

# ALBURTIS CODIFIED ORDINANCES

## Chapter 8

### Budget and Finance

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## Chapter 8 — Budget and Finance

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## Article I — New Borough Hall

### § 8-101 Background.

(a) The governing body of the Borough of Alburdis, Lehigh County, Pennsylvania (the “**Local Government Unit**”) deems it advisable to borrow up to Two Hundred Fifty Thousand Dollars (\$250,000.00) for and toward the construction of a new Borough Hall and the demolition and removal of the existing Borough Hall (the “**Project**”), and paying the costs of issuance of the indebtedness.

(b) The governing body of the Local Government Unit contemplates the authorization, sale, issuance, and delivery of a note evidencing such indebtedness in a principal amount not to exceed \$250,000 to be designated as the General Obligation Note, Series 1 of 1998, all in accordance with applicable and appropriate provisions of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, as amended, 53 PA. CONS. STAT. § 8001 *et seq.* (the “**Act**”).

(c) The proposed increase of debt, together with the Local Government Unit’s nonelectoral indebtedness and its lease rental indebtedness presently outstanding, will not cause the debt limitations of the Act to be exceeded.

(d) The architect retained by the Local Government Unit to design the new Borough Hall has determined that the useful life of the Project is more than forty (40) years.

(e) PNC BANK, NATIONAL ASSOCIATION (the “**Bank**”) has presented a written purchase contract (the “**Purchase Contract**”), attached to Ordinance 360 as **Exhibit A** (which is incorporated herein by reference), to purchase the note to be issued by the Local Government Unit in order to achieve the financing of the Project.

[Ord. 415 10-29-2003]

### § 8-102 Authorization.

The Local Government Unit hereby authorizes the incurrence of debt, and the increase of its nonelectoral indebtedness under the Act, in the principal amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00), in order to pay the costs of the Project and the costs of issuing the indebtedness. The indebtedness shall be evidenced by one General Obligation Note (Series 1 of 1998), in fully registered form, in the principal sum not to exceed \$250,000, dated the date of its delivery, bearing interest at the rate of 4.79% per annum calculated on a 365-day year basis for the actual number of days in each interest period, payable in eighty-four (84) level monthly installment payments of principal and interest commencing February 15, 1999, and in the form attached to Ordinance 360 as **Exhibit B** (which is incorporated herein by reference) (the “**Note**”). The Local Government Unit may prepay the Note as set forth in **Exhibit B** to Ordinance 360.

[Ord. 415 10-29-2003]

### § 8-103 Issuance.

The Note shall be executed in the name and under the corporate seal of the Local Government Unit by the President of Borough Council (or the Vice President of Borough Council) and attested to by the Secretary (or the Treasurer) (the “**Designated Officers**”). The Designated Officers are hereby authorized and directed to execute and deliver such documents, and to do and perform all acts, necessary and proper for the issuance and further security of the Note, including the execution, sealing, and delivery of the Note to the Bank. The Designated Officers are authorized to receive payment for the Note on behalf of the Local Government Unit, and to apply the proceeds to the costs of the Project and the issuance of the Note.

[Ord. 415 10-29-2003]

### § 8-104 Debt Statement and State Filings.

The Designated Officers are hereby authorized and directed to prepare, execute, verify, and file with the Pennsylvania Department of Community and Economic Development (“**Department**”) the debt statement and borrowing base certificate required by the Act at 53 PA. CONS. STAT. § 8110, to maintain a copy of such debt statement and certificate in the Office of the Secretary, and to take other necessary action, including, if necessary or desirable, any statements required to qualify any portion of the debt from the appropriate debt limit as self-liquidating or subsidized debt. The Designated Officers shall also apply for the authorization of the proceedings by the Department under 53 PA. CONS. STAT. § 8111(a), and, notwithstanding anything to the contrary in this Article, shall not deliver the Note until the proceedings have been authorized or deemed authorized by the Department under 53 PA. CONS. STAT. §§ 8204, 8206.

[Ord. 415 10-29-2003]

### § 8-105 Security and Payment of the Note.

The Note shall be a general, full faith and credit, unlimited tax obligation of the Local Government Unit. The Local Government Unit hereby covenants with the Bank and with subsequent holders, from time to time, of the Note that the Local Government Unit shall (a) include the amount of the debt service on the Note for each fiscal year in which any amount of principal or interest is payable in its budget for that year; (b) appropriate such amounts to the payment of such debt service; and (c) duly and punctually pay or cause to be paid the principal of and interest on the Note on the dates, at the place, and in the manner stated in the Note according to the true intent and meaning thereof, and for such proper budgeting, appropriation, and payment, the Local Government hereby irrevocably pledges its full faith, credit and taxing power.

[Ord. 415 10-29-2003]

### § 8-106 Sinking Fund.

The Local Government Unit does hereby create, and order to be established (in its name and identified by reference to the Note), a Sinking Fund for the payment of the Note with the Bank, and does further covenant to maintain such Sinking Fund until the Note is paid in full.

The Secretary or Treasurer shall deposit into the Sinking Fund sufficient amounts for payment of principal and interest on the Note no later than the dates upon which such payments are due, without further action by the Local Government Unit. The Local Government Unit hereby designates the Bank as the Sinking Fund Depository and Paying Agent for the Note, and the Designated Officers are hereby authorized and directed to contract with the Bank for its services in such capacity, except as the same may be included in the Purchase Contract. Without further action by the Local Government Unit, the Bank may withdraw available monies from the Sinking Fund and apply them to the payment of the principal and interest on the Note.

[Ord. 415 10-29-2003]

## § 8-107 Tax Covenants.

(a) **No Arbitrage Bond.** The Local Government Unit hereby covenants that no part of the proceeds of the Note will be used, at any time, directly or indirectly, in a manner which, if such use had been reasonably expected on the date of issuance of the Note, would have caused the Note to be an “arbitrage bond” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “**Code**”) and the regulations thereunder applicable to the Note (the “**Regulations**”) and that it will comply with the requirements of that Section and the Regulations throughout the term of the Note.

(b) **Rebate Requirements.** If:

(1) the principal amount of the Note plus the aggregate principal amount of all other tax-exempt obligations issued and to be issued by or on behalf of the Local Government Unit during the 1998 calendar year exceeds \$5,000,000; and if

(2) the gross proceeds of the Note are invested at a yield greater than the yield on the Note; and if

(3) the gross proceeds of the Note are not expended or deemed to have been expended (since the Project is a construction project) within two years from the date of issuance (and according to certain periodic expenditure thresholds),

all pursuant to § 1.148.7 of the Regulations, the Local Government Unit covenants that it will rebate to the U.S. Treasury, at the times and in the manner required by the Code, the difference (if a positive number) between the investment income received on the Note proceeds and the investment income that would have been earned had the Note proceeds been invested at the yield of the Note.

(c) **Qualified Tax-Exempt Obligation.** The Local Government Unit hereby designates the Note as a “qualified tax-exempt obligation,” as defined in Section 265(b)(3)(B) of the Code, for the purposes and effect contemplated by Section 265 of the Code, and represents that it has not issued, and does not reasonably expect to issue, tax-exempt obligations, together with all tax-exempt obligations issued and reasonably expected to be issued by its “subordinate entities” (within the meaning of Code § 265(b)(3)(E)) which, in the aggregate, exceed or will exceed Ten Million Dollars (\$10,000,000) during the 1998 calendar year.

(d) **IRS Filings.** The Local Government Unit will file IRS Form 8038-G (or 8038-GC if applicable) and any other forms or information required by the Code or the Regulations to be filed with the Internal Revenue Service in order to further ensure the exclusion of the interest on the Note from gross income tax for federal income tax purposes.

[Ord. 415 10-29-2003]

## § 8-108 Award.

(a) **Private Sale by Negotiation.** In compliance with 53 PA. CONS. STAT. § 8161(a), the governing body of the Local Government Unit hereby determines that private sale of the Note by negotiation, rather than public sale, is in the best financial interest of the Local Government Unit.

(b) **Award to Bank.** The governing body of the Local Government Unit hereby awards and sells the Note to the Bank at par in accordance with the Purchase Contract, *provided that* the proceedings are approved by the Department of Community and Economic Development under the provisions of the Act. The Local Government Unit accepts the Purchase Contract subject to the above provision, and authorizes the Designated Officers to execute an appropriate acceptance document.

[Ord. 415 10-29-2003]

## § 8-109 Contract.

This Article shall be deemed to be a contract with the holders, from time to time, of the Note.

[Ord. 415 10-29-2003]

## § 8-110 Necessary Acts.

The Designated Officers are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, and publish all notices which shall be necessary or convenient to comply with the provisions of this Article and the Act in the name and on behalf of the Local Government Unit.

[Ord. 415 10-29-2003]

## § 8-111 Compliance With Debt Act.

This Article is enacted pursuant to, and the Note issued hereunder shall be subject to, the provisions of the Act, and all of the mandatory provisions of the Act shall apply whether or not explicitly stated in this Article.

[Ord. 415 10-29-2003]

### § 8-112 Severability.

In case any one or more of the provisions contained in this Article or in the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Article or of the Note, and this Article or the Note shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

[Ord. 415 10-29-2003]

### § 8-113 Advertisement.

The prior advertisement of a summary of this Article as required by law in a newspaper of general circulation, is ratified and confirmed. Borough Council hereby authorizes and directs the Solicitor to advertise the enactment of Ordinance 360 in a newspaper of general circulation within fifteen (15) days following the date of final adoption.

[Ord. 415 10-29-2003]

## Article II — West Penn Avenue Reconstruction and Other Roadway Improvements

### § 8-201 Background.

(a) The governing body of the Borough of Alburtis, Lehigh County, Pennsylvania (the “**Local Government Unit**”) deems it advisable to borrow up to One Hundred Thousand Dollars (\$100,000.00) for and toward the costs of roadway improvements, including the reconstruction of West Penn Avenue (the “**Project**”), and paying the costs of issuance of the indebtedness.

(b) The governing body of the Local Government Unit contemplates the authorization, sale, issuance and delivery of a note evidencing such indebtedness in a principal amount not to exceed \$100,000 to be designated as the General Obligation Note, Series 1 of 2000, all in accordance with applicable and appropriate provisions of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, as amended, 53 PA. CONS. STAT. § 8001 *et seq.* (the “**Act**”)

(c) The proposed increase of debt, together with the Local Government Unit’s nonelectoral indebtedness and its lease rental indebtedness presently outstanding, will not cause the debt limitations of the Act to be exceeded.

(d) The Borough Engineer has determined that the useful life of the Project is at least ten (10) years.

(e) PNC BANK, NATIONAL ASSOCIATION (the “**Bank**”) has presented a written purchase contract (the “**Purchase Contract**”), attached to Ordinance 382 as **Exhibit A** (which is incorporated herein by reference), to purchase the note to be issued by the Local Government Unit in order to achieve the financing of the Project.

[Ord. 415 10-29-2003]

### § 8-202 Authorization.

The Local Government Unit hereby authorizes the incurrence of debt, and the increase of its nonelectoral indebtedness under the Act, in the principal amount not to exceed One Hundred Thousand Dollars (\$100,000.00), in order to pay the costs of the Project and the costs of issuing the indebtedness. The indebtedness shall be evidenced by one General Obligation Note (Series 1 of 2000), in fully registered form, in the principal sum not to exceed \$100,000, dated the date of its delivery, bearing interest at the rate of 5.14% per annum calculated on a 365-day year basis for the actual number of days in each interest period, payable in forty-eight (48) level monthly installment payments of principal and interest commencing January 15, 2001, and in the form attached to Ordinance 382 as **Exhibit B** (which is incorporated herein by reference) (the “**Note**”). The Local Government Unit may prepay the Note as set forth in **Exhibit B** to Ordinance 382.

[Ord. 415 10-29-2003]

### § 8-203 Issuance.

The Note shall be executed in the name and under the corporate seal of the Local Government Unit by the President of Borough Council (or the Vice President of Borough Council) and attested to by the Secretary (or the Treasurer) (the “**Designated Officers**”). The Designated Officers are hereby authorized and directed to execute and deliver such documents, and to do and perform all acts, necessary and proper for the issuance and further security of the Note, including the execution, sealing, and delivery of the Note to the Bank. The Designated Officers are authorized to receive payment for the Note on behalf of the Local Government Unit, and to apply the proceeds to the costs of the Project and the issuance of the Note.

[Ord. 415 10-29-2003]

### § 8-204 Small Borrowing; Debt Statement.

The Local Government Unit hereby incurs the debt represented by the Note as a small borrowing for capital purposes under 53 PA. CONS. STAT. § 8109, and this Article, although adopted as an ordinance in accordance with the Borough Code, is a “resolution” under 53 PA. CONS. STAT. § 8109. *See* 53 PA. CONS. STAT. § 8002(c) (a “resolution” under the Act is a formal action of a governmental unit to which the advertising requirements of 53 PA. CONS. STAT. § 8003 do not apply, whether, under the law applicable to the local government unit, the action is taken by ordinance or resolution). In accordance with the requirements of PA. CONS. STAT. § 8110, the Designated Officers have prepared, executed, and verified the debt statement and borrowing base certificate required by the Act prior to the adoption of Ordinance 382 (a true and correct copy of

which is attached to Ordinance 382 as **Exhibit C** and incorporated herein by reference) and they are hereby directed to file and maintain such debt statement and certificate in the Office of the Secretary, and to take other necessary action, including, if necessary or desirable, any statements required to qualify any portion of the debt from the appropriate debt limit as self-liquidating or subsidized debt.

[Ord. 415 10-29-2003]

### § 8-205 Security and Payment of the Note.

The Note shall be a general, full faith and credit, unlimited tax obligation of the Local Government Unit. The Local Government Unit hereby covenants with the Bank and with subsequent holders, from time to time, of the Note that the Local Government Unit shall (a) include the amount of the debt service on the Note for each fiscal year in which any amount of principal or interest is payable in its budget for that year; (b) appropriate such amounts to the payment of such debt service; and (c) duly and punctually pay or cause to be paid the principal of and interest on the Note on the dates, at the place, and in the manner stated in the Note according to the true intent and meaning thereof, and for such proper budgeting, appropriation, and payment, the Local Government hereby irrevocably pledges its full faith, credit and taxing power.

[Ord. 415 10-29-2003]

### § 8-206 Sinking Fund.

The Local Government Unit does hereby create, and order to be established (in its name and identified by reference to the Note), a Sinking Fund for the payment of the Note with the Bank, and does further covenant to maintain such Sinking Fund until the Note is paid in full. The Secretary or Treasurer shall deposit into the Sinking Fund sufficient amounts for payment of principal and interest on the Note no later than the dates upon which such payments are due, without further action by the Local Government Unit. The Local Government Unit hereby designates the Bank as the Sinking Fund Depository and Paying Agent for the Note, and the Designated Officers are hereby authorized and directed to contract with the Bank for its services in such capacity, except as the same may be included in the Purchase Contract. Without further action by the Local Government Unit, the Bank may withdraw available monies from the Sinking Fund and apply them to the payment of the principal and interest on the Note.

[Ord. 415 10-29-2003]

### § 8-207 Tax Covenants.

(a) **No Arbitrage Bond.** The Local Government Unit hereby covenants that no part of the proceeds of the Note will be used, at any time, directly or indirectly, in a manner which, if such use had been reasonably expected on the date of issuance of the Note, would have caused the Note to be an “arbitrage bond” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”) and the regulations thereunder applicable to the Note

(the “**Regulations**”) and that it will comply with the requirements of that Section and the Regulations throughout the term of the Note.

**(b) Rebate Requirements.** If:

(1) the principal amount of the Note plus the aggregate principal amount of all other tax-exempt obligations issued and to be issued by or on behalf of the Local Government Unit during the 1998 calendar year exceeds \$5,000,000; and if

(2) the gross proceeds of the Note are invested at a yield greater than the yield on the Note; and if

(3) the gross proceeds of the Note are not expended or deemed to have been expended either within six months from the date of issuance, or, if the Project is a construction project, within two years from the date of issuance (and according to certain periodic expenditure thresholds),

all pursuant to § 1.148.7 of the Regulations, the Local Government Unit covenants that it will rebate to the U.S. Treasury, at the times and in the manner required by the Code, the difference (if a positive number) between the investment income received on the Note proceeds and the investment income that would have been earned had the Note proceeds been invested at the yield of the Note.

**(c) Qualified Tax-Exempt Obligation.** The Local Government Unit hereby designates the Note as a “qualified tax-exempt obligation,” as defined in Section 265(b)(3)(B) of the Code, for the purposes and effect contemplated by Section 265 of the Code, and represents that it has not issued, and does not reasonably expect to issue, tax-exempt obligations, together with all tax-exempt obligations issued and reasonably expected to be issued by its “subordinate entities” (within the meaning of Code § 265(b)(3)(E)) which, in the aggregate, exceed or will exceed Ten Million Dollars (\$10,000,000) during the 2000 calendar year.

**(d) IRS Filings.** The Local Government Unit will file IRS Form 8038-G (or 8038-GC if applicable) and any other forms or information required by the Code or the Regulations to be filed with the Internal Revenue Service in order to further ensure the exclusion of the interest on the Note from gross income tax for federal income tax purposes.

[Ord. 415 10-29-2003]

## § 8-208 Award.

**(a) Private Sale by Negotiation.** In compliance with 53 PA. CONS. STAT. § 8161(a), the governing body of the Local Government Unit hereby determines that private sale of the Note by negotiation, rather than public sale, is in the best financial interest of the Local Government Unit.

**(b) Award to Bank.** The governing body of the Local Government Unit hereby awards and sells the Note to the Bank at par in accordance with the Purchase Contract. The Local Government Unit accepts the Purchase Contract subject to the above provision, and authorizes the Designated Officers to execute an appropriate acceptance document.

[Ord. 415 10-29-2003]

**§ 8-209 Contract.**

This Article shall be deemed to be a contract with the holders, from time to time, of the Note.

[Ord. 415 10-29-2003]

**§ 8-210 Necessary Acts.**

The Designated Officers are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, and publish all notices which shall be necessary or convenient to comply with the provisions of this Article and the Act in the name and on behalf of the Local Government Unit.

[Ord. 415 10-29-2003]

**§ 8-211 Compliance With Debt Act.**

This Article is enacted pursuant to, and the Note issued hereunder shall be subject to, the provisions of the Act relating to general obligation notes issued as small borrowings for capital purposes under PA. CONS. STAT. § 8109, and all of the mandatory provisions of the Act relating to such notes shall apply whether or not explicitly stated in this Article.

[Ord. 415 10-29-2003]

**§ 8-212 Severability.**

In case any one or more of the provisions contained in this Article or in the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Article or of the Note, and this Article or the Note shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

[Ord. 415 10-29-2003]

**§ 8-213 Advertisement.**

The prior advertisement of a summary of this Article as required by law in a newspaper of general circulation, is ratified and confirmed.

[Ord. 415 10-29-2003]

## Article III — Acquisition of Vehicles and Snow Plow

### § 8-301 Background.

(a) The governing body of the Borough of Alburdis, Lehigh County, Pennsylvania (the “**Local Government Unit**”) deems it advisable to borrow up to Forty-five Thousand Dollars (\$45,000.00) for and toward the costs for the acquisition of a 2004 Ford Crown Victoria, a 2004 Ford Super Duty F-250 F21 Regular Cab 137” XL 4 Wheel Drive, and a Fisher 8 1/2 Snow Plow, and related costs (the “**Project**”), and paying the costs of issuance of the indebtedness.

(b) The governing body of the Local Government Unit contemplates the authorization, sale, issuance and delivery of a note evidencing such indebtedness in a principal amount not to exceed \$45,000 to be designated as the General Obligation Note, Series 1 of 2004, all in accordance with applicable and appropriate provisions of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, as amended, 53 PA. CONS. STAT. § 8001 *et seq.* (the “**Act**”).

(c) The proposed increase of debt, together with the Local Government Unit’s nonelectoral indebtedness and its lease rental indebtedness presently outstanding, will not cause the debt limitations of the Act to be exceeded.

(d) The Borough Maintenance Supervisor has determined that the estimated useful life of the Project is six (6) years, except that the estimated useful life of the snow plow to be acquired as part of the Project is five (5) years.

(e) EAST PENN BANK (the “**Bank**”) has presented a written purchase contract (the “**Purchase Contract**”), attached to Ordinance 422 as **Exhibit A** (which is incorporated herein by reference), to purchase the note to be issued by the Local Government Unit in order to achieve the financing of the Project.

[Ord. 422 02-11-2004]

### § 8-302 Authorization.

The Local Government Unit hereby authorizes the incurrence of debt, and the increase of its nonelectoral indebtedness under the Act, in the principal amount not to exceed Forty-five Thousand Dollars (\$45,000.00), in order to pay the costs of the Project and the costs of issuing the indebtedness. The indebtedness shall be evidenced by one General Obligation Note (Series 1 of 2004), in fully registered form, in the principal sum not to exceed \$45,000, dated the date of its delivery, bearing interest at the rate of 3.25% per annum calculated on a 365-day year basis (366 days in leap years) for the actual number of days in each interest period, payable in thirty-six (36) level monthly installment payments of principal and interest commencing March 15, 2004, and in the form attached to Ordinance 422 as **Exhibit B** (which is incorporated herein by reference) (the “**Note**”). The Local Government Unit may prepay the Note as set forth in **Exhibit B** to Ordinance 422.

[Ord. 422 02-11-2004]

### § 8-303 Issuance.

The Note shall be executed in the name and under the corporate seal of the Local Government Unit by the President of Borough Council (or the Vice President of Borough Council) and attested to by the Secretary (or the Treasurer) (the “**Designated Officers**”). The Designated Officers are hereby authorized and directed to execute and deliver such documents, and to do and perform all acts, necessary and proper for the issuance and further security of the Note, including the execution, sealing, and delivery of the Note to the Bank. The Designated Officers are authorized to receive payment for the Note on behalf of the Local Government Unit, and to apply the proceeds to the costs of the Project and the issuance of the Note.

[Ord. 422 02-11-2004]

### § 8-304 Small Borrowing; Debt Statement.

The Local Government Unit hereby incurs the debt represented by the Note as a small borrowing for capital purposes under 53 PA. CONS. STAT. § 8109, and this Article, although adopted as an ordinance in accordance with the Borough Code, is a “resolution” under 53 PA. CONS. STAT. § 8109. *See* 53 PA. CONS. STAT. § 8002(c) (a “resolution” under the Act is a formal action of a governmental unit to which the advertising requirements of 53 PA. CONS. STAT. § 8003 do not apply, whether, under the law applicable to the local government unit, the action is taken by ordinance or resolution). In accordance with the requirements of PA. CONS. STAT. § 8110, the Designated Officers have prepared, executed, and verified the debt statement and borrowing base certificate required by the Act prior to the adoption of Ordinance 422 (a true and correct copy of which is attached to Ordinance 422 as **Exhibit C** and incorporated herein by reference) and they are hereby directed to file and maintain such debt statement and certificate in the Office of the Secretary, and to take other necessary action, including, if necessary or desirable, any statements required to qualify any portion of the debt from the appropriate debt limit as self-liquidating or subsidized debt.

[Ord. 422 02-11-2004]

### § 8-305 Security and Payment of the Note.

The Note shall be a general, full faith and credit, unlimited tax obligation of the Local Government Unit. The Local Government Unit hereby covenants with the Bank and with subsequent holders, from time to time, of the Note that the Local Government Unit shall (a) include the amount of the debt service on the Note for each fiscal year in which any amount of principal or interest is payable in its budget for that year; (b) appropriate such amounts to the payment of such debt service; and (c) duly and punctually pay or cause to be paid the principal of and interest on the Note on the dates, at the place, and in the manner stated in the Note according to the true intent and meaning thereof, and for such proper budgeting, appropriation, and payment, the Local Government hereby irrevocably pledges its full faith, credit and taxing power.

[Ord. 422 02-11-2004]

### § 8-306 Sinking Fund.

The Local Government Unit does hereby create, and order to be established (in its name and identified by reference to the Note), a Sinking Fund for the payment of the Note with the Bank, and does further covenant to maintain such Sinking Fund until the Note is paid in full. The Secretary or Treasurer shall deposit into the Sinking Fund sufficient amounts for payment of principal and interest on the Note no later than the dates upon which such payments are due, without further action by the Local Government Unit. The Local Government Unit shall maintain a general account with the Bank so long as any amount remains outstanding under the Note, and hereby authorizes Bank to automatically deduct from this account and deposit into the Sinking Fund sufficient amounts to insure that the obligation of the Secretary or Treasurer under the preceding sentence is satisfied on the dates payments are due on the Note (but not more than the amounts so required). The Local Government Unit hereby designates the Bank as the Sinking Fund Depository and Paying Agent for the Note, and the Designated Officers are hereby authorized and directed to contract with the Bank for its services in such capacity, except as the same may be included in the Purchase Contract. Without further action by the Local Government Unit, the Bank may withdraw available monies from the Sinking Fund and apply them to the payment of the principal and interest on the Note.

[Ord. 422 02-11-2004]

### § 8-307 Tax Covenants.

(a) **No Arbitrage Bond or Private Activity Bond.** The Local Government Unit hereby covenants that it will make no use of the proceeds of the Note or do or suffer any other action, at any time, directly or indirectly, in a manner which, if such use or action had been reasonably expected on the date of issuance of the Note, would have caused the Note to be an “arbitrage bond” or a “private activity bond” within the meaning of Section 148 and Section 141 of the Internal Revenue Code of 1986, as amended (the “**Code**”) and the regulations thereunder applicable to the Note (the “**Regulations**”) and that it will comply with the requirements of those Sections and the Regulations thereunder throughout the term of the Note.

(b) **Rebate Requirements.** If:

(1) the principal amount of the Note plus the aggregate principal amount of all other tax-exempt obligations issued and to be issued by or on behalf of the Local Government Unit during the 2004 calendar year exceeds \$5,000,000; and if

(2) the gross proceeds of the Note are invested at a yield greater than the yield on the Note; and if

(3) the gross proceeds of the Note are not expended or deemed to have been expended either within six months from the date of issuance, or, if the Project is a construction project, within two years from the date of issuance (and according to certain periodic expenditure thresholds),

all pursuant to § 1.148.7 of the Regulations, the Local Government Unit covenants that it will rebate to the U.S. Treasury, at the times and in the manner required by the Code, the difference (if a positive number) between the investment income received on the Note proceeds and the in-

vestment income that would have been earned had the Note proceeds been invested at the yield of the Note.

(c) **Qualified Tax-Exempt Obligation.** The Local Government Unit hereby designates the Note as a “qualified tax-exempt obligation,” as defined in Section 265(b)(3)(B) of the Code, for the purposes and effect contemplated by Section 265 of the Code, and represents that it has not issued, and does not reasonably expect to issue, tax-exempt obligations, together with all tax-exempt obligations issued and reasonably expected to be issued by its “subordinate entities” (within the meaning of Code § 265(b)(3)(E)) which, in the aggregate, exceed or will exceed Ten Million Dollars (\$10,000,000) during the 2004 calendar year. The Local Government Unit also determines that it will not engage in any action or inaction which will or may cause the Note to fail or cease to constitute a “qualified tax-exempt obligation” under Section 265(b)(3) of the Code.

(d) **IRS Filings.** The Local Government Unit will file IRS Form 8038-G (or 8038-GC if applicable) and any other forms or information required by the Code or the Regulations to be filed with the Internal Revenue Service in order to further ensure the exclusion of the interest on the Note from gross income tax for federal income tax purposes.

[Ord. 422 02-11-2004]

### § 8-308 Award.

(a) **Private Sale by Negotiation.** In compliance with 53 PA. CONS. STAT. § 8161(a), the governing body of the Local Government Unit hereby determines that private sale of the Note by negotiation, rather than public sale, is in the best financial interest of the Local Government Unit.

(b) **Award to Bank.** The governing body of the Local Government Unit hereby awards and sells the Note to the Bank at par in accordance with the Purchase Contract. The Local Government Unit accepts the Purchase Contract subject to the above provision, and authorizes the Designated Officers to execute an appropriate acceptance document.

[Ord. 422 02-11-2004]

### § 8-309 Financial Statements.

So long as any amount remains outstanding under the Note, the Local Government Unit shall provide the Bank, or subsequent holders of the Note, with an annual financial statement prepared by a certified public accountant.

[Ord. 422 02-11-2004]

**§ 8-310 Contract.**

This Article shall be deemed to be a contract with the holders, from time to time, of the Note.

[Ord. 422 02-11-2004]

**§ 8-311 Necessary Acts.**

The Designated Officers are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, and publish all notices which shall be necessary or convenient to comply with the provisions of this Article and the Act in the name and on behalf of the Local Government Unit.

[Ord. 422 02-11-2004]

**§ 8-312 Compliance With Debt Act.**

This Article is enacted pursuant to, and the Note issued hereunder shall be subject to, the provisions of the Act relating to general obligation notes issued as small borrowings for capital purposes under PA. CONS. STAT. § 8109, and all of the mandatory provisions of the Act relating to such notes shall apply whether or not explicitly stated in this Article.

[Ord. 422 02-11-2004]

**§ 8-313 Severability.**

In case any one or more of the provisions contained in this Article or in the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Article or of the Note, and this Article or the Note shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

[Ord. 422 02-11-2004]

**§ 8-314 Advertisement.**

The prior advertisement of a summary of this Article and Ordinance 422 as required by law in a newspaper of general circulation, is ratified and confirmed.

[Ord. 422 02-11-2004]

## Article IV — Borough Maintenance Building and Salt Shed; Water Storage Tank and Water Pump Station

### § 8-401 Background.

(a) The governing body of the Borough of Alburdis, Lehigh County, Pennsylvania (the “**Local Government Unit**”) deems it advisable to borrow up to Five Hundred Fifty Thousand Dollars (\$550,000.00) for and toward paying the costs and expenses for the planning, designing, acquiring, constructing, and equipping of a new Borough maintenance building and salt shed, and the planning, designing, acquiring, erecting, constructing, and equipping of a new water storage tank, water pump station, and other water system facilities (the “**Project**”), and paying the costs of issuance of the indebtedness.

(b) The governing body of the Local Government Unit contemplates the authorization, sale, issuance and delivery of a note evidencing such indebtedness in a principal amount not to exceed \$550,000 to be designated as the General Obligation Note, Series 2 of 2004, all in accordance with applicable and appropriate provisions of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, as amended, 53 PA. CONS. STAT. § 8001 *et seq.* (the “**Act**”).

(c) The proposed increase of debt, together with the Local Government Unit’s nonelectoral indebtedness and its lease rental indebtedness presently outstanding, will not cause the debt limitations of the Act to be exceeded.

(d) The Borough Engineer has determined that the estimated useful life of the Project is in excess of twelve (12) years (with the maintenance building and salt shed having an estimated useful life of at least thirty-five (35) years, the pump station having an estimated useful life of twenty (20) years, and the water storage tank having an estimated useful life of fifty (50) years).

(e) The Local Government Unit has obtained realistic cost estimates for the costs of the Project from registered architects, professional engineers, or other persons qualified by experience, indicating the sum of \$750,000.00 will be needed to complete the Project.

(e) EAST PENN BANK (the “**Bank**”) has presented a written purchase contract (the “**Purchase Contract**”), attached to Ordinance 427 as **Exhibit A** (which is incorporated herein by reference), to purchase the note to be issued by the Local Government Unit in order to achieve the financing of the Project.

[Ord. 427 11-22-2004]

### § 8-402 Authorization.

The Local Government Unit hereby authorizes the incurrence of debt, and the increase of its nonelectoral indebtedness under the Act, in the principal amount not to exceed Five Hundred Fifty Thousand Dollars (\$550,000.00), in order to pay the costs of the Project and the costs of issuing the indebtedness. The indebtedness shall be evidenced by one General Obligation Note

(Series 2 of 2004), in fully registered form; in the principal sum not to exceed \$550,000; dated the date of its delivery; bearing interest at the rate of 3.65% per annum calculated on a 365-day year basis for the actual number of days elapsed; payable in eleven (11) monthly payments of interest only on the advanced and outstanding principal balance, commencing February 1, 2005, followed by level monthly installment payments of principal and interest in the amount of Five Thousand Four Hundred Seventy-seven Dollars and forty-five cents (\$5,477.45) commencing January 1, 2006, with all outstanding principal and accrued interest due and payable in full on December 1, 2015; and in the form attached to Ordinance 427 as **Exhibit B** (which is incorporated herein by reference) (the “**Note**”). The Local Government Unit may prepay the Note as set forth in **Exhibit B** to Ordinance 247.

[Ord. 427 11-22-2004]

### § 8-403 Issuance.

The Note shall be executed in the name and under the corporate seal of the Local Government Unit by the President of Borough Council (or the Vice President of Borough Council) and attested to by the Secretary (or the Treasurer) (the “**Designated Officers**”). The Designated Officers are hereby authorized and directed to execute and deliver such documents, and to do and perform all acts, necessary and proper for the issuance and further security of the Note, including the execution, sealing, and delivery of the Note to the Bank. The Designated Officers are authorized to receive payment for the Note on behalf of the Local Government Unit, and to apply the proceeds to the costs of the Project and the issuance of the Note.

[Ord. 427 11-22-2004]

### § 8-404 Debt Statement and State Filings.

The Designated Officers are hereby authorized and directed to prepare, execute, verify, and file with the Pennsylvania Department of Community and Economic Development (“**Department**”) the debt statement and borrowing base certificate required by the Act at 53 PA. CONS. STAT. § 8110, to file and maintain a copy of such debt statement and certificate in the Office of the Secretary, and to take other necessary action, including, if necessary or desirable, any statements required to qualify any portion of the debt from the appropriate debt limit as self-liquidating or subsidized debt. The Designated Officers shall also apply for the authorization of the proceedings by the Department under 53 PA. CONS. STAT. § 8111(a) and, notwithstanding anything to the contrary in this Article, shall not deliver the Note until the proceedings have been approved or deemed approved by the Department under 53 PA. CONS. STAT. §§ 8204, 8206. The proceedings set forth in this Article are expressly contingent upon such approval or deemed approval by the Department.

[Ord. 427 11-22-2004]

### § 8-405 Security and Payment of the Note.

The Note shall be a general, full faith and credit, unlimited tax obligation of the Local Government Unit. The Local Government Unit hereby covenants with the Bank and with subsequent holders, from time to time, of the Note that the Local Government Unit shall (a) include the amount of the debt service on the Note for each fiscal year in which any amount of principal or interest is payable in its budget for that year; (b) appropriate such amounts to the payment of such debt service; and (c) duly and punctually pay or cause to be paid the principal of and interest on the Note on the dates, at the place, and in the manner stated in the Note according to the true intent and meaning thereof, and for such proper budgeting, appropriation, and payment, the Local Government Unit hereby irrevocably pledges its full faith, credit and taxing power.

[Ord. 427 11-22-2004]

### § 8-406 Sinking Fund.

The Local Government Unit does hereby create, and order to be established (in its name and identified by reference to the Note), a Sinking Fund for the payment of the Note with the Bank, and does further covenant to maintain such Sinking Fund until the Note is paid in full. The Secretary or Treasurer shall deposit into the Sinking Fund sufficient amounts for payment of principal and interest on the Note no later than the dates upon which such payments are due, without further action by the Local Government Unit. The Local Government Unit shall maintain a general account with the Bank so long as any amount remains outstanding under the Note, and hereby authorizes Bank to automatically deduct from this account and deposit into the Sinking Fund sufficient amounts to insure that the obligation of the Secretary or Treasurer under the preceding sentence is satisfied on the dates payments are due on the Note (but not more than the amounts so required). The Local Government Unit hereby designates the Bank as the Sinking Fund Depository and Paying Agent for the Note, and the Designated Officers are hereby authorized and directed to contract with the Bank for its services in such capacity, except as the same may be included in the Purchase Contract. Without further action by the Local Government Unit, the Bank may withdraw available monies from the Sinking Fund and apply them to the payment of the principal and interest on the Note.

[Ord. 427 11-22-2004]

### § 8-407 Tax Covenants.

(a) **No Arbitrage Bond or Private Activity Bond.** The Local Government Unit hereby covenants that it will make no use of the proceeds of the Note or do or suffer any other action, at any time, directly or indirectly, in a manner which, if such use or action had been reasonably expected on the date of issuance of the Note, would have caused the Note to be an “arbitrage bond” or a “private activity bond” within the meaning of Section 148 and Section 141 of the Internal Revenue Code of 1986, as amended (the “Code”) and the regulations thereunder applicable to the Note (the “Regulations”) and that it will comply with the requirements of those Sections and the Regulations thereunder throughout the term of the Note.

**(b) Rebate Requirements.** If:

(1) the principal amount of the Note plus the aggregate principal amount of all other tax-exempt obligations issued and to be issued by or on behalf of the Local Government Unit during the 2004 calendar year exceeds \$5,000,000; and if

(2) the gross proceeds of the Note are invested at a yield greater than the yield on the Note; and if

(3) the gross proceeds of the Note are not expended or deemed to have been expended (since the Project is a construction project) within two years from the date of issuance (and according to certain periodic expenditure thresholds),

all pursuant to § 1.148.7 of the Regulations, the Local Government Unit covenants that it will rebate to the U.S. Treasury, at the times and in the manner required by the Code, the difference (if a positive number) between the investment income received on the Note proceeds and the investment income that would have been earned had the Note proceeds been invested at the yield of the Note.

**(c) Qualified Tax-Exempt Obligation.** The Local Government Unit hereby designates the Note as a “qualified tax-exempt obligation,” as defined in Section 265(b)(3)(B) of the Code, for the purposes and effect contemplated by Section 265 of the Code, and represents that it has not issued, and does not reasonably expect to issue, tax-exempt obligations, together with all tax-exempt obligations issued and reasonably expected to be issued by its “subordinate entities” (within the meaning of Code § 265(b)(3)(E)) which, in the aggregate, exceed or will exceed Ten Million Dollars (\$10,000,000) during the 2004 calendar year. The Local Government Unit also determines that it will not engage in any action or inaction which will or may cause the Note to fail or cease to constitute a “qualified tax-exempt obligation” under Section 265(b)(3) of the Code.

**(d) IRS Filings.** The Local Government Unit will file IRS Form 8038-G (or 8038-GC if applicable) and any other forms or information required by the Code or the Regulations to be filed with the Internal Revenue Service in order to further ensure the exclusion of the interest on the Note from gross income tax for federal income tax purposes.

[Ord. 427 11-22-2004]

**§ 8-408 Award.**

**(a) Private Sale by Negotiation.** In compliance with 53 PA. CONS. STAT. § 8161(a), the governing body of the Local Government Unit hereby determines that private sale of the Note by negotiation, rather than public sale, is in the best financial interest of the Local Government Unit.

**(b) Award to Bank.** The governing body of the Local Government Unit hereby awards and sells the Note to the Bank at par in accordance with the Purchase Contract, *provided* that the proceedings are approved by the Department under the provisions of the Act and the Note is dated the date of its delivery to the Bank. The Local Government Unit accepts the Purchase Contract subject to the above provision, and authorizes the Designated Officers to execute an appropriate acceptance document.

[Ord. 427 11-22-2004]

**§ 8-409 Financial Statements; Bank as Main Bank Depository.**

So long as any amount remains outstanding under the Note, the Local Government Unit shall provide the Bank, or subsequent holders of the Note, with an annual financial statement prepared by a certified public accountant. So long as any amount remains outstanding under the Note and the Bank is the holder of the Note, the Local Government Unit shall utilize the Bank as the main bank depository of the Local Government Unit.

[Ord. 427 11-22-2004]

**§ 8-410 Contract.**

This Article shall be deemed to be a contract with the holders, from time to time, of the Note.

[Ord. 427 11-22-2004]

**§ 8-411 Necessary Acts.**

The Designated Officers are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, and publish all notices which shall be necessary or convenient to comply with the provisions of this Article and the Act in the name and on behalf of the Local Government Unit.

[Ord. 427 11-22-2004]

**§ 8-412 Compliance With Debt Act.**

This Article is enacted pursuant to, and the Note issued hereunder shall be subject to, the provisions of the Act, and all of the mandatory and applicable provisions of the Act shall apply whether or not explicitly stated in this Article.

[Ord. 427 11-22-2004]

**§ 8-413 Severability.**

In case any one or more of the provisions contained in this Article or in the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Article or of the Note, and this Article or the Note shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

[Ord. 427 11-22-2004]

### § 8-414 Advertisement.

The prior advertisement of a summary of this Article and Ordinance 427 as required by law in the *East Penn Press*, a newspaper of general circulation, is ratified and confirmed. Borough Council hereby authorizes and directs the Solicitor to advertise the enactment of this Article and Ordinance 427 in a newspaper of general circulation within fifteen (15) days following the date of final adoption.

[Ord. 427 11-22-2004]

## Article V — Acquisition of Backhoe

### § 8-501 Background.

(a) The governing body of the Borough of Alburdis, Lehigh County, Pennsylvania (the “**Local Government Unit**”) deems it advisable to borrow up to Fifty-two Thousand Seven Dollars (\$52,700.00) for and toward paying the costs for the acquisition of a new John Deere 310SG Backhoe, and related costs (the “**Project**”), and paying the costs of issuance of the indebtedness.

(b) The governing body of the Local Government Unit contemplates the authorization, sale, issuance and delivery of a note evidencing such indebtedness in a principal amount not to exceed \$52,700 to be designated as the General Obligation Note, Series 1 of 2006, all in accordance with applicable and appropriate provisions of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, as amended, 53 PA. CONS. STAT. § 8001 *et seq.* (the “**Act**”).

(c) The proposed increase of debt, together with the Local Government Unit’s nonelectoral indebtedness and its lease rental indebtedness presently outstanding, will not cause the debt limitations of the Act to be exceeded.

(d) The Borough Maintenance Supervisor has determined that the estimated useful life of the Project is in excess of four (4) years.

(e) EAST PENN BANK (the “**Bank**”) has presented a written purchase contract (the “**Purchase Contract**”), attached to Ordinance 444 as **Exhibit A** (which is incorporated herein by reference), to purchase the note to be issued by the Local Government Unit in order to achieve the financing of the Project.

[Ord. 444 02-22-2006]

### § 8-502 Authorization.

The Local Government Unit hereby authorizes the incurrence of debt, and the increase of its nonelectoral indebtedness under the Act, in the principal amount not to exceed Fifty-two Thousand Seven Dollars (\$52,700.00), for the purpose of providing funds for and towards the

costs of the Project and the costs of issuing the indebtedness. The indebtedness shall be evidenced by one General Obligation Note (Series 1 of 2006), in fully registered form, in the principal sum not to exceed \$52,700; dated the date of its delivery; bearing interest at the rate of 3.40% per annum calculated on a 365-day year basis (366 days in leap years) for the actual number of days elapsed; payable in forty-seven (47) level monthly installment payments of principal and interest in the amount of One Thousand One Hundred Seventy-five Dollars and eighty-two cents (\$1,175.82) commencing March 24, 2006, with all outstanding principal and accrued interest due and payable in full on February 24, 2010; and in the form attached to Ordinance 444 as **Exhibit B** (which is incorporated herein by reference) (the “**Note**”). The Local Government Unit may prepay/redeem the Note as set forth in **Exhibit B** to Ordinance 444.

[Ord. 444 02-22-2006]

### § 8-503 Issuance.

The Note shall be executed in the name and under the corporate seal of the Local Government Unit by the President of Borough Council (or the Vice President of Borough Council) and attested to by the Secretary (or the Treasurer) (the “**Designated Officers**”). The Designated Officers are hereby authorized and directed to execute and deliver such documents, and to do and perform all acts, necessary and proper for the issuance and further security of the Note, including the execution, sealing, and delivery of the Note to the Bank. The Designated Officers are authorized to receive payment for the Note on behalf of the Local Government Unit, and to apply the proceeds to the costs of the Project and the issuance of the Note. Immediately upon receipt of the proceeds of the Note, the Designated Officers and all other officers and employees of the Local Government Unit are directed to pay the full amount of the proceeds to the supplier of the new John Deere 310SG backhoe, Plasterer Equipment Co., Inc., together with all other amounts required to satisfy the invoice from the supplier for the new backhoe, since the backhoe has been delivered to and accepted by the Local Government Unit.

[Ord. 444 02-22-2006]

### § 8-504 Small Borrowing; Debt Statement.

The Local Government Unit hereby incurs the debt represented by the Note as a small borrowing for capital purposes under 53 PA. CONS. STAT. § 8109, and this Article, although adopted as an ordinance in accordance with the Borough Code, is a “resolution” within the meaning of 53 PA. CONS. STAT. § 8109. *See* 53 PA. CONS. STAT. § 8002(c) (a “resolution” under the Act is a formal action of a governmental unit to which the advertising requirements of 53 PA. CONS. STAT. § 8003 do not apply, whether, under the law applicable to the local government unit, the action is taken by ordinance or resolution). In accordance with the requirements of PA. CONS. STAT. § 8110, the Designated Officers have prepared, executed, and verified the debt statement and borrowing base certificate required by the Act prior to the adoption of this Ordinance (which are attached to Ordinance 444 as **Exhibit C** and incorporated herein by reference) and they are hereby directed to file and maintain such debt statement and certificate in the Office of the Secretary, and to take other necessary action, including, if necessary or desirable, any statements re-

quired to qualify any portion of the debt from the appropriate debt limit as self-liquidating or subsidized debt.

[Ord. 444 02-22-2006]

### **§ 8-505 Security and Payment of the Note.**

The Note shall be a general, full faith and credit, unlimited tax obligation of the Local Government Unit. The Local Government Unit hereby covenants with the Bank and with subsequent holders, from time to time, of the Note that the Local Government Unit shall (a) include the amount of the debt service on the Note for each fiscal year in which any amount of principal or interest is payable in its budget for that year to the fullest extent authorized by law; (b) appropriate such amounts to the payment of such debt service; and (c) duly and punctually pay or cause to be paid the principal of and interest on the Note on the dates, at the place, and in the manner stated in the Note according to the true intent and meaning thereof, and for such proper budgeting, appropriation, and payment, the Local Government Unit hereby irrevocably pledges its full faith, credit and taxing power.

[Ord. 444 02-22-2006]

### **§ 8-506 Sinking Fund.**

The Local Government Unit does hereby create, and order to be established (in its name and identified by reference to the Note), a Sinking Fund for the payment of the Note with the Bank, and does further covenant to maintain such Sinking Fund until the Note is paid in full. The Executive Secretary or Treasurer shall deposit into the Sinking Fund sufficient amounts for payment of principal and interest on the Note no later than the dates upon which such payments are due, without further action by the Local Government Unit. The Local Government Unit shall maintain a general account with the Bank so long as any amount remains outstanding under the Note, and hereby authorizes Bank to automatically deduct from this account and deposit into the Sinking Fund sufficient amounts to insure that the obligation of the Secretary or Treasurer under the preceding sentence is satisfied on the dates payments are due on the Note (but not more than the amounts so required). The Local Government Unit hereby designates the Bank as the Sinking Fund Depository and Paying Agent for the Note, and the Designated Officers are hereby authorized and directed to contract with the Bank for its services in such capacity, except as the same may be included in the Purchase Contract. Without further action by the Local Government Unit, the funds in the Sinking Fund shall be subject to withdrawal by the Paying Agent only to pay the principal and interest on the Note as the same becomes due and payable in accordance with the terms of the Note. The principal of and interest on the Note shall be payable in lawful money of the United States of America. The Paying Agent is directed to keep books for the registration, exchange, and transfer of the Note so long as the Note remains outstanding. The Paying Agent is directed to make such registrations, exchanges, and transfers without charge to holders, except for actual costs, including postage, insurance, and any taxes or other governmental charges required to be paid with respect to the same.

[Ord. 444 02-22-2006]

## § 8-507 Tax Covenants.

(a) **No Arbitrage Bond or Private Activity Bond.** The Local Government Unit hereby covenants that it will make no use of the proceeds of the Note or do or suffer any other action, at any time, directly or indirectly, in a manner which, if such use or action had been reasonably expected on the date of issuance of the Note, would have caused the Note to be an “arbitrage bond” or a “private activity bond” within the meaning of Section 148 and Section 141 of the Internal Revenue Code of 1986, as amended (the “Code”) and the regulations thereunder applicable to the Note (the “Regulations”) and that it will comply with the requirements of those Sections and the Regulations thereunder throughout the term of the Note.

(b) **Rebate Requirements.** If:

(1) the principal amount of the Note plus the aggregate principal amount of all other tax-exempt obligations issued and to be issued by or on behalf of the Local Government Unit during the 2006 calendar year exceeds \$5,000,000; and if

(2) the gross proceeds of the Note are invested at a yield greater than the yield on the Note; and if

(3) the gross proceeds of the Note are not expended or deemed to have been expended either within six months from the date of issuance,

all pursuant to § 1.148.7 of the Regulations, the Local Government Unit covenants that it will rebate to the U.S. Treasury, at the times and in the manner required by the Code, the difference (if a positive number) between the investment income received on the Note proceeds and the investment income that would have been earned had the Note proceeds been invested at the yield of the Note.

(c) **Qualified Tax-Exempt Obligation.** The Local Government Unit hereby designates the Note as a “qualified tax-exempt obligation,” as defined in Section 265(b)(3)(B) of the Code, for the purposes and effect contemplated by Section 265 of the Code, and represents that it has not issued, and does not reasonably expect to issue, tax-exempt obligations, together with all tax-exempt obligations issued and reasonably expected to be issued by its “subordinate entities” (within the meaning of Code § 265(b)(3)(E)) which, in the aggregate, exceed or will exceed Ten Million Dollars (\$10,000,000) during the 2006 calendar year. The Local Government Unit also determines that it will not engage in any action or inaction which will or may cause the Note to fail or cease to constitute a “qualified tax-exempt obligation” under Section 265(b)(3) of the Code.

(d) **IRS Filings.** The Local Government Unit will file IRS Form 8038-G (or 8038-GC if applicable) and any other forms or information required by the Code or the Regulations to be filed with the Internal Revenue Service in order to further ensure the exclusion of the interest on the Note from gross income tax for federal income tax purposes.

**§ 8-508 Award.**

(a) **Private Sale by Negotiation.** In compliance with 53 PA. CONS. STAT. § 8161(a), the governing body of the Local Government Unit hereby determines that private sale of the Note by negotiation, rather than public sale, is in the best financial interest of the Local Government Unit.

(b) **Award to Bank.** The governing body of the Local Government Unit hereby awards and sells the Note to the Bank at par in accordance with the Purchase Contract. The Local Government Unit accepts the Purchase Contract and authorizes the Designated Officers to execute an appropriate acceptance document.

[Ord. 444 02-22-2006]

**§ 8-509 Financial Statements.**

So long as any amount remains outstanding under the Note, the Local Government Unit shall provide the Bank, or subsequent holders of the Note, with an annual financial statement prepared by a certified public accountant.

[Ord. 444 02-22-2006]

**§ 8-510 Contract.**

This Article shall be deemed to be a contract with the holders, from time to time, of the Note.

[Ord. 444 02-22-2006]

**§ 8-511 Necessary Acts.**

The Designated Officers are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, and publish all notices which shall be necessary or convenient to comply with the provisions of this Article and the Act in the name and on behalf of the Local Government Unit.

[Ord. 444 02-22-2006]

**§ 8-512 Compliance With Debt Act.**

This Article is enacted pursuant to, and the Note issued hereunder shall be subject to, the provisions of the Act relating to general obligation notes issued as small borrowings for capital purposes under PA. CONS. STAT. § 8109, and all of the mandatory and applicable provisions of the Act relating to such notes shall apply whether or not explicitly stated in this Article.

[Ord. 444 02-22-2006]

### § 8-513 Severability.

In case any one or more of the provisions contained in this Article or in the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Article or of the Note, and this Article or the Note shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

[Ord. 444 02-22-2006]

### § 8-514 Advertisement.

The prior advertisement of a summary of this Article and Ordinance 444 as required by law in the *East Penn Press*, a newspaper of general circulation, is ratified and confirmed.

[Ord. 444 02-22-2006]

## Article VI — Water System Facilities

### § 8-601 Background.

(a) The governing body of the Borough of Alburtis, Lehigh County, Pennsylvania (the “**Local Government Unit**”) deems it advisable to borrow up to Three Hundred Thousand Dollars (\$300,000.00) for and toward paying the costs and expenses for planning, designing, acquiring, erecting, constructing, equipping, and/or modifying of water system facilities (the “**Project**”), and paying the costs of issuance of the indebtedness. The Project includes, but is not limited to, a new water storage tank, new well pump, water pressure booster station modifications, and other water system facilities.

(b) The governing body of the Local Government Unit contemplates the authorization, sale, issuance and delivery of a note evidencing such indebtedness in a principal amount not to exceed \$300,000 to be designated as the General Obligation Note, Series 1 of 2007, all in accordance with applicable and appropriate provisions of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, as amended, 53 PA. CONS. STAT. § 8001 *et seq.* (the “**Act**”).

(c) The proposed increase of debt, together with the Local Government Unit’s nonelectoral indebtedness and its lease rental indebtedness presently outstanding, will not cause the debt limitations of the Act to be exceeded.

(d) The engineering consultant for the Project has determined that the estimated useful life of the Project is fifty (50) to seventy-five (75) years under normal operating and maintenance procedures and conditions.

(e) EAST PENN BANK (the “**Bank**”) has presented a written purchase contract (the “**Purchase Contract**”), attached to Ordinance 459 as **Exhibit A** (which is incorporated herein by reference), to purchase the note to be issued by the Local Government Unit in order to achieve the financing of the Project.

[Ord. 459 06-11-2007]

### § 8-602 Authorization.

The Local Government Unit hereby authorizes the incurrence of debt, and the increase of its nonelectoral indebtedness under the Act, in the principal amount not to exceed Three Hundred Thousand Dollars (\$300,000.00), in order to pay the costs of the Project and the costs of issuing the indebtedness. The indebtedness shall be evidenced by one General Obligation Note (Series 1 of 2007), in fully registered form; in the principal sum not to exceed \$300,000; dated the date of its delivery; bearing interest at the rate of 3.75% per annum calculated on a 365-day year basis (366 days in leap years) for the actual number of days elapsed; payable in eleven (11) monthly payments of interest only on the advanced and outstanding principal balance, commencing August 20, 2007, together with one or more payments of principal on or before July 20, 2008 sufficient to reduce the outstanding principal balance to \$100,000.00 by July 20, 2008, followed by fifty-nine (59) level monthly installment payments of principal and interest in the amount of One Thousand Eight Hundred Thirty Dollars and thirty-nine cents (\$1,830.39) commencing August 20, 2008, and one (1) final payment of principal and interest in the amount of One Thousand Eight Hundred Thirty Dollars and fifty-one cents (\$1,830.51) on July 20, 2013, with all outstanding principal and accrued interest due and payable in full on July 20, 2013; and in the form attached to Ordinance 459 as **Exhibit B** (which is incorporated herein by reference) (the “**Note**”). The Local Government Unit may prepay/redeem the Note as set forth in **Exhibit B** to Ordinance 459.

[Ord. 459 06-11-2007]

### § 8-603 Issuance.

The Note shall be executed in the name and under the corporate seal of the Local Government Unit by the President of Borough Council (or the Vice President of Borough Council) and attested to by the Executive Secretary (or the Treasurer) (the “**Designated Officers**”). The Designated Officers are hereby authorized and directed to execute and deliver such documents, and to do and perform all acts, necessary and proper for the issuance and further security of the Note, including the execution, sealing, and delivery of the Note to the Bank. The Designated Officers are authorized to receive payment for the Note on behalf of the Local Government Unit, and to apply the proceeds to the costs of the Project and the issuance of the Note.

[Ord. 459 06-11-2007]

### § 8-604 Debt Statement and State Filings.

In accordance with the requirements of 53 PA. CONS. STAT. § 8110, the Designated Officers have prepared, executed, and verified the debt statement and borrowing base certificate required by the Act (which are attached to Ordinance 459 as **Exhibit C** and incorporated herein by reference), and they are hereby directed to file the such debt statement and certificate with the Pennsylvania Department of Community and Economic Development (“**Department**”), to file and maintain a copy of such debt statement and certificate in the Office of the Executive Secretary, and to take other necessary action, including, if necessary or desirable, any statements required to qualify any portion of the debt from the appropriate debt limit as self-liquidating or subsidized debt. The Designated Officers shall also apply for the authorization of the proceedings by the Department under 53 PA. CONS. STAT. § 8111(a) and, notwithstanding anything to the contrary in this Article, shall not deliver the Note until the proceedings have been approved or deemed approved by the Department under 53 PA. CONS. STAT. §§ 8204, 8206. The proceedings set forth in this Article are expressly contingent upon such approval or deemed approval by the Department.

[Ord. 459 06-11-2007]

### § 8-605 Security and Payment of the Note.

The Note shall be a general, full faith and credit, unlimited tax obligation of the Local Government Unit. The Local Government Unit hereby covenants with the Bank and with subsequent holders, from time to time, of the Note that the Local Government Unit shall (a) include the amount of the debt service on the Note for each fiscal year in which any amount of principal or interest is payable in its budget for that year; (b) appropriate such amounts to the payment of such debt service; and (c) duly and punctually pay or cause to be paid the principal of and interest on the Note on the dates, at the place, and in the manner stated in the Note according to the true intent and meaning thereof, and for such proper budgeting, appropriation, and payment, the Local Government Unit hereby irrevocably pledges its full faith, credit and taxing power.

[Ord. 459 06-11-2007]

### § 8-606 Sinking Fund; Paying Agent.

The Local Government Unit does hereby create, and order to be established (in its name and identified by reference to the Note), a Sinking Fund for the payment of the Note with the Bank, and does further covenant to maintain such Sinking Fund until the Note is paid in full. The Executive Secretary or Treasurer shall deposit into the Sinking Fund sufficient amounts for payment of principal and interest on the Note no later than the dates upon which such payments are due, without further action by the Local Government Unit. The Local Government Unit shall maintain a general account with the Bank so long as any amount remains outstanding under the Note, and hereby authorizes Bank to automatically deduct from this account and deposit into the Sinking Fund sufficient amounts to insure that the obligation of the Executive Secretary or Treasurer under the preceding sentence is satisfied on the dates payments are due on the Note (but not more than the amounts so required). The Local Government Unit hereby designates the

Bank as the Sinking Fund Depository and Paying Agent for the Note, and the Designated Officers are hereby authorized and directed to contract with the Bank for its services in such capacity, except as the same may be included in the Purchase Contract. Without further action by the Local Government Unit, the funds in the Sinking Fund shall be subject to withdrawal by the Paying Agent only to pay the principal and interest on the Note as the same becomes due and payable in accordance with the terms of the Note. The principal and interest on the Note shall be payable in lawful money of the United States of America. The Paying Agent is directed to keep books for the registration, exchange, and transfer of the Note so long as the Note remains outstanding. The Paying Agent is directed to make such registrations, exchanges, and transfers without charge to holders, except for actual costs, including postage, insurance, and any taxes or other governmental charges required to be paid with respect to the same.

[Ord. 459 06-11-2007]

## § 8-607 Tax Covenants.

(a) **No Arbitrage Bond or Private Activity Bond.** The Local Government Unit hereby covenants that it will make no use of the proceeds of the Note or do or suffer any other action, at any time, directly or indirectly, in a manner which, if such use or action had been reasonably expected on the date of issuance of the Note, would have caused the Note to be an “arbitrage bond” or a “private activity bond” within the meaning of Section 148 and Section 141 of the Internal Revenue Code of 1986, as amended (the “**Code**”) and the regulations thereunder applicable to the Note (the “**Regulations**”) and that it will comply with the requirements of those Sections and the Regulations thereunder throughout the term of the Note.

(b) **Rebate Requirements.** If:

(1) the principal amount of the Note plus the aggregate principal amount of all other tax-exempt obligations issued and to be issued by or on behalf of the Local Government Unit during the 2007 calendar year exceeds \$5,000,000; and if

(2) the gross proceeds of the Note are invested at a yield greater than the yield on the Note; and if

(3) the gross proceeds of the Note are not expended or deemed to have been expended (since the Project is a construction project) within two years from the date of issuance (and according to certain periodic expenditure thresholds),

all pursuant to § 1.148.7 of the Regulations, the Local Government Unit covenants that it will rebate to the U.S. Treasury, at the times and in the manner required by the Code, the difference (if a positive number) between the investment income received on the Note proceeds and the investment income that would have been earned had the Note proceeds been invested at the yield of the Note.

(c) **Qualified Tax-Exempt Obligation.** The Local Government Unit hereby designates the Note as a “qualified tax-exempt obligation,” as defined in Section 265(b)(3)(B) of the Code, for the purposes and effect contemplated by Section 265 of the Code, and represents that it has not issued, and does not reasonably expect to issue, tax-exempt obligations, together with all tax-exempt obligations issued and reasonably expected to be issued by its “subordinate entities” (within the meaning of Code § 265(b)(3)(E)) which, in the aggregate, exceed or will exceed Ten

Million Dollars (\$10,000,000) during the 2007 calendar year. The Local Government Unit also determines that it will not engage in any action or inaction which will or may cause the Note to fail or cease to constitute a “qualified tax-exempt obligation” under Section 265(b)(3) of the Code.

**(d) IRS Filings.** The Local Government Unit will file IRS Form 8038-G (or 8038-GC if applicable) and any other forms or information required by the Code or the Regulations to be filed with the Internal Revenue Service in order to further ensure the exclusion of the interest on the Note from gross income tax for federal income tax purposes.

[Ord. 459 06-11-2007]

### § 8-608 Award.

**(a) Private Sale by Negotiation.** In compliance with 53 PA. CONS. STAT. § 8161(a), the governing body of the Local Government Unit hereby determines that private sale of the Note by negotiation, rather than public sale, is in the best financial interest of the Local Government Unit.

**(b) Award to Bank.** The governing body of the Local Government Unit hereby awards and sells the Note to the Bank at par in accordance with the Purchase Contract, *provided* that the proceedings are approved by the Department under the provisions of the Act and the Note is dated the date of its delivery to the Bank. The Local Government Unit accepts the Purchase Contract subject to the above provision, and authorizes the Designated Officers to execute an appropriate acceptance document.

[Ord. 459 06-11-2007]

### § 8-609 Financial Statements; Bank as Main Bank Depository.

So long as any amount remains outstanding under the Note, the Local Government Unit shall provide the Bank, or subsequent holders of the Note, with an annual financial statement prepared by a certified public accountant. So long as any amount remains outstanding under the Note and the Bank is the holder of the Note, the Local Government Unit shall utilize the Bank as the main bank depository of the Local Government Unit.

[Ord. 459 06-11-2007]

### § 8-610 Contract.

This Article shall be deemed to be a contract with the holders, from time to time, of the Note.

[Ord. 459 06-11-2007]

### § 8-611 Necessary Acts.

The Designated Officers are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, and publish all notices which shall be necessary or convenient to comply with the provisions of this Article and the Act in the name and on behalf of the Local Government Unit.

[Ord. 459 06-11-2007]

### § 8-612 Compliance With Debt Act.

This Article is enacted pursuant to, and the Note issued hereunder shall be subject to, the provisions of the Act relating to general obligation notes, and all of the mandatory and applicable provisions of the Act relating to such notes shall apply whether or not explicitly stated in this Article.

[Ord. 459 06-11-2007]

### § 8-613 Severability.

In case any one or more of the provisions contained in this Article or in the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Article or of the Note, and this Article or the Note shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

[Ord. 459 06-11-2007]

### § 8-614 Advertisement.

The prior advertisement of a summary of this Article and Ordinance 459 as required by law in the *East Penn Press*, a newspaper of general circulation, is ratified and confirmed. Borough Council hereby authorizes and directs the Solicitor to advertise the enactment of this Article and Ordinance 459 in a newspaper of general circulation within fifteen (15) days following the date of final adoption.

[Ord. 459 06-11-2007]

## Appendix

### ¶ 8-A Disposition of Ordinance 360.

<u>Ordinance 360</u>	<u>1981 Code</u>	<u>2003 Codified Ordinances</u>
Whereas clauses	never codified to 1981 Code	§ 8-101
§ 1	“	§ 8-102
§ 2	“	§ 8-103
§ 3	“	§ 8-104
§ 4	“	§ 8-105
§ 5	“	§ 8-106
§ 6	“	§ 8-107
§ 7	“	§ 8-108
§ 8	“	§ 8-109
§ 9	“	§ 8-110
§ 10	“	§ 8-111
§ 11	“	§ 8-112
§ 12	“	§ 8-113
§ 13 (repealer)		
§ 14 (effective date)		

### ¶ 8-B Disposition of Ordinance 382.

<u>Ordinance 382</u>	<u>1981 Code</u>	<u>2003 Codified Ordinances</u>
Whereas clauses	never codified to 1981 Code	§ 8-201
§ 1	“	§ 8-202
§ 2	“	§ 8-203
§ 3	“	§ 8-204
§ 4	“	§ 8-205
§ 5	“	§ 8-206
§ 6	“	§ 8-207
§ 7	“	§ 8-208
§ 8	“	§ 8-209
§ 9	“	§ 8-210
§ 10	“	§ 8-211
§ 11	“	§ 8-212
§ 12	“	§ 8-213
§ 13 (effective date)		

### ¶ 8-C Source Ordinances.

Ordinance 360	11-25-1998
Ordinance 382	11-29-2000

Ordinance 415	10-29-2003
Ordinance 422	02-11-2004
Ordinance 427	11-22-2004
Ordinance 444	02-22-2006
Ordinance 459	06-11-2007

#### **¶ 8-D Prior Ordinances Relating to Borough Indebtedness.**

Ordinance 29	10-01-1934
Ordinance 30	11-22-1934
Ordinance 33	04-21-1937
Ordinance 231	05-30-1984
Ordinance 264	10-26-1988
Ordinance 310	09-28-1994
Ordinance 341	11-27-1996
Ordinance 351	03-26-1997

#### **¶ 8-E Annual Budget Ordinances.**

In certain years, the Borough adopted its annual budget by Ordinance:

1937	Ordinance 34	04-21-1937
1979	Ordinance 202	12-28-1978
1980	Ordinance 207	12-28-1979
1981	Ordinance 211	12-30-1980
1982	Ordinance 218	12-23-1981
1983	Ordinance 223	12-29-1982
1984	Ordinance 229	12-29-1983
1985	Ordinance 236	12-12-1984
1986	Ordinance 242	12-11-1985
1987	Ordinance 249	12-29-1986

1988	Ordinance 257	12-30-1987
1989	Ordinance 266	12-26-1988
1990	Ordinance 277	12-27-1989

**¶ 8-F Cross-Reference.**

*See* ¶ 65-N for financing relating to the Borough's Sanitary Sewer System.