

AN ORDINANCE OF BROWNSVILLE TOWNSHIP
FAYETTE COUNTY, PENNSYLVANIA

ENACTED JANUARY 17, 2005 and NUMBERED 02-05
01-05

AUTHORIZING THE INCURRING OF LEASE RENTAL DEBT CONSISTING OF A GUARANTY OF THE REPAYMENT OF THE OBLIGATIONS OF THE BROWNSVILLE MUNICIPAL AUTHORITY (HEREINAFTER "THE AUTHORITY") TO THE COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY (HEREINAFTER "PENNVEST") WITH RESPECT TO A LOAN IN THE AMOUNT OF \$7,715,500.00.

SUCH INDEBTEDNESS TO BE INCURRED BY THE AUTHORITY FOR THE PURPOSE OF PROVIDING FUNDS TO FINANCE THE DESIGN, ENGINEERING AND CONSTRUCTION OR RENOVATION OF THE AUTHORITY'S WASTEWATER TREATMENT PLANT, MAIN PUMP STATION AND FORCE MAIN AND RELATED DEVELOPMENT COSTS TO BE INCURRED BY THE AUTHORITY IN CONNECTION WITH THAT PROJECT; FIXING THE FORM OF THE GUARANTY AND THE COVENANTS AND OTHER PROVISIONS THEREOF; COVENANTING TO PAY THE OBLIGATIONS UNDER THE GUARANTY PURSUANT TO THE TERMS OF SUCH GUARANTY; PLEDGING ITS FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER FOR THE PAYMENT OF THE GUARANTY; AUTHORIZING CERTAIN FILINGS OF REQUIRED DOCUMENTS WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; RATIFYING CERTAIN ACTIONS OF OFFICERS AND DIRECTING OTHER ACTIONS; AND MAKING CERTAIN OTHER COVENANTS IN RESPECT OF THE GUARANTY.

COUNSEL FOR BROWNSVILLE TOWNSHIP:

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COUNSEL FOR THE AUTHORITY:

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PREAMBLE

WHEREAS, the Governing Body (as hereinafter defined) of Brownsville Township (as more fully defined hereinafter, the "Local Government Unit"), after due consideration of the public welfare and with full legal competency pursuant to its enabling legislation, has executed a service agreement with the Brownsville Municipal Authority (the "Authority"); and

WHEREAS, the Authority and the Local Government Unit have determined that there is a need for the construction or renovation of the Authority's wastewater treatment plant, main pump station and force main (the "Project") in order to serve the Borough of Brownsville, and portions of Redstone Township, Luzerne Township, and Brownsville Township; and

WHEREAS, the Authority has determined to undertake the project and costs thereof with financing therefor to be provided by the Pennsylvania Infrastructure Investment Authority (hereinafter "Pennvest"); and

WHEREAS, Pennvest requires that the Local Government Unit guarantee its proportionate share of the repayment of the financing to be provided by Pennvest to the Authority; and

WHEREAS, the governing body of the Local Government Unit desires to incur lease rental debt as hereinafter defined with the constitutional and statutory limitations in order to guaranty the repayment of its portion of the financing provided to the Authority for the undertaking of said project; and

WHEREAS, the execution and delivery of such guaranty is governed by the provisions of the Pennsylvania Local Government Unit Debt Act, as amended, (the "Debt Act"); and

WHEREAS, it is deemed to be in the best financial interest of the Local Governmental Unit to guaranty the repayment of its portion of the obligations of the Authority as hereinafter described.

NOW, THEREFORE, BE, AND IT HEREBY IS, ORDAINED AND ENACTED by the affirmative vote of a majority of all members of the Governing Body of the Local Government Unit as follows:

ARTICLE 1 - DEFINITION

Section 1.01. Definitions and Conventions. Unless the context clearly indicates otherwise, the following terms shall, for all purposes of this Lease Rental Debt Ordinance (including the preamble hereto), have the meanings hereby ascribed to them. Moreover, such terms, together with all other provisions of this Lease Rental Debt Ordinance, shall be read and understood in a manner consistent with the provisions of the Debt Act, as generally interpreted by the Department of Community and Economic Development ("DCED") or by courts maintaining competent jurisdiction. Words or phrases importing the masculine, feminine or neuter gender shall be read and understood to include the other two genders and those importing number shall include singular or plural, both as appropriate to the context.

"Authority" shall mean the Brownsville Municipal Authority, a body corporate and politic organized and existing under the Commonwealth of Pennsylvania Municipal Authorities Act (53 Pa. C.S.A. §5601, et seq., as amended), and its successors and assigns.

"Borrowing Base" shall mean the annual arithmetic average of the total revenues for the three full fiscal years ended next preceding the date of the incurring of Lease Rental Debt as set forth in a certificate stating the total revenues in each of such years and stating such average, executed by the appropriately authorized officials of the Local Government Unit or by an independent accountant. If, within such three-year period, there shall have been an expansion or contraction of the territorial or functional jurisdiction of the Local Government Unit through transfer, merger, annexation, or assumption, in whole or in part, in relation to another local government unit or an authority, the Borrowing Base shall be calculated as if such expansion or contraction had occurred within or prior to the commencement of such three-year period in such manner as the statutes, charter, provisions or court decree shall provide or direct, or in the absence of such provisions, as the DCED shall approve.

Counsel for the Authority means Ernest P. DeHaas, III, Esquire, Radcliffe & DeHaas, L.L.P., 99 East Main Street, Uniontown, Pennsylvania 15401.

Counsel for the Local Government Unit means Anthony S. Dedola, Jr., Esquire, 51 E. South Street, Uniontown, Pennsylvania 15401.

"Debt" shall mean the obligations to be incurred by the Local Government Unit, under the terms of this Lease Rental Debt Ordinance, as guarantor of the Loan.

"Debt Act" shall mean the Pennsylvania Local Government Unit Debt Act as more fully described in the preamble to this Lease Rental Debt Ordinance.

"Debt Statement" shall mean the written certification by a Designated Officer that complies with Section 410 of the Debt Act.

"Department of Community and Economic Development" ("DCED") shall mean the Department of Community and Economic Development of the Commonwealth of Pennsylvania, and any Person or Persons succeeding to the functions thereof.

"Designated Officer" or "Designated Officers" shall mean and include, individually or jointly, each member of the Governing Body (including the Chairman thereof) and the Secretary and Treasurer of the Local Government Unit, being those duly elected or appointed and acting officials of the Local Government Unit, and their successors, hereby authorized to undertake and perform the actions herein specified as necessary and proper to the execution and delivery of the Guaranty and compliance with the Debt Act and this Lease Rental Debt Ordinance.

"Governing Body" shall mean the Board of Supervisors of the Local Government Unit, being that entity authorized by law to fix the rate of, and to levy, taxes within the Local Government Unit.

"Guaranty" shall mean the guaranty by the Local Government Unit of its pro rata share of indebtedness, obligations and liabilities of the Authority under the Loan, including the repayment of principal of, interest on, and other obligations with respect to the Loan, as evidenced by a guaranty agreement substantially in the form of Exhibit "A" attached hereto, and other instruments and documents to be executed by the Local Government Unit in form and substance acceptable to Pennvest, the Authority and the Local Government Unit.

"Lease Rental Debt" means "Lease Rental Debt" as that term is defined in the Debt Act.

"Lease Rental Debt Ordinance" shall mean this document, being the formal action taken by the Local Government Unit according to the requirements of Section 403 of the Debt Act in order to authorize and incur the Lease Rental Debt represented by the Guaranty. Such term shall apply whether, under the law and existing practices of the Local Government Unit, it would normally take formal action by enactment of an ordinance, adoption of a resolution or some other similar means.

"Loan" shall mean the Loan from Pennvest to the Authority in the principal amount of \$7,515,500.00 in order to finance or refinance the Project.

"Local Government Unit" shall mean Brownsville Township, a township of the second class of the Commonwealth of Pennsylvania duly organized and validly existing under the constitution and laws of the Commonwealth, particularly the Second Class Township Code (53 P. S. §65101, et. seq.), and its successors and assigns.

"Net Nonelectoral Debt" means "Net Nonelectoral Debt" as that term is defined in the Debt Act.

"Net Lease Rental Debt" means "Net Lease Rental Debt" as that term is defined in the Debt Act.

"Nonelectoral Debt" means "Nonelectoral Debt" as that term is defined in the Debt Act.

"Pennsylvania Infrastructure Investment Authority" or "Pennvest" shall mean a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania.

"Person" shall mean an individual, a corporation, an association, a partnership, a trust or estate, a government, foreign or domestic, and any agency or political subdivision thereof, or any other entity.

"Project" shall mean (a) the engineering and design work and costs, including, without limitation, surveying, land, right-of-way, easement acquisition, construction, legal and other costs to be incurred by the Authority, related to the construction or renovation of its wastewater treatment plant, its main pump station and force main; and (b) payment of the necessary and proper costs of incurring indebtedness in respect of the foregoing.

"System" shall mean a wastewater treatment plant and the corresponding collection and conveyance system identified as the wastewater treatment plant project in the Borough of Brownsville, together with the collection system in the Borough of Brownsville, Luzerne Township, Redstone Township, and Brownsville Township, transferring sewage to the Authority's plant.

ARTICLE 2 - AUTHORIZATION OF INDEBTEDNESS

Section 2.01. Incurrence. The Local Government Unit does hereby authorize and direct the incurrence of Lease Rental Debt consisting of the Guaranty, for purposes of the project; such Lease Rental Debt shall be evidenced by the Guaranty to be issued according to the provisions of this Lease Rental Debt Ordinance and the Debt Act, as general obligations of the Local Government Unit. Except as otherwise provided in the Debt Act: (i) the Local Government Unit shall not incur any new Nonelectoral Debt, if the aggregate net principal amount of such new Nonelectoral Debt together with all other Net Nonelectoral Debt

outstanding would cause the total Net Nonelectoral Debt of such Local Government Unit to exceed 250% of its Borrowing Base; and (ii) the Local Government Unit shall not incur any new Lease Rental Debt or new Nonelectoral Debt, if the aggregate net principal amount of such new debt together with all other Net Nonelectoral Debt and Net Lease Rental Debt outstanding would cause the outstanding total of Net Nonelectoral Debt plus Net Lease Rental Debt of such Local Government Unit to exceed 350% of its Borrowing Base.

Section 2.02. Preparation of Debt Statement; Proceedings Before the Secretary. The Designated Officers are hereby authorized and directed to prepare and verify under oath or affirmation, according to the requirements of the Debt Act, the Debt Statement of the Local Government Unit, including therewith a certification of the Borrowing Base, and, if desired, any statements required by the Debt Act necessary to qualify all or any portion of the Debt for exclusion from the appropriate debt limit as self-liquidating or subsidized debt.

The Designated Officers are hereby further authorized and direct to prepare and file all proceedings of the Local Government Unit relative to this incurrence of Debt with DCED, and to respond to all inquiries or requests and to perform all other actions necessary to obtain the approval of the Secretary of DCED to issue and deliver the Guaranty.

Section 2.03. General Obligation Covenant. The Local Government Unit hereby covenants with the holder of the Guaranty to: (a) include the amounts payable in respect of the Guaranty for each fiscal year in which such sums are payable in its budget for that year, (b) appropriate such amounts from its general revenues to the payment of the amounts payable in respect of the Guaranty, and (c) duly and punctually pay or cause to be paid from its revenues or funds, to the extent of its obligations, the amounts payable in respect of the Guaranty at the dates and places and in the manner stated in the Guaranty according to the true intent and meaning thereof.

For such budgeting, appropriation and payment under the Guaranty, the Local Government Unit hereby irrevocably pledges its full faith, credit and taxing power.

As provided in the Debt Act, the foregoing covenants are specifically enforceable.

ARTICLE 3 - EXECUTION, FORM AND DELIVERY OF GUARANTY

Section 3.01. Execution of the Guaranty. The Guaranty shall be executed on behalf of the Local Government Unit by any one of the Designated Officers and shall have the corporate seal of the Local Government Unit affixed thereto either manually or by engraved or lithographic facsimile, duly attested by its Secretary or Assistant Secretary, and any one of the Designated Officers are hereby authorized to execute the Guaranty, as aforesaid as well as take all other appropriate and necessary action in connection therewith.

Section 3.02. Form of the Guaranty. The Guaranty shall be substantially in the form attached hereto as Exhibit "A", with such changes as the Designated Officers, or any one of them, may approve, such approval to be conclusively evidenced by their execution and delivery thereof. The Guaranty in the form executed and delivered by the Designated Officers is incorporated herein by reference.

Section 3.03. Delivery of the Guaranty. The Designated Officers are hereby authorized and directed, at the date of closing of the Loan to deliver the Guaranty to Pennvest.

ARTICLE 4 - FINANCIAL INFORMATION

Section 4.01. Financial Information. The Local Government Unit covenants that it shall deliver to Pennvest, as may be required by Pennvest pursuant to the Guaranty or other related documents, financial information of the Local Government Unit, including, without limitation, (a) a copy of the Local Government Unit's audited financial and income statements; and (b) a copy of the Local Government Unit's proposed budget for the next fiscal year.

ARTICLE 5 - MISCELLANEOUS

Section 5.01. Expeditious Settlement. The Local Government Unit hereby authorizes and directs its or the Authority's Counsel to undertake and perform all actions on behalf of the Local Government Unit necessary and proper to the expeditious execution and delivery of the Guaranty.

Section 5.02. Publications of Lease Rental Debt Ordinance. The action of the proper officers or agents in advertising a summary notice of this Lease Rental Debt Ordinance, is required by law, is ratified and confirmed. The advertisement of the enactment notice of this Lease Rental Debt Ordinance is hereby directed.

Section 5.03. Inconsistencies. All prior ordinances, resolutions, or other official acts or parts thereof inconsistent herewith are hereby repealed to the extent of such inconsistencies.

Section 5.04. Statutory References. All references to specific provisions of statutory law herein contained may be read and interpreted by reference to amended, successor or replacement laws, but only to the extent consistent with the intent and clear meaning of this Lease Rental Debt Ordinance. All inconsistencies shall be resolved with recognition of, and in favor of, the rights of the holder of the Guaranty, whose rights shall not be impaired.

Section 5.05. Amendment and Waiver.

(a) Any term, covenant, agreement or condition of this Lease Rental Debt Ordinance or of the Guaranty may, with the consent of the Local Government Unit be amended or compliance therewith may be waived (either generally or in a particular instance and whether retroactively or prospectively), by a written instrument signed by the holder of the Guaranty.

(b) Any amendment or waiver pursuant to the foregoing clause (a) of this Section 5.05 shall be binding upon such holder of the Guaranty, upon each future holder of the Guaranty and upon the Local Government Unit. No notation need be made on the Guaranty at the time outstanding in respect of any such amendment or waiver, but any Guaranty executed and delivered thereafter may, at the option of the Local Government Unit, bear a notation referring to any such amendment or waiver then in effect.

Section 5.06. Costs, Expenses and Taxes. The Local Government Unit is authorized to pay all expenses incident to execution of the Guaranty. By way of example and not in limitation of the foregoing, such expenses shall be deemed to include the obligations, if any, of the Local Government Unit to pay the pro rata share of the following costs: legal costs to the holder of the Guaranty, printing, copying, document production and other expenses incident to such transactions (including the fees and disbursements of the Solicitor for their services with relation to such transactions).

Section 5.07. Reliance on and Survival of Representations. All agreements, representations and warranties of the Local Government Unit herein and in any certificates of other instruments delivered pursuant to this Lease Rental Debt Ordinance shall survive the execution and delivery of this Lease Rental Debt Ordinance and the execution and delivery of the Guaranty, and shall continue in effect so long as the Guaranty, or any of them, is outstanding and thereafter until all obligations under the Guaranty and this Lease Rental Debt Ordinance have been satisfied.

Section 5.08. Successors and Assigns. This Lease Rental Debt Ordinance shall bind, and inure to the benefit of and be enforceable by, the Local Government Unit, the holder of the Guaranty and its successors and assigns.

Section 5.09. Communications. All communications and notices provided for herein shall be hand delivered, or mailed by registered mail or any receipted courier, postage prepaid, and addressed as follows:

A. If to the Local Government Unit:

Brownsville Township
232 Brown Street
Brownsville PA 15417

B. If to the Person who is the holder of the Guaranty, to the address provided to the Local Government Unit by such holder.

The address for any purpose hereof of the Local Government Unit may be changed at any time and from time to time and shall be the most recent such address furnished in writing by the Local Government Unit to the holder of the Guaranty at such time. The address for any purpose hereof of any Person who is a holder of the Guaranty shall be the most recent such address furnished in writing by such Person to the Local Government Unit.

Any notice or other communication herein provided to be given to the holder of the Guaranty shall be deemed to have been duly given if delivered or mailed as aforesaid to the holder of the Guaranty at the time at the address for such purpose of such holder as it appears on the records of the Local Government Unit.

Section 5.10. Governing Law. This Lease Rental Debt Ordinance and the Guaranty and (unless otherwise provided) all amendments, supplements, waivers and consents relating hereto or thereto shall be construed in accordance with and governed by the law of the Commonwealth of Pennsylvania.

Section 5.11. Counterparts. This Lease Rental Debt Ordinance may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 5.12. Lease Debt Ordinance a Contract. This Lease Debt Ordinance shall be a contract with the holder, from time to time, of the Guaranty.

Section 5.13. No Personal Liability. No covenant or agreement contained in the Guaranty or in this Debt Ordinance shall be deemed to be the covenant or agreement of any member, officer, agent, attorney or employee of the Local Government Unit in his individual capacity, and neither the members of the Governing Body nor any Designated Officer executing the Guaranty shall be personally liable on the

Guaranty or be subject to any personal liability or accountability by reason of the issuance thereof.

Duly adopted by the Board of Supervisors of Brownsville Township, in lawful session assembled, on the 17th day of January, 2005.

BROWNSVILLE TOWNSHIP

BY: Home T. [Signature]
Chairman

Treasurer

ATTEST:
(SEAL)

[Signature]