

ORDINANCE NO. 709 OF THE BOROUGH COUNCIL
OF THE BOROUGH OF MOUNT PENN,
BERKS COUNTY, PENNSYLVANIA

AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF MOUNT PENN, BERKS COUNTY, PENNSYLVANIA (THE "BOROUGH"), AUTHORIZING AND DIRECTING THE INCURRENCE OF LEASE RENTAL DEBT IN THE MAXIMUM PRINCIPAL AMOUNT OF TWO MILLION TWO HUNDRED EIGHTY THOUSAND DOLLARS (\$2,280,000), PURSUANT TO THE LOCAL GOVERNMENT UNIT DEBT ACT OF THE COMMONWEALTH OF PENNSYLVANIA (THE "DEBT ACT"); DETERMINING THAT SUCH DEBT SHALL BE INCURRED UNDER THE DEBT ACT AS LEASE RENTAL DEBT TO BE EVIDENCED BY A GUARANTY AGREEMENT OF THE BOROUGH SECURING GUARANTEED SEWER REVENUE BONDS -- SERIES OF 2001 (THE "BONDS") TO BE ISSUED BY ANTIETAM VALLEY MUNICIPAL AUTHORITY (THE "AUTHORITY") TO FINANCE A PROJECT OF THE AUTHORITY CONSISTING OF: (1) THE REFUNDING BY THE AUTHORITY OF A PORTION OF ITS GUARANTEED SEWER REVENUE BONDS, SERIES OF 1995; (2) THE ESTABLISHMENT OF NECESSARY RESERVES AND OTHER FUNDS UNDER THE INDENTURE (TO THE EXTENT AVAILABLE); AND (3) THE PAYMENT OF THE COSTS ASSOCIATED WITH THE ISSUANCE OF THE 2001 BONDS; BRIEFLY DESCRIBING THE PROJECT FOR WHICH SUCH DEBT IS TO BE INCURRED; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THIS BOROUGH: (A) TO PREPARE, TO CERTIFY AND TO FILE THE DEBT STATEMENT AND BORROWING BASE CERTIFICATE REQUIRED BY THE DEBT ACT; (B) TO THE EXTENT FEASIBLE, TO CAUSE TO BE PREPARED AND FILED, STATEMENTS REQUIRED BY THE DEBT ACT WHICH ARE NECESSARY TO QUALIFY ALL OF SUCH LEASE RENTAL DEBT FOR EXCLUSION FROM THE APPROPRIATE DEBT LIMITS AS SELF-LIQUIDATING DEBT; (C) TO EXECUTE, TO ATTEST, TO SEAL AND TO DELIVER, AS APPROPRIATE, A GUARANTY AND REIMBURSEMENT AGREEMENT; APPROVING THE FORM OF THE GUARANTY AND REIMBURSEMENT AGREEMENT; SPECIFYING THE AMOUNT OF THE GUARANTY OBLIGATION OF THIS BOROUGH PURSUANT TO SUCH GUARANTY AGREEMENT AND THE SOURCES OF PAYMENT OF SUCH GUARANTY OBLIGATIONS; AUTHORIZING THE PROPER OFFICERS OF THIS BOROUGH TO TAKE ALL OTHER REQUIRED, NECESSARY OR DESIRABLE RELATED ACTION IN CONNECTION WITH SUCH PROJECT AND THE EXECUTION AND DELIVERY OF THE GUARANTY AND REIMBURSEMENT AGREEMENT; PROVIDING FOR THE EFFECTIVENESS OF THIS ORDINANCE; PROVIDING FOR THE SEVERABILITY OF PROVISIONS OF THIS ORDINANCE; AND PROVIDING FOR THE REPEAL OF ALL INCONSISTENT ORDINANCES OR RESOLUTIONS OR PARTS OF ORDINANCES OR RESOLUTIONS.

WHEREAS, the Borough of Mount Penn (the "Borough") is a political subdivision of the Commonwealth of Pennsylvania (the "Commonwealth") and is a "local government unit"

under the provisions of the Act of the General Assembly of the Commonwealth, approved July 12, 1972, Act No. 185, as amended, reenacted and supplemented, from time to time, known as the Local Government Unit Debt Act (the "Debt Act"); and

WHEREAS, the Antietam Valley Municipal Authority (the "Authority") is a body politic and corporate organized and existing under the Pennsylvania Municipality Authorities Act of 1945, as amended and supplemented, from time to time, of Commonwealth; and

WHEREAS, the Authority intends to issue its Guaranteed Sewer Revenue Bonds -- Series of 2001 in the maximum aggregate principal amount of \$2,280,000 (the "Bonds" or the "2001 Bonds"); and

WHEREAS, the proceeds to be derived from the issuance and sale of the 2001 Bonds will be applied, together with other funds available or to be available to the Authority, for and towards a project (the "Project") which consists of the following: (i) payment of the costs and expenses of the refunding of a portion of the Authority's Guaranteed Sewer Revenue Bonds, Series of 1995 (the "1995 Bonds"), (ii) the establishment of necessary reserves and other funds under the Indenture (to the extent available); and (iii) payment of the costs and expenses associated with the issuance of the 2001 Bonds; and

WHEREAS, the Council of this Borough has determined that the Project is in the best interests of this Borough and its residents and desires to approve the Project and to request the Authority to undertake the Project; and

WHEREAS, the Borough, as an inducement to the Authority to undertake the Project and to authorize and to issue the 2001 Bonds, and as an inducement to initial purchasers and to any and all subsequent owners of the 2001 Bonds to purchase the 2001 Bonds, and to thereby achieve interest costs and other savings to the Authority and to the residents and taxpayers of this Borough and other users of the Authority's sewer facilities in this Borough, desires to enter into the Guaranty and Reimbursement Agreement (the "Guaranty Agreement") with the Authority and the bank or trust company named therein, as trustee (the "Trustee") under a Trust Indenture, as supplemented by a First Supplemental Trust Indenture, all as permitted by and in accordance with the terms and conditions of the Debt Act.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Borough Council of the **BOROUGH OF MOUNT PENN, BERKS COUNTY, PENNSYLVANIA**, in lawful session duly assembled, as follows:

1. Pursuant to the provisions of this Ordinance, the Council hereby authorizes and approves the Project and requests the Authority to undertake the Project. This Borough ratifies and confirms all action heretofore taken by the Authority in connection with the Project. The Borough authorizes and approves the issuance of the 2001 Bonds by the Authority and determines to incur lease rental debt in the maximum aggregate principal amount of \$2,280,000 by the execution of the Guaranty Agreement.

2. (a) The lease rental debt authorized to be incurred hereby is for the purpose of financing the Project.

(b) This Borough hereby finds and determines that the purpose of the Project is to, among other things, reduce the total debt service payable by the Authority over the life of the 1995 Bonds and that the realistic estimated useful life of the facilities originally financed by the 1995 Bonds is at least forty (40) years.

3. The maximum aggregate principal amount of the 2001 Bonds, payment of which is assured by the Guaranty Agreement, is \$2,280,000.

4. The debt to be evidenced by the Guaranty Agreement shall be lease rental debt of this Borough.

5. The President or Vice President and the Secretary or Assistant Secretary of the Council of this Borough are hereby authorized and directed to prepare, to certify, to acknowledge and to file the debt statement and the borrowing base certificate, as appropriate, required by the Debt Act and to take any and all other action necessary at any time to from time to time in connection with carrying out the intent of this Ordinance or necessary to comply with the Debt Act.

6. The President or Vice President and Secretary and Assistant Secretary of the Council of this Borough are hereby authorized and directed to execute, attest, seal and deliver the Guaranty and Reimbursement Agreement in substantially the form set forth on Exhibit "A" hereto with such insertions, deletions and amendments as the officers of this Borough executing said documents and the Solicitor to this Borough shall deem necessary. The execution, attestation and delivery of the Guaranty Agreement by appropriate officers of this Borough shall constitute conclusive evidence of such approval.

7. In the event that this Borough is obligated to make payments under the Guaranty Agreement, the maximum amounts required to be paid thereunder, from the general revenues of this Borough, are as set forth on Exhibit "B" hereto. Exhibit "B" is incorporated herein by reference with the same force and effect as if fully set forth in the text hereof. If at any time this Borough is required to make any payment under the Guaranty Agreement, proper officers of this Borough are hereby authorized and directed to do so.

8. This Borough covenants to and with the Trustee for the owners, of the 2001 Bonds, the Authority and the registered owners, from time to time, of the 2001 Bonds that this Borough (a) shall include the amounts payable in respect of the Guaranty Agreement for each fiscal year in which such sums are payable in its budget for that year, (b) shall appropriate such amounts from its general revenues for the payment of such payment, and (c) shall duly and punctually pay or cause to be paid from any of its revenues or funds the amount payable in respect of the Guaranty Agreement, at the dates and place and in the manner stated in such Guaranty

Agreement, and according to the true intent and meaning thereof. This Borough pledges its full faith, credit and taxing power for such budgeting, appropriation and payment in respect to the Guaranty Agreement. This covenant shall be specifically enforceable in accordance with the Debt Act.

9. The President or Vice President and Secretary or Assistant Secretary of the Council of this Borough are authorized and directed, if necessary or desirable, to cause to be prepared and filed with the Department of Community and Economic Development of the Commonwealth appropriate statements required by the Debt Act which are necessary to qualify the lease rental debt of this Borough, which is subject to exclusion of self-liquidating debt, for exclusion from the appropriate debt limits as self-liquidating debt.

10. The proper officers of this Borough are hereby authorized and directed to execute, attest and deliver any and all necessary or appropriate documents and to do any and all necessary or appropriate things in connection with the transactions hereby contemplated, including, without limitation, approving the Bond Purchase Proposal of Janney, Montgomery, Scott, presented to the Authority.

11. The Borough hereby confirms its appointment of Brian Boland, Esquire, as its counsel in connection with the authorization and delivery of the Guaranty Agreement, and of Concord Public Financial Advisors, Inc., as financial advisor, with respect to the Guaranty Agreement.

12. All ordinances and resolutions or parts thereof, insofar as the same are inconsistent herewith, are repealed hereby.

13. This Ordinance shall become effective in accordance with the provisions of the Act.

14. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of this Borough that the remainder of this Ordinance shall remain in full force and effect.

**DULY ENACTED AND ORDAINED THIS 11th DAY OF SEPTEMBER, 2001 BY
THE BOROUGH COUNCIL OF THE BOROUGH OF MOUNT PENN, BERKS
COUNTY, PENNSYLVANIA, IN LAWFUL SESSION DULY ASSEMBLED.**

**Borough Of Mount Penn,
Berks County, Pennsylvania**

By: *Randall P. Miller*
President of Borough Council

(SEAL)

Attest: *Ann D Storski*
(Assistant) Secretary

EXAMINED AND APPROVED THIS 11TH DAY OF SEPTEMBER, 2001.

D. Regina Krumholz
Mayor

EXHIBITS

"A" Guaranty Agreement

"B" Maximum Lease Rental Obligations

*I hereby certify that the foregoing is a true
and correct copy of Ord. 709 enacted Sept 11, 2001*
Ann D Storski
Secretary

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