

BOROUGH OF MILLVILLE

COLUMBIA COUNTY, PENNSYLVANIA

ORDINANCE NO. 108 (1992)

AN ORDINANCE INCREASING THE INDEBTEDNESS OF THE BOROUGH OF MILLVILLE, COUNTY OF COLUMBIA, PENNSYLVANIA, BY THE INCURRENCE OF LEASE RENTAL DEBT THROUGH THE GUARANTY OF THE OBLIGATION OF THE MUNICIPAL AUTHORITY OF THE BOROUGH OF MILLVILLE TO THE PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY INCURRED FOR THE PURPOSE OF CONSTRUCTING CERTAIN IMPROVEMENTS TO THE BOROUGH SEWER SYSTEM; APPROVING THE FORM AND SUBSTANCE OF SUCH GUARANTY; MAKING A COVENANT FOR THE PAYMENT OF THE INDEBTEDNESS EVIDENCED BY SUCH GUARANTY; PROVIDING FOR THE FILING OF REQUIRED DOCUMENTS; AND AUTHORIZING EXECUTION AND DELIVERY OF THE GUARANTY.

WHEREAS, it is necessary that the indebtedness of the BOROUGH OF MILLVILLE be increased through the incurrence of Lease Rental Debt through the guaranty of an indebtedness of the Municipal Authority of the Borough of Millville (the "Authority"), to the Pennsylvania Infrastructure Investment Authority ("PennVEST"), in the amount of FOUR HUNDRED SEVENTY-SIX THOUSAND (\$476,000.00) DOLLARS (said indebtedness of the Authority being hereinafter called the "Authority Debt"); and

WHEREAS, the Authority is an "authority" as defined under the provisions of the Pennsylvania Local Government Unit Debt Act, 53 P.S. §6780-1 et seq.; and

WHEREAS, the Authority Debt has been incurred in connection with a sewer construction project (the "Project"), which involves the extension of the waste water collection system servicing the BOROUGH OF MILLVILLE, rehabilitation of the existing system and outfall relocation, for which a preliminary realistic cost estimate determined by professional engineers employed by the Authority, indicating that the expenditure of the sum of FOUR HUNDRED NINETY-SIX THOUSAND (\$496,000.00) DOLLARS will be required for its completion; and

WHEREAS, the guaranty of the Authority Debt by the BOROUGH OF MILLVILLE is required in order to enable the consummation of financing and to facilitate the completion of the Project; and

WHEREAS, the proposed guaranty by the BOROUGH OF MILLVILLE of the Authority Debt, together with its non-electoral indebtedness and its lease rental indebtedness

presently outstanding, will not cause the limitations of the BOROUGH OF MILLVILLE'S debt incurring power, pursuant to constitutional and statutory authority, to be exceeded.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the BOROUGH OF MILLVILLE, Columbia County, Pennsylvania, and IT IS HEREBY ORDAINED AND ENACTED by the authority of the same as follows:

SECTION 1: That the BOROUGH OF MILLVILLE guaranty the Authority Debt in the aggregate principal amount of FOUR HUNDRED SEVENTY-SIX THOUSAND (\$476,000.00) DOLLARS, said Authority Debt to be evidenced by Promissory Note of the Authority (the "Authority Note") substantially in the form appended hereto as Exhibit A, for the purpose of facilitating and enabling the financing of the Project. The debt to be incurred by the BOROUGH OF MILLVILLE hereunder is lease rental debt, as defined by the Pennsylvania Local Government Unit Debt Act, 53 P.S. §6780-1 et seq.

SECTION 2: That the period of useful life of the Authority improvements to the sewer system servicing the BOROUGH OF MILLVILLE for which this obligation is to be issued is estimated to be in excess of twenty (20) years.

SECTION 3: That the indebtedness incurred by the BOROUGH OF MILLVILLE hereunder shall be evidenced by guaranty agreement (the "Guaranty"), guarantying the payment of the Authority Debt in the principal sum of FOUR HUNDRED SEVENTY-SIX THOUSAND (\$476,000.00) DOLLARS, and shall be substantially in the following form:

#### GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, 1992, by, between and among the MILLVILLE BOROUGH ("Guarantor") ; MUNICIPAL AUTHORITY OF THE BOROUGH OF MILLVILLE ("Borrower") , a municipal authority organized and existing under the Pennsylvania Municipality Authorities Act of 1945, as amended, ("Act") ; and the PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, with an office at 22 South Third Street, Harrisburg, Pennsylvania 17101 ("Authority"), as lender under a loan agreement of even date.

#### W I T N E S E T H

WHEREAS, the Borrower has determined to undertake the extension of a certain sewer system within the meaning of the Pennsylvania Infrastructure Investment Authority Act of 1988, located in Millville Borough, Columbia County, Pennsylvania ("System");

WHEREAS, in order to finance the costs of the Project, the Borrower has determined to secure a loan from the Authority in the amount of Four Hundred Seventy Six Thousand Dollars (\$476,000) ("Loan");

WHEREAS, the Borrower has this date properly executed a promissory note ("Note"), loan agreement ("Loan Agreement"), and other documents (collectively referred to as the "Loan Documents"), for the purposes of securing the Loan;

WHEREAS, under the terms of the Loan Documents, the Borrower has pledged its full faith and credit to repay the Loan in accordance with the terms and conditions of the Loan Documents, from the gross receipts and revenues generated from the use of the System and to the extent necessary, from any and all gross receipts and revenues; and

WHEREAS, as further security for the repayment of the Loan in accordance with the terms and conditions of the Loan Documents, the Guarantor, the Borrower and the Authority intend to enter into this agreement ("Guaranty Agreement"), as authorized by the Pennsylvania Local Government Unit Debt Act, as amended and reenacted 53 P.S. Sections 6780-1 et seq., ("Debt Act"), providing for the full and unconditional guarantee of repayment of the Loan in accordance with the terms and conditions of the Loan Documents, and the pledge by the Guarantor of its full faith, credit and taxing power to discharge all of its obligations under this Guaranty Agreement.

NOW THEREFORE, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

Section 1. Pursuant to the provisions of the Debt Act and this Guaranty Agreement, the Guarantor hereby fully and unconditionally guarantees the payment, as and when due, of the full amount of each and every payment of the principal of, and interest on, the Loan.

Section 2. In order to carry out the provisions of Section 1 hereof, the Guarantor covenants with the Borrower and the Authority that it shall:

- (a) Include amounts payable hereunder for each fiscal year in which such sums are payable in its budget for such year;
- (b) Appropriate such amount from its general revenues for the payment of the amounts payable hereunder; and
- (c) Duly and punctually pay or cause to be paid from such revenues, to the extent of its obligations hereunder; the amounts payable in respect hereof, at the dates and places and in the manner stated in Section 4 hereof, according to the true intent and meaning thereof.

For such budgeting, appropriation and payment, the Guarantor hereby pledges its full faith, credit and taxing power. This covenant shall be specifically enforceable, subject, as to the enforceability of remedies, to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors'

rights generally. Nothing in this Section shall be construed to give the Guarantor any taxing power not granted by another provision of law. The Guarantor agrees that this covenant may be enforced against it by the Authority or its assigns or successors as provided in the Debt Act.

Section 3. The Authority agrees to cause all sums received pursuant to this Guaranty Agreement to be applied to payment of the principal of, and interest on, the Loan as provided in the Loan Documents.

Section 4. It is intended by the parties hereto that the Guarantor shall be required to pay to the Authority only that portion of the principal of, and interest on, the Loan due in any fiscal year as cannot be paid from funds applicable thereto, paid by the Borrower to, or held by, the Authority pursuant to the Loan Documents, including moneys set aside for such purposes from the proceeds of the Loan for the payment of interest during

construction or from the operation of the System. Therefore, the Guarantor shall be entitled, under this Guaranty Agreement, in each fiscal year, to a total credit equal in the aggregate to the amounts transferred by the Borrower to the Authority or otherwise available to the Authority for application to payment of principal of, and interest on, the Loan in accordance with the terms of the Loan Documents. Accordingly, not less than fifteen (15) days prior to any interest or principal and interest payment date ("Payment Date") with respect to the Loan, the Borrower shall notify the Guarantor hereunder of any deficiency in moneys paid or to be paid to the Authority for payment of principal of and/or interest on the Loan on the next following Payment Date, and the Guarantor shall forthwith pay over to the Authority, not later than the day prior to such Payment Date, the amount required to make up such deficiency.

Section 5. In order for the Guarantor to provide in its budget for payments due pursuant to this Guaranty Agreement, Borrower shall, at least thirty (30) days before the beginning of each fiscal year of the Guarantor, beginning with the fiscal year commencing on \_\_\_\_\_, 19\_\_\_\_, cause to be delivered to the Guarantor an estimate, prepared and certified by the Borrower's Consulting Engineers, of the proceeds to be received by the Borrower from the operation of the System as well as other revenues and receipts which are anticipated to be available for payment of principal of and/or interest on the Loan on each Payment Date in such fiscal year and of any other moneys available to the Borrower or Authority for such purpose.

Section 6. The maximum amounts of principal of, and interest on, the Loan guaranteed by the Guarantor are as set forth in Exhibit A, attached hereto and made a part thereof.

Section 7. The obligations of the Guarantor hereunder are absolute, full and unconditional and shall remain in full force and effect until the Borrower shall have fully and satisfactorily discharged all of its obligations under the Loan Documents, irrespective of the genuineness, validity, regularity, or enforceability of the Loan Documents, or of any termination thereof, and shall not be affected or impaired in any way by reason of:

(a) Any failure of the Borrower or the Authority to retain or preserve any rights against any person (including, in the case of the Authority, the Borrower) or in any property, the inaccuracy of any estimates delivered to the Guarantor hereunder or of the calculation of the principal of, and interest on, the Loan;

(b) The invalidity of any such rights which the Borrower or the Authority may attempt to obtain;

(c) The lack of prior enforcement by the Borrower or the Authority of any rights against any person (including, in the case of the Authority, the Borrower) or in any property; or

(d) The dissolution of the Borrower or of the Authority.

Nor shall the obligation of the Guarantor hereunder be affected in any way by any compromise, settlement, release, revival, extension, indulgence, change in or modification of any of the obligations or liabilities of the Borrower under the Loan Documents (including, but not limited to, any modification, limitation, or discharge arising out of or by virtue of any bankruptcy, arrangement, reorganization or similar proceeding for relief of debts under federal or state law hereinafter initiated by or against the Borrower), or any redelivery, repossession, surrender or destruction of the System located therein, in whole or in part. The Guarantor hereby waives any right to require, and the benefit of all laws now or hereafter in effect giving such Guarantor the right to require, any such prior enforcement as referred to in (c) above, and the Guarantor agrees that any delay in enforcing or failure to enforce any such rights shall not in any way affect its liability hereunder; and the Guarantor hereby waives all rights and benefits which might accrue to it by reason of any of the aforesaid bankruptcy, arrangement, reorganization, or similar proceedings and agrees that its liabilities hereunder for the obligations of the Borrower under the Loan Documents shall not be affected by any modification, limitation or discharge of the liabilities of the Borrower that may result from any such proceedings.

Section 8. The Guarantor further agrees to pay to the Authority, on demand, all costs and expenses, legal or otherwise (including counsel fees), which may be incurred in the enforcement of the Loan Documents or the liability of the Borrower hereunder. No delay in making demand on the Borrower for performance of any obligation hereunder shall prejudice the right to enforce such performance.

Section 9. It is understood and agreed that the obligations of the Guarantor to make payments hereunder shall be absolute and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach of the Borrower of any obligation to it whether hereunder or otherwise, or out of any indebtedness or liability at any time owing to it by the Borrower.

Section 10. If in any fiscal year the total principal of, and interest on, the Loan due in such year shall be in excess of the total credit to which the Guarantor is entitled under Section 4 hereof and the Guarantor has accordingly paid over to the Authority such amount or amounts as are at that time required to fully discharge the obligation of the Guarantor in such fiscal year under this Guaranty Agreement, then the Borrower agrees to reimburse the Guarantor from any of its moneys available for that purpose for the amounts so paid to the Authority; provided, however, that the Borrower's Consulting Engineers shall first have certified that Borrowers moneys intended to be used for such reimbursement will not be required within twelve (12) months to operate or make needed repairs to the System or for capital additions thereto necessary for the proper and efficient operation of the System.

Section 11. The Borrower agrees (a) to diligently and efficiently operate the System in a prudent and businesslike manner and, in connection therewith, to file the necessary reports and documents and take all necessary actions to assure the continued operation of the System, all in a timely manner, and (b) to provide for the proper and timely assessment of rates to the users, customers or those benefitted by the operation of the System, sufficient to pay operating costs thereof and the Borrower's obligations under the Loan Documents, and to provide for the collection of such rates.

Section 12. The Guarantor shall take all necessary actions to secure the approval of the Department of Community Affairs ("DCA") or its successor department, board or commission, to enter into this Guaranty Agreement, pursuant to requirements set forth in the Local Government Unit Debt Act, 53 P.S. Section 6780-161(a).

Section 13. The Borrower shall cause to be delivered to the Guarantor copies of all such budgets, financial reports and other certificates and documents with respect to the operation of the System, including any amounts due and payable to the Authority pursuant to the terms of the Loan Documents, and shall permit the Guarantor reasonable access to the accounts and all records of the Borrower.

Section 14. This Guaranty Agreement shall inure to the benefit of and shall be binding upon the Borrower and the Authority and their respective successors and assigns, and the Authority shall have the right to enforce this Guaranty Agreement as provided in law or in equity for the benefit of its successors or assigns from time to time, if it so chooses.

Section 15. In the event that for any reason one or more of the provisions of this Agreement or their application to any person or circumstance shall be held to be invalid, illegal or unenforceable in any respect or to any extent, such provisions shall nevertheless remain valid, legal and enforceable in all other respects and to such extent as may be permissible. In addition, any such invalidity, illegality or unenforceability shall not effect any other provision hereof, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.



\_\_\_\_\_, 1992, between and among  
 Millville Borough, Millville Borough Municipal Authority and  
 the Pennsylvania Infrastructure Investment Authority

Year Ending 12/31	Total Debt Service	Principal	Interest
1993	\$ 26,638.46	\$ 18,602.09	\$ 8,036.37
1994	29,060.14	20,660.88	8,399.26
1995	29,060.14	21,051.62	8,008.52
1996	29,060.14	21,449.75	7,610.39
1997	29,060.14	21,855.41	7,204.73
1998	29,060.14	22,268.73	6,791.41
1999	29,060.14	22,689.88	6,370.26
2000	29,060.14	23,118.99	5,941.15
2001	29,060.14	23,556.22	5,503.92
2002	29,060.14	24,001.71	5,058.43
2003	29,060.14	24,455.63	4,604.51
2004	29,060.14	24,918.14	4,142.00
2005	29,060.14	25,389.39	3,670.75
2006	29,060.14	25,869.55	3,190.59
2007	29,060.14	26,358.79	2,701.35
2008	29,060.14	26,857.29	2,202.85
2009	29,060.14	27,365.22	1,694.92
2010	29,060.14	27,882.75	1,177.39
2011	29,060.14	28,410.06	650.08
2012	19,373.43	19,237.91	135.51

(A) Calculated at 1.875%, assuming an Amortization date of February 1, 1993.

SECTION 4: That the Guaranty, substantially in the form provided in Section 3 of this Ordinance, shall be executed and delivered in the name of and under the corporate seal of the BOROUGH OF MILLVILLE by the President or Vice President of the Borough Council, whose signature shall be attested to by the Secretary of the BOROUGH OF MILLVILLE. The President or Vice President of the Borough Council and Secretary of the BOROUGH OF MILLVILLE are authorized and directed to prepare, verify and file the debt statement required by the Pennsylvania Local Government

Unit Debt Act, and to take all other necessary actions, including, if necessary or desirable, the preparation and filing of any



statements required under the Pennsylvania Local Government Unit Debt Act to qualify any portion of the indebtedness incurred hereby for exclusion from the appropriate debt limit as self-liquidating or subsidized debt.

SECTION 5: That the BOROUGH OF MILLVILLE covenants with the holder of the Guaranty that the BOROUGH OF MILLVILLE shall: (1) include the amounts of payment payable in respect of the Guaranty for each fiscal year in which such sums are payable in its budget for that year; (2) appropriate such amounts from its general revenues for the payment of the Guaranty; and (3) duly and punctually pay or cause to be paid from its revenues or funds the amount 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. To secure the prompt and full payment of the Guaranty, the BOROUGH OF MILLVILLE hereby irrevocably pledges its full faith, credit and taxing power. This covenant shall be specifically enforceable; however, nothing herein shall be construed to give to the BOROUGH OF MILLVILLE any taxing power not granted by another provision of law.

The amounts for which the BOROUGH OF MILLVILLE issues its Guaranty and covenants to pay hereunder in each of the following fiscal years on the basis of an interest rate of 1.875% are as follows:

Year Ending	Total	Debt Service	Principal	Interest
12/31				
1993	\$ 26,638.46	\$ 18,602.09	\$ 8,036.37	
1994	29,060.14	20,660.88	8,399.26	
1995	29,060.14	21,051.62	8,008.52	
1996	29,060.14	21,449.75	7,610.39	
1997	29,060.14	21,855.41	7,204.73	
1998	29,060.14	22,268.73	6,791.41	
1999	29,060.14	22,689.88	6,370.26	
2000	29,060.14	23,118.99	5,941.15	
2001	29,060.14	23,556.22	5,503.92	
2002	29,060.14	24,001.71	5,058.43	
2003	29,060.14	24,455.63	4,604.51	
2004	29,060.14	24,918.14	4,142.00	
2005	29,060.14	25,389.39	3,670.75	
2006	29,060.14	25,869.55	3,190.59	
2007	29,060.14	26,358.79	2,701.35	
2008	29,060.14	26,857.29	2,202.85	
2009	29,060.14	27,365.22	1,694.92	
2010	29,060.14	27,882.75	1,177.39	
2011	29,060.14	28,410.06	650.08	
2012	19,373.43	19,237.91	135.51	

(A) Calculated at 1.875%, assuming an Amortization date of February 1, 1993.

SECTION 6: That the Borough Council has determined that a private sale of the Authority Note and the Guaranty issued pursuant to this Ordinance by negotiation, rather than public sale, is in the best interest of the Authority and the BOROUGH OF MILLVILLE.

SECTION 7: That the actions of the proper officers and the advertising of a summary of this Ordinance as required by law in the Press-Enterprise, a newspaper of general circulation in the BOROUGH OF MILLVILLE and COLUMBIA COUNTY, is ratified and confirmed. The advertisement in said paper of the enactment of this Ordinance is hereby directed within fifteen (15) days following the date of final enactment.

SECTION 8: All ordinances or parts of ordinances not in accord with this Ordinance are hereby repealed insofar as they conflict herewith.  
ORDAINED AND ENACTED, this 22nd day of June, 1992.

BOROUGH OF MILLVILLE

BY:  
COUNCIL PRESIDENT  
ATTEST:

BOROUGH SECRETARY

19920622.108 Debt, PennVEST