

BOROUGH OF CLARKS SUMMIT

(LACKAWANNA COUNTY, PENNSYLVANIA)

ORDINANCE NO. 1 OF 2013

DECLARING THAT THE EXECUTION BY THE BOROUGH OF A GUARANTY AGREEMENT BETWEEN THE BOROUGH AND PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY (“PENNVEST”), WHEREBY THE BOROUGH WILL GUARANTY TO PENNVEST THE PAYMENT OF 35.79% OF THE FULL AMOUNT OF PRINCIPAL OF AND INTEREST ON THE DEBT OBLIGATION OF ABINGTON REGIONAL WASTE AUTHORITY (“ARWA”) TO PENNVEST IN CONNECTION WITH ARWA’S PROJECT FOR THE EXPANSION OF ITS WASTEWATER TREATMENT FACILITIES (THE “ARWA PROJECT”) IS IN THE INTEREST OF THE BOROUGH; STATING THAT THE DEBT IS TO BE LEASE RENTAL DEBT AS DEFINED IN THE PENNSYLVANIA LOCAL GOVERNMENT UNIT DEBT ACT, 53 PA. CONS. STAT. §8001 ET SEQ., AS AMENDED (THE “DEBT ACT”); AUTHORIZING AND DIRECTING OFFICERS OF THE BOROUGH TO PREPARE AND VERIFY A DEBT STATEMENT REQUIRED BY SECTION 8110 OF THE DEBT ACT AND A BORROWING BASE CERTIFICATE AND DIRECTING THE SECRETARY OR ASSISTANT SECRETARY TO FILE SUCH STATEMENT AND CERTIFICATE, TOGETHER WITH A CERTIFIED COPY OF THIS ORDINANCE AND PROOFS OF PUBLICATION, WITH THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT AND TO PAY ANY NECESSARY FILING FEES; APPROVING THE FORM, AND AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY, OF THE GUARANTY AGREEMENT BY THE BOROUGH; STATING THE ANNUAL AMOUNTS OF PRINCIPAL AND INTEREST TO BE PAID UNDER THE GUARANTY AGREEMENT, COVENANTING THE PAYMENT THEREOF AND PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE BOROUGH THEREFOR; AUTHORIZING AND DIRECTING THE PREPARATION OF THE SELF-LIQUIDATING DEBT REPORT OF THE CONSULTING ENGINEERS OF ARWA AND THE FILING THEREOF AND THE PREPARATION AND FILING OF ANY OTHER STATEMENTS AND REPORTS REQUIRED TO QUALIFY THE DEBT OR ANY PORTION THEREOF FOR EXCLUSION FROM THE APPROPRIATE DEBT LIMIT AS SELF-LIQUIDATING; AUTHORIZING THE OFFICIALS OF THE BOROUGH TO TAKE OTHER APPROPRIATE ACTION; REPEALING ALL INCONSISTENT ORDINANCES AND RESOLUTIONS HEREWITH.

WHEREAS, the Borough is a constituent member of ARWA, and the number of Equivalent Domestic Units from properties located in the Borough constitute 35.79% of the total

number of Equivalent Domestic Units contributing wastewater to ARWA's Treatment Facility (as hereinafter defined); and

WHEREAS, ARWA, a municipal authority created and existing under the Pennsylvania Municipality Authorities Act, 53 Pa. Cons. Stat. §§5601-5622, as amended (the "Authorities Act"), presently owns and operates certain existing wastewater treatment facilities in the Township of South Abington, Lackawanna County, Pennsylvania (all thereof, together with any additions, extensions and improvements from time to time hereafter acquired or constructed and all property and interests in property now or hereafter acquired by ARWA in connection with the treatment of wastewater from any area which ARWA may be authorized to serve, being hereinafter called the "Treatment Facility"); and

WHEREAS, ARWA has determined to undertake a certain project, as more fully described and defined in Exhibit A hereto and as further contemplated by the legal documentation herein authorized (the "Capital Improvements"); and

WHEREAS, ARWA has determined to enter a debt obligation with PENNVEST pursuant to which PENNVEST is obligated to make future advances to ARWA and ARWA has committed to repay the stated principal sum of \$9,735,970.00, with interest at the rate of one (1%) percent per annum for the first five (5) years and one point eight six eight (1.868%) percent for the remaining term (the "Debt Obligation"); and

WHEREAS, the Borough has duly enacted ordinances requiring the owners of improved property to connect with the Sewer System and has adopted resolutions imposing certain user fees and charges with respect thereto in amounts sufficient to pay to ARWA the Borough's proportionate share of ARWA's annual budgets; and

WHEREAS, the Capital Improvements will be direct benefit to the residents of the Borough; and

WHEREAS, in order to secure payment of the Debt Obligation, ARWA has pledged to PENNVEST all revenues of ARWA received from the constituent municipalities, including the Borough; and

WHEREAS, in order to further secure the payment of the principal of, and interest on, the Debt Obligation, the Borough will enter into a guaranty agreement dated the date of closing on the Debt Obligation (the "Guaranty Agreement") with PENNVEST, as authorized by the Pennsylvania Local Government Unit Debt Act, 53 Pa. Cons. Stat. §8001 *et seq.*, as amended (the "Debt Act") providing for the unconditional guarantee by the Borough of the timely payment of 35.79% of the principal of, and interest on, the Debt Obligation and the pledge by the Borough of its full faith, credit and taxing power to discharge all of its obligations under the Guaranty Agreement; and

WHEREAS, the Capital Improvements will be constructed pursuant to plans and specifications prepared by Gannett Fleming, Inc., Camp Hill, Pennsylvania (the "Consulting Engineers"); and

WHEREAS, the Consulting Engineers will prepare a report (the “Self-Liquidating Debt Report”) to ARWA in accordance with Section 8026(a) of the Debt Act to qualify all of the debt of the Borough incurred pursuant to the Guaranty Agreement as self-liquidating debt under the Debt Act and to exclude such debt from the debt limit of the Borough; and

WHEREAS, the execution of the Guaranty Agreement shall constitute the incurrence of lease rental debt by the Borough within the meaning of the Debt Act;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COUNCIL (the “Governing Body”) OF THE BOROUGH OF CLARKS SUMMIT, LACKAWANNA, COUNTY, PENNSYLVANIA, AS FOLLOWS:

Section 1. Approval of Project and Financing Thereof; Realistic Estimated Useful Life. The Borough hereby approves the Project, as described above, and the financing thereof. The realistic estimated useful life of the Capital Improvements is hereby determined to be in excess of thirty (30) years.

Section 2. Debt Obligation Secured by Guaranty Agreement; Incurrence of Lease Rental Debt. The maximum aggregate principal amount of the Debt Obligation to be incurred by ARWA and secured by this Borough pursuant to the Guaranty Agreement is 35.79% of \$9,735,970.00.

This Governing Body hereby authorizes and directs the incurring of lease rental debt of the Borough, pursuant to the Debt Act, in the maximum aggregate principal amount of 35.79% of \$9,735,970.00, to be evidenced by the Guaranty Agreement between the Borough and PENNVEST.

Section 3. Debt Statement and Borrowing Base Certificate. The President or Vice President of this Governing Body and the Secretary or Assistant Secretary of the Borough (or other authorized officers or officials of the Borough) are hereby authorized and directed to prepare and verify the debt statement required by Section 8110 of the Debt Act and to prepare or cause to be prepared a borrowing base certificate and the Secretary or Assistant Secretary of the Borough is hereby authorized and directed to certify to the Pennsylvania Department of Community and Economic Development a transcript of the proceedings as required by Section 8111 of the Debt Act, and to pay any filing fees required under Section 8203 of the Debt Act.

Section 4. Guaranty Agreement. The form, terms and provisions of the Guaranty Agreement as presented to this meeting (copies of which shall be filed with the records of the Borough) is hereby approved. The President or Vice President of this Governing Body (or other authorized officers or officials of the Borough) is hereby authorized and directed, upon receipt of approval from the Pennsylvania Department of Community and Economic Development, to execute the Guaranty Agreement in such form, subject to such changes and modifications, if any, as may be approved by such officer or officers, the execution of the Guaranty Agreement to be conclusive evidence of such approval, and the Secretary or Assistant Secretary of the Borough is

hereby authorized and directed to affix thereto the corporate seal of the Borough, to attest the same and to deliver the Guaranty Agreement to the Trustee.

Section 5. Annual Amounts Payable Under Guaranty Agreement; Covenant to Pay Such Amounts. The annual amounts of principal and interest covenanted to be paid by the Borough under the Guaranty Agreement are as set forth in Schedule I attached hereto and made a part hereof.

It is covenanted with PENNVEST that the Borough shall (i) include the amount payable in respect of its guaranty for each fiscal year in which such sums are payable in its budget for that year, (ii) appropriate such amounts from its general revenues, for the payment of the amounts payable in respect of its guaranty, and (iii) duly and punctually pay, or cause to be paid from such revenues, to the extent of its obligations under the Guaranty Agreement, the amounts payable in respect of its guaranty, at the dates and places and in the manner stated in the Guaranty Agreement according to the true intent and meaning thereof. For such budgeting, appropriation and payment in respect of its guaranty of the Debt Obligation, the Borough pledges its full faith, credit and taxing power. This covenant shall be specifically enforceable; subject, however, 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 Borough any taxing power not granted by another provision of law.

Section 6. Authorization for Exclusion of Lease Rental Debt as Self-Liquidating Debt. The President or Vice President of this Governing Body and the Secretary or Assistant Secretary of the Borough (or other authorized officers or officials of the Borough) are each further authorized and directed to prepare, or cause to be prepared, and file the Self-Liquidating Debt Report and any statements required under Section 8026(a) of the Debt Act, which are necessary to qualify all or any portion of the lease rental indebtedness incurred hereby for exclusion as self-liquidating debt.

Section 7. Incidental Actions. The proper officers of the Borough are hereby authorized, directed and empowered on behalf of the Borough to execute any and all papers and documents and to do or cause to be done any and all acts and things necessary or proper for the carrying out of the provisions of this Ordinance.

Section 8. Repealer. All resolutions or ordinances or parts of resolutions or ordinances inconsistent herewith be and the same hereby are repealed.

Section 9. Severability. In case any one or more of the provisions of this Ordinance shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Ordinance and this Ordinance shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

Section 10. Effective Date. This Ordinance shall become effective on the earliest date permitted by the Debt Act.

EXHIBIT A
Capital Improvements

Certain Capital Projects which include:

- (i) installing a nutrient reduction program;
- (ii) increasing the peak flow of the wastewater treatment plant; and
- (iii) repairing and replacing certain structures and equipment.

SCHEDULE I

Ordinance of the [Council] [Board of Supervisors]
of the [Borough] [Township] of _____
enacted _____, 2013

Annual Amounts Payable Under Guaranty Agreement

Year	Principal or Sinking Fund	Interest	Debt Service
2013			
2014			
2015			
2016			
2017			
2018			
2019			
2020			
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			

I HEREBY CERTIFY that the foregoing is a true and correct copy of an Ordinance duly enacted by the affirmative vote of a majority of the members of the Council of the Borough of Clarks Summit, Lackawanna County, Pennsylvania, at a public meeting held the ____ day of _____, 2013 and approved by the Mayor; that proper notice of such meeting was duly given as required by law; and that said Ordinance has been spread upon the Minutes of said Governing Body, showing how each member voted thereon, and has been duly advertised as required by law.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Borough this ____ day of _____, 2013.

Secretary

(SEAL)