

Borough of Lilly

LILLY, PENNSYLVANIA
ORDINANCE NO.: 2009-2

An Ordinance increasing the indebtedness of Lilly Borough, Cambria County, Pennsylvania, by the issue of a general obligation note in the amount of \$300,000.00 for sundry purposes; fixing the form, number, date, interest and maturity thereof; making a covenant for the payment of the debt service on the note; providing for the filing of the required document; providing for the appointment of a sinking fund depository for the note; and authorizing execution, sale and delivery thereof.

WHEREAS, the governing body of the Borough of Lilly (hereinafter "Borough") deems it advisable to borrow three hundred thousand dollars (\$300,000.00), pursuant to the Local Government Unit Debt Act (the "Act"), for the purpose of issuing debt, the proceeds of which will be used as interim financing for the cost of design, acquisition, construction and improvement of the Borough's water project (hereinafter, the "Project") as more specifically described in Exhibit "P" which is attached hereto and incorporated herein; and

WHEREAS, the Borough has obtained estimate(s) of the costs(s) and has determined the useful life, of the Project by any one or more of the following methods: taking bids, obtaining an option for a fixed price contract or obtaining estimates from registered architects, professional engineers or other persons qualified by experience; and

WHEREAS, PNC Bank, N.A. (hereinafter, "Bank") has presented a written purchase contract (the "Purchase Contract"), attached hereto as Exhibit PC, to purchase a Note to be issued by the Borough in order to achieve the financing of the Project;

NOW, THEREFORE, it is hereby **ORDAINED AND ENACTED** by the Lilly Borough Council that:

Section 1 - Authorization.

1.01. The Borough hereby authorizes the incurrance, and the increase of its nonelectoral indebtedness, pursuant to Section 8109 of the Act, in the principal amount of three hundred

thousand dollars (\$300,000.00) to be evidenced by a general obligation note (the "Note"), in the form attached hereto as Exhibit N, in order to pay the costs of the Project. The Note will be dated the date of its delivery, will bear interest at the rate of eighty percent (80%) of the Bank's prime rate and will be payable (or will be subject to redemption or will mature) on the dates shown on Exhibit PC.

1.02. The President and the Secretary of the Borough or their duly elected and acting successors (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 its execution and sealing and delivery to the Bank.

Section 2 - Preparation of Debt Statement.

As required by §8110 of the Act, the Designated Officers of the Borough, are hereby authorized to, and shall prepare, execute and certify the Debt Statement, and its accompanying Borrowing Base Certificate. The Designated Officers are further authorized and directed to prepare and file any statements required by Subchapter B of Chapter 80 of the Act which are necessary to qualify all or a portion of this debt as self-liquidating.

Section 3 - Security and Payment of Note.

3.01. The Note shall be a general obligation note of the Borough. The Borough hereby pledges its full faith, credit, and unlimited taxing power for the payment of the debt service on the Note. The Borough hereby covenants with the Bank and with subsequent holders, from time to time, of the Note that it will (a) include the amount of the debt service for each fiscal year in which any installment 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 therein according to the true intent and meaning thereof; for such budgeting, appropriation and payment, the Borough hereby pledges its full faith, credit and taxing power.

3.02. The Borough hereby creates, and orders 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 with a bank, in accordance with the Act, until the Note is paid in full. The Designated Officer is 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.

3.03. The Borough reserves the right to anticipate any or all installments of principal or any payment of interest at any time prior to the respective payment dates thereof, without notice or penalty.

Section 4 - Tax Covenants.

4.01. The Borough 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 and that it will comply with the requirements of the Section and the Regulations throughout the term of the Note.

4.02. If: (a) 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 Borough during the current calendar year exceeds \$5,000,000 (\$10,000,000 in case of certain debt issued for educational purposes); and if (b) the gross proceeds of the Note are invested at a yield greater than the yield on the Note; and if (c) 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 Borough 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.

4.03. The Borough hereby designates the Note as a Qualified Tax-Exempt Obligation pursuant to Section 265(b)(3) of the Code and represents that the total amount of obligations designated and to be designated by or on behalf of the Borough during the current calendar year does not and is not expected to exceed \$10,000,000.

4.04. The Borough will file IRS Form 8038-G 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.

Section 5 - Requests for Advance.

The Borough hereby covenants and agrees that advances on the Note will be applied solely to paying the cost of the Project. The Bank upon receipt will advance such money from the Borough of a requisition in the form attached hereto as Exhibit R, signed by the President and Secretary of the Borough, together with the Consulting Engineer (as hereinafter defined), stating in respect of each advance to be made:

- (1) the requisition number;

- (2) the name and address of the person to whom payment is due;
- (3) the amount to be paid;
- (4) in reasonable detail, the purpose for which the obligation was incurred;
- (5) that the obligations in the stated amounts have been incurred by the Borough and that each item thereof is properly payable and has not been paid;
- (6) that there has not been filed with or served upon the Borough notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable to any persons named in such requisition;
- (7) that such requisition contains no item representing payment on account of any retained percentage which the Borough is on the date of such certificate entitled to retain;
- (8) that neither the Borough nor any of its officers or members has received any discount, rebate, commission, fee, proceeds from insurance or other abatement in connection with any such expenditure or indebtedness except as expressly set forth therein;
- (9) that no part of any such item has been included in any previous requisition; and
- (10) for payments related to or payments under contracts for construction or reimbursement for such payments, a certificate signed by the engineer, firm of engineers or other persons engaged in the engineering profession, who is a registered professional engineer under the laws of the Commonwealth of Pennsylvania, who has a favorable reputation for skill and experience in the planning, construction and operation of sewer systems, who is in fact independent (although such person may be regularly retained by the Borough) and who is appointed by the Borough (the "Consulting Engineer"), approving such requisition and certifying with respect to any obligation incurred for work, equipment or materials in connection with construction or other work which is the basis of the requisition, that such is in accordance with applicable plans and specifications and that such labor or other work actually was installed in or about the Project or that such equipment and/or materials were delivered to the site of the work for that purpose or were delivered for fabrication at a place approved by the Consulting Engineer.

Section 6 - Award.

Having determined that a private sale by negotiation of the Note is in the best financial interest of the Borough, the Governing Body hereby awards and sells the Note to the Bank in accordance with the Purchase Contract, which, as presented at this meeting, is hereby accepted and shall be executed by the Designated Officers.

Section 7 - Note Ordinance a Contract.

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

ORDAINED AND ENACTED, this fifth day of May, 2009,

BOROUGH OF LILLY

By: John F. Neznieski
John F. Neznieski - President

Attest: Claudine A. Falger (Seal)
Claudine A. Falger - Secretary

APPROVED, this 5th day of May, 2009,

John C. Gides
John C. Gides - Mayor

Lilly Borough
Cambria County, Pennsylvania

DESCRIPTION OF PROJECT

WATER SYSTEM IMPROVEMENTS PROJECT.

The project is located approximately 80 miles northwest of the City of Pittsburgh in the Borough of Lilly, Cambria County, Pennsylvania. Specifically, the proposed Work is located along various streets as indicated on the General Location Map on the Drawings.

The scope of Work for this project consists of the installation of 9,500 linear feet of 8-inch, 1,750 feet of 6-inch, and 400 feet of 4-inch C-900 or C-909 PVC water main, 90 feet of highway boring, 145 feet of railroad boring with service connections, appurtenances, and fire hydrants along various streets in the Borough of Lilly, Cambria County, PA.

EXHIBIT P

Lilly Borough
REQUISITION AND CERTIFICATE

for payment under the General Obligation Note, Series PNC-2009, dated _____, 2009

TO: PNC Bank, National Association
4044 William Penn Highway
Monroeville, PA 15146
Attn: Joseph E. Miller

Requisition No. _____
Date _____

Pursuant to Section 5 of the Ordinance of the Local Government Unit enacted _____, 2009, you are hereby requested to make the following payments for costs of the Project:

ITEM NO.	PAYEE'S NAME & ADDRESS	AMOUNT	PURPOSE OF OBLIGATION (In reasonable detail)	Status Item No.
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(Attach additional sheets, if necessary)

We, the undersigned officers of the Local Government Unit, hereby certify as follows: (a) that the obligations listed above in the stated amounts have been incurred by the Local Government Unit and that each item is properly payable as a cost of the Project and has not been paid; (b) that there has not been filed with or served upon the Local Government Unit formal notice of any lien, right to lien or attachment upon or claim affecting the right to receive payment of any of the monies payable to any persons named in this requisition; (c) that this requisition contains no item representing payment on account of any retained percentage which the Local Government Unit is, on the date of this certificate, entitled to retain; (d) that neither the Local Government Unit nor any of its officers or members has received any discount, rebate, commission, fee, proceeds from insurance or other abatement in connection with any such expenditure or indebtedness, except as expressly set forth herein; and (e) that no part of such item to be paid has been included in any previous requisition.

IN WITNESS WHEREOF, we have set our hands this _____ day of _____, 20__.

Lilly Borough

By _____
President

By _____
Secretary

CERTIFICATE OF CONSULTING ENGINEER

The undersigned, as the Consulting Engineer for the Lilly Borough, certifies that we have examined and approved the above Requisition No. _____. We further certify that with respect to any obligations incurred for work, equipment or materials in connection with construction or other work which is the basis of the requisition, that such is in accordance with applicable plans and specifications and that the labor or other work was installed in or about the Project or that such equipment or materials were delivered at the site of the work for that purpose or were delivered for fabrication at a place approved by the undersigned.

Signed and dated this ____ day of _____, 20__.

By _____
Name: _____
Title: _____

Lilly Borough
Cambria County, Pennsylvania
GENERAL OBLIGATION NOTE, SERIES PNC-2009
Revolving Line of Credit

\$300,000 80% of the Prime Rate _____, 2009 _____
Principal Amount Interest Rate Dated Date Maturity Date

The above named Local Government Unit, intending to be legally bound, promises to pay to the registered owner shown on the attached registration form in such coin or currency as at the time and place of payment is legal tender for the payment of public and private debts, without any right of set-off, the lesser of (i) the Principal Amount set forth above, or (ii) the aggregate unpaid principal amount of all advances made by the Bank (as hereinafter defined) to the Local Government Unit, on the sooner to occur of the Maturity Date or the date upon which The Pennsylvania Infrastructure Investment Authority loan to the Local Government Unit, known as Project Number _____, the commitment for which is set forth in the Pennvest letter to the Local Government Unit dated _____. Interest is due semiannually on each _____ and _____, commencing on _____, 2009, to the date of maturity, or upon earlier prepayment. Any outstanding principal and accrued interest shall be due and payable in full on _____. The Principal Amount from time to time outstanding under this Note will bear interest at the Interest Rate shown above, not to exceed twelve percent (12.00%).

A request for advance may only be made in accordance with Section 5 of the Ordinance of the Local Government Unit enacted _____, 2009. PNC Bank, National Association (the "Bank") shall be entitled to rely upon the authority of any person providing such requisition. The Local Government Unit hereby indemnifies and holds the Bank harmless from and against any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and expenses) which may arise or be created by making such advances. The Bank will enter on its books and records, which entry when made will be presumed correct, the date and amount of each advance, as well as the date and amount of each payment or prepayment made by the Local Government Unit.

Interest will be calculated on the basis of a year of 360 days for 30 days in each interest period.

The Local Government Unit has the right to prepay all or part of the outstanding principal and interest hereunder at any time.

As security for the payment of this Note, the Local Government Unit hereby covenants with the registered owner hereof that it will include the amount of the debt service payable hereunder in its budget for the applicable fiscal year, will appropriate such amounts to the payment of such debt service and will duly and punctually pay or cause to be paid the entire principal hereof and the interest hereon at the place, on the dates and in the manner stated above, according to the true meaning and intent hereof, and for such budgeting, appropriation and payment, the Local Government Unit hereby pledges its full faith, credit and taxing power.

No recourse shall be had for the payment of the principal of or the interest on this Note, or for any claim based hereon, against any officer, agent or employee, past, present or future, of the Local Government Unit, as such, either directly or through the Local Government Unit, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise; all such

liability of such officers, agents or employees is hereby renounced, waived and released as a condition of and as consideration for the issuance, execution and acceptance of this Note.

In the event of a default hereunder, the entire principal balance hereof shall, at the option of the holder, accelerate and shall be and become immediately due and payable without notice or demand and the Local Government Unit will pay the registered owner's reasonable costs and expenses incurred in collection of the amounts due hereunder.

This Note evidences a borrowing for a Project under the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, as amended, pursuant to an Ordinance of the Local Government Unit duly and regularly enacted in accordance with the provisions of the Debt Act.

It is hereby certified that all acts, conditions and things required to be done, to occur or be performed precedent to and in the issuance of this Note, or in the creation of the indebtedness of which this Note is evidence, have been done, have occurred and have been performed in regular and due form and manner as required by law, and that the debt evidenced by this Note is not in excess of any constitutional or statutory limitation.

This Note is a Qualified Tax-Exempt Obligation within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

WITNESS the due execution hereof as of the Dated Date set forth above.

ATTEST:

Lilly Borough

Secretary

By: _____
President

(SEAL)

REGISTRATION FORM

This Note can be validly negotiated only upon proper execution of the form set forth below. The Local Government Unit shall treat the registered owner of this Note, as noted on this Note and on its books, as the absolute owner hereof, and shall not be affected by any changed circumstances, nor by any notice to the contrary.

Original Registered Owner:

PNC BANK, NATIONAL ASSOCIATION

<u>Date</u>	<u>Transferor</u>	<u>Subsequent Purchaser</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

For value received, the last-named Transferor, by its due execution above, hereby, on the above-stated date, sells, transfers and negotiates this Note to the last-named Subsequent Purchaser, warranting that this transfer is effective and rightful; that this Note is genuine and has not been materially altered; and that it has no knowledge of any fact which might impair the validity of this Note.

**Lilly Borough
General Obligation Note, Series 2009
Amortization Schedule**

Principia Amount =	\$300,000.00
Interest Rate =	12.00%
Dated Date =	06/01/2009

Payment Date	Payment Number	Principal Payment	Interest Payment	Total Payment	Remaining Balance
12/01/2009	1	\$0.00	\$18,000.00	\$18,000.00	\$300,000.00
06/01/2010	2	\$0.00	\$18,000.00	\$18,000.00	\$300,000.00
12/01/2010	3	\$300,000.00	\$18,000.00	\$318,000.00	\$0.00