

FOREST CITY BOROUGH
Susquehanna County, Pennsylvania

ORDINANCE NO: 497

Enacted: March 3, 2014

AUTHORIZING THE INCURRENCE OF DEBT OF FOREST CITY BOROUGH THROUGH THE ISSUANCE OF A GUARANTEED SEWER REVENUE BOND, SERIES OF 2014, IN THE PRINCIPAL AMOUNT OF \$6,600,000, FOR THE PURPOSE OF PROVIDING FUNDS FOR THE PERMANENT FINANCING OF THE SEWER SYSTEM PROJECT AND PAYING THE COSTS OF ISSUING THE BOND; DECLARING THE REMAINING REALISTIC ESTIMATED USEFUL LIFE OF THE BOROUGH'S SEWER SYSTEM; AUTHORIZING THE ISSUANCE OF GUARANTEED SEWER REVENUE BOND; AUTHORIZING AND DIRECTING THE PREPARATION, CERTIFICATION AND FILING WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT OF THE DEBT STATEMENT REQUIRED BY THE LOCAL GOVERNMENT UNIT DEBT ACT; PROVIDING FOR THE FORM OF SUCH BOND; PLEDGING CERTAIN REVENUES FOR THE PAYMENT OF SUCH BOND AND FURTHER PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE BOROUGH FOR THE PAYMENT OF THE BOND TO THE EXTENT SUCH REVENUES ARE INSUFFICIENT THEREFOR; ASSUMING AND AGREEING TO PAY CERTAIN TAXES IF NECESSARY; ESTABLISHING A SINKING FUND IN RESPECT OF THE BOND AND PROVIDING FOR A SINKING FUND DEPOSITARY; COVENANTING AS TO ARBITRAGE; DESIGNATING THE BOND AS A QUALIFIED TAX-EXEMPT OBLIGATION; AUTHORIZING PREPARATION, EXECUTION AND DELIVERY OF THE BOND AND OTHER DOCUMENTS AND SUCH OTHER ACTION AS MAY BE NECESSARY TO EFFECTUATE ISSUANCE, SALE AND DELIVERY OF THE BOND; ACCEPTING THE PROPOSAL FROM THE UNITED STATES OF AMERICA, U.S. DEPARTMENT OF AGRICULTURE FOR THE PURCHASE OF THE BOND; AND REPEALING INCONSISTENT ORDINANCES.

WHEREAS, Forest City Borough (the "Borough"), in order to replace the existing sewer collection system for rendering sewer collection service in the Borough, has undertaken a project (the "Project") involving the design, acquisition, and construction of a new sewer and storm water collection system and the acquisition of land and rights of way or easements related thereto; and

WHEREAS, the Borough has determined that it is in the best interest of the Borough to finance the costs of the Project on an interim basis during the construction phase of the Project (the "Interim Financing"), and then on a permanent basis by refinancing the Interim Financing and payment of additional Project costs (the "Permanent Financing"), through the incurrence of nonelectoral debt pursuant to the Local Government Unit Debt Act (the "Debt Act"), being Act No. 177 of December 19, 1996, P.L. 158, as amended; and

WHEREAS, pursuant to the Act, the Borough incurred nonelectoral debt in the amount not to exceed \$9,665,900 (Approval No. GON-12100301) for the Interim Financing and, pursuant to such approval, the Borough issued to Landmark Community Bank (the "Bank") its General Obligation Note, Series 2012 (the "2012 Note"), which is currently outstanding in the amount of \$4,863,060.18; and

WHEREAS, the Borough has applied to the United States of America, U.S. Department of Agriculture ("USDA") for the Permanent Financing and desires to authorize the issuance of a guaranteed sewer revenue bond to the USDA (the "USDA Bond") to provide funds for (i) the Permanent Financing of the Project and the payment of the 2012 Note (the "Refunding"); (ii) additional Project costs; and (iii) the payment of costs of issuing the USDA Bond (together, the "Financing Project"), pursuant to the terms of the USDA's letter to the Borough dated July 24, 2008 (the "USDA Proposal"); and

WHEREAS, the Borough has determined that the private sale by negotiation of the USDA Bond is in the best financial interest of the Borough; and

WHEREAS, the Borough desires to accept the USDA Proposal and to authorize and direct certain acts and things necessary and proper to effectuate the issuance, sale and delivery of the USDA Bond in order to provide the Permanent Financing of the Project, the payment of additional Project costs and the refunding of the 2012 Note.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Forest City, Susquehanna County, Pennsylvania as follows:

Section 1. The Financing Project involving the Refunding, the incurring of debt for the Permanent Financing of the Project and the payment of additional Project costs (the "Additional Project Costs") is hereby declared a purpose or project which the Borough hereby undertakes and for which it desires to incur nonelectoral debt (within the meaning of the Debt Act). The realistic remaining useful life of the System is hereby declared to be 45 years.

The Borough hereby authorizes and shall undertake the Financing Project described in the recitals hereto and shall incur indebtedness, pursuant to the Act, in the principal amount of \$6,600,000 for the purpose of providing funds for and toward the Financing Project and the payment of the costs of the financing.

It is hereby determined and set forth that the purpose of the Refunding is to substitute bonds for notes as authorized by Section 8241(b)(5) of the Act.

Section 2. For the purpose of providing funds for the payment of all or a portion of the costs of the Financing Project, and for the payment of the costs of issuance and sale of the USDA Bond, the incurring of the principal amount of \$6,600,000 of nonelectoral debt by the Borough is hereby authorized. The debt shall be evidenced by the USDA Bond. The USDA Bond is to be a guaranteed revenue bond of the Borough and shall be substantially in the form of the USDA Bond attached hereto as Exhibit A and incorporated herein by reference, with such changes as may be approved by the President of Borough Council. The USDA Bond shall be designated as the Borough's "United States of America, U.S. Department of Agriculture

Guaranteed Sewer Revenue Bond, Series of 2014," shall be issued in the principal amount of \$6,600,000, shall be payable to the order of the United States of America, U.S. Department of Agriculture, shall be dated the date of issuance, and shall bear interest from such date at a rate to be determined under the USDA proposal as of the closing on the USDA Bond but not to exceed 2.75% per annum (except as otherwise provided in the form of USDA Bond) payable to the holder or registered owner thereof at the place or places specified herein. Interest and principal shall be payable on such dates as shall be provided in the form of USDA Bond and the form of the loan agreement attached hereto as Exhibit B (the "Loan Agreement"). The USDA Bond shall mature as provided in the USDA Bond, and shall be prepayable by the Borough at its option at any time, without penalty or premium. The execution, issuance sale and delivery of the USDA Bond is hereby authorized and directed in accordance with the terms of this Ordinance. Pursuant to the Debt Act, the Borough hereby designates the debt to be incurred by the USDA Bond as nonelectoral debt.

Section 3. The Borough Council hereby finds, determines and declares that a private sale of the USDA Bond by negotiation is in the best financial interest of the Borough. The USDA Proposal, presented to the meeting of the Borough Council held on the date of this Ordinance, is hereby declared to be an acceptable proposal for the purchase at negotiated sale of the USDA Bond at a price of 100% of the par amount thereof, and is hereby accepted and the USDA Bond is hereby awarded to the USDA. The President or Vice President of the Borough Council hereby is authorized, empowered and directed to execute on behalf of the Borough a copy or copies of the USDA Proposal in the form as submitted and approved at this meeting and to cause the official seal of the Borough to be affixed thereto and duly attested by the Secretary or Assistant Secretary or Acting Secretary. The Secretary of the Borough Council is hereby directed to notify the USDA of such action and to file a copy of said proposal with the records of the Borough. The authorized representatives of the Borough are hereby authorized to deliver the USDA Bond to the USDA, upon compliance with all conditions precedent to such delivery required by the Debt Act, this Ordinance, and the USDA Proposal, and are further authorized or directed to pay all costs of financing at the time of delivery of the USDA Bond; and execute such other closing documents as are necessary or appropriate, in the opinion of counsel, to effectuate settlement on the USDA Bond.

Section 4. The USDA Bond shall be a guaranteed sewer revenue bond payable, first, out of the specific revenues of the System pledged for the payment thereof, as hereafter provided and, second, to the extent such System revenues are insufficient to pay principal of and interest on the USDA Bond when due, from the general revenues of the Borough.

Section 5. The President or Vice President of the Borough Council and the Treasurer of the Borough are hereby authorized and directed to prepare, certify, verify and/or file with the Department of Community and Economic Development, as appropriate in accordance with the Debt Act, both (i) the debt statement required by the Debt Act; and (ii) such statements and reports as are required by the Debt Act to qualify the maximum eligible portion of the nonelectoral debt represented by the USDA Bond for exclusion from the Borough's debt limits; and the President of the Borough Council, or the Vice-President or Treasurer in the absence of the President, or, in the alternative, an independent certified public accountant, are hereby authorized and directed to prepare and execute a certificate stating the Borough's borrowing

base, as such term is defined in the Debt Act, for submission to the Department of Community and Economic Development.

Section 6. The form of the Loan Agreement is to be substantially in the form as attached as Exhibit B hereto, which is incorporated herein by reference, with such changes therein as may be approved by the President of the Borough Council. The Loan Agreement shall be executed by the President or Vice President of the Borough Council, and shall have the seal of the Borough impressed thereon, duly attested by the Secretary or Assistant Secretary (or any acting Secretary appointed for such purpose) of the Borough Council. Such persons are hereby authorized to execute the USDA Bond and the Loan Agreement as aforesaid. The President or Vice President of the Borough Council is hereby authorized and directed to deliver the USDA Bond and the Loan Agreement upon the terms and conditions hereinafter provided for such delivery, and all officers of the Borough and the Borough Council are hereby authorized to execute and deliver such other documents and to take such other action as may be necessary or appropriate in order to effectuate the issuance and sale of the USDA Bond, all in accordance with this Ordinance.

Section 7. In order to secure payment of the principal of and interest on the USDA Bond according to its tenor, to secure performance and observance of all covenants and conditions contained in the USDA Bond and in the Loan Agreement, and in consideration of covenants contained in the Loan Agreement and of acceptance of the USDA Bond by the USDA, the Borough, intending to be legally bound, does hereby pledge, assign, transfer, set over and grant a security interest to the holders or registered owners from time to time of the USDA Bond, all right, title and interest of the Borough in and to the revenues of the System, under and subject to terms and conditions set forth in the Loan Agreement. To the extent such revenues are insufficient to pay the principal of and interest on the USDA Bond, the Borough hereby covenants with the holders from time to time of the USDA Bond that it shall include the amount of the debt service, and any taxes payable pursuant to Section 8 hereof, on the USDA Bond for each fiscal year in which such sums are payable in its budget for that year and shall appropriate such amounts to the payment of such debt service and taxes covenanted to be paid and shall duly and punctually pay or cause to be paid the principal of and the interest on the USDA Bond on the dates and at places and in the manner stated therein according to the true intent and meaning thereof, and for such budgeting, appropriation and payment the Borough does hereby pledge its full faith, credit and taxing power. As provided in the Debt Act, the foregoing covenant shall be specifically enforceable.

Section 8. The principal of and interest on the USDA Bond shall be payable without deductions of, and the Borough assumes and agrees to pay, any tax or taxes which the Borough or the Treasurer thereof may be required to pay thereon or retain therefrom under or by virtue of any present or future law of the Commonwealth of Pennsylvania, except gift, succession or inheritance taxes.

Section 9. Upon the issuance of the USDA Bond, there shall be established a sinking fund to be known as the "United States of America, U.S. Department of Agriculture Guaranteed Sewer Revenue Bond Sinking Fund" (the "Sinking Fund"), into which the Borough covenants to deposit, and into which the Treasurer is hereby authorized and directed to deposit, the amounts required to pay when due the principal of and interest on the USDA Bond. The

Sinking Fund shall be kept under the terms of the Loan Agreement in separate accounts at the principal corporate trust office of the Sinking Fund Depository provided for in Section 10 hereof, until such time as the Borough Council by resolution or ordinance shall provide for a similar separate account in another Pennsylvania bank or bank and trust company.

All sums in the Sinking Fund shall be applied exclusively to the payment of the principal of and interest on the USDA Bond, as the same shall from time to time become due and payable and the balance of said moneys over and above the sum so required shall remain in the Sinking Fund, such balance to be applied in reduction of future required deposits or to the prepayment of the USDA Bond.

The Sinking Fund shall be secured and invested by the Sinking Fund Depository in securities or deposits authorized by the Debt Act, upon direction of the Borough, all as provided in the Debt Act. Said deposits and securities shall be in the name of the Borough but subject to withdrawal or collection only by the Sinking Fund Depository, and said deposits and securities, together with the interest thereon shall be a part of the said Sinking Fund. The Sinking Fund Depository without further action of the Borough is hereby authorized and directed to pay from the said Sinking Fund the principal of and interest on the USDA Bond when due and payable.

Section 10. The President of the Borough Council, his delegate and/or the Treasurer of the Borough is hereby authorized and directed to contract with Landmark Community Bank for its services in respect of the USDA Bond as sinking fund depository (the "Sinking Fund Depository").

Section 11. The Borough hereby covenants with the holders or registered owners from time to time of the USDA Bond that it will make no investment or other use of the proceeds of the USDA Bond which would cause the USDA Bond 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 promulgated thereunder, and that it will comply with the requirements of the Code and the regulations under it as they pertain to the USDA Bond throughout the term of the USDA Bond.

The President or his delegate and the Secretary of the Borough shall execute on behalf of the Borough an arbitrage certificate with respect to the USDA Bond for the purpose of assuring the holders of the USDA Bond that the USDA Bond is not an "arbitrage bond" within the meaning of Section 148 of the Code and regulations promulgated thereunder. Such certificate shall constitute a certificate and representation of the Borough that no investment or other use shall be made of the proceeds of the USDA Bond in violation of the expectations expressed in such arbitrage certificate.

The Borough further covenants that it will file or cause to be filed with the Internal Revenue Service a report of the issuance of the USDA Bond as required by Section 149(e) of the Code as a condition of the exemption of the interest on each USDA Bond from federal income tax.

Section 12. The USDA Bond is hereby designated by the Borough as a "Qualified Tax-Exempt Obligation" within the meaning of Section 265(b)(3) of the Code for purposes of determining the deductibility of interest expense of banks and other financial institutions holding the USDA Bond.

Section 13. The Borough hereby authorizes and directs the prepayment in full of the 2012 Note on the closing date established for the USDA Bond, or on such date as soon as practical thereafter. The proper officers of the Borough are hereby authorized and directed to execute all documents and to take such other action as may be necessary or advisable to effectuate the prepayment of the outstanding 2012 Note. Such documentation shall be in form and substance as approved by the signing officers of the Borough.

Section 14. The President or Vice President of the Borough Council and the Secretary or Assistant Secretary or Acting Secretary of the Borough Council, as the case may be, are further authorized, empowered and directed to deliver the USDA Bond upon receipt of the purchase money and in accordance with the terms of the USDA Proposal and the Loan Agreement for the purchase thereof and to execute and deliver any and all papers and documents with such additions, deletions or changes as such officers shall deem appropriate and in accordance with this Ordinance and to take such further action and to do or cause to be done any and all acts and things as may be necessary or appropriate to execute or carry out the purposes of this Ordinance, to incur the debt hereby authorized and to effectuate the issuance, sale and delivery of the USDA Bond, and such actions of such officers shall be deemed the actions of the Borough.

The Borough's Bond Counsel is hereby authorized and directed to prepare all documents required in connection with the issuance, sale and delivery of the USDA Bond as Bond Counsel deems necessary or appropriate.

Section 15. This Ordinance is enacted pursuant to the Debt Act, the Borough Code, as amended, the laws and the Constitution of the Commonwealth of Pennsylvania and the Borough hereby determines and declares that each and every matter and thing provided for herein is necessary and desirable to carry out and effect the public purposes of the Borough in accordance with such laws. All of the mandatory provisions of the Debt Act shall apply hereunder whether or not explicitly stated herein and are specifically incorporated herein by reference.

Section 16. In consideration of the purchase and acceptance of the USDA Bond authorized to be issued hereunder by those who shall purchase the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Borough and the holders or registered owners from time to time of the USDA Bond; and the covenants and agreements herein set forth to be performed on behalf of the Borough shall be for the benefit, protection and security of the holders or registered owners from time to time of the USDA Bond. If the Borough shall default in the performance of any of its obligations hereunder, under the Note or under the Debt Act, the holders of the USDA Bond shall be entitled to all of the rights and remedies provided by the Debt Act in the event of such default.

Section 17. In the event that any one or more of the provisions contained in this Ordinance or in the USDA Bond issued pursuant hereto shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Ordinance or of the USDA Bond, and this Ordinance or the USDA Bond shall be construed and enforced as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

Section 18. The Borough may, from time to time and at any time, enact a supplemental ordinance (a) to cure any ambiguity, formal defect or omission in this Ordinance or in any supplemental ordinance; or (b) to grant to and confer upon the holders or registered owners from time to time of the USDA Bond any additional rights, remedies, powers, authority or security that may be lawfully granted to or conferred upon same; or (c) to comply with any requirements of the Code after regulations and rulings interpreting the Code are promulgated.

Section 19. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon, or to give any person, firm or corporation other than the Borough, and the holders or registered owners of the USDA Bond any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements contained in this Ordinance are and shall be for the sole and exclusive benefit of the Borough, and the holders or registered owners of the USDA Bond.

Section 20. All prior ordinances or resolutions or parts thereof inconsistent herewith are hereby repealed rescinded and annulled.

Enacted by the Borough Council this 3rd day of March, 2014.

FOREST CITY BOROUGH

BY: 
President, Borough Council

[SEAL]

Attest:

By: 
Secretary