

FOREST CITY BOROUGH  
Susquehanna County, Pennsylvania

ORDINANCE 479

Enacted: May 4, 2009

DECLARING THE REPLACEMENT AND RECONSTRUCTION OF THE BOROUGH'S SEWER COLLECTION SYSTEM AS A PROJECT FOR WHICH THE BOROUGH DESIRES TO INCUR NONELECTORAL DEBT; DECLARING THE REALISTIC ESTIMATED USEFUL LIFE OF SUCH SYSTEM; AUTHORIZING THE INCURRING OF NONELECTORAL DEBT NOT TO EXCEED NINE MILLION SIX HUNDRED SIXTY-FIVE THOUSAND NINE HUNDRED DOLLARS (\$9,665,900) TO PROVIDE INTERIM FINANCING OF THE PROJECT DURING THE CONSTRUCTION PHASE AND FURTHER AUTHORIZING THE INCURRING OF NONELECTORAL DEBT IN THE SAME MAXIMUM AMOUNT TO REFINANCE THE INTERIM FINANCING ON A PERMANENT BASIS; PROVIDING FOR THE EVIDENCING OF SUCH DEBT BY GUARANTEED SEWER REVENUE NOTES; AUTHORIZING THE ISSUANCE OF SUCH NOTES; 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 NOTES; PLEDGING CERTAIN REVENUES FOR THE PAYMENT OF THE GUARANTEED SEWER REVENUE NOTES AND FURTHER PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE BOROUGH FOR THE PAYMENT OF THE NOTES TO THE EXTENT SUCH REVENUES ARE INSUFFICIENT THEREFOR; ASSUMING AND AGREEING TO PAY CERTAIN TAXES IF NECESSARY; ESTABLISHING A SINKING FUND IN RESPECT OF EACH OF THE NOTES AND PROVIDING FOR A SINKING FUND DEPOSITARY; COVENANTING AS TO ARBITRAGE; DESIGNATING THE NOTES AS QUALIFIED TAX-EXEMPT OBLIGATIONS; AUTHORIZING PREPARATION, EXECUTION AND DELIVERY OF NOTES AND OTHER DOCUMENTS AND SUCH OTHER ACTION AS MAY BE NECESSARY TO EFFECTUATE ISSUANCE, SALE AND DELIVERY OF THE NOTES; ACCEPTING THE PROPOSAL OF COMMUNITY BANK & TRUST CO. FOR THE PURCHASE OF THE NOTE RELATED TO THE INTERIM FINANCING AND ACCEPTING THE PROPOSAL FROM THE UNITED STATES OF AMERICA, U.S. DEPARTMENT OF AGRICULTURE FOR THE PURCHASE OF THE NOTE RELATED TO THE PERMANENT FINANCING; 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 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 initially 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 (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, the Borough has received from Community Bank & Trust Co. (the "Bank") a proposal dated April 3, 2009, (the "Bank Proposal") for the purchase at private sale by negotiation of a guaranteed sewer revenue note (the "Bank Note") to provide the Interim Financing for the Project; 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 note to the USDA (the "USDA Note") for the Permanent Financing of the Project pursuant to the terms of the USDA's letter to the Borough dated July 24, 2008 (the "USDA Proposal"); and

WHEREAS, the Council of the Borough (the "Borough Council") has reviewed cost analyses by the Borough's consulting engineers of the costs of the Project, including costs of issuance of the Bank Note and USDA Note and the payment of capitalized interest on the Bank Note during the construction phase of the Project and has determined such costs to be approximately \$10,000,000; and

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

WHEREAS, the Borough desires to accept the Bank Proposal and the USDA Proposal and to authorize and direct certain acts and things necessary and proper to effectuate the issuance, sale and delivery of the Bank Note and the USDA Note.

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

Section 1. The replacement and reconstruction of the sewer collection system (the "System") for rendering sewer collection service in the Borough, described above as the "Project", 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 useful life of the System is hereby declared to be in excess of 40 years.

Section 2. For the purpose of providing funds for the payment of all or a portion of the costs of the Project, including capitalized interest incurred on the outstanding Bank Note during the construction phase of the Project, and for the payment of the costs of issuance



and sale of the Bank Note and the USDA Note, the incurring of up to a maximum amount of \$9,665,900 of nonelectoral debt by the Borough is hereby authorized. Such debt shall be evidenced during the Interim Financing period by the Bank Note, which is to be a guaranteed revenue note of the Borough in a principal amount not to exceed \$9,665,900. Upon the completion of the construction phase of the Project, the Interim Financing will be refinanced and the principal outstanding on the Bank Note will be paid in its entirety from the proceeds received from the issuance, delivery and sale to the USDA of and the debt shall be evidenced during the Permanent Financing Period by the USDA Note. The USDA Note is to be a guaranteed revenue note of the Borough in a principal amount not to exceed \$9,665,900. The Bank Note and USDA Note are sometimes referred to herein as the "Notes." The execution, issuance sale and delivery of the Notes is hereby authorized and directed in accordance with the terms of the Ordinance. Pursuant to the Debt Act, the Borough hereby designates the debt to be incurred by the Notes as nonelectoral debt.

Section 3. The Borough Council hereby finds, determines and declares that a private sale of the Bank Note by negotiation is in the best financial interest of the Borough. The proposal of the Bank for the purchase of the Bank Note at private sale by negotiation as set forth in the Bank Proposal, is hereby approved and accepted in compliance with Section 8107 of the Debt Act, which provides that such obligations may be sold by the Borough at negotiated or invited sale upon receipt of an acceptable proposal for the purchase thereof, and the Bank Note is hereby awarded to the Bank upon the terms set forth in the Bank Proposal. 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 Bank 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 Bank Note, if, as and when issued, shall be delivered to the Bank after execution and authentication thereof. A copy of the Bank Proposal as presented, approved and accepted is to be attached to the minutes of the meeting and is hereby made a part hereof by reference. As set forth in the Bank Proposal, the Bank Note shall be issued in a principal amount not to exceed \$9,655,900 and shall be purchased at a price of 100% of the par amount thereof. The Bank Note shall be designated as the Borough's "Guaranteed Sewer Revenue Note, Series of 2009", shall be payable to the order of the Bank, shall be dated the date of issuance and shall bear interest at a variable rate not to exceed 6.00% and shall be in the form of the Bank Note attached hereto as Exhibit A.

Section 4. The Borough Council hereby finds, determines and declares that a private sale of the USDA Note 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 Borough's USDA Note at a price of 100% of the par amount thereof, and is hereby accepted and the USDA Note 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 Note 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 Note; and execute such other closing documents as are necessary or appropriate, in the opinion of counsel, to effectuate settlement on the USDA Note. The USDA Note shall be designated as the Borough's "United States of America, U.S. Department of Agriculture Guaranteed Sewer Revenue Note" and with a series designated the year of issuance, shall be issued in the principal amount not to exceed \$9,665,900, 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 per annum as provided in the USDA Proposal payable to the holder thereof at the place or places specified therein. Interest and principal shall be payable on such dates as shall be provided therein and shall be in the form of the USDA Note attached hereto as Exhibit B. The USDA Note shall mature as set forth in the USDA Loan Agreement, and shall be pre-payable by the Borough at its option at any time, without penalty or premium.

Section 5. The Notes shall be guaranteed sewer revenue notes 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 Notes when due, from the general revenues of the Borough.

Section 6. 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, including a report to be prepared by Public Financial Management, Inc., as are required by the Debt Act to qualify the maximum eligible portion of the nonelectoral debt represented by the Notes 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 7. The forms of the loan agreement between the Borough and the USDA (the "USDA Loan Agreement") and the loan agreement between the Borough and the Bank (the "Bank Loan Agreement", and referred to together as the "Loan Agreements") are to be substantially in the form as presented to this meeting, which is incorporated herein by reference, with such changes therein as may be approved by the President of the Borough Council. The Loan Agreements 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 Notes and the Loan Agreements as aforesaid. The President or Vice President of the Borough Council is hereby authorized and directed to deliver the Notes and the Loan Agreements 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 Notes, all in accordance with this Ordinance.

Section 8. In order to secure payment of the principal of and interest on the Notes according to their tenor, to secure performance and observance of all covenants and conditions contained in the Notes and in the Loan Agreements, and in consideration of covenants contained in the Loan Agreements and of acceptance of the Bank Note by the Bank and the USDA Note 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 from time to time of the Notes, 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 Agreements. To the extent such revenues are insufficient to pay the principal of and interest on the Notes, the Borough hereby covenants with the holders from time to time of the Notes that it shall include the amount of the debt service, and any taxes payable pursuant to Section 9 hereof, on the Notes 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 Notes 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 9. The principal of and interest on the Notes 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 10. Upon the issuance of the Bank Note, there shall be established a sinking fund to be known as the "Bank Guaranteed Sewer Revenue Note, Series of 2009 Sinking Fund" (the "Bank Note 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 the interest on the Bank Note. The Bank Note Sinking Fund shall be kept in separate accounts at the principal corporate trust office of the Sinking Fund Depository provided for in Section 12 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 Bank Note Sinking Fund shall be applied exclusively to the payment of the principal of and interest on the Bank Note, 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 Bank Note Sinking Fund, such balance to be applied in reduction of future required deposits or to the prepayment of the Bank Note.

The Bank Note 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 Depositary, and said deposits and securities, together with the interest thereon shall be a part of the said Bank Note Sinking Fund. The Sinking Fund Depositary without further action of the Borough is hereby authorized and directed to pay from the said Bank Note Sinking Fund the principal of and interest on the Bank Note when due and payable.

Section 11. Upon the issuance of the USDA Note, there shall be established a sinking fund to be known as the "United States of America, U.S. Department of Agriculture Guaranteed Sewer Revenue Note Sinking Fund" (the "USDA Note 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 Note. The USDA Sinking Fund shall be kept under the terms of the USDA Loan Agreement in separate accounts at the principal corporate trust office of the Sinking Fund Depositary provided for in Section 12 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 Note, 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 Note.

The USDA Note Sinking Fund shall be secured and invested by the Sinking Fund Depositary 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 Depositary, and said deposits and securities, together with the interest thereon shall be a part of the said USDA Note Sinking Fund. The Sinking Fund Depositary without further action of the Borough is hereby authorized and directed to pay from the said USDA Note Sinking Fund the principal of and interest on the USDA Note when due and payable.

Section 12. The President of the Borough Council, his delegate and/or the Treasurer of the Borough is hereby authorized and directed to contract with the Bank for its services in respect of the Notes as sinking fund depositary (the "Sinking Fund Depositary").

Section 13. The Borough hereby covenants with the holders from time to time of the Notes that it will make no investment or other use of the proceeds of the Notes which would cause either 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 promulgated thereunder, and that it will comply with the requirements of the Code and the regulations under it as they pertain to the Notes throughout the terms of the Notes.

The President or his delegate and the Secretary of the Borough shall execute on behalf of the Borough an arbitrage certificate with respect to each Note for the purpose of assuring the holders of each Note that each Note is not an "arbitrage bond" within the meaning



of Section 148 of the Code and regulations promulgated thereunder. Each 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 respective Note 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 each Note as required by Section 149(e) of the Code as a condition of the exemption of the interest on each Note from federal income tax.

Section 14. The Bank Note and the USDA Note are hereby each 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 Notes.

Section 15. 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 Notes upon receipt of the purchase money and in accordance with the terms of the Bank Proposal, the USDA Proposal and the Loan Agreements 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 Notes, and such actions of such officers shall be deemed the actions of the Borough.

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

Section 16. 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 17. In consideration of the purchase and acceptance of the Notes 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 from time to time of the Notes; 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 Notes. If the Borough shall default in the performance of any of its obligations hereunder, under the Notes or under the Debt Act, the

holders of the Notes shall be entitled to all of the rights and remedies provided by the Act in the event of such default.

Section 18. In the event that any one or more of the provisions contained in this Ordinance or in the Notes 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 Notes, and this Ordinance or the Notes shall be construed and enforced as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

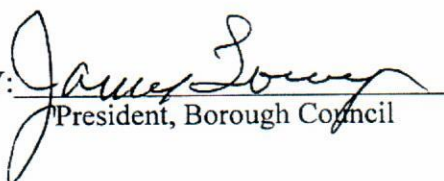
Section 19. The Borough may, from time to time and at any time, enact a supplemental ordinance (a) to cure any ambiguity, formal defect or omission in this Ordinance or in any supplemental ordinance; or (b) to grant to and confer upon the holders from time to time of the Notes any additional rights, 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 20. 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 owners of the notes 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 owners of the Notes.

Section 21. All prior ordinances or resolutions or parts thereof inconsistent herewith are hereby repealed rescinded and annulled.


Enacted by the Borough Council this 4<sup>th</sup> day of May, 2009.

FOREST CITY BOROUGH

BY:   
President, Borough Council

[SEAL]

Attest:

By:   
Secretary