

ORDINANCE #74

FIRST READING - November 22, 1991
SECOND READING - December 2, 1991

AUTHORIZING THE INCURRING OF LEASE RENTAL DEBT EVIDENCED BY A GUARANTY AGREEMENT; ESTIMATING THE USEFUL LIFE OF THE PROJECT; AUTHORIZING AND DIRECTING THE PREPARATION, CERTIFICATION AND FILING WITH THE DEPARTMENT OF COMMUNITY AFFAIRS OF A DEBT STATEMENT AND OTHER DOCUMENTS REQUIRED BY THE LOCAL GOVERNMENT UNIT DEBT ACT; AUTHORIZING THE EXCLUSION OF ALL OR PART OF THE INDEBTEDNESS AS SUBSIDIZED DEBT OR SELF-LIQUIDATING DEBT; AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF GUARANTY AGREEMENT UPON CERTAIN CONDITIONS AND UPON RECEIPT OF THE APPROVAL OF DEPARTMENT OF COMMUNITY AFFAIRS; DESCRIBING THE FORM OF THE AUTHORITY BOND; REFERRING TO THE GENERAL OBLIGATION COVENANT OF THE COUNTY SET FORTH IN THE ORDINANCE; AND REPEALING ALL INCONSISTENT ORDINANCES OR RESOLUTIONS; PROVIDING FOR THE EFFECTIVE DATE OF ORDINANCE.

WHEREAS, the Lackawanna River Basin Sewer Authority (the "Authority") was organized in July, 1966, by the Board of County Commissioners (the "Board") of the County of Lackawanna, Pennsylvania (the "County") under provisions of the Pennsylvania Municipality Authorities Act of 1945, as amended; and

WHEREAS, the Authority has determined to undertake a project (the "Project") consisting of (1) the retirement of the Authority's Bond Anticipation Notes, Series of 1989 (the "1989 Notes") or other short term indebtedness of the Authority; (2) various capital improvements to Sewer Facilities; (3) the funding of a Debt Service Reserve Fund and Maintenance Reserve Fund; and (4) the payment of the costs of issuance of the financing of the Project; and

WHEREAS, the Authority intends to finance a portion of the costs of the Project through the issuance of its Guaranteed Sewer Revenue Bonds, Series of 1991, in the aggregate principal amount of \$3,620,000 (the "1991 Bonds"); and

WHEREAS, the 1991 Bonds are to be issued under and pursuant to a Trust Indenture dated as of October 1, 1985 (the "1985 Indenture") by and between the Authority and First Eastern Bank, N.A., as trustee (the "Trustee"), as amended and supplemented by a First Supplemental Trust Indenture, dated as of December 1, 1991 (the "First Supplemental Indenture") (the 1985 Indenture and the First Supplemental Indenture are collectively referred to as the "Indenture"); and

WHEREAS, the Authority has adopted a resolution (the "Authority Resolution") authorizing the issuance of the 1991 Bonds and approving the form of the First Supplemental Indenture, the Bonds; and

WHEREAS, the Project will benefit the County and promote the general health and welfare of the residents thereof and the County desires that the Authority issue the 1991 Bonds and apply the proceeds thereof to the costs of the Project; and

WHEREAS, the County is willing to enter into a guaranty agreement (the "Guaranty") in order to enhance the marketability of the 1991 Bonds and achieve certain savings of interest and other costs with respect to the Project; and

WHEREAS, the obligation of the County under the Guaranty will constitute lease rental debt under the Local Government Unit Debt Act, P.L. 871 of 1972, as amended and reenacted by P.L. 52 of 1978, as amended (the "Debt Act"); and

WHEREAS, the Debt Act requires that certain actions be taken by the County in incurring lease rental debt;

NOW, THEREFORE, the Board of County Commissioners of the County of Lackawanna, Pennsylvania, hereby **ORDAINS AND ENACTS**, as follows:

Section 1. The County hereby authorizes the incurring of lease rental debt in the form of a Guaranty Agreement, substantially in the form attached hereto as Exhibit A (the "Guaranty Agreement"), guaranteeing the payment of principal of and interest on the 1991 Bonds, which will be issued by the Authority in the aggregate principal amount of \$3,620,000. The Project, as described in the foregoing recitals, is hereby approved.

Section 2. The realistic estimated useful life of the capital improvements to the Authority's Sewer Facilities included in the 1991 Project is hereby declared to be in excess of 20 years.

Section 3. The Chairman of the Board of County Commissioners and the Administrative Director of the County, or any duly appointed successor to either, are hereby authorized and directed to prepare, certify and file with the Department of Community Affairs, in accordance with the Debt Act, a Debt Statement (with a Borrowing Base Certificate appended thereto) as required by Section 410 of the Debt Act and any statements required by the Debt Act which are necessary to qualify that portion of the lease rental debt of the County securing the payment of principal and interest on the 1991 Bonds which may be excluded from gross lease rental debt as subsidized or self-liquidating debt, for the purposes of establishing the net lease rental debt of the County.

Section 4. Subject to the approval of the Department of Community Affairs of the authorization to incur debt, the members of the Board and the Controller and the Treasurer of the County are hereby authorized and directed to execute, acknowledge and deliver, and the Administrative Director of the County is hereby authorized and directed to affix and attest the corporate seal of the County to, the Guaranty Agreement, with such changes therein as counsel may advise and the Officers executing the same may approve, such approval to be evidenced by their execution thereof.

Section 5. The 1991 Bonds to be issued by the Authority will be substantially in the form attached to the First Supplemental Trust Indenture, and shall mature and bear interest, in the amounts and on the dates set forth on Schedule I hereto.

Section 6. The Guaranty contains the covenant of the County to (i) include the amount payable in respect of the Guaranty for each fiscal year in which such sums are payable in its budget for such fiscal year; (ii) appropriate such amounts from its general revenues for the payment of the Guaranty; and (iii) duly and punctually pay or cause to be paid from its revenues the amount payable in respect of such Guaranty, at the dates and places and in the manner stated therein, according to the true intent and meaning thereof. For such budgeting, appropriation and payment, the County has in the Guaranty pledged its full faith, credit and taxing power. As provided in the Debt Act, the foregoing covenant of the County shall be specifically enforceable.

Section 7. All prior ordinances or resolutions or parts thereof inconsistent herewith are hereby repealed.

Section 8. This Ordinance shall become effective as of the date of enactment.

GUARANTY AGREEMENT

This Guaranty Agreement (the "Agreement"), made as of December 1, 1991, by THE COUNTY OF LACKAWANNA, a body politic of the Commonwealth of Pennsylvania, with offices at 200 Adams Avenue, Scranton, Pennsylvania (the "Guarantor") and FIRST EASTERN BANK, N.A. (the "Trustee"), a national banking association, with offices in Wilkes Barre, Pennsylvania, together with any successor at the time serving as such under the Trust Indenture (as herein defined).

WHEREAS, the Lackawanna River Basin Sewer Authority (the "Authority"), a body corporate and politic, organized by the County under the Pennsylvania Municipality Authorities Act of 1945, as amended, maintains certain sewer treatment and interceptor facilities (the "System Facilities") to transport and treat sanitary sewage from fifteen municipalities (the "Municipalities") that have entered into Service Agreements with the Authority (the "Service Agreements") and

WHEREAS, the Authority has determined to undertake a project (the "Project") consisting of (1) the retirement of the Authority's Bond Anticipation Notes, Series of 1989 (the "1989 Notes"); (2) various capital improvements to the Sewer Facilities; (3) the funding of a Debt Service Reserve Fund and Maintenance Reserve Fund; and (4) the payment of the costs of issuance of the financing of the Project; and

WHEREAS, the Authority intends to finance a portion of the costs of the Project through the issuance of its Guaranteed Sewer Revenue Bonds, Series of 1991, in the aggregate principal amount of \$3,620,000 (the "1991 Bonds"); and

WHEREAS, the 1991 Bonds are to be issued under and pursuant to a Trust Indenture, dated as of October 1, 1985, between the Authority and the Trustee (the "1985 Indenture"), as amended and supplemented by a First Supplemental Indenture, dated as of December 1, 1991 (the "First Supplemental Indenture") (the 1985 Indenture and the First Supplemental Indenture are collectively referred to as the "Indenture"); and

WHEREAS, the Project will promote the general health and welfare of the residents of the County of Lackawanna, and the County is willing to enter into this Guaranty Agreement in order to enhance the marketability of the 1991 Bonds and thereby achieve interest cost and other savings with respect to the operations of the Authority;

NOW, THEREFORE, in consideration of the premises herein contained, and intending to be legally bound, on the terms and conditions set forth herein, the Guarantor hereby covenants and agrees with the Trustee as follows:

Section 1 (a). In consideration of and in order to facilitate the purchase of the 1991 Bonds at the interest rates provided for therein, to induce the Authority to issue the 1991 Bonds and undertake the Project, and in consideration of the benefits which will accrue to the Guarantor as a result of the financing of the Project by the Authority, the Guarantor hereby unconditionally guarantees to the Trustee for the benefit of the holders, at any time and from time to time, of the 1991 Bonds: (i) the full and prompt payment of the principal or redemption price (including premium, if any) of any 1991 Bonds when and as the same shall become due, whether at the stated maturity thereof, by acceleration or call for redemption or otherwise, (ii) the full and prompt payment of any interest on any 1991 Bonds when and as the same shall become due. The amounts specified in subparagraphs (i) and (ii) above shall hereinafter be collectively called the "Indebtedness". All payments by the Guarantor shall be paid in lawful money of the United States of America. Each and every default in payment in the Indebtedness shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

(b) This Guaranty Agreement shall constitute a guaranty of payment and not of collection, and is the primary obligation of the Guarantor, and the Trustee may, in its sole discretion, enforce this Guaranty against the Guarantor without any prior enforcement against the Authority of its obligations referred to in the following paragraphs hereof and without any prior enforcement against any other guarantor of such obligations.

Section 2. The obligations of the Guarantor under this Agreement shall be independent, absolute and unconditional and shall remain in full force and effect until the Indebtedness shall have been paid in full or otherwise discharged as provided in the Indenture, and such obligations shall not be affected, modified or impaired upon the happening from time to time of any event, including, without limitation, any of the following, whether or not with notice to, or the consent of, the Guarantor:

(i) the failure by the Authority to continue operation of the System Facilities or failure otherwise to perform any obligation contained in the Indenture, the Service Agreements, or in any other agreement entered pursuant thereto, for any reason whatsoever, including without limitation, insufficiency of funds, negligence or willful misconduct on the part of the Authority, the Municipalities, the Guarantor, or any other guarantor or surety, their agents, or independent contractors, legal action of any nature which prohibits or delays operation of the System Facilities, labor disputes, war, insurrection, natural catastrophe or laws, rules or regulations of any body, governmental or otherwise;

(ii) the compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of the Authority under the Indenture, of the Municipalities under the Service Agreements; whether or not pursuant to the terms thereof;

(iii) the failure to give notice to the Guarantor, of the occurrence of an event of default under the terms and provisions of this Guaranty Agreement, the Indenture or the Service Agreements;

(iv) the assignment, pledge, mortgaging or purported assignment of all or any part of the interest of the Authority in the System Facilities or any defect of title with respect to the Authority's interest in the System Facilities;

(v) the waiver of the payment, performance or observance by the Authority or the Municipalities of any of the obligations and covenants or either of them contained in the Indenture or the Service Agreements, or by the Guarantor of obligations and covenants contained in this Guaranty Agreement;

(vi) the extension of the time for payment of the principal of, premium, if any, and interest on the 1991 Bonds, the Indebtedness, or of the performance of any other obligations, covenants or agreements under or arising out of any of the Indenture, the Service Agreement or this Guaranty Agreement; or any extension or the renewal thereof;

(vii) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Indenture, the Service Agreements or this Guaranty Agreement, whether or not expressly permitted by and in accordance with the provisions thereof;

(viii) the taking or the omission of any of the actions referred to in the Indenture, the Service Agreements or this Guaranty Agreement;

(ix) any failure, omission, delay or lack on the part of the Authority or the Trustee to enforce, assert or exercise any right, power or remedy conferred on the Authority or the Trustee in the Indenture, the Service Agreements or this Guaranty Agreement, or any other act or acts on the part of the Authority, the Trustee or any of the holders from time to time of the 1991 Bonds, either directly or by or through their duly authorized representatives;

(x) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the Authority, any Municipality, the Guarantor or any of the assets of any of them or any allegation or contest of the validity of this Guaranty Agreement in any such proceeding; or

(xi) to the extent permitted by law, the release or discharge of the Guarantor from the performance or observance of any obligation, covenant, or agreement contained in this Agreement by operation of law;

(xii) the default or failure of the Guarantor fully to perform any of the obligations set forth in this Agreement; or

(xiii) the damage or partial or total destruction of the System Facilities, or the taking or title to or the temporary use of the System Facilities by any lawful authority.

Section 3. No set-off, counterclaim, reduction or diminution of any obligation, or any defense of any kind or nature which the Guarantor have or may come to have against the Authority or the Trustee shall be available hereunder to the Guarantor; provided that nothing contained herein shall prohibit the Guarantor from asserting any claim against the Authority or the Trustee in a separate proceeding, which proceeding shall in no way delay the prompt performance by the Guarantor of its obligations hereunder.

Section 4. The Guarantor hereby covenants with the holders of the 1991 Bonds that it will (i) include the amounts payable by Guarantor pursuant to this Guaranty Agreement in its budget for each of its fiscal year or years in which such amounts are reasonably expected to be payable by Guarantor; (ii) appropriate such amounts from its revenues for the payment of its obligations hereunder; and (iii) duly and promptly pay or cause to be paid such amounts, at the dates and places and in the manner stated herein according to the true intent and meaning hereof. For such budgeting, appropriation and payment, the Guarantor hereby pledges its full faith, credit and taxing power. The foregoing covenant shall be specifically enforceable. The obligations of the Guarantor under this Guaranty Agreement shall constitute a guaranty as defined in Section 102(c)(7.1) of the Pennsylvania Local Government Unit Debt Act, and shall be subject to the provisions for enforcement of such a guaranty as provided in such Act.

Section 5. In the event of a default (a) in the payment of principal of or any premium on any 1991 Bond when and as the same shall become due, whether at the stated of maturity thereof, by acceleration or call for redemption or otherwise, or (b) in the payment of any interest on any 1991 Bond when and as the same shall become due, and regardless of the reason for any such default, the Trustee may, and if requested to do so by the holders of 25% in aggregate principal amount of 1991 Bonds then outstanding, and upon indemnification as hereinafter provided, the Trustee shall be obligated to proceed hereunder and in its sole discretion, shall have the right to proceed first and directly against the Guarantor under this Agreement without proceeding against or exhausting any other remedies which it may have and without resorting to any other security held by the Authority and the Trustee.

Before taking any action hereunder, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default by reason of any action so taken.

The Guarantor agrees to pay all costs, expenses and fees, including, to the extent permitted by law, all reasonable attorneys' fees, which may be incurred by the Trustee in enforcing or attempting to enforce this Guaranty Agreement following any default on the part of the Guarantor hereunder, whether the same shall be enforced by suit or otherwise.

Section 6. The Guarantor hereby expressly waives notice in writing or otherwise from the Trustee or the holders at any time or from time to time of any of the 1991 Bonds of their acceptance and reliance on this Guaranty Agreement.

Section 7. This Guaranty Agreement is entered into by the Guarantor for the benefit of the Trustee and the holders from time to time of the 1991 Bonds and any successor trustees and their respective successors and assigns under the Indenture, all of whom shall be entitled to enforce performance and observance of this Agreement and of the Guarantees and other provisions herein contained.

Section 8. Anything contained in this Guaranty Agreement to the contrary notwithstanding, except as provided herein with respect to expenses incurred in connection with the enforcement hereof, the obligations of the Guarantor hereunder shall be satisfied in full and discharged upon the payment in full of the Indebtedness, less all amounts theretofore deposited with the Trustee for the payment thereof.

Section 9. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Guaranty Agreement, it shall not be necessary to give any notice to the Guarantor, prior to the demand for payment other than such notice as may be herein expressly required. In the event any provision contained in this Agreement should be breached by the Guarantor and thereafter duly waived by the Trustee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of any of the terms of this Agreement shall be established by conduct, custom or course of dealing.

Section 10. No amendment, change, modification, alteration or termination of the Indenture shall be effective which would in any way increase the Guarantor's obligations under this Guaranty Agreement without the prior written consent of the Guarantor first had and obtained.

Section 11. This Agreement constitutes the entire Guaranty Agreement, and supersedes all prior agreements and understandings both written and oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 12. The invalidity or unenforceability of any one or more provisions in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part thereof.

Section 13. This Agreement shall not be amended by the parties hereto except in writing signed by all the parties hereto.

Section 14. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

COUNTY OF LACKAWANNA


RAY A. ALBERIGI
CHAIRMAN

ATTEST:


GERALD L. STANVITCH
ADMINISTRATIVE DIRECTOR


JOSEPH J. CORCORAN
COMMISSIONER

[SEAL]


JOHN SENIO
COMMISSIONER