

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 341

(Duly Adopted November 27, 1996)

AN ORDINANCE INCREASING THE NONELECTORAL INDEBTEDNESS OF THE BOROUGH OF ALBURTIS, LEHIGH COUNTY, PENNSYLVANIA, BY THE ISSUE OF A GENERAL OBLIGATION NOTE, SERIES 1 OF 1996, IN AN AMOUNT NOT TO EXCEED FIFTY THOUSAND DOLLARS (\$50,000) FOR AND TOWARD THE PURCHASE OF A 1996 INTERNATIONAL DUMP TRUCK AND PAYING THE COSTS OF ISSUING THE NOTE; 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 APPOINTMENT OF A SINKING FUND DEPOSITARY FOR THE NOTE; AND AUTHORIZING EXECUTION, SALE AND DELIVERY THEREOF.

WHEREAS, it is necessary that the indebtedness of the Borough of Alburdis, Lehigh County, Pennsylvania (the “**Local Government Unit**”), be increased for and toward the purchase price of a 1996 International dump truck (the “**Project**”) recently acquired by the Borough in anticipation of the financing described in this Ordinance, and paying the costs of issuance of the indebtedness; and

WHEREAS, the governing body of the Local Government Unit contemplates the authorization, sale, issuance and delivery of a note evidencing such indebtedness in a principal amount not to exceed \$50,000 to be designated as the General Obligation Note, Series 1 of 1996 (the “**Note**”), all in accordance with applicable and appropriate provisions of Local Government Unit Debt Act, as amended (the “**Act**”), of the Commonwealth of Pennsylvania; and

WHEREAS, the proposed increase of debt, together with the Local Government Unit’s nonelectoral indebtedness and its lease rental indebtedness presently outstanding, will not cause the debt limitations of the Act to be exceeded; and

WHEREAS, the proposed increase of debt satisfies the requirements for treatment as a small borrowing under Section 409 of the Act, 53 PA. STAT. ANN. § 6780-159;

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Albury, Lehigh County, Pennsylvania, as follows:

SECTION 1. The aggregate principal amount of the Note of the Local Government Unit to be issued is not to exceed \$50,000, the same to be issued as nonelectoral debt under the Act and for the purpose of providing funds for and toward the Project and payment of costs of issuance of the Note. The Project is more fully described in the recitals of this Ordinance and will have a realistic useful life of more than five (5) years.

SECTION 2. Said indebtedness shall be evidenced by one General Obligation Note, in fully registered form, in the sum not to exceed \$50,000, dated and bearing interest from the date of issuance of said Note, at the rate of interest equal to 6.00% per annum, calculated on a 360-day year basis as described in the form of the Note set forth in **Exhibit A** of this Ordinance. Principal on the Note shall be payable in installments as set forth in **Exhibit A** of this Ordinance.

The Local Government Unit may prepay the Note as set forth in the Form of Note set forth in **Exhibit A** of this Ordinance.

The principal of and interest on said Note shall be payable at the office of the sinking fund depository selected for the Note as hereinafter provided.

SECTION 3. The said Note is hereby declared to be a general obligation of the Local Government Unit. The Local Government Unit hereby covenants that the Local Government Unit shall include the amount of debt service on the Note for each fiscal year in which such sums are payable in its budget for that year; shall appropriate such amounts to the payment of such debt service; and shall duly and punctually pay or cause to be paid the principal of the Note and the interest thereon as the dates and places and in

the manner stated in the Note according to the true intent and meaning thereof, and for such proper budgeting, appropriation, payment, the full faith, credit and taxing power of the Local Government Unit is hereby irrevocably pledged.

SECTION 4. The form of said Note shall be dated the date of issuance thereof and shall be substantially as set forth in the attached **Exhibit A**, which is incorporated herein by reference.

SECTION 5. The said Note shall be executed in the name and under the corporate seal of the Local Government Unit by the President of Borough Council and attested to by the Secretary. The President of Borough Council is hereby authorized and directed to deliver said Note to the purchaser, and receive payment therefor on behalf of the Local Government Unit. The President of Borough Council and Secretary or Treasurer or any other officers of the Local Government Unit are authorized and directed to prepare and verify the debt statement required by Section 410 of the Act, 53 PA. STAT. ANN. § 6780-160, to maintain a copy of such debt statement in the Office of the Secretary, and to take other necessary action, including, if necessary or desirable, any statements required to qualify any portion of the debt from the appropriate debt limit as self-liquidating or subsidized debt.

SECTION 6. CoreStates Bank, N.A. is hereby designated as the Paying Agent and Sinking Fund Depository for the obligation herein authorized, and there is hereby created and established a Sinking Fund, to be known as “Sinking Fund 1996 General Obligation Note,” for the payment of the principal and interest thereon which shall be deposited into the Sinking Fund no later than the date upon which the same becomes due and payable. The Secretary or Treasurer shall deposit into the Sinking Fund, which shall be maintained until such obligation is paid in full, sufficient amounts for payment of principal and interest on the obligation no later than the date upon which such payments

are due, without further action by the Local Government Unit, withdraw available monies in the Sinking Fund and apply said monies to payment of the principal of and interest on the obligation.

SECTION 7. The President of Borough Council and Secretary or any other officers of the Local Government Unit are hereby authorized to contract with CoreStates Bank, N.A. for its services as Sinking Fund Depository and for the Note and Paying Agent for the same.

SECTION 8. In compliance with Section 701 of the Act, 53 PA. STAT. ANN. § 6780-301, the members of the governing body have determined that a private sale by negotiation rather than public sale is in the best interest of the Local Government Unit. Therefore, the General Obligation Note in the amount not to exceed \$50,000, herein authorized to be issued and sold, is hereby awarded and sold to CoreStates Bank, N.A. in accordance with its proposal to purchase the said Note at par; provided the said Note is dated the date of delivery thereof to CoreStates Bank, N.A. and is substantially in the form set forth in **Exhibit A** of this Ordinance.

SECTION 9. The Local Government Unit shall not assume the payment of any tax or taxes in consideration of the purchase of the Note.

SECTION 10. The officers of the Local Government Unit are authorized to apply the proceeds of the Note to the purposes set forth in the recitals hereto, and specifically to the replenishment of those funds from which the purchase price of the dump truck was advanced in anticipation of this financing.

SECTION 11. This Local Government Unit determines that it has not issued, and does not reasonably expect to issue, tax-exempt obligations, together with all tax-

exempt obligations issued and reasonably expected to be issued by “all subordinate entities” (within the meaning of Section 265(b)(3)(E) of the Internal Revenue Code of 1986, as amended (the “Code”)) of the Local Government Unit which, in the aggregate, exceed or will exceed Ten Million Dollars (\$10,000,000) during the 1996 calendar year and, accordingly, hereby designates the Note as a “qualified tax-exempt obligation,” as defined in Section 265(b)(3)(B) of the Code, for the purposes and effect contemplated by Section 265 of the Code.

SECTION 12. The Local Government Unit hereby covenants not to take or omit to take any action so as to cause interest on the Note to be no longer excluded from gross income for the purposes of federal income taxation and to otherwise comply with the requirements of Sections 103 and 141 through 150 of the Code, and all applicable regulations promulgated with respect thereto, throughout the term of the Note. The Local Government Unit further covenants that it will make no investments or other use of the proceeds of the Note which would cause the Note to be an “arbitrage bond” as defined in Section 148 of the Code. The Local Government Unit further covenants to comply with the rebate requirements (including the prohibited payment provisions) contained in Section 148(f) of the Code and any regulations promulgated thereunder, to the extent applicable, and to pay any interest or penalty imposed by the United States for failure to comply with said rebate requirements, to the extent applicable.

SECTION 13. For the purpose of expediting the closing and the issuance and delivery of the Note, or in the event that the President of Borough Council or the Secretary of the Local Government Unit shall be absent or otherwise unavailable for the purpose of executing documents, or for the purpose of taking any other action which they or either of them may be authorized to take pursuant to this Ordinance, the Vice President of Borough Council or the Treasurer of the Local Government Unit, respectively, are

hereby authorized and directed to execute documents, or otherwise to act on behalf of the Local Government Unit in their stead.

SECTION 14. The proper officers of the Local Government Unit are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, publish all notices and otherwise comply with the provisions of this Ordinance and the Act in the name and on behalf of the Local Government Unit.

SECTION 15. This Ordinance is enacted pursuant to, and the Note issued hereunder shall be subject to, the provisions of the Act regarding small borrowings under Act § 409, and all of the mandatory provisions thereof shall apply hereunder whether or not explicitly stated herein.

SECTION 16. This Ordinance constitutes a contract with the registered owner of the Note and shall be enforceable in accordance with the provisions of the laws of the Commonwealth of Pennsylvania.

SECTION 17. In case any one or more of the provisions contained in this Ordinance or in the Note 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 said Note and this Ordinance or said Note shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

SECTION 18. The action of the proper officers and the advertising of a summary of this Ordinance as required by law in a newspaper of general circulation, is ratified and confirmed.

SECTION 19. All Ordinances or parts of Ordinances not in accord with this Ordinance are hereby repealed insofar as they conflict herewith.

SECTION 20. This Ordinance shall take effect on the earliest date permitted by the Act.

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Alburdis, this 27th day of November, 1996, in lawful session duly assembled.

BOROUGH COUNCIL
BOROUGH OF ALBURDIS

Steven R. Hill, President

Attest:

Louise Stahley, Secretary

AND NOW, this 27th day of November, 1996, the above Ordinance is hereby APPROVED.

Ronald J. DeIaco, Mayor

EXHIBIT A

{Form of Note, including Certificate of Registration and Form of Assignment}

**UNITED STATES OF AMERICA
COMMONWEALTH OF PENNSYLVANIA**

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA
GENERAL OBLIGATION NOTE, SERIES 1 OF 1996
Dated as of _____, 1996**

BOROUGH OF ALBURTIS, Lehigh County, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania (“**Maker**”), for value received, hereby promises to pay to CoreStates Bank, N.A., its successors or registered assigns hereof (“**Payee**”) the principal sum of Fifty Thousand Dollars (\$50,000) and to pay interest from the date of this Note on the unpaid principal balance at the applicable rate set forth below.

This Note shall be paid in fifty-nine (59) consecutive monthly installments of principal in the amount of Eight Hundred Thirty-three Dollars and Thirty-four Cents (\$833.34) together with interest on the unpaid balance at the rate of 6.00% per annum (hereinafter the “**Basic Rate**”) commencing on the date one calendar month after the date of this Note, and a final payment of Eight Hundred Thirty-two Dollars and Ninety-four Cents (\$832.94) principal plus interest on the unpaid balance at the Basic Rate due on the fifth (5th) anniversary of the date of this Note.

Anything herein to the contrary notwithstanding, the entire unpaid principal balance of this Note, together with all interest accrued thereon, shall be due and payable on the fifth (5th) anniversary of the date of this Note. Payee must surrender this Note to the Paying Agent in order to receive final payment upon maturity or redemption in whole of this Note.

All interest on this Note shall be calculated on the basis of a 360-day year and 30-day months. If the payment date for any payment of interest and/or principal falls on a Saturday, Sunday, or bank holiday, such payment shall be made on the next succeeding business day (based on interest accrued through the nominal payment date). Any payment not made within fifteen (15) days of its respective due date shall be subject to a late charge of five percent (5%) of the principal plus interest payment past due.

It is the intention of Maker that the interest payable upon this Note will not be includable in gross income of Payee hereof for purposes of federal income taxation under the United States Internal Revenue Code of 1986, as amended from time to time, and any successor provisions of law (the “**Code**”). Maker hereby covenants that it will not do anything that would endanger the tax-exempt status of the interest referred to herein. Maker covenants that it will not make any investment or other use of any portion of the “proceeds” of this Note (within the meaning of Sections 103 and 141 through 150 of the Code or any applicable regulations thereunder) which would cause the Note to be an “arbitrage bond” as such term is defined in Section 148 of the Code or which would

otherwise cause the interest on this Note to be includable in gross income of Payee for purposes of federal income taxation under the Code. Maker covenants to comply with the requirements of Sections 103 and 141 through 150 of the Code, and all applicable regulations promulgated with respect thereto, including, but not limited to, the requirements regarding the use or investment of the proceeds of the Note and the rebate in Section 148(f) of the Code.

Notwithstanding anything contained herein to the contrary, the rate of interest on the Note shall be automatically and immediately increased to a fixed rate of 8.82% per annum, upon a change in the Internal Revenue Code of 1986, or any successor statute, as amended, and/or any Treasury Regulations issued thereunder, which change has resulted, or will result, in (a) any of the interest received on the Note to be treated as taxable income to the holder of the Note; or (b) less interest expense, attributable to this loan for federal income tax calculation purposes, to be deductible, than had been allowed on the date this loan was originated; or (c) the adoption of any tax, of any nature whatsoever, which by its terms imposes a greater tax burden, on Payee or its successors or assigns, with respect to the interest income received and/or earned on the Note; or (d) the adoption of any tax on the acquisition of this Note or the receipt of interest thereon; and/or (e) a reduction in the rate of federal income tax and/or state or local taxes applicable to Payee or its successors or assigns.

The Maker shall, upon notification by Payee, immediately remit to Payee any additional interest due from the retroactive application of the increased interest rate and, thereafter, the Maker shall pay interest on the loan at the increased rate(s).

The Paying Agent for this Note is CoreStates Bank, N.A., Philadelphia, Pennsylvania. Payments of principal of and interest on this Note shall be made by check or draft mailed by the Paying Agent to the person in whose name the Note is registered for that purpose on the close of business on the fifteenth (15th) day preceding the Payment Date (the "**Record Date**"); provided, however that, upon request of the registered owner hereof to the Paying Agent, such payments shall be by wire transfer by the Paying Agent to an account designated by the registered owner.

This Note is transferable by Payee hereof or his duly authorized attorney upon presentation of this Note at the principal corporate trust office of the Paying Agent by execution of the assignment form hereof in a manner satisfactory to the Paying Agent. Transfers shall be recorded by the Paying Agent on the books maintained for such purpose and upon the Certificate of Registration attached to this Note. Maker may treat the person in whose name this Note is registered on the registration books maintained by the Paying Agent as the absolute owner of this Note for all purposes and despite notice to the contrary.

This Note is issued in fully registered form in the principal amount of \$50,000 in accordance with the Local Government Unit Debt Act, as reenacted 1978 Pa. Laws 124, No. 52 (April 28, 1978), as amended, 53 PA. STAT. ANN. § 6780-1 *et seq.* (the "**Act**") and pursuant to Ordinance No. 341 of the Maker duly enacted on November 27, 1996, ("**Ordinance**"). The Note is issued for the purposes set forth in the Ordinance. Reference is hereby made to the Act and the Ordinance for complete statement of the provisions thereof.

The Act provides that the Commonwealth does pledge to and agree with any person, firm or corporation or Federal Agency subscribing to or acquiring of the Note, that the Note, its transfer and the income therefrom (including any profits made on the sale thereof) shall at all times be free from taxation for State and local purposes within

the Commonwealth, but this exemption shall not extend to gift, estate, succession or inheritance taxes, taxes on the gains on the sale of the Note or any other taxes not levied directly on the Note, the transfer thereof, the income therefrom or the realization of profits on the sale thereof.

It is covenanted with the holders from time to time of this Note that the Maker shall (i) include the amount of the debt service for the Note 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 such debt service, and (iii) duly and punctually pay or cause to be paid from its sinking fund the principal of and the interest on this Note on the dates and at the places and in the manner stated in this Note according to the true intent and meaning thereof. For such budgeting, appropriation, and payment, the Maker pledges its full faith, credit, and taxing power. This covenant shall be specifically enforceable. Nothing in this paragraph shall be construed to give the Maker any taxing power not granted by another provision of law.

Maker may, at any time, prepay the unpaid principal sum hereof, in whole or in part, subject to the following conditions: (i) that Maker shall have given Payee at least thirty (30) days prior written notice of Maker's intention to make such prepayment; and (ii) all prepayments shall be applied first to the payment of interest accrued and other sums due as of the date of such prepayment, and then to a reduction of principal in inverse order of principal installments.

It is hereby certified that all actions required by the Act to be taken to render this Note valid and obligatory have been duly taken pursuant to the Act; that all acts, conditions and things required by the laws of the Commonwealth of Pennsylvania to exist, to have happened or to have been performed precedent to and in the authorization and issuance of this Note exist, have happened and have been performed in regular and due form and manner and as required by law; and that all existing indebtedness of the Maker is within every limitation prescribed by the Constitution and the statutes of the Commonwealth of Pennsylvania.

Payee shall not by an act of omission or commission be deemed to waive any of its rights or remedies hereunder unless such waiver be in writing and signed by Payee, and then only to the extent specifically set forth therein; a waiver of one event shall not be construed as continuing or as a bar to or waiver of such right or remedy on a subsequent event.

If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable, it shall be ineffective only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of Payee in order to effect the provisions the Note.

This Note does not pledge the general credit or taxing power of the Commonwealth of Pennsylvania or any political subdivision of the Commonwealth of Pennsylvania, other than the Maker.

Maker hereby designates the Note as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code.

The words "Payee" and "Maker" whenever occurring herein shall be deemed and construed to include the respective heirs, personal representatives, successors and assigns

of Payee and Maker. This instrument shall be construed according to and governed by the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, and intending to be legally bound, Maker has duly executed this Note as of _____, 1996.

BOROUGH OF ALBURTIS

By: _____
Steven R. Hill, President of Borough
Council

Attest:

Louise Stahley, Secretary

{SEAL}

CERTIFICATE OF REGISTRATION

**NOTICE: No writing hereon except
by Paying Agent on behalf of the Maker**

It is hereby certified that the foregoing Note is registered as to principal and interest as follows:

<u>Name of Registered Owner</u>	<u>Address of Registered Owner</u>	<u>Date of Registration</u>	<u>Paying Agent's Authorized Signature</u>
CoreStates Bank, N.A.	645 Hamilton Mall Allentown, PA 18101-2197	_____, 1996	_____
_____	_____ _____ _____	_____, 19__	_____
_____	_____ _____ _____	_____, 19__	_____

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the within Note, and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer said Note on the books of the within named Maker, with full power of substitution in the premises.

Tax Identification No.

Dated: _____

Notice: The signature on this assignment must correspond with the name as it appears upon the face of the within Note in every particular, without alteration or any change whatever.