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## Chapter 8 — Budget and Finance

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## Article I — New Borough Hall

### § 8-101 Background.

(a) The governing body of the Borough of Alburdis, Lehigh County, Pennsylvania (the “**Local Government Unit**”) deems it advisable to borrow up to Two Hundred Fifty Thousand Dollars (\$250,000.00) for and toward the construction of a new Borough Hall and the demolition and removal of the existing Borough Hall (the “**Project**”), and paying the costs of issuance of the indebtedness.

(b) 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 \$250,000 to be designated as the General Obligation Note, Series 1 of 1998, all in accordance with applicable and appropriate provisions of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, as amended, 53 PA. CONS. STAT. § 8001 *et seq.* (the “**Act**”).

(c) 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.

(d) The architect retained by the Local Government Unit to design the new Borough Hall has determined that the useful life of the Project is more than forty (40) years.

(e) PNC BANK, NATIONAL ASSOCIATION (the “**Bank**”) has presented a written purchase contract (the “**Purchase Contract**”), attached to Ordinance 360 as **Exhibit A** (which is incorporated herein by reference), to purchase the note to be issued by the Local Government Unit in order to achieve the financing of the Project.

### § 8-102 Authorization.

The Local Government Unit hereby authorizes the incurrence of debt, and the increase of its nonelectoral indebtedness under the Act, in the principal amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00), in order to pay the costs of the Project and the costs of issuing the indebtedness. The indebtedness shall be evidenced by one General Obligation Note (Series 1 of 1998), in fully registered form, in the principal sum not to exceed \$250,000, dated the date of its delivery, bearing interest at the rate of 4.79% per annum calculated on a 365-day year basis for the actual number of days in each interest period, payable in eighty-four (84) level monthly installment payments of principal and interest commencing February 15, 1999, and in the form attached to Ordinance 360 as **Exhibit B** (which is incorporated herein by reference) (the “**Note**”). The Local Government Unit may prepay the Note as set forth in **Exhibit B** to Ordinance 360.

### § 8-103 Issuance.

The Note shall be executed in the name and under the corporate seal of the Local Government Unit by the President of Borough Council (or the Vice President of Borough Council) and attested to by the Secretary (or the Treasurer) (the “**Designated Officers**”). The Designated Officers are hereby authorized and directed to execute and deliver such documents, and to do and perform all acts, necessary and proper for the issuance and further security of the Note, including the execution, sealing, and delivery of the Note to the Bank. The Designated Officers are authorized to receive payment for the Note on behalf of the Local Government Unit, and to apply the proceeds to the costs of the Project and the issuance of the Note.

### § 8-104 Debt Statement and State Filings.

The Designated Officers are hereby authorized and directed to prepare, execute, verify, and file with the Pennsylvania Department of Community and Economic Development (“**Department**”) the debt statement and borrowing base certificate required by the Act at 53 PA. CONS. STAT. § 8110, to maintain a copy of such debt statement and certificate 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. The Designated Officers shall also apply for the authorization of the proceedings by the Department under 53 PA. CONS. STAT. § 8111(a), and, notwithstanding anything to the contrary in this Article, shall not deliver the Note until the proceedings have been authorized or deemed authorized by the Department under 53 PA. CONS. STAT. §§ 8204, 8206.

### § 8-105 Security and Payment of the Note.

The Note shall be a general, full faith and credit, unlimited tax obligation of the Local Government Unit. The Local Government Unit hereby covenants with the Bank and with subsequent holders, from time to time, of the Note that the Local Government Unit shall (a) include the amount of the debt service on the Note for each fiscal year in which any amount of principal or interest is payable in its budget for that year; (b) appropriate such amounts to the payment of

such debt service; and (c) duly and punctually pay or cause to be paid the principal of and interest on the Note on the dates, at the place, and in the manner stated in the Note according to the true intent and meaning thereof, and for such proper budgeting, appropriation, and payment, the Local Government hereby irrevocably pledges its full faith, credit and taxing power.

### § 8-106 Sinking Fund.

The Local Government Unit does hereby create, and order to be established (in its name and identified by reference to the Note), a Sinking Fund for the payment of the Note with the Bank, and does further covenant to maintain such Sinking Fund until the Note is paid in full. The Secretary or Treasurer shall deposit into the Sinking Fund sufficient amounts for payment of principal and interest on the Note no later than the dates upon which such payments are due, without further action by the Local Government Unit. The Local Government Unit hereby designates the Bank as the Sinking Fund Depository and Paying Agent for the Note, and the Designated Officers are hereby authorized and directed to contract with the Bank for its services in such capacity, except as the same may be included in the Purchase Contract. Without further action by the Local Government Unit, the Bank may withdraw available monies from the Sinking Fund and apply them to the payment of the principal and interest on the Note.

### § 8-107 Tax Covenants.

(a) **No Arbitrage Bond.** The Local Government Unit hereby covenants that no part of the proceeds of the Note will be used, at any time, directly or indirectly, in a manner which, if such use had been reasonably expected on the date of issuance of the Note, would have caused the Note to be an “arbitrage bond” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “**Code**”) and the regulations thereunder applicable to the Note (the “**Regulations**”) and that it will comply with the requirements of that Section and the Regulations throughout the term of the Note.

(b) **Rebate Requirements.** If:

(1) the principal amount of the Note plus the aggregate principal amount of all other tax-exempt obligations issued and to be issued by or on behalf of the Local Government Unit during the 1998 calendar year exceeds \$5,000,000; and if

(2) the gross proceeds of the Note are invested at a yield greater than the yield on the Note; and if

(3) the gross proceeds of the Note are not expended or deemed to have been expended (since the Project is a construction project) within two years from the date of issuance (and according to certain periodic expenditure thresholds),

all pursuant to § 1.148.7 of the Regulations, the Local Government Unit covenants that it will rebate to the U.S. Treasury, at the times and in the manner required by the Code, the difference (if a positive number) between the investment income received on the Note proceeds and the investment income that would have been earned had the Note proceeds been invested at the yield of the Note.

(c) **Qualified Tax-Exempt Obligation.** The Local Government Unit 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, and represents 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 its “subordinate entities” (within the meaning of Code § 265(b)(3)(E)) which, in the aggregate, exceed or will exceed Ten Million Dollars (\$10,000,000) during the 1998 calendar year.

(d) **IRS Filings.** The Local Government Unit will file IRS Form 8038-G (or 8038-GC if applicable) and any other forms or information required by the Code or the Regulations to be filed with the Internal Revenue Service in order to further ensure the exclusion of the interest on the Note from gross income tax for federal income tax purposes.

### § 8-108 Award.

(a) **Private Sale by Negotiation.** In compliance with 53 PA. CONS. STAT. § 8161(a), the governing body of the Local Government Unit hereby determines that private sale of the Note by negotiation, rather than public sale, is in the best financial interest of the Local Government Unit.

(b) **Award to Bank.** The governing body of the Local Government Unit hereby awards and sells the Note to the Bank at par in accordance with the Purchase Contract, *provided that* the proceedings are approved by the Department of Community and Economic Development under the provisions of the Act. The Local Government Unit accepts the Purchase Contract subject to the above provision, and authorizes the Designated Officers to execute an appropriate acceptance document.

### § 8-109 Contract.

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

### § 8-110 Necessary Acts.

The Designated Officers are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, and publish all notices which shall be necessary or convenient to comply with the provisions of this Article and the Act in the name and on behalf of the Local Government Unit.

### § 8-111 Compliance With Debt Act.

This Article is enacted pursuant to, and the Note issued hereunder shall be subject to, the provisions of the Act, and all of the mandatory provisions of the Act shall apply whether or not explicitly stated in this Article.

### § 8-112 Severability.

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

### § 8-113 Advertisement.

The prior advertisement of a summary of this Article as required by law in a newspaper of general circulation, is ratified and confirmed. Borough Council hereby authorizes and directs the Solicitor to advertise the enactment of Ordinance 360 in a newspaper of general circulation within fifteen (15) days following the date of final adoption.

## Article II — West Penn Avenue Reconstruction and Other Roadway Improvements

### § 8-201 Background.

(a) The governing body of the Borough of Alburts, Lehigh County, Pennsylvania (the “**Local Government Unit**”) deems it advisable to borrow up to One Hundred Thousand Dollars (\$100,000.00) for and toward the costs of roadway improvements, including the reconstruction of West Penn Avenue (the “**Project**”), and paying the costs of issuance of the indebtedness.

(b) 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 \$100,000 to be designated as the General Obligation Note, Series 1 of 2000, all in accordance with applicable and appropriate provisions of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, as amended, 53 PA. CONS. STAT. § 8001 *et seq.* (the “**Act**”)

(c) 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.

(d) The Borough Engineer has determined that the useful life of the Project is at least ten (10) years.

(e) PNC BANK, NATIONAL ASSOCIATION (the “**Bank**”) has presented a written purchase contract (the “**Purchase Contract**”), attached to Ordinance 382 as **Exhibit A** (which is incorporated herein by reference), to purchase the note to be issued by the Local Government Unit in order to achieve the financing of the Project.

### § 8-202 Authorization.

The Local Government Unit hereby authorizes the incurrence of debt, and the increase of its nonelectoral indebtedness under the Act, in the principal amount not to exceed One Hundred Thousand Dollars (\$100,000.00), in order to pay the costs of the Project and the costs of issuing the indebtedness. The indebtedness shall be evidenced by one General Obligation Note (Series 1 of 2000), in fully registered form, in the principal sum not to exceed \$100,000, dated the date of its delivery, bearing interest at the rate of 5.14% per annum calculated on a 365-day year basis for the actual number of days in each interest period, payable in forty-eight (48) level monthly installment payments of principal and interest commencing January 15, 2001, and in the form attached to Ordinance 382 as **Exhibit B** (which is incorporated herein by reference) (the “**Note**”). The Local Government Unit may prepay the Note as set forth in **Exhibit B** to Ordinance 382.

### § 8-203 Issuance.

The Note shall be executed in the name and under the corporate seal of the Local Government Unit by the President of Borough Council (or the Vice President of Borough Council) and attested to by the Secretary (or the Treasurer) (the “**Designated Officers**”). The Designated Officers are hereby authorized and directed to execute and deliver such documents, and to do and perform all acts, necessary and proper for the issuance and further security of the Note, including the execution, sealing, and delivery of the Note to the Bank. The Designated Officers are authorized to receive payment for the Note on behalf of the Local Government Unit, and to apply the proceeds to the costs of the Project and the issuance of the Note.

### § 8-204 Small Borrowing; Debt Statement.

The Local Government Unit hereby incurs the debt represented by the Note as a small borrowing for capital purposes under 53 PA. CONS. STAT. § 8109, and this Article, although adopted as an ordinance in accordance with the Borough Code, is a “resolution” under 53 PA. CONS. STAT. § 8109. *See* 53 PA. CONS. STAT. § 8002(c) (a “resolution” under the Act is a formal action of a governmental unit to which the advertising requirements of 53 PA. CONS. STAT. § 8003 do not apply, whether, under the law applicable to the local government unit, the action is taken by ordinance or resolution). In accordance with the requirements of PA. CONS. STAT. § 8110, the Designated Officers have prepared, executed, and verified the debt statement and borrowing base certificate required by the Act prior to the adoption of Ordinance 382 (a true and correct copy of which is attached to Ordinance 382 as **Exhibit C** and incorporated herein by reference) and they are hereby directed to file and maintain such debt statement and certificate 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.

### **§ 8-205 Security and Payment of the Note.**

The Note shall be a general, full faith and credit, unlimited tax obligation of the Local Government Unit. The Local Government Unit hereby covenants with the Bank and with subsequent holders, from time to time, of the Note that the Local Government Unit shall (a) include the amount of the debt service on the Note for each fiscal year in which any amount of principal or interest is payable in its budget for that year; (b) appropriate such amounts to the payment of such debt service; and (c) duly and punctually pay or cause to be paid the principal of and interest on the Note on the dates, at the place, and in the manner stated in the Note according to the true intent and meaning thereof, and for such proper budgeting, appropriation, and payment, the Local Government hereby irrevocably pledges its full faith, credit and taxing power.

### **§ 8-206 Sinking Fund.**

The Local Government Unit does hereby create, and order to be established (in its name and identified by reference to the Note), a Sinking Fund for the payment of the Note with the Bank, and does further covenant to maintain such Sinking Fund until the Note is paid in full. The Secretary or Treasurer shall deposit into the Sinking Fund sufficient amounts for payment of principal and interest on the Note no later than the dates upon which such payments are due, without further action by the Local Government Unit. The Local Government Unit hereby designates the Bank as the Sinking Fund Depository and Paying Agent for the Note, and the Designated Officers are hereby authorized and directed to contract with the Bank for its services in such capacity, except as the same may be included in the Purchase Contract. Without further action by the Local Government Unit, the Bank may withdraw available monies from the Sinking Fund and apply them to the payment of the principal and interest on the Note.

### **§ 8-207 Tax Covenants.**

(a) **No Arbitrage Bond.** The Local Government Unit hereby covenants that no part of the proceeds of the Note will be used, at any time, directly or indirectly, in a manner which, if such use had been reasonably expected on the date of issuance of the Note, would have caused the Note to be an “arbitrage bond” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “**Code**”) and the regulations thereunder applicable to the Note (the “**Regulations**”) and that it will comply with the requirements of that Section and the Regulations throughout the term of the Note.

(b) **Rebate Requirements.** If:

(1) the principal amount of the Note plus the aggregate principal amount of all other tax-exempt obligations issued and to be issued by or on behalf of the Local Government Unit during the 1998 calendar year exceeds \$5,000,000; and if



(2) the gross proceeds of the Note are invested at a yield greater than the yield on the Note; and if

(3) the gross proceeds of the Note are not expended or deemed to have been expended either within six months from the date of issuance, or, if the Project is a construction project, within two years from the date of issuance (and according to certain periodic expenditure thresholds),

all pursuant to § 1.148.7 of the Regulations, the Local Government Unit covenants that it will rebate to the U.S. Treasury, at the times and in the manner required by the Code, the difference (if a positive number) between the investment income received on the Note proceeds and the investment income that would have been earned had the Note proceeds been invested at the yield of the Note.

(c) **Qualified Tax-Exempt Obligation.** The Local Government Unit 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, and represents 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 its “subordinate entities” (within the meaning of Code § 265(b)(3)(E)) which, in the aggregate, exceed or will exceed Ten Million Dollars (\$10,000,000) during the 2000 calendar year.

(d) **IRS Filings.** The Local Government Unit will file IRS Form 8038-G (or 8038-GC if applicable) and any other forms or information required by the Code or the Regulations to be filed with the Internal Revenue Service in order to further ensure the exclusion of the interest on the Note from gross income tax for federal income tax purposes.

## § 8-208 Award.

(a) **Private Sale by Negotiation.** In compliance with 53 PA. CONS. STAT. § 8161(a), the governing body of the Local Government Unit hereby determines that private sale of the Note by negotiation, rather than public sale, is in the best financial interest of the Local Government Unit.

(b) **Award to Bank.** The governing body of the Local Government Unit hereby awards and sells the Note to the Bank at par in accordance with the Purchase Contract. The Local Government Unit accepts the Purchase Contract subject to the above provision, and authorizes the Designated Officers to execute an appropriate acceptance document.

## § 8-209 Contract.

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

**§ 8-210 Necessary Acts.**

The Designated Officers are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, and publish all notices which shall be necessary or convenient to comply with the provisions of this Article and the Act in the name and on behalf of the Local Government Unit.

**§ 8-211 Compliance With Debt Act.**

This Article is enacted pursuant to, and the Note issued hereunder shall be subject to, the provisions of the Act relating to general obligation notes issued as small borrowings for capital purposes under PA. CONS. STAT. § 8109, and all of the mandatory provisions of the Act relating to such notes shall apply whether or not explicitly stated in this Article.

**§ 8-212 Severability.**

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

**§ 8-213 Advertisement.**

The prior advertisement of a summary of this Article as required by law in a newspaper of general circulation, is ratified and confirmed.

## **Appendix**

**¶ 8-A Disposition of Ordinance 360.**

| <u>Ordinance 360</u> | <u>1981 Code</u>            | <u>2003 Codified Ordinances</u> |
|----------------------|-----------------------------|---------------------------------|
| Whereas clauses      | never codified to 1981 Code | § 8-101                         |
| § 1                  | “                           | § 8-102                         |
| § 2                  | “                           | § 8-103                         |
| § 3                  | “                           | § 8-104                         |
| § 4                  | “                           | § 8-105                         |
| § 5                  | “                           | § 8-106                         |
| § 6                  | “                           | § 8-107                         |

| <u>Ordinance 360</u>  | <u>1981 Code</u> | <u>2003 Codified Ordinances</u> |
|-----------------------|------------------|---------------------------------|
| § 7                   | “                | § 8-108                         |
| § 8                   | “                | § 8-109                         |
| § 9                   | “                | § 8-110                         |
| § 10                  | “                | § 8-111                         |
| § 11                  | “                | § 8-112                         |
| § 12                  | “                | § 8-113                         |
| § 13 (repealer)       |                  |                                 |
| § 14 (effective date) |                  |                                 |

### ¶ 8-B Disposition of Ordinance 382.

| <u>Ordinance 382</u>  | <u>1981 Code</u>            | <u>2003 Codified Ordinances</u> |
|-----------------------|-----------------------------|---------------------------------|
| Whereas clauses       | never codified to 1981 Code | § 8-201                         |
| § 1                   | “                           | § 8-202                         |
| § 2                   | “                           | § 8-203                         |
| § 3                   | “                           | § 8-204                         |
| § 4                   | “                           | § 8-205                         |
| § 5                   | “                           | § 8-206                         |
| § 6                   | “                           | § 8-207                         |
| § 7                   | “                           | § 8-208                         |
| § 8                   | “                           | § 8-209                         |
| § 9                   | “                           | § 8-210                         |
| § 10                  | “                           | § 8-211                         |
| § 11                  | “                           | § 8-212                         |
| § 12                  | “                           | § 8-213                         |
| § 13 (effective date) |                             |                                 |

### ¶ 8-C Source Ordinances.

|               |            |
|---------------|------------|
| Ordinance 360 | 11-25-1998 |
| Ordinance 382 | 11-29-2000 |
| Ordinance 415 | 10-29-2003 |

### ¶ 8-D Prior Ordinances Relating to Borough Indebtedness.

|               |            |
|---------------|------------|
| Ordinance 29  | 10-01-1934 |
| Ordinance 30  | 11-22-1934 |
| Ordinance 33  | 04-21-1937 |
| Ordinance 231 | 05-30-1984 |

|               |            |
|---------------|------------|
| Ordinance 264 | 10-26-1988 |
| Ordinance 310 | 09-28-1994 |
| Ordinance 341 | 11-27-1996 |
| Ordinance 351 | 03-26-1997 |

### **¶ 8-E Annual Budget Ordinances.**

In certain years, the Borough adopted its annual budget by Ordinance:

|      |               |            |
|------|---------------|------------|
| 1937 | Ordinance 34  | 04-21-1937 |
| 1979 | Ordinance 202 | 12-28-1978 |
| 1980 | Ordinance 207 | 12-28-1979 |
| 1981 | Ordinance 211 | 12-30-1980 |
| 1982 | Ordinance 218 | 12-23-1981 |
| 1983 | Ordinance 223 | 12-29-1982 |
| 1984 | Ordinance 229 | 12-29-1983 |
| 1985 | Ordinance 236 | 12-12-1984 |
| 1986 | Ordinance 242 | 12-11-1985 |
| 1987 | Ordinance 249 | 12-29-1986 |
| 1988 | Ordinance 257 | 12-30-1987 |
| 1989 | Ordinance 266 | 12-26-1988 |
| 1990 | Ordinance 277 | 12-27-1989 |

### **¶ 8-F Cross-Reference.**

See ¶ 65-N for financing relating to the Borough's Sanitary Sewer System.