

Westfall Township , Pike County, Pennsylvania

ORDINANCE NO. 154

OF THE WESTFALL TOWNSHIP BOARD OF SUPERVISORS OF WESTFALL TOWNSHIP, PIKE COUNTY, PENNSYLVANIA DETERMINING TO INCUR LEASE RENTAL DEBT; EVIDENCED BY THE LOAN AGREEMENT IN THE MAXIMUM PRINCIPAL AMOUNT OF THREE HUNDRED FIFTY THOUSAND (\$350,000.00) DOLLARS, TO BE AUTHORIZED AND ISSUED BY THE MUNICIPAL AUTHORITY OF WESTFALL TOWNSHIP TO DESIGN AND CONSTRUCT A SEWER COLLECTION PUMP STATION FOR THE KATZ COMMERCIAL PROPERTY ALONG MOUNTAIN AVENUE IN ORDER TO PROVIDE FOR COLLECTION OF SEWAGE FROM THE KATZ PROPERTIES; AND PAYING RELATED COSTS, FEES AND EXPENSES; SPECIFYING THE REALISTIC USEFUL LIFE OF THE PROJECT; AUTHORIZING AND DIRECTING APPROPRIATE OFFICERS OF WESTFALL TOWNSHIP TO TAKE CERTAIN ACTIONS AND TO EXECUTE CERTAIN DOCUMENTS, INCLUDING A LOAN AGREEMENT, BETWEEN THE TOWNSHIP OF WESTFALL, AS GUARANTOR AND THE MUNICIPAL AUTHORITY OF WESTFALL TOWNSHP; APPROVING THE FORM, MAXIMUM GUARANTEED AMOUNTS AND SOURCES OF PAYMENT OF THE LOAN AGREEMENT, AND PLEDGING THE FULL FAITH , CREDIT, AND TAXING POWER OF THIS TOWNSHIP OF WESTFALL IN SUPPORT THEREOF; CREATING A SINKING FUND IN CONNECTION WITH SUCH LOAN OBLIGATIONS AND APPOINTING A SINKING FUND DEPOSITORY; AND PROVIDING FOR THE REPEAL OF ALL INCONCISTENT ORDINANCES OR PARTS OF ORDINANCES.

WHEREAS, the Township of Westfall, Pike County, Pennsylvania (the "Local Government Unit") is the local government unit under provisions of 53 PA.C.S. Chs. 80-8, as amended and supplemented from time to time, known as the Pennsylvania Local Government Unit Debt Act, (the "Act").

WHEREAS, the Municipal Authority of Westfall Township, (the "Authority") is a municipality authority organized by appropriate action of the Township of Westfall and existing under the Municipal Authorities Act, 53 Pa. C.S. Ch. 56 (the "Authorities Act"); and

WHEREAS, the Authority will undertake a capital project which consists of the design and construction of a sewer collection pump station for the Katz commercial property along Mountain Avenue, (the "Project").

WHEREAS, The Dime Bank has approved funding for the Project, subject to the approval of lease rental debt proceedings under the Act; and

WHEREAS, Westfall Township has received preliminary realistic cost estimates from professional consultants indicating the sum of Three Hundred Fifty Thousand (\$350,000.00) Dollars will be needed to complete the project;

WHEREAS, provided the debt related to the project qualifies as self liquidating, as aforesaid, the proposed increase of lease rental debt, together with the Local Governmental Unit's other indebtedness presently outstanding, will not cause the limitations of the Local Governmental Unit's lease rental debt incurring power, pursuant to constitutional and statutory authority, to be exceeded.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors, of Westfall Township, Pike County, Pennsylvania, and it is hereby ordained and enacted by the authority of same as follows:

SECTION 1. Westfall Township authorizes and requests the Authority to undertake and complete the Project.

SECTION 2. Westfall Township determines to incur debt as such term is defined in the Act, which shall be lease rental debt of Westfall Township pursuant to the Act, in connection with the Project.

SECTION 3. Such lease rental debt shall be in the maximum principal amount of Three Hundred Fifty Thousand (\$350,000.00) Dollars and shall be evidenced by the Loan Agreement issued by the Authority under the Authorities Act consisting of a guarantee in the maximum principal amount of Three Hundred Fifty Thousand (\$350,000.00) Dollars to be issued by the

Authority to The Dime Bank. The Dime Bank Note shall have the benefit of and be secured by, among other things, the guaranty obligations of Westfall Township, and shall initiate amortization (payment of principal and interest) no later than two (2) years after settlement on The Dime Bank Note and such initiation of amortization shall not be later than one year after project completion as defined by the Act

SECTION 4. Westfall Township specifies that the estimated useful life of the Project is two (2) years.

SECTION 5. Westfall Township, as guarantor, shall enter into a Loan Agreement, to be dated as provided therein (the "Loan Agreement"), substantially in the form approved and presented to this meeting and attached hereto as **EXHIBIT A**, with the Authority as security for The Dime Bank Note, the Loan Agreement is hereby incorporated herein by reference.

SECTION 6. A copy of the Loan Agreement shall be filed with the Secretary of Westfall Township and shall be available for inspection at reasonable times by interested persons requesting such inspection and the terms and conditions of the agreement are incorporated herein by reference.

SECTION 7. Westfall Township in the Loan Agreement does covenant with The Dime Bank and the Authority among other things, to include the debt service for each of its Fiscal Years, in its budget for that Fiscal Year; to appropriate the amounts from its general revenues for payment of its obligations under the Loan Agreement; to pay or caused to be paid from its sinking funds or any other of its revenues or funds, the amount payable under the Loan Agreement and in the manner prescribed; and to budget in accordance with the amounts set forth in **EXHIBIT B** included herein by reference and apart hereof, appropriate, and make payments as required by the Loan Agreement. To this end, Westfall Township irrevocably pledges its full faith, credit, and taxing power.

It shall be the intent and purpose of the Loan Agreement that Westfall Township shall be required to pay over to The Dime Bank only that portion of such debt service that cannot be paid from other funds available for that purpose, as set forth in the Loan Agreement.

SECTION 8. The maximum guaranty obligations of Westfall Township, with respect to The Dime Bank Note, as set forth in the Loan Agreement, shall be payable, if as necessary, in such amounts as set forth in **EXHIBIT B**.

SECTION 9. The Loan Agreement of Westfall Township, shall be payable from the tax and other general revenues of Westfall Township.

SECTION 10. The Supervisors of Westfall Township and the Secretary of Westfall Township, as appropriate, are authorized and directed to prepare, certify and file with the Pennsylvania Department of Community and Economic Development the debt statement, as such phrase is defined in the Act required by 53 Pa. C.S. Section 8110, on behalf of Westfall Township, and the borrowing base certificate appended to such debt statement.

SECTION 12. The Supervisors of Westfall Township and the Secretary of Westfall Township, as appropriate, are authorized and directed to prepare statements required by the Act to qualify the lease rental debt for exclusion from the appropriate debt limit as self liquidating.

SECTION 13. The Supervisors of Westfall Township and the Secretary of Westfall Township, as appropriate, are authorized and directed to make application to the Department of Community and Economic Development for approval with respect to the Loan Agreement as required by 53 P.S. Section 8111(b), and in connection with this application to pay or cause to be paid the applicable filing fee.

SECTION 14. After obtaining the approval discussed in Section 13, the Supervisors of Westfall Township and the Secretary of Westfall Township, as appropriate, are authorized and directed to confirm the Loan Agreement with The Dime Bank.

SECTION 15. The Supervisors of Westfall Township and the Secretary of Westfall Township, as appropriate, are authorized and directed to execute all documents and to do all other acts as may be necessary and proper to carry out the intent and purpose of this Ordinance and the undertakings of Westfall Township, under the Loan Agreement .

SECTION 16. In the event any provision, section, sentence or clause or part of the Ordinance shall be held invalid, such invalidity shall not impair or affect any remaining provision, section, sentence, clause or part of the Ordinance from remaining in full force and effect. This Ordinance shall become effective in accordance with the provisions of the Act.


SECTION 17. All ordinances or parts of ordinances that are inconsistent herewith are repealed.

ORDAINED AND ENACTED THIS 5<sup>th</sup> day of October, 2010.

  
\_\_\_\_\_  
JAMES MUIR, Chairman

  
\_\_\_\_\_  
LESTER J. BUCHANAN, Vice-Chairman

  
\_\_\_\_\_  
ROBERT EW BANK, Supervisor

  
\_\_\_\_\_  
PAUL C. FISCHER, Supervisor

  
\_\_\_\_\_  
RAYMOND BANACH, Supervisor

ATTEST:

  
\_\_\_\_\_  
LISA GREEN, SECRETARY

LOAN AGREEMENT  
EXHIBIT A

[ COPY ]

LOAN AGREEMENT

THIS AGREEMENT is made this 7 day of SEPT. 2010, by and between the **TOWNSHIP OF WESTFALL**, a Pennsylvania municipal corporation operating under the PA Second Class Township Code, hereinafter the "Township";

AND

**THE MUNICIPAL AUTHORITY OF THE TOWNSHIP OF WESTFALL**, a Pennsylvania municipal authority organized and operating under the Pennsylvania municipal authority organized and operating under the PA Municipalities Planning Act, hereinafter the "Authority" and is based upon the following considerations:

WHEREAS, the Township and Authority entered into an agreement on September 10, 2009, whereby the Authority agreed to design and construct a sewer collection pump station for the Katz Commercial Property along Mountain Avenue (the "Project"), in order to provide for collection of sewage from the Katz properties and the Township agreed to pay the Township for the cost of doing same; and

WHEREAS, the Township paid the Authority the sum of One Hundred, Forty-Six Thousand, Five Hundred Sixty-Four and 00/100 (\$ 146,564.00) Dollars for the anticipated cost of the Project, based upon a preliminary estimate provided by the Authority Engineer; and

WHEREAS, in the process of doing the actual design of the Project, the Authority Engineer discovered a hydraulic overload problem with the Authority collection system, due in part to improper design by the previous Authority Engineer, which resulted in a more significant design and cost of the Project; and

WHEREAS, the Authority has incurred additional engineering costs and the successful bid for the Project work is in the amount of \$342,500.00; and

WHEREAS, on June 30, 2010, the Authority applied to the Commonwealth of Pennsylvania for an H2O Grant which included funding for the Project, but which will not be awarded until November, 2010; and

WHEREAS, in order to meet the schedule for completing the Project which the Township agreed to in the U.S. District in July, 2009, as part of a settlement of litigation with David and Barbara Katz, it is necessary for the Project to be completed in 2010; and

WHEREAS, the Authority has applied to the Dime Bank (the "Bank") of Honesdale, PA for a loan in the amount of \$350,000.00 (the "Loan") and the Bank is considering same, subject to the Authority entering into this Agreement for reimbursement by the Township to the Authority.

NOW THEREFORE, the parties hereto, each intending to be legally bound hereby, do covenant and agree as follows:

1. The recitals set forth above are hereby incorporated by reference into the terms of this Agreement.
2. The Authority agrees to obtain the Loan from the Dime Bank, in the principal amount of \$350,000.00, for a term of two (2) years, with payments of interest only for the two year period until the full amount shall be due, at an anticipated fixed rate of Three and three-tenths (3.3%) percent on the principal balance. The Loan funds shall be drawn down by the Authority only after all of the previous payment made by the Township to the Authority in September, 2009, have been exhausted and shall be used exclusively for the Project.
3. Once the Authority receives invoices for the interest due on the Loan funds drawn, said invoice shall be delivered to the Township for payment to the Bank. At the end of the Loan period, i.e. two years, if the Loan has not been satisfied as provided hereinbelow, the Township shall deliver the full principal due under the Loan to the Bank for satisfaction of this Loan.
4. In the event that the Authority receives full funding from the Commonwealth on its H2O grant, it shall apply those funds to payment of the Project. In the event any money is owed on the Loan, then the Authority shall satisfy the Bank Loan and shall reimburse the Township for any interest payments it has previously made pursuant to the terms of this Agreement. In the event that the Authority receives partial payment, the parties hereto shall agree to the disbursement of such funds.
5. It is acknowledged and agreed by the parties hereto that the Authority will pursue recovery of the additional cost incurred on this Project as the result of apparent negligence on the part of the Authority's pervious engineer. In the event that any such recovery is accomplished, any funds shall be distributed between the parties in a manner proportionate to their involvement in this Project.



IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed by their appropriate authorized officers:

TOWNSHIP OF WESTFALL

*Lester Buchanan*  
Supervisor

*James Min*  
Supervisor

*[Signature]*  
Supervisor

*[Signature]*  
Supervisor

Attest: *Lisa Green*  
Lisa Green  
Township Secretary

*[Signature]*  
Supervisor

THE MUNICIPAL AUTHORITY OF THE TOWNSHIP OF WESTFALL

by: *Albert W. Schneider*  
Albert W. Schneider Chairman

Attest: *Jack Hoffmann*  
Secretary

AMORTIZATION SCHEDULE

EXHIBIT B

**Westfall Township  
Loan Amortization  
\$350,000 Line of Credit from Westfall Authority**

Exhibit B

Loan Amount \$ 350,000.00  
Interest Rate 3.30%  
Loan Agreement Date September 7, 2010  
Interest only payment \$ 962.50  
Balloon Payment Due September 2012

<u>Date</u>	<u>Payment</u>
7-Oct-10	\$ 962.50
7-Nov-10	\$ 962.50
7-Dec-10	\$ 962.50
Jan-11	\$ 962.50
Feb-11	\$ 962.50
Mar-11	\$ 962.50
Apr-11	\$ 962.50
May-11	\$ 962.50
Jun-11	\$ 962.50
Jul-11	\$ 962.50
Aug-11	\$ 962.50
Sep-11	\$ 962.50
Oct-11	\$ 962.50
Nov-11	\$ 962.50
Dec-11	\$ 962.50
Jan-12	\$ 962.50
Feb-12	\$ 962.50
Mar-12	\$ 962.50
Apr-12	\$ 962.50
May-12	\$ 962.50
Jun-12	\$ 962.50
Jul-12	\$ 962.50
Aug-12	\$ 962.50
Sep-12	\$ 350,000.00