

BOROUGH OF AVALON
RESOLUTION NO. 834

RESOLUTION AUTHORIZING BORROWING OF \$100,000 OR LESS FOR CAPITAL PURPOSES

Borough of Avalon

(Name of Local Government Unit)

Allegheny County, Pennsylvania

RESOLUTION

INCREASING THE NONELECTORAL INDEBTEDNESS OF

Borough of Avalon (the "Local Government Unit")
(Name of Local Government Unit)

COUNTY OF Allegheny, PENNSYLVANIA, BY THE ISSUANCE OF A GENERAL OBLIGATION NOTE IN THE AMOUNT OF \$ 60,000.00 FOR CAPITAL PURPOSES, FIXING THE FORM, NUMBER, DATE, INTEREST AND MATURITY THEREOF; MAKING A COVENANT FOR THE PAYMENT OF THE DEBT SERVICE ON THE NOTE; AND AUTHORIZING THE EXECUTION, SALE AND DELIVERY THEREOF.

WHEREAS, it is necessary that the non-electoral indebtedness of the Local Government Unit be increased to finance the following project:

Purchase Two Ford F 350 Dump Trucks with Spreaders and Plows

(the "Project"); and

WHEREAS, the Local Government Unit has received preliminary realistic cost estimates from professional engineers, registered architects or others qualified by experience indicating the sum of \$ 60,000.00 will be needed to complete the Project; and

WHEREAS, the proposed increase of indebtedness together with its nonelectoral indebtedness and its lease rental indebtedness presently outstanding, will not cause the limitations of the Local Government Unit's nonelectoral borrowing power pursuant to constitutional and statutory authority to be exceeded:

NOW, THEREFORE, BE IT RESOLVED by the Local Government Unit as follows:

SECTION 1. The Local Government Unit hereby determines to incur nonelectoral debt, in accordance with the provisions of the Local Government Unit Debt Act, Act No. 52 of the 1978 General Assembly of the Commonwealth of Pennsylvania, as amended (the "Act"), by the issuance of \$ _____ aggregate principal amount of the Local Government Unit's General Obligation Note (the "Note") to finance the Project hereby determined to have a realistic useful life in excess of Five (5) years.

SECTION 2. The indebtedness shall be evidenced by the Note, in registered form, in the aggregate principal amount of \$ 68,000.00, dated the date of the execution and delivery thereof and bearing interest from the date of the Note on the unpaid balance of principal, payable (quarterly on the _____ day of each calendar quarter, commencing _____, 19_____)¹ (monthly on the 30th day of each month, commencing _____, 19_____)² and at maturity or earlier payment at (the rate of 6.75 % per annum (the "Tax Free Rate")),³ (_____ % of the Prime Rate, as hereinafter defined, rounded to the nearest one-tenth of one percent (the "Tax Free Rate"), in effect from time to time, said rate shall change simultaneously effective with the corresponding change in the Prime Rate. "Prime Rate" means the rate per annum announced from time to time by Integra Bank/ Pittsburgh (the "Bank") at its principal office in Pittsburgh as its prime rate, which may not be the lowest rate of interest charged by the Bank to its other borrowers. In no event will the rate go below N/A %, or exceed N/A %. The Tax Free Rate as of the date hereof would be 6.75 %, based on a year of 365 or 366 days, as the case may be.)⁴

The principal of the Note shall be payable in installments on the annual anniversary date of the Note [or monthly] in the amounts set forth below:

<u>Fiscal Year</u>	<u>Principal Amount to be Paid</u>
19 <u>94</u>	\$ <u>12,000.00</u>
19 <u>95</u>	\$ <u>12,000.00</u>
19 <u>96</u>	\$ <u>12,000.00</u>
19 <u>97</u>	\$ <u>12,000.00</u>
19 <u>98</u>	\$ <u>12,000.00</u>

After maturity, whether by declaration, acceleration or otherwise, the Note shall bear interest until fully paid at a variable rate per annum equal to _____ % of the Prime Rate in effect from time to time, such interest rate to change automatically from time to time, effective as of the effective date of each change in the Prime Rate, payable on demand, provided that such interest rate shall not go below N/A %, or exceed N/A %.

Each interest rate referred to in the Note shall be computed on the basis of a year of 365 or 366 days, as the case may be.

1. Quarterly Payments
2. Monthly Payments
3. Fixed Rate
4. Variable Rate

The principal of and interest on the Note shall be payable at the
Avalon Office of the Bank, Pittsburgh,

Pennsylvania, in any coin or currency of the United States which, at the respective times of payment, is legal tender for the payment of public and private debts.

If at any time or from time to time after the date of the Note there should be a change in the rate of income tax imposed upon the Bank (the "Bank Tax Rate") by Section 11 of the Internal Revenue Code of 1986, as amended (the "Code"), then the Tax-Free Rate shall be adjusted, effective as of the effective date of the change in the Bank Tax Rate.

The interest received on the Note by the Bank and any other participant in the Note is not subject to Federal income tax and the Note is a "qualified tax exempt obligation" as described in Section 265(b)(3)B of the Code. In the event, as a result of a change in existing statutes or in the interpretation or administration thereof by the Internal Revenue Service or any action by failure to take action to the Local Government Unit (hereinafter "IRS Action"), it shall be determined (after the Bank shall have taken such steps as in its reasonable judgment shall be required to dispute such determination) that all or any portion of the interest thereafter received by the Bank or by a participant in the Note shall be subject to Federal income tax or that the Note is not a "qualified tax exempt obligation", the rate of interest payable on this Note thereafter shall be changed to such rate as may be negotiated by the Bank and the Local Government Unit and, if a rate cannot be agreed upon within 30 days after a demand is made to negotiate, the Bank, in its discretion, may demand that the Note and all sums unpaid or due shall become immediately payable. In addition, in the event such IRS Action shall require the Bank or any participant in the Note to pay Federal income taxes on interest received prior to the date of such IRS Action, or shall disallow the Bank's allocable interest expense under Section 265(b) of the Code with respect to the Note, in the discretion of the Bank, and within 90 days after its demand therefor, the Local Government Unit shall pay, during such period, as additional interest, an amount equal to the difference between the interest made subject to Federal income taxation by such IRS Action or disallowed under Section 265(b) of the Code and [_____] [_____] % of the Prime Rate, fluctuating as aforesaid] during the period that interest is taxed or disallowed. The obligation under the immediately preceding sentence shall survive payment in full of the Note. Under no circumstances shall the Bank be obligated to refund or return to the Local Government Unit any interest paid by the Local Government Unit.

The Local Government Unit shall have the right at its option to prepay the Note, as a whole at any time or in part from time to time, without premium or penalty, provided that any prepayment in part shall be applied to principal installments in the inverse order of their maturities.

The Note shall be in substantially the form of Exhibit A* annexed hereto.

SECTION 3. The 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 the 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 at 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, and payment, the full faith, credit and taxing power of the Local Government Unit is hereby irrevocably pledged.

The amounts which the Local Government Unit hereby covenants to pay in each of the following fiscal years on the basis of an interest rate of [6.75 % Fixed Tax Free] [fluctuating at _____ % of the Prime Rate Tax Free] as follows:

<u>Year*</u>	<u>Principal</u>	<u>Interest</u>
19 <u>94</u>	\$ <u>12,000.00</u>	\$ _____ **
19 <u>95</u>	\$ <u>12,000.00</u>	\$ _____ **
19 <u>96</u>	\$ <u>12,000.00</u>	\$ _____ **
19 <u>97</u>	\$ <u>12,000.00</u>	\$ _____ **

*If monthly principal payments, adjust the schedule.

**If interest is fluctuating as indicated above the interest amounts payable may change.

SECTION 4. The Note shall be executed in the name and under the corporate seal of the Local Government Unit by the President of Council
(Title of Officer)

and attested to by the Secretary of the Local Government Unit. The Treasurer of the Local Government Unit is hereby authorized and directed to deliver the Note to the Bank and receive payment therefor on behalf of the Local Government Unit. The President of Council
(Title of Officer) and Secretary of the

Local Government Unit are authorized and directed to prepare and verify, or cause to be prepared and verified, a Debt Statement of the Local Government Unit complying with Section 410 of the Act and to take all other necessary

*Use Example 7 as the Exhibit A referred to above.

action, including, if desirable, any statement required to exclude any portion of the debt from the appropriate debt limit as self-liquidating or subsidized debt.

SECTION 5. In compliance with Section 701 of the Act, the Local Government Unit hereby finds that a private sale of the Note by negotiation rather than public sale is in the best interest of the Local Government Unit. Therefore, the Proposal to Purchase the Note dated _____, 199__ of the Bank submitted to the Local Government Unit is hereby approved and accepted. The Note is approved and shall be awarded, issued and sold upon a negotiated sale to the Bank at the principal amount thereof in accordance with said Proposal.

SECTION 6. Certain Representations Regarding Federal Income Tax Matters. The Local Government Unit hereby represents as follows:

- (a) It is a governmental unit with general taxing powers and the authority to incur this debt;
- (b) The aggregate face amount of tax-exempt obligations which are not "private activity bonds" (as defined in Section 141 of the Code) issued since January 1 of this calendar year by the Local Government Unit or any subordinate entity controlled by the Local Government Unit and outstanding on the date of issuance of the Note, when added to the amount of the Note and the amount of tax-exempt obligations which are not "private activity bonds" which are reasonably expected to be issued by the Local Government Unit or any subordinate entity controlled by the Local Government Unit after the date of issuance of the Note and before January 1 of the next calendar year does not and will not exceed \$5,000,000;
- (c) No more than 5% of the proceeds of any bond issuance including the funds hereby borrowed will be used directly or indirectly in a trade or business of a person or persons other than the Local Government Unit and its governmental affiliates. Additionally, no amount exceeding 5% of the proceeds will be used as loans to any persons other than a governmental unit;
- (d) At least 95% of the net proceeds of such issue will be used for local governmental activities of the Local Government Unit or of the governmental unit the jurisdiction of which is entirely within the jurisdiction of the Local Government Unit;

(e) The aggregate amount of the tax-exempt obligations which are not "private activity bonds" (as defined in Section 141 of the Code), other than "qualified 501(c)(3) bonds" (as defined in Section 145 of the Code) issued since January 1 of this calendar year by the Local Government Unit or any subordinate entity controlled by the Local Government Unit and outstanding on the date of issuance of the Note, when added to the amount of the Note and the amount of tax-exempt obligations (including "qualified 501(c)(3) bonds") which are not "private activity bonds" which are reasonably expected to be issued by the Local Government Unit or any subordinate entity controlled by the Local Government Unit after the date of issuance of the Note and before January 1 of the next calendar year does not and will not exceed \$10,000,000; and

(f) The total amount of qualified tax-exempt obligations designated by the Local Government Unit in the current calendar year under Section 265(b)(3)(B)(iii) of the Code shall not exceed \$10,000,000.

SECTION 7. Qualified Tax-Exempt Obligation: Information Reporting.

The Local Government Unit hereby agrees to designate on the face of the Note that the Note is a "qualified tax-exempt obligation", as that term is defined in Section 265(b)(3)(B) of the Code.

The Local Government Unit hereby covenants with the Bank that the Local Government Unit will provide to the Bank, at the time of the payment for and delivery of the Note, a copy of IRS Form 8038-GC or 8038-G, as appropriate, prepared by the Local Government Unit in compliance with Section 149(e) of the Code with evidence of the filing thereof with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

SECTION 8. Registered-Required Obligations. The Local Government Unit agrees to maintain the Note in registered form. The Note will be registered as to both principal and any stated interest with the Local Government Unit. The transfer of the Note will be effected only by surrender of the old Note and either the reissuance by the Local Government Unit of the old Note to the new holder or the issuance by the Local Government Unit of a new instrument.

SECTION 9. All resolutions or parts of resolutions not in accord with this Resolution are hereby repealed insofar as they conflict herewith.

ADOPTED THIS 17th day of May, 1994.

Borough of Avalon
(Name of Local Government Unit)

By Harry W. DiAmore
(Title of Officer)

Harry W DiAmore, President of Council

(SEAL)

ATTEST:

Joan A. Welsh
(Secretary)

Joan A Welsh, Secretary

(If Applicable)

Approved this 17 day of May, 1994.

Daniel Brimant

Mayor or Chief Executive Officer of _____

Borough of Avalon
(Name of Local Government Unit)