

ORDINANCE 2018-03

OF THE
BOROUGH COUNCIL OF THE BOROUGH OF DOWNINGTOWN
CHESTER COUNTY, PENNSYLVANIA

AUTHORIZING AND DIRECTING THE INCURRENCE OF LEASE RENTAL DEBT OF THE BOROUGH OF DOWNINGTOWN, CHESTER COUNTY, PENNSYLVANIA (THE "BOROUGH") IN CONNECTION WITH DOWNINGTOWN MUNICIPAL WATER AUTHORITY'S ISSUANCE OF ITS GUARANTEED WATER REVENUE NOTE, SERIES OF 2018, IN THE STATED PRINCIPAL AMOUNT OF \$5,525,000 (the "NOTE") FOR THE PURPOSE OF PROVIDING FUNDS FOR THE REFUNDING OF SAID AUTHORITY'S GUARANTEED WATER REVENUE BONDS, SERIES OF 2008, AND FOR THE PAYMENT OF THE COSTS OF ISSUING THE NOTE, (THE "2018 PROJECT"); AUTHORIZING THE EXECUTION AND DELIVERY OF A GUARANTY AGREEMENT IN WHICH THE BOROUGH GUARANTEES PAYMENT OF PRINCIPAL OR REDEMPTION PRICE, AND INTEREST ON THE NOTE; PLEDGING ITS FULL FAITH, CREDIT, AND TAXING POWER FOR PAYMENT OF DEBT SERVICE ON THE NOTE PURSUANT TO THE GUARANTY; DIRECTING THE PROPER OFFICERS TO PREPARE A DEBT STATEMENT AND BORROWING BASE CERTIFICATE; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE BOROUGH TO CERTIFY AND TO FILE WITH THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT SAID DEBT STATEMENT, BORROWING BASE CERTIFICATE AND PROCEEDINGS TO DECLARE THE DEBT REPRESENTED BY THE GUARANTY TO BE SELF-LIQUIDATING; AND AUTHORIZING OTHER NECESSARY ACTION.

WHEREAS, the Downingtown Municipal Water Authority (the "Authority") was incorporated by the Borough of Downingtown (the "Borough") for the purpose of acquiring, holding, constructing, improving, maintaining, operating and owning a water system (the "Water System"); and

WHEREAS, the Authority has previously financed a capital project (the "Capital Project") consisting of: (i) the purchase of the Borough's Water System and certain other water system facilities; (ii) the construction of a new water plant (including engineering, design, study and construction costs); (iii) the upgrade of the existing water distribution system; and (iv) the demolition of the existing water plant by the issuance of its Guaranteed Water Revenue Bonds, Series A of 1993 (the "Series A Bonds"), in the aggregate principal amount of \$7,000,000 and its Series B of 1993 Bond, in the aggregate principal amount of \$4,189,500 (the "PennVest Bond"), (the Series A Bonds and the PennVest Bond, collectively the "1993 Bonds"); and

WHEREAS, the 1993 Bonds were refunded and additional capital improvements to the Authority's Water System were made with the proceeds of the Authority's Guaranteed Water Revenue Bonds, Series of 1998 (the "1998 Bonds"); and

WHEREAS, further improvements to the Water System were financed with the proceeds of the Authority's \$2,200,000 Promissory Note, Series of 2006 (the "2006 Note"); and

WHEREAS, the 1998 Bonds and the 2006 Note were refunded with the proceeds of the Authority's \$10,705,000 Guaranteed Water Revenue Bonds, Series of 2008 (the "2008 Bonds"); and

WHEREAS, the Authority has determined that it is in its best interest to achieve interest savings by issuing its Guaranteed Water Revenue Note, Series of 2018 in the stated principal amount of \$5,525,000 (the "Note") to accomplish the refunding of the 2008 Bonds (the "2008 Project"); and

WHEREAS, the Bonds will be issued pursuant to a Resolution of the Authority (the "Authority Resolution") and a Trust Indenture, dated as of June 15, 2008, as previously supplemented and now to be supplemented by a Second Supplemental Trust Indenture to be dated as of September 4, 2018 (the "Second Supplemental Indenture") from the Authority to U. S. Bank National Association (the "Trustee"); and

WHEREAS, in order to induce the Lender to purchase the Note, and thereby achieve interest cost savings to the Authority and the users of the Water System, the Borough has agreed to guarantee payment of the principal or redemption price, and interest on the obligation evidenced by the Note and will execute and deliver a Guaranty Agreement dated as of the date of the Second Supplemental Indenture (the "Guaranty"); and

WHEREAS, the Authority has received a proposal for the purchase of its Note from Capital One Public Funding, LLC (the "Lender") and the Borough desires to authorize and approve the Authority's acceptance thereof; and

NOW THEREFORE, THE BOROUGH COUNCIL OF THE BOROUGH OF DOWNTOWN DOES HEREBY ENACT AND ORDAIN AS FOLLOWS:

Section 1. The Borough hereby approves the 2018 Project. The Borough shall incur lease rental indebtedness pursuant to the Local Government Unit Debt Act, 53 PA.C.S. §8001 *et seq.* (the "Debt Act") by executing and delivering the Borough's Guaranty in substantially the form attached hereto and made a part hereof (the "Guaranty") in connection with the Authority's issuance of its Note in the amount of \$5,525,000 for the purpose of providing funds for and toward the costs of the 2018 Project, including the expenses of the financing. The Borough finds that its Guaranty will achieve interest cost savings for the benefit of users of the Water System.

Section 2. The estimated useful life of the capital projects financed or refinanced with the proceeds of the 1998 Bonds was declared to be in excess of thirty-five years by the Borough at the time of issuance of the 1998 Bonds.

It is hereby determined and stated that the realistic remaining estimated useful life of the 2018 Project as it relates to the 1998 Bonds is in excess of fifteen years and of the 2006 Note is in excess of fifteen years. The Note to be secured by the Guaranty does not mature beyond the estimated remaining useful life of the projects financed thereby nor beyond the original maturities of the 2008 Bonds.

The 2018 Project is being undertaken for the purpose of reducing total debt service over the life of the Authority's 2008 Bonds, pursuant to Section 8241(b)(1) of the Debt Act.

Section 3. The indebtedness authorized by this Ordinance is lease rental debt. The Borough shall incur lease rental debt as defined in the Debt Act, which shall be evidenced by the Guaranty. Incurrence of such lease rental debt is hereby authorized and approved.

Section 4. As security for the Note, the President or Vice President of the Borough Council and Secretary of the Borough are hereby authorized to execute and deliver to the Trustee, for the benefit of the registered owner of the Note, the Guaranty Agreement dated as of the date of the Note. Pursuant to the terms of the Guaranty, the Borough will guarantee the payment of the principal, redemption price of and the interest due on the Note. For such Guaranty the Borough pledges its full faith, credit and taxing power. The form of the Guaranty is hereby approved and the President or Vice President of the Borough Council and Secretary of the Borough are authorized to execute and deliver the Guaranty substantially in the form presented at the time of the enactment of this Ordinance, subject to the foregoing conditions, and with such changes or additions as may be appropriate upon advice of the Borough Solicitor.

Section 5. In the event the Borough is obligated to make payments under the Guaranty, the maximum amounts required to be paid thereunder, if and as necessary on an annual basis, from the general revenues of the Borough, are as set forth on Exhibit "A" to the Guaranty. Exhibit "A" is incorporated herein by reference with the same force and effect as if fully set forth in the text hereof.

Section 6. As provided in the Guaranty, the Borough hereby covenants with the Authority, the Trustee and the owners from time to time of the Note that it will include in its budget for each year the amounts which, together with other funds held, or reasonably expected to be received, by the Trustee and the Authority and which are or will be available for such purpose, will equal the amount of the principal of and interest on the Note and sinking fund payments becoming due in each fiscal year in its budget for such fiscal year, will appropriate such amounts to such payments and will duly and punctually pay or cause to be paid to the Trustee the amount necessary to pay such principal and interest at the dates and places and in the manner stated in the Note, and for such budgeting, appropriation and payment the Borough hereby pledges its full faith, credit and taxing power. This covenant shall be specifically enforceable.

Section 7. The President or Vice President of the Borough Council and Secretary of the Borough are hereby authorized to prepare and verify the Debt Statement and Borrowing Base Certificate required by Section 8110 of the Debt Act and such further and additional documents as may be required to exclude self-liquidating debt under Section 8026 of the Act from lease rental debt of this Borough. Said officers, or any of them, are further authorized to apply to the Pennsylvania Department of Community and Economic Development for approval of the lease rental debt herein authorized and to file with such application a transcript of the proceedings including a certified copy of this Ordinance, the Debt Statement and a Borrowing Base Certificate, the exclusion proceedings, and to take any and all such further action to execute and deliver such other documents as may be necessary or proper to comply with all requirements of the Debt Act or to carry out the intent and purpose of this Ordinance.

Section 8. The Borough hereby approves the form of the Contract of Purchase presented by the Lender consistent with the purposes of this Ordinance.

Section 9. The President and Vice President of the Borough Council are hereby authorized, directed and empowered on behalf of the Borough to execute any and all agreements, papers and documents and to do or cause to be done any and all acts and things necessary or proper for the carrying out of the purposes of this Ordinance.

Section 10. All ordinances or parts of ordinances inconsistent herewith be and the same hereby are rescinded, cancelled and annulled.

Section 11. This Ordinance shall take effect on the earliest date permitted by the Act.

ORDAINED AND ENACTED this 11th day of July, 2018.

Attest:

BOROUGH OF DOWNINGTOWN

Borough Secretary

(Vice) President, Borough Council

(SEAL)

APPROVED this 11th day of July, 2018.

Josh Maxwell, Mayor