

BOROUGH OF HIGHSPIRE
DAUPHIN COUNTY, PENNSYLVANIA

AN ORDINANCE

NO. 650 OF 2023

AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF HIGHSPIRE, DAUPHIN COUNTY, PENNSYLVANIA, SETTING FORTH ITS INTENT TO ISSUE ITS GENERAL OBLIGATION BOND, SERIES OF 2023, IN THE PRINCIPAL AMOUNT OF EIGHTY-EIGHT THOUSAND SIX HUNDRED DOLLARS (\$88,600) PURSUANT TO THE ACT OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, 53 PA.C.S. CHAPTERS 80-82, AS AMENDED, REENACTED AND SUPPLEMENTED, KNOWN AS THE LOCAL GOVERNMENT UNIT DEBT ACT (THE “ACT”); FINDING THAT A PRIVATE SALE BY NEGOTIATION IS IN THE BEST FINANCIAL INTEREST OF THE BOROUGH; DETERMINING THAT SUCH BOND SHALL EVIDENCE NONELECTORAL DEBT OF THE BOROUGH; SPECIFYING THAT SUCH INDEBTEDNESS IS TO BE INCURRED TO PROVIDE FUNDS TO FINANCE A PROJECT OF THE BOROUGH WHICH CONSISTS OF, AMONG OTHER THINGS: (1) PLANNING, DESIGNING, ACQUIRING, CONSTRUCTING, INSTALLING, FURNISHING AND EQUIPPING OF AN HVAC SYSTEM IN THE MUNICIPAL BUILDING OF THE BOROUGH; AND (2) PAYING THE COSTS AND EXPENSES OF ISSUING THE BOND; SETTING FORTH THE REASONABLE ESTIMATED USEFUL LIFE OF THE CAPITAL PROJECT TO BE FINANCED BY THE BOND; ACCEPTING A PROPOSAL FOR THE PURCHASE OF SUCH BOND AT PRIVATE SALE BY NEGOTIATION; PROVIDING THAT SUCH BOND, WHEN ISSUED, SHALL CONSTITUTE A GENERAL OBLIGATION OF THE BOROUGH; FIXING THE DENOMINATION, DATED DATE, INTEREST PAYMENT DATES, INTEREST RATES, REDEMPTION PROVISIONS AND PLACE OF PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SUCH BOND; AUTHORIZING SPECIFIED OFFICERS OF THE BOROUGH TO CONTRACT WITH THE PAYING AGENT FOR ITS SERVICES IN CONNECTION WITH THE BOND; SETTING FORTH THE SUBSTANTIAL FORM OF THE BOND EVIDENCING THE DEBT; AUTHORIZING EXECUTION AND ATTESTATION OF SUCH BOND; PROVIDING COVENANTS RELATED TO DEBT SERVICE APPLICABLE TO SUCH BOND TO THE EXTENT REQUIRED BY THE ACT AND PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE BOROUGH IN SUPPORT THEREOF; CREATING A SINKING FUND IN CONNECTION WITH SUCH BOND, TO THE EXTENT REQUIRED BY THE ACT; DESIGNATING THE PAYING AGENT TO BE THE SINKING FUND DEPOSITARY; PROVIDING A COVENANT TO INSURE PROMPT AND FULL PAYMENT FOR SUCH BOND WHEN DUE; SETTING FORTH REGISTRATION AND TRANSFER PROVISIONS WITH RESPECT TO SUCH BOND; AUTHORIZING AND DIRECTING SPECIFIED OFFICERS OF THE BOROUGH TO DO, TO TAKE AND TO PERFORM CERTAIN SPECIFIED, REQUIRED, NECESSARY OR APPROPRIATE ACTS TO EFFECT THE ISSUANCE OF THE BOND, INCLUDING, WITHOUT LIMITATION, THE PREPARATION OF A DEBT STATEMENT AND BORROWING BASE CERTIFICATE, AND THE FILING OF

SPECIFIED DOCUMENTS WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, ALL AS REQUIRED BY THE ACT; DECLARING THAT THE DEBT TO BE EVIDENCED BY SUCH BOND, TOGETHER WITH ALL OTHER INDEBTEDNESS OF THE BOROUGH, WILL NOT BE IN EXCESS OF ANY APPLICABLE LIMITATION IMPOSED BY THE ACT; AUTHORIZING PROPER OFFICERS OF THE BOROUGH TO DELIVER THE BOND UPON THE APPROVAL OF THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; SETTING FORTH CERTAIN COVENANTS PRECLUDING THE BOROUGH FROM TAKING ACTIONS WHICH WOULD CAUSE THE BOND TO BECOME AN “ARBITRAGE BOND” OR A “PRIVATE ACTIVITY BOND” AS THOSE TERMS ARE USED IN THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”), AND APPLICABLE REGULATIONS PROMULGATED THEREUNDER; DESIGNATING THE BOND AS A “QUALIFIED TAX-EXEMPT OBLIGATION” UNDER SECTION 265(b) OF THE CODE; PROVIDING WHEN THIS ORDINANCE SHALL BECOME EFFECTIVE; PROVIDING FOR SEVERABILITY OF PROVISIONS; AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INsofar AS THE SAME SHALL BE INCONSISTENT HEREWITH.

WHEREAS, the Borough of Highspire, Dauphin County, Pennsylvania (the “Borough”), is a borough organized and existing under the laws of the Commonwealth of Pennsylvania (the “Commonwealth”); and

WHEREAS, the Borough, in contemplation of the issuance and sale of its General Obligation Bond in an aggregate principal amount of Eighty-Eight Thousand Six Hundred Dollars (\$88,600), to provide funds for and towards certain projects of the Borough, has determined that the Bond (hereinafter defined) shall be offered for sale at a private sale by negotiation pursuant to the provisions of the Local Government Unit Debt Act of the Commonwealth, as reenacted and amended (the “Act”) and has determined that a private sale by negotiation is in the best financial interests of the Borough; and

WHEREAS, the Council of the Borough (the “Council”) has determined that such Bond will be issued and designated generally as “Borough of Highspire, Dauphin County, Pennsylvania, General Obligation Bond, Series of 2023 (the “Bond”); and

WHEREAS, the Bond shall be issued in the aggregate principal amount of Eighty-Eight Thousand Six Hundred Dollars (\$88,600); and

WHEREAS, the Bond is being issued by the Borough for the purposes of providing funds for: (1) planning, designing, acquiring, constructing, installing, furnishing and equipping of an HVAC system in the Municipal Building of the Borough; and (2) paying the costs and expenses of issuing the hereinafter-defined Bond (the “Project”); and

WHEREAS, it is necessary that the indebtedness of the Borough be increased for the purpose of funding the Project; and

WHEREAS, the proposed increase of debt, together with its nonelectoral indebtedness and its lease rental indebtedness presently outstanding, will not cause the limitations of the Borough, pursuant to constitutional and statutory authority, to be exceeded; and

WHEREAS, to finance the costs of the Project, The United States of America, acting through USDA, Rural Housing Service (the “Government”) has determined to make a loan to the Borough in the principal amount of Eighty-Eight Thousand Six Hundred Dollars (\$88,600) and has issued its letter of conditions, dated March 29, 2022, to the Borough for the financing of the costs of the Project (collectively, as such letter of conditions may be further amended and supplemented from time to time, the “Letter of Conditions”); and

WHEREAS, the Borough desires to formally approve the Project, to accept the Letter of Conditions, to authorize the incurrence of nonelectoral debt under the Act, and to authorize the execution and delivery of the Letter of Conditions; and

WHEREAS, design, engineering, acquisition and construction of the Project may commence prior to the issuance of the Bond and the Borough desires to pay for certain of the costs of the Project (the “Expenditures”) from general funds of the Borough which do not constitute proceeds of tax-exempt bonds; and

WHEREAS, the Borough has determined that the funds that have been or are to be advanced to pay Expenditures are or will be available only for a temporary period and it is necessary to reimburse the Borough for Expenditures with respect to the Project from the proceeds of a tax-exempt borrowing represented by the Bond; and

WHEREAS, as of the date hereof, there are no funds from sources other than the Bond that are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside by the Borough or any member of the same controlled group as the Borough to pay the Expenditures; and

WHEREAS, the Borough, in compliance with Section 1.150-2 of the United States Treasury Regulations, reasonably expects to reimburse the Expenditures made by it for the Project with proceeds of the Bond; and

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Council of the Borough of Highspire, Dauphin County, Pennsylvania, and it is hereby ordained and enacted by the authority of same as follows:

SECTION 1. Incurrence of Indebtedness.

(a) Pursuant to the provisions of this Ordinance, the Council hereby authorizes and directs the issuance of the Bond in the aggregate principal amount of Eighty-Eight Thousand Six Hundred Dollars (\$88,600) to be designated generally as “Borough of Highspire, Dauphin County, Pennsylvania, General Obligation Bond, Series of 2023” or such other name or such other designations, including the appropriate designation of the year and series such Bond is issued, as shall be selected by the President or Vice President of Council upon delivery of the Bond in accordance with the requirements of Section 7 hereof. The Bond shall be issued and sold in accordance with the provisions of the Act by private sale by negotiation.

(b) The Council determines that the debt to be incurred pursuant to this Ordinance, and which will be evidenced by the Bond, shall be nonelectoral debt of the Borough.

SECTION 2. The Project.

A brief description of the project (the "Project") to be funded with, among other things, the proceeds of the Bond is as follows: (1) the planning, designing, acquiring, constructing, installing, furnishing and equipping of an HVAC system in the Municipal Building of the Borough; and (2) paying the costs and expenses of issuing the Bond (the "Project").

It is hereby determined and declared that the realistic estimated useful life of the capital project to be financed by the proceeds of the Bond is at least 17 years. It is hereby certified that a principal amount of the Bond at least equal to the realistic estimated cost of such capital project shall mature prior to the end of the useful life of such project.

Stated installments or maturities of principal of the Bond will not be deferred beyond the later of one year after the estimated date for the completion of the construction portion of the Project, if any, or two years from the date of issuance of the Bond.

The Borough hereby finds and certifies that realistic cost estimates have been obtained for the costs of the Project from financial analysts, registered architects, professional engineers or other persons qualified by experience to provide such estimates.

SECTION 3. Private Sale by Negotiation.

The private sale by negotiation of the Bond to finance the Project and the costs and expenses of the financing is hereby determined to be in the best financial interest of the Borough.

SECTION 4. Acceptance of Letter of Conditions.

Subject to the approval of the Department, as required by the provisions of the Act, the Letter of Conditions is hereby accepted and the Bond in the principal amount Eighty-Eight Thousand Six Hundred Dollars (\$88,600), herein authorized to be issued and sold, is hereby awarded and sold to the Government in accordance with its commitment to purchase the said Bond at par; provided the said Bond is dated the date of delivery thereof to the Government and is in substantially the form set forth in Exhibit B to this Ordinance with such changes as may be approved by the officers of the Borough executing such Bond; and further provided that the proceedings have been approved by the Department of Community and Economic Development if such approval is required under the provisions of the Act. A copy of said Letter of Conditions shall be attached hereto as Exhibit C and lodged with the official minutes of this meeting and is hereby incorporated herein by reference.

SECTION 5. The Bond

(a) The Bond, when issued, will be a general obligation of the Borough and shall be evidenced by a general obligation bond in the principal amount of Eighty-Eight Thousand Six Hundred Dollars (\$88,600), dated and bearing interest from the earliest date of

possible issue of said Bond under the statutory time requirements as set forth in the Act, at a rate of interest as set forth in the Letter of Conditions, payable on the unpaid balance of said Bond during the term of said Bond, which is 15 years from the date of issuance of said Bond. The Bond shall mature in maximum installments of principal and interest as shown on the attached Schedule hereinafter referred to as Exhibit A.

(b) The Borough reserves the right to anticipate any or all installments of principal or any payment of interest at any time prior to the respective payment dates thereof, in accordance with the limitations as specified in the Letter of Conditions, if any.

(c) The principal and interest of said Bond shall be payable at the office of the sinking fund depository selected for the Bond as hereinafter provided.

SECTION 6. Appointment of Paying Agent, Registrar and Sinking Fund Depository.

The proper officers of the Borough are hereby authorized, empowered and directed to contract with _____ or such other bank or bank and trust company authorized to do business in the Commonwealth of Pennsylvania and who has an office in the Commonwealth of Pennsylvania (the "Paying Agent"), for its services as paying agent and sinking fund depository in accordance with the terms and conditions of the Letter of Conditions, this Ordinance and the Act. Payment of the principal of and interest on the Bond shall be made, when due, in accordance with the provisions of the Bond, at the designated office of the Paying Agent in lawful money of the United States of America. The Borough may, by ordinance, from time to time, appoint a successor paying agent, registrar or sinking fund depository to fill a vacancy or for any other reason.

SECTION 7. Form of Bond.

(a) The Bond shall be in substantially the form set forth in Exhibit "B" with appropriate insertions, omissions and variations. The form of the Bond as submitted to the Borough is hereby approved in substantially such form, with such changes, insertions and variations as are necessary or appropriate to reflect the final terms, including, but not limited to, the name or designation and the final redemption provisions, of the Bond as specified to the Borough in the delivery instructions of the Government and such other changes as the President or Vice President of the Council may approve upon advice of counsel to the Borough, such approval to be evidenced by such officer's execution and delivery of the Bond.

(b) The Bond shall be executed in the name and on behalf of the Borough by the true or facsimile signature of the President or Vice President of the Council and the true or facsimile official seal of the Borough shall be affixed thereunto, duly attested by the true or facsimile signature of the Secretary or Assistant Secretary of the Borough. Said officers are authorized and directed to execute and attest the Bond. The execution and delivery of the Bond shall constitute conclusive proof of the approval of the final terms and provisions of the Bond by the Borough.

SECTION 8. General Obligation Covenant.

The Borough hereby covenants to and with the registered owners from time to time of the Bond that it (i) shall include in its budget in each fiscal year the amount of the debt service for each fiscal year of the Borough in which such sums are payable; (ii) shall appropriate such amounts from its general revenues in each such fiscal year the amount required to pay debt service on the Bond for such year; and (iii) shall duly and punctually pay or cause to be paid from its sinking fund or any other of its general revenues the principal of the Bond and the interest thereon at the dates and places and in the manner stated in the Bond according to the true intent and meaning thereof. For such proper budgeting, appropriation, and payment, shall and does pledge, irrevocably, its full faith, credit and taxing power. As provided in Section 8104 of the Act, the foregoing covenant of the Borough shall be enforceable specifically.

The maximum amounts which the Borough hereby covenants to pay in each of the fiscal years that the Bond is outstanding on the basis of a fixed interest rate as specified in the Letter of Conditions are shown on Exhibit A attached hereto.

SECTION 9. Sinking Fund.

(a) The Borough hereby covenants to create and there is hereby created, pursuant to Section 8221 of the Act, a sinking fund for the Bond, to be known as “Sinking Fund – Borough of Highspire, Dauphin County, Pennsylvania, General Obligation Bond, Series of 2023” (the “Sinking Fund”) or such other name, series or designation as selected by the proper officers of the Borough from time to time which shall be established with the Paying Agent and administered in accordance with applicable provisions of the Act and this Ordinance.

(b) The Paying Agent shall be the “sinking fund depository” with respect to the Sinking Fund created pursuant to Section 9(a). The Borough covenants and agrees to deposit in the Sinking Fund, on or before each principal and interest payment date, an amount which shall be sufficient to permit the Paying Agent to pay on such payment date all principal and accrued interest becoming due with respect to the Bond. After such deposit, the Paying Agent shall, without further authorization or direction from the Borough or any of its officials, upon proper and timely presentation, execution and surrender of the Bond, with respect to the payment of principal of the Bond, or at the interest payment date, with respect to the payment of interest on the Bond, withdraw moneys from the Sinking Fund and apply such moneys to the prompt and full payment of such obligations in accordance with the terms thereof, the terms and conditions of this Ordinance and the provisions of the Act.

SECTION 10. Debt Statement and Borrowing Base Certificate.

The President or Vice President of the Council and the Secretary or Assistant Secretary of the Borough, and, if applicable, their duly qualified respective successors, are hereby authorized and directed, in the name and on behalf of the Borough: (a) to prepare, execute and certify the debt statement and borrowing base certificate required by the Act; (b) to prepare, execute and file with the Department, as required by Section 8111 of the Act, a duly attested copy of this Ordinance, with proofs of proper publication, the accepted Letter of Conditions of the Government and a complete and accurate transcript of the proceedings relating

to the incurring of the debt to be evidenced by the Bond, including the debt statement and borrowing base certificate; (c) to pay or to cause to be paid to the Department all proper filing fees required by the Act in connection with the foregoing; (d) to pay or cause to be paid from proceeds of the Bond or otherwise, all costs and expenses incurred by the Borough in connection with the issuance of the Bond; (e) to advertise the enactment of this Ordinance, as required by the Act; and (f) to take any and all other action, and to execute and deliver any and all documents and other instruments, required or permitted by the Act or by the Letter of Conditions, or which they, in their sole discretion, may deem necessary, proper or desirable to effect the issuance of the Bond, to the extent not inconsistent with this Ordinance or applicable law.

SECTION 11. Compliance with Debt Act.

It is hereby declared that the debt to be evidenced by the Bond, together with all other indebtedness of the Borough, is not in excess of any applicable limitation imposed by the Act upon the incurring of debt by the Borough.

SECTION 12. Delivery of the Bond.

The proper officers of the Borough are hereby authorized and directed to deliver the Bond to the Government, upon due registration thereof as provided for herein, upon receipt of full and proper payment of the purchase price therefor, provided, however, that such delivery shall be effected only after the Department has certified its approval pursuant to Section 8204 of the Act.

SECTION 13. Internal Revenue Code Covenants.

(a) The Borough covenants to and with the registered owner of the Bond that it will make no use of the proceeds of such issue or do or suffer any other action which, if such use or action had been reasonably expected on the date of issue of such Bond, would cause such Bond to be an “arbitrage bond” or a “private activity bond” as those terms are defined in Section 148 and Section 141 of the Code and the applicable regulations thereunder. The Borough further covenants that it will comply with the requirements of such Section 148 and Section 141 and with the regulations thereunder throughout the term of this issue. In addition, the President or Vice President of the Council, being the official(s) responsible for issuing the Bond, attested by the Secretary or Assistant Secretary of the Borough, are hereby authorized and directed to execute and deliver, in the name and on behalf of the Borough, any and all documents or other instruments which Bond Counsel may reasonably request in connection with the providing of its opinion that the Bond is not an “arbitrage bond” or a “private activity bond” within the meaning of Section 148 and Section 141 of the Code and the regulations promulgated thereunder, including, without limitation, a certificate dated the date of issuance and delivery of the Bond, which certificate shall set forth the reasonable expectations of the Borough as to the amount and use of the proceeds of the Bond.

(b) In accordance with the provisions of Section 265(b) of the Internal Revenue Code of 1986, as amended (the “Code”), the Borough hereby finds, determines and designates the Bond as a “qualified tax-exempt obligation” as defined in Section 265(b)(3)(B) of the Code, for the purposes of such Section 265(b) of the Code. The Borough determines that it

and all entities with which it is d under Section 265(b)(3)(E) of the Code have not issued, and do not reasonably expect to issue, tax-exempt obligations which, in the aggregate, exceed or will exceed Ten Million Dollars (\$10,000,000) during the calendar year 2023. The Borough also determines that it will not engage in any action or inaction which will or may cause the Bond to fail or cease to constitute “qualified tax-exempt obligations” under Section 265(b)(3) of the Code.

SECTION 14. Appointment of Bond Counsel.

The Borough hereby appoints and engages Stevens & Lee, P.C., to act as Bond Counsel to the Borough in connection with the issuance of the Bond and to facilitate the intent of this Ordinance and the President or Vice President of Council are each hereby authorized and directed to execute an engagement letter with such counsel.

SECTION 15. Reimbursement.

The Borough reasonably expects to reimburse itself for original Expenditures to be paid by the Borough from general funds of the Borough in connection with the Project with the proceeds of the Bond.

This Ordinance constitutes a declaration of official intent intended to comply with the requirements of Section 1.150-2(e) of the United States Treasury Regulations, as amended.

The amount of debt expected to be issued to finance the Project is Eighty-Eight Thousand Six Hundred Dollars (\$88,600).

The Expenditures are or will be “capital expenditures” as defined in Treasury Regulation Section 1.150-2(d)(3).

No reimbursement allocation will employ an “abusive arbitrage device” under Treasury Regulations Section 1.148-10 to avoid the arbitrage restrictions or to avoid the restrictions under Sections 142 through 147 of the Code. The proceeds of the Bond used to reimburse the Borough for costs of the Project, or funds corresponding to such amounts, will not be used, within one year after the reimbursement allocation, in a manner that results in the creation of “replacement proceeds,” including “sinking funds,” “pledged funds,” or funds subject to a “negative pledge” (as such terms are defined in Treasury Regulations Section 1.148-1) of the Bond or another issue of debt obligations of the Borough, other than amounts deposited into a “bona fide debt service fund” (as defined in Treasury Regulations Section 1.148-1).

All reimbursement allocations will occur not later than eighteen (18) months after the later of: (i) the date the expenditure from a source other than the Bond is paid, or (ii) the date the Project is “placed in service” (within the meaning of Treasury Regulations Section 1.150-2) or abandoned, but in no event more than three (3) years after the expenditure is paid.

SECTION 16. Advertising.

The action of the officers of the Borough in advertising a summary of this Ordinance, as required by law, is ratified and confirmed. The officers of the Borough, or any of

them, are authorized and directed to advertise a notice of enactment of this Ordinance in a newspaper of general circulation in the Borough within 15 days after final enactment. The Secretary of the Borough is hereby directed to make a copy of this Ordinance available for inspection by any citizen during normal office hours.

SECTION 17. Expenses. All expenses incurred in connection with issuance of the Bond shall be paid out of the proceeds derived from the issuance of the Bond and the President or Vice President of the Council is authorized to approve requests for payment of such expenses and to pay such expenses.

SECTION 18. Mandatory Provisions of Act.

This Ordinance is enacted pursuant to the Act and the laws and the Constitution of the Commonwealth of Pennsylvania, and the Borough hereby determines and declares that each and every matter and thing provided for herein is necessary and desirable to carry out and effect the public purposes of the Borough in accordance with such laws. All of the mandatory provisions of the Act shall apply hereunder whether or not explicitly stated herein and are specifically incorporated herein by reference.

SECTION 19. General Authorization.

The proper officers of the Borough are hereby authorized to execute and deliver such other documents and to take such other action as may be necessary or proper to effect the completion of the financing or the intent and purposes of this Ordinance.

SECTION 20. Invalidity.

In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of the Borough that the remainder of this Ordinance shall remain in full force and effect.

SECTION 21. Repeal of Inconsistent Ordinances.

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

SECTION 22. Effectiveness of Ordinance.

This Ordinance shall be effective in accordance with Section 8003 of the Act.

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DULY ENACTED, THIS 16th DAY OF MAY, 2023, BY THE COUNCIL OF THE BOROUGH OF HIGHSPIRE, DAUPHIN COUNTY, PENNSYLVANIA, IN LAWFUL SESSION DULY ASSEMBLED.

BOROUGH OF HIGHSPIRE,
Dauphin County, Pennsylvania

By: _____
Michael J. Anderson, President

(SEAL)

Attest:

Mark L. Stonbraker, Secretary

APPROVED:

Von E. Hess, Mayor

EXHIBIT A

Amortization Schedule

EXHIBIT B

Form of Bond

EXHIBIT C

Letter of Conditions