

ORDINANCE NO. 9 2021  
OF THE  
BOROUGH OF MOOSIC

AMENDING ORDINANCE 14 OF 2019 WHICH IS AN ORDINANCE  
AUTHORIZING THE ISSUANCE OF A ONE MILLION FIVE HUNDRED  
THOUAND DOLLARS MAXIMUM 2019 NOTE; AMENDING SAID ORDINANCE  
TO EXTEND THE MATURITY DATE TO DECEMBER 31,2027: AMENDING  
THE REPAYMENT TERMS OF INTEREST TO BE PAID ANNUALY ON MAY  
1<sup>ST</sup> OF EACH YEAR AND AMENDING THE START OF PRINCIPAL PAYMENT  
TO DECEMBER 10, 2023: ACKNOWLEDGING THE AWARDING OF THE  
NOTE TO FIDELITY DEPOSIT & DISCOUNT BANK; DETERMINING THE  
FORM AND TERMS OF SUCH NOTE; ESTABLISHING THE DEBT AS NON-  
ELECTORAL; PROVIDING FOR THE EXECUTION AND AUTHENTICATION  
OF THE NOTE; ESTABLISHING A USEFUL LIFE OF THE PROJECT;  
ESTABLISHING A SINKING FUND AND DIRECTING PAYMENTS THERETO  
IN RESPECT OF SUCH NOTE FROM TAX AND OTHER REVENUES;  
PROVIDING SAID ORDINANCE TO BE A CONTRACT WITH THE NOTE  
HOLDER; PROVIDING CERTAIN FEDERAL TAX COVENANTS;  
AUTHORIZING FILING OF CERTAIN DOCUMENTS; AND AUTHORIZING  
ANY OTHER INCIDENTAL ACTION; ENSURING THAT THE OBLIGATIONS  
IS A QUALIFIED TAX EXEMPT OBLIGATION; PROVIDING A  
SEVERABILITY CLAUSE; PROVIDING FOR REPEALING INCONSISTENT  
ORDINANCES AND PROVIDING AN EFFECTIVE DATE AND RESTATING  
THAT ALL TERMS UNCHANGED BY THIS AMENDMENT SHALL REMAIN IN

**FULL FORCE AND EFFECT.**

WHEREAS, the Borough of Moosic (the "Borough") is a duly organized political subdivision; and

WHEREAS, the on September 20, 2019 the Borough authorized the borrowing the sum of \$1,500,000.00 for the purpose of (1) planning, designing, constructing, renovating and improving roads, all in the Borough of Moosic, Pennsylvania; (2) additional capital projects as approved by the Borough; and (3) paying for the cost of issuance of the hereinafter-defined Note(the "Project");

WHEREAS, on September 23, 2019 the Borough of Moosic received approval by the Department of Economic and Community Development to borrow the sum of \$1,500,000 from Fidelity Deposit & Discount Bank (the "Bank")through a line of credit for the Project; and

WHEREAS, due to receiving only one high bid for the Project the Borough elected to reject the bid and rebid in 2020 and as a result the delay affected certain of the time requirements of the Loan Agreement; and

WHEREAS the Bank and the Borough wish to amend the Loan Agreement to reflect the changes in certain dates under the Loan Agreement including the maturity date.

**NOW THEREFORE, BE IT ENACTED AND ORDAINED AND IT IS HEREBY ENACTED AND ORDAINED, by the Council of the Borough of Moosic, Lackawanna County, Pennsylvania, that:**

**Section 1. Re-Authorization of the Project and Incurrence of Indebtedness.** The Council of the Borough of Moosic hereby reauthorizes and approves the Project and hereby determines it to be in the best interests of the Borough to incur non-electoral indebtedness pursuant to the Local Government Unit Debt Act (the "Act") for the purposes of providing funds for and toward the cost of the Project, including the payment and expenses of the financing and to pay costs of issuance.

**Section 2. Amendment to Ordinance 14, of 2019 and approval of amendments of Notes.** That the Council of the Borough of Moosic hereby authorizes the following amendments to the Borough of Moosic General Obligation Note Series of 2019 (the "Note") of the Borough as approved by Ordinance 14, 2019:

a. The maturity date of the Loan is extended to December 31, 2027.

b. The repayment of interest dated is amended to May 1<sup>st</sup> of each year.

c. The date to begin payment of principal is amended to December 10, 2023 and each year thereafter on December 10.

**Section 3. Authorization Of Issuance of Notes.** That the principal amount of the General Obligation Note Series of 2019 (the "Note") of the Borough approved was issued in an amount not to exceed \$1,500,000.00 same to be issued for the forgoing purposes and same to be incurred as nonelectoral debt.

**Section 4. Type of Note.** The Note, is a general obligation note.

**Section 5. Type of Indebtedness.** The indebtedness authorized by this Ordinance is non-electoral debt.

**Section 6. Execution and Authentication of Notes.** The document reflecting the amendments to Note shall be executed by the President or Vice President of the Borough and the Secretary of the Borough and each such execution may be by facsimile signature. If any officer whose signature appears on the Note shall cease to hold such office before the actual delivery date of the Note, such signature shall nevertheless be valid and

sufficient for all purposes as if such person had remained in such office until the actual delivery date of the Notes.

**Section 7. Form of Note** The Note shall be substantially in the following form, such insertions or variations are as appropriate:

THE COUNCIL OF THE BOROUGH OF MOOSIC

2019 NOTE

The Council of the Borough of Moosic (the "Local Government Unit"), Lackawanna County, Pennsylvania, for value received, hereby promises to pay on or before December 10, 2023 \_\_\_\_\_, at the office of the Moosic Borough \_\_\_\_\_. located at Moosic, Pennsylvania, the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00) in lawful money of the United States of America, with interest thereon from the date hereof payable on or before May 1<sup>st</sup> of each year \_\_\_\_\_ at the rate of (3.94%) per annum with no further obligation on the part of the Council of the Borough of Moosic.

This Note has been duly authorized for issuance by the Local Government Unit pursuant to the Local Government Unit Debt Act, Act No. 185 of the 1972 General Assembly of the Commonwealth of Pennsylvania, approved July 12, 1972, and by a Ordinance (the "Ordinance") of the Local Government Unit adopted . This Note is payable from, and equally and ratably with other such Notes, is secured by the pledge of, and a first lien and

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charge on, the taxes and revenues of the Local Government Unit to be received between the first day of the month next following the date hereof, and the date of maturity stated above. From such taxes and revenues there shall be deposited with the Bank, as sinking fund depository pursuant to the Local Government Unit Debt Act, the amounts specified in the Ordinance.

This Note is subject to prepayment in whole or in part at the option of the Local Government Unit at any time and from time to time.

IN WITNESS WHEREOF, the Local Government Unit has caused this Note to be duly signed this 9 day of February \_\_\_\_\_2021.

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BY: \_\_\_\_\_

**ATTEST: \_\_\_\_\_ Council President**



**Borough Secretary**

~~ATTEST: \_\_\_\_\_ THE COUNCIL OF THE BOROUGH OF MOOSIC~~

(SEAL)

**Section 8. Sinking Fund Appointment** The Borough hereby establishes a sinking fund and designates Fidelity Deposit & Discount Bank (the "Bank") as a sinking fund depository pursuant to the Local Government Unit Debt Act.

**Section 9. Useful Life.** The realistic useful life of the Project financed by the 2019 Notes, was determined to be in excess of 10 years.

**Section 10. Qualified Tax Exempt Obligation.** In order to ensure that the Bank and all subsequent holders of the Note, if they are financial institutions, will not be subject to certain provisions of the Code as a result of acquiring and carrying the Note, the Issuer hereby designates the Note as a "qualified tax-exempt obligation", within the meaning of paragraph (b) (3) (b) of Section 265 of the Code, and the Issuer hereby covenants with the holders of the Note that it will take such steps as may be necessary to cause the Note to continue to be an obligation described in such paragraph during the period in which the Note is outstanding. The Issuer further agrees that it will take such steps as may be necessary to ensure compliance with any similar provision contained in any other Federal income tax legislation enacted while the Note is outstanding. The Issuer also represents that it has not, and covenants that it will not, without the prior written consent of the Bank or any subsequent holder of the Note, designate, or permit any entities subordinate to it to designate obligations other than the Note as "qualified tax-exempt obligations" which, when combined with the Note, will result in more than \$10,000,000 of obligations designated by the Issuer as "qualified tax-exempt obligations" having been issued during this calendar year.

**Section 11. Contract With Sinking Fund Depository.** The Borough does hereby designate, subject to its acceptance, Fidelity Deposit & Discount Bank, Dunmore, Pennsylvania, a banking institution having corporate trust offices in the Borough of Dunmore, Pennsylvania, as the "**Sinking Fund Depository**". Appropriate officers of the Borough are authorized and directed to execute such contracts as shall be necessary to effectuate the intent of this Section 11.

**Section 12. Creation of and Deposits in Sinking Fund.**

There is hereby established a sinking fund to be known as "Sinking Fund-Borough of Moosic, General Obligation Note, which shall be held by the Sinking Fund Depository hereinafter appointed and into said Sinking Fund there shall be paid all moneys necessary to pay the debt service on the Note when and as the same are collected, and said Sinking Fund shall be applied exclusively to the payment of the principal of and the interest on the Note as covenanted and to no other purpose whatsoever, except as may be authorized by law, until the same shall have been fully paid.

In each of the following Borough calendar years, commencing January 1, 2019, the following amounts shall be pledged to pay the debt service on the Note, and such amounts are annually hereby appropriated to the said Sinking Fund for the payment thereof:

<u>Calender Year</u>	<u>Amount</u>
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See attached amortization schedule

The Borough shall deposit in the said Sinking fund not later than two business days next preceding each date when interest and principal is to become due on the Note a sufficient part of each aforementioned appropriation so that on each such payment date the said Sinking Fund will contain together with any other available funds therein, sufficient money to pay in full interest, if any, and principal, if any, then due on the Note. The said Sinking Fund shall be secured and invested by the Sinking Fund Depository in securities or deposits authorized by the Act upon direction of the Borough, all as provided in the Act. Said deposits and securities shall be in the name of the Borough but subject to withdrawal or collection only by the Sinking Fund Depository, and said deposits and securities together with the interest thereon shall be a part of the said Sinking Fund. The Sinking Fund Depository and Paying Agent without further action of the Borough is hereby authorized and directed to pay from the said Sinking Fund the principal of and interest on, if any, the Note when due and payable.

Upon receipt of the proceeds of the sale of the Note, the Sinking Fund Depository is further requested and directed to deposit same in a settlement account from which the Agent, pursuant to written directions of the Borough signed by the

President or Vice President of the Council of the Borough of Moosic, shall pay the costs of the financing; and shall pay to the Borough the amount borrowed for the Project.

**Section 13. Award and Sale of Note.** The Borough by ordinance No. 14 of 2019 did accept the proposal of Fidelity Deposit & Discount Bank, Dunmore, Pennsylvania for purchase of the Note, which Note and awarded to Fidelity Deposit & Discount Bank, in accordance with terms and conditions of the Note Purchase Agreement, at a dollar price of \$1,500,000, the Bank having submitted their proposal in accordance with provisions of the Act. A copy of such is attached hereto. The Borough also excepts the amendments to the Note. Appropriate officers of the Borough are authorized and directed to execute the Note Purchase Agreement.

**Section 14. Covenant To Pay Debt Service - Pledge of Taxing Power.** The Borough hereby covenants with the owner of the Note outstanding pursuant to this Ordinance as follows: that the Borough will include in its budget for the calendar year ending December 31, 2019 and in its budgets for each calendar year thereafter, the amount of any debt service on the Note issued hereunder which will be payable in each such calendar year so long as any of the Note shall remain outstanding; that the Borough shall appropriate from its general revenues such amounts to the payment of such debt service; that the Borough shall duly and punctually pay or cause to be paid the principal of every 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 budgeting, appropriation and payment the Borough hereby pledges its full faith, credit and taxing power. The covenant contained in this Section 13 shall be specifically enforceable.

**Section 15. No Taxes Assumed.** The Borough shall not assume the payment of any tax or taxes in consideration of the purchase of the Notes. However, the Borough shall assume and agree to pay those taxes, if any, described in Section 15 hereof.

**Section 16. Federal Tax Covenants.** The Borough hereby covenants not to take or omit to take any action so as to cause interest on the Note to be no longer excluded from gross income for the purposes of federal income taxation and to otherwise comply with the requirements of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (**the "Code"**),



and all applicable regulations promulgated with respect thereto, throughout the term of the Note. The Borough further covenants that it will make no investments or other use of the proceeds of the Notes which would cause the Note to be "**arbitrage bonds**" as defined in Section 148 of the Code. The Borough further covenants to comply with the rebate requirements (including the prohibited payment provisions) contained in Section 148(f) of the Code and any regulations promulgated thereunder, to the extent applicable, and to pay any interest or penalty imposed by the United States for failure to comply with said rebate requirements, to the extent applicable.

The Borough hereby represents and warrants, after due investigation and to the best of its knowledge that: (i) the Borough is a governmental unit with general taxing powers; (ii) the Note is not "**private activity bonds**" within the meaning of Section 141 of the Code; and (iii) ninety-five (95%) percent or more of the net proceeds of the Note are to be used for local governmental activities of the Borough. The Borough hereby authorizes the proper officers of the Borough to execute a certificate to that effect at the time of the closing.

**Section 17. Application of Note Proceeds.** Upon receipt of the purchase price for the Note, including interest thereon accrued to the date of delivery, if any, the proper officers of the Borough shall deposit the same in one or more bank accounts of the Borough and apply such proceeds to the payment of the costs of the Project, including the costs and expenses of issuing the Note, as and when due and payable.

**Section 18. Official Acts Authorized.** The President of the Council of the Borough of Moosic, and the Borough Secretary, or the Vice President or Assistant Secretary in the absence of the President or Secretary, or a duly appointed successor, as the case may be, are hereby authorized and directed, without limitation, as appropriate: (a) to prepare, to certify and to file the debt statement required by Section 410 of the Act; (b) to prepare and file, as required with the Department of Economic and Community Development (**the "Department"**) of the Commonwealth, statements required by Section 204 or 206 of the Act, which are necessary to qualify certain non-electoral and lease rental debt of the Borough, and, if necessary, the debt which will be evidenced by the Notes to be issued hereunder, as subsidized or self-liquidated debt; (c) to prepare, execute and to file the application with the Department, together with a complete and accurate transcript of the proceedings relating to

the incurring of debt, of which debt the Note, upon issue, will be evidenced, as required by Section 411 of the Act; (d) to prepare and file originally and thereafter, as required, with the Department, appropriate statement required by Section 206 of the Act which are necessary to qualify all or a portion of non-electoral debt of the Borough, which is subject to exclusion as self-liquidating debt, for exclusion from the appropriate debt limit of the Borough as self-liquidating debt; (e) to pay or cause to be paid to the Department all filing fees required by the Act in connection with the foregoing; (f) to contract with Fidelity Deposit & Discount Bank for its services as Sinking Fund Depository and as Paying Agent in connection with the Notes; and (g) to take other required, necessary and/or appropriate action.

**Section 19. Further Action.** The proper officers of the Borough are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, publish all notices and otherwise comply with the provisions of this Ordinance and the Act in the name and on behalf of the Borough.

**Section 20. Act Applicable To Note.** This Ordinance is adopted pursuant to, and the Note issued hereunder shall be subject to, the provisions of the Act and all of the mandatory provisions thereof shall apply hereunder whether or not explicitly stated herein.

**Section 21. Contract With Noteholders.** This Ordinance constituted a contract with the registered owners of the Notes from time to time outstanding hereunder and shall be enforceable in accordance with the provisions of the laws of the Commonwealth of Pennsylvania.

**Section 22. Severability.** In case any one or more of the provisions contained in this Ordinance or in any Note issued pursuant hereto 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 Ordinance or of said Notes and this Ordinance or said Note shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

**Section 23. Repealer.** All Ordinances and parts of Ordinances heretofore adopted to the extent that the same are

inconsistent herewith are hereby repealed. Further the provisions of ordinance No. 14 of 2019 are unaffected by this ordinance except where amended.

**Section 24. Effective Date.** This Ordinance shall take effect on the earliest date permitted by the Act.

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Borough of Moosic  
Lackawanna County, Pennsylvania



BY:

**ATTEST:**

**Council President**



**Borough Secretary**

**Approved this 9 day of February 2021**



**Mayor**



**AMORTIZATION  
SCHEDULE**

# **PROPOSAL**