

**BOROUGH OF PENNSBURG
MONTGOMERY COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2-2023

AN ORDINANCE AUTHORIZING THE INCURRENCE OF NONELECTORAL DEBT OF THE BOROUGH OF PENNSBURG, MONTGOMERY COUNTY, PENNSYLVANIA, BY THE ISSUANCE OF UP TO \$1,950,900 GENERAL OBLIGATION NOTE, SERIES OF 2023 (THE "NOTE"); BRIEFLY DESCRIBING THE PURPOSE FOR WHICH THE DEBT IS TO BE INCURRED; DETERMINING TO SELL THE NOTE AT A PRIVATE NEGOTIATED SALE; APPROVING THE FORM OF THE NOTE; FIXING THE DATE, INTEREST AND MATURITY OF THE NOTE; MAKING A COVENANT FOR THE PAYMENT OF THE DEBT SERVICE ON THE NOTE; PROVIDING FOR THE FILING OF REQUIRED DOCUMENTS; PROVIDING FOR THE APPOINTMENT OF A SINKING FUND DEPOSITARY FOR THE NOTE; AND AUTHORIZING EXECUTION, SALE AND DELIVERY THEREOF, AND OTHER NECESSARY ACTION.

WHEREAS, the Borough Council (the "Borough Council") of the Borough of Pennsburg (the "Borough") being the governing body of the Borough has invited QNB Bank, Quakertown, Pennsylvania (the "Bank"), to present a proposal for the purchase at private sale of its General Obligation Note, Series of 2023, in the initial principal amount of \$1,950,900 (the "Note"); and

WHEREAS, the Bank has presented a proposal for the purchase of the Note (the "Commitment Letter") as hereinafter stated and the Borough Council desires to accept said proposal; and

WHEREAS, the Borough intends to use the proceeds of the Note to provide funds for the (i) engineering, design, rehabilitation and construction of improvements to the Borough's Borough Hall, (ii) engineering, design, demolition, renovation and construction of improvements to the Borough's Public Works Garage, (iii) engineering, design and construction of improvements to the Borough's Pole Building, (iv) such other capital projects of the Borough as may be approved from time to time, and (v) costs and expenses in connection with the issuance of the Note (subsections (i) through (v) collectively the "2023 Project"); and

WHEREAS, the Borough has obtained realistic cost estimates through actual bids, option agreements or professional estimates from registered architects, professional engineers, financial advisors or other persons qualified by experience to make such estimates, and has determined that the costs of such 2023 Project, as such costs are defined in Section 8007 of the Act (as hereinafter defined), will be approximately \$1,950,900 which estimates have been presented to and approved by the Borough Council concurrently with this Ordinance; and

WHEREAS, the estimated completion date of the 2023 Project is December 31, 2024; and

WHEREAS, the Borough has been informed that the United States Department of Agriculture (“USDA”) will provide permanent financing for the 2023 Project through a Community Facilities Direct Loan as set forth in a Letter of Conditions from the USDA (the “USDA Loan”); and

WHEREAS, under the terms of the USDA Loan, the Borough must pay for and finance the costs of the 2023 Project and the USDA will provide take-out financing to the Borough after construction is completed; and

WHEREAS, the Note is intended to provide interim financing to the Borough for the 2023 Project, with such Note to be paid off with the proceeds from the USDA Loan; and

WHEREAS, the Borough desires to authorize the issuance of the Note for the purposes recited herein and other necessary action; and

WHEREAS, the proposed increase of debt, together with its other indebtedness presently outstanding, will not cause the limitations of the Borough's debt incurring power, pursuant to constitutional and statutory authority, to be exceeded.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Borough Council of Borough Pennsburg, Montgomery County, Pennsylvania, as follows:

Section 1. The Borough Council hereby authorizes the incurrence of indebtedness by the Borough, pursuant to the Local Government Unit Debt Act, 53 Pa. C.S. §8001 et. seq., as amended (the “Act”) in the aggregate principal amount of up to \$1,950,900 for the purpose of providing funds for and toward the costs of the 2023 Project. A listing of the component parts of the 2023 Project and their estimated costs has been presented to Borough Council.

Section 2. It is hereby stated that a realistic estimated useful lives of the component parts of the 2023 Project are as follows:

- a. Construction of improvements to the Borough's Borough Hall is in excess of 40 years.
- b. Construction of improvements to the Borough's Public Works Garage is in excess of 40 years.
- c. Construction of improvements to the Borough's Pole Building is in excess of 40 years.

It is hereby certified that an aggregate principal amount of the Note at least equal to the realistic estimated cost of the 2023 Project shall mature prior to the end of the useful life of the 2023 Project.

Section 3. The Borough shall issue, pursuant to this Ordinance, the Note, a General Obligation Note, Series of 2023, in the aggregate principal amount of up to \$1,950,900, to finance the indebtedness authorized above.

Section 4. It is hereby stated that the Borough Council has discussed the merits of alternative methods of selling the Borough's Note and has determined that a private, negotiated sale of the Note is in the best interest of the Borough.

Section 5. The indebtedness authorized by this Ordinance is non-electoral debt.

Section 6. Closing on the Note and the transactions contemplated thereby is anticipated to occur on or about September 30, 2023. The Note shall be a draw-down note and the Borough shall have the right to draw on the Note, from time to time, for the payment of costs of the 2023 Project. The Note shall bear interest on amounts drawn and unpaid at the Bank's "Bank Qualified Tax Exempt Rate" in effect as of the date of Closing, but in any event at a rate not to exceed 5.0% per annum. The Note shall mature on or about September 30, 2025. Principal is payable upon the earlier of maturity, upon receipt of proceeds of the USDA Loan, or at any time prior during the term of the Note. Interest is payable monthly on the last day of each month beginning on or about October 31, 2023. The Note shall be prepayable by the Borough in whole or in part at any time without premium or penalty.

The maximum annual debt service is set forth on the schedule attached hereto as Exhibit A. The actual debt service payable by the Borough may be less than shown, depending on the amount and timing of the draws on said Note and the interest charged in accordance with the Note. Principal significantly in excess of the costs of said portions of the 2023 Project will mature on the Note before the expiration of the estimated useful lives of said portions of the 2023 Project.

Section 7. The Note is hereby declared to be a general obligation of the Borough. The Borough hereby covenants that the Borough 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 Borough, as well as the Borough's revenues, is hereby irrevocably pledged. The covenants set forth in this paragraph are specifically enforceable.

Section 8. The form of the Note shall be substantially as set forth on Exhibit B attached hereto and made a part hereof with such modifications as the officers executing such Note shall approve, their execution of said Note to be conclusive evidence of such approval.

Section 9. The Note shall be executed in the name and under the corporate seal of the Borough by the President (or Vice President) of Borough Council and attested to by the

Secretary of the Borough. The Borough Secretary is hereby authorized and directed to deliver said Note to the Bank, and receive payment therefor on behalf of the Borough. The President (or Vice President) of Borough Council and Secretary of the Borough, or any one of such officers alone, are authorized and directed to prepare, verify and file the debt statement required by Section 8110 of the Act, and to take other actions, and execute all such other documents as may be necessary or appropriate to effect the issuance and sale of the Note in accordance with the Commitment Letter, this Ordinance, and the Act, including, if necessary or desirable, any statements required to qualify any portion of the debt from the appropriate debt limit as self-liquidating or subsidized debt, and to designate the Note as "qualified tax exempt obligations" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986 and prepare and execute such documents as may be necessary to accomplish such designation.

Section 10. The Borough covenants that there shall be established and there is hereby established a Sinking Fund (the "Sinking Fund") for the payment of the Note hereby authorized, said fund to be known as "Sinking Fund - Borough of Pennsburg, General Obligation Note, Series of 2023" with the bank or bank and trust company selected as hereinafter set forth as sinking fund depository. The Borough Secretary shall pay into the appropriate Sinking Fund, which shall be maintained until such Note are paid in full, the amounts required pursuant to the covenant contained in Section 7 hereof, and to be provided for in the appropriation to be made by the Borough for the purpose of making payments of principal and interest due on the Note. The Paying Agent is hereby authorized and directed to pay from the Sinking Fund the principal of, and interest on, the Note as the same become due and payable in accordance with the terms thereof and the Borough hereby covenants that such moneys, to the extent required, will be applied to such purpose.

Section 11. The Bank is hereby appointed Paying Agent and Sinking Fund Depository for the Note, and the President of the Borough Council and Secretary of the Borough are hereby authorized to contract with a bank or bank and trust company for its services as sinking fund depository and paying agent for the Note if such additional services shall be necessary or advisable.

Section 12. The Note in the aggregate principal amount of \$1,950,900, as herein described is hereby awarded and sold, by private sale, to the Bank. at the price and in accordance with the other terms and conditions contained in the Commitment Letter which is hereby accepted. A copy of said Commitment Letter dated August 3, 2023, from the Bank, is attached hereto as Exhibit C.

Such award and sale is conditional, however, upon the following: (a) all provisions of this Ordinance becoming effective; (b) the approval of the Department of Community & Economic Development of the Commonwealth of Pennsylvania for the issuance of the Note; (c) and the approval of any other governmental agency, the approval of which is determined to be necessary by Note Counsel or the Borough's Solicitor.

Section 13. The Borough will not assume the payment of any taxes in consideration of the purchase of the Note.

Section 14. The Borough covenants with the Bank, and subsequent registered owners of the Note, that no part of the proceeds of the Note shall at any time be used directly or indirectly to acquire securities or obligations, the acquisition of which would cause the Note to be "arbitrage bonds" as defined in subsection (a) of Section 148 of the Internal Revenue Code of 1986, as amended, or under any similar statutory provisions, or any currently enacted rule or regulation promulgated thereunder or under former Section 103(c) of the Internal Revenue Code of 1954 with the effect that interest on the Note would no longer be exempt from federal income taxes. The Borough further covenants that it will promptly and timely comply with the reporting and filing requirements of Section 149(e) of the Internal Revenue Code of 1986, and regulations issued thereunder.

Section 15. The President or Vice President of the Borough Council or either one of them is hereby authorized to enter into an agreement with the Bank providing for the confirmation and acceptance of the appointments herein made as Paying Agent and Sinking Fund Depository for the Note, for its compensation in such capacities, for the administration of the Sinking Fund and for such other matters as counsel may recommend be included in the Agreement and as the officers may approve by their execution of the Agreement. The above officials are further authorized to contract with the Bank or one or more other banks or bank and trust companies, to the extent deemed necessary or advisable, for additional services as trustee, fiscal agent, sinking fund depository or paying agent.

Section 16. The Borough covenants that it has not, and will not, without prior written consent of the Bank, designate obligations other than the Note as "qualified tax exempt obligations" under Section 265(b)(3)(B) of the Internal Revenue Code of 1986, which obligations, when combined with the Note, would result in more than \$10,000,000 of obligations designated by the Borough as "qualified tax-exempt obligations" having been issued during the 2023 calendar year.

Section 17. The action of the Borough Secretary in advertising a summary of this Ordinance as required by law in the *Times Herald* on July 20, 2023, is ratified and confirmed and the Borough Secretary is directed to advertise in the *Times Herald* within 15 days following the day of final enactment, a notice of the enactment of this Ordinance.

Section 18. In case any one or more of the provisions contained in this Ordinance or in the 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 Note, 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 19. The Borough hereby appoints Barley Snyder LLP, Reading, Pennsylvania, as Note Counsel for the Note.

Section 20. This Ordinance is enacted pursuant to, and the Note issued hereunder shall be issued subject to, the provisions of the Act and all of the mandatory provisions thereof shall apply and be deemed incorporated herein by reference whether or not explicitly stated herein.

Section 21. This Ordinance constitutes a contract with the Bank or subsequent registered owners of the Note and shall be enforceable in accordance with the provisions of the laws of the Commonwealth of Pennsylvania.

Section 22. If 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 the and this Ordinance and the Note shall be construed and enforced as if such invalid, illegal or unenforceable provision had never been contained therein.

Section 23. All ordinances or parts of ordinances not in accord with this Ordinance are hereby repealed insofar as they conflict herewith.

Section 24. The appropriate officers of the Borough are authorized and directed to execute and, if appropriate, file and deliver any and all documents and take any action necessary or appropriate for the consummation of the transactions contemplated by this Ordinance.

[Signature Page Follows]

THIS ORDINANCE enacted the 8th day of August, 2023.

BOROUGH OF PENNSBURG

By: Miane K. Stever
President of Borough Council

Attest: Don M. Kelly
Secretary

(SEAL)

The foregoing Ordinance adopted by the Borough Council of the Borough of Pennsburg is hereby approved this 8th day of August, 2023.

Charles Slaggs
Mayor of the Borough of Pennsburg