

11.9.15

ORDINANCE NO. 626
OF THE BOARD OF SUPERVISORS
OF THE TOWNSHIP OF LOWER PROVIDENCE,
MONTGOMERY COUNTY, PENNSYLVANIA

AN ORDINANCE THAT APPROVES CERTAIN CAPITAL PROJECTS; AUTHORIZES A BORROWING BY THE TOWNSHIP OF LOWER PROVIDENCE, MONTGOMERY COUNTY, PENNSYLVANIA (THE "TOWNSHIP") FROM THE COUNTY OF MONTGOMERY, PENNSYLVANIA (THE "COUNTY") AND THE ISSUANCE OF A PROMISSORY NOTE, 2015 SERIES (THE "2015 NOTE") IN THE MAXIMUM PRINCIPAL AMOUNT OF ONE HUNDRED SEVENTY-NINE THOUSAND DOLLARS \$179,000.00; APPROVES THE SUBSTANTIAL FORM OF THE 2015 NOTE AND APPROVES THE EXECUTION OF THE 2015 NOTE AND DELIVERY OF THE 2015 NOTE TO THE COUNTY OF MONTGOMERY, PENNSYLVANIA (THE "COUNTY"); AUTHORIZES EXECUTION AND DELIVERY OF ALL OTHER NECESSARY DOCUMENTS; STATES THE AMORTIZATION SCHEDULE FOR THE 2015 NOTE; STATES THAT THE TOWNSHIP IS OBLIGATED TO MAKE PAYMENTS ON THE 2015 NOTE ONLY FROM FUNDS IF AND TO THE EXTENT APPROPRIATED FOR THE THEN CURRENT FISCAL YEAR OF THE TOWNSHIP; AUTHORIZES ANY PAYMENTS MADE ON THE 2015 NOTE TO BE MADE AS DIRECTED BY THE DELAWARE VALLEY REGIONAL FINANCE AUTHORITY WHICH HAS BEEN APPOINTED AS COLLECTION AGENT FOR THE COUNTY; AUTHORIZES ADVERTISEMENT OF ENACTMENT; AND REPEALS INCONSISTENT ORDINANCES.

WHEREAS, Township of Lower Providence, Montgomery County, Pennsylvania (the "Township") is a second class Township and a local government unit of the Commonwealth of Pennsylvania (the "Commonwealth"); and

WHEREAS, the County of Montgomery, Pennsylvania (the "County") has entered into a Bulk Purchasing Agreement with Motorola Solutions, Inc. ("Motorola") with respect to emergency radio equipment and services; and

WHEREAS, the County has made available to municipalities within the County, the ability to purchase from Motorola emergency radio equipment at a discount, and has further agreed to provide an interest-free loan (the "Loan") from funds borrowed by the County from the Delaware Valley Regional Finance Authority ("DelVal") to any municipality that desires to

purchase such emergency radio equipment through the County arranged Bulk Purchasing Agreement; and

WHEREAS, the Township desires to receive the Loan from the County and issue a Promissory Note, Series 2015 (the "2015 Note") to the County to evidence its obligations under the Loan in order to: (i) purchase certain radio equipment and services for the Township police, fire and emergency personnel; and (ii) pay of costs of issuance incurred by the Township in connection with the Bulk Purchasing Agreement and the 2015 Note (collectively, the "2015 Project"); and

WHEREAS, the payments due on the 2015 Note are subject to annual appropriation by the Township, will not constitute a debt or general obligation of the Township and will be a current expense solely payable from funds appropriated and lawfully available for such use during the then current fiscal year of the Township; and

WHEREAS, the 2015 Project will benefit the health and welfare of the residents of the Township; and

WHEREAS, the 2015 Project shall be for the benefit and use of the general public, and no private party shall have any special legal entitlement to the beneficial use of the 2015 Project, through a lease, management contract, or any other arrangement that would result in a private business use under the *Internal Revenue Code of 1986*, as amended.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF LOWER PROVIDENCE, MONTGOMERY COUNTY, PENNSYLVANIA AS FOLLOWS:

SECTION 1. APPROVAL OF THE 2015 PROJECT AND AUTHORIZATION TO ISSUE THE 2015 NOTE

The Board of Supervisors (the "Board") hereby authorizes and approves the 2015 Project. The Board hereby authorizes and approves the Loan from the County in the maximum principal amount of One Hundred Seventy-Nine Thousand Dollars \$179,000.00 as evidenced by the issuance of the 2015 Note.

SECTION 2. APPROVAL OF THE FORMS OF THE 2015 NOTE AND AUTHORIZATION TO EXECUTE AND DELIVER ALL NECESSARY DOCUMENTS

The Chairman of the Board, and the Secretary (collectively, the "Authorized Officers") are hereby authorized and directed to execute and deliver the 2015 Note, in the substantial form

attached hereto, but with such alterations, deletions and additions as the Authorized Officers may approve (such approval to be conclusively established by the execution of the 2015 Note by the Authorized Officers). The Authorized Officers also are hereby authorized and directed (i) to execute and deliver such other certificates, instruments, and agreements (including those required by DelVal or otherwise related to the 2015 Note) and (ii) to take all actions that may be necessary or beneficial to issue the 2015 Note.

SECTION 3. AMORTIZATION SCHEDULE

The indebtedness of the 2015 Note shall be a current expense subject to annual appropriation by the Township and payable solely from funds lawfully available for such use during the then current fiscal year of the Township and shall be evidenced by the 2015 Note in the maximum principal amount of One Hundred Seventy-Nine Thousand Dollars (\$179,000.00). The 2015 Note shall not bear interest. The 2015 Note shall be subject to optional redemption by the Township as set forth in the 2015 Note. The amortization schedule of the principal payments under the 2015 Note (the "Loan Principal") are shown below:

**Promissory Note, 2015 Series
Principal Amortization Schedule**

January 25, 2016	\$35,800.00
January 25, 2017	\$35,800.00
January 25, 2018	\$35,800.00
January 25, 2019	\$35,800.00
January 25, 2020	\$35,800.00

SECTION 4. CURRENT EXPENSE

Payments due on the 2015 Notes are a current expense, subject to annual appropriation by the Township, payable solely from funds lawfully available to the Township for such purpose during the then current fiscal year of the Township. The obligations of the Township to pay the Loan Principal under the 2015 Note (and any other sums due thereunder) do not constitute a lien or charge upon the funds of the Township beyond the fiscal year for which the Township has appropriated money to pay the Loan Principal (and any other sums due thereunder) and that the obligations of the Township under the 2015 Note do not constitute a debt or general obligation of the Township. Neither the full faith and credit nor the taxing power of the Township or of any

other political subdivision of the Commonwealth has been or will be pledged to the payment of the Loan Principal (and any other sums due thereunder).

SECTION 5. ACH DEBIT AUTHORIZATION

The Township hereby authorizes payments on the 2015 Note to be made by ACH Debit Authorization to Wells Fargo Bank, N.A., acting as co-trustee for DelVal, the collection agent of the County with respect to the 2015 Note. The Authorized Officers are hereby authorized and directed to execute and deliver the ACH Debit Authorization form, the IRS Form W-9 and such other certificates, instruments, and agreements as may be required for purposes of making payments on the 2015 Note.

SECTION 6. CONFLICTING ORDINANCES

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

IN WITNESS WHEREOF, we, the undersigned Authorized Officers, have hereunto set our signatures and affixed hereto the Seal of the Township of Lower Providence, Montgomery County, Pennsylvania.

Dated: Nov. 19, 2015



Name: Jason Sorgini

Title: Chairman

ATTEST:



Name:

Title: Township Secretary

11.9.15

\$179,000.00

**TOWNSHIP OF LOWER PROVIDENCE,
MONTGOMERY COUNTY, PENNSYLVANIA**

PROMISSORY NOTE, 2015 SERIES

The **TOWNSHIP OF LOWER PROVIDENCE** (the "Borrower"), existing by and under the laws of the Commonwealth of Pennsylvania, for value received, hereby acknowledges itself indebted and promises to pay to the order of the **COUNTY OF MONTGOMERY, PENNSYLVANIA**, a county of the second class, its successors and assigns (the "County"), in lawful money of the United States of America, the principal amount of **ONE HUNDRED SEVENTY-NINE THOUSAND DOLLARS (\$179,000.00)**, without interest, on the dates and in the amounts set forth on **Schedule A** attached hereto (the "Borrower Note").

This Borrower Note evidences the payment obligation of the Borrower to repay the loan (the "Loan") made by County to the Borrower on the date hereof for the purposes of: (i) purchasing certain radio equipment and services for the Borrower police, fire and emergency personnel; and (ii) paying of costs of issuance incurred by the County in making the Loan or by the Borrower in connection with this Borrower Note (collectively, the "2015 Project").

The Borrower hereby certifies that all of the proceeds of the Loan will be used solely for payment of the costs of the 2015 Project and not for any other purpose. The County shall have no obligation to provide any additional amounts to the Borrower, whether by loan or otherwise, for the costs of the 2015 Project if the proceeds of this Borrower Note are not sufficient to pay all the costs of the 2015 Project, and all such costs shall be paid by the Borrower. The Borrower shall not be entitled to any reimbursement, abatement, diminution or postponement of the repayments of the principal amount of this Borrower Note if the Borrower cannot fund all of the costs of the 2015 Project.

The amounts payable under this Borrower Note are payable in immediately available funds on or before the 25th day of January of each year, commencing January 25, 2016, at the corporate trust office of Wells Fargo Bank, N.A. (the "Trustee"), account number _____, or any other account, designated by the Delaware Valley Regional Finance Authority ("DelVal"), which the County has appointed as the collection agent for payments due to the County hereunder. The Borrower agrees to execute an authorization for Wells Fargo Bank, N.A. to use the Automated Clearing House (the "ACH") System, or any successor to the ACH System that may be used by financial institutions in the future, to collect amounts payable hereunder.

The amounts payable under this Borrower Note are payable without deduction for any tax or taxes now or hereafter levied, or assessed thereon under any present or future laws of the Commonwealth of Pennsylvania, all of which taxes the Borrower assumes and agrees to pay.

This Borrower Note is issued pursuant to an Ordinance of the Board of Supervisors of the Township of Lower Providence duly enacted on Nov. 19th, 2015.

The Borrower represents that it is a second class Township of the Commonwealth of Pennsylvania and has all requisite power and authority to own and operate its properties, to carry on its activities as now conducted and as presently proposed to be conducted, to execute and deliver this Borrower Note and to carry out and consummate the 2015 Project. The execution

and delivery of this Borrower Note and all other documents and instruments and the consummation of the 2015 Project and compliance by the Borrower with the provisions hereof, have been duly authorized, executed and delivered by the Borrower and constitute valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms.

The Borrower hereby certifies that all acts, conditions and things required by the laws of the Commonwealth of Pennsylvania to exist, to have happened or to have been performed, precedent to or in the issuance of this Borrower Note or in the creation of the obligation of which this Borrower Note is evidence, exist, have happened and have been performed in regular and due form and manner as required by law, and the Borrower is in compliance with all laws, ordinances, resolutions, governmental rules and regulations to which it is subject.

THE BORROWER AND THE COUNTY EACH ACKNOWLEDGE AND AGREE THAT PAYMENT OF THIS BORROWER NOTE IS SUBJECT TO ANNUAL APPROPRIATION OF FUNDS BY THE BORROWER FOR SUCH PURPOSE AND THAT THE BORROWER IS OBLIGATED TO MAKE PAYMENTS UNDER THIS BORROWER NOTE ONLY FROM FUNDS IF AND TO THE EXTENT APPROPRIATED FOR THE THEN CURRENT FISCAL YEAR OF THE BORROWER. THE OBLIGATION OF THE BORROWER TO MAKE PAYMENTS UNDER THIS BORROWER NOTE IS A CURRENT EXPENSE, PAYABLE SOLELY FROM FUNDS LAWFULLY AVAILABLE FOR SUCH USE DURING THE THEN CURRENT FISCAL YEAR OF THE BORROWER. THIS BORROWER NOTE AND THE OBLIGATIONS OF THE BORROWER HEREUNDER DO NOT CONSTITUTE A LIEN OR A CHARGE UPON THE FUNDS OF THE BORROWER BEYOND THE FISCAL PERIOD FOR WHICH THE BORROWER HAS APPROPRIATED MONEY TO MAKE SUCH PAYMENTS. THIS BORROWER NOTE AND THE OBLIGATIONS OF THE BORROWER HEREUNDER DO NOT AND WILL NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE BORROWER.

This Borrower Note may be prepaid, in whole or in part, on the 25th day of each month (or if not a Business Day (hereinafter defined) the next date that is a Business Day) commencing January, 2016, upon not less than thirty (30) days prior written notice (the "Prepayment Notice") to the County and DelVal at the addresses provided by such parties. The Prepayment Notice shall specify (i) the amount to be prepaid; (ii) if a partial prepayment, the maturities or installments of the Loan to which such prepayment is to be applied, which shall be in inverse order of maturities or installments; and (iii) the date of the prepayment. No prepayment shall postpone the next installments of principal becoming due under this Borrower Note. The Borrower may withdraw a Prepayment Notice at any time at no penalty. Any partial prepayment shall not operate to abate or postpone repayments otherwise becoming due.

"Business Day" shall mean any day other than (a) a Saturday or Sunday, (b) a day on which commercial banks in New York, New York, or the city or cities in which the corporate trust office of the Trustee is authorized by law or executive order to close or (c) a day on which the New York Stock Exchange is closed.

It shall constitute an "Event of Default" hereunder if the Borrower fails to make any payment due hereunder after such payment due hereunder has been appropriated for in its annual budget.

If an Event of Default shall have occurred and be continuing, the County may declare all amounts due under this Borrower Note due and payable and may pursue any and all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Borrower Note.

No remedy conferred upon or reserved to the County is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Borrower Note, or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the County to exercise any remedy reserved to it herein, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made herein.

If an Event of Default should occur and the County should incur expenses, including attorneys' fees and expenses, in connection with the enforcement of this Borrower Note or the collection of sums due hereunder, the Borrower shall reimburse the County for the expenses so incurred, upon demand.

No failure by the County to insist upon the strict performance by the Borrower of any provision hereof shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Borrower to observe or comply with any provision hereof.

No covenant or agreement contained in this Borrower Note shall be deemed to be the covenant or agreement of any officer, agent or employee of the Borrower in his or her individual capacity, and no official executing this Borrower Note shall be liable personally on this Borrower Note or be subject to any personal liability or accountability by reason of the issuance of this Borrower Note.

This Borrower Note may not be amended, modified, terminated or assigned by the Borrower without, in each case, the written consent of the County.

This Borrower Note and all matters arising hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, we, the undersigned authorized officials, have hereunto set our signatures and affixed hereto the Seal of the Township of Lower Providence, Montgomery County, Pennsylvania.

Dated: Nov 19,, 2015

Jason F. Sorgini
Name: Jason Sorgini

Title: Chairman

ATTEST:

Richard Cestari

Name:

Title: Township Secretary

Schedule A

**Township of Lower Providence
Promissory Note, 2015 Series
Principal Amortization Schedule**

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