

**ORDINANCE NO. 627
OF THE BOARD OF SUPERVISORS
OF THE TOWNSHIP OF LOWER PROVIDENCE,
MONTGOMERY COUNTY, PENNSYLVANIA**

AN ORDINANCE THAT AUTHORIZES THE INCURRENCE OF LEASE RENTAL DEBT BY THE TOWNSHIP OF LOWER PROVIDENCE (THE “TOWNSHIP”) PURSUANT TO THE EXECUTION AND DELIVERY OF A GUARANTY AGREEMENT FOR THE LOWER PROVIDENCE TOWNSHIP SEWER AUTHORITY (THE “AUTHORITY”); APPROVES CERTAIN CAPITAL PROJECTS; APPROVES THE ISSUANCE AND NEGOTIATED SALE OF THE GUARANTEED SEWER REVENUE NOTES, 2016 SERIES (COLLECTIVELY, THE “2016 NOTES”) TO THE DELAWARE VALLEY REGIONAL FINANCE AUTHORITY IN THE AGGREGATE PAR AMOUNT OF \$4,245,000; APPROVES THE FORMS OF THE LOAN DOCUMENTS; SETS FORTH THE RANGE OF THE ANNUAL LEASE RENTAL PAYMENTS DUE UNDER THE GUARANTY AGREEMENT; AUTHORIZES AND AWARDS A TRANSACTION UNDER A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT AND AUTHORIZES AND DIRECTS A FILING TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; PLEDGES THE FULL FAITH, CREDIT, AND TAXING POWER OF THE TOWNSHIP FOR THE TIMELY REPAYMENT OF THE 2016 NOTES, INCLUDING THE REGULARLY SCHEDULED PAYMENTS DUE UNDER THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT; COVENANTS TO PAY ANY TERMINATION CHARGES; AUTHORIZES THE PREPARATION AND FILING OF ALL NECESSARY DOCUMENTS FOR APPROVAL OF THE GUARANTY AGREEMENT TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; AUTHORIZES ADVERTISEMENT OF ENACTMENT; AND REPEALS INCONSISTENT ORDINANCES.

WITNESSETH:

WHEREAS, the Lower Providence Township Sewer Authority (the “Authority”) was incorporated pursuant to the *Municipality Authorities Act*, 53 Pa. C.S. §5601 *et seq* (the “*Authorities Act*”) and appropriate actions of the Board of Supervisors of the Township of Lower Providence (the “Township”); and

WHEREAS, the Authority owns certain facilities for the collection and transmission of sanitary sewage in the Township and has contracted for the conveyance and treatment of sanitary sewage at the Oaks Treatment Plant (collectively, the “Sewer System”) of the Lower Perkiomen Valley Regional Sewer Authority; and

WHEREAS, the Authority assesses rentals, rates, and other charges (the “Revenues”) to fund the costs of operation, maintenance, and administration and to pay any debt service costs of the Sewer System; and

WHEREAS, the Authority issued its Guaranteed Sewer Revenue Bonds, Series of 1992 (the “1992 Bonds”), in the par amount of \$11,800,000 on May 27, 1992, to reimburse capital expenditures and to fund improvements to the Sewer System; and

WHEREAS, the Authority issued its Guaranteed Sewer Revenue Bonds, Series of 1995 (the “1995 Bonds”), on December 28, 1995, in the par amount of \$11,505,000 to redeem the 1992 Bonds and in the par amount of \$8,855,000 to fund improvements to the Sewer System; and

WHEREAS, the Authority issued its Guaranteed Sewer Revenue Bonds, Series of 2006 (the “2006 Bonds”), in the par amount of \$11,510,000 on May 1, 2006, to redeem the 1995 Bonds; and

WHEREAS, the 2006 Bonds may be redeemed at par plus accrued interest on or after May 1, 2016, and

WHEREAS, the Authority’s municipal advisor has recommended the optional redemption of the 2006 Bonds to reduce the Authority’s total debt service payments; and

WHEREAS, the Board of Directors of the Authority has determined to issue the Guaranteed Sewer Revenue Notes, 2016 Series (the “2016 Notes”), together with other available funds of the Authority, to fund certain capital expenditures (collectively, the “2016 Refunding”) consisting of (i) the optional redemption of the 2006 Bonds and (ii) the costs of issuance of the 2016 Notes; and

WHEREAS, the Sewer System 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 Sewer

System, through a lease, management contract, or any other arrangement that would result in a private business use under the *Internal Revenue Code of 1986* (the “*Code*”), as amended; and

WHEREAS, the Authority has determined that the negotiated sale of the 2016 Notes to the Delaware Valley Regional Finance Authority (“DelVal”) is in the best financial interest of the Authority; and

WHEREAS, DelVal’s Loan Commitment requires the execution and delivery of a guaranty agreement (the “Guaranty”) by the Township as a condition to the purchase of the 2016 Notes; and

WHEREAS, the Township has determined that the 2016 Refunding will benefit and contribute to the health and general welfare of the Township’s residents; and

WHEREAS, the Township has determined that the execution of the Guaranty will allow the Authority to minimize the costs of issuance and the interest costs of the 2016 Notes and thereby minimize the rates and charges that the Authority must assess for use of the Sewer System; and

WHEREAS, the execution and delivery of the Guaranty, under which the Township shall guarantee the Authority’s obligations to pay principal, interest, and other charges due and payable to DelVal under the terms of the 2016 Notes and the related loan agreement (the “Loan Agreement”) will constitute “lease rental debt” under the Pennsylvania *Local Government Unit Debt Act*, 53 Pa. C.S.A. §8001, et seq (the “*Debt Act*”), as amended and restated; and

WHEREAS, the proposed increase of lease rental debt from the execution of the Guaranty, together with the nonelectoral and lease rental debt presently outstanding, will not cause the constitutional or statutory debt limitations of the Township to be exceeded; and

WHEREAS, the Revenues to be pledged by the Authority to repay the 2016 Notes are expected to be sufficient to pay the costs of operation and maintenance of the Sewer System and to pay the Authority’s debt obligations; and

WHEREAS, DelVal, a public authority within the meaning of the *Debt Act*, has from time to time issued Local Government Revenue Bonds (the “DelVal Bonds”), to provide funds for loans to be secured by the pledge of the full faith, credit and taxing power of local government units (the “Loan Program”); and

WHEREAS, DelVal has from time to time entered into interest rate swap agreements related to the DelVal Bonds (collectively, the “DelVal Swap Agreement”) in order to provide a more cost effective Loan Program and to allow participants in the Loan Program to manage interest rate risk more efficiently; and

WHEREAS, Calhoun Baker Inc. (the “Financial Advisor”) is an “Independent Financial Advisor”, as such term is defined in the *Debt Act*, to DelVal, and the Financial Advisor has prepared an “Interest Rate Management Plan” (the “Plan”), as such term is defined in the *Debt Act*, and an Interest Rate Swap Management Policy (the “Swap Policy”) that have been adopted by the Board of Directors of DelVal; and

WHEREAS, DelVal established minimum criteria of long term, senior, unsecured debt ratings in the “AA” category or higher by at least one Nationally Recognized Statistical Rating Organization registered with the Securities and Exchange Commission for any counterparty to the DelVal Swap Agreement (or a rating equal to or higher than the counterparty active under a swap agreement related to any series of DelVal Bonds), and the Board of DelVal found that the award of transactions under the DelVal Swap Agreement by negotiation in a private sale was in the best financial interests of DelVal and the participants in the Loan Program, and the Financial Advisor concluded that the financial terms and conditions of the DelVal Swap Agreement were fair and reasonable as of the date of award; and

WHEREAS, the Authority wishes to utilize the DelVal Loan Program by issuing the 2016 Notes to DelVal; and

WHEREAS, under the terms of the Loan Agreement with DelVal, interest payments on the 2016 Notes (the “Loan Interest”) will equal the amounts allocable to the 2016 Notes for interest on the DelVal Bonds, regularly scheduled payments on the DelVal Swap Agreement, and other costs and liquidity requirements incurred by DelVal to administer the Loan Program; and

WHEREAS, under the terms of the Loan Agreement with DelVal, the principal amount outstanding of the 2016 Notes (the “Loan Principal”) will equal the notional amount of the DelVal Swap Agreement related to the 2016 Notes; and; and

WHEREAS, under the terms of the Guaranty, the Township shall guarantee the timely payment of all amounts due under the Loan Agreement and the 2016 Notes, including payments under the DelVal Swap Agreement related to the 2016 Notes; and

WHEREAS, the Township intends to (i) designate the Guaranty and the portion of the DelVal Swap Agreement related to the 2016 Notes and the Loan Agreement as a Qualified Interest Rate Management Agreement under the *Debt Act*, (ii) approve the Plan as the Interest Rate Management Plan required by the *Debt Act*, and (iii) adopt the Swap Policy.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF LOWER PROVIDENCE, MONTGOMERY COUNTY, PENNSYLVANIA, AND IT IS HEREBY ORDAINED AND ENACTED BY THE AUTHORITY OF SAID BOARD OF SUPERVISORS THAT:

SECTION 1. APPROVAL OF THE PROJECT AND AUTHORIZATION TO ISSUE THE 2016 NOTES

The remaining, estimated, weighted average useful life of the capital projects originally funded by the 1992 Bonds and the 1995 Bonds exceeds the six-year term of the 2016 Notes. The principal of the 2016 Notes shall be amortized to provide level or declining annual debt service. The amortization of the principal amounts of the 2016 Notes shall begin within two years of the issuance of the 2016 Notes.

The Board of Supervisors (the “Board”) hereby approves the 2016 Refunding. The Board hereby authorizes and directs the incurring of lease rental debt in the aggregate principal amount of FOUR MILLION TWO HUNDRED FORTY-FIVE THOSAND DOLLARS (\$4,245,000), evidenced by the execution of the Guaranty.

SECTION 2. APPROVAL OF THE LOAN COMMITMENT

The Board, after due deliberation and investigation, hereby determines that a private sale by negotiation of the 2016 Notes to DelVal is in the best financial interests of the Authority and the Township. The Township hereby approves the sale of the 2016 Notes in accordance with the terms of the proposal submitted by DelVal (the “Loan Commitment”) attached hereto. DelVal will purchase the 2016 Notes at a price of \$4,245,000. The Authority shall be responsible for paying DelVal’s costs of origination in an amount not to exceed \$21,225, as directed by DelVal’s Program Administrator upon the issuance of the 2016 Notes. The 2016 Notes shall be

purchased by DelVal on or about April 29, 2016, or in such installments and/or at such other times as the Authority's Chairman and DelVal's Program Administrator shall determine.

SECTION 3. APPROVAL OF THE FORMS OF THE LOAN DOCUMENTS AND AUTHORIZATION TO EXECUTE THE GUARANTY, CONTINUING DISCLOSURE AGREEMENT, AND REIMBURSEMENT AGREEMENT

The Board hereby approves the substantial forms of the, 2016 Notes, Loan Agreement, Participant Tax Compliance Agreement, and Guaranty (collectively, the "Loan Documents") attached to DelVal's Loan Commitment. The Chairman or Vice Chairman and the Secretary (the "Authorized Officers") are hereby authorized and directed to execute and deliver the Guaranty, in the form attached to the Loan Commitment, but with such alterations, deletions and additions as the Authorized Officers may approve (such approval to be conclusively established by the execution by said Authorized Officers). The Authorized Officers also are hereby authorized and directed (i) to execute and deliver such other certificates, instruments, and agreements and (ii) to take all actions that may be necessary or beneficial to issue the 2016 Notes.

SECTION 4. AMORTIZATION SCHEDULE AND MAXIMUM ANNUAL LEASE RENTAL PAYMENTS

The 2016 Notes shall bear interest at the floating rate specified in the Loan Agreement and 2016 Notes, the substantial forms of which are attached to the Loan Commitment. The annual lease rental payments due under the Guaranty would range from \$0 to \$1,313,675. The principal amortization schedule and maximum annual debt service payments for the 2016 Notes (based upon the maximum Loan Rate of 15%) are shown below:

**Lower Providence Township Sewer Authority
Guaranteed Sewer Revenue Notes, 2016 Series
Principal Amortization Schedule and
Maximum Annual Debt Service Payments**

<i>Bond Year Ending</i>	<i>Principal (1)</i>	<i>Maximum Interest Rate</i>	<i>Maximum Interest Payment (2)</i>	<i>Maximum Annual Debt Service</i>
25-Apr-17	\$ 684,000.00	15%	\$ 629,675.00	\$ 1,313,675.00
25-Apr-18	693,000.00	15%	534,150.00	1,227,150.00
25-Apr-19	702,000.00	15%	430,200.00	1,132,200.00
25-Apr-20	712,000.00	15%	324,900.00	1,036,900.00
25-Apr-21	722,000.00	15%	218,100.00	940,100.00
25-Apr-22	732,000.00	15%	109,800.00	841,800.00
Total	<u>\$4,245,000.00</u>		<u>\$2,246,825.00</u>	<u>\$ 6,491,825.00</u>

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|---|-----------|
| (1) Principal is payable annually, commencing on: | 25-Apr-17 |
| Principal is amortized to provide level or declining annual debt service. | |
| (2) Interest is payable monthly on the 25th, commencing: | 25-May-16 |
| Interest is calculated for the period beginning on: | 29-Apr-16 |

SECTION 5. AUTHORIZATION AND AWARD OF A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT RELATING TO THE 2016 NOTES

Under the terms of the Guaranty, in the event of a payment default of the Authority, the Township will be obligated to make the scheduled payments for the portion of the DelVal Swap Agreement related to the 2016 Notes. The Board hereby approves and adopts the Plan as the Interest Rate Management Plan fulfilling the requirements of §8281(b)(2) of the *Debt Act*, and the Board hereby approves and adopts the Swap Policy. The Board hereby accepts and ratifies the minimum criteria used by DelVal to select the provider of the DelVal Swap Agreement and the award of the DelVal Swap Agreement in a private sale by negotiation. The Board hereby authorizes and awards the Guaranty and the Loan Agreement as the Qualified Interest Rate Management Agreement related to the 2016 Notes, pursuant to §8281(a)(2) of the *Debt Act*. The Board hereby authorizes and directs the filing, to the Department of Community and Economic Development (“DCED”) within fifteen days of enactment, of a certified copy of this Ordinance and the following documents, in accordance with §8284(a)(1) of the *Debt Act*:

- 1) the forms of the Guaranty, Loan Agreement, and the DelVal Swap Agreement related to the 2016 Notes, the Qualified Interest Rate Management Agreement pursuant to §8281(b)(1) of the *Debt Act*,

- 2) the Interest Rate Management Plan pursuant to §8281(b)(2)(ii) of the *Debt Act*, and
- 3) the finding of the Financial Advisor that the financial terms and conditions of the DelVal Swap Agreement were fair and reasonable as of the date of the award by DelVal, pursuant to §8281(e)(5) of the *Debt Act*.

SECTION 6. PLEDGE OF THE FULL FAITH, CREDIT, AND TAXING POWER

The Township is hereby authorized to incur lease rental debt, as defined in the *Debt Act*, which shall be evidenced by the Guaranty that secures the 2016 Notes and the Loan Agreement. The Township hereby covenants, in the event of a deficiency by the Authority:

- 1) to include all periodic, scheduled payments of Loan Interest and Loan Principal payable under the Loan Agreement and the 2016 Notes in the budget of the fiscal year in which such amounts are due and payable,
- 2) to appropriate such amounts from its taxes and other general revenues, and
- 3) to pay, or cause to be paid, punctually and duly, such amounts that are due and payable under the 2016 Notes and the Loan Agreement at the dates and places and in the manner stated in the 2016 Notes and the Loan Agreement.

For such budgeting, appropriation, and payment, the Township irrevocably pledges its full faith, credit, and taxing power. As provided by the *Debt Act*, this covenant shall be specifically enforceable.

SECTION 7. OBLIGATIONS RELATED TO THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT

The Authority's and, in the event of a payment default by the Authority, the Township's obligations related to the DelVal Swap Agreement are set forth in the Loan Agreement and Guaranty, respectively. In accordance with §8281(c) of the *Debt Act*, in the event of a deficiency by the Authority:

- 1) The Township pledges its full faith, credit, and taxing power to make any periodic scheduled payments due and payable under the DelVal Swap Agreement related to the 2016 Notes and Loan Agreement (the "Periodic Payments"). The Township covenants to (a) include all Periodic Payments in the budget of the fiscal year in which such amounts are due and payable, (b) appropriate such amounts from its taxes

and other general revenues, and (c) pay, or cause to be paid, punctually and duly, such amounts that are due and payable on the dates, at the places, and in the manner stated in the 2016 Notes and the Loan Agreement. As provided by the *Debt Act*, this covenant shall be specifically enforceable.

- 2) The notional amount of the DelVal Swap Agreement related to the 2016 Notes is equal to the outstanding principal amount of the 2016 Notes, initially \$4,245,000.
- 3) The Township's obligations under the DelVal Swap Agreement end when the Township repays or prepays the amounts outstanding under the 2016 Notes and the Loan Agreement. The scheduled term of the Township's obligations related to the DelVal Swap Agreement ends on April 25, 2022.
- 4) The Township pledges to budget, appropriate, and pay any termination payment due and payable under the DelVal Swap Agreement related to the 2016 Notes and Loan Agreement (the "Termination Charge"). The Township covenants (a) to include any Termination Charge in the budget of the fiscal year in which such amounts are due and payable, (b) appropriate such amounts from its taxes and other general revenues, and (c) pay, or cause to be paid, punctually and duly, such amounts that are due and payable on the dates, at the places, and in the manner stated in the 2016 Notes and the Loan Agreement. The Township's obligations to make Periodic Payments are senior to any obligation for a Termination Charge.
- 5) The maximum annual Periodic Payments, not including any Termination Charge, shall not exceed the maximum annual debt service payments authorized for the 2016 Notes. The maximum Loan Rate under the Loan Agreement and the DelVal Swap Agreement is 15%.

SECTION 8. AUTHORIZATION TO SUBMIT STATEMENTS TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

The Authorized Officers are hereby authorized to prepare and to submit to the Department of Community and Economic Development ("DCED") the debt statement required by §8110 of the *Debt Act*, the proceedings that authorize the incurrence of lease rental debt that is evidenced by the Guaranty, any statements or certificates required to qualify the lease rental

obligations evidenced by the Guaranty as self-liquidating debt pursuant to §8026 of the *Debt Act*, and any other documents required by the *Debt Act* or DCED.

SECTION 9. LEGAL ADVERTISEMENTS

The Board hereby ratifies and directs the advertisement of a summary of this Ordinance as finally enacted, as required by the *Debt Act*, in *The Times Herald*, a newspaper of general circulation in the Township, within fifteen (15) days following the day of final enactment.

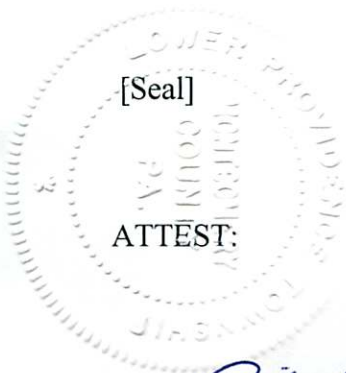
SECTION 10. CONFLICTING ORDINANCES

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: November 19, 2015


JASON SORGINI
Chairman, Board of Supervisors




RICHARD G. GESTRICH
Secretary