

**MIDDLETOWN TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 832

AN ORDINANCE OF THE COUNCIL OF MIDDLETOWN TOWNSHIP, DELAWARE COUNTY, PENNSYLVANIA (THE "COUNCIL") (THE "TOWNSHIP") AUTHORIZING AND APPROVING A PROJECT OF THE MIDDLETOWN TOWNSHIP, DELAWARE COUNTY, SEWER AUTHORITY (THE "AUTHORITY"); DETERMINING TO INCUR DEBT IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$10,000,000; DETERMINING THAT SUCH DEBT SHALL BE INCURRED AS LEASE RENTAL DEBT TO BE EVIDENCED BY A SERIES OF GUARANTEED SEWER REVENUE BONDS, SERIES OF 2021 (THE "BONDS"), TO BE AUTHORIZED AND TO BE ISSUED BY THE AUTHORITY TO FINANCE A PROJECT OF THE AUTHORITY CONSISTING OF (1) THE CURRENT REFUNDING OF THE AUTHORITY'S GUARANTEED SEWER REVENUE BONDS, SERIES OF 2016; AND (2) PAYING THE COSTS AND EXPENSES ASSOCIATED WITH THE ISSUANCE OF THE BONDS IN CONNECTION WITH THE SEWER SYSTEM OWNED BY THE AUTHORITY AND LEASED TO THE TOWNSHIP FOR OPERATION AND USE; PROVIDING FOR THE INCURRING OF SUCH LEASE RENTAL DEBT IN CONNECTION THEREWITH; AUTHORIZING AND DIRECTING THE CHAIRMAN OR VICE CHAIRMAN OF THE COUNCIL AND THE TOWNSHIP MANAGER, RESPECTIVELY: (A) TO PREPARE, TO CERTIFY AND TO FILE THE DEBT STATEMENT REQUIRED BY THE ACT OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA KNOWN AS THE LOCAL GOVERNMENT UNIT DEBT ACT, 53 PA. C.S. CHS. 80-82; (B) TO PREPARE AND TO FILE ANY STATEMENTS REQUIRED BY SAID ACT THAT ARE NECESSARY TO QUALIFY ALL OR ANY PORTION OF THE DEBT OF THE TOWNSHIP FOR EXCLUSION FROM THE APPROPRIATE DEBT LIMIT AS SELF-LIQUIDATING OR SUBSIDIZED DEBT; AND (C) TO EXECUTE, TO ATTEST, TO ACKNOWLEDGE AND TO DELIVER, AS APPROPRIATE, A THIRD SUPPLEMENTAL SEWER SYSTEM LEASE (THE "THIRD SUPPLEMENTAL LEASE") TO THE SEWER SYSTEM LEASE, DATED AS OF OCTOBER 16, 2014, AS PREVIOUSLY SUPPLEMENTED BY THE FIRST SUPPLEMENTAL SEWER SYSTEM LEASE, DATED AS OF DECEMBER 6, 2016 AND THE SECOND SUPPLEMENTAL SEWER SYSTEM LEASE, DATED AS OF SEPTEMBER 16, 2019 (COLLECTIVELY, THE "LEASE"), EACH BETWEEN THE TOWNSHIP, AS LESSEE, AND THE AUTHORITY, AS LESSOR, WITH RESPECT TO THE SEWER SYSTEM, AND THE GUARANTY AGREEMENT (THE "GUARANTY") BETWEEN THE TOWNSHIP, THE AUTHORITY AND THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS TRUSTEE (THE "TRUSTEE") UNDER A CERTAIN TRUST INDENTURE OF THE AUTHORITY TO BE SUPPLEMENTED IN CONNECTION WITH THE ISSUANCE OF SAID BONDS, WITH RESPECT TO

PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID BONDS; APPROVING THE FORM OF SAID THIRD SUPPLEMENTAL LEASE AND GUARANTY; CONSENTING TO ASSIGNMENT OF SAID THIRD SUPPLEMENTAL LEASE BY THE AUTHORITY TO THE TRUSTEE, AS SECURITY; SPECIFYING THE SOURCE OF PAYMENT OF THE LEASE RENTALS TO BE PAID BY THE TOWNSHIP PURSUANT TO SAID LEASE; GUARANTEEING THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID BONDS; PROVIDING COVENANTS RELATED TO DEBT SERVICE APPLICABLE TO SAID BONDS AND PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE TOWNSHIP IN SUPPORT OF SUCH GUARANTY OBLIGATIONS; PROVIDING FOR CERTAIN ACTION TO BE TAKEN BY THE AUTHORITY; PROVIDING FOR PROPER OFFICERS OF THE TOWNSHIP TO TAKE ALL OTHER REQUIRED, NECESSARY OR DESIRABLE RELATED ACTION IN CONNECTION WITH SAID SEWER SYSTEM AND SAID LEASE AND GUARANTY; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; ACKNOWLEDGING THAT THE AUTHORITY INTENDS TO ISSUE THE BONDS AS QUALIFIED TAX-EXEMPT OBLIGATIONS UNDER SECTION 265(B)(3) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; PROVIDING FOR THE SEVERABILITY OF PROVISIONS OF THIS ORDINANCE; AND PROVIDING FOR REPEAL OF ALL INCONSISTENT ORDINANCES OR PARTS OF ORDINANCES.

WHEREAS, The Township is a political subdivision of the Commonwealth of Pennsylvania (the “Commonwealth”) and is a “local government unit” under provisions of the Act of the General Assembly of the Commonwealth known as the Local Government Unit Debt Act, 53 Pa. C.S. Chs. 80-82 (the “Act”); and

WHEREAS, The Authority is existing under the Pennsylvania Municipality Authorities Act, 53 Pa. C.S. Ch. 56, as amended and supplemented, from time to time, of the Commonwealth (the “Authorities Act”); and

WHEREAS, The Authority heretofore acquired and/or constructed certain sanitary sewage collection and transmission facilities (the “Sewer System”), for rendering sewage service in and for certain portions of the Township; and

WHEREAS, The Authority, as lessor, and the Township, as lessee, heretofore entered into the Sewer System Lease dated as of October 16, 2014 (the “Original Lease”), whereby the Authority leased the Sewer System to the Township, and the Township agreed, among other things, to pay certain minimum lease rental payments to the Authority; and

WHEREAS, The Authority heretofore issued a series of Guaranteed Sewer Revenue Bonds, Series of 2016, in the original aggregate principal amount of \$9,805,000 (the “2016 Bonds”), under the Trust Indenture dated as of October 1, 2014 (the “Original Indenture”), between

the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as amended and supplemented by the First Supplemental Trust Indenture dated as of December 1, 2016 (the “First Supplemental Indenture”), between the Authority and the Trustee, for the purpose of (i) financing the design, construction, installation and equipping of a gravity sewer interceptor line and manholes to convey wastewater to the Chester Creek Interceptor and then to the Delaware County Regional Water Quality Control Authority’s Chester Ridley Pump Station, and certain other capital improvements and additions to the Authority’s sewer system and facilities, including right-of-way acquisitions; (ii) funding capitalized interest, if any, on the 2016 Bonds; and (iii) paying the costs and expenses of issuance of the 2016 Bonds (collectively, the “2016 Project”); and

WHEREAS, In connection with the issuance of the 2016 Bonds, the Authority, as lessor, and the Township, as lessee, heretofore entered into the First Supplemental Sewer System Lease dated as of December 6, 2016 (the “First Supplemental Lease”), amending, and supplementing the Original Lease; and

WHEREAS, The 2016 Bonds are presently outstanding in the aggregate principal amount of \$8,300,000; and

WHEREAS, The Authority heretofore issued a series of Guaranteed Sewer Revenue Bonds, Series of 2019, in the original aggregate principal amount of 5,900,000 (the “2019 Bonds”), under the Original Indenture, between the Authority and Trustee, as amended and supplemented by the First Supplemental Trust Indenture and as further supplemented by the Second Supplemental Trust Indenture dated as of September 15, 2019 (the “Second Supplemental Indenture”), between the Authority and the Trustee, for the purpose of (i) currently refunding the Authority’s Guaranteed Sewer Revenue Bonds, Series of 2014; and (ii) paying the costs and expenses of issuance of the 2019 Bonds (collectively, the “2019 Project”); and

WHEREAS, In connection with the issuance of the 2019 Bonds, the Authority, as lessor, and the Township, as lessee, heretofore entered into the Second Supplemental Sewer System Lease dated as of September 16, 2019 (the “Second Supplemental Lease”), amending and supplementing the Original Lease, as previously amended and supplemented by the First Supplemental Lease; and

WHEREAS, The Authority intends to issue its guaranteed sewer revenue bonds in the maximum aggregate principal amount not to exceed \$10,000,000 (the “Bonds”), under the Original Indenture, as amended and supplemented by the First Supplemental Indenture, and by the Second Supplemental Trust Indenture, and as further amended and supplemented by the Third Supplemental Trust Indenture (the “Third Supplemental Indenture,” and together with the Original Indenture, the First Supplemental Indenture, and the Second Supplemental Indenture, the “Indenture”), between the Authority and the Trustee, in order to finance the current refunding of all or a portion of the 2016 Bonds (the “Refunding Project”); and

WHEREAS, The Authority and the Township have determined that the Authority shall: (i) fund the Refunding Project; and (ii) pay the costs and expenses of issuance of the Bonds (collectively, the “2021 Project”); and

WHEREAS, The refunding is being undertaken under Section 8241(b)(6) of the Act to adjust lease rentals upon refunding of the lease rental debt, evidenced by the 2016 Bonds, by reducing the total debt service over the life pursuant to Section 8241(b)(1) of the Act; and

WHEREAS, In connection with the Bonds, the Authority and the Township intend to enter into the Third Supplemental Sewer System Lease (the “Third Supplemental Lease,” and together with the Original Lease, the First Supplemental Lease, and the Second Supplemental Lease, the “Lease”) and Guaranty with respect to the payment of the principal of and interest on the Bonds; and

WHEREAS, The Sewer System is leased under the Lease to the Township for operation and use and it is desirable that the Township guarantee payment of the principal of and interest on the Bonds pursuant to the Guaranty.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Council of the Township, as follows:

SECTION 1. Approval of 2021 Project and Financing Thereof. The Township authorizes and requests the Authority to undertake and to complete the 2021 Project. The Township ratifies and confirms all action heretofore taken by the Authority in connection with the 2021 Project. The estimated useful life of the 2016 Project set forth in the Ordinance duly enacted by the Township on September 26, 2016, was determined to be at least 50 years. The remaining useful life of the 2016 Project which is being refinanced with the Bonds is presently at least 45 years. The Township approves the issuance of the Bonds by the Authority.

SECTION 2. Incurrence of Lease Rental Debt. The Township determines to incur “debt”, as such term is defined in the Act, as “lease rental debt”, as such phrase is defined in the Act, in connection with the Sewer System. Such debt, which shall be incurred as such lease rental debt, shall be in the maximum aggregate principal amount not to exceed \$10,000,000.

SECTION 3. Amount of Bonds Secured by Lease and Guaranty. The Bonds to be issued by the Authority under the Authorities Act have been determined to be in a maximum aggregate principal amount not to exceed \$10,000,000 and shall be secured by lease rentals to be payable under the Lease and by a covenant of guaranty of the Township contained in the Guaranty.

SECTION 4. Approval of Third Supplemental Lease and Guaranty. The Township, as lessee, shall enter into the Third Supplemental Lease and the Guaranty, each to be dated as of a customary date on or preceding the date of issuance of the Bonds, both in a form satisfactory to the Township's solicitor, with the Authority, as lessor, with respect to the Sewer System, under terms and provisions of which Third Supplemental Lease, the Township shall consent to

assignment of the Third Supplemental Lease and all rentals to be payable by the Township under the Original Lease as amended and supplemented by the Third Supplemental Lease, to the Trustee under a the Indenture, as security for the Bonds. The Third Supplemental Lease may set forth such other amended or supplemental terms, conditions, provisions, covenants, and agreements to be observed by the Authority and the Township in relation to the Sewer System. The Guaranty shall contain a covenant of guarantee of the Township with respect to payment of the principal of and interest on the Bonds.

Filing of Third Supplemental Lease and Guaranty. The Third Supplemental Lease, including the Assignment thereof to the Trustee, and the Guaranty, shall be filed with the Township Manager and shall be made available for inspection at reasonable times by interested persons requesting such inspection.

SECTION 5. Debt Statement and Borrowing Base Certificate. The Chairman or Vice Chairman of the Council and the Township Manager are authorized and directed to prepare, to certify and to file the debt statement, as such phrase is defined in the Act, required by the Act, on behalf of the Township.

Proper officers of the Township are authorized and directed to prepare and to execute an appropriate borrowing base certificate for the Township to be appended to the debt statement in accordance with the Act.

SECTION 6. Self-Liquidating Debt. The Chairman or Vice Chairman of the Council and the Township Manager, respectively, are authorized and directed to prepare and to file any statements required by the Act that are necessary to qualify all or any portion of the lease rental debt of the Township that is subject to exclusion as self-liquidating or subsidized debt for exclusion from the appropriate debt limit as self-liquidating or subsidized debt.

SECTION 7. Delivery of Third Supplemental Lease and Guaranty. The Chairman or Vice Chairman of the Council and the Township Manager, as applicable, are authorized and directed to execute, to attest, to acknowledge and to deliver the Third Supplemental Lease and Guaranty, on behalf of the Township, subject to conditions in Section 4 and applicable provisions of the Act.

SECTION 8. Debt Proceeding. The Chairman or Vice Chairman of the Council and the Township Manager are authorized and directed to make application to the Department of Community and Economic Development (the "Department") for approval with respect to the lease rental debt, as required by the Act, and for approval with respect to exclusion of the lease rental debt to be evidenced by the Lease as self-liquidating debt; and, in connection with such application, the Township shall pay to the Department the appropriate filing fee, the payment of which filing fee is authorized and approved.

SECTION 9. Lease Rentals Payable Under Third Supplemental Lease. The lease rentals to be payable under the Third Supplemental Lease shall be payable from certain revenues of the Township specified in the Lease.

SECTION 10. Covenant to Pay Guaranty. The maximum annual amounts of principal and interest covenanted to be paid by the Township under the Guaranty are as set forth in Exhibit A, which is attached hereto and made a part hereof.

It is covenanted with the registered owners of the Bonds that the Township shall (i) include the amounts payable in respect of its guaranty for each fiscal year in which such sums are payable in its budget for that year (provided that such amounts are due and owing on the date of adoption of such budget or are reasonably anticipated to become payable during the period covered by such budget), (ii) appropriate such amounts from its general revenues for the payment of the amounts payable in respect of its guaranty, and (iii) duly and punctually pay, or cause to be paid from such revenues, to the extent of its obligations under the Guaranty, the amounts payable in respect of its guaranty, at the dates and places and in the manner stated in the Guaranty according to the true intent and meaning thereof. For such budgeting, appropriation, and payment in respect of its guaranty of the Bonds, the Township pledges its full faith, credit, and taxing power. This covenant shall be specifically enforceable; subject, however, as to the enforceability of remedies, to the enforcement of creditors' rights generally. Nothing in this Section shall be construed to give the Township any taxing power not granted by another provision of law.

SECTION 11. Incidental Actions. The proper officers of the Township are authorized and directed to execute all documents and to do all other acts as may be necessary and proper to carry out the intent and purpose of this Ordinance and the undertakings of the Township under the Third Supplemental Lease and Guaranty and with respect to the Sewer System.

SECTION 12. Successors. Reference in this Ordinance to specified officers of the Township shall include and shall be construed to include, if and as applicable, their respective successors in office.

SECTION 13. Continuing Disclosure Obligations. The Township shall enter into a Continuing Disclosure Agreement, to be dated as set forth therein (the "Continuing Disclosure Agreement"); and a copy of the Continuing Disclosure Agreement shall be filed with the Township Manager and shall be made available for inspection at reasonable times by interested persons requesting such inspection. The Chairman or the Vice Chairman of the Council and the Township Manager, as applicable, are authorized and directed to execute, attest, to acknowledge and to deliver the Continuing Disclosure Agreement, on behalf of the Township; subject, however, to applicable provisions of the Act.

SECTION 14. Qualified Tax-Exempt Obligations. The Township acknowledges that the Authority intends to issue the Bonds as "qualified tax-exempt obligations" under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

SECTION 15. Effective Date. This Ordinance shall become effective in accordance with provisions of the Act, subject to such requirements of the Township's Home Rule Charter specifying a later effective date.

SECTION 16. 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 Township that such remainder shall be and shall remain in full force and effect.


SECTION 17. Repealer. All other ordinances or parts of ordinances which are inconsistent herewith shall be and the same expressly are repealed.

DULY ENACTED AND ORDAINED this 12th day of July 2021, by the Council of Middletown Township, Delaware County, Pennsylvania, in lawful session duly assembled.

ATTEST:

By: 
John McMullan
Township Manager

TOWNSHIP OF MIDDLETOWN COUNCIL

By: 
Mark Karchgasser
Chairman of Council

(SEAL)

EXHIBIT A

MAXIMUM AMOUNTS PAYABLE UNDER GUARANTY

<u>Year</u>	<u>Amount</u>
2021	\$ 666,527.78
2022	1,041,450.00
2023	1,022,575.00
2024	1,013,150.00
2025	1,002,625.00
2026	991,000.00
2027	973,275.00
2028	934,725.00
2029	911,450.00
2030	892,625.00
2031	862,975.00
2032	848,050.00
2033	827,025.00
2034	815,175.00
2035	806,950.00
2036	807,075.00

**MIDDLETOWN TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA**

CERTIFICATE OF TOWNSHIP MANAGER

The undersigned, Township Manager of Middletown Township, Delaware County, Pennsylvania HEREBY CERTIFIES that:

1 The foregoing Ordinance authorizing the issuance of lease rental debt in the amount of not to exceed \$10,000,000 was duly moved and seconded and enacted by a majority vote of all the Council of said Township at a duly called and convened meeting of said Council held on July 12, 2021, that public notice of said meeting was given as required by law; and that the roll of the Council was called and such members voted or were absent as follows:

<u>Name</u>	<u>Office</u>	<u>Vote</u>
Mark Kirchgasser	Chairman	<u>Yes</u>
Kathleen O'Connell Bell	Vice Chairman	<u>Absent</u>
Bibianna Dussling	Member	<u>Absent</u>
Walter Read	Member	<u>Yes</u>
Norman C. Shropshire	Member	<u>Absent</u>
Stephen Byrne	Member	<u>Yes</u>
Susan Powell	Member	<u>Yes</u>

2 Said Ordinance has not been altered, amended, modified, suspended and is still in full force and effect as of the date of this Certificate.

WITNESS my hand and the seal of Middletown Township, Delaware County, Pennsylvania, as of the 12th day of July 2021.



John McMullan, Township Manager

