

MIDDLETOWN TOWNSHIP,
Delaware County, Pennsylvania

ORDINANCE NO. 770

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") AND MAKING CERTAIN DETERMINATIONS IN RELATION TO SAID PROJECT FOR PURPOSES OF THE ORIGINAL LEASE (HEREINAFTER DEFINED); 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 2016 (THE "BONDS"), TO BE AUTHORIZED AND TO BE ISSUED BY THE AUTHORITY TO FINANCE A PROJECT OF THE AUTHORITY CONSISTING OF (1) DESIGNING, FURNISHING, INSTALLING, CONSTRUCTING AND EQUIPPING OF IMPROVEMENTS AND ADDITIONS TO THE SEWER SYSTEM AND FACILITIES OF THE AUTHORITY; (2) FUNDING CAPITALIZED INTEREST, IF ANY, ON THE BONDS; AND (3) 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 SUPPLEMENT (THE "LEASE SUPPLEMENT") TO THE AGREEMENT OF LEASE, DATED AS OF OCTOBER 16, 2014 (THE "ORIGINAL LEASE," AND TOGETHER WITH THE LEASE SUPPLEMENT, 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 LEASE SUPPLEMENT AND GUARANTY; CONSENTING TO ASSIGNMENT OF SAID LEASE SUPPLEMENT 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 SEWER SYSTEM 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, have entered into the Original Lease, with respect to the Sewer System, as defined and described in the Lease, which is herein referred to as the “Sewer System” and intend to enter into the Lease Supplement and the Guaranty with respect to the payment of the principal of and interest on the Bonds (defined below); 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”), in connection with a project (the “Sewer Project”) consisting of 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; and

WHEREAS, The Authority and the Township have determined that the Authority shall: (i) fund the Sewer Project; (ii) fund capitalized interest, if any, on the Bonds; and (iii) pay the costs and expenses of issuance of the Bonds (collectively, the “2016 Project”); 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 2016 Project and Financing Thereof. The Township authorizes and requests the Authority to undertake and to complete the 2016 Project. The Township ratifies and confirms all action heretofore taken by the Authority in connection with the 2016 Project. The estimated useful life of the Sewer Project to be financed by the Bonds is at least 50 years. The Township, through the Authority, has obtained realistic cost estimates of the

costs of the capital improvements of the Sewer Project from engineers or other qualified persons. The Township approves the issuance of the Bonds by the Authority.

Pursuant to Section 13(a) of the Original Lease, the Township hereby determines and states that all renewals or replacements or permanent improvements, additions, extensions, enlargements or betterments, as the case may be, constituting the Sewer Project are deemed necessary, desirable or advisable in the proper maintenance and operation of the Sewer System and the proper officers of the Township are hereby authorized to make all necessary requests to the Authority pursuant to the Original Lease for purposes of constructing, acquiring and financing the Sewer Project.

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 Lease Supplement and Guaranty. The Township, as lessee, shall enter into the Lease Supplement 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 Lease Supplement, the Township shall consent to assignment of the Lease Supplement and all rentals to be payable by the Township under the Original Lease as amended and supplemented by the Lease Supplement, to The Bank of New York Mellon Trust Company,

N.A., as trustee (the "Trustee"), under a Trust Indenture, dated as of October 1, 2014 (the "Original Indenture"), to be supplemented by a First Supplemental Trust Indenture, to be dated as of November 1, 2016 (or such other customary date on or preceding the date of issuance of the Bonds) (the "First Supplemental Trust Indenture," and together with the Original Indenture, the "Indenture") between the Authority and the Trustee as security for the Bonds. The Lease Supplement shall provide that the Lease's term is extended to a date ending on or about October 1, 2036, and may set forth 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.

SECTION 5. Filing of Lease Supplement and Guaranty. The Lease Supplement, 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 6. 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 7. 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 8. Delivery of Lease Supplement 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 Lease Supplement and Guaranty, on behalf of the Township, subject to conditions in Section 4 and applicable provisions of the Act.

SECTION 9. 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 10. Lease Rentals Payable Under Lease Supplement. The lease rentals to be payable under the Lease Supplement shall be payable from certain revenues of the Township specified in the Lease.

SECTION 11. 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 12. 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 Lease Supplement and Guaranty and with respect to the Sewer System.

SECTION 13. 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 14. 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 15. 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 16. 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.

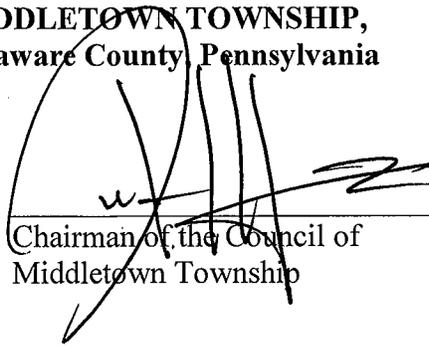
SECTION 17. Invalidity. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of the Township that such remainder shall be and shall remain in full force and effect.

SECTION 18. 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 26th day of September, 2016, by the Council of Middletown Township, Delaware County, Pennsylvania, in lawful session duly assembled.

**MIDDLETOWN TOWNSHIP,
Delaware County, Pennsylvania**

By:


Chairman of the Council of
Middletown Township

ATTEST:


Township Manager

(SEAL)

[SIGNATURE PAGE TO ORDINANCE]

EXHIBIT A

MAXIMUM AMOUNTS PAYABLE UNDER GUARANTY

<u>Year</u>	<u>Amount</u>
2017	\$1,005,000
2018	1,179,975
2019	1,160,000
2020	1,134,475
2021	1,108,675
2022	1,082,600
2023	1,056,250
2024	1,029,625
2025	1,002,725
2026	980,550
2027	952,825
2028	934,825
2029	906,000
2030	876,900
2031	852,525
2032	822,600
2033	797,400
2034	771,650
2035	750,350
2036	733,225

**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 September 26, 2016, 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	_____
Norman C. Shropshire	Vice Chairman	_____
Russ Carlson	Member	_____
Scott D. Galloway	Member	_____
Dean T. Helm, Jr.	Member	_____
Christopher B. Quinn	Member	_____
Susan Powell	Member	_____

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 26th day of September, 2016.

W. Bruce Clark, Township Manager

(TOWNSHIP SEAL)