



ORDINANCE NO. 2016-07

OF THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF NEWTOWN, DELAWARE COUNTY, PENNSYLVANIA

AN ORDINANCE THAT AUTHORIZES THE INCURRENCE OF NONELECTORAL DEBT BY THE TOWNSHIP OF NEWTOWN, DELAWARE COUNTY, PENNSYLVANIA (THE "TOWNSHIP") PURSUANT TO THE ISSUANCE OF THE GENERAL OBLIGATION NOTES, 2016 SERIES (THE "2016 NOTES") IN THE AGGREGATE PRINCIPAL AMOUNT OF \$3,750,000 AND APPROVES CERTAIN CAPITAL PROJECTS AND A REFUNDING PROJECT; APPROVES THE NEGOTIATED SALE OF THE 2016 NOTES TO THE DELAWARE VALLEY REGIONAL FINANCE AUTHORITY; APPROVES THE SUBSTANTIAL FORMS OF THE LOAN DOCUMENTS AND AUTHORIZES EXECUTION AND DELIVERY OF ALL NECESSARY DOCUMENTS; STATES THE AMORTIZATION SCHEDULE AND MAXIMUM ANNUAL DEBT SERVICE PAYMENTS; 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 PERIODIC PAYMENTS DUE UNDER THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT; COVENANTS TO PAY ANY TERMINATION CHARGES; CREATES AND APPOINTS A SINKING FUND DEPOSITORY; AUTHORIZES THE APPLICATION FOR APPROVAL OF THE ISSUANCE OF THE 2016 NOTES TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; AUTHORIZES ADVERTISEMENT OF ENACTMENT; AND REPEALS INCONSISTENT ORDINANCES.

WHEREAS, the Township issued the General Obligation Note, Series of 1987 (the “1987 Note”) in the aggregate principal amount of \$500,000 on October 7, 1987, to fund certain capital projects (collectively, the “1987 Project”); and

WHEREAS, the Township issued the General Obligation Bonds, Series of 1993 (the “1993 Bonds”) in the aggregate principal amount of \$975,000 on February 3, 1993, to fund certain capital projects (collectively, the “1993 Project”) and to redeem the 1987 Note; and

WHEREAS, the Township issued the General Obligation Bonds, Series of 2001 (the “2001 Bonds”) in the aggregate principal amount of \$3,110,000 on December 20, 2001, to fund certain capital projects (collectively, the “2001 Project”) and to redeem the 1993 Bonds; and

WHEREAS, the Township issued the General Obligation Bonds, Series of 2005 (the “2005 Bonds”) in the aggregate principal amount of \$2,770,000 on October 11, 2005, to redeem the 2001 Bonds; and

WHEREAS, the Township issued the General Obligation Bonds, Series of 2010 (the “2010 Bonds”) in the aggregate principal amount of \$3,115,000 on October 1, 2010, to fund certain capital projects (collectively, the “2010 Project”) and to redeem the 2005 Bonds; and

WHEREAS, the 2010 Bonds can be optionally redeemed on and after December 1, 2015, and the redemption of the 2010 Bonds from the proceeds of a new general obligation debt issue would reduce the Township’s debt service costs; and

WHEREAS, the Board of Supervisors of the Township wishes to undertake certain capital projects to resurface roads and to improve the stormwater infrastructure (collectively, the “2016 Project”); and

WHEREAS, the issuance of nonelectoral debt, the General Obligation Note, 2016 A Series (the “2016 A Note”) and the General Obligation Note, 2016 B Series (the “2016 B Note”) and, together with the 2016 A Note, the “2016 Notes”), is necessary to provide the funding to complete the 2016 Project and to redeem the 2010 Bonds; and

WHEREAS, certain projects consisting of (i) 2016 Project, (ii) the redemption of the 2010 Bonds, and (iii) the costs of issuance of the 2016 Notes, will benefit the health and welfare of the residents of the Township; and

WHEREAS, the Township has obtained preliminary cost estimates for the 2016 Project and the redemption of the 2010 Bonds from persons qualified by experience; and

WHEREAS, the 1987 Project, the 1993 Project, 2001 Project, and 2010 Project (collectively, the “Prior Projects”) and the 2016 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 Prior Projects or the 2016 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; and

WHEREAS, the proposed increase of nonelectoral debt from the issuance of the 2016 Notes, 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 Delaware Valley Regional Finance Authority (“DelVal”), a public authority within the meaning of the *Local Government Unit Debt Act*, 53 Pa. C.S.A. §8001, *et seq* (the “*Debt Act*”), has from time to time issued Local Government Revenue Bonds (the “DelVal Bonds”), to provide funds for loans to local government units and municipal authorities (the “Loan Program”); and

WHEREAS, from time to time, DelVal has 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 DelVal; and

WHEREAS, DelVal established minimum rating criteria for any counterparty to the DelVal Swap Agreement of long term, senior, unsecured debt ratings in the “AA-” or “Aa3” category or higher, or ratings equal to or higher than any active counterparty, by a Nationally Recognized Statistical Rating Organization registered with the Securities and Exchange Commission, and the Board of Directors of DelVal found that the award of transactions under

the DelVal Swap Agreement by negotiation in private sales were 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 dates of award; and

WHEREAS, the Township 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, periodic 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

WHEREAS, the Board of Supervisors intends to (i) designate the Loan Agreement and the allocable portion of the DelVal Swap Agreement as a Qualified Interest Rate Management Agreement related to the 2016 Notes, (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 NEWTOWN, DELAWARE COUNTY, PENNSYLVANIA, AND IT IS HEREBY ORDAINED AND ENACTED BY THE AUTHORITY OF SAID BOARD OF SUPERVISORS THAT:

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

The 2016 Project shall be funded from the proceeds of the 2016 A Note. Pursuant to §8142(a)(2) of the *Debt Act*, the weighted average useful life of the 2016 Project exceeds the five-year term of the 2016 A Note. The redemption of the 2010 Bonds shall be funded from the proceeds of the 2016 B Note, pursuant to §8241(b)(1) of the *Debt Act*, to reduce total debt service. In accordance with §8243(a) of the *Debt Act*, the term of the debt will not be extended. Pursuant to §8142(a)(2) of the *Debt Act*, the remaining, weighted, average useful life of the Prior Projects exceeds the fourteen-year term of the 2016 B Note.

The principal of the 2016 Notes shall be amortized to provide approximately level or declining annual debt service, pursuant to §8142(b)(1) of the *Debt Act*. The amortization of the principal amounts of the 2016 Notes shall begin within two years of the date of issue in accordance with §8142(c) of the *Debt Act*.

The Board of Supervisors (the “Board”) hereby approves the 2016 Project and the redemption of the 2010 Bonds. The Board hereby authorizes and directs the paying agent of the 2010 Bonds to notice the bondholders that the principal amounts of the 2010 Bonds maturing on and after June 1, 2017, will be optionally redeemed on June 24, 2016. The Board hereby authorizes and directs the incurrence of nonelectoral, general obligation debt in the aggregate principal amount of \$3,750,000 by the issuance of the 2016 Notes.

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 Township. The Board hereby accepts the Loan Commitment from DelVal, attached hereto, to purchase the 2016 Notes at an aggregate price of \$3,750,000 from the proceeds of the DelVal Bonds. The Township shall be responsible for paying DelVal’s costs of origination in an amount not to exceed \$18,750, 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 June 24, 2016, or in such installments and/or at such other times as the Chairman or Vice-Chairman of the Board and DelVal’s Program Administrator shall determine.

SECTION 3. APPROVAL OF THE FORMS OF THE LOAN DOCUMENTS AND AUTHORIZATION TO EXECUTE AND DELIVER ALL NECESSARY DOCUMENTS

The substantial forms of the Loan Agreement, 2016 Notes, and Participant Tax Compliance Agreement (collectively, the “Loan Documents”) attached to the Loan Commitment are hereby approved. The Chairman or Vice-Chairman of the Board, and the Secretary (collectively, the “Authorized Officers”) are hereby authorized and directed to execute and deliver the Loan Documents, in the substantial forms 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 of the Loan Documents 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 any

institution issuing a financial guaranty insurance policy, municipal bond insurance policy, letter of credit, or similar instrument related to the DelVal Bonds or the 2016 Notes) and (ii) to take all actions that may be necessary or beneficial to issue the 2016 Notes.

SECTION 4. AMORTIZATION SCHEDULE AND MAXIMUM ANNUAL DEBT SERVICE PAYMENTS

The indebtedness of the 2016 Notes shall be nonelectoral debt and a general obligation of the Township and shall be evidenced by Promissory Notes in the aggregate par amount of THREE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$3,750,000). The 2016 Notes shall bear interest (the “Loan Rate”) at the rate specified in the Loan Agreement and the 2016 Notes, the substantial forms of which are attached to the Loan Commitment. The 2016 Notes shall be subject to optional redemption by the Township as set forth in the 2016 Notes and the Loan Agreement. The amortization schedule of the Loan Principal and the maximum Loan Interest payments under the 2016 Notes, based upon the maximum Loan Rate of 15%, are shown below:

General Obligation Notes, 2016 Series

**Principal Amortization Schedule and
Maximum Annual Debt Service Payments**

<i>Bond Year Ending</i>	<i>Principal Amount</i>		<i>Total Principal (1)</i>	<i>Maximum Interest Rate</i>	<i>Maximum Interest Payment (2)</i>	<i>Maximum Annual Debt Service</i>
	<i>2016 A Series</i>	<i>2016 B Series</i>				
25-May-17	\$ 299,000.00	\$ 195,000.00	\$ 494,000.00	15%	\$ 517,187.50	\$ 1,011,187.50
25-May-18	302,000.00	198,000.00	500,000.00	15%	488,400.00	988,400.00
25-May-19	305,000.00	202,000.00	507,000.00	15%	413,400.00	920,400.00
25-May-20	309,000.00	205,000.00	514,000.00	15%	337,350.00	851,350.00
25-May-21	312,000.00	208,000.00	520,000.00	15%	260,250.00	780,250.00
25-May-22	-	212,000.00	212,000.00	15%	182,250.00	394,250.00
25-May-23	-	215,000.00	215,000.00	15%	150,450.00	365,450.00
25-May-24	-	219,000.00	219,000.00	15%	118,200.00	337,200.00
25-May-25	-	223,000.00	223,000.00	15%	85,350.00	308,350.00
25-May-26	-	226,000.00	226,000.00	15%	51,900.00	277,900.00
25-May-27	-	30,000.00	30,000.00	15%	18,000.00	48,000.00
25-May-28	-	30,000.00	30,000.00	15%	13,500.00	43,500.00
25-May-29	-	30,000.00	30,000.00	15%	9,000.00	39,000.00
25-May-30	-	30,000.00	30,000.00	15%	4,500.00	34,500.00
Total	\$1,527,000.00	\$2,223,000.00	\$3,750,000.00		\$2,649,737.50	\$6,399,737.50

- (1) Principal is payable annually, commencing on: 25-May-17
Principal is amortized to provide level or declining annual debt service.
- (2) Interest is payable monthly on the 25th, commencing: 25-Jul-16
Interest is calculated for the period beginning on: 24-Jun-16

SECTION 5. AUTHORIZATION AND AWARD OF A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT

The Township is incurring indebtedness under the *Debt Act* that will be issued to DelVal, a public authority, and the Township, by execution of the Loan Agreement, will become obligated for a notional amount of the DelVal Swap Agreement equal to the outstanding principal amount of the 2016 Notes. The Board hereby accepts and adopts the Plan as the Interest Rate Management Plan fulfilling the requirements of §8281(b)(2) of the *Debt Act*. The Board hereby adopts the Swap Policy, accepts and ratifies the minimum criteria used by DelVal to select the counterparties of the DelVal Swap Agreement, and accepts and ratifies the award of the DelVal Swap Agreement in a private sale by negotiation. The Board hereby authorizes and awards the Loan Agreement and the portion of the DelVal Swap Agreement allocable to the 2016 Notes as the Qualified Interest Rate Management Agreement with respect 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) Form of the Loan Agreement, the Qualified Interest Rate Management Agreement pursuant to §8281(b)(1) of the *Debt Act*, and the form of the confirmation related to the 2016 Notes,
- 2) The Interest Rate Management Plan pursuant to §8281(b)(2) 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 hereby covenants to:

- 1) Include all 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) Appropriate such amounts from its taxes and other general revenues, and

- 3) Pay, or cause to be paid, punctually and duly, such amounts that are due and payable under the 2016 Notes and the Loan Agreement on the dates, at the 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 OF THE TOWNSHIP RELATED TO THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT

The Township's obligations related to the Qualified Interest Rate Management Agreement are set forth in the Loan Agreement. In accordance with §8281 of the *Debt Act*:

- 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 \$3,750,000.
- 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 May 25, 2030.
- 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 to (a) 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 maximum floating rate payable under the DelVal Swap Agreement is 15%.

SECTION 8. SINKING FUND DEPOSITORY

The Board hereby finds and acknowledges that under the terms of the Loan Agreement, Wells Fargo Bank, N.A. (the "Bank"), or its successors or assigns, shall serve and is hereby appointed as the Paying Agent and Sinking Fund Depository, shall maintain separate accounts, subaccounts and subfunds for payments of Loan Principal and Loan Interest to be made by the Township until such 2016 Notes are paid in full. These accounts, subaccounts, and subfunds shall, collectively, constitute the "Sinking Fund" required by the *Debt Act* for the 2016 Notes. The Board hereby authorizes, empowers, and directs the Authorized Officers to contract with the Bank, by the execution of the Loan Agreement, to serve as Paying Agent and Sinking Fund Depository for the 2016 Notes.

SECTION 9. AUTHORIZATION TO SUBMIT STATEMENTS TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

The Board hereby authorizes and directs the Authorized Officers to prepare and submit an application for approval of the incurrence of the nonelectoral debt evidenced by the 2016 Notes to DCED, including the proceedings that authorize issuance, the debt statement, and any other documents required by the *Debt Act* or DCED.

SECTION 10. LEGAL ADVERTISEMENTS

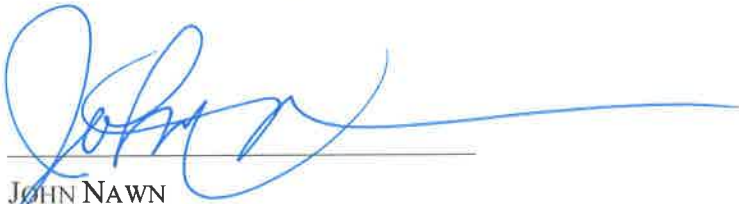
The Board hereby ratifies and directs the advertisement of a summary of this Ordinance as finally enacted, as required by the *Debt Act*, in the *Delaware County Daily Times*, a newspaper of general circulation in the Township, within fifteen (15) days following the date of final enactment.

SECTION 11. 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 NEWTOWN, Delaware County, Pennsylvania.

Dated: May 23, 2016



JOHN NAWN
Chairman, Board of Supervisors

[Seal]

ATTEST:



STEPHEN M. NEASE
Secretary