

BOROUGH OF CONSHOHOCKEN
Montgomery County, Pennsylvania

ORDINANCE – 2021-
Adopted December 15, 2021

AN ORDINANCE OF THE BOROUGH COUNCIL OF CONSHOHOCKEN BOROUGH AUTHORIZING THE INCURRENCE OF DEBT BY THE ISSUANCE OF \$7,067,000 GENERAL OBLIGATION NOTE, SERIES A OF 2022 (TAX EXEMPT) AND \$1,028,000 GENERAL OBLIGATION NOTE, SERIES B OF 2022 (FEDERALLY TAXABLE), FOR THE PURPOSE OF PROVIDING FUNDS TO FUND REFINANCING PROJECT; PAYING THE COSTS OF ISSUING THE NOTES; AUTHORIZING THE PREPARATION AND FILING OF A DEBT STATEMENT AND OTHER DOCUMENTATION; COVENANTING TO CREATE A SINKING FUND AND TO BUDGET, APPROPRIATE AND PAY DEBT SERVICE ON THE NOTES AND PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE BOROUGH FOR THE NOTES; SETTING FORTH THE SUBSTANTIAL FORM OF NOTES; SETTING FORTH THE STATED PRINCIPAL MATURITY AMOUNTS AND DATES, INTEREST RATES AND INTEREST PAYMENT DATES, PLACE OF PAYMENT, SINKING FUND PROVISIONS AND OTHER DETAILS OF THE NOTES; APPOINTING SINKING FUND DEPOSITARY; AND AUTHORIZING OTHER NECESSARY ACTION IN CONNECTION THEREWITH.

WHEREAS, Conshohocken Borough (the “Borough”), is granted the power by the Local Government Unit Debt Act of the Commonwealth of Pennsylvania (the “Commonwealth”), as codified by the Act of December 19, 1996, P.L. 1158, No. 177, as amended (the “Act”), to incur indebtedness and to issue the Notes for the purpose of financing its Refinancing Projects; and

WHEREAS, the Borough has heretofore issued its General Obligation Note, Tax Exempt Series A of 2014 (the “2014 A Note”), which is currently outstanding in the aggregate principal amount of \$5,030,600; and

WHEREAS, the Borough has heretofore issued its General Obligation Note, Tax Exempt Series B of 2014 (the “2014 B Note”), which is currently outstanding

in the aggregate principal amount of \$1,932,700; and

WHEREAS, the Borough has heretofore issued its General Obligation Note, Taxable Series of 2014 (the “2014 Taxable Note”), which is currently outstanding in the aggregate principal amount of \$1,007,700; and

WHEREAS, the Borough has determined to undertake a refinancing project through the current refunding of the outstanding 2014 A Note, 2014 B Note and the 2014 Taxable Note (collectively the “2014 Notes”), and paying the costs of the Notes, defined herein, together with the accrued interest under the 2014 Notes (the “Refinancing Project”); and

WHEREAS, the Borough now proposes to issue \$7,067,000.00 aggregate principal amount of its General Obligation Note, Series A of 2022 (Tax Exempt) (the “2022 A Note”) and \$1,028,000 General Obligation Note, Series B of 2022 (Federally Taxable) (the 2022 B Note and together with the 2022 A Note, the “Notes”), to finance the Refinancing Project and the costs and expenses of issuing the Notes; and

WHEREAS, the Borough has determined that it is in the best financial interest of the Borough to sell the Notes at a private negotiated sale, and has received an acceptable proposal for the purchase of the 2022 A Note from Phoenixville Federal Bank and Trust (“Phoenixville Federal”) (the “2022 A Proposal”) and an acceptable proposal for the purchase of the 2022 B Note from Truist Bank (“Truist”) (the “2022 B Proposal”), which it desires to accept; and

WHEREAS, the Borough desires to approve the terms and conditions of the Notes and other action necessary for the purpose of undertaking the Refinancing Project and paying the costs and expenses of issuing the Notes and to accept the 2022 A Proposal and the 2022 B Proposal for the purchase of the Notes.

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of Conshohocken Borough (the “Council”) and IT IS HEREBY RESOLVED, as follows:

1. Authorization of the Refinancing Project; Incurrence of Indebtedness and Remaining Useful Lives. The Council hereby authorizes and shall undertake the Refinancing Project described in the recital hereto and shall incur indebtedness, pursuant to the Act, in the aggregate principal amount of \$8,095,000 for the purpose of providing funds for and toward the cost of said Refinancing Project, including the payment of the cost of the financing, for which the Borough has received professional cost estimates.

The 2014 Notes were issued to: (i) finance various capital projects in the Borough, including the construction of Borough Hall, and (ii) pay the costs and expenses of issuing the 2014 Notes (the “2014 Capital Project”). The 2014 Notes Ordinance adopted on September 17, 2014 authorizing the 2014 Capital Project (GON-14100901 dated 10/09/2014) stated the average useful lives of the 2014 Capital Project was not less than 25 years. The remaining realistic, estimated useful lives of the 2014 Capital Project refunded by the Notes has a useful life of at least twenty-five (25) years and does

not extend beyond the original useful lives of the 2014 Capital Project.

It is hereby determined and set forth that the purpose of the Refinancing Project is to reduce the debt service that would otherwise be payable on the 2014 Notes in compliance with Section 8241(b)(1) of the Act, as follows:

2. Authorization of Issuance of Notes; Type of Indebtedness. The Borough shall issue, pursuant to the Act and this Ordinance, \$8,095,000 aggregate principal amount of the Notes, designated as its \$7,067,000.00 aggregate principal amount of its General Obligation Note, Series A of 2022 (Tax Exempt) and \$1,028,000 General Obligation Note, Series B of 2022 (Federally Taxable), to provide funds for and toward the costs of the Refinancing Project, including paying the costs of issuing the Notes as provided in Section 1 hereof. The proceeds of the Notes will be applied to the Refinancing Project and the costs of issuing the Notes. The debt authorized by this Ordinance is designated as and constitutes non-electoral debt.

3. Sale of Notes. The Notes shall be sold at private sale by negotiation as hereinafter set forth in Section 6. After due consideration, the Borough Council hereby finds and determines, on the basis of all available information, that a private negotiated sale of the Notes is in the best financial interest of the Borough.

4. Type of Notes. The Notes, when issued, will be general obligation Notes.

5. Execution of Debt Statement, Notes and Other Documents. The President or Vice President of the Borough Council and the Secretary or Treasurer of the Borough and their successors (each, an “Authorized Officer”) are hereby authorized and directed to file the Debt Statement required by Section 8110 of the Act, to execute and deliver the Notes in the name and on behalf of the Borough, and to take all other action required by the Act or this Ordinance in order to effect the issuance of the Notes. Said officers or any of them are further authorized to apply to the Department of Community and Economic Development (the “Department”) for approval of the debt herein authorized and for the exclusion of any portion of such debt which qualifies as subsidized or self-liquidating debt under the Act, and to file with such application a transcript of the proceedings including a certified copy of this Ordinance, the Debt Statement, a Borrowing Base Certificate signed by an Authorized Officer of the Borough or by the accountants of the Borough responsible for auditing its financial affairs, and to take any and all such further action and to execute and deliver such other documents as may be necessary or proper to comply with all requirements of the Act or to carry out the intent and purpose of this Ordinance.

6. Award and Sale of Notes. The Borough hereby awards and sells the 2022 A Note to Phoenixville Federal, at par, and in accordance with the terms and conditions contained or incorporated in the 2022 A Proposal dated November 16, 2021, which is hereby approved and accepted. A copy of said 2022 A Proposal shall be attached to this Ordinance and lodged with the official minutes of this meeting and is hereby

incorporated herein by reference. The Authorized Officers of the Borough are hereby authorized and directed to endorse the acceptance of the Borough on the 2022 A Proposal and to deliver executed copies thereof to Phoenixville Federal. The Borough hereby awards and sells the 2022 B Note to Truist, at par, and in accordance with the terms and conditions contained or incorporated in the 2022 B Proposal dated November 16, 2021, which is hereby approved and accepted. A copy of said 2022 B Proposal shall be attached to this Ordinance and lodged with the official minutes of this meeting and is hereby incorporated herein by reference. The Authorized Officers of the Borough are hereby authorized and directed to endorse the acceptance of the Borough on the 2022 B Proposal and to deliver executed copies thereof to Truist.

7. Terms of Notes. The Notes shall be issued in fully-registered form, shall be dated the Date of Delivery, and shall bear interest from the dated date until maturity or redemption, at the rates per annum, and shall be due by maturity or mandatory sinking fund redemption in the amounts on June 1 and December 1 of certain years, as set forth on the Notes Maturity Schedule attached hereto as Exhibit A and incorporated herein by reference.

8. Redemption of Notes; Payment Date. The Notes are subject to redemption prior to maturity, at the option of the Borough, in whole or from time to time in part, upon payment of One Hundred (100%) percent of the principal amount of the Notes to be redeemed plus accrued interest to the redemption date, without penalty.

9. Form of Notes.

a. The form of the 2022 A Note hereby approved shall be, with appropriate insertions, omissions and variations, substantially as set forth in Exhibit B-1 attached hereto and incorporated by reference.

b. The form of the 2022 B Note hereby approved shall be, with appropriate insertions, omissions and variations, substantially as set forth in Exhibit B-2 attached hereto and incorporated by reference.

10. Covenant as to Tax Law. The Borough hereby covenants with the holders from time to time of the 2022 A Note that (i) it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the 2022 A Note under Sections 103 and 148 of the Internal Revenue Code of 1986, as amended (the "Code"); and (ii) it will make no investment or other use of the proceeds of the 2022 A Note which, if such investment or use had been reasonably expected on the date of issuance of the 2022 A Note, would cause the 2022 A Note to be an "arbitrage note" within the meaning of Section 148 of the Code and the rules and regulations promulgated. This covenant shall extend throughout the term of the 2022 A Note and shall apply to all amounts which are proceeds of the 2022 A Note for the purposes of said Section, rules and regulations. No official or agent of the Borough shall make any investment inconsistent with the foregoing covenant. The Treasurer and all other Borough officials responsible for

investment shall follow the advice or direction of Notes Counsel in respect to the 2022 A Note as to investments which may be made in compliance with this covenant.

The President or Vice President of Council is authorized to represent, in a certificate delivered when the 2022 A Note is issued, if appropriate, that the Borough does not then reasonably expect to issue tax-exempt obligations that, together with all tax-exempt obligations reasonably expected to be issued by all entities that issue notes on behalf of the Borough and all “subordinate entities” (within the meaning of Section 265(b)(3)(E) of the Code) of this Borough, in the aggregate, will exceed Ten Million Dollars (\$10,000,000) (excluding obligations issued to refund (other than to advance refund) any obligation to the extent that the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation) in the calendar year of issuance of the Notes and, accordingly, thereby designate the 2022 A Note (to the extent they are not “deemed designated” under Section 265(b)(3)(D)(ii) of the Code), on behalf of the Borough, as “qualified tax-exempt obligations,” as defined in Section 265(b)(3)(B) of the Code, for the purposes and effect contemplated by Section 265 of the Code.

11. Covenant as to Rebate. The Borough covenants, if it is required to do so by the Code, to rebate to the United States an amount equal to the sum of (A) the excess of (i) the amount earned on all nonpurpose investments (other than investments attributable to an excess described in this Section), over (ii) the amount which would have been earned if such nonpurpose investments were invested at a rate equal to the yield on the Notes, plus (B) any income attributable to the excess described in (A) above, except as regulations may otherwise provide. The amount which is required by this Section to be paid to the United States shall be paid in installments at least once every five years. Each installment shall be in an amount which ensures that 90% of the amount calculated under this Section, at the time payment is required, shall have been paid to the United States. The last installment shall be made no later than sixty (60) days after the day on which the last payment is due and shall be in an amount sufficient to pay the remaining balance of the amount calculated with respect to the Notes.

12. Covenant to Pay Debt Service; Pledge of Taxing Power. The Borough covenants, pursuant to this Ordinance, that the Borough (i) shall include the amount of the debt service for the Notes, for each fiscal year of the Borough in which such sums are payable, in its budget for that fiscal year, (ii) shall appropriate such amounts from its general revenues for the payment of such debt service, and (iii) shall duly and punctually pay or cause to be paid from the Sinking Fund, or any other of its revenues or funds, the principal and the interest thereon at the dates and place and in the manner stated therein, according to the true intent and meaning thereof; and, for such budgeting, appropriation and payment, the Borough shall and does pledge, irrevocably, its full faith, credit and taxing power. As provided in the Act, the foregoing covenant of the Borough shall be specifically enforceable.

13. Creation of and Deposits in Sinking Fund. The Borough covenants

that there shall be and there is hereby established and that it shall hereafter maintain two separate sinking funds (the “Sinking Funds”), one for the 2022 A Note designated as the “Sinking Fund – General Obligation Note, Series A of 2022” for the 2022 A Note to be held by the 2022 A Sinking Fund Depository hereinafter appointed (or such substitute or successor 2022 A Sinking Fund Depository which shall hereafter be appointed in accordance with the provisions of the Act) and the other for the 2022 B Note designated as the “Sinking Fund – General Obligation Note, Series B of 2022” for the Notes to be held by the 2022 B Sinking Fund Depository hereinafter appointed (or such substitute or successor 2022 B Sinking Fund Depository which shall hereafter be appointed in accordance with the provisions of the Act) and into each of the Sinking Funds there shall be paid all moneys necessary to pay the debt service on the Notes when and as the same are collected, and said Sinking Funds shall be applied exclusively to the payment of the principal of and interest on the Notes as covenanted and to no other purpose whatsoever, except as may be authorized by law, until the same shall have been fully paid.

The maximum amounts set forth in Exhibit A attached hereto and made a part hereof shall be pledged in each of the fiscal years shown in Exhibit A to pay the debt service on the Notes, and such amounts are annually hereby appropriated to the Sinking Funds for the payment thereof.

The Borough shall deposit in each of the Sinking Funds, not later than 11:00 a.m. on each date when principal and/or interest is to become due on the Notes, a sufficient part of each aforementioned appropriation so that on each such payment date that each of the Sinking Funds will contain, together with any other available funds therein, sufficient money to pay in full the principal and/or interest amount then due on the Notes. The 2022 A Sinking Fund shall be secured and invested by the 2022 A Sinking Fund Depository in securities or deposits authorized by the Act, upon direction of the Borough, all as provided in the Act. The 2022 B Sinking Fund shall be secured and invested by the 2022 B Sinking Fund Depository in securities or deposits authorized by the Act, upon direction of the Borough, all as provided in the Act. Said deposits and securities shall be in the name of the Borough but subject to withdrawal or collection only by the 2022 A Sinking Fund Depository or the 2022 B Sinking Fund Depository, respectively, and said deposits and securities, together with the interest thereon, shall be a part of each of the Sinking Funds. The 2022 A Sinking Fund Depository and the 2022 B Sinking Fund Depository, respectively, without further action of the Borough, are hereby authorized and directed to pay from the said 2022 A Sinking Fund or the 2022 B Sinking Fund the interest on and the principal of the Notes when due and payable.

All income received on such deposits or investments of monies in each of the Sinking Funds during each applicable period shall be added to the applicable Sinking Funds and shall be credited against the deposit next required to be made in the respective Sinking Funds.

Pending application to the purposes for which the 2022 A Sinking Fund and the 2022 B Sinking Fund are established, the President or Vice President of Borough

Council, the Secretary or any Assistant Secretary or Treasurer are hereby authorized and directed to cause the monies therein to be invested or deposited and insured or secured as permitted and required by Section 8224 of the Act. All income received on such deposits or investments of monies in said Sinking Funds during each applicable period shall be added to that particular Sinking Fund and shall be credited against the deposit next required to be made in said Sinking Fund.

All monies deposited in the Sinking Funds for the payment of the Notes which have not been claimed by the Bank after two (2) years from the date payment is due, except where such monies are held for the payment of outstanding checks, drafts or other instruments of Phoenixville Federal or Truist, shall be returned to the Borough. Nothing contained herein shall relieve the Borough of its liability to Phoenixville Federal or Truist of that portion of the outstanding principal of the Notes.

The principal of and interest on the Notes shall be payable without deduction of, and the Borough assumes and agrees to pay, any tax or taxes which the Borough or the Treasurer thereof may be required to pay thereon or retain therefrom under or by virtue of any present or future law of the Commonwealth of Pennsylvania, except gift, estate, succession or inheritance taxes.

14. Appointment of and Contract with Sinking Fund Depository. Phoenixville Federal Bank and Trust is hereby appointed as the 2022 A Sinking Fund Depository for the 2022 A Note, as required by Section 8106 of the Act. Truist Bank is hereby appointed as the 2022 B Sinking Fund Depository for the 2022 B Note, as required by Section 8106 of the Act.

15. DCED Filing. The President or Vice President of the Borough Council and the Secretary or Treasurer of the Borough and their successors, as the case may be, are hereby authorized, empowered and directed to prepare, execute and verify the Debt Statement of the Borough, with an appended Borrowing Base Certificate, certified by a Borough officer as required by Section 8110 of the Act, and to cause a complete and accurate copy of the proceedings in connection with the authorization, issuance and sale of the Notes, certified by the Borough Manager, Secretary or Assistant Secretary or any Acting Secretary, including the aforesaid Debt Statement, to be filed with the Pennsylvania Department of Community and Economic Development as required by Sections 8111 and 8201 of the Act, and to pay the necessary filing fees in connection therewith.

16. Execution and Authentication of Notes; Further Action. The appropriate officers, as designated in Section 5 hereof, are hereby authorized, empowered and directed to execute the Notes as aforesaid in Section 5 and to cause the Notes to be authenticated by the certificate endorsed thereon, manually signed by a duly-authorized officer of the Bank. The President or Vice President of the Borough Council and the Secretary or Treasurer of the Borough and their successors, as the case may be, are further authorized, empowered and directed to deliver the Notes upon receipt of the

purchase money and in accordance with the terms of the Purchase Proposal for the purchase thereof and to execute and deliver any and all papers and documents with such additions, deletions or changes, as such officers shall deem appropriate and in accordance with this Ordinance, and to take such further action and to do or cause to be done any and all acts and things as may be necessary or appropriate to execute or carry out the purposes of this Ordinance, to incur the debt hereby authorized, and to effectuate the issuance, sale and delivery of the Notes, and such actions of such officers shall be deemed the actions of the Borough.

The Borough's Notes Counsel is hereby authorized and directed to prepare all documents required in connection with the issuance, sale and delivery of the Notes, as Notes Counsel deems necessary or appropriate, and to arrange for the printing thereof and of the Notes.

17. Redemption of 2014 Notes. The Borough hereby authorizes and directs the redemption of the 2014 Notes on January 18, 2022. The Borough shall irrevocably deposit with an appropriate bank or bank and trust company the amount required to pay, after taking into account the interest to be earned thereon, the principal and interest to the date of redemption of the outstanding 2014 Notes. The officers of the Borough are hereby authorized and directed to execute all documents and to take such other action as may be necessary or advisable to effectuate the refunding and redemption of the outstanding 2014 Notes. Such agreements and documentation shall be in form and substance as approved by the signing officers of the Borough.

18. Applicability of Act. This Ordinance is adopted pursuant to the Act, the laws, and the Constitution of the Commonwealth of Pennsylvania, and the Borough hereby determines and declares that each and every matter and thing provided for herein is necessary and desirable to carry out and effect the public purposes of the Borough in accordance with such laws. All of the mandatory provisions of the Act shall apply hereunder, whether or not explicitly stated herein, and are specifically incorporated herein by reference.

19. Severability Provision. In the event that any one or more of the provisions contained in this Ordinance or in the Notes issued pursuant hereto shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Ordinance or of the Notes, and this Ordinance or the Notes shall be construed and enforced as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

20. Amendment of Ordinance. The Borough may, from time to time and at any time, enact a supplemental Ordinance (a) to cure any ambiguity, formal defect or omission in this Ordinance or in any supplemental Ordinance; or (b) to grant to and confer upon the holders from time to time of the Notes, any additional rights, remedies, powers, authority or security that may be lawfully granted to or conferred upon same; or (c) to comply with any requirements of the Code after regulations and rulings interpreting the Code are promulgated.

21. Exclusive Effect. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon, or to give any person, firm or corporation other than the Borough, its agents, and the registered owners of the Notes any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements contained in this Ordinance are and shall be for the sole and exclusive benefit of the Borough, its agents, and the registered owners of the Notes.

22. Repealer. All ordinances or parts thereof inconsistent herewith are hereby repealed, rescinded, cancelled and annulled.

23. Further Action. The officers of the Borough are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, publish all notices, and otherwise comply with the provisions of this Ordinance and the Act in the name and on behalf of the Borough, as may be necessary or desirable to effect the issuance and delivery of the Notes.

24. Effective Date. This Ordinance shall take effect on the earliest date permitted by the Act.

ORDAINED and **ENACTED** an ordinance of the Borough of Conshohocken this 15th day of December, 2021.

BOROUGH OF CONSHOHOCKEN:

COLLEEN LEONARD, COUNCIL PRESIDENT

ATTEST:

SECRETARY

Approved this _____ day of _____, 2021

YANIV ARONSON, MAYOR

Exhibit "A"

NOTES MATURITY SCHEDULE

Exhibit “B-1”

FORM OF 2022 A NOTE

Exhibit "B-2"

FORM OF 2022 B NOTE

CERTIFICATE OF SECRETARY

The undersigned, Secretary of Conshohocken Borough, DOES HEREBY CERTIFY that:

The foregoing Ordinance relating to the issuance of \$7,067,000 principal amount GENERAL OBLIGATION NOTE, SERIES A OF 2022 (TAX EXEMPT) and the issuance of \$1,028,000 principal amount GENERAL OBLIGATION NOTE, SERIES B OF 2022 (FEDERALLY TAXABLE), of the Borough was duly moved and seconded and enacted by a majority vote of all the Borough Council of said Borough at a duly called and convened public meeting of said Council held on December 15, 2021; that public notice of said meeting was given as required by law; that the roll of the Borough Council was called and such members voted or were absent as follows:

<u>Name</u>	<u>Vote</u>
Colleen Leonard, President	
Tina Sokolowski, Vice President	
Karen Tutino	
James Griffin	
Anita Barton	
Kathleen Kingsley	
Robert Stokley	

and that such Ordinance and the votes thereon have been duly recorded in the minutes.

WITNESS my hand and seal of the Borough this 15th day of December, 2021.

(SEAL)

Stephanie Cecco, Council Secretary