

BOROUGH OF AMBLER
Commonwealth of Pennsylvania

ORDINANCE NO. 1085

Enacted June 2, 2015

AUTHORIZING THE INCURRENCE OF DEBT OF THE BOROUGH OF AMBLER BY THE ISSUANCE OF THE GENERAL OBLIGATION NOTE, SERIES OF 2015 IN THE PRINCIPAL AMOUNT OF \$3,505,000 FOR THE PURPOSE OF PROVIDING FUNDS TO FINANCE VARIOUS CAPITAL PROJECTS, TO CURRENTLY REFUND THE BOROUGH'S GENERAL OBLIGATION BONDS, SERIES OF 2009 AND TO PAY THE COSTS OF ISSUING THE NOTE; 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 NOTE AND PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE BOROUGH FOR THE NOTE; SETTING FORTH THE SUBSTANTIAL FORM OF THE NOTE AND PROVIDING FOR THE PRINCIPAL MATURITY AMOUNTS AND DATES, INTEREST RATE AND INTEREST PAYMENT DATES AND OTHER DETAILS OF THE NOTE; FINDING THAT A PRIVATE INVITED SALE OF THE NOTE IS IN THE BEST FINANCIAL INTEREST OF THE BOROUGH AND ACCEPTING A PROPOSAL FOR THE PURCHASE OF THE NOTE; APPOINTING A SINKING FUND DEPOSITORY; DESIGNATING THE NOTE AS A QUALIFIED TAX EXEMPT OBLIGATION; STATING AUTHORITY FOR ENACTMENT OF ORDINANCE; STATING THAT ORDINANCE IS A CONTRACT WITH THE REGISTERED OWNER OF THE NOTE; SETTING FORTH A SEVERABILITY CLAUSE; CANCELLING AND ANNULLING INCONSISTENT ORDINANCES; AND AUTHORIZING OTHER NECESSARY ACTION.

WHEREAS, the Borough of Ambler, Montgomery County, Commonwealth of Pennsylvania (the "Borough") is granted the power by the Local Government Unit Debt Act, 53 Pa. Cons. Stat. §8001 *et seq.*, as amended (the "Act"), to incur indebtedness and to issue a general obligation note for the purposes of refunding outstanding indebtedness and financing capital projects; and

WHEREAS, pursuant to the Act, the Borough has determined to undertake various capital projects consisting of: (i) the planning, designing, acquiring, installing and constructing of various capital projects to upgrade, improve and equip the water system of the Borough (the "Water System"), including pipeline and valve replacement, acquisition of generators and other equipment, and improvements and upgrades to fire hydrants and the meter system; (ii) the acquisition of a

computer-based billing system for the Water System; and (iii) the acquisition of vehicles (collectively, the “**Projects**”); and

WHEREAS, the Borough has heretofore issued nonelectoral debt evidenced by its General Obligation Bonds, Series of 2009 (referred to as the “**2009 Bonds**”), which were issued in the aggregate principal amount of \$3,455,000, of which \$2,330,000 remain outstanding; and

WHEREAS, the Borough has determined to issue its General Obligation Note, Series of 2015 (the “**Note**”) in the principal amount of \$3,505,000 to finance (i) the costs of the Projects; (ii) the current refunding of the outstanding 2009 Bonds (with such refunding referred to herein as the “**Refinancing Program**” and such bonds referred to as the “**Refunded Bonds**”); and (iii) the payment of the costs and expenses of issuing the Note; and

WHEREAS, the 2009 Bonds were issued to provide funds for the current refunding of the Borough’s General Obligation Bonds, Series of 2003 (the “**2003 Bonds**”); and

WHEREAS, the 2003 Bonds were issued to provide funds for (i) the current refunding of the Borough’s General Obligation Bonds, Series of 1993 and (ii) certain capital projects involving the Water System (the “**2003 Projects**”); and

WHEREAS, the Borough has retained Public Financial Management, Inc., Malvern, Pennsylvania, as financial advisor in connection with the issuance of the Note (the “**Financial Advisor**”); and

WHEREAS, the Financial Advisor has received from Susquehanna Bank, Lancaster, Pennsylvania (the “**Purchaser**”) and presented to the Borough a proposal for the purchase of the Note (the “**Proposal**”); and

WHEREAS, the Note will provide funds for the costs of the Projects, for the Refinancing Program and for paying the costs of issuing the Note; and

WHEREAS, Borough Council desires to authorize the incurrence of debt and the issuance of the Note, to approve the Projects, to approve the Refinancing Program and to accept the Proposal of the Purchaser for the purchase of the Note.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by Borough Council as follows:

Section 1. Authorization of the Projects and the Refinancing Program and Incurrence of Indebtedness; Estimated Useful Lives and Cost of the Projects; Statement of Remaining Useful Lives of Prior Projects; and Purpose of the Refinancing Program. The Borough hereby approves and authorizes the Projects and the Refinancing Program as described in the recitals hereto and shall incur indebtedness, in the form of the Note; pursuant to the Act, in the principal amount of \$3,505,000 for the purpose of providing funds for and toward the costs of the Projects, the Refinancing Program and the payment of the costs and expenses of the financing.

It is hereby determined and stated that the estimated useful lives of the various components of the Projects range from 5 years to in excess of 40 years. The Borough obtained realistic estimates of the costs of the Projects determined through bid prices or estimates from persons qualified by experience to provide such estimates, and the total of such costs is not less than \$1,100,000. The principal amount of the Note equal to the separate cost of the portions of such projects having an unexpired shorter useful life than the period during which the Note will be outstanding has been scheduled to mature prior to the end of such useful life and the balance prior to the end of the longest unexpired useful life.

It is hereby determined and set forth that the purpose of the Refinancing Program is to reduce the total debt service that would otherwise be payable on the 2009 Bonds over the life of the issue as authorized in Section 8241(b) of the Act. Attached hereto as Exhibit A and made part hereof is the schedule of debt service savings anticipated in connection with the Refinancing Program.

The remaining estimated useful life of the 2003 Projects financed or refinanced with the proceeds of the 2009 Bonds was determined by the Borough under its Ordinance No. 1043 enacted September 15, 2009 to be in excess of 34 years. The realistic estimated useful lives of the 2003 Projects are hereby ratified and confirmed. The term of the principal amount of the Note allocated to the Refinancing Program does not extend the term of the 2009 Bonds.

Section 2. Authorization of Issuance of the Note; Type of Indebtedness. The Borough shall issue, pursuant to the Act and this Ordinance, the Note in the principal amount of \$3,505,000, to provide funds for and toward the costs of Projects and Refinancing Program and paying the costs of issuing the Note, as provided in Section 1 hereof. The debt evidenced by the Note is nonelectoral debt.

Section 3. Sale of Note. The Note shall be sold at invited private sale as hereinafter set forth in Section 6. After due consideration, Borough Council hereby finds and determines, on the basis of the advice and recommendation of its Financial Advisor and all available information, that such an invited private sale of the Note is in the best financial interest of the Borough.

Section 4. Type of Note. The Note, when issued, will be a general obligation note.

Section 5. Execution of the Note. The Note shall be executed by the manual or facsimile signature of the President or Vice President of Borough Council, shall have the corporate seal of the Borough or a facsimile thereof affixed thereto, duly attested by the manual or facsimile signature of the Secretary or Assistant Secretary (or any Acting Secretary appointed for such purposes).

Section 6. Award and Sale of the Note. The Borough hereby awards and sells the Note to the Purchaser, at a price of \$3,505,000 (representing the principal amount of the Note), and in accordance with the terms and conditions of the Proposal, which is hereby approved and accepted. A copy of said Proposal shall be attached to this Ordinance and lodged with the official minutes of this meeting and is hereby incorporated herein by reference. The proper officers of the Borough are hereby authorized and directed to endorse

the acceptance of the Borough on said Proposal and to deliver a copy thereof to the Purchaser.

Section 7. Terms of the Note. The Note shall be issued in fully registered form and shall be dated the date of delivery and shall have such other terms as may be specified in the accepted Proposal.

Section 8. Payment Date. If the date for payment of the principal of or interest on the Note shall be a Saturday, Sunday, legal holiday or a day on which banking institutions where the designated corporate trust office of the Sinking Fund Depository is located or authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

Section 9. Form of the Note. The form of the Note and the notation for registration, hereby approved, shall be with appropriate insertions, omissions and variations substantially as set forth in Exhibit C attached hereto and incorporated by reference.

Section 10. Covenants as to Tax Law. The Borough hereby covenants with the holders from time to time of the 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 Note under Section 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 Note, which, if such investment or use had been reasonably expected on the date of issuance of the Note, would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code and the rules and regulations promulgated. This covenant shall extend throughout the term of the Note and shall apply to all amounts which are proceeds of the Note for the purposes of said section, rules and regulations. Neither the Sinking Fund Depository nor any other official or agent of the Borough shall make any investment inconsistent with the foregoing covenant. All Borough officials responsible for investment shall follow the advice or direction of bond counsel in respect to the Note as to investments which may be made in compliance with this covenant.

The Borough hereby designates the Note for purposes of paragraph (3) of Section 265(b) of the Code as a "qualified tax-exempt obligation" and covenants that the Note does not constitute a private activity bond as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code), from gross income for federal income taxes (excluding, however, private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code) including the Note, have been or shall be issued by the Borough, including all subordinate entities of the Borough, during the calendar year 2015.

Section 11. Covenant to Pay Debt Service; Pledge of Taxing Power. The Borough covenants to and with registered owners, from time to time, of the Note, pursuant to this Ordinance, that the Borough (i) shall include the amount of the debt service for the Note, 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 of the Note 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.

The amounts to be budgeted, appropriated and paid pursuant to the foregoing covenants are set forth in the note amortization schedule attached hereto as Exhibit B and made a part hereof.

Section 12. 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 a sinking fund (the "**Sinking Fund**") for the Note, designated as the "Sinking Fund - General Obligation Note, Series of 2015", to be held by the Sinking Fund Depository hereinafter appointed (or such substitute or successor Sinking Fund Depository which shall hereafter be appointed in accordance with the provisions of the Act) and into said Sinking Fund there shall be paid all moneys necessary to pay the debt service on the Note when and as the same are collected, and said Sinking Fund shall be applied exclusively to the payment of the principal of and interest on the Note as covenanted and to no other purpose whatsoever, except as may be authorized by law, until the same shall have been fully paid.

The Borough covenants and agrees to deposit in the Sinking Fund, no later than the date due, the debt service payable on the Note, which shall not exceed the amounts set forth in Exhibit B hereto.

Pending application to the purpose for which each Sinking Fund is established, the President or Vice President of Borough Council or the Treasurer of the Borough is 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 each Sinking Fund during each applicable period shall be added to such Sinking Fund and shall be credited against the deposit next required to be made in such Sinking Fund.

The Sinking Fund Depository is hereby authorized and directed, without further action by the Borough, to pay from the Sinking Fund the principal of and interest on the Note as the same become due and payable in accordance with the terms thereof and the Borough hereby covenants that such monies, to the extent required, will be applied to such purpose.

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

All monies deposited in the Sinking Fund for the payment of the Note which have not been claimed by the registered owners thereof 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 the Sinking Fund Depository, shall be returned to the Borough.

Section 13. No Taxes Assumed. The Borough shall not assume the payment of any tax or taxes in consideration of the purchase of the Note.

Section 14. Appointment of Sinking Fund Depository and Paying Agent. Susquehanna Bank, is hereby appointed as Paying Agent and Sinking Fund Depository for the Note as required by Section 8106 of the Act (the “**Sinking Fund Depository**”). The Sinking Fund Depository is further appointed as registrar of the Note and directed to maintain a registry book for the Note. The proper officers of the Borough are authorized to contract with the Sinking Fund Depository on usual and customary terms, including an agreement to observe and comply with the provisions of this Ordinance and the Act.

Section 15. DCED Filing. The President of Borough Council, the Borough Manager and the Secretary, or the Vice President or the Assistant Secretary (or any Acting Secretary in the absence of the President or Secretary), or a duly-appointed successor, 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 Note, 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.

Section 16. Execution and Authentication of Note; Further Action. The appropriate officers as designated in Section 5 hereof are hereby authorized, empowered and directed to execute the Note as aforesaid in Section 5. The President or Vice President of Borough Council and the Secretary, Assistant Secretary (or any Acting Secretary) of the Borough, or any duly-appointed successor, as the case may be, are further authorized, empowered and directed to deliver the Note upon receipt of the purchase money and in accordance with the terms of the Proposal 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 Note, and such actions of such officers shall be deemed the actions of the Borough. The Borough’s bond counsel is hereby authorized and directed to prepare all documents required in connection with the issuance, sale and delivery of the Note as bond counsel deems necessary or appropriate.

Section 17. Redemption of Refunded Bonds. Subject to the issuance of and settlement for the Note, the Borough hereby calls the Refunded Bonds for redemption on or about July 15, 2015. The Borough Manager in consultation with the Financial Advisor is authorized to set the exact redemption date. The Borough shall deposit with the paying agent for the Refunded Bonds (the “**Refunded Bonds Paying Agent**”) the amounts required to pay the principal of and interest on the Refunded Bonds to the date of redemption. The officers of the Borough are hereby

authorized and directed to execute all applicable documents, including but not limited to the execution of an escrow agreement or comparable documentation on usual and customary terms, and to take such other action as may be necessary or advisable to effect the redemption and payment of the Refunded Bonds. Such agreements and documentation shall be in form and substance as approved by the signing officers of the Borough. Upon redemption of the Refunded Bonds, any excess monies shall be transferred by the Refunded Bonds Paying Agent to the Sinking Fund Depository, and the Sinking Fund Depository shall deposit the same in the Sinking Fund.

Section 18. Application of Note Proceeds. The purchase price for the Note drawn at the time of settlement shall be paid to the Sinking Fund Depository on behalf of the Borough. The Sinking Fund Depository shall deposit the same in a settlement account. From the settlement account, the Sinking Fund Depository shall pay, or establish reserves for payment of, the costs and expenses of the financing, and the proper officers of the Borough are authorized to direct the Sinking Fund Depository to pay such amounts on behalf of the Borough, all as set forth in written directions to the Sinking Fund Depository. The net proceeds of the Note drawn at the time of settlement shall be deposited with the Refunded Bonds Paying Agents as provided in Section 17 hereof and the remaining proceeds of the Note shall be drawn by the Borough for costs of the Projects as provided in the Note.

Section 19. Applicability of Act. This Ordinance is enacted 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.

Section 20. Contract with Noteholders. In consideration of the purchase and acceptance of the Note authorized to be issued hereunder by those who shall purchase the same, this Ordinance shall be deemed to be and shall constitute a contract between the Borough and the holders from time to time of the Note; and the covenants and agreements herein set forth to be performed on behalf of the Borough shall be for the benefit, protection and security of the holders or registered owners from time to time of the Note. If the Borough shall default in the performance of any of its obligations hereunder, under the Note or under the Act, the holders or registered owners of the Note shall be entitled to all of the rights and remedies provided by the Act in the event of such default.

Section 21. Severability Provision. In the event that any one or more of the provisions contained in this Ordinance or in the Note 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 Note, and this Ordinance or the Note shall be construed and enforced as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

Section 22. 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 Note 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.

Section 23. 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 Note 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 Note.

Section 24. Repealer. All ordinances or parts thereof inconsistent herewith are hereby repealed, rescinded, cancelled and annulled.

SO ORDAINED this 2nd day of June 2015. This ordinance is effective upon adoption.



Salvatore Pasceri, Council President

ATTEST: 

Mary Aversa, Secretary