

Bill No. ____-2016

CITY OF BETHLEHEM,

Lehigh and Northampton Counties, Pennsylvania

Ordinance

No. ____ 2016

File of the City Council

No. ____

Session of 2016

Moved by _____

May 3, 2016

AN ORDINANCE

OF THE COUNCIL OF THE CITY OF BETHLEHEM, LEHIGH AND NORTHAMPTON COUNTIES, PENNSYLVANIA (THE "CITY"), DETERMINING TO INCUR DEBT IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$17,435,000; DETERMINING THAT SUCH DEBT SHALL BE INCURRED AS LEASE RENTAL DEBT TO BE EVIDENCED BY ONE OR MORE SERIES OF GUARANTEED PARKING SYSTEM REVENUE BONDS, SERIES OF 2016 (THE "BONDS"), TO BE AUTHORIZED AND TO BE ISSUED BY THE BETHLEHEM PARKING AUTHORITY (THE "AUTHORITY"); BRIEFLY DESCRIBING THE PROJECT FOR WHICH SAID DEBT IS TO BE INCURRED AND SPECIFYING THE REALISTIC USEFUL LIFE OF SAID PROJECT; AUTHORIZING AND DIRECTING THE MAYOR, THE PRESIDENT OF THE COUNCIL, THE CITY CONTROLLER, THE CITY TREASURER, THE BUSINESS ADMINISTRATOR OR THE CITY CLERK OF THE CITY TO PREPARE, VERIFY AND FILE, AS APPLICABLE, THE DEBT STATEMENT AND OTHER APPROPRIATE DOCUMENTS REQUIRED BY THE LOCAL GOVERNMENT UNIT DEBT ACT, 53 PA. C.S.

§ 8001 ET SEQ., AS AMENDED AND SUPPLEMENTED, AND, UPON RECEIPT OF APPROVAL OF THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, TO EXECUTE, ATTEST, ACKNOWLEDGE AND DELIVER, AS APPROPRIATE, A GUARANTY AGREEMENT WITH RESPECT TO THE BONDS; APPROVING THE FORM OF SAID GUARANTY AGREEMENT; AUTHORIZING DELIVERY OF SAID GUARANTY AGREEMENT TO MANUFACTURERS AND TRADERS TRUST COMPANY, AS TRUSTEE UNDER A MASTER TRUST INDENTURE, DATED AS OF NOVEMBER 15, 2016, AS SUPPLEMENTED AND AMENDED BY A FIRST SUPPLEMENTAL TRUST INDENTURE, AND AS FURTHER SUPPLEMENTED AND AMENDED BY A SECOND SUPPLEMENTAL TRUST INDENTURE; GUARANTEEING PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO; SPECIFYING THE MAXIMUM AMOUNT OF THE GUARANTY OBLIGATIONS OF THE CITY PURSUANT TO SUCH GUARANTY AGREEMENT; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE CITY WITH RESPECT TO THE GUARANTY AGREEMENT; APPROVING A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT AS TO THE INFORMATION REGARDING THE CITY; PROVIDING FOR PROPER OFFICERS OF THE CITY TO TAKE ALL OTHER REQUIRED, NECESSARY OR DESIRABLE RELATED ACTION IN CONNECTION WITH SAID PROJECT AND SAID GUARANTY AGREEMENT; COVENANTING TO PROVIDE CONTINUING DISCLOSURE; PROVIDING WHEN THIS ORDINANCE SHALL BECOME EFFECTIVE; PROVIDING FOR SEVERABILITY OF PROVISIONS; AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INSOFAR AS THE SAME SHALL BE INCONSISTENT HEREWITH.

WHEREAS, the City of Bethlehem, Lehigh and Northampton Counties, Pennsylvania (the “**City**”) is existing under laws of the Commonwealth of Pennsylvania (the “**Commonwealth**”) and is a Local Government Unit, as defined in the Pennsylvania Local government Unit Debt Act, 53 Pa.C.S. § 8001 *et seq.*, as amended and supplemented (the “**Debt Act**”); and

WHEREAS, Bethlehem Parking Authority (the “**Authority**”) is a body politic and corporate existing under the laws of the Commonwealth, specifically, 53 Pa.C.S. § 5501 *et seq.*, as amended and supplemented, having been duly organized by the City for purposes set forth therein; and

WHEREAS, the Authority heretofore acquired and constructed certain lots, buildings and structures, including equipment, entrances, exits, fencing and other accessories necessary or desirable for the safety and convenience of the parking of vehicles in and around the City (collectively, the “**Parking Facilities**”); and

WHEREAS, the Authority heretofore issued its \$5,000,000 principal amount Grant Anticipation Note, Series of 2013 (the “**Series 2013 Note**”), to QNB Bank, in order to finance various capital projects with respect to the Parking Facilities, a portion of which Series of 2013 Note presently remains outstanding; and

WHEREAS, the Authority desires to undertake a project consisting of: (i) financing the current refunding of the Series of 2013 Note (the “**Refunding Project**”); (ii) financing and/or reimbursing the costs of the acquisition, construction, installation and equipping of a new multi-level parking garage to be located on the south side of the City at the corner of South New Street and Rink Street (the “**Capital Project**”), and (iii) the payment of the costs and expenses of issuing the Series 2016 Bonds (hereinafter defined); and

WHEREAS, the Authority, upon certain terms and conditions, proposes to issue and sell its Guaranteed Parking System Revenue Bonds, Series of 2016, in the maximum aggregate principal amount of \$17,435,000 (the “**Series of 2016 Bonds**”), consisting of one or more series of tax-exempt and/or taxable bonds, the proceeds of which Series of 2016 Bonds will be applied by the Authority, together with other available funds of the Authority, if any, to finance a project (the “**Project**”), consisting of: (i) the Refunding Project; (ii) the Capital Project; (iii) the funding of capitalized interest, (iv) the establishment of necessary reserves and other funds under the Indenture (as hereinafter defined); and (v) payment of the costs and expenses of issuing the Series of 2016 Bonds; and

WHEREAS, the City, pursuant to a Meter Revenue Agreement, dated October 28, 2015, heretofore transferred, assigned and pledged to the Authority, certain revenues from parking meters in the City, to the extent set forth therein, to be applied, *inter alia*, to the payment of debt service on any bonds or notes of the Authority issued in accordance with the terms of the Meter Revenue Agreement; and

WHEREAS, the Bonds will be secured by, among other things, (i) a Municipal Bond Insurance Policy (the “**Bond Insurance Policy**”) issued by [Bond Insurer] (the “**Bond Insurer**”), that guarantees the scheduled payment of principal of and interest on the Bonds when due, and (ii) a Municipal Bond Debt Service Reserve Insurance Policy (the “**DSRF Policy**”), issued by the Bond Insurer, which will be deposited in lieu of a cash to the 2016 Series Debt Service Reserve Account, as defined and established under the Second Supplemental Trust Indenture (as hereinafter defined), in an amount equal to the debt service reserve requirement for the Bonds; and

WHEREAS, the City, as an inducement to the purchasers and to any and all subsequent owners of the Bonds to purchase the Bonds and to the Bond Insurer to issue the DSRF Policy and the Bond Insurance Policy, and thereby to achieve interest cost and other savings, has determined to guarantee (i) the payment of principal of and interest on the Bonds, when due, (ii) all amounts due and payable to the Bond Insurer under or in connection with the Bond Insurance Policy, including without limitation administrative costs and reimbursement amounts to the Bond Insurer, and (iii) all amounts due and payable to the Bond Insurer under or in connection with the DSRF Policy and the Debt Service Reserve Agreement between the Authority and the Bond Insurer, including without limitation policy costs and administrative expenses, pursuant to this Guaranty, all as permitted by and in accordance with the terms and conditions of the Debt Act.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Council of the City of Bethlehem, Lehigh and Northampton Counties, Pennsylvania, as follows:

1. The City hereby authorizes and approves the Project, as described in the recitals hereof, and requests the Authority to undertake the Project. The City ratifies and confirms all actions heretofore taken by the Authority and any official of the City in connection with the Project.

2. The Council of the City hereby determines that reasonable cost estimates have been obtained for the Project with the assistance of the Authority's financial advisor, consulting engineers and others qualified by experience. The cost of the Project is estimated not to exceed \$17,435,000. . The Council of the City hereby determines that the useful life of the Capital Project is at least thirty (30) years.

Proceeds derived from the Series of 2013 Note were applied to finance, *inter alia*, capital projects with respect to the Parking Facilities including, but not limited to, preliminary expenditures in connection with the Capital Project. The City hereby finds and determines that the remaining useful life of the Parking Facilities is at least twenty-five (25) years.

3. The Council of the City hereby determines to incur "debt", as such term is defined in the Debt Act, as "lease rental debt", as such term is defined in the Debt Act, in connection with the financing of the Project by the Authority.

4. The debt to be incurred as lease rental debt, as set forth in Paragraph 3 hereof, shall be evidenced by the Authority's Series of 2016 Bonds, in the maximum aggregate principal amount of \$17,435,000. The Series of 2016 Bonds shall be one or more series of Guaranteed Parking System Revenue Bonds issued under and pursuant to a Master Trust Indenture (the "**Master Indenture**"), as amended and supplemented by a First Supplemental Trust Indenture (the "**First Supplemental Indenture**"), and as further amended and supplemented by a Second Supplemental Trust Indenture (the "**Second Supplemental Indenture**"), and together with the Master Indenture and the First Supplemental Indenture, collectively the "**Indenture**"), between the Authority and Manufacturers and Traders Trust Company, as Trustee, and secured by, *inter alia*, a pledge of all of the Net Revenues, as defined therein, derived from the Parking Facilities.

5. The City shall enter into a Guaranty Agreement (the "**Guaranty Agreement**") with respect to the Series of 2016 Bonds to be issued by the Authority, substantially in the form presented to this meeting as Exhibit A attached hereto, which form is approved; and a copy of the Guaranty Agreement, in the form so presented to this meeting and so approved, shall be filed with the City Clerk of the City for inspection, at reasonable times, by interested persons requesting such inspection.

6. The Mayor, the President of the Council of the City, the City Controller, the City Treasurer, the Business Administrator or the City Clerk, as appropriate, of the City hereby are authorized and directed: (a) to prepare, verify and file with the Pennsylvania Department of Community and Economic Development (the "**Department**"), a debt statement and the borrowing base certificate, as required by Section 8110 of the Debt Act; and (b) to prepare and file originally and thereafter, as required, with the Department, appropriate statements required by Section 8026 of the Debt Act which are necessary to qualify all or a portion of lease rental debt of the City, which is subject to exclusion as self-liquidating debt, for exclusion from the appropriate debt limit of the City as self-liquidating debt.

For such purpose, the Council of the City hereby directs the firm of Desman, Chicago, Illinois, Parking Consultant, to prepare a self-liquidating debt report in conformance with Section 8026 of the Debt Act, with respect to the Parking System and with respect to the Series of 2016 Bonds.

7. The Mayor, the City Controller, or the City Clerk of the City, as appropriate, hereby are authorized and directed to execute, attest, seal, acknowledge and deliver, as applicable, the Guaranty Agreement, in behalf of the City, with such insertions, deletions and amendments as the officers of the City executing the same and the Solicitor to the City shall approve. The execution, attestation and delivery of the Guaranty Agreement by appropriate officers of the City shall constitute conclusive evidence of each such approval; Provided, however, that such execution and delivery of the Guaranty Agreement shall be subject to compliance by the City with applicable provisions of the Debt Act.

The City authorizes delivery of the Guaranty Agreement to Manufacturers and Traders Trust Company, as Trustee, for the purposes set forth in the Guaranty Agreement.

8. In the event that the City is obligated to make payments under the Guaranty Agreement, the maximum annual amounts required to be paid thereunder, if and as necessary, from the general revenues of the City, shall be as set forth in Exhibit B hereto. Exhibit B is incorporated herein by reference with the same force and effect as if fully set forth in the text hereof. If at any time the City is required to make any payment under the Guaranty Agreement, the proper officers of the City hereby are authorized and directed to do so.

9. The City covenants to and with the owners of the Series of 2016 Bonds, from time to time, that, subject to the terms and conditions of and as set forth more fully in the Guaranty Agreement, the City (a) shall include the amounts payable in respect of the Guaranty Agreement for each fiscal year in which such sums are payable in its budget for that year, (b) shall appropriate such amounts from its general revenues for the payment of such payment, and (c) shall duly and punctually pay or cause to be paid from any of its revenues or funds the amount payable in respect of the Guaranty Agreement, at the dates and place and in the manner stated in such Guaranty Agreement, according to the true intent and meaning thereof. The City pledges its full faith, credit and taxing power for such budgeting, appropriation and payment in respect of the Guaranty Agreement. For the purpose of complying with the covenants of this Paragraph, the City shall, subject to the terms and conditions hereof and of the Guaranty Agreement, budget the amounts set forth in Exhibit C hereto for the fiscal year in which such amounts are payable and shall appropriate and shall pay, in the manner provided in the Guaranty Agreement, such amounts; provided, however, the City shall be entitled from time to time, to take as a credit against such amounts payable, the amounts on deposit in the Debt Service Reserve Fund, if any, created under the Indenture, all as more fully set forth in the Guaranty Agreement. This covenant shall be specifically enforceable in accordance with the Debt Act.

10. Proper officers and officials of the City hereby are authorized and directed to execute, attest and deliver any and all necessary or appropriate certificates, instruments, agreements or documents and to do any and all necessary or appropriate things in connection with the transactions hereby contemplated, including, without limitation, fulfilling the requirements of the terms and conditions approved by the Authority with respect to the Series of 2016 Bonds.

11. The distribution of the Preliminary Official Statement of the Authority (the "Preliminary Official Statement") setting forth, among other matters, certain information about the City hereby is authorized. The Mayor, the City Controller, or the City Clerk of this City, as appropriate, hereby are authorized and directed to execute on behalf of this City such certificates as to the Preliminary Official Statement, including a certificate that as of its date the Preliminary Official Statement is "deemed final" by this City in accordance with Rule 15c2-12 of the Securities and Exchange Commission, as to information regarding this City, and the final Official Statement as the purchasers of the Series of 2016 Bonds may reasonably request and counsel may recommend.

12. The Mayor, the City Controller, the President of the Council of the City or the City Clerk of the City, as appropriate, hereby are authorized and directed to: (i) execute, attest, acknowledge and deliver, as applicable, any consents; and (ii) take any action which may be necessary or required in connection with the Project or the issuance of the Series of 2016 Bonds.

13. There is created a sinking fund of the City for the guarantee of the City related to the Series of 2016 Bonds, to be known as "Sinking Fund - Bethlehem Parking Authority Guaranteed Parking System Revenue Bonds, Series of 2016". Said sinking fund shall be administered in the manner provided by the Debt Act for administration of sinking funds created pursuant to the Debt Act.

The City covenants and agrees to pay into the aforesaid sinking fund all moneys, if any, required to be paid to holders of the Series of 2016 Bonds pursuant to provisions of the Guaranty Agreement on or before the dates required for such payment pursuant to terms of the Guaranty Agreement. Moneys so deposited shall be paid to applicable holders of the Series of 2016 Bonds by the sinking fund depository appointed in Paragraph 15 hereof, in behalf of the City, pursuant to terms of the Guaranty Agreement, on the dates and in the manner required by terms of the Guaranty Agreement.

14. The City appoints Manufacturers and Traders Trust Company, as the sinking fund depository with respect to the sinking fund created pursuant to Paragraph 14 hereof.

15. The City covenants that it will execute and deliver and comply with a Continuing Disclosure Certificate (the "**Disclosure Certificate**") for the benefit of the owners of the Series of 2016 Bonds at or prior to the closing for the issuance thereof. Pursuant to the Disclosure Certificate, the City will provide certain financial and operating information on an annual basis and notice of certain events to each Nationally Recognized Municipal Securities Information Repository, the appropriate state repository, if any, and the Municipal Securities Rulemaking Board, Electronic Municipal Market Access System (EMMA), in accordance with Securities and Exchange Commission Rule 15c2-12. The Mayor, the City Controller or the City Clerk of this City, as appropriate, are hereby authorized and directed to execute and deliver the Disclosure Certificate on behalf of this City with such changes as have been approved by the Solicitor to the City and Bond Counsel.

16. This Ordinance shall become effective in accordance with the provisions of the Debt Act.

17. In the event any provision, paragraph, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision,

paragraph, sentence, clause or part of this Ordinance, it being the intent of the City that the remainder of the Ordinance shall remain in full force and effect.

18. All ordinances and resolutions or parts thereof, insofar as the same are inconsistent herewith, are repealed hereby.

Sponsored by _____

PASSED finally in Council on the _____ of _____, 2016.

President of Council

ATTEST:

City Clerk

(SEAL)

This Ordinance approved this _____ day of _____, 2016.

Mayor of City of Bethlehem

EXHIBIT A

GUARANTY AGREEMENT

EXHIBIT B

MAXIMUM ANNUAL OBLIGATION

CERTIFICATE

I, the undersigned City Clerk of the City of Bethlehem, Lehigh and Northampton Counties, Pennsylvania (the “**City**”), certify that: the foregoing is a true and correct copy of an Ordinance that duly was enacted by affirmative vote of a majority of all members of the Council of the City at a meeting duly held on the 3rd day of May, 2016; said Ordinance duly has been recorded in the minute book of the Council of the City; a notice with respect to the intent to enact said Ordinance has been published as required by law; said Ordinance was available for public inspection by any interested citizen requesting the same in accordance with the requirements of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania and such notice; and said Ordinance has not been amended, altered, modified or repealed as of the date of this Certificate.

I further certify that the Council of the City met the advance notice requirements of the Sunshine Act, 65 Pa. C.S. § 701 *et seq.*, by advertising the time and place of said meeting and by posting prominently a notice of said meeting at the principal office of the City or at the public building in which said meeting was held.

I further certify that: the total number of members of the Council of the City is seven (7); the vote of members of the Council of the City upon said Ordinance was called and duly was recorded upon the minutes of said meeting; and members of the Council of the City voted upon said Ordinance in the following manner:

Vote

IN WITNESS WHEREOF, I set my hand and affix the official seal of the City, this 3rd day of May, 2016.

City Clerk

(SEAL)