

RESOLUTION 2021- 006

RESOLUTION APPROVING THE ISSUANCE OF A GENERAL OBLIGATION BOND UP TO \$1,670,000 PRINCIPAL AMOUNT TO FUND THE WATER MAIN REPLACEMENT PROJECT, TO THE DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DRINKING WATER STATE REVOLVING FUND, AS REGISTERED OWNER; SETTING FORTH THE FORM AND DETAILS OF THE BOND; DETERMINING THAT THE BOND WILL BE SOLD BY PRIVATE SALE AND AUTHORIZING EXECUTION OF A FINANCING AGREEMENT IN CONNECTION WITH THE BOND; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE TOWN FOR THE BOND; AND AUTHORIZING OTHER NECESSARY ACTION

RECITALS

WHEREAS, the Mayor and Council of the Town of Milton (collectively, the “Town Council”) of The Town of Milton (the “Town”) pursuant to Section 33 of 76 Delaware Laws, Chapter 201, as amended (the “Charter”), proposed to the electors of the Town by Resolution 2020-021 dated November 2, 2020 (the “First Resolution”) to borrow, in the aggregate, up to One Million Six Hundred Seventy Thousand Dollars (\$1,670,000) principal amount in order to provide funds for the installation of 6,800 feet of water main piping under Atlantic Avenue, Chestnut Street and Atlantic Street (the “Water Main Replacement Project”), and fixed a time, date and place for a public hearing on the First Resolution. Notice of hearing on the First Resolution was properly placed in the *Cape Gazette* on November 20, 2020 as required by the Charter; and

WHEREAS, the public hearing was held in accordance with the Charter on December 7, 2020 and the Town Council by affirmative vote of its members thereafter passed a second resolution, Resolution 2020-020, on December 7, 2020 (the “Second Resolution,” and together with the First Resolution, the “Prior Resolutions”) in which the Town Council determined to proceed with the proposed borrowing as authorized by the Charter and ordered a special election to be held on January 16, 2021 (the “Special Election”) for the purpose of voting for or against the proposed loan; and

WHEREAS, the Special Election was held on January 16, 2021 and notice was properly given for the Special Election in the *Cape Gazette* on December 29, 2020, January 1, 2021, January 5, 2021 and January 8, 2021 and posted in four (4) public places as required by the Charter, whereby a majority of the electors approved the borrowing by voting in the Special Election which was conducted and certified in accordance with the provisions of the Charter and whereby the results of the Special Election were ratified by Resolution 2021-005 of the Secretary of the Town Council on February 1, 2021; and

WHEREAS, the Delaware Department of Health and Social Services, Division of Public Health, in conjunction with the Delaware Department of Natural Resources and Environmental Control (collectively, the “Department”), has authorized a loan (the “Loan”) to the Town from the Delaware Drinking Water State Revolving Fund (the “Fund”) in a total amount not to exceed One Million Six Hundred Seventy Thousand Dollars (\$1,670,000) to fund the Water Main Replacement Project, bearing interest at the rate of 1.00% per annum and an administrative fee at the rate of 1.00% per annum (collectively, interest and the administrative fee are referred to as “Fee” and equal to an annual rate of two percent (2.0%)) and principal forgiveness of the entire amount advanced to the Town up to \$1,670,000 upon completion of the Water Main Replacement Project. In the event the Water Main Replacement Project is not completed, the Town shall be obligated to repay any amount advanced under the Loan up to \$1,670,000, with a repayment term as described in Section 1 hereof and as set forth in the 2021 Bond; and

WHEREAS, Section 33(b) of the Charter authorizes the Town to borrow sums, not exceeding in the aggregate the total sum of 5% of the assessed value of real property and improvements thereon situate within the limits of the Town as shown by the last assessment preceding the creation of the said indebtedness; and

WHEREAS, the Town Council desires to authorize the Mayor with the Town Manager or the Secretary of the Town Council to take such action on behalf of the Town as deemed necessary or desirable to effect the purposes of this Resolution and to consummate the proposed borrowing; and

WHEREAS, pursuant to this Resolution, the Mayor with the Town Manager or the Secretary of the Town Council are authorized and directed to enter into all agreements on behalf of the Town as they shall determine are necessary or appropriate to carry out the intent of this Resolution; and

WHEREAS, the Town now proposes to issue its general obligations bonds in the amount up to \$1,670,000 General Obligation Bond (Water Main Replacement Project), Series 2021-SRF (the “2021 Bond”). The 2021 Bond will finance the Water Main Replacement Project, as such project was approved by the electors in the Special Election, and to pay the costs associated with issuing the 2021 Bond (collectively, the “Project”); and

WHEREAS, the 2021 Bond will be issued under, and subject to, the terms and conditions contained in the Financing Agreement dated as of the date of closing, by and between the Town and the Fund (the “Financing Agreement”); and

WHEREAS, the Town Council desires to formalize, ratify and confirm such action by adoption of a formal written resolution.

NOW, THEREFORE, BE IT HEREBY RESOLVED AND DETERMINED by the Town Council of The Town of Milton, as follows:

Section 1. Authorization of the Incurrence of Indebtedness as Approved by the Special Election. The Town Council shall borrow the sum of up to One Million Six Hundred Seventy Thousand Dollars (\$1,670,000) principal amount for a loan in order to provide funds for

the Project, as approved by referendum of the Board of Special Election in the Special Election held on January 16, 2021, by the issuance of the 2021 Bond, which, together with other indebtedness of the Town, does not exceed in the aggregate 5% of the assessed value of real property and improvements thereon situate within the limits of the Town as shown by the last assessment preceding the creation of the said indebtedness.

The Fee for the Loan is two percent (2.0%), payable semi-annually during project construction. Based on the assumption that certain conditions will have been satisfied, specifically, the full completion of the Project, the entire principal amount of the loan will be forgiven after completion of the Project, with any principal amount advanced and not forgiven, should the Project not be completed, to be paid for a term equal to the (1) earlier of the date the Town notifies the Department of its intent to not complete the Project or (2) the third (3rd) anniversary from issuance of the Bonds (defined herein) plus twenty (20) years.

Section 2. Authorization of Issuance of the 2021 Bond. The Town shall issue, pursuant to the Charter, the Prior Resolutions and this Resolution, up to \$1,670,000 aggregate principal amount of its General Obligation Bond (Water Main Replacement Project), Series 2021-SRF, for the purpose of financing the Project.

Section 3. Form and Terms of the 2021 Bond. The 2021 Bond shall be substantially in the Form of Bond provided in **Exhibits A**, attached hereto, with appropriate omissions, insertions and variations. The actual 2021 Bond will contain the terms of the 2021 Bond as required by Section 33(a)(8) of the Charter. The 2021 Bond shall bear interest at an annual interest rate of 1.00% and an administrative fee at an annual rate of 1.00%.

Section 4. Sale of 2021 Bond. The 2021 Bond shall be sold at a private sale by negotiation to the Delaware Department of Health and Social Services, in conjunction with the Delaware Department of Natural Resources and Environmental Control, Delaware Drinking Water State Revolving Fund pursuant to the terms of the 2021 Bond and the Financing Agreement, as herein defined.

Section 5. Covenant to Pay Debt Service - Pledge of Full Faith, Credit and Taxing Power. The Town hereby covenants with the Department, as registered owner of the 2021 Bond, pursuant to this Resolution as follows: (a) that the Town will include in its budget for each fiscal year during the life of the 2021 Bond, the amount of the debt service on the 2021 Bond issued hereunder which will be payable in each such fiscal year so long as the 2021 Bond shall remain outstanding; (b) that the Town shall appropriate such amounts from its general revenues to the payment of such Fee; (c) that the Town shall duly and punctually pay or cause to be paid the principal of the 2021 Bond at the dates and places and in the manner stated in the 2021 Bond according to the true intent and meaning thereof; and (d) for such budgeting, appropriation and payment the Town hereby pledges its full faith, credit and taxing power.

Section 6. Authorization of the Financing Agreement. The Mayor with the Town Manager or Secretary of the Town Council are hereby authorized to execute and deliver the Financing Agreement by and between the Town and the Department setting forth the terms of the Loan and the Town's obligation to repay the Loan, which will be evidenced by the execution of such Financing Agreement and the delivery of the 2021 Bond.

Section 7. Further Action. The Town Manager, or designee, is 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 Resolution and the Charter in the name and on behalf of the Town.

Section 8. Charter Applicable to 2021 Bond. This Resolution is adopted pursuant to, and the 2021 Bond issued hereunder shall be subject to, the provisions of the Charter and all of the mandatory provisions thereof shall apply hereunder whether or not explicitly stated herein.

Section 9. Contract with Bondholders. This Resolution constitutes a contract with the Department as registered owner of the 2021 Bond and shall be enforceable in accordance with the provisions of the laws of the State of Delaware.

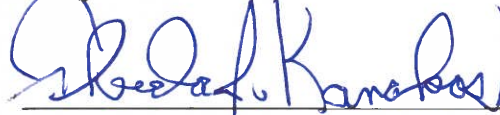
Section 10. Severability. In case any one or more of the provisions contained in this Resolution or in the 2021 Bond issued pursuant hereto shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Resolution or of said 2021 Bond and this Resolution or said 2021 Bond shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

Section 11. Repealer. All Resolutions and parts of Resolutions heretofore adopted to the extent that the same are inconsistent herewith are hereby repealed.

Section 12. Effective Date. This Resolution shall become effective immediately upon its approval by the Town Council.

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ADOPTED AND RESOLVED this 1st day of March, 2021.



Theodore Kanakos
Mayor

(TOWN SEAL)

Attest:



James Garde
Secretary of the Town Council

Exhibit A
Form of Bond

REGISTERED
R-1

\$1,670,000

UNITED STATES OF AMERICA
STATE OF DELAWARE
TOWN OF MILTON

GENERAL OBLIGATION BOND
(WATER MAIN REPLACEMENT PROJECT),
SERIES 2021-SRF

Final Maturity Date: _____, 20__¹

REGISTERED OWNER: Delaware Drinking Water State Revolving Fund, acting by and through the Delaware Department of Health and Social Services, Division of Public Health

PRINCIPAL AMOUNT: One Million Six Hundred Seventy Thousand Dollars (\$1,670,000)

THE TOWN OF MILTON, DELAWARE, a municipal and political subdivision of the State of Delaware (hereinafter referred to as the “Borrower” or the “Town”), for value received hereby acknowledges itself indebted and promises to pay, as hereinafter set forth if necessary, to the DELAWARE DRINKING WATER STATE REVOLVING FUND, or to any other registered owner hereof, the principal sum of ONE MILLION SIX HUNDRED SEVENTY THOUSAND DOLLARS (\$1,670,000) or so much thereof as shall actually be advanced to the Borrower by the Drinking Water State Revolving Fund, acting by and through the Delaware Department of Health and Social Services, Division of Public Health (the “Department”) pursuant to the Financing Agreement dated _____, 2021 (the “Financing Agreement”) between the Borrower and the Department.

This Bond is being issued in order to provide funds to finance the installation of 6,800 feet of water main piping under Atlantic Avenue, Chestnut Street and Atlantic Street, as more fully described in Exhibit A to the Financing Agreement (the “Project”) and pay certain administrative costs and costs of issuing this Bond.

The Borrower shall pay to the Department, on the principal amount drawn down and outstanding hereunder from the date(s) drawn, interest at the rate of 1.00% per annum and an administrative fee at the rate of 1.00% per annum (collectively, interest and the administrative fee are referred to herein as “Fee”). Such Fee shall accrue starting on the date hereof (the “Closing”) through the Final Maturity Date or prepayment in full hereof. The Borrower shall

¹ Should repayment become necessary.

pay Fee hereunder initially on _____, _____ and semiannually thereafter on each _____ and _____ (each, a "Payment Date"). The Borrower shall pay only Fee and no principal during the period commencing with the Closing through the earlier of (i) the Payment Date next succeeding the date on which the Project is actually completed or (ii) _____, _____ (which, as of the Closing, is the date by which the Project is projected to be completed (the "Anticipated Project Completion Date").

The Borrower expects to complete the Project by _____, _____, at which time the Borrower will have fulfilled its obligation under this Bond. This projected date of completion of the Project is subject to an extension if such extension is mutually agreed upon by the Department and the Borrower. Upon completion of the Project, the entire principal amount advanced to the Borrower and outstanding will be forgiven by the Department.

Should the principal amount advanced and outstanding not be forgiven as a result of non-completion of the Project, such outstanding principal amount will be payable upon the earlier of (i) the date the Town notifies the Department of its intent to not complete the Project or (ii) the third (3rd) anniversary from issuance of the Bond, such date currently expected to be _____, _____ (herein referred to as the "Amortization Start Date"). After the Amortization Start Date, Fee and principal shall be payable on the outstanding principal amounts drawn hereunder semiannually, on each Payment Date, commencing on the Payment Date next succeeding the Amortization Start Date and continuing on each of the next 39 following Payment Dates, in an amount sufficient to amortize all principal drawn with substantially equal semiannual payments of principal and Fee over twenty (20) years. Once determined, Payment Dates shall remain the same throughout the term of this Bond.

If by _____, 2022, which is one year from the date of Closing, (i) the Borrower has not drawn down the principal amount of this Bond by more than ten percent (10%) of the Capital Project costs, and (ii) the Department has not received a Notice to Proceed as required by the Financing Agreement, the Department may in its discretion assess a penalty of one percent (1%) of the total principal amount authorized by this Bond (the "Penalty"). Such Penalty may be drawn by the Department from the principal amount allocated to this Bond. It is within the Department's complete discretion whether to impose the Penalty based upon its review of affirmative steps taken by the Borrower to complete the Capital Project and the totality of the circumstances surrounding any such delay in making draws on the principal amount of this Bond.

Notwithstanding the foregoing, all unpaid principal shall be paid in full on _____, 20___. The Fee hereon shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. Both the principal of and Fee on this Bond is payable in lawful money of the United States of America. Principal and Fee on this Bond shall be paid by check or draft mailed or remitted electronically on the payment date to the Registered Owner, as shown on the books and records of the Borrower.

This Bond is authorized and issued pursuant to the Laws of the State of Delaware, including Section 33 of 71 Delaware Laws, Chapter 326, as amended, and resolutions adopted by

the Town Council on November 2, 2020 and December 7, 2020, a public hearing held on December 7, 2020, favorable results of a special election conducted on January 16, 2021 and a resolution adopted by Town Council on _____, 2021.

At the option of the Borrower and upon providing prior written notice to the Registered Owner hereof, as shown on the books and records of the Borrower, this Bond may be prepaid or redeemed in whole or in part, without penalty, at any time, and any prepayment in part of this Bond shall be applied to all or a portion of the principal installments then outstanding as shall be specified by the Borrower. If all or a portion of this Bond is called for redemption, it or the portion so called will cease to bear Fee on the specified redemption date provided that funds for the payment of the principal amount of the portion of this Bond so called for redemption and the accrued Fee thereon to the redemption date are on deposit at the place of payment on the redemption date.

It is hereby certified and recited that all conditions, acts, and things required by the Constitution, statutes or laws of the State of Delaware to exist, be performed or happen, precedent to or in the issuance of this Bond, do exist, have been performed and have happened, and that the amount of this Bond, together with all other indebtedness of the Borrower, is within every debt and other limit prescribed by said Constitution, statutes or laws.

This Bond is a valid and legally binding general obligation of the Borrower and, unless paid from other sources, the principal payable hereon will be paid from ad valorem taxes levied upon all real property subject to taxation by the Borrower. The full faith and credit of the Borrower are hereby pledged to the punctual payment of the principal of this Bond according to its terms.

This Bond may be transferred by the Registered Owner hereof in person or by its attorney duly authorized in writing. The Borrower may deem and treat the Registered Owner as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal hereof and for all other purposes.

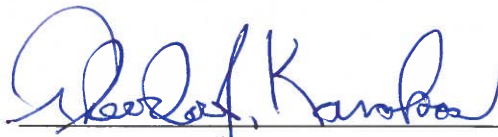
The provisions of this Bond shall be construed and enforced under the laws of the State of Delaware.

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IN WITNESS WHEREOF, the Town has caused this Bond to be signed by the Mayor and attested by the Secretary of Town Council of the Town, and the official corporate seal of the Town to be imprinted or impressed hereon, and this Bond to be dated _____, 2021.

(TOWN SEAL)

THE TOWN OF MILTON, DELAWARE

By: 
Theodore Kanakos
Mayor

Attest:


James Garde
Secretary of the Town Council

[END OF FORM OF BOND]

CERTIFICATE OF SECRETARY OF THE TOWN COUNCIL

The undersigned, Secretary of the Town Council of The Town of Milton, HEREBY CERTIFIES that:

The foregoing Resolution authorizing the issuance of General Obligation Bond (Water Main Replacement Project), Series 2021-SRF of the Town was duly moved and seconded and adopted by a majority vote of the Town Council of said Town at a duly called and convened public meeting of said body held on March 1, 2021; and that the roll of the Town Council was called and such members voted or were absent as follows:

<u>Name</u>	<u>Vote</u>
Theodore Kanakos, Mayor	Yes
George Kevin Kelly, Vice Mayor	Absent
James Garde, Secretary	Yes
Richard Baty, Treasurer	Yes
Randi Meredith, Council Member	Yes
Michael Cote, Council Member	Yes

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

WITNESS my hand and seal of the Town this 1st day of March, 2021.



James Garde
Secretary of the Town Council

(TOWN SEAL)