

BOROUGH OF BADEN  
BEAVER COUNTY, PENNSYLVANIA

ORDINANCE NO. 971

AN ORDINANCE OF THE BOROUGH OF BADEN, BEAVER COUNTY, PENNSYLVANIA, AUTHORIZING THE INCURRING OF LEASE RENTAL DEBT IN THE AMOUNT NOT TO EXCEED \$8,900,000 BY GUARANTEEING THE BONDS TO BE ISSUED BY THE MUNICIPAL AUTHORITY OF THE BOROUGH OF BADEN FOR THE PURPOSE OF REFUNDING PRIOR DEBT; AGREEING TO PAY THE PRINCIPAL OF AND INTEREST ON SUCH BONDS; APPROVING THE FORM OF THE GUARANTY AGREEMENT; AUTHORIZING THE APPLICATION TO THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT TO HAVE THE DEBT APPROVED AND EXCLUDED FROM THE BOROUGH'S NET NONELECTORAL DEBT AS SELF-LIQUIDATING OR SUBSIDIZED DEBT; AUTHORIZING OTHER NECESSARY AND PROPER ACTION; AND REPEALING INCONSISTENT ORDINANCES.

WHEREAS, the Borough of Baden, Beaver County, Pennsylvania (the "Borough") is a Borough organized and existing under the laws of the Commonwealth of Pennsylvania; and

WHEREAS, the Municipal Authority of the Borough of Baden, Beaver County, Pennsylvania (the "Authority") is a public body corporate and politic duly organized and validly existing under the provisions of the Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, as amended and re-enacted as Chapter 56 in Title 53 of the Pennsylvania Consolidated Statutes (53 Pa. C.S. §5601 *et seq.*) (the "Act") having been organized by the Borough; and

WHEREAS, the Authority previously issued its Guaranteed Sewer Revenue Bonds, Series of 2016 ("2016 Bonds"); and

WHEREAS, the Authority has determined that it is advantageous to issue bonds to refund the 2016 Bonds in order to achieve debt service savings; and

WHEREAS, in order to currently refund the 2016 Bonds and pay the costs of issuance, the Authority has determined to issue its Guaranteed Sewer Revenue Bonds, Series of 2021 (the "2021 Bonds"), in an aggregate principal amount not to exceed \$8,900,000, pursuant to the terms of a Trust Indenture by and between the Authority and U.S. Bank National Association as Trustee; and

WHEREAS, the Board of the Authority invited RBC Capital Markets, LLC (the "Purchaser") to submit, to the Authority, a proposal for the purchase of the 2021 Bonds, at private sale by negotiation, and will accept the same and will award the 2021 Bonds to the Purchaser, pursuant to a Bond Purchase Contract, for the purchase of the 2021 Bonds (the "Bond Purchase Contract"), which meets and satisfies the requirements and parameters set forth in the Resolution adopted by the Authority on August 10, 2021; and

WHEREAS, in order to enhance the marketability of the 2021 Bonds, the Borough has agreed to guarantee payment of all principal and interest on the 2021 Bonds; and

WHEREAS, the Borough is willing to guarantee the 2021 Bonds; and

WHEREAS, the Guaranty Agreement (the "Guaranty") will be substantially in the form as presented to this meeting; and

WHEREAS, it is necessary that the indebtedness of the Borough be increased for the purpose of guaranteeing the 2021 Bonds; and

WHEREAS, the Borough intends to issue its guaranty, in accordance with the terms of this Ordinance and Title 53, Part VII, Subpart B, of the Pennsylvania Consolidated Statutes (53 Pa.C.S. Sections 8001, et seq.), known as the Local Government Unit Debt Act (the "Debt Act"); and

WHEREAS, the proposed increase of indebtedness, if approved for exclusion as self-liquidating or subsidized debt, together with the nonelectoral indebtedness and the lease rental indebtedness presently outstanding, will not cause the limitations of the Borough's non-electoral borrowing power, pursuant to constitutional and statutory authority, to be exceeded; and

WHEREAS, the Borough will apply to the Pennsylvania Department of Community and Economic Development to have the proposed increase of indebtedness approved.

NOW THEREFORE, BE IT ORDAINED AND ENACTED, by the Council of the Borough of Baden, Beaver County, Pennsylvania, and it is hereby ORDAINED and ENACTED by the authority of the same, as follows:

SECTION 1. The Council hereby determines to incur and authorizes the incurrence of lease rental debt, in accordance with the provisions of the Debt Act, in an amount not to exceed \$8,900,000 and having a maximum annual debt service, as set forth in Exhibit "A" (attached hereto), to be evidenced by a guaranty of the 2021 Bonds.

SECTION 2. The Borough hereby approves the execution and delivery of the Bond Purchase Contract as executed by the Authority.

SECTION 3. The debt to be incurred is lease rental debt and is to be incurred to enable the Authority to refund and redeem the 2016 Bonds which was previously issued to refund prior debt.

SECTION 4. The Council hereby directs that the necessary documentation be filed with the Department of Community and Economic Development of the Commonwealth of Pennsylvania (the "Department") so that the debt incurred hereunder may be approved as lease rental debt of the Borough. It is, therefore, hereby declared that the lease rental debt of the Borough, to be incurred hereunder, shall not exceed \$8,900,000 which, if excluded and together with all presently existing net debt of the Borough, will not be in excess of the limitations, as set forth in the Debt Act. The President, Borough Secretary or any other proper officers of the Borough are hereby authorized and directed to prepare, verify and file the Debt Statement, required by the Debt Act, together with the Borrowing Base Certificate and an application for approval of said indebtedness, with the Department, as promptly as practicable, and to do and perform all other acts and sign all other documents necessary and proper in connection therewith. Said officers are further authorized, at this time or in the future, to take the necessary action and to file all necessary documentation with the Department to exclude any portion of the debt incurred hereby from the appropriate debt limit as self-liquidating or subsidized debt, pursuant to the Debt Act, the cost of which approval and exclusion proceedings shall be paid for by the Authority as part of the costs of issuance of the 2021 Bonds.

SECTION 5. The maximum amount to be paid in each year under the Guaranty is set forth in Exhibit "A", attached to this Ordinance. The Borough covenants that it will include the amount of each such payment in its budget for each year in which each such amount is payable; that it will appropriate such amounts from its revenues for such payments; and that it will duly and punctually pay such amounts or cause them to be paid on the dates and at the places and in the manner stated in the Guaranty, according to the true intent and meaning thereof. In preparing and adopting its budget for any year, the Borough may, unless it has received notice of default on the 2021 Bonds, treat as a

revenue item from other sources an amount, not in excess of the amount of its liability hereunder for such year, which the Authority estimates will be available to pay debt service on the 2021 Bonds in that year. Such amount may be estimated to be received during the year, on or before the date when payments of principal of or interest on the 2021 Bonds will be due. For such budgeting, appropriation and payment, the Borough hereby pledges its full faith, credit and taxing power.

SECTION 6. Upon the receipt by the Borough of the approval of the Department to incur lease rental debt, the Borough shall enter into the Guaranty, substantially in the form of Exhibit "B", attached to this Ordinance, with such changes therein as shall be approved by the Borough Solicitor and the officers executing the Guaranty, such approval to be conclusively evidenced by such execution.

SECTION 7. The President is hereby authorized and empowered to execute the Guaranty for and on behalf of the Borough, and the Borough Secretary shall attest to the same and affix thereto the seal of the Borough.

SECTION 8. The proper officers of the Borough are hereby authorized and directed to perform all acts necessary and proper for the delivery of the Guaranty, the payment of the amounts due thereunder and the performance of all acts required thereby and for the issuance of the 2021 Bonds.

SECTION 9. The action of the officers of the Borough in advertising the pre-enactment notice of summary of this Ordinance, as required by law, is ratified and confirmed. The officers of the Borough are authorized and directed to advertise notice of enactment of this Ordinance in a newspaper of general circulation in Beaver County within fifteen (15) days after final enactment. The Borough Secretary is hereby directed to make a copy of this Ordinance available for inspection by any citizen during normal office hours.

SECTION 10. The realistic estimated useful life of the Authority's 2021 Project is at least fifteen (15) years, from the date hereof.

SECTION 11. In accordance with Rule 15c2-12 (the "Rule") promulgated under the Securities Exchange Act of 1934, as amended, the Borough will execute and deliver the Continuing Disclosure Certificate and/or Agreement described in the Preliminary Official Statement for the 2021 Bonds under which it will agree to provide or cause to be provided (i) annual financial information and operating data, and (ii) timely notice of the occurrence of certain material events with respect to the 2021 Bonds. The Purchaser's obligation to purchase the 2021 Bonds is conditioned upon its receipt of the Continuing Disclosure Certificate and/or Agreement, at or prior to the delivery of the 2021 Bonds, in form and substance satisfactory to the Purchaser and the Borough's Solicitor.

SECTION 12. Any authorization granted to, power conferred on or direction given to the President or Borough Secretary shall be deemed to run to the Vice-President or Assistant or Acting Borough Secretary, respectively, as if such latter titles had been expressly included in the text hereof which grants such authorization, confers such power or gives such direction.

SECTION 13. The Borough hereby appoints John F. Salopek, Esquire, as Bond Counsel, for the purpose of rendering any and all necessary opinions with respect to the 2021 Bonds and the Guaranty.

SECTION 14. As of the date thereof and as relates to the Borough, the Preliminary Official Statement for the 2021 Bonds did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and

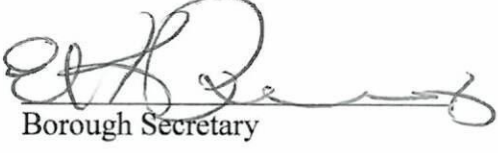
SECTION 15. All ordinances and resolutions or parts thereof not in accordance with this Ordinance are hereby repealed insofar as they conflict with this Ordinance.

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ENACTED and ORDAINED by the Council of the Borough of Baden,  
this 18<sup>th</sup> day of August, 2021.

BOROUGH OF BADEN

ATTEST:

  
Borough Secretary

By:   
President

SEAL

APPROVED by me this 18<sup>th</sup> day of August, 2021.

  
Mayor

**EXHIBIT "A"**

Table of the maximum annual amount  
to be paid each year under the Guaranty Agreement.

**BOND DEBT SERVICE****Baden Borough Municipal Authority  
Series of 2021 Max Schedule**

<b>Period Ending</b>	<b>Principal</b>	<b>Coupon</b>	<b>Interest</b>	<b>Debt Service</b>	<b>Annual Debt Service</b>
12/01/2021	625,000	5.000%	131,027.78	756,027.78	756,027.78
06/01/2022			206,875.00	206,875.00	
12/01/2022	650,000	5.000%	206,875.00	856,875.00	1,063,750.00
06/01/2023			190,625.00	190,625.00	
12/01/2023	655,000	5.000%	190,625.00	845,625.00	1,036,250.00
06/01/2024			174,250.00	174,250.00	
12/01/2024	660,000	5.000%	174,250.00	834,250.00	1,008,500.00
06/01/2025			157,750.00	157,750.00	
12/01/2025	670,000	5.000%	157,750.00	827,750.00	985,500.00
06/01/2026			141,000.00	141,000.00	
12/01/2026	675,000	5.000%	141,000.00	816,000.00	957,000.00
06/01/2027			124,125.00	124,125.00	
12/01/2027	685,000	5.000%	124,125.00	809,125.00	933,250.00
06/01/2028			107,000.00	107,000.00	
12/01/2028	695,000	5.000%	107,000.00	802,000.00	909,000.00
06/01/2029			89,625.00	89,625.00	
12/01/2029	705,000	5.000%	89,625.00	794,625.00	884,250.00
06/01/2030			72,000.00	72,000.00	
12/01/2030	710,000	5.000%	72,000.00	782,000.00	854,000.00
06/01/2031			54,250.00	54,250.00	
12/01/2031	715,000	5.000%	54,250.00	769,250.00	823,500.00
06/01/2032			36,375.00	36,375.00	
12/01/2032	725,000	5.000%	36,375.00	761,375.00	797,750.00
06/01/2033			18,250.00	18,250.00	
12/01/2033	730,000	5.000%	18,250.00	748,250.00	766,500.00
	8,900,000		2,875,277.78	11,775,277.78	11,775,277.78



**EXHIBIT "B"**

Form of Guaranty Agreement

**GUARANTY AGREEMENT**

**THIS GUARANTY AGREEMENT is made as of \_\_\_\_\_, 20\_\_\_\_, by and among the BOROUGH OF BADEN, Beaver County, Pennsylvania (the “Borough”)**

**A**

**N**

**D**

**MUNICIPAL AUTHORITY OF THE BOROUGH OF BADEN, Beaver County, Pennsylvania (the “Authority”)**

**A**

**N**

**D**

**U.S. BANK NATIONAL ASSOCIATION, (the “Trustee”), pursuant to the Trust Indenture dated as of \_\_\_\_\_, 2021, between the Trustee and the Authority (the “Indenture”).**

**WITNESSETH**

**WHEREAS, the Authority is a body corporate and politic, organized and existing under the Pennsylvania Municipality Authorities Act (53 Pa. C.S. § 5601, et seq.), (the “Act”); and**

**WHEREAS, the Authority proposes to issue its Guaranteed Sewer Revenue Bonds, Series of 2021, dated \_\_\_\_\_, 2021, (the “2021 Bonds”), pursuant to the Indenture, in the aggregate principal amount of \$\_\_\_\_\_ the proceeds of which are to be used to finance the costs of a project (the “2021 Project”), consisting of the**

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current refunding of the Guaranteed Sewer Revenue Bonds, Series of 2016 (“2016 Bonds”) and paying the costs of issuance of the 2021 Bonds; and

WHEREAS, the Authority has requested \_\_\_\_\_ (the “Bond Insurer”) to issue its municipal bond insurance policy (the “Policy”), pursuant to which the Bond Insurer will insure the payment of the principal of and interest on the 2021 Bonds when due in order to enhance the marketability of the 2021 Bonds; and

WHEREAS, in order to further enhance the marketability of the 2021 Bonds and to induce the Bond Insurer to issue the Policy, the Authority has requested the Borough to guarantee payment of all principal of and interest on the 2021 Bonds and make certain information disclosures to the Bond Insurer; and

WHEREAS, the Borough has agreed to unconditionally guarantee the payment of principal and interest on the 2021 Bonds, pursuant to this Guaranty Agreement (the “Guaranty”); and

WHEREAS, this Guaranty has been authorized, on the part of the Borough, by Ordinance No. \_\_\_\_\_, duly adopted by the Council of the Borough, on August 18, 2021.

NOW THEREFORE, the Borough, Authority and Trustee, in consideration of the premises and the issuance and delivery of the 2021 Bonds and intending to be legally bound, do hereby agree as follows:

Section 1. (a) The Borough does hereby unconditionally guarantee to the Trustee, for the benefit of the Bond Insurer and the holders, from time to time, of all of the 2021 Bonds issued and outstanding under the Indenture, (i)

the full and prompt payment of the principal or redemption price of every 2021 Bond, when and as the same shall become due, whether at the stated maturity thereof or by acceleration, (ii) the full and prompt payment of the interest on every 2021 Bond, when and as the same shall become due, and (iii) the repayment of amounts due the Bond Insurer under the Policy. The Borough acknowledges receipt of the Indenture and agrees to pay such amounts, to the Trustee or Bond Insurer, as appropriate, as may be required to discharge the Authority's obligations thereunder, within three (3) business days of delivery, by the Trustee, of such demand to the Borough Secretary. This is a guarantee of payment and not of collection.

(b) The Borough agrees to pay all costs, expenses and fees (including court costs and reasonable attorney's fees) paid or incurred by the Trustee or the Bond Insurer, in realizing upon any of the payments hereby guaranteed or, to the extent permitted by law, in enforcing this Guaranty, whether the same be enforced by suit or otherwise.

(c) The Authority agrees to repay the Borough any amounts and costs paid hereunder. Such repayment obligation of the Authority to the Borough arising out of payments by the Borough hereunder shall be subordinate to the payment of debt service on the 2021 Bonds.

(d) The Trustee or the Bond Insurer, in its sole discretion, shall have the right to proceed first and directly against the Borough under this Guaranty without proceeding against or exhausting any other remedies which it may have and without resorting to any other security held by the Authority or the Trustee.

(e) The Borough shall have no right to the benefits of the Policy, including, without limitation, any right to file a claim under the Policy.

Section 2. The Borough hereby covenants to the Trustee, the Bond Insurer and the holders, from time to time, of the 2021 Bonds, that it shall include in its budget, for that year, all amounts payable under this Guaranty, for each fiscal year in which such sums are payable; shall appropriate such amounts to the payment of its obligations hereunder; shall duly and punctually pay or cause to be paid such amounts at the date and place and in the manner stated herein according to the true intent and meaning hereof; and for such budgeting, appropriation and payments, the Borough hereby pledges its full faith, credit and taxing power, which presently includes ad valorem taxes on all taxable property in the Borough, without limitation as to rate or amount. The Borough further agrees that the covenant, contained in this Section 2, may be specifically enforced against it by any owner of the 2021 Bonds, the Bond Insurer or by the Trustee, on behalf of such owners, all as provided in the Pennsylvania Local Government Unit Debt Act (the "Debt Act").

Section 3. (a) The Trustee shall give the Borough immediate telephonic notice of the occurrence of any default under the Indenture. The term "default" for the purpose of these provisions, includes both events of default, as defined in the Indenture, and events which but for notice or lapse of time would constitute an event of default. Said telephonic notice shall be confirmed within two (2) business days, in writing, delivered by certified mail or such other method of delivery as, in the judgment of the Trustee, is of equal or greater effectiveness. The

Trustee shall communicate any additional information the Borough requests and otherwise cooperate with the Borough so as to facilitate the Borough's performance of its obligations under this Guaranty. Notwithstanding the foregoing, all payments hereunder relating to the 2021 Bonds shall be made no later than one (1) business day prior to any payment date for the 2021 Bonds.

(b) Any and all payments made by the Borough hereunder shall be paid directly to the Trustee and deposited in the Debt Service Fund or any appropriate subaccount established therein, under the Indenture.

(c) The Borough's obligation to make payments hereunder shall continue and remain in full force and effect, irrespective of whether or not the Borough has made one or more payments, pursuant to the terms hereof.

Section 4. So long as any 2021 Bonds remain outstanding, this Guaranty shall remain in full force and effect, irrespective of whether there has been any breach, by the Authority, of its obligations under the Indenture or of any disagreement between the Borough and the Authority, as to the accuracy of any insufficiency notice. It is the intention of the parties hereto that so long as any 2021 Bond shall remain outstanding under the Indenture, there shall be no termination or abatement of the obligation of the Borough to make payments, as aforesaid, for any cause whatsoever, whether similar or dissimilar to any of the foregoing, any present or future law to the contrary notwithstanding.

Section 5. The Borough agrees that its obligations hereunder shall be absolute and shall not be subject to any defense or any right of set-off,

counterclaim or recoupment, arising out of any breach by the Authority of any obligation to the Borough, whether hereunder or otherwise. The Borough hereby waives any defenses to payment available to it as a guarantor, including any defense that the obligations guaranteed were modified without its consent. This is a guaranty of payment and not of collection.

Section 6. This Guaranty shall take effect immediately upon its execution by all parties hereto and delivery and shall remain in full force and effect until the date all 2021 Bonds have been paid in full or otherwise satisfied by virtue of the defeasance provisions contained in the Indenture and all amounts payable to Bond Insurer have been paid in full.

Section 7. Subsequent to the issuance of the 2021 Bonds, this Guaranty may not be amended, changed, modified, altered or terminated, in any manner, without the prior written consent of the Trustee and Bond Insurer.

Section 8. This Guaranty is being entered into solely for the benefit of the Authority, the Bond Insurer, the owners of the 2021 Bonds (including the Bond Insurer in respect of subrogation rights resulting from any payment of principal or interest on the 2021 Bonds, under the Policy), the Trustee, on behalf of such owners, and each of their respective successors and assigns, and nothing in this Guaranty, expressed or implied, is intended or shall be construed to give, to any other person, any legal or equitable right, remedy or claim under or in respect of this Guaranty or any covenants, conditions or provisions contained herein. In respect of the foregoing, the Authority, the Borough and the Trustee agree that the Bond Insurer shall be a

third-party beneficiary of this Guaranty. The obligations of the Borough shall not be affected by the delivery or a draw on the Policy and any amount paid by the Bond Insurer shall remain outstanding for purposes hereof.

Section 9. This Guaranty may be executed in any number of counterparts and by different parties hereto on separate counterparts, all of which taken together shall be regarded for all purposes as one original and such counterparts shall together constitute and be but one and the same agreement.

Section 10. This Guaranty is entered into pursuant to the Debt Act and is intended to confer upon the owners of the 2021 Bonds the rights provided therein for holders of obligations guaranteed pursuant to the Debt Act. In the enforcement hereof, this Guaranty may be enforced in accordance with the rights and remedies contained in the Debt Act. So long as the Bond Insurer is not in default under the Policy, the Bond Insurer shall control the enforcement of all remedies against the Borough under this Guaranty.

Section 11. Should any clause, provision or section of this Guaranty be held illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections hereof, and this Guaranty shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein.

Section 12. The Borough shall provide the Bond Insurer with the following financial information: (i) annual audited financial statements within 180 days after the end of its fiscal year, (ii) the Borough's annual budget within 30 days



after the approval thereof and (iii) such other information, data or reports as the Bond Insurer shall reasonably request from time to time. The reports and information required by this Section shall be sent to the address for the Bond Insurer provided in the Indenture.

Section 13. The Borough will permit the Bond Insurer to discuss the affairs, finances and accounts of the Borough or any information the Bond Insurer may reasonably request regarding the security for the 2021 Bonds with appropriate officers of the Borough and will use commercially reasonable efforts to enable the Bond Insurer to have access to the facilities, books and records of the Borough on any business day upon reasonable prior notice.

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IN WITNESS WHEREOF, the Borough, Trustee and Authority have caused this Guaranty Agreement to be duly executed as of the day and year first above written.

ATTEST:

  
Borough Secretary

BOROUGH OF BADEN

By:   
President

U.S. BANK NATIONAL  
ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

ATTEST:

\_\_\_\_\_  
(Assistant) Secretary

MUNICIPAL AUTHORITY OF  
THE BOROUGH OF BADEN

By: \_\_\_\_\_  
(Vice) Chairman