BOROUGH OF ZELIENOPLE
BUTLER COUNTY, PENNSYLVANIA
ORDINANCE #870-20

AUTHORIZING THE INCURRING OF NONELECTORAL DEBT BY THE ISSUANCE OF A GENERAL OBLIGATION NOTE IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED THREE MILLION FIVE HUNDRED THOUSAND DOLLARS ($3,500,000); COVENANTING TO PAY, AND PLEDGING UNLIMITED TAXING POWER FOR THE PAYMENT OF, THE NOTE; FIXING THE FORM, INTEREST RATE, MATURITY, REDEMPTION AND OTHER PROVISIONS FOR THE PAYMENT THEREOF; AUTHORIZING THE ACCEPTANCE OF A PROPOSAL FOR THE PURCHASE OF THE NOTE; AUTHORIZING A FILING OF REQUIRED DOCUMENTS WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; RATIFYING AND DIRECTING CERTAIN ACTIONS OF OFFICERS; AND MAKING CERTAIN OTHER COVENANTS AND PROVISIONS IN RESPECT OF THE NOTE.

WHEREAS, the County of Butler (the “County” or the “Purchaser”) previously authorized a loan financing program offering reduced interest rate loans to municipal entities in the County for qualified municipal infrastructure projects designated as the “Butler County Infrastructure Bank Program” (the “BCIB Program”); and

WHEREAS, on March 18, 2020, the Board of County Commissioners approved the projects eligible for inclusion in the BCIB Program, one of which was the project to be undertaken by the Borough of Zelienople (the “Local Government Unit”); and

WHEREAS, on April 29, 2020, the Board of County Commissioners approved the issuance of a tax-exempt general obligation note (the “BCIB Note”) in an aggregate principal amount not to exceed $8,000,000 in order to fund the BCIB Program; and

WHEREAS, the Borough Council (the “Governing Body”) of the Local Government Unit deems it advisable to borrow an aggregate principal sum not to exceed $3,500,000 pursuant to the Local Government Unit Debt Act, 53 Pa.C.S.A. §8001 et seq. (the “Debt Act”), for the purposes described on Exhibit P hereto (the “Project”); and

WHEREAS, the County has presented a Purchase Proposal (defined hereinafter), attached hereto as Exhibit PC, to purchase the note to be issued by the Local Government Unit in order to achieve the financing of the Local Government Unit’s Project.

NOW, THEREFORE, it is hereby ENACTED as follows:

Section 1. Definitions

Unless the context clearly indicates otherwise, the following terms shall, for all purposes of this Ordinance, have the meanings hereby ascribed to them. Moreover, such terms, together with all other provisions of this Ordinance, shall be read and understood in a manner consistent with the provisions of the Debt Act, as generally interpreted by the Department of Community and Economic Development or by courts maintaining competent jurisdiction.
Words or phrases importing the masculine gender shall be read and understood to include the feminine and neuter genders and those importing number shall include singular or plural, both as appropriate to the context. The word “person,” in addition to natural persons, shall mean and include corporations, associations and public bodies and their successors unless the context shall indicate otherwise.

“Dated Date” means the date of delivery of the Note, expected to be June 24, 2020, or such other date that may be determined and fixed by the Purchaser and the Local Government Unit, upon which interest will begin to accrue on amounts advanced under the Note.

“Department” has the meaning given to such term in Section 2 hereof.

“Designated Officers” has the meaning given to such term in Section 2 hereof.

“First Note Payment Date” means November 1, 2020, the date upon which interest on the Note is first payable, as may be further specified by the Purchaser in accordance with the Purchase Proposal relating to the Note.

“Local Government Unit” means the Borough of Zelienople, situated in the County of Butler, a borough of the Commonwealth of Pennsylvania, duly organized and validly existing under the Constitution and laws of the Commonwealth, particularly the Borough Code, as amended.

“Note” or “Obligations” means, collectively, the Local Government Unit’s General Obligation Note, Series of 2020, in an aggregate principal amount not to exceed $3,500,000.

“Note Payment Date(s)” means, singularly or jointly, May 1 and November 1 of each year during the term thereof, or as may be further specified by the Local Government Unit and the Purchaser in accordance with the Purchase Proposal, commencing with the First Note Payment Date.

“Project” has the meaning given to such term in Exhibit P hereto.

“Purchase Proposal” means the Proposal for the Purchase of Note, set out in Exhibit PC hereto, of even date with the date of adoption of this Ordinance by the Governing Body, as presented by the County, and accepted by the Local Government Unit by execution and delivery of the same pursuant to Section 6 herein; provided however that the term shall, in addition, mean and include any addendums to the Proposal for Purchase of the Note containing the final terms and conditions of the sale of the Note (consistent with the parameters established herein) from the Purchaser, with the intent that the two documents shall be read and interpreted as one, and furthermore that the Proposal for Purchase of the Note together with the addendum thereto, shall govern the rights and duties of the Local Government Unit and the Purchaser, inter se.

“Redemption Date(s)” means any date selected by the Local Government Unit, on or after July 1, 2020, upon which, with at least thirty (30) days’ prior written notice to the Purchaser, the Local Government Unit shall prepay all, or any portion of, the outstanding principal amount of the Note, together with all interest then accrued and owing, in order to redeem and prepay the same.

“Redemption Price” means 100% of the principal amount of the Note being redeemed and prepaid.

Section 2. Authorization
The Local Government Unit hereby authorizes the incurrence, and the increase, of nonelectoral indebtedness in an aggregate principal amount not to exceed $3,500,000, to be evidenced by its General Obligation Note, Series of 2020 in substantially the form attached hereto as Exhibit A to the Loan Agreement (defined hereafter) (with such changes as the Designated Officers, hereinafter defined, shall approve), in order to pay the costs of the Project.

The Note will be dated the Dated Date, will bear interest at a fixed rate not exceeding .56% per annum (30/360 day year basis), payable on the Note Payment Dates, beginning with the First Note Payment Date, and will amortize, as to principal, in part, on each said Note Payment Date according to the schedule of maximum principal and interest payments set out in Exhibit DS attached hereto. Specific payments of principal of and interest on the Note advanced and outstanding shall be due and payable in accordance to the schedule of principal amortization provided by the Purchaser on December 2, 2021, as provided in the Loan Agreement.

The Note shall preserve to the Local Government Unit the right, on thirty (30) days’ prior written notice, to prepay, at any time beginning on the applicable Redemption Date and on any date thereafter, and from time to time, in whole or in part (but if in part, then in integral multiples of $5,000); at a redemption price of 100% of the principal amount being prepaid and redeemed, any amount outstanding hereunder, in all cases with interest accrued to the date of such prepayment and redemption.

Furthermore, the Note will be issued subject to, and the terms and conditions of payment, prepayment and security further delineated by and under a loan agreement (the “Loan Agreement”) incorporating the terms and conditions of the Purchase Proposal. The Loan Agreement, substantially in the form attached hereto as Exhibit LA, is hereby approved, and the same shall be executed and delivered, with such changes as the Designated Officers shall approve, upon the issuance and delivery of the Note, in exchange for the Purchase Price of said Note at the settlement thereof.

The Local Government Unit hereby authorizes and directs the Governing Body (including individual members thereof) and the Township Secretary, or their duly elected and acting successors (the “Designated Officers”), to execute and deliver the Note, the Loan Agreement and all such documents, and to do and perform all acts necessary and proper for the issuance and further security of the Note, including the filing of proceedings with the Pennsylvania Department of Community and Economic Development (the “Department”) to enable the Department to certify its approval to issue, sell and deliver the Note.

The Designated Officers are hereby further authorized and directed to provide to the Purchaser each year, for as long as the Note are outstanding, a copy of the audited financial statements of the Local Government Unit when available, and to comply with and perform all the terms and conditions of the Loan Agreement and the Note.

The Designated Officers are hereby authorized and directed to prepare such materials and make such filings, applications and solicitations that are necessary to obtain appropriate approvals for the issuance of the Note and the matters contemplated hereby.

Section 3. Preparation of Debt Statement

As required by §8110 of the Act, any member of the Governing Body and the Borough Secretary of the Local Government Unit are authorized to prepare, execute and acknowledge the Debt Statement, and its accompanying Borrowing Base Certificate.
Section 4. Security and Payment of the Note

The Note shall be a general obligation of the Local Government Unit to the extent permitted by law. The Local Government Unit hereby covenants with the Purchaser and with subsequent holders, from time to time, of the Note that it will (a) include the amount of the debt service for each fiscal year in which any installment of principal or interest is payable in its budget for that year, (b) appropriate such amounts to the payment of such debt service, and (c) duly and punctually pay or cause to be paid the principal of and interest on the Note on the dates, at the place and in the manner stated therein according to the true intent and meaning thereof.

For such budgeting, appropriation and payment of the Note, the Local Government Unit hereby pledges its full faith, credit and taxing power. The Local Government Unit further covenants and agrees to undertake, perform and pursue all acts, applications, appeals, procedures and petitions, including the filing and pursuit of legal actions and remedies within appropriate administrative and judicial forums, necessary to permit and enable the Local Government Unit to budget and collect taxes and other revenues adequate to fulfill the foregoing covenant. The maximum amounts of debt service which are payable in respect of the Note are set forth in Exhibit DS attached hereto.

The Local Government Unit authorizes the creation (in its name and identified by reference to the Note), of a Sinking Fund for the payment of the Note with NexTier Bank, which is a bank lawfully conducting business in the Commonwealth of Pennsylvania, and does further covenant to maintain such Sinking Fund, in accordance with the Local Government Unit Debt Act, until the Note is paid in full. The Local Government Unit shall serve as its own paying agent and shall well and timely pay, from the Sinking Fund, the full amounts of all principal of and interest owing on the Note, as and when due and payable, until the Note is paid in full. Finally, the Local Government Unit shall serve as registrar in respect of the Note, according to the provisions of the Act in compliance with current industry standards and practices.

Section 5. Tax Covenants.

The Local Government Unit acknowledges that the BCIB Note is being issue by the County as a tax-exempt obligation compliant with all the provisions of Sections 103 and 141 through 150, inclusive, of the Internal Revenue Code of 1986, as amended (the “Tax Code”).

The Local Government Unit represents and warrants that proceeds of the Note are being applied to the purposes described in Exhibit P hereto. The Local Government Unit further represents and covenants that it will take such actions as shall be necessary or desirable, from time to time and within its reasonable control, as shall be necessary to maintain the exclusion of interest paid on the BCIB Note from the gross income of the owner for federal income tax purposes, pursuant to the requirements of the Tax Code. The Local Government Unit will not take any action or permit any action to be taken on its behalf or cause or permit any circumstance within its control to arise or continue, if such action or circumstance, or its expectation on the date of issue of the Note, would cause the interest paid by the County on the BCIB Note to be subject to federal income tax in the hands of the owner thereof.

Section 6. Award

After due consideration of sundry factors, including the professional advice of financial advisors and current market conditions, the Local Government Unit hereby: (1) determines that a private sale by negotiation of the Note is in the best financial interest of the Local Government Unit; and (2) authorizes the President or Vice-President of the Borough Council and the Borough Secretary (or their appropriate successors acting by reason of absence or other incapacity), in their sole discretion, to award the sale of the
Note to the Purchaser, by means of the execution, and delivery to the Purchaser, of the Purchase Proposal. The execution and delivery of the Purchase Proposal is hereby ratified and confirmed.

Section 7. Expeditious Settlement.

The Local Government Unit hereby authorizes and directs the Designated Officers, Note Counsel or Solicitor to undertake and perform all actions on behalf of the Local Government Unit necessary and proper to the expeditious settlement of the sale of the Note.

The Designated Officers are further authorized and directed to undertake and perform, or cause to be undertaken or performed, all the ordinary duties of the Local Government Unit (and the same are hereby specifically approved) which may be required under, or reasonably contemplated by, the Purchase Proposal, including without limitation, retention of professionals, and execution and delivery of any certificates, orders, security agreements, mortgages and other similar documents and agreements that may be necessary, in the opinion of the Purchaser, Note Counsel or Solicitor, for settlement of the sale of the Note.

Section 8. Note Ordinance a Contract

Upon the Local Government Unit's execution of a Purchase Proposal relating to the Note, this Ordinance, with the Note themselves, and the Loan Agreement relating thereto, as and when the same are executed and delivered, shall be deemed to be a contract with the holders (including purchasers of participation interests therein), from time to time, of said Note.

Section 9. Inter-municipal Contracts

The Designated Officers of the Local Government Unit are authorized to enter into contracts with the County to work collaboratively to finance and complete the Project.

[SEAL]  
BOROUGH OF ZELIENOPLE  

ATTEST:  
Allen E. Bayer, President  

______________________________  
Donald C. Pepe, Borough Manager  

APPROVED AND EXAMINED by me this 11th day of May 2020. _________  

______________________________  
Thomas M. Oliverio, Mayor
DESCRIPTION OF PROJECT

“Project” means payment of the costs of: (A) Main Street streetscape and stormwater improvements consisting of: (i) demolition of existing sidewalks, asphalt and signal lights, (ii) installation of new sidewalks, asphalt, light and signal poles, signs and signals, (iii) installation of a stormwater retention device in the Community Park and (iv) replacement of the Linden Street culvert; and (B) issuing the Note. The realistically estimated remaining useful life of the capital assets financed by the proceeds of the Note is, on a weighted average basis, in excess of twenty (20) years.
EXHIBIT P

MAXIMUM DEBT SERVICE PAYMENT SCHEDULE
EXHIBIT DS

FORM OF LOAN AGREEMENT
(INCLUDING FORM OF NOTE)
CERTIFICATE

I, the undersigned, a Designated Officer of the named Local Government Unit, hereby certify that the foregoing and attached is a true copy of an Ordinance which was duly adopted by the affirmative vote of the majority of all the members of the Governing Body thereof at a meeting held on the date of the execution thereof; that due notice of such meeting was given and the meeting was at all times open to the public; that such Ordinance was duly recorded; that this Ordinance is still in full force and effect as of the date hereof; that the vote upon said Ordinance was called and duly recorded upon the minutes of the Governing Body; and that the members of the Governing Body voted in the manner following:

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WITNESS my hand and seal of the Borough of Zelienople this 11th day of May 2020.

BOROUGH OF ZELIENOPLE

[SEAL]

Borough Manager