

**ORDINANCE NO. 998
OF THE BOROUGH COUNCIL
OF THE
BOROUGH OF ELIZABETHTOWN,
LANCASTER COUNTY, PENNSYLVANIA**

TO AUTHORIZE AND DIRECT THE INCURRING OF NON-ELECTORAL DEBT BY THE BOROUGH OF ELIZABETHTOWN, LANCASTER COUNTY, PENNSYLVANIA (THE "BOROUGH") THROUGH THE ISSUANCE OF ITS GENERAL OBLIGATION NOTE, SERIES OF 2020 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$2,886,000 (THE "NOTE"), THE PROCEEDS OF WHICH WILL BE USED FOR THE PURPOSE OF PROVIDING FUNDS TO: (1) CURRENTLY REFUND THE BOROUGH'S GENERAL OBLIGATION NOTE, SERIES OF 2018 (THE "2018 NOTE") (THE "REFUNDING PROJECT"); AND (2) PAY THE COSTS OF ISSUING THE NOTE OR ANY OR ALL OF THE SAME; STATING THE PURPOSE OF THE REFUNDING PROJECT; DESCRIBING CERTAIN PRIOR PROJECTS AND RATIFYING AND CONFIRMING THE PREVIOUSLY ESTIMATED REALISTIC USEFUL LIVES THEREOF; DIRECTING THE PROPER OFFICERS OF THE BOROUGH TO PREPARE, CERTIFY AND FILE THE REQUIRED DEBT STATEMENT AND BORROWING BASE CERTIFICATE; COVENANTING THAT THE BOROUGH SHALL INCLUDE THE AMOUNT OF ANNUAL DEBT SERVICE IN ITS BUDGET FOR EACH FISCAL YEAR; SETTING FORTH THE SUBSTANTIAL FORM OF THE NOTE; APPOINTING A SINKING FUND DEPOSITORY; PROVIDING FOR THE EXECUTION, DELIVERY AND AUTHENTICATION OF THE NOTE AND THE DISPOSITION OF THE PROCEEDS THEREOF; AWARDING SUCH NOTE AT PRIVATE SALE BY INVITATION AND STATING THAT SUCH SALE IS IN THE BEST FINANCIAL INTEREST OF THE BOROUGH; CREATING A SINKING FUND AND APPROPRIATING ANNUAL AMOUNTS FOR THE PAYMENT OF DEBT SERVICE ON THE NOTE; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE BOROUGH TO CERTIFY AND TO FILE WITH THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT CERTIFIED COPIES OF THE NECESSARY PROCEEDINGS; UNDERTAKING CERTAIN TAX COVENANTS WITH REGARD TO THE NOTE; DESIGNATING THE NOTE AS A "QUALIFIED TAX-EXEMPT OBLIGATION"; AUTHORIZING AND DIRECTING THE REFUNDING OF THE 2018 NOTE;

AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE BOROUGH TO DO ALL THINGS NECESSARY TO CARRY OUT THE ORDINANCE; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE BOROUGH TO PAY ISSUANCE COSTS; AUTHORIZING INCIDENTAL ACTIONS; RESCINDING INCONSISTENT RESOLUTIONS AND ORDINANCES; AND STATING THE EFFECTIVE DATE.

The Borough Council (the “Governing Body”) of the Borough of Elizabethtown, Lancaster County, Pennsylvania (the “Borough”), pursuant to the Pennsylvania Local Government Unit Debt Act, 53 Pa. Cons. Stat. §8001 *et seq.*, as amended (the “Act”), hereby ORDAINS AND ENACTS as follows:

Section 1. Incurrence of Debt; Amount and Purpose of Note; Estimated Project Completion Date. The Governing Body of the Borough hereby authorizes and directs the incurring of non-electoral debt through the issuance of its General Obligation Note, Series of 2020 (the “Note”) pursuant to this Ordinance in the maximum principal amount of \$2,886,000.

The Note is being issued by the Borough to provide funds to (i) currently refund (the “Refunding Project”) the Borough’s outstanding 2018 Note (hereinafter defined); and (ii) pay the costs of issuing the Note or any or all of the same ((i) and (ii) collectively, the “Project”).

The Borough in accordance with the provisions of the Act, has heretofore issued its General Obligation Note, Series of 2018 (the “2018 Note”), in the initial principal amount of \$2,848,000, the proceeds of which were used to finance a project consisting of (i) the design, planning, acquisition, construction and/or equipping of a public works facility; (ii) various other capital projects determined by the Governing Body of the Borough; and (iii) payment of the costs of issuing the 2018 Note ((i) through (iii) collectively, the “2018 Note Project”), all as described in Ordinance No. 988 of the Borough, authorizing the issuance of the 2018 Note, duly enacted on November 15, 2018 (the “2018 Note Ordinance”) and approved by DCED on December 6, 2018, Approval No. GON-181206-05. Pursuant to the 2018 Note Ordinance, the 2018 Note is subject to prepayment at any time without penalty. The Borough pursuant to authorization contained herein has elected to exercise its option to redeem the 2018 Note on May 19, 2020, or such other date not more than 90 days after issuance of the Note, designated by the President or Vice President of the Governing Body of the Borough (the “Redemption Date”).

The Refunding Project is being undertaken by the Borough for the purpose of reducing total debt service over the life of the 2018 Note, in compliance with Section 8241(b)(1) of the Act.

The Borough hereby reserves the right to undertake components of the Project in such order and at such time or times as it shall determine and to allocate the proceeds of the Note and other available moneys to the final costs of the Project in such amounts and order of priority as it shall determine; but the proceeds of the Note shall be used solely to pay the “costs,” as defined in the Act, of the Project described herein or, upon appropriate amendment hereto, to pay the costs of other capital projects for which the Borough is authorized to incur indebtedness.

The estimated completion date of the Refunding Project is the Redemption Date.

Section 2. Realistic Estimated Useful Life. The 2018 Note was issued for the purpose of providing funds for the 2018 Note Project. The realistic estimated useful life of projects financed or refinanced by the 2018 Note was determined at the time of issuance of the 2018 Note to range from five (5) years to in excess of twenty (20) years, and the principal amount of the 2018 Note equal to the cost of the 2018 Note Project was scheduled to mature on or before December 1, 2038, based on the unexpired useful life thereof. Such determination is hereby ratified and confirmed and the principal amount of the Note equal to the cost of the 2018 Note Project has been scheduled to mature prior to the unexpired useful life of the 2018 Note Project.

Section 3. Debt Statement and Borrowing Base Certificate. The President or the Vice President of the Governing Body, or any one of them, and/or any other duly authorized or appointed officer of the Borough, are hereby authorized and directed to prepare and certify a debt statement required by Section 8110 of the Act and a Borrowing Base Certificate.

Section 4. Covenant to Pay Note. It is covenanted with the holder of the Note that the Borough shall (i) include the amount of the debt service for the Note for each fiscal year in which the sums are payable in its budget for that year; (ii) appropriate those amounts from its general revenues for the payment of the debt service; and (iii) duly and punctually pay, or cause to be paid, from its sinking fund or any other of its revenues or funds the principal of, and the interest on, the Note at the dates and places and in the manner stated in the Note according to the true intent and meaning thereof. For such budgeting, appropriation and payment, the Borough pledges its full faith, credit and taxing power. The covenants contained in this **Section 4** shall be specifically enforceable.

Neither the credit nor the taxing power of the County of Lancaster or of the Commonwealth of Pennsylvania will be pledged for the payment of the Note.

Section 5. Form of Note; Description of Note. The Note is substantially in the form set forth in Exhibit A, hereto. The Note shall be in registered form, without coupons, and shall be numbered in such manner as may be satisfactory to the Borough and Webster Public Finance Corporation (the "Purchaser"). So long as the Note is held by the Purchaser and its participating bank or banks, if any, the Note shall not require numbering as recommended by the Committee on Uniform Security Identification Procedures ("CUSIP").

The Note shall be issued in the maximum principal amount of \$2,886,000, or such lesser amount as authorized by the Governing Body of the Borough pursuant to this Ordinance, shall be dated the date of its issuance, and shall bear interest, until maturity or prior prepayment, at the maximum rates per annum, and shall mature in the amounts and in certain years, all as set forth as Exhibit B attached hereto and made a part hereof. The Note shall be issued in certificated form in the form of a single certificate for the entire principal amount of the Note with one maturity date and annual principal payments. The full principal amount of the Note shall be advanced by Webster Bank, N.A., as paying agent for the Note (the "Paying Agent"), on behalf of the Purchaser, on the date of issuance hereof.

If the date for payment of the principal of, or interest on, the Note is not a business day, then the date of such payment shall be the next succeeding day which is a business day. Payment on such subsequent business day shall have the same force and effect as if made on the nominal date of payment. A business day shall be any day in which the Purchaser and the Paying Agent are not authorized by law or under lawful authority to be closed.

The principal amount of the Note shall be subject to prepayment prior to maturity, at the option of the Borough, as a whole or, from time to time, in part, on any date on and after December 1, 2023, upon 10 days' written notice to the Purchaser, upon payment of the principal amount to be redeemed together with accrued interest thereon to the date fixed for prepayment and without any premium or penalty. Any partial prepayment of principal may be credited against such stated installments of principal on the Note as the Borough may designate in writing to the Purchaser at the time of prepayment; otherwise a partial prepayment shall be applied against the principal installments last, by date, due and payable.

The principal of and interest on the Note shall be payable in lawful money of the United States of America at the offices of the Paying Agent.

Section 6. Execution, Delivery and Authentication of Note; Disposition of Proceeds. The Note shall be executed by the manual or facsimile signature of the President or the Vice President of the Governing Body, or any one of them, and/or any other duly authorized or appointed officer of the Borough, and shall have the corporate seal of the Borough or a facsimile thereof impressed thereon, duly attested by the manual or facsimile signature of the Secretary or Assistant Secretary of the Borough, and such officers are hereby authorized and directed to execute the Note in such manner. In case any official of the Borough whose manual or facsimile signature shall appear on the Note shall cease to be such official before the authentication of the Note, such signature or the facsimile signature thereof shall nevertheless be valid and sufficient for all purposes the same as if such official had remained in office until authentication; and the Note may be signed on behalf of the Borough, even though at the date of authentication of such Note such person was not an official. The President or the Vice President of the Governing Body, or any one of them, and/or any other duly authorized or appointed officer of the Borough, are authorized and directed to deliver, or cause to be delivered, the Note to the Purchaser as purchaser thereof against the full balance of the purchase price therefor.

The Borough hereby creates with the Paying Agent by proper action a settlement account (the "Settlement Account") in the name of the Borough. On the date of issuance and delivery of the Note, the proceeds of the Note shall be deposited in the Settlement Account and shall be disbursed, transferred or deposited as directed in a closing receipt duly executed and delivered by an authorized officer of the Borough.

Section 7. Manner of Sale; Award of Note. The Governing Body of the Borough after due deliberation and investigation has found that a private sale by invitation is in the best financial interest of the Borough and based upon such finding the Governing Body of the Borough hereby awards the Note, at private invited sale, to the Purchaser for its own account, upon the terms set forth in its proposal for purchase of the Note dated as of April 13, 2020 (the "Purchase Contract"), a copy of which is attached hereto and made a part hereof. Such details are hereby approved.

Section 8. Appointment of Sinking Fund Depository; Sinking Fund; Appropriation of Annual Amounts for Payment of Debt Service. The proper officers of the Borough are hereby authorized and directed to contract with Webster Bank, N.A., with an office located in Conshohocken, Pennsylvania (the “Paying Agent”) for its services as sinking fund depository, paying agent and registrar with respect to the Note and the Paying Agent is hereby appointed to act in such capacities with respect to the Note. There is hereby established a separate sinking fund for the Borough designated as the “Sinking Fund – General Obligation Note, Series of 2020” (the “Sinking Fund”). Into the Sinking Fund there shall be paid, when and as required, all moneys necessary to pay the debt service on the appropriate series of Note, and the Sinking Fund shall be applied exclusively to the payment of the interest covenanted to be paid upon the Note and to the principal thereof at maturity or earlier prepayment and to no other purpose whatsoever, except as may be authorized by law, until the same shall have been fully paid. The Paying Agent, as sinking fund depository shall, as and when said payments are due, without further action by the Borough, withdraw available monies in the Sinking Fund and apply said monies to the payment of the principal of and interest on the appropriate series of Note.

The maximum amounts set forth in Exhibit C attached hereto and made a part hereof shall be pledged in each of the fiscal years shown in Exhibit C to pay the debt service on the Note, and such amounts are annually hereby appropriated to the Sinking Fund for the payment thereof.

Section 9. Debt Proceedings. The Secretary or Assistant Secretary of the Borough is hereby authorized and directed to certify to and file with the Pennsylvania Department of Community and Economic Development, in accordance with the Act, a complete and accurate copy of the proceedings taken in connection with the increase of debt authorized hereunder, including the debt statement and borrowing base certificate referred to hereinabove, and to pay the filing fees necessary in connection therewith.

Section 10. Tax Covenants, Representations and Designations. So long as the Note is outstanding, the following covenants shall apply:

(a) The Borough will make no use of the proceeds of the Note during the term thereof which would cause the Note to be an “arbitrage bond” within the meaning of section 148 of the Internal Revenue Code of 1986, as amended (the “Code”) and that it will comply with the requirements of all Code sections necessary to ensure that the Note is described in Code section 103(a) and not described in Code section 103(b) throughout the term of the Note.

(b) If and to the extent the Borough is required to remit any amounts to the United States pursuant to Code section 148(f) (the “Rebate Amounts”) in order to cause the Note not to be an arbitrage bond, the Borough will remit such Rebate Amounts at such times and in the manner required by Code section 148(f) and the regulations thereunder. The obligation to remit the Rebate Amounts and to comply with all other requirements of this **Section 10** shall survive the defeasance and payment in full of the Note.

(c) The Borough shall file IRS Form 8038-G and any other forms or information required by the Code with respect to the Note to be filed in order to permit the interest on the Note to be excluded from gross income for federal income tax purposes.

(d) In order to ensure that the registered owner or owners of the Note, if they are financial institutions, will not be subject to certain provisions of the Code as a result of acquiring and carrying the Note, the Borough hereby designates the Note, or the Note is otherwise deemed designated, as a “qualified tax-exempt obligation,” within the meaning of Code section 265(b)(3)(B), and the Borough hereby covenants that it will take such steps as may be necessary to cause the Note to continue to be an obligation described in such Code section during the period in which the Note is outstanding. The Borough represents that it has not issued, and does not reasonably anticipate issuing, tax-exempt obligations which, when combined with the Note, will result in more than \$10,000,000 of tax-exempt obligations being issued in the calendar year in which the Note is issued. For purposes only of the foregoing sentence, the term “tax-exempt obligation” shall include any “qualified 501(c)(3) bond,” as defined in Code section 145, but shall not include any other “private activity bond,” as defined in Code section 141(a), any obligation which would be an “industrial development bond” or a “private loan bond” as defined in sections 103(b)(2) and 103(o)(2)(a) of the Internal Revenue Code of 1954, as amended, but for the fact that it is issued pursuant to section 1312, 1313, 1316(g) or 1317 of the Tax Reform Act of 1986, or any obligation issued to currently refund any obligation to the extent the amount thereof does not exceed the outstanding amount of the refunded obligation.

Section 11. Note Register, Registrations and Transfer. The Borough shall cause to be kept at the office of the Paying Agent, as paying agent, a register for the Note (the “Note Register”) in which, subject to such reasonable regulations as it may prescribe, the Borough shall provide for the registration of the Note and the registration of transfers thereof. No transfer or exchange of the Note shall be valid unless made at such office and registered in the Note Register. A Note Register shall be attached to the Note as part of the Note.

The Note, upon any registration of transfer, shall be a valid obligation of the Borough, evidencing the same debt and entitled to the same benefits under this Ordinance as the Note surrendered for such registration of transfer.

The Note, if presented or surrendered for registration of transfer, shall be duly endorsed, or be accompanied by a written instrument of transfer, in form and with guaranty of signature satisfactory to the Borough and the Note Register, duly executed by the registered owner thereof or his duly authorized agent or legal representative.

No service charge shall be made for any transfer of the Note, but the Borough may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer of the Note.

The Borough shall not be required to: (a) issue, or register the transfer of, the Note during a period of fifteen (15) business days before any payment of principal or interest under the Note or any date of selection for prepayment of the Note, if applicable; or (b) register the transfer of the Note after it has been selected for prepayment, in whole or in part.

Section 12. Current Refunding of the 2018 Note. Subject only to completion of delivery of, and settlement for, the Note, the Borough hereby authorizes and directs the irrevocable deposit in trust, in the sinking fund for the 2018 Note (the “2018 Note Sinking Fund”) established with ACNB Bank, the paying agent under the 2018 Note Ordinance (for purposes of

this Section 12 the “2018 Note Paying Agent”), proceeds of the Note in an amount which will be sufficient, without regard to investment earnings, to effect the current refunding and redemption of the 2018 Note on the 2018 Note Redemption Date.

On the 2018 Note Redemption Date, the 2018 Note Paying Agent is irrevocably authorized and directed to pay from the 2018 Note Sinking Fund the principal or redemption price of, and interest due on, the 2018 Note and to transfer any balance remaining in the 2018 Note Sinking Fund not required for such redemption and payment to the Paying Agent for deposit in the Sinking Fund established hereunder for application to the payment of interest due on the Note on the first interest payment date. The Borough gives and grants the 2018 Note Paying Agent full authority to do and perform all and every act and thing whatsoever requisite and necessary to effectuate said purposes as the Borough might do on its own behalf, and hereby ratifies and confirms all that said agent shall do or cause to be done by virtue hereof.

Subject only to completion of delivery of, and settlement for, the Note, the Borough hereby calls for redemption and payment on the 2018 Note Redemption Date the outstanding 2018 Note.

Section 13. Incidental Actions. The proper officers of the Borough are hereby authorized, directed and empowered on behalf of the Borough to execute any and all papers and documents and to do or cause to be done any and all acts and things necessary or proper for the carrying out of the provisions of this Ordinance, and the issuance and delivery of the Note.

Section 14. Payment of Issuance Costs. The proper officers of the Borough are hereby authorized and directed to pay the costs of issuing the Note at the time of delivery of the Note to the Purchaser.

Section 15. Appointment of Bond Counsel and Financial Advisor. The Borough hereby appoints McNees Wallace & Nurick LLC, Lancaster, Pennsylvania, as Bond Counsel, and Concord Public Financial Advisors, Inc., Lancaster, Pennsylvania, as Financial Advisor, for the Note.

Section 16. Contract with Noteholders. This Ordinance constitutes a contract with the registered owners of the Note from time to time outstanding hereunder and shall be enforceable in accordance with the provisions of the laws of the Commonwealth of Pennsylvania.

Section 17. Rescinding Inconsistent Ordinances or Resolutions. All ordinances or resolutions or parts of ordinances or resolutions inconsistent herewith be and the same hereby are repealed, rescinded, cancelled and annulled.

Section 18. Severability. In case 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 said Note and this Ordinance or said Note shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

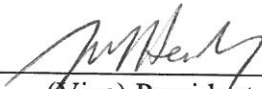
Section 19. Effective Date. This Ordinance shall become effective on the earliest date permitted by the Act.

ORDAINED AND ENACTED into law by the Borough Council of the Borough of Elizabethtown, Lancaster County, Pennsylvania, in lawful session assembled on the 16th day of April, 2020.

Attest:

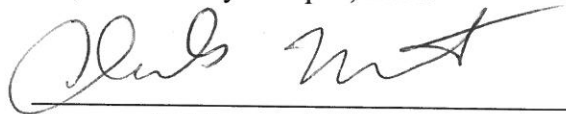
BOROUGH OF ELIZABETHTOWN,
Lancaster County, Pennsylvania


Secretary/Treasurer

By: 
(Vice) President
Borough Council

(Borough Seal)

EXAMINED AND APPROVED, the 16th day of April, 2020.


Clarence S. Mummert, Jr.,
Mayor of the Borough of Elizabethtown,
Lancaster County, Pennsylvania