

ORDINANCE NO. 87-09

AN ORDINANCE OF THE TOWNSHIP OF WEST BRADFORD, COUNTY OF CHESTER, PENNSYLVANIA, DETERMINING TO INCUR INDEBTEDNESS OF THE TOWNSHIP IN THE PRINCIPAL AMOUNT OF \$500,000, SUCH DEBT TO BE NONELECTORAL DEBT AS DEFINED IN THE LOCAL GOVERNMENT UNIT DEBT ACT AND TO BE EVIDENCED BY A GENERAL OBLIGATION NOTE OR NOTES TO BE ISSUED BY THE TOWNSHIP; DESCRIBING THE PROJECT FOR WHICH SUCH DEBT SHALL BE INCURRED; MAKING THE FINDINGS, DETERMINATIONS, SPECIFICATIONS AND COVENANTS REQUIRED BY SAID ACT IN RESPECT OF SUCH DEBT; AUTHORIZING AND DIRECTING CERTAIN OFFICERS OF THE TOWNSHIP TO PREPARE, VERIFY AND SUBMIT TO THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AFFAIRS THE DEBT STATEMENT AND OTHER DOCUMENTS REQUIRED BY SAID ACT IN RESPECT OF SUCH DEBT, AND TO SELL, EXECUTE, ATTEST AND DELIVER SAID NOTE OR NOTES; AUTHORIZING PROPER OFFICERS OF THE TOWNSHIP TO TAKE ALL OTHER NECESSARY OR APPROPRIATE ACTION IN CONNECTION WITH THE INCURRING OF SAID INDEBTEDNESS; AND MAKING CERTAIN OTHER DETERMINATIONS AND APPROVALS.

WHEREAS, the Township of West Bradford ("Township"), County of Chester, Pennsylvania, desires to provide funds for the costs of the construction of a new township building for the Township ("Project") by incurring nonelectoral debt of the Township to be evidenced by the issuance and sale of a general obligation note of the Township in the principal amount of \$500,000 ("Note"); and

WHEREAS, the Township is empowered to incur indebtedness of the character evidenced by the Note for various purposes, including the financing of the Project, pursuant to the provisions of the Local Government Unit Debt Act, Act No. 1978-52

of the General Assembly of the Commonwealth of Pennsylvania, approved April 28, 1978, as the same may from time to time be amended or supplemented ("Act"); and

WHEREAS, in order to incur indebtedness as aforesaid, the Township is required by the Act to make certain determinations and findings; to approve the form of the Note; to make certain covenants and agreements with or for the security of the holders, from time to time, of the Note; to create a sinking fund and name a sinking fund depository with respect to the Note; and to cause to be prepared, verified and filed with the Pennsylvania Department of Community Affairs ("Department") certain financial information of the Township; and

WHEREAS, the Township has determined, after due investigation and deliberation, that a private sale by negotiation is in the best financial interest of the Township and the Township desires to perform the actions required by the Act and to accept a proposal for the purchase of the Note;

NOW THEREFORE, THE TOWNSHIP OF WEST BRADFORD HEREBY ORDAINS:

Section 1. Authorizing of Debt. The Township hereby authorizes the incurrence of debt of the Township in the principal amount of \$500,000 for the purpose of financing the costs of the Project and paying the costs of such financing.

Section 2. Preliminary Cost Estimates; Useful Life.

The Township has obtained preliminary cost estimates, as contemplated by Section 106 of the Act, regarding the Project. The realistic estimated useful life of the Project is at least forty (40) years, as determined by persons qualified by experience to make such estimates for the Project to the Township.

Section 3. Type of Indebtedness; Form and Execution of Note.

(a) It is hereby determined that the indebtedness authorized in Section 1 hereof shall be incurred as "non-electoral debt" of the Township, as such term is defined in Section 102(a) (3) of the Act.

(b) Said indebtedness shall be evidenced by the issuance and sale of a general obligation note of the Township to be designated: "Township of West Bradford, General Obligation Note of 1987" ("Note").

(c) The Note shall be issued as a fully registered note, in the denomination of \$500,000, and shall be substantially in the form attached hereto as Exhibit "A" and made a part hereof, which form of Note is hereby approved and adopted.

(d) The Note shall be executed in the name of the Township by the manual signature of the President or Chairman of the Township and the official seal of the Township shall be affixed to the Note and attested by the manual signature of the Secretary of the Township.

Section 4. Debt Statement and Borrowing Base

Certificate. The finance director or treasurer of the Township are hereby authorized and directed to prepare and verify under oath or affirmation the Debt Statement required by Section 410 of the Act, and to prepare or cause to be prepared the Borrowing Base Certificate required by Section 209 of the Act, and to file the foregoing documents, together with such other documents as are required by Article VIII of the Act with the Department.

Section 5. General Obligation Covenant.

It is hereby determined that the Note, when issued, shall be a general obligation of the Township as contemplated by Section 102(c) (5) of the Act, and pursuant to Section 404 of the Act, the Township hereby covenants with the holders from time to time of the Note, as follows:

(a) The Township shall include the amount of the debt service on the Note for each fiscal year in which debt service on the Note is payable in its budget for that year;

(b) The Township shall appropriate such amount from its general revenues for the payment of such debt service;

(c) The Township shall duly and punctually pay the principal of and 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; and

(d) For such budgeting, appropriation and payment in respect of the Note, the Township hereby pledges its full faith, credit and taxing power.

The covenants of the Township contained in this Section 5 shall be specifically enforceable.

Section 6. Provisions of the Note. The Note shall be dated the date of original delivery and payment therefor, shall mature ten (10) years from the date of original delivery and payment, shall be in the principal amount of \$500,000, shall bear interest at the rate of 7.27% per annum, calculated on the basis of a 30/360 day year, and shall have the following terms:

(a) Principal of and interest on the Note shall be payable in equal monthly payments commencing on or about November 1, 1987 to and including September 1, 1997 in the amount of approximately FIVE THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS AND TWENTY-FIVE CENTS (\$5,875.25) and a final payment of principal and interest on or about October 1, 1997 in the amount of approximately FIVE THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS AND TWENTY-THREE CENTS, (\$5,875.23).

(b) Place of payment: Fidelity Bank, Broad and Walnut Streets, Philadelphia, Pennsylvania.

(c) The Note shall be subject to such prepayment penalties, if any, as may be requested by Fidelity Bank.

Section 7. Private Sale. The Township has determined, after due investigation and deliberation, that a private sale by negotiation is in the best financial interest of the Township and hereby determines to sell the Note at negotiated sale. The acceptance of the proposal of Fidelity Bank to purchase the Note is hereby ratified, confirmed and approved, said proposal being attached hereto as Exhibit "B" and made a part hereof ("Purchase Proposal"). The execution of the Purchase Proposal by the Township Manager shall be conclusive evidence of the acceptance and approval thereof by the Township.

Section 8. Sinking Fund. Pursuant to Section 1001 of the Act, there is hereby created a sinking fund for the Note, to be designated: "Township of West Bradford General Obligation Note of 1987 Sinking Fund" ("Sinking Fund"), which shall be maintained by Fidelity Bank, Philadelphia, Pennsylvania, which is hereby appointed as sinking fund depository for the Note.

Moneys payable into the Sinking Fund shall be deposited therein not later than the day on which payments are required to be made therefrom.

Section 9. Ordinance and Act to be Contract with Noteholders. The terms of this Ordinance and the Act as in effect at the time of authorization of the Note shall constitute a contract between the Township and the holder from time to time of the Note. Said contract may be modified without the consent of said holder insofar as any such modification does not adversely affect the rights of said holder as such. In other respects said contract may be modified with the consent of the holder of the Note.

Section 10. Non-Arbitrage and Other Covenants in Respect of Federal Tax Laws.

(a) The Township hereby covenants that it will not make any use of the proceeds of the Note or do or suffer any other action which would cause the Note to be an "arbitrage bond" as such term is defined in Section 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder ("Code"), or which would otherwise cause the interest on the Note not to be exempt from federal income taxation under the Code.

(b) The Township further covenants that:

(1) Not more than ten percent (10%) of the proceeds of the Note ("Allowable Portion") will be used directly or indirectly in any trade or business carried on by any person other than a government unit;

(2) If the Allowable Portion is used directly or indirectly in any trade or business carried on by any

person other than a governmental unit, the amount used (a) for purposes that are not related to the purpose for which the note is being issued, and (b) for purposes that are disproportionate but related to the purposes for which the Note is being issued shall not exceed five percent (5%) of the proceeds of the Note. For purposes of this subsection (2) the terms "related" and "disproportionate" shall have the meanings given thereto in Section 141(b) (3) of the Code;

(3) If proceeds of the Note are used directly or indirectly to make or finance loans to any person other than a governmental unit, the amount so used will not exceed five percent (5%) of the proceeds of the Note;

(4) The Township shall timely file with the Philadelphia, Pennsylvania office of the Internal Revenue Service, such information report or reports as may be required by Section 149(e) of the Code;

(5) The Township shall take no action that would cause the Note to be "federally guaranteed" within the meaning of Section 149 (b) of the Code;

(c) Additionally, the Township hereby further covenants as follows:

(1) The Township shall make the rebate required by Section 148(f) of the Code ("Rebate") in the manner described in Temporary Treasury Regulation Section 1.103-15AT(d), 26 C.F.R. Part 1, as such regulation and statutory provision may be modified insofar as they apply to the Note;

(2) To insure that such Rebate, if required, will be properly made, the Township shall not make any "prohibited payments" as defined in Temporary Treasury Regulation Section 1.103-145AT(d) (6) (ii), 26 C.F.R. Part 1. Accordingly,

(i) If any "gross proceeds" (as defined in Temporary Treasury Regulation Section 1.103-15AT(b) (6) (i), 26 C.F.R. Part 1) of the Note are or will be invested in a certificate of deposit for which there is an active secondary market, at the time such certificate of deposit is purchased or sold, the Township shall obtain a certificate from a dealer who maintains an active secondary market in such certificates of deposit stating that the price at which the certificate of deposit was purchased or sold was the bona fide bid price.

(ii) If any "gross proceeds" of the Note are or will be invested in a certificate of deposit for which there is no active secondary market at the time such certificate of deposit is purchased or sold, the Township shall obtain a certificate from a dealer who maintains an active secondary market in comparable certificates of deposit stating that the certificates of deposit has a "yield" (A) as high or higher than the "yield" on comparable obligations traded on an active secondary market; and (B) as high or higher than the "yield" available on comparable obligations offered by the United States Treasury. Such certificates must be based on actual trades adjusted to reflect the size and term of the certificate of deposit and the stability and reputation of the person issuing such certificate of deposit.

(iii) If any "gross proceeds" of the Note are or will be invested in "nonpurpose investments" (as defined in Section 148(f) (6) (A) of the Code), pursuant to an agreement to deposit such "gross proceeds" with the deposits to bear interest at an agreed rate (an "Investment Contract"), at the time such Investment Contract is entered into:

(A) the Township shall have received at least three (3) bids on the Investment Contract from persons other than those with an interest in the Note;

(B) the Township shall have received a certificate from the person whose bid was accepted that, based on such person's reasonable expectations on the date that the Investment Contract was entered into, "nonpurpose obligations" will not be purchased pursuant to the Investment Contract at a price in excess of their fair market value or sold pursuant to the Investment Contract at a price less than their fair market value;

(C) the yield on the Investment Contract shall at least equal the yield offered under the highest bid received from a noninterested party; and

(D) the yield on the Investment Contract shall at least equal the yield offered on similar obligations under similar investment contracts.

Section 11. Designation of Note in Accordance with Section 265(b) (3) of the Code. The Township hereby designates the Note as a "qualified tax-exempt obligation" as defined in and for the purposes of Section 265(b) (3) of the Code. The Township certifies that (i) the Note is not a private activity bond (as defined in Section 141 of the Code) and (ii) the aggregate face amount of all tax-exempt obligations (including qualified 501 (c) (3) bonds as defined in Section 145 of the Code but excluding all other private activity bonds) issued by the Township (and all of its "subordinate units") during calendar year 1987 is not reasonably expected to exceed \$10,000,000. The Township expects that only twenty percent (20%) of the interest deducted for indebtedness incurred by banks, thrift institutions and other financial institutions to purchase or carry the Note will be denied under Sections 256(b) (1) (B) and 291(e) (1) (B) of the Code.

Section 12. Actions of Township Officials; Further Action. All actions heretofore taken and documents prepared by officials of the Township in connection with the issuance of the Note are hereby ratified, confirmed, approved and adopted, and the Township Council, the Township Solicitor and other appropriate Township officials are hereby jointly and severally authorized and directed to take all other necessary or appropriate action in connection with the incurring of indebtedness as described herein, including, without limitation,

the issuance, sale, execution, attestation and delivery of the Note and the execution of such documents as may be necessary or appropriate in connection therewith.

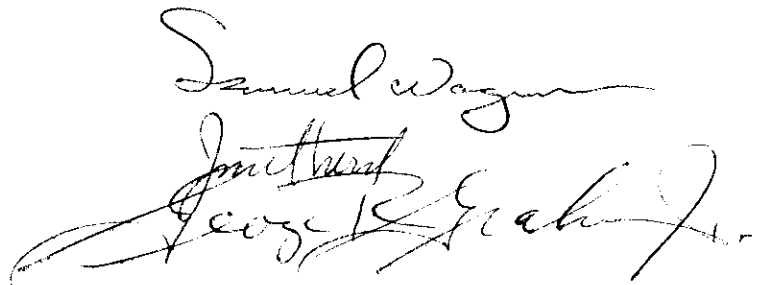
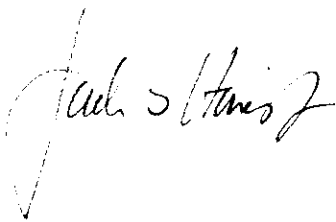
Section 13. Inconsistent Legislative Actions Repealed. All ordinances and resolutions or parts thereof insofar as they are inconsistent herewith are hereby repealed and rescinded.

Section 14. Headings. The headings of this Ordinance are inserted for ease of reference only and shall not constitute part of this Ordinance.

Section 15. Effective Date. This Ordinance shall be valid and effective for all purposes on the fifth day following advertisement of final enactment hereof.

ENACTED AND ORDAINED BY COUNCIL this 8th day of September, 1987.

TOWNSHIP OF WEST BRADFORD



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