

ORDINANCE NO. 155 – 2010

OF THE  
BOARD OF SUPERVISORS  
OF  
HONEY BROOK TOWNSHIP

AUTHORIZING AND DIRECTING THE INCURRING OF NON-ELECTORAL DEBT OF THE TOWNSHIP OF HONEY BROOK, CHESTER COUNTY, PENNSYLVANIA THROUGH THE ISSUANCE OF ITS GENERAL OBLIGATION NOTE, SERIES OF 2010, IN THE AGGREGATE PRINCIPAL AMOUNT OF ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000) FOR THE PURPOSE OF PROVIDING FUNDS TO FINANCE THE ACQUISITION OF FEE TITLE, CONSERVATION EASEMENTS, DEVELOPMENT RIGHTS OR OTHER INTERESTS IN REAL ESTATE FOR THE PRESERVATION OF OPEN SPACE OR USE AS RECREATION OR PARK LAND IN THE TOWNSHIP AND TO PAY THE COSTS OF ISSUING THE NOTE (THE "CAPITAL PROJECT"); STATING THAT REALISTIC COST ESTIMATES HAVE BEEN MADE FOR THE CAPITAL PROJECT; DECLARING THE USEFUL LIFE OF THE CAPITAL PROJECT FOR WHICH SAID NOTE IS ISSUED; DIRECTING THE PROPER OFFICERS TO PREPARE, CERTIFY AND FILE THE REQUIRED DEBT STATEMENT, BORROWING BASE CERTIFICATE AND EXCLUSION PROCEEDINGS; COVENANTING THAT THE TOWNSHIP SHALL INCLUDE THE AMOUNT OF ANNUAL DEBT SERVICE IN ITS BUDGET FOR EACH FISCAL YEAR; DECLARING THE INTENTION TO USE EARNED INCOME TAX REVENUES FOR DEBT SERVICE ON THE NOTE; SETTING FORTH THE SUBSTANTIAL FORM OF THE NOTE; SETTING FORTH THE STATED PRINCIPAL AND INTEREST PAYMENT DATES, REDEMPTION PROVISIONS, PLACE OF PAYMENT AND OTHER DETAILS OF THE NOTE; STATING A COVENANT AS TO PAYMENT OF PRINCIPAL AND INTEREST WITHOUT DEDUCTION FOR CERTAIN TAXES; PROVIDING FOR THE EXECUTION OF THE NOTE; AWARDING THE NOTE AT PRIVATE SALE AND STATING THAT SUCH PRIVATE SALE IS IN THE BEST FINANCIAL INTEREST OF THE TOWNSHIP; APPOINTING A PAYING AGENT AND SINKING FUND DEPOSITARY; CREATING A SINKING FUND; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE TOWNSHIP TO CERTIFY AND TO FILE WITH THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT CERTIFIED COPIES OF THE NECESSARY PROCEEDINGS; COVENANTING THAT THE

PROCEEDS OF THE NOTE SHALL NOT BE USED IN SUCH A MANNER AS TO CAUSE THE NOTE TO BE AN ARBITRAGE BOND UNDER FEDERAL TAX LAW PROVISIONS; MAKING CERTAIN TAX REPRESENTATIONS AND DESIGNATING THE NOTE AS A "QUALIFIED TAX-EXEMPT OBLIGATION"; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE TOWNSHIP TO DO ALL THINGS NECESSARY TO CARRY OUT THE ORDINANCE; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE GOVERNING BODY TO PAY ISSUANCE COSTS; AND REPEALING ALL INCONSISTENT ORDINANCES.

The Board of Supervisors (the "Board of Supervisors") of the Township of Honey Brook, Chester County, Pennsylvania (the "Township"), pursuant to the Pennsylvania Local Government Unit Debt Act, as amended 53 Pa.C.S. §8001 *et seq.* (the "Act"), hereby ordains as follows:

**Section 1. Incurrence of Debt; Amount and Purpose of Note and Realistic Cost Estimates.** The Township hereby authorizes and directs the incurring of non-electoral debt through the issuance of its General Obligation Note, Series of 2010 (the "Note") of the Township in an aggregate principal amount of One Million Five Hundred Thousand Dollars (\$1,500,000) to finance the costs of acquisition of fee title, conservation easements, development rights or other interests in real estate for the preservation of open space or use as recreation or park land in the Township and to pay the costs of issuing the Note (collectively, the "Capital Project"). Proceeds of the Note will be disbursed from time to time as needed to pay or reimburse costs of the Capital Project.

Realistic cost estimates were obtained by the Township for the Capital Project through actual agreements and professional estimates, as required by Section 8006 of the Act.

**Section 2. Realistic Estimated Useful Life of Capital Project.** The realistic estimated useful life of the Capital Project is estimated to be in excess of 40 years and the Note does not extend beyond the useful life thereof.

**Section 3. Debt Statement and Borrowing Base Certificate.** The Chairman or Vice Chairman of the Board of Supervisors and the Secretary of the Board of Supervisors 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. Dedication of Earned Income Tax; Covenant to Pay Bonds.** The Township hereby confirms for purposes of Section 8002(b) of the Act relating to special levies and self-liquidating debt that it shall use the receipts from the Township's one-half percent earned income tax and related tax receipts collected by the Township pursuant to Act 153 of 1996 and a Referendum of Township residents held November 8, 2005 as a dedicated tax for paying the

costs of acquisition of interests in real estate or debt service payments on debt incurred to finance the acquisition of such interests, for park land, recreation and open space. The Township further covenants with the registered owners from time to time of the Bonds that the Township shall (i) include the amount of the debt service for the Bonds for each fiscal year in which such sums are payable in its budget for that year, (ii) appropriate such amounts from its general revenues for the payment of such 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 Bonds at the dates and places and in the manner stated in the Bonds according to the true intent and meaning thereof. For such budgeting, appropriation and payment, the Township pledges its full faith, credit and taxing power. As provided by the Act, this covenant shall be specifically enforceable.

**Section 5. Form of Note.** The Note shall be substantially in the form set forth in Exhibit "A" hereto, subject to such changes as may be necessary to conform to the Commitment Letter accepted by Section 9 hereof and as counsel may recommend and the Chairman or Vice Chairman of the Board of Supervisors may approve, such approval to be conclusively evidenced by his execution thereof.

**Section 6. Description of Note; Maturity Schedule.** The Note shall be in fully registered form without coupons, in the amount of \$1,500,000, shall be dated as of the date of issue, shall bear interest on the amount of principal outstanding from time to time at the rate of 3.85% for the first year, during which time principal may be drawn down and thereafter at 4.00% per annum during the 5 year repayment period, or at the Default Rate or Taxable Rate, all as set forth in the form of Note attached hereto as Exhibit A and made a part hereof.

Interest will be payable at the interest rate described above on January 1, 2011 and on the first day of each month thereafter and principal and interest on the unpaid principal balance will begin to be paid monthly in 60 equal payments beginning January 1, 2012 and all unpaid principal and accrued interest thereon shall be due and payable in full on December 1, 2016.

The Note is subject to redemption prior to maturity at the option of the Township, at any time, at par plus accrued interest to the date fixed for redemption in whole or in part if paid from cash or the proceeds of long term Bonds, but with the prepayment penalty described in the Note if financed through another bank.

The stated maturity of the Note has been fixed in compliance with Section 8142(b)(1) of the Act.

**Section 7. Paying Agent, Sinking Fund Depository and Registrar; Payment of Principal and Interest Without Deduction for Taxes.** The proper officers of the Township are hereby authorized and directed to

contract with DNB First, National Association (the "Paying Agent) for its services as sinking fund depository, paying agent and registrar with respect to the Note and such Bank is hereby appointed to act in such capacities with respect to the Note.

The principal of and interest on the Note shall be payable when due in lawful money of the United States of America at the principal office of DNB First, National Association, Downingtown, Pennsylvania or such other office as the Paying Agent may designate in writing to the Township.

If the date for payment of the principal of, and interest on, the Note shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the Commonwealth of Pennsylvania are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

The principal or redemption price of, and interest on, the Note are payable without deduction for any tax or taxes, except gift, succession, franchise, excise or inheritance taxes, now or hereafter levied or assessed thereon under any present or future laws of the Commonwealth of Pennsylvania, all of which taxes, except as above provided, the Township assumes and agrees to pay.

**Section 8. Execution of Note.** The Note shall be executed by the Chairman or Vice Chairman of the Board of Supervisors of the Township and shall have the corporate seal of the Township affixed thereto, duly attested by the Secretary of the Township, and the said officers are hereby authorized and directed to execute the Note in such manner. If any officer whose signature appears on the Note shall cease to hold such office before the actual delivery date of such Note, such signature shall nevertheless be valid and sufficient for all purposes as if such person had remained in such office until the actual delivery date of such Note. The Chairman or Vice Chairman of the Board of Supervisors (or such other authorized officer of the Township) is hereby authorized and directed to deliver, or cause to be delivered, the Note to the purchaser thereof against the full balance of the purchase price therefor.

**Section 9. Manner of Sale; Award of Note; Bid Price; Interest Rate.** The Board of Supervisors of the Township after due deliberation and investigation has found that a private sale by negotiation is in the best financial interest of the Township and based upon such finding the Board of Supervisors of the Township hereby awards the Note, at private sale, to DNB First, National Association (the "Purchaser"), upon the terms set forth in its Commitment Letter presented to this meeting, a copy of which shall be filed with the debt proceedings herein authorized. As set forth in such Commitment Letter, the Note is purchased at a bid price of \$1,500,000.

**Section 10. Sinking Fund for Note; Appropriation of Annual Amounts for Payment of Debt Service.** The Township covenants that it shall establish and maintain a sinking fund for the Township designated as "Township of Honey Brook, Series of 2010 Note Sinking Fund" (the "Sinking Fund") to be held by the Paying Agent (or such substitute or successor Paying Agent which shall hereafter be appointed in accordance with the provisions of the Act) in the name of the Township, but subject to withdrawal only by the Paying Agent and into which there shall be paid, when and as required, all moneys necessary to pay the debt service on the 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 prior redemption and to no other purpose whatsoever, except as may be authorized by law, until the same shall have been fully paid.

Pending application to the purposes for which the Sinking Fund is established, the Chairman, the Vice-Chairman or Treasurer of the Board of Supervisors is hereby authorized and directed to cause the moneys therein to be invested or deposited and insured or secured as permitted and required by Section 8224 of the Act. All income received on such deposits or investments of moneys in the Sinking Fund during each applicable period shall be added to the Sinking Fund and shall be credited against the deposit next required to be made in the Sinking Fund.

The Paying Agent is hereby authorized and directed, without further action by the Township, to pay from the Sinking Fund the principal of and interest on the Note as the same becomes due and payable in accordance with the terms hereof, and the Township hereby covenants that such moneys, to the extent required, will be applied to such purposes.

All moneys deposited in the Sinking Fund for the payment of the Note which have not been claimed by the owners thereof after two years from the date payment is due, except where such moneys are held for the payment of outstanding checks, drafts or other instruments of the Paying Agent, shall be returned to the Township. Nothing contained herein shall relieve the Township of its liability to the holder of an unrepresented Note.

In each of the fiscal years 2011 through 2016, the amounts set forth in the proposal of the Purchaser accepted by Section 9 hereof, which proposal is attached hereto and incorporated herein, shall be pledged to pay the debt service on the Note, and such amounts are annually hereby appropriated to the Sinking Fund for the payment thereof.

**Section 11. Debt Proceedings.** The Secretary of the Township 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 12. Tax Covenants, Representations and Designations.** The Township hereby covenants that:

(i) The Township will make no use of the proceeds of the Note during the term thereof which would cause such Note to be "arbitrage Bonds" within the meaning of section 148 of the Internal Revenue Code of 1986, as amended (the "Code") and 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;

(ii) In compliance with section 148(f)(4)(D) of the Code, the Township hereby represents that (i) it is a governmental unit with general taxing powers, (ii) the Note is not a "private activity bond" as defined in the Code, (iii) ninety-five percent or more of the net proceeds of the issue are to be used for local government activities of the Township, and (iv) the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the Township and its subordinate entities during the calendar year in which the Note is issued is not reasonably expected to exceed \$5,000,000.

In order to ensure that the registered 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 Township hereby designates the Note as a "qualified tax-exempt obligation," within the meaning of Code section 265(b)(3)(B), and the Township 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 Township 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 obligations" 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 13. Incidental Actions.** The proper officers of the Township are hereby authorized, directed and empowered on behalf of the Township to execute any and all agreements, 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 purposes of this Ordinance and payment of costs of issuance,

including any investment agreements as may be appropriate in connection with investing the proceeds of the Note.

**Section 14. Inconsistent Ordinances.** All ordinances or parts of ordinances inconsistent herewith be and the same hereby are repealed, canceled and annulled.

**Section 15. Effective Date.** This Ordinance shall take effect on the earliest date permitted by the Act.

ENACTED AND ORDAINED this 17th day of November , 2010.

HONEY BROOK TOWNSHIP  
BOARD OF SUPERVISORS




---

Lewis M. Wertley, Chairman

[SEAL]

Attest:



---

Antoinette Antonini, Admin.  
Secretary/Treasurer