



County of Lackawanna

Lackawanna County
Administration Building
200 Adams Avenue
Scranton, Pennsylvania
18503

Certified Copy

Ordinance: 15-0270

File Number: 15-0270

Ordinance #241

Second Reading

Authorizing the Issuance of Tax Anticipation Notes

First Reading: December 2, 2015

Second Reading: December 16, 2015

BOARD OF COMMISSIONERS OF THE COUNTY OF LACKAWANNA

ORDINANCE #241

AUTHORIZING THE ISSUANCE OF TAX ANTICIPATION NOTES IN AMOUNTS NOT TO EXCEED \$9,900,000.00 IN AGGREGATE PRINCIPLE AMOUNT OUTSTANDING AT ANY GIVEN TIME; PROVIDING FOR THE DATE, DENOMINATION, INTEREST RATE, MATURITY DATE AND PLACE OF PAYMENT PROVISIONS IN RESPECT OF THE NOTES; ACCEPTING THE PROPOSAL OF A LOCAL LENDING INSTITUTION FOR THE PURCHASE OF THE NOTES; PROVIDING THE SECURITY FOR THE NOTES, AUTHORIZING AND DIRECTING THE PREPARATION, CERIFICATION AND FILING OF THE PROCEEDINGS WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; ESTABLISHING A SINKING FUND IN RESPECT OF THE NOTES; PROVIDING FOR A SINKING FUND DEPOSITORY AND PAYING AGENT; SETTING FORTH A FORM OF NOTE; REPEALING INCONSISTANT ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

Whereas, the County of Lackawanna (the "County") anticipates receiving, in fiscal year 2016, tax revenues, such revenues being as yet unreceived; and

Whereas, the County has estimated such expected tax revenues and expenditures for the fiscal year 2016 and, on a monthly basis, will experience a cash flow deficit during some portions of such year; and

Whereas, the County has therefore determined to borrow for the purpose of meeting current expenses by issuing a note to be repaid from said anticipated tax revenues (the "Note"), all in accordance with the Local Government Unit Debt Act (the "Debt Act") being Act No. 185 of the

1972 General Assembly of the Commonwealth of Pennsylvania, approved July 12, 1972, as amended and re-enacted by Act No. 52 of the 1978 General Assembly of the Commonwealth of Pennsylvania; and

Whereas, the County has received an acceptable proposal for the purchase of the Note, as hereinafter described; and

Whereas, as required by Section 8126 of the Debt Act, the authorized officers of the County have heretofore made an estimate of the tax revenues during the period when the Note will be outstanding and, by their execution of a certificate with respect thereto dated within 30 days of, but no later than the date of, this Ordinance (the "Certificate as to Taxes and Revenues") have certified said estimate, a copy of which is attached hereto as Exhibit "A"; and

Whereas, Section 8121 of the Debt Act provides, with regard to tax and revenue anticipation notes, that "the power to borrow from time to time shall include the power to make a single authorization and then issue and sell portions of such amount of authorized notes whenever desired during the fiscal year"; and

Whereas, it is the intent of the County to authorize the issuances and sale of its Tax Anticipation Note in amounts not to exceed \$9,900,000.00 in aggregate principle amount outstanding at any given time, such Notes to be completely repaid on or before December 31, 2016; and

Whereas, such borrowing in anticipation of tax revenues shall be pursuant to and evidenced by the Note, the form which is as substantially specified herein.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Board of County Commissioners of the County of Lackawanna, Pennsylvania, that:

SECTION 1. For the reasons and purposes recited above, the County hereby authorizes the issuance of the Notes in amounts not to exceed \$9,900,000.00 in aggregate principle amount outstanding at any given time in anticipation of the receipt of tax revenues, said Note to be sold and delivered as hereinafter provided.

SECTION 2. At least two of the members of the Board of Commissioners, Interim Chief of Staff, Controller and/or Treasurer of the County, or any duly appointed successor, as the case may be, are hereby authorized and directed to prepare and verify a certified copy of this Ordinance and a true copy of the accepted proposal for the purchase of the Note, all as required by Section 8128 of the Debt Act and to file all of the above, together with an executed copy of the Certificate as to Taxes and Revenues, the contents of which are hereby approved, with the Department of Community and Economic Development of the Commonwealth of Pennsylvania.

SECTION 3. The Note shall be designated “ Tax and Revenue Anticipation Note, Series A of 2016” and the Note shall be issued in denominations to be agreed upon by the County and the Purchaser (as herein defined), shall be subject to repayment prior to maturity, shall be payable to the registered owner thereof, shall be dated the date of delivery thereof, shall bear interest on the unpaid principle balance hereof from the date hereof at a rate not to exceed **1.39% fixed**, per annum subject to the Indemnity and Alternate Rate Agreement. Said principle and interest shall be payable on or before December 31, 2016 at the place in the manner and be otherwise in substantially the same form recited in Section 9 hereof.

SECTION 4. The Note shall be executed by at least two members of the Board of Commissioners, the Treasurer and the Controller of the County and shall have to corporate seal of the County affixed thereof, duly attested by the Chief of Staff. Those officers are further authorized and directed to deliver the Note to the Purchaser upon the terms and conditions hereinafter provided for such delivery and to execute and deliver such other documents and to take action as may be necessary or appropriate in order to effectuate the issuance and sale of Notes, all in accordance with the Debt Act.

SECTION 5. The Note shall be secured by a pledge of, first security interest in, and a lien and charge on, the tax revenues received by the County during the period when the Note is outstanding; and the Chief of Staff is hereby authorized and directed to prepare and file such financing statements as may be necessary under the Pennsylvania Uniform Commercial Code and Section 8125 of the Debt Act to fully perfect said pledge, security interest, lien and charge.

SECTION 6. There is hereby established a Sinking Fund to be known as “ Sinking Fund, County of Lackawanna Tax Note, Series A of 2016” into which the County covenants to deposit and into which the Treasurer is hereby authorized and directed to deposit, on or before December 31, 2016, from taxes and revenues received by the County, amounts sufficient to pay the interest due on that date and the principle on the Notes as provided in Section 3 hereof. All sums in the Sinking Fund shall be applied exclusively to the payment of said principle and interest. Said Sinking Fund shall be kept in a separate account at the principle office of the Sinking Fund Depository provided for in Section 7 hereof, until such time as the County and the Treasurer thereof shall provide for a similar separate account in another bank or trust company or bank and trust company located and lawfully conducting a bank or trust business in the Commonwealth of Pennsylvania. The said Sinking Fund Depository, without further authorization than is herein contained, shall pay from all moneys in the Sinking Fund the interest on the Principle of the Notes, when the same shall become due.

SECTION 7. The Treasurer is hereby authorized and directed to contract with a commercial bank for its services and Sinking Fund Depository (the “Sinking Fund depository”) and paying agent (the “Paying Agent”) said bank being hereby appointed to such positions in respect to the Notes.

SECTION 8. The Note shall be sold at private, negotiated sale upon receipt of an acceptable

proposal for the purchase thereof, which proposal shall be in compliance with the provisions of the Debt Act. The County Commissioners hereby find that such private, negotiated sale is in the best financial interest of the County.

SECTION 9. The Proposal of **Fidelity Deposit & Discount Bank**, (the "Purchaser"), presented to the Board of Commissioners at a public meeting on the date of the first reading of this Ordinance, such proposal being in conformity with the requirements of Section 8 of this Ordinance for the purchase at private sale by negotiation of the Notes, is hereby accepted and the Notes are hereby awarded to the Purchaser. The Chief of Staff is hereby authorized and directed to notify the Purchaser of such action and to file the original of said proposal with the records of the County. The officers of the County are hereby authorized to deliver the Notes to the Purchaser upon receipt of the principle amount thereof and upon compliance with all conditions precedent to such delivery required by the Debt Act, this Ordinance, the County Home Rule Charter and said proposal, and the officers of the County are hereby authorized and directed to prepare, verify and deliver to the Purchaser, concurrently with the delivery of the Notes, the certificate required by Section 8127 of the Debt Act, a copy of which certificate shall be retained in the records of the County during the fiscal year ending on December 31, 2016, shall have been paid in full.

SECTION 10. The forms of the Note shall be substantially, as contained in Exhibit C, attached hereto and made a part of hereof (with necessary language changes, as approved by counsel), The terms and conditions set forth in such form being hereby incorporated by reference and enacted as if fully recited at length herein and said form is hereby approved.

SECTION 11. The County does hereby designate the Note as a "Qualified Tax-exempt Obligation" as the same is defined in §265 of the U.S. Internal Revenue Code of 1986, as amended.

SECTION 12. All prior Ordinances or resolutions or parts thereof inconsistent herewith are hereby repealed.

SECTION 13. This ordinance shall be in full force and effect ten (10) days after publication, as required by law.

ADOPTED at a regular meeting of the Board of Commissioners of Lackawanna

County held on December 16, 2015.

COUNTY OF LACKAWANNA


JIM WANSACZ


PATRICK M. O'MALLEY


EDWARD G. STABACK

ATTEST:


STEVEN M. BARCOSKI
INTERIM CHIEF OF STAFF

Approved as to form and legality:


DONALD J. FREDERICKSON, ESQUIRE
COUNTY SOLICITOR

November 19, 2015

Steven Barcoski, Deputy Director
Lackawanna County
Department of Revenue & Finance
200 Adams Ave. – 6th Floor
Scranton, PA 18503

RE: 2016 TAX ANTICIPATION NOTE

Dear Mr. Barcoski:

Please know that in addition to this bank financing proposal, Fidelity Deposit and Discount Bank brings added value as a trusted financial partner having many years of Municipal Lending experience. We are willing and able to provide guidance and expertise as we understand the landscape relating to the purpose of your financing request.

In response to your request for a Tax Anticipation Note, The Fidelity Deposit and Discount Bank (the “Bank”) hereby proposes to issue a Tax Anticipation Note for Lackawanna County (the “Borrower”) based upon the following terms and conditions.

A summary of the proposed terms and conditions of the Note are as follows:

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DEPOSIT AND DISCOUNT BANK**

Scranton Financial Center
338 N.Washington Avenue
Scranton, PA 18503
(570) 504-8081

1) **Amount of Note**

The principal amount of the note shall not exceed \$9,900,000.00. The Note shall be fully funded at closing.*

**Note: Fidelity Bank wishes to offer the County a multiple advance feature with this loan. This will allow the County to draw down funds as they are needed and to pay interest only on funds that have been disbursed until the loan is fully advanced. This can result in a significant saving of interest for the County. We ask the County to notify us if they are interested in this feature.*

2) **Term of Note**

The note shall mature no later than December 31, 2016.

3) **Rate of Interest Per Annum**

1.39% per annum (the "Tax-Free Rate"), computed based on a year of 365 days, and paid for the actual days elapsed, provided that the interest is free of Federal and Pennsylvania income tax in the hands of the holder (the "Tax Assumption") and provided further that the Bank shall be entitled to deduct at least 80% of the cost to carry the Note (the "Cost to Carry Assumption"); if either the Tax Assumption or the Cost to Carry Assumption is not correct the rate shall be 3.25%.

4) **Repayment Terms**

Payment of Principal and Accrued Interest shall be due in full on or before December 31, 2016. The Note may be prepaid in whole or in part at any time, without penalty.

5) **Collateral/Security**

Borrower shall provide a security interest in all 2016 taxes and revenues. The Borrower shall covenant to budget and appropriate for debt service in its annual budget. The Note will be a general credit obligation of the Borrower guaranteed by the full faith, credit and taxing authority of the Borrower.

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6) **Fees and Expenses**

The Bank will not charge an origination fee for the loan.

Any expenses associated with the preparation and/or review of the Note documents by the County Solicitor will be the responsibility of Lackawanna County.

7) **Conditions/Documentation**

The Bank proposes the issuance of the Tax Anticipation Note based upon the following conditions and documentation:

1. A Note in form and content satisfactory to the Bank, and shall be issued and sold by the Borrower pursuant to the Pennsylvania Local Government Unit Debt Act 177 of 1996, P.L. 1155 of the General Assembly of the Commonwealth of Pennsylvania, as amended, (the "Act") and shall be dated the date of the loan evidenced thereby.
2. The Bank shall purchase the Note at such time as the Borrower shall request, but no later than January 6, 2016, subject, however, to the satisfaction of the following conditions precedent at or before the issuance of the Note and making of the loan evidenced thereby, to wit:
 - (a) The Borrower shall have duly adopted a Resolution in form and content satisfactory to the Bank authorizing the issuance of the Note to the Bank, and the Bank shall receive a copy of the Resolution duly certified by a duly authorized officer of the Borrower;
 - (b) The Bank shall receive an executed counterpart of a Certificate of Authorized Officers confirming that the principal amount of the Note does not exceed the maximum principal amount permitted by the Act, dated not more than thirty (30) days prior to the date of the closing and otherwise complying with the Act;

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- (c) The Bank shall have received the unqualified approving legal opinion of the Borrower's Solicitor as to (i) the due adoption, legal sufficiency and continuing effectiveness of the Resolution, (ii) the due authorizations, execution, issuance and delivery, validity, binding effect and enforceability of the Note, and (iii) the absence of pending or threatened litigation with respect to or affecting acceptance of this Proposal, adoption of the Resolution and issuance of the Note, and such other matters as the Bank may reasonably request;
- (d) The Bank shall have received the unqualified legal opinion of Counsel that (i) the interest in the hands of the holder is free of Pennsylvania and U.S. income tax and (ii) that the Cost to Carry the Note is deductible by the Bank for federal income tax purposes in an amount not less than 80% thereof
- (e) Subsequent to the closing the Bank shall submit the proceedings to the Department of Community and Economic Development in compliance with the "Act" and provide the Bank with satisfactory evidence of the submission;
- (f) The Bank shall have received a duly executed Certificate as to Estimated Taxes and Revenues to be collected during the period that the Note will be outstanding dated as of the date of the Note;
- (g) The Note shall be secured by the full faith, credit and taxing power of the Borrower and the Bank shall be entitled to file Financing Statements complying with the Pennsylvania Uniform Commercial Code describing the pledge by the Borrower to the Bank of the taxes and revenues to be received by the Borrower.
- (h) The Bank shall have received such information and certification as the Bank may in its discretion require in order to establish that the Note will not be an "arbitrage bond" within the

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meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder;

- (i) The Bank shall have received such information as the Bank may in its discretion require in order to establish that the Note will be a "qualified tax-exempt obligation" as that term is defined in Section 265 (b) (3) (B) of the "Code" (if rate option 1 is selected);
- (j) The Bank shall receive an Indemnity and Alternate Rate Agreement in such form and content satisfactory to the bank;
- (k) The Bank shall have received at the time of payment for and Delivery of the Note, or promptly thereafter, a copy of the IRS Form 8038-G prepared by the Borrower in compliance with Section 149 (e) of the "Code" along with evidence of the filing thereof with the Internal Revenue Service Center; and
- (l) All legal details and proceedings in connection with the transactions contemplated by this proposal and such loan shall be in form and substance satisfactory with the Bank, and the Bank shall have received all such counterparts or certified copies of such documents and proceedings as the Bank may reasonably request;
- (m) Such other documents required by the Bank and its counsel for a transaction of similar structure;
- (n) The Bank's completion of any and all due diligence deemed necessary.

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8) **Affirmative and Negative Covenants**

In addition to negative covenants typically required by the Bank for similar Transactions to similar borrowers, the following affirmative covenants shall apply:

1. Borrower shall covenant to budget and appropriate for debt service in its annual operating budget.
2. Borrower shall covenant that it will not incur any additional debt if after giving effect to such debt on a proforma basis would exceed their Statutory Limits.

9) **Events of Default**

In addition to Events of Default which are typically required by the Bank for similar transactions to similar borrowers the following Events of Default shall apply:

1. Non-payment of fees, principal or interest
2. Failure to perform covenants of Borrower.
3. Breach of representations and warranties for Borrower.
4. Material adverse change in the financial condition or otherwise of the Borrower.
5. Default on other existing and future debt of Borrower.

The proposed terms outlined within this proposal are subject to the final approval by The Fidelity Deposit and Discount Bank. This proposal expires on December 15, 2015 if not accepted by Borrower.

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Thank you for the opportunity to provide Lackawanna County with this proposal. If you have any questions or any other alternatives you would like to discuss, please do not hesitate to contact me at 570-504-8059.

THE FIDELITY DEPOSIT AND DISCOUNT BANK

By: Vincent G. O'Bell
Vincent G. O'Bell, Vice President
Business Relationship Manager

Accepted this ___ day of December 2015.

ATTEST:

Lackawanna County

Dust J. Rose

By: J. W. King
Title: Chairman

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