

COUNTY OF LUZERNE
Commonwealth of Pennsylvania

ORDINANCE NO. 2015-13

AUTHORIZING THE INCURRENCE OF DEBT OF THE COUNTY OF LUZERNE (THE "COUNTY") BY THE ENTRY INTO A BORROWING (AS FURTHER DESCRIBED HEREIN) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$20,000,000 TO FUND UNFUNDED DEBT; COVENANTING TO BUDGET, APPROPRIATE AND PAY DEBT SERVICE ON THE BORROWING AND PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE COUNTY FOR THE BORROWING; SETTING FORTH PARAMETERS FOR THE BORROWING; FINDING THAT A PRIVATE NEGOTIATED SALE IS IN THE BEST FINANCIAL INTEREST OF THE COUNTY; AND AUTHORIZING OTHER NECESSARY ACTION.

WHEREAS, the County is granted the power by the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, 53 Pa. Cons. Stat. §8001 *et seq.*, as amended (the "Act"), to incur indebtedness and to issue Borrowing for the purposes of funding unfunded debt, as described in Section 8129 of the Act; and

WHEREAS, many of the agencies and programs of the County are required by the laws of the Commonwealth of Pennsylvania (the "Commonwealth") and the Commonwealth provides a significant portion of the funding for many of those agencies and programs; and

WHEREAS, the 2015 budget for the County included an expectation that the Commonwealth would discharge its obligations under the law to provide funding for certain agencies and programs; and

WHEREAS, the Commonwealth has failed to faithfully discharge its obligations under the law to adopt a budget for the 2015-2016 fiscal year of the Commonwealth; and

WHEREAS, as a result of the failure of the Commonwealth to meet its duties and obligations under the law in providing a budget, there has been an interruption in funding which was expected to be provided to the County by the Commonwealth; and

WHEREAS, the local taxes levied on the citizens of the County do not produce sufficient revenue to continue to cover unpaid obligations of the Commonwealth to the County; and

WHEREAS, considering the 4th quarter of the fiscal year of the County has begun, it is not feasible or in the public interest to levy additional taxes upon the citizens of the County in the current fiscal year; and

WHEREAS, satisfying the outstanding obligations by curtailing services would be dangerous to public health and safety; and

WHEREAS, with the approval of the Court of Common Pleas of Luzerne County, the County proposes to enter into a borrowing, to be evidenced by Borrowing, notes, a loan agreement, a line of

credit or other similar instrument, the proceeds of which may be advanced in one or more installments as needed by the County (collectively, the "Borrowing") in an aggregate principal amount not to exceed \$20,000,000 for the purpose of funding its unfunded debt and paying the costs and expenses of the Borrowing; and

WHEREAS, because of the exigent circumstances caused by the Commonwealth's budget impasse, upon the advice of its Financial Advisor, the County has determined that it is in the best financial interest of the County to enter into the Borrowing via a private negotiated sale with a bank, financial institution or similar entity; and

WHEREAS, the County desires to authorize necessary action in connection with the authorization and entry into the Borrowing;

NOW, THEREFORE, BE IT ORDAINED by the County Council of the County of Luzerne and IT IS HEREBY ORDAINED, as follows:

Section 1. Authorization of Incurrence of Indebtedness; and Statement of Purposes of Indebtedness The County hereby authorizes the incurrence of indebtedness in order to fund the unfunded debt of the County and the costs and expenses of issuing the indebtedness, as described in the preambles to this Ordinance. The County shall incur indebtedness pursuant to the Act in an aggregate principal amount not exceeding \$20,000,000 for the purpose of: (i) funding the County's unfunded debt; and (ii) paying the costs and expenses of entering into the Borrowing.

The Borrowing shall be entered into as hereinafter provided. The County reserves the right to not enter into the Borrowing or to borrow less than the maximum principal amount authorized hereunder and to cancel any unused authorization hereunder in accordance with the terms of the Act.

Section 2. Authorization to Petition Court of Common Pleas The County hereby authorizes the County Solicitor to petition the Court of Common Pleas of Luzerne County for approval to fund its unfunded debt as described herein. Such petition shall specifically request the Court of Common Pleas of Luzerne County to waive any further proceedings involving the Commonwealth's Department of Community and Economic Development because of the exigent circumstances associated with the County's unfunded debt.

Section 3. Authorization of the Borrowing The County may borrow, pursuant to the Act and this Ordinance, an aggregate principal amount not exceeding \$20,000,000.

Section 4. Establishment of Parameters for the Borrowing The County hereby establishes that the Borrowing authorized hereunder shall be subject to the following parameters: (a) the Borrowing shall not exceed TWENTY MILLION DOLLARS (\$20,000,000) in aggregate principal amount; (b) the Borrowing shall have a final maturity or termination date no later than ten (10) years after the date of the Borrowing and the maximum scheduled principal amounts payable each year pursuant to the Borrowing shall not exceed those stated on Schedule A attached hereto and made a part hereof; (c) the Borrowing shall be subject to prepayment, without penalty, at such time as the County receives its expected funding from the Commonwealth that gave rise to its unfunded debt and also in accordance with the federal income tax laws and regulations relating to interest on the Borrowing being exempt for the Lender, if the County so chooses that the interest on the Borrowing be tax-exempt; and (d) the interest rate on the Borrowing shall be initially be at a rate that shall not exceed four percent (4.00%) per annum, for an approximate six-month period, after which

the rate may increase, but shall in no event exceed ten percent (10.00%) per annum for the remainder of the term of the Borrowing (the "Maximum Rate").

The County shall covenant in the Borrowing to repay the Borrowing as soon as reasonably practicable after funds from the Commonwealth due to the County during the Commonwealth's 2015-2016 budget year are received by the County in an amount sufficient to satisfy the Borrowing but in no event later than is required by the federal income tax laws related to the Borrowing, if the Borrowing is tax-exempt. The Director of Budget and Finance of the County shall notify County Council no later than five (5) business days after such funds are received.

In addition to all other documents authorized hereunder, the County hereby authorizes the execution and delivery of an Assignment Agreement between the County and the Lender, and acknowledged by the Commonwealth (the "Assignment Agreement"), pursuant to which the full obligation of the Borrowing authorized by this Ordinance shall be paid by the Commonwealth directly to the Lender in accordance with the law. The Assignment Agreement shall be executed by the Chair or Vice Chair of the County Council of the County, and the seal of the County affixed thereto and duly attested to by the Clerk to County Council (or any Assistant Clerk to County Council or temporary Clerk to County Council or Treasurer appointed for such purpose) of the County, and each such execution shall be by manual signature.

Section 5. Authorization of Private Negotiated Sale. The County authorizes its Chair or Vice Chair, upon the advice of the County's Financial Advisor, to enter into the Borrowing via private negotiated sale with a bank, financial institution or similar entity (the "Lender"). The contract between the County and the Lender for the Borrowing (the "Borrowing Contract") shall set forth the actual terms of the Borrowing. The Council Chair or Vice Chair, in consultation with the County's Financial Advisor, shall select the Lender, based on the willingness of the Lender to comply with the parameters set forth in Section 4 hereof and the ability to close on the Borrowing within the timeframe established by the County. The Council Chair or Vice Chair, in consultation with the County's Financial Advisor and Borrowing counsel, shall determine the actual terms of the Borrowing, within the parameters set forth in this Ordinance. The selection of the Lender and the determination of the actual terms of the Borrowing shall be conclusively evidenced by the execution of the Borrowing Contract by the Council Chair or Vice Chair.

After due consideration, the County Council hereby finds and determines, on the basis of the advice and recommendation of its Financial Advisor and all available information, that entering into the Borrowing via a private negotiated sale is in the best financial interest of the County.

Section 6. Type of Indebtedness; Limitation on Indebtedness. The indebtedness authorized by this Ordinance is nonelectoral debt. It is declared that the debt incurred hereby, together with any other indebtedness of the County, is not in excess of any limitation imposed by the Act upon the incurrence of debt by the County.

Section 7. Type of Borrowing. The Borrowing, when entered into, will be a general obligation of the County.

Section 8. Covenant to Pay Debt Service - Pledge of Taxing Power. The County hereby covenants with the Lender pursuant to this Ordinance as follows: that the County will include in its budget for each fiscal year during the life of the Borrowing, the amount of the debt service on the Borrowing entered into hereunder which will be payable in each such fiscal year so long as any

of the Borrowing shall remain outstanding; that the County shall appropriate from its general revenues such amounts to the payment of such debt service; that the County shall duly and punctually pay or cause to be paid the principal due under the Borrowing and the interest thereon at the dates and places and in the manner stated in the Borrowing according to the true intent and meaning thereof; and for such budgeting, appropriation and payment the County hereby pledges its full faith, credit and taxing power. The covenant contained in this Section 8 shall be specifically enforceable.

Section 9. Sinking Fund and Paying Agent. If necessary, the proper officers of the County shall establish and maintain a sinking fund for the Borrowing, to be held by the Lender or by a paying agent appointed by the County, and the County shall deposit into the sinking fund, not later than each debt service payment date on the Borrowing, the debt service payable on the Borrowing on such dates, or such greater or lesser amount as at the time shall be sufficient to pay the principal and interest due on the Borrowing becoming due on such date.

If necessary, the proper officers of the County are authorized to appoint and contract with a paying agent for the Borrowing.

Section 10. Federal Tax Covenants. If the County so chooses that the Borrowing shall be done on a tax exempt basis, the following covenants shall apply: The County hereby covenants not to take or omit to take any action so as to cause interest on the Borrowing to be no longer excluded from gross income for the purposes of federal income taxation and to otherwise comply with the requirements of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), and all applicable regulations promulgated with respect thereto throughout the term of the Borrowing. The County further covenants that it will make no investments or other use of the proceeds of the Borrowing which would cause the Borrowing to be "arbitrage Borrowing" as defined in Section 148 of the Code. The County further covenants to comply with the rebate requirements (including the prohibited payment provisions) contained in Section 148(f) of the Code and any regulations promulgated thereunder, to the extent applicable, and to pay any interest or penalty imposed by the United States for failure to comply with said rebate requirements, to the extent applicable.

Section 11. Execution and Authentication of Borrowing. The Borrowing, when entered into, shall be executed by the Chair or Vice Chair of the County Council of the County, and the seal of the County affixed thereto and duly attested to by the Clerk to County Council (or any Assistant Clerk to County Council or temporary Clerk to County Council or Treasurer appointed for such purpose) of the County, and each such execution shall be by manual signature. If any officer whose signature appears on the Borrowing shall cease to hold such office before the actual delivery date of the Borrowing, 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 the Borrowing.

Section 12. Execution of Borrowing Contract. The Borrowing Contract shall be executed by the Chair or Vice Chair of the County Council of the County, and the seal of the County affixed thereto and duly attested to by the Clerk to County Council (or any Assistant Clerk to County Council or temporary Clerk to County Council or Treasurer appointed for such purpose) of the County, and each such execution shall be by manual signature.

Section 13. Application of proceeds of the Borrowing. The proceeds of the Borrowing, when received, shall be used by the County to pay the costs of entry into the Borrowing and to fund the unfunded debt of the County.

Section 14. Officers Authorized to Act. For the purpose of expediting the closing and the issuance and delivery of the Borrowing, or in the event that the Chair of the County Council or the Clerk to County Council of the County shall be absent or otherwise unavailable for the purpose of executing documents, or for the purpose of taking any other action which they or either of them may be authorized to take pursuant to this Ordinance, the Vice Chair of the County Council or the Assistant Clerk to County Council or Temporary Clerk to County Council appointed for such purpose of the County, respectively, are hereby authorized and directed to execute documents, or otherwise to act on behalf of the County in their stead.

Section 15. Confirmation of Appointment of Professionals. The County hereby confirms the appointment of Public Financial Management, Inc., Harrisburg, Pennsylvania, as financial advisor (the "Financial Advisor") and Saul Ewing LLP, Philadelphia, Pennsylvania, as Borrowing counsel ("Borrowing Counsel") in connection with the entry into the Borrowing described in this Ordinance.

Section 16. Further Action. The proper officers of the County are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, publish all notices, appoint such other professionals and otherwise comply with the provisions of this Ordinance and the Act in the name and on behalf of the County.

Section 17. Act Applicable to Borrowing. This Ordinance is enacted pursuant to Section 8130 of the Act and the provisions of the Act, as they apply to the Borrowing, shall be deemed modified by the order of the Court of Common Pleas of Luzerne County relating to the Borrowing.

Section 18. Contract with Lender. This Ordinance constitutes a contract with the Lender hereunder and shall be enforceable in accordance with the provisions of the laws of the Commonwealth of Pennsylvania.

Section 19. Severability. In case any one or more of the provisions contained in this Ordinance or in any Borrowing entered into 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 Borrowing and this Ordinance or said Borrowing shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.


Section 20. Repealer. All resolutions and parts of resolutions heretofore enacted to the extent that the same are inconsistent herewith are hereby repealed.

Section 21. **Effective Date.** This Ordinance shall be effective 15 days after enactment.

PASSED this 24th day of November, 2015.

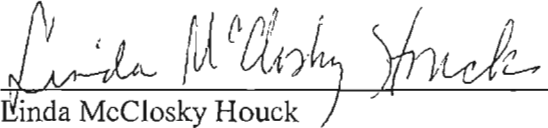
(COUNTY SEAL)

ATTEST:



Sharon Lawrence
Clerk of County Council

COUNTY COUNCIL
COUNTY OF LUZERNE



Linda McClosky Houck
Chair, County Council



Edward A. Brominski
Vice-Chair, County Council

SCHEDULE A

LUZERNE COUNTY SERIES OF 2015					
				<i>Settle</i>	12/11/2015
				<i>Dated</i>	12/11/2015

1	2	3	4	5	6
					Proposed Fiscal Year
<u>Date</u>	<u>Principal</u>	<u>Rate</u>	<u>Interest</u>	<u>Semi-Annual Debt Service</u>	<u>Debt Service</u>
6/1/2016		4.00	377,777.78	377,777.78	
12/1/2016	1,380,000	10.00	1,000,000.00	2,380,000.00	2,757,777.78
6/1/2017			931,000.00	931,000.00	
12/1/2017	1,370,000	10.00	931,000.00	2,301,000.00	3,232,000.00
6/1/2018			862,500.00	862,500.00	
12/1/2018	1,510,000	10.00	862,500.00	2,372,500.00	3,235,000.00
6/1/2019			787,000.00	787,000.00	
12/1/2019	1,660,000	10.00	787,000.00	2,447,000.00	3,234,000.00
6/1/2020			704,000.00	704,000.00	
12/1/2020	1,825,000	10.00	704,000.00	2,529,000.00	3,233,000.00
6/1/2021			612,750.00	612,750.00	
12/1/2021	2,010,000	10.00	612,750.00	2,622,750.00	3,235,500.00
6/1/2022			512,250.00	512,250.00	
12/1/2022	2,210,000	10.00	512,250.00	2,722,250.00	3,234,500.00
6/1/2023			401,750.00	401,750.00	
12/1/2023	2,430,000	10.00	401,750.00	2,831,750.00	3,233,500.00
6/1/2024			280,250.00	280,250.00	
12/1/2024	2,670,000	10.00	280,250.00	2,950,250.00	3,230,500.00
6/1/2025			146,750.00	146,750.00	
12/1/2025	2,935,000	10.00	146,750.00	3,081,750.00	3,228,500.00
 TOTALS	 20,000,000		 11,854,277.78	 31,854,277.78	 31,854,277.78

CERTIFICATE OF CLERK TO COUNTY COUNCIL

The undersigned, Clerk to County Council of the County of Luzerne DOES HEREBY CERTIFY that:

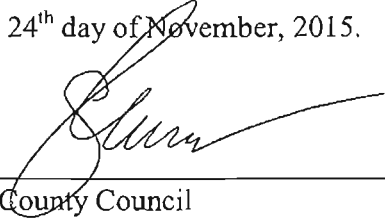
The foregoing Ordinance authorizing the entry into General Obligation Borrowing, Series C of 2015 was duly moved and seconded and to enacted by a majority vote of all the County Council of said County at a duly called and convened public meeting of said Council held on November 17, 2015; that public notice of said meeting was given as required by law; that the roll of the County Council was called and such members voted or were absent as follows:

<u>Name</u>	<u>Vote</u>
Linda McClosky Houck, Chair	Yes
Edward A. Brominski, Vice Chair	No
Jim Bobeck	Yes
Rick Williams	Yes
Kathy Dobash	No
Harry Haas	No
Stephen A. Urban	No
Tim McGinley	Yes
Stephen J. Urban	No
Rick Morelli	Yes
Eileen M. Sorokas	Yes

and that said Ordinance is a true, complete and correct copy of said Ordinance, which has not been altered, amended, modified, suspended or repealed and is still in full force and effect as of the date of the delivery of this Certificate, and said Ordinance and the votes thereon have been duly recorded in the minutes.

WITNESS my hand and seal of the County this 24th day of November, 2015.

(COUNTY SEAL)



Clerk of County Council