

**ORDINANCE NO. 115  
OF THE BOARD OF COMMISSIONERS  
OF THE COUNTY OF BUCKS, PENNSYLVANIA**

AN ORDINANCE THAT AUTHORIZES THE INCURRENCE OF NON-ELECTORAL DEBT BY THE COUNTY OF BUCKS (THE "PARTICIPANT") PURSUANT TO THE ISSUANCE OF THE GENERAL OBLIGATION NOTE, SERIES OF 2004 (THE "PARTICIPANT NOTE") IN THE AGGREGATE PAR AMOUNT OF \$5,000,000 AND APPROVES CERTAIN CAPITAL PROJECTS; APPROVES THE NEGOTIATED SALE OF THE PARTICIPANT NOTE TO THE DELAWARE VALLEY REGIONAL FINANCE AUTHORITY; APPROVES THE SUBSTANTIAL FORMS OF THE PARTICIPANT NOTE, LOAN AGREEMENT, CONTINUING DISCLOSURE AGREEMENT, AND TAX COMPLIANCE AGREEMENT AND AUTHORIZES EXECUTION AND DELIVERY OF ALL NECESSARY DOCUMENTS; STATES THE AMORTIZATION SCHEDULE AND MAXIMUM ANNUAL DEBT SERVICE PAYMENTS; AUTHORIZES AND AWARDS A TRANSACTION UNDER A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT AND AUTHORIZES AND DIRECTS A FILING TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; PLEDGES THE FULL FAITH, CREDIT, AND TAXING POWER OF THE PARTICIPANT FOR THE TIMELY REPAYMENT OF THE PARTICIPANT NOTE, INCLUDING THE REGULARLY SCHEDULED PAYMENTS DUE UNDER THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT; COVENANTS TO PAY ANY TERMINATION FEES; CREATES AND APPOINTS A SINKING FUND DEPOSITORY; AUTHORIZES THE APPLICATION FOR APPROVAL OF THE ISSUANCE OF THE PARTICIPANT NOTE TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; AUTHORIZES ADVERTISEMENT OF ENACTMENT; AND REPEALS INCONSISTENT ORDINANCES.

WHEREAS, certain capital projects (collectively, the "2004 Project") consisting of (i) the funding of unfunded actuarial accrued pension liabilities and (ii) the payment of the costs of issuance of the Participant Note will benefit the health and welfare of the residents of the County of Bucks; and

WHEREAS, the incurrence of non-electoral debt by the Participant is necessary to fund the 2004 Project; and

WHEREAS, the 2004 Project shall be for the benefit and use of the general public, and no private party shall have any special legal entitlement to the beneficial use of the 2004 Project, through a lease, management contract, or any other arrangement; and

WHEREAS, the proposed increase of non-electoral debt from the issuance of the Participant Note, together with the non-electoral and lease rental debt presently outstanding, will not cause the constitutional or statutory debt limitations of the Participant to be exceeded; and

WHEREAS, the Delaware Valley Regional Finance Authority (the "DVRFA"), a public authority within the meaning of the *Local Government Unit Debt Act*, 53 Pa. C.S.A. §8001, *et seq* (the "*Debt Act*"), issued the Local Government Revenue Bonds, Series of 2002 (the "DVRFA Bonds"), to provide funds for loans to be secured by the pledge of the full faith, credit and taxing power of local government units (the "Loan Program"); and

WHEREAS, the DVRFA determined to enter into an "Interest Rate Management Agreement", as such term is defined in the *Debt Act*, with respect to the DVRFA Bonds (the "DVRFA Swap Agreement") in order to provide a more cost effective Loan Program and to allow participants in the Loan Program to manage interest rate risk more efficiently; and

WHEREAS, Calhoun, Baker Inc. (the "Financial Advisor") is an "Independent Financial Advisor", as such term is defined in the *Debt Act*, to the DVRFA, and the Financial Advisor has prepared an "Interest Rate Management Plan" (the "DVRFA Plan"), as such term is defined in the *Debt Act*, that has been adopted by the Board of DVRFA; and

WHEREAS, the DVRFA established minimum criteria of long term, senior, unsecured debt ratings of "Aa3" or higher by Moody's Investors Service or "AA-" or higher by Standard & Poor's for the provider

of the DVRFA Swap Agreement, and the Board of the DVRFA found that the award of the DVRFA Swap Agreement by negotiation in a private sale was in the best financial interests of DVRFA and the participants in the Loan Program, and the Financial Advisor concluded that the financial terms and conditions of the DVRFA Swap Agreement were fair and reasonable as of the date of award; and

WHEREAS, the Participant wishes to utilize the DVRFA Loan Program by issuing the Participant Note to the DVRFA and, under the terms of the loan documents, the Participant will be obligated to make certain payments under the DVRFA Swap Agreement; and

WHEREAS, the Board of Commissioners of the Participant desires to have the DVRFA Swap Agreement constitute a "Qualified Interest Rate Management Agreement", as such term is defined in the *Debt Act*, with respect to the Participant Note, and the DVRFA Plan constitute the Interest Rate Management Plan required by the *Debt Act*.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF BUCKS, PENNSYLVANIA, AND IT IS HEREBY ORDAINED AND ENACTED BY THE AUTHORITY OF SAID BOARD OF COMMISSIONERS THAT:

**SECTION 1. APPROVAL OF THE 2004 PROJECT AND AUTHORIZATION TO ISSUE THE PARTICIPANT NOTE**

Pursuant to §8142(a)(2)(i) of the *Debt Act*, the estimated useful life of the 2004 Project is thirty years, a period in excess of the five year term of the Participant Note. The principal of the Participant Note shall be amortized to provide more level overall annual debt service, pursuant to §8142(b)(2) of the *Debt Act*. The amortization of the principal amounts of the Participant Note shall begin within two years of the date of issue in accordance with §8142(c) of the *Debt Act*. The Board of Commissioners hereby authorizes and approves the 2004 Project. The Board of Commissioners hereby authorizes and directs the incurring of non-electoral debt in the aggregate par amount of \$5,000,000 by the issuance of the Participant Note.

**SECTION 2. APPROVAL OF THE PURCHASE PROPOSAL**

The Board of Commissioners, after due deliberation and investigation, hereby determines that a private sale by negotiation of the Participant Note to the DVRFA is in the best financial interests of the Participant. The Board of Commissioners hereby accepts the Purchase Proposal from the DVRFA, attached hereto, to purchase the Participant Note at an aggregate price of \$5,000,000 from the proceeds of DVRFA Bonds. The Participant shall be responsible for paying the DVRFA's costs of origination in an amount not to exceed \$20,000, as directed by the DVRFA's Program Administrator upon the issuance of the Participant Note. The Participant Note shall be purchased by the DVRFA on or about January 7, 2004, or at such other times as the Chairman of the Board of Commissioners and the DVRFA's Program Administrator shall determine.

**SECTION 3. APPROVAL OF THE FORMS OF THE PARTICIPANT NOTE, LOAN AGREEMENT, CONTINUING DISCLOSURE AGREEMENT, AND TAX COMPLIANCE AGREEMENT AND AUTHORIZATION TO EXECUTE AND DELIVER ALL NECESSARY DOCUMENTS**

The substantial forms of the Participant Note, Loan Agreement, Continuing Disclosure Agreement, and Tax Compliance Agreement (collectively, the "Loan Documents") attached to the Purchase Proposal are hereby approved. The Chairman or Vice Chairman, and the Chief Clerk are hereby authorized and directed to execute and deliver the Loan Documents, in the substantial forms attached to the Purchase Proposal, but with such alterations, deletions and additions as the Chairman or Vice Chairman may approve (such approval to be conclusively established by the execution of the Loan Documents by the Chairman or Vice Chairman). The Chairman or Vice Chairman and the Chief Clerk also are hereby authorized and directed (i) to execute and deliver such other certificates, instruments, and agreements (including those required by any institution issuing any financial guaranty insurance policy, municipal bond insurance policy, letter of credit, or similar instrument) and (ii) to take all actions that may be necessary or beneficial to issue the Participant Note.

**SECTION 4. AMORTIZATION SCHEDULE AND MAXIMUM ANNUAL DEBT SERVICE PAYMENTS**

The indebtedness of the Participant Note shall be evidenced by one Note in the aggregate par amount of FIVE MILLION DOLLARS (\$5,000,000). The Participant Note shall bear interest at the floating rate specified in the Loan Agreement and Participant Note, the substantial forms of which are attached to the Purchase Proposal. The principal amortization schedule and maximum annual debt service payments as defined in the Participant Note and Loan Agreement for periodic scheduled payment under the Participant Note (based upon the maximum interest rate of 15%) are shown below:

**County of Bucks**  
**General Obligation Note, Series of 2004**  
**Principal Amortization Schedule and**  
**Maximum Annual Debt Service at 15% Interest Rate**

<u>Period</u> <u>Ending</u>	<u>Principal</u> (1)	<u>Maximum</u> <u>Interest</u> <u>Rate</u>	<u>Maximum</u> <u>Interest</u> <u>Payment</u> (2)	<u>Maximum</u> <u>Annual</u> <u>Debt Service</u>
7-Jan-04				
25-Jan-05	\$ 30,000.00	15%	\$ 787,500.00	\$ 817,500.00
25-Jan-06	35,000.00	15%	745,500.00	780,500.00
25-Jan-07	35,000.00	15%	740,250.00	775,250.00
25-Jan-08	4,000,000.00	15%	735,000.00	4,735,000.00
25-Jan-09	900,000.00	15%	135,000.00	1,035,000.00
Total	<u>\$ 5,000,000.00</u>		<u>\$ 3,143,250.00</u>	<u>\$ 8,143,250.00</u>

(1) Principal is amortized to provide more level overall annual debt service.

Principal is payable annually on January 25, commencing January 25, 2005.

(2) Interest is payable monthly on the 25th day of the month, commencing February 25, 2004. Calculated for the period beginning on January 7, 2004.

**SECTION 5. AUTHORIZATION AND AWARD OF A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT**

The Participant is incurring indebtedness under the *Debt Act* which will be issued to the DVRFA, a public authority, and the Participant, by execution of the Loan Documents, will become obligated for a portion of the DVRFA Swap Agreement equal to the outstanding principal amount of the Participant Note. The Board of Commissioners hereby accepts and adopts the DVRFA Plan as the Interest Rate Management Plan fulfilling the requirements of §8281(b)(2) of the *Debt Act*. The Board of Commissioners hereby accepts and ratifies the minimum criteria used by DVRFA to select the provider of the DVRFA Swap Agreement and hereby accepts and ratifies the award of the DVRFA Swap Agreement in a private sale by negotiation. The Board of Commissioners hereby authorizes and awards the DVRFA Swap Agreement as the Qualified Interest Rate Management Agreement with respect to the Participant Note, pursuant to §8281(a)(2) of the *Debt Act*. The Board of Commissioners hereby authorizes and directs the filing, to the Department of Community and Economic Development (“DCED”) within fifteen days of enactment, of a certified copy of this Ordinance and the following documents, attached hereto, in accordance with §8284(a)(1) of the *Debt Act*:

- (a) Form of the Loan Agreement to be executed by the Participant and DVRFA,
- (b) DVRFA Swap Agreement, the Qualified Interest Rate Management Agreement pursuant to §8281(b)(1) of the *Debt Act*,
- (c) DVRFA Plan, the Interest Rate Management Plan pursuant to §8281(b)(2)(ii) of the *Debt Act*,  
and
- (d) Finding of the Financial Advisor that the financial terms and conditions of the DVRFA Swap Agreement were fair and reasonable as of the date of the award by DVRFA, pursuant to §8281(e)(5) of the *Debt Act*.

**SECTION 6. OBLIGATIONS OF THE PARTICIPANT RELATED TO THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT**

The Participant’s obligations related to the DVRFA Swap Agreement are set forth in the Loan Agreement. In accordance with §8281(c) of the *Debt Act*:

- 1) The Participant pledges its full faith, credit, and taxing power to make any scheduled payments related to the DVRFA Swap Agreement and covenants to budget, appropriate, and pay any termination payment (the “Termination Payment”) that may be due under the DVRFA Swap Agreement.
- 2) The notional amount of the DVRFA Swap Agreement related to the Participant Note is equal to the outstanding principal amount of the Participant Note, initially \$5,000,000.

- 3) The scheduled term of the Participant's obligations related to the DVRFA Swap Agreement ends on January 25, 2009.
- 4) The Participant's obligations under the DVRFA Swap Agreement end when the Participant repays or prepays the amounts outstanding under the Participant Note and the Loan Agreement.
- 5) The maximum interest rate under the DVRFA Swap Agreement is 15%.
- 6) The maximum annual net, scheduled payments, not including any Termination Payment, related to the DVRFA Swap Agreement shall not exceed the maximum annual debt service payments authorized for the Participant Note.
- 7) The Participant has pledged general revenues for the payment of any obligations due under the DVRFA Swap Agreement.
- 8) The DVRFA Swap Agreement requires collateralization if the ratings of the provider drop below "Aa3" by Moody's Investor Service and "AA-" by Standard & Poor's.
- 9) The Participant's obligations to make payments due on the Participant Note and scheduled payments related to the DVRFA Swap Agreement are senior to any obligation for a Termination Payment

#### **SECTION 7. PLEDGE OF THE FULL FAITH, CREDIT, AND TAXING POWER**

The Participant hereby covenants:

- i. to include all periodic scheduled payments payable under the Participant Note, which takes into consideration (a) the regularly scheduled interest payments on the DVRFA's Bonds, (b) the regularly scheduled payments due under the DVRFA Swap Agreement, (c) all Administrative Fees and Expenses, except any Termination Payments due under the DVRFA Swap Agreement, and (d) the amortization of principal due on the Participant Note, in the budget of the fiscal year in which such amounts are due and payable,
- ii. to appropriate such amounts from its taxes and other general revenues, and
- iii. to pay, or cause to be paid, punctually and duly, such amounts that are due and payable under the Participant Note and the Loan Agreement at the dates and places and in the manner stated in the Participant Note and the Loan Agreement.

For such budgeting, appropriation, and payment, the Participant irrevocably pledges its full faith, credit, and taxing power. As provided by the *Debt Act*, this covenant shall be specifically enforceable.

#### **SECTION 8. COVENANTS FOR TERMINATION PAYMENTS**

The Participant hereby covenants:

- i. to include the amounts for Administrative Fees and Expenses allocable to Termination Payments due under the DVRFA Swap Agreement for each fiscal year in which such Termination Payments are payable in its budget for that year,
- ii. to appropriate such amounts from its general revenues for the payment of such Termination Payments, and
- iii. to duly and punctually pay or cause to be paid from its sinking fund or any other of its revenues or funds the Termination Payments at the dates and places and in the manner stated in the Participant Note and the Loan Agreement.

Pursuant to §8129 of the *Debt Act*, in the event of a payment default by the Participant, the Termination Payments shall constitute "unfunded debt".

#### **SECTION 9. SINKING FUND DEPOSITORY**

The Board of Commissioners hereby finds and acknowledges that under the terms of the Loan Agreement, Wilmington Trust of Pennsylvania (the "Bank"), or its successors, shall serve and is hereby

appointed as the Sinking Fund Depository, shall maintain separate accounts, subaccounts and subfunds for Repayments (as defined in the Loan Agreement) to be made by the Participant until such Participant Note is paid in full. These accounts, subaccounts and subfunds shall, collectively, constitute the "Sinking Fund" required by the *Debt Act* for the Participant Note. The Board of Commissioners hereby authorizes, empowers, and directs the Chairman or Vice Chairman and the Chief Clerk to contract with the Bank by the execution of the Loan Agreement to serve as Sinking Fund Depository for the Participant Note.

**SECTION 10. AUTHORIZATION TO SUBMIT STATEMENTS TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT**

The Solicitor and the Chief Clerk are hereby authorized and directed to prepare and to submit to the DCED an application for approval of the incurrence of the non-electoral debt evidenced by the Participant Note, including the proceedings that authorize issuance, the debt statement, and any other documents required by the *Debt Act* or DCED.

**SECTION 11. LEGAL ADVERTISEMENTS**

The Board of Commissioners hereby ratifies and directs the advertisement of a summary of this Ordinance as finally enacted, as required by the *Debt Act*, in the *Bucks County Courier Times*, a newspaper of general circulation in the County of Bucks, within fifteen (15) days following the day of final enactment.

**SECTION 12. FILING WITH THE PUBLIC EMPLOYEE RETIREMENT COMMISSION**

The Solicitor and the Chief Clerk are hereby authorized and directed to file a certified copy of this Ordinance and a copy of the certificate of approval by DCED of the issuance of the Participant Note with the Public Employee Retirement Commission prior to the date of issuance of the Participant Note, pursuant to §8116 of the *Debt Act*.

**SECTION 13. CONFLICTING ORDINANCES**

All ordinances or parts of ordinances not in accord with this Ordinance are hereby repealed insofar as they conflict herewith.

IN WITNESS WHEREOF, we, the undersigned authorized officials of the County of Bucks, have hereunto set our signatures and affixed hereto the Seal.

Dated: December 3, 2003


  
Michael G. Fitzpatrick, Esq., Chairman

  
Charles H. Martin, Commissioner

  
Sandra A. Miller, Commissioner

[SEAL]

ATTEST:

  
David G. Steinbach, Chief Clerk  
County of Bucks