

ORDINANCE 2018-15

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THIS TOWNSHIP DETERMINING TO INCUR LEASE RENTAL DEBT IN THE MAXIMUM PRINCIPAL AMOUNT OF FOURTEEN MILLION TWO HUNDRED THOUSAND DOLLARS (\$14,200,000) TO BE EVIDENCED BY A FEDERALLY TAXABLE GUARANTEED PROJECT NOTE TO BE ISSUED BY LOWER ALLEN TOWNSHIP DEVELOPMENT AUTHORITY IN CONNECTION WITH A CERTAIN CAPITAL PROJECT BEING UNDERTAKEN BY SAID AUTHORITY; AUTHORIZING AND APPROVING A GUARANTY AGREEMENT AMONG THIS TOWNSHIP, AS GUARANTOR, THE AUTHORITY AND FARMERS AND MERCHANTS TRUST COMPANY OF CHAMBERSBURG; SETTING FORTH THE SUBSTANTIAL FORM OF SAID GUARANTY AGREEMENT; PROVIDING THAT THIS TOWNSHIP SHALL GUARANTY PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID NOTE; SPECIFYING THE MAXIMUM AMOUNTS OF THE GUARANTY OBLIGATIONS OF THIS TOWNSHIP PURSUANT TO SAID GUARANTY AGREEMENT AND THE SOURCE OF PAYMENT OF SUCH GUARANTY OBLIGATIONS; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THIS TOWNSHIP IN SUPPORT OF SUCH GUARANTY OBLIGATIONS; PROVIDING FOR PROPER OFFICERS OF THIS TOWNSHIP TO TAKE ALL REQUIRED OR DESIRABLE RELATED ACTION AND TO EXECUTE ALL OTHER REQUIRED OR DESIRABLE DOCUMENTS; CREATING A SINKING FUND IN CONNECTION WITH SUCH GUARANTY OBLIGATIONS AND APPOINTING A SINKING FUND DEPOSITARY AND PAYING AGENT; AUTHORIZING PROCEEDINGS FOR THE APPROVAL OF SUCH LEASE RENTAL DEBT PURSUANT TO THE LOCAL GOVERNMENT UNIT DEBT ACT; PROVIDING FOR THE EFFECTIVENESS OF THIS ORDINANCE; AND REPEALING ALL INCONSISTENT ORDINANCES OR PARTS OF ORDINANCES.

WHEREAS, this Township is a municipality (a township of the first class) of the Commonwealth of Pennsylvania (the “Commonwealth”) and is a “local government unit” under terms of the Local Government Unit Debt Act, 53 Pa.C.S. Chs. 80-82 (the “Act”), of the Commonwealth; and

WHEREAS, Lower Allen Township Development Authority (the “Authority”) is an industrial and commercial development authority organized and existing under the Economic Development Financing Law, as amended (the “EDF”), of the Commonwealth; and

WHEREAS, the Authority and this Township have determined that the Authority shall undertake the Project, as such phrase is defined in the Guaranty Agreement (hereinafter defined), in connection with acquisition and improvement of certain property in this Township as part of a community development program, and shall finance the same by issuance of a guaranteed project note; and

WHEREAS, the Board of Commissioners of this Township has obtained realistic cost estimates with respect to the Project through actual bids or contracts, option agreements or professional estimates from registered architects, professional engineers or other persons qualified by experience and has determined that the costs of the Project are not less than \$14,200,000.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Board of Commissioners of this Township, as follows:

SECTION 1. This Township authorizes and requests the Authority to undertake such Project. Such Project is being undertaken to acquire and improve, for community development purposes, certain property located in this Township.

SECTION 2. This Township determines that the Authority shall incur debt, which shall be lease rental debt of this Township pursuant to the Act, in connection with such Project.

SECTION 3. Such lease rental debt of this Township shall be in the maximum principal amount of Fourteen Million Two Hundred Thousand Dollars (\$14,200,000), shall be evidenced by an obligation to be issued by the Authority under the EDF Law to be known generally as its “Guaranteed Project Note, Series of 2019 (Federally Taxable)” (the “Note”), which shall have the benefit of and shall be secured by the guaranty obligations of this Township pursuant to the Guaranty Agreement (hereinafter defined).

SECTION 4. This Township specifies that the estimated useful life of the Project is at least 40 years.

SECTION 5. This Township, as guarantor, shall enter into a Guaranty Agreement (the “Guaranty Agreement”), substantially in the form referred to in Section 6, with the Authority and Farmers and Merchants Trust Company of Chambersburg, having its principal office in Chambersburg, Pennsylvania (the “Bank”), as lender under and pursuant to a Loan Agreement between the Authority and the Bank, with respect to the Project and the Note, under terms and provisions of which Guaranty Agreement this Township shall guaranty, unconditionally, for the benefit of the holder, from time to time, of the Note, full and prompt payment of Debt Service, as such phrase is defined in the Guaranty Agreement, to the extent provided in the Guaranty Agreement, as such shall be due and payable with respect to the Note.

The Guaranty Agreement shall be for the life of the Note and shall set forth certain terms, conditions, provisions, covenants and agreements to be observed by this Township, the Authority and the Bank in relation to the Project and the Note.

SECTION 6. The Guaranty Agreement shall be substantially in the form presented to this meeting, which form is approved; and a copy of the Guaranty Agreement, in the form so presented to this meeting and so approved, shall be filed with the Secretary of this Township and shall be made available for inspection at reasonable times by interested persons requesting such inspection.

SECTION 7. The President or Vice President of the Board of Commissioners and the Secretary or Assistant Secretary of this Township, respectively, are authorized and directed to prepare, to certify and to file the debt statement, as such phrase is defined in the Act, required by the Act, on behalf of this Township, and to prepare and to file any statements required by the Act that are necessary to qualify all or any portion of the debt of this Township for exclusion from the appropriate debt limit as self-liquidating or subsidized debt, as appropriate.

The President or Vice President of the Board of Commissioners and the Secretary or Assistant Secretary of this Township are authorized and directed to prepare and to execute, or to authorize the auditors of this Township to prepare and to execute, an appropriate borrowing base certificate for filing with the Department of Community and Economic Development (the “Department”) of the Commonwealth, as required by the Act.

SECTION 8. The President or Vice President of the Board of Commissioners and the Secretary or Assistant Secretary of this Township, as applicable, are authorized and directed to execute, to attest, to acknowledge and to deliver the Guaranty Agreement, on behalf of this Township, substantially in the form approved in Section 6; Subject, however, to applicable provisions of the Act.

SECTION 9. The President or Vice President of the Board of Commissioners and the Secretary or Assistant Secretary of this Township are authorized and directed to make application to the Department for approval with respect to the Guaranty Agreement, as required by the Act, and for approval with respect to the exclusion of such lease rental debt as self-liquidating debt and any other existing lease rental debt, as may be appropriate; and in connection with such application, this Township shall pay to the Department the filing fee as required by the Act, the payment of which filing fee is authorized and approved.

SECTION 10. The guaranty obligations of this Township with respect to the Note, as set forth in the Guaranty Agreement in the form referred to in Section 6, which shall be payable, if and

as necessary, on a semiannual basis, shall be as are set forth in **Exhibit A** which is attached hereto and made part hereof.

The phrase “Fiscal Year,” as provided in the Guaranty Agreement, as used in such **Exhibit A**, shall mean the fiscal year of this Township.

SECTION 11. The guaranty obligations of this Township, as set forth in Section 10, shall be payable from the tax and other general revenues of this Township.

SECTION 12. This Township shall covenant in the Guaranty Agreement and does hereby covenant to and with the Bank and the Authority that this Township: (1) shall include the Debt Service, as such phrase is defined in the Guaranty Agreement, payable in respect of its guaranty pursuant to the Guaranty Agreement, for each Fiscal Year, as such phrase is defined in the Guaranty Agreement, in which such sums are payable in its budget for that Fiscal Year; (2) shall appropriate such amounts from its tax or other general revenues for payment to the Bank of its obligations under the Guaranty Agreement; and (3) shall duly and punctually pay or cause to be paid from its sinking fund (hereinafter referred to) or any other of its revenues or funds the amount payable in respect of such guaranty, at the dates and place and in the manner provided in the Guaranty Agreement, according to the true intent and meaning thereof; and for such budgeting, appropriation and payment in respect of such guaranty, this Township shall and does pledge, irrevocably, its full faith, credit and taxing power. The foregoing covenants of this Township shall be enforceable specifically.

For the purposes of complying with the foregoing covenant, this Township covenants that it shall budget the amounts set forth in **Exhibit A** which is attached hereto and made part hereof, such amounts being such Debt Service with respect to the Note for the Fiscal Years in which such amounts are payable, and shall appropriate and shall pay over to the Bank such amounts; Subject, however, to provisions of the Guaranty Agreement with respect to credit for certain sums that shall be available for such Debt Service under the Loan Agreement, all as more fully set forth in the Guaranty Agreement.

This Township also shall covenant in the Guaranty Agreement and does hereby covenant that, to the extent sufficient money shall not be available in its then current budget at any time when payments are required under the Guaranty Agreement, and if it shall be unable to incur debt lawfully in the current year for the purpose or to issue tax anticipation notes or otherwise to satisfy its obligations under the Guaranty Agreement, it shall include any amounts so payable by it in its budget for the next succeeding Fiscal Year and shall appropriate such amounts to the payment of such obligations and duly and punctually shall pay or shall cause to be paid its obligations incurred under the Guaranty Agreement, in the manner therein stated, according to the true intent and meaning thereof.

This Township hereby establishes a “sinking fund,” as such phrase is defined or applied in the Act, as amended and supplemented from time to time, with respect to its obligations under the Guaranty Agreement with respect to such guaranty, and Farmers and Merchants Trust Company of Chambersburg, with its principal place of business located in Chambersburg, Pennsylvania, is hereby appointed “sinking fund depository” and “paying agent,” as such phrases are defined or applied in the Act, to the extent necessary with respect to obligations of this Township under the Guaranty Agreement with respect to such guaranty.

SECTION 13. Proper officers of this Township are authorized and directed to execute all documents and to do all other acts as may be necessary and proper to carry out the intent and purpose of this Ordinance and the undertakings of this Township under the Guaranty Agreement.

SECTION 14. Reference in this Ordinance to specified officers of this Township shall include and shall be construed to include, if and as applicable, their respective successors in office.

SECTION 15. This Ordinance shall become effective in accordance with provisions of the Act.

SECTION 16. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of this Township that such remainder shall be and shall remain in full force and effect.

SECTION 17. All other ordinances or parts of ordinances which are inconsistent herewith shall be and the same expressly are repealed.

DULY ENACTED AND ORDAINED, this 10th day of December, 2018, by the Board of Commissioners of the Township of Lower Allen, Cumberland County, Pennsylvania, in lawful session duly assembled.

Attest:
(Corporate Seal)

BOARD OF COMMISSIONERS
LOWER ALLEN TOWNSHIP

(Assistant) Secretary

(Vice) President

TOWNSHIP OF LOWER ALLEN,
Cumberland County, Pennsylvania

EXHIBIT A

Debt Service, as such phrase is defined in the Guaranty Agreement referred to in the Ordinance to which this is attached, with respect to the Note, as such phrase is defined in such Ordinance (in the maximum stated principal amount of \$14,200,000), to be issued by Lower Allen Township Development Authority, is as follows:

[See Following Page]

CERTIFICATE

I, the undersigned, (Assistant) Secretary of the Township of Lower Allen, Cumberland County, Pennsylvania (the “Township”), certify that: the foregoing is a true and correct copy of an Ordinance which duly was enacted by affirmative vote of a majority of all members of the Board of Commissioners of the Township, in accordance with law, at a meeting duly held on December 10, 2018, at which meeting a quorum was present; said Ordinance has been certified and recorded by me, as (Assistant) Secretary of the Township, in the book provided for the purpose of such recording; said Ordinance, upon enactment, as aforesaid, was assigned Ordinance No. _____; the total number of members of the Board of Commissioners of the Township is five (5); the vote of the members of the Board of Commissioners of the Township, upon enactment of said Ordinance, the yeas and nays having been called, duly was recorded by me, as (Assistant) Secretary, as follows:

H. Edward Black	-
Jack R. Simpson, Jr.	-
Carolyn E. Holtzman	-
Richard F. Schin	-
Dean W. Villone	-

A notice with respect to the intent to enact said Ordinance has been advertised, as required by law, in a newspaper of general circulation in the Township; said Ordinance was available for inspection by any interested citizen requesting the same, in accordance with the Pennsylvania Local Government Unit Debt Act and such notice; and said Ordinance has not been amended, altered or repealed, as of the date of this Certificate.

I further certify that the Board of Commissioners of the Township met the advance notice requirements of the Sunshine Act, 65 Pa.C.S. §701 et seq., by advertising said meeting, by posting prominently a notice of said meeting at the principal office of the Township or at the public building in which said meeting was held, and by providing reasonable opportunity for public comment at such meeting, all in accordance with such Act.

IN WITNESS WHEREOF, I set my hand and affix the official seal of the Township, this 10th day of December, 2018.

(Assistant) Secretary

(SEAL)