

**AN ORDINANCE OF THE COUNTY COMMISSIONERS
OF THE COUNTY OF LACKAWANNA
(PENNSYLVANIA)
ENACTED NOVEMBER 22, 2005 AND NUMBERED 167.**

**FORMAL ACTION CONSTITUTING A QUALIFIED INTEREST RATE
MANAGEMENT AGREEMENT ORDINANCE
UNDER THE LOCAL GOVERNMENT UNIT DEBT ACT**

APPROVING AND ADOPTING AN INTEREST RATE MANAGEMENT PLAN; APPROVING THE FORM OF INTEREST RATE MANAGEMENT AGREEMENT RELATING TO ITS SERIES B OF 2005 BONDS; AUTHORIZING THE PROPER OFFICERS OF THE COUNTY TO EXECUTE AND DELIVER THE INTEREST RATE MANAGEMENT AGREEMENT; APPROVING THE RATE OF INTEREST PAYABLE BY THE COUNTY UNDER THE INTEREST RATE MANAGEMENT AGREEMENT AND THE RATE OF INTEREST PAYABLE BY THE COUNTERPARTY UNDER THE INTEREST RATE MANAGEMENT AGREEMENT; APPROVING THE TERM OF THE INTEREST RATE MANAGEMENT AGREEMENT; COVENANTING TO BUDGET, APPROPRIATE AND PAY THE PERIODIC SCHEDULED PAYMENTS OF THE COUNTY UNDER THE INTEREST RATE MANAGEMENT AGREEMENT; AUTHORIZING THE PREPARATION OF A TRANSCRIPT OF PROCEEDINGS TO BE FILED WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER NECESSARY DOCUMENTS AND THE TAKING OF OTHER NECESSARY ACTION IN CONNECTION WITH THE FOREGOING.

WHEREAS, The County of Lackawanna (the "County") has authorized the issuance of its General Obligations Bonds, Series B of 2005 (the "Bonds") in the maximum aggregate principal amount of \$40,000,000; and

WHEREAS, the County has heretofore appointed Investment Management Advisory Group, Inc. ("IMAGE"), a firm that is experienced in the financial aspects and risks of interest rate management agreements, to advise the County with respect to the Swap Agreement (as hereinafter defined); and

WHEREAS, IMAGE has been retained, among other things, to prepare an Interest Rate Management Plan as defined in the Local Government Unit Debt Act (the "Debt Act"); and

WHEREAS, the Interest Rate Management Plan contains recommendations relating to the process for selecting a counterparty and criteria for entering into an interest rate management agreement with UBS Financial Services, Inc. or another financial institution to be determined in consultation with its financial advisors (the "Counterparty"); and

WHEREAS, IMAGE is recommending that the County enter into a qualified interest rate management agreement related to the Bonds in order to manage its interest cost with respect to the Bonds; and

WHEREAS, the qualified interest rate management agreement shall be memorialized by a Master Agreement, as supplemented by a Schedule, Credit Support Annex and Confirmation thereto (the "Swap Agreement"); and

WHEREAS, the County desires to approve and adopt the Interest Rate Management Plan, authorize the execution and delivery of the Swap Agreement and authorize the execution and delivery of such other documents as shall be necessary or appropriate in connection therewith.

NOW, THEREFORE, BE IT, AND IT HEREBY IS, ENACTED by the affirmative vote of a majority of all members of the County Commissioners as follows:

1. **Adoption of the Interest Rate Management Plan.** In accordance with the purposes and objectives of the Debt Act, as amended, the County hereby adopts and approves the Interest Rate Management Plan prepared and recommended by IMAGE, attached hereto as

the maximum combined obligations of the County taking into account the Swap Agreement and the Bonds.

4. **Authorization of Private Sale By Negotiation or Invited Sale.** In compliance with Section 8281(e) of the Debt Act, the County Commissioners, in consultation with IMAGE, have determined that a private sale by negotiation or invited sale, rather than public sale is in the best financial interest of the County. Therefore, the Swap Agreement shall be awarded to the Counterparty subject to the requirements of this Ordinance; provided that the proceedings have been filed with the Department of Community and Economic Development in accordance with paragraph 7 below; and provided further that the County hereby reserves the right to award the Swap Agreement, in whole or in part, to another counterparty, or by using an invited or competitive public sale, if upon consultation with its advisors, the County deems such award to be in its best financial interest. The award of the Swap Agreement at a private sale, by negotiation or invited sale, in accordance with the other terms and conditions set forth in this Ordinance, is hereby deemed to be in the best financial interest of the County and is hereby approved.

5. **Execution and Delivery of Documents.** The proper officers or officials of the County are hereby authorized to execute and deliver, in the name of the County and on its behalf such other documents, agreements, instruments and certifications, as they determine to be reasonable and appropriate to provide for the Swap Agreement as authorized by this Ordinance, and to approve the final form and substance thereof, and any amendments or supplements thereto before or after the initial execution and delivery thereof copies of the foregoing documents, together with the other documents relating to the transactions authorized hereby, in final form as executed and delivered by the parties thereto, shall be filed in the official records of the County.

6. **Debt Act Proceedings.** The Chairman or Vice Chairman of the County Commissioners are authorized and directed to prepare or cause to be prepared, verify and file the proceedings required by Section 8284 of the Debt Act, to take other necessary action. The action of the proper officers and the advertising of a summary of this Ordinance as required by law in a newspaper of general circulation, is hereby ratified and confirmed, and approved. The advertisement in said paper of the adoption of the Ordinance is hereby directed within fifteen (15) days following the day of final enactment.

7. **Binding Effect of Covenants and Agreements.** All covenants, obligations and agreements of the County set forth in this Ordinance and in the documents authorized hereby shall be deemed to be the covenants, obligations and agreements of the County to the full extent authorized or permitted by law, and all such covenants, obligations and agreements shall be binding upon the County and its successors from time to time and upon any board or body to which any powers or duties affecting the same shall be transferred by or in accordance with law. Except as otherwise provided in this Ordinance, all rights, powers and privileges conferred and duties and liabilities imposed upon the County or the members thereof by the provisions of this Ordinance or the documents authorized hereby shall be exercised or performed by such members, officers or other representatives of the County as may be required or permitted by law to exercise or perform the same. No covenant, obligation or agreement herein contained or contained in any documents authorized hereby shall be deemed to be a covenant, obligation or agreement of any member, officer, agent or employee of the County in his or her individual capacity and neither the members of the County nor any officer executing the Swap Agreement or other documents authorized by this Ordinance shall be liable personally thereunder or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

8. **Further Action.** Any member of the County is hereby authorized and directed to execute such further documents and do such further things as may be necessary or proper to carry out the intent and purpose of this Ordinance or any document herein authorized.

9. **Repeal of Inconsistent Ordinances.** All prior Ordinances or parts thereof inconsistent herewith are hereby repealed to the extent of such inconsistency.

10. **Effective Date.** This Ordinance shall be effective for all purposes upon the last to occur of: (a) seven days following the publication of the notice required by Section 1.3-311 of the County's Home Rule Charter; and (b) ten days after the date hereof.

Schedule I

Maximum and Estimated Amounts Payable under the Swap Agreement

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Appendix I

Interest Rate Management Plan