

ORDINANCE NO. 174
FIRST READING – APRIL 11, 2006
SECOND READING – MAY 9, 2006

TO AUTHORIZE AND DIRECT THE INCURRING OF NONELECTORAL DEBT THROUGH THE ISSUANCE OF A GENERAL OBLIGATION NOTE OF LACKAWANNA COUNTY, PENNSYLVANIA (THE "COUNTY") IN THE PRINCIPAL AMOUNT OF ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000) (THE "NOTE") FOR THE PURPOSE OF PROVIDING FUNDS TO PURCHASE CERTAIN EQUIPMENT (THE "PROJECT"); STATING THE REALISTIC ESTIMATED USEFUL LIFE OF THE PROJECT FOR WHICH THE NOTE IS ISSUED; DIRECTING THE PROPER OFFICERS OF THE COUNTY'S GOVERNING BODY TO PREPARE, CERTIFY AND FILE A DEBT STATEMENT AND BORROWING BASE CERTIFICATE IN CONNECTION WITH ISSUANCE OF THE NOTE; COVENANTING THAT THE COUNTY SHALL INCLUDE THE AMOUNT OF ANNUAL PRINCIPAL PAYMENTS ON THE NOTE IN ITS BUDGET FOR EACH FISCAL YEAR; PROVIDING FOR THE FORM, DATE, PLACE OF PAYMENT, MATURITY DATE, PAYMENT, PREPAYMENT AND REDEMPTION OF THE NOTE; AWARDING THE NOTE AT PRIVATE NEGOTIATED SALE AND STATING THAT SUCH PRIVATE NEGOTIATED SALE IS IN THE BEST FINANCIAL INTEREST OF THE COUNTY; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE COUNTY TO DO ALL THINGS NECESSARY, INCLUDING THE PAYMENT OF ANY FEES RELATED TO THE NOTE, TO CARRY OUT THE ORDINANCE; AND REPEALING ALL INCONSISTENT ORDINANCES.

WHEREAS, the Pennsylvania Department of Public Welfare (the "DPW") has implemented a waiver program known as "HealthChoices" under §1915(b) of Title XIX of the Social Security Act (49 Stat. 620, 42 U.S.C. §1396n(b)) to provide mandatory managed physical and behavioral health services to eligible recipients of Medicaid in the Commonwealth of Pennsylvania; and

WHEREAS, under HealthChoices counties have been provided with the first opportunity to bid to contract with DPW to provide behavioral health services to their residents who are eligible Medicaid recipients; and

WHEREAS, in order to assist counties with their resulting financial needs in undertaking the provision of these services, COMCARE, a Pennsylvania intergovernmental cooperation agreement of which the County of Lackawanna (the "County") is a member, has established a program for making interest-free loans of funds to counties; and

WHEREAS, the Board of Commissioners (the "Governing Body") of the County has determined to bid, and if successful, manage the delivery of behavioral health services to eligible Medicaid recipients and, where feasible, base service recipients (the "Services"), to further serve these needs of its citizens; and

WHEREAS, in furtherance of this determination, the Governing Body of the County has entered into an Intergovernmental Cooperation Agreement acting through and under the name of Northeast Behavioral Health Care Consortium (the "Joinder") with certain other counties to facilitate the delivery of Services to persons residing in the counties which are parties to the Joinder; and

WHEREAS, in order to provide the Services and to further the intent of and fulfill its obligations under the Joinder, it is necessary for the County to provide funds for the purchase of certain equipment (the "Project"); and

WHEREAS, the County has determined, after due deliberation and investigation, to authorize the issuance of its General Obligation Note, Series of 2006 (the "Note") in the principal amount of \$125,000 as a small borrowing for capital purposes pursuant to Section 8109 of the Local Government Unit Debt Act, as amended (53 Pa.C.S. §8001, *et seq.*), for the Project; and

The Note is payable in five (5) installments in the following amounts and on the following dates:

Repayment Amount (as a percentage of the Principal Sum of Note)	Repayment Amount in Dollars	Repayment Date
Two and One Half Percent (2.5%)	\$ 3,125	December 31, 2006
Two and One Half Percent (2.5%)	\$ 3,125	March 31, 2007
Two and One Half Percent (2.5%)	\$ 3,125	June 30, 2007
Two and One Half Percent (2.5%)	\$ 3,125	September 30, 2007
Ninety Percent (90.0%)	\$112,500	December 31, 2007

Section 7. Execution of Note. The Note shall be executed by the manual signature of the Chairman of the Governing Body, the Controller and the Treasurer and shall have the corporate seal of the County, duly attested by the manual signature of the Chief of Staff of the County, and the said officers are hereby authorized and directed to execute the Note in such manner. The Chairman of the Governing Body is authorized and directed to deliver, or cause to be delivered, the Note to the Note Purchaser against the full balance of the purchase price therefor.

Section 8. Form of Note. The Note shall be executed in substantially the form as set forth in Exhibit "A" hereto with such appropriate changes, additions or deletions as may be approved by the officers executing the Note in the manner set forth in Section 7 hereof; such execution shall constitute approval by such officers on behalf of the Governing Body.

Section 9. Manner of Sale; Award of Note. The Governing Body of the County after due deliberation and investigation has found that a private sale by negotiation is in the best financial interest of the County and based upon such finding the Governing Body of the County hereby awards the Note, at private negotiated sale, to the Note Purchaser, upon the terms set forth in the proposal for Note Purchase Contract, a copy of which is attached hereto and made a part hereof as Exhibit "B". As set forth in such proposal for Note Purchase Contract, the Note is purchased at a price equal to the face amount thereof.

Section 10. Appropriation of Annual Amounts for Payment of Note Principal. In the current fiscal year and in the immediately following fiscal year the following amounts shall be pledged to pay the principal then due on the Note, and such amounts are annually hereby appropriated for the payment thereof:

<u>Year</u>	<u>Amount</u>
2006	\$ 3,125
2007	\$121,875

Section 11. Incidental Actions. The proper officers of the County are hereby authorized, directed and empowered on behalf of the County to execute any and all agreements, papers and documents and to do or cause to be done any and all acts and things necessary or proper, including the payment of any origination or other fees in connection with the Loan, for the carrying out of the purposes of this Ordinance.

Section 12. Inconsistent Ordinances. Ordinance No. 169 and all other ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed.

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct copy of an Ordinance duly enacted by the affirmative vote of a majority of the members of the Governing Body of Lackawanna County, Pennsylvania (the "County") at a public meeting held the 9th day of May, 2006; that proper notice of such meeting was duly given as required by law; and that said Ordinance has been duly entered upon the Minutes of said Governing Body, showing how each member voted thereon.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the County this 9th day of May, 2006.

Chief of Staff

[SEAL]

EXHIBIT "A"

FORM OF NOTE

\$125,000
LACKAWANNA COUNTY
COMMONWEALTH OF PENNSYLVANIA
ISSUER
GENERAL OBLIGATION NOTE, SERIES OF 2006

Lackawanna County, Commonwealth of Pennsylvania (the "Issuer"), for value received, hereby promises to pay to COMCARE (the "Purchaser") the principal sum of \$125,000, without interest, said principal sum to be repaid in five (5) installments in the following amounts and on the following dates:

Repayment Amount (as a percentage of the Principal Sum of Note)	Repayment Amount in Dollars	Repayment Date
Two and One Half Percent (2.5%)	\$ 3,125	December 31, 2006
Two and One Half Percent (2.5%)	\$ 3,125	March 31, 2007
Two and One Half Percent (2.5%)	\$ 3,125	June 30, 2007
Two and One Half Percent (2.5%)	\$ 3,125	September 30, 2007
Ninety Percent (90.0%)	\$112,500	December 31, 2007

The principal on this Note shall be payable in lawful money of the United States of America at the principal office of the Purchaser in Harrisburg, Pennsylvania.

This Note constitutes a General Obligation Note, Series of 2006, authorized and issued in the principal amount of \$125,000 (the "Note") in accordance with the provisions of the Local Government Unit Debt Act, as amended (53 Pa.C.S. §8001, *et seq.*) (the "Act"), and pursuant to an ordinance (the "Ordinance") duly adopted by the governing body of the Issuer. Reference is hereby made to the Act, the Ordinance and that Note Purchase Proposal from the Purchaser to the Issuer concerning the purchase of this Note by the Purchaser for a complete statement of the terms and conditions hereof and the rights and limitations of rights of the holder of the Note, all of which are hereby incorporated herein by reference and to all of which the holder hereof by acceptance of this Note assents.

and after the date on which this Note becomes due (whether at maturity or by acceleration), any unpaid principal will bear interest, until paid or duly provided for, at an annual rate equal to the average prime rate published in the *Wall Street Journal* on such date (or, if the *Wall Street Journal* is not published on such date, in the most recent edition of the *Wall Street Journal*).

IN WITNESS WHEREOF, the Issuer has caused this Note to be executed by the Chairman of its governing body, the Controller and the Treasurer, its seal to be hereunto affixed and the same to be attested to by its Chief of Staff, all as of the 1st day of June, 2006.

LACKAWANNA COUNTY,
PENNSYLVANIA

ATTEST:

Chief of Staff

By: _____
Chairman, Board of County Commissioners

[SEAL]

By: _____
Controller

By: _____
Treasurer

The Note shall otherwise be subject to the terms and conditions and substantially in the form attached as Exhibit "A" to the proposed ordinance presented to us in connection with this proposal (the "Ordinance"). The Note shall also be subject to the terms and conditions of the Ordinance.

The outstanding principal indebtedness evidenced by the Note may be prepaid at the option of the Issuer at any time, without premium or penalty, upon payment to the Purchaser of 100% of the principal then outstanding. The Issuer may further redeem and cancel the Note upon payment in full of the principal of the Note and written direction to the Purchaser to redeem or cancel the Note.

All payments of principal due under the Note shall be due and payable at 5:00 p.m., Harrisburg time, on the day when due. Such payments shall be made to the Purchaser at its office in United States dollars in immediately available funds without setoff, counterclaim or other deduction of any nature.

The Purchaser's proposal to purchase the Note is conditioned upon receipt by the Purchaser of: (1) the Ordinance, duly certified by the Chief of Staff of the Issuer; (2) a general certificate of the Issuer in a form satisfactory to the Purchaser; (3) the Note, duly authorized, executed and delivered by the Issuer; (4) the approving opinion of the Issuer's solicitor as to the due authorization, execution, delivery and enforceability of the Note and as to such other matters as the Purchaser may reasonably request; (5) acknowledgment from the Department of Community and Economic Development of the filing with the Department of copies of the Ordinance, the Note, the Issuer's Debt Statement, the Issuer's Borrowing Base Certificate, this Note Purchase Proposal and, if required by the Department, the Issuer's Section 8110(b) Certificate as to excluded self-liquidating or subsidized debt; (6) a Small Capital Borrowing Certificate, duly authorized, executed and delivered by the Issuer; (7) a Guaranty, Suretyship and Security Agreement, duly authorized, executed and delivered by an intergovernmental cooperation agreement among Issuer and one or more other counties in the Commonwealth of Pennsylvania, for the purpose of providing managed care behavioral health services to residents of the member counties, for which the member counties expect to receive payment under the Health Choices Program (the "Joinder"), or by a nonprofit corporation formed under the Joinder for such purpose; and (8) evidence of due filing and indexing of financing statements on Form UCC-1, perfecting the security interest granted pursuant to the Guaranty, Suretyship and Security Agreement.

The Purchaser may, by written notice to the Issuer, terminate this proposal upon failure of the Issuer to comply with any of its obligations hereunder or under the Note. Upon the termination of this proposal, the Purchaser shall have no further obligation to the Issuer, including any obligation to purchase the Note, and all amounts owing by the Issuer hereunder and under the Note shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are waived, and an action therefor shall immediately accrue.

The Issuer agrees to pay or cause to be paid and to save the Purchaser harmless against liability for the payment of all reasonable out-of-pocket expenses, including but not

If the foregoing is acceptable to you, please so indicate by signing in the space below, whereupon this will become a binding agreement between us.

Very truly yours,

COMCARE

By: _____

By: _____

Acknowledged, accepted and agreed, the undersigned intending to be legally bound:

LACKAWANNA COUNTY, PENNSYLVANIA

By: _____
Chairman, Board of Commissioners

By: _____
Controller

By: _____
Treasurer