

## ORDINANCE NO. 49

First Reading  
Second Reading

February 24, 1987  
March 10, 1987

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LACKAWANNA COUNTY AUTHORIZING AND APPROVING AN INTER COUNTY GUARANTY AND ASSUMPTION AGREEMENT ("INTER COUNTY AGREEMENT") BETWEEN LACKAWANNA COUNTY AND LUZERNE COUNTY WITH RESPECT TO THE CONSTRUCTION OF A 12,000 SQUARE FOOT PRE-ENGINEERED METAL AIRCRAFT HANGER ("PROJECT") AT THE WILKES-BARRE-SCRANTON INTERNATIONAL AIRPORT AND THE GUARANTEE OF CERTAIN OBLIGATIONS UNDER NOTES TO BE ISSUED IN CONNECTION THEREWITH, DESCRIBING THE PROJECT, STATING THE ESTIMATED USEFUL LIFE THEREOF, STATING THE AGGREGATE PRINCIPAL AMOUNT OF THE NOTES, STATING THAT THE DEBT IS TO BE INCURRED AS LEASE RENTAL DEBT, AUTHORIZING AND DIRECTING SPECIFIED OFFICERS OF THE COUNTY TO PREPARE, CERTIFY AND FILE THE DEBT STATEMENT REQUIRED BY SECTION 410 OF THE PENNSYLVANIA LOCAL GOVERNMENT UNIT DEBT ACT, AS AMENDED ("ACT"), AND TO TAKE CERTAIN OTHER REQUIRED ACTION, AUTHORIZING THE EXCLUSION OF A CERTAIN PORTION OF THE INDEBTEDNESS AS SUBSIDIZED DEBT OR SELF-LIQUIDATING DEBT, PROVIDING THAT THIS COUNTY SHALL INCLUDE THE AMOUNT PAYABLE IN RESPECT OF ITS GUARANTEE FOR EACH FISCAL YEAR IN WHICH SUCH SUMS ARE PAYABLE IN ITS BUDGET FOR THAT YEAR, PROVIDING THAT THIS COUNTY SHALL APPROPRIATE SUCH AMOUNTS FROM ITS REVENUES FOR THE GUARANTEE, PROVIDING THAT THIS COUNTY SHALL DULY AND PUNCTUALLY PAY OR CAUSE TO BE PAID FROM ITS REVENUES OR FUNDS THE PRINCIPAL OF AND INTEREST ON EVERY SUCH NOTE TO THE EXTENT OF ITS OBLIGATIONS AS PROVIDED IN THE INTER COUNTY AGREEMENT, PROVIDING THAT, FOR SUCH BUDGETING, APPROPRIATION AND PAYMENT IN RESPECT OF ITS GUARANTEE OF THE NOTES, THIS COUNTY IS PLEDGING ITS FULL FAITH, CREDIT AND TAXING POWER, PROVIDING THAT THESE COVENANTS ARE BEING MADE WITH THE HOLDERS, FROM TIME TO TIME, OF THE NOTES, COVENANTING THAT THE NOTES SHALL NOT BE ARBITRAGE NOTES, MAKING PROVISION FOR SEPARABILITY WITHIN THE ORDINANCE AND REPEALING INCONSISTENT ORDINANCES.

**Section 1.** The Inter County Agreement with Luzerne County with respect to the construction of a 12,000 square foot pre-engineered metal aircraft hangar at the Wilkes-Barre/Scranton International Airport ("Project"), in the form attached hereto, made a part hereof, and incorporated herein by reference, is hereby approved and shall be executed by the County Commissioners on behalf of the County, such Agreement providing that Lackawanna County shall assume 50 percent of Luzerne County's obligation with regard to payment of principal of and interest on Luzerne County's general obligation notes ("Notes") maturing June 15, 1992 (estimated) in the aggregate principal amount of \$333,000. Lackawanna and Luzerne Counties shall each be responsible for, and pay, when due and payable, 50 percent of the costs of construction of the Project and related costs including costs of issuance of the Notes. The form of note and other provisions relating to the Notes and the issuance thereof are contained in an ordinance being adopted at this time by the Board of County Commissioners of Luzerne County.

**Section 2.** The Board of County Commissioners (the "Governing Body") of Lackawanna County (the "County") does hereby confirm that the Notes being guaranteed are being issued for and toward the cost of construction of a 12,000 square foot pre-engineered metal aircraft hangar at the Wilkes-Barre/Scranton International Airport, which building is to be leased by the U.S. Army Corps of Engineers pursuant to a written lease providing for an initial term of one year and thereafter renewable from year to year, without notice, until February 14, 1991.

The realistic estimate useful life of the Project is twenty years and upwards, prior to which time the Notes shall mature. The aggregate principal amount of the Notes is \$333,000. The County Commissioners and the Administrative Director, respectively, of the County, which shall include their duly qualified successors in office, if applicable, are authorized and directed, as required, necessary and/or appropriate: (a) to prepare, certify and file the debt statement required by Section 410 of the Act; (b) to prepare and file with the Pennsylvania Department of Community Affairs ("Department") any statements required by Article II of the Act which are necessary to qualify all or any portion of the debt of the County that is subject to exclusion as self-liquidating or subsidized debt for exclusion from the appropriate debt limit of the County as self-liquidating or subsidized debt; (c) to prepare and file the application with the Department, together with a complete and accurate transcript of the proceedings for the required approval relating to the debt; (d) to pay or to cause to be paid to the Department all proper filing fees required in connection with the foregoing; and (e) to take other required, necessary and/or appropriate action. The County covenants to and with the registered owners, from time to time, of the Notes, that the County: (1) shall include the amount payable in respect of its guarantee for each fiscal year in which such sums are payable in its budget for that fiscal year, (2) shall appropriate such amounts from its revenues for the payment of such guarantee, and (3) shall duly and punctually pay or cause to be paid from its revenues or funds the principal of and interest on every such Note, to the extent of its obligations as provided in the Inter County Agreement, for such budgeting, appropriation and payment, the County shall and does pledge, irrevocably, its full faith, credit and taxing power. As provided in the Act, the foregoing covenant of the County shall be specifically enforceable.

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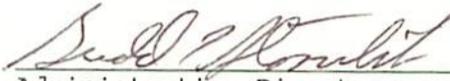
**Section 3.** In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of this County that such remainder shall be and shall remain in full force and effect.

**Section 4.** All ordinances or parts of ordinances, insofar as the same shall be inconsistent herewith, shall be, and the same expressly are, repealed.

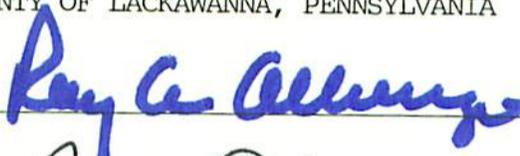
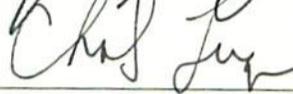
**DULY ADOPTED,** by the Governing Body of this County, in lawful session duly assembled, this 10th day of March 1987.

COUNTY OF LACKAWANNA, PENNSYLVANIA

ATTEST:

  
Administrative Director

(SEAL)

  
  
  
County Commissioners

**INTER COUNTY GUARANTY AND ASSUMPTION AGREEMENT**

This Agreement, made this 10th day of March 1987, by and between LUZERNE COUNTY, a body politic of the Commonwealth of Pennsylvania, with offices at Luzerne County Courthouse, Wilkes-Barre, Pennsylvania, 18711 and LACKAWANNA COUNTY, a body politic of the Commonwealth of Pennsylvania, with offices at 200 Adams Avenue, Scranton, Pennsylvania 18503. Lackawanna County and Luzerne County are sometimes hereinafter referred to collectively as the "Counties".

**WHEREAS,** The Counties have joined in a project for development of an airport located at or near Avoca, Luzerne County, Pennsylvania (the "Airport") under a project of the Administrator of the Civil Aeronautics of the U.S. Department of Commerce, which project was identified as S-904-36-6.

**WHEREAS,** pursuant to an agreement between the counties dated April 16, 1968, the Counties jointly operate the Airport.

**WHEREAS,** the Counties have agreed to undertake a project (the "Project") consisting of the construction of a 12,000 foot pre-engineered metal aircraft hangar at an estimate cost of \$330,000.

**WHEREAS,** the Project will improve services and traffic at the Airport and will otherwise benefit the citizens of the Counties.

**WHEREAS,** the Counties have entered into a construction agreement (the "Construction Agreement") with Panzitta Enterprises, Inc. with offices in Wilkes-Barre, Pennsylvania for construction of the Project.

**WHEREAS,** in consideration of Luzerne County's Issuance of the Notes as general obligations of Luzerne County, Lackawanna County has agreed to assume responsibility for fifty-percent (50%) of Luzerne County's obligation for payment of principal of and interest on the Notes.

**NOW, THEREFORE,** in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the parties hereto agree as follows:

1. Luzerne County has agreed to issue its General Obligation Notes, Series of 1987 (the "Notes") in the aggregate principal amount of approximately Three Hundred Thirty Three Thousand Dollars (\$333,000) pursuant to an ordinance (the "Luzerne Ordinance") of the Board of Commissioners of Luzerne County, the proceeds of the Notes to be used to fund the costs of construction of the Project and payment of costs of issuance of and interest on the Notes pending receipt of funds expected to become available for the Project.

2. The proceeds of the Notes shall be used (1) to fund the cost of the Project, (2) to provide interest payments on the Notes through March 1992, and (3) to pay the costs associated with the issuance of the Notes.

3. Lackawanna County shall assume fifty percent (50%) of Luzerne County's obligation with regard to payment of principal of and interest on the Notes, and shall pay, upon demand by the paying Agent, as that term is defined in the Luzerne Ordinance, fifty percent (50%) of the excess of principal and interest payments due and payable on the Notes.

4. In clarification and amplification of paragraph 3, each county covenants to budget for fiscal 1987 and subsequent years of the project an amount sufficient to meet its respective obligations under this Agreement, which amount so budgeted shall be identical for each county.

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5. The obligation of Lackawanna County with regard to payment of debt service on the Notes, as contained in Section 4 hereof, shall constitute a guaranty as defined in Section 102(c)(7.1) of the Pennsylvania Local Government Unit Debt Act (the "Act"), 53 P.S. §6780-2(7.1), and shall be subject to the provisions for enforcement of such a guaranty, as provided in the Act, including, but not limited to, the provisions of Section 1201 thereof.

6. Each County hereby covenants with the holders of the Notes that it will: (a) include the amounts payable to or for the benefit of the holders of the Notes pursuant to this Agreement in its budget for 1987 through 1992; (b) appropriate such amounts from its revenues for the payment of such amounts pursuant to this Agreement; and (c) shall duly and promptly pay or cause to be paid such amounts, in accordance with this Agreement.

Each County hereby pledges its full faith, credit and taxing power in support of the covenants contained in this Section.

7. Section 11 of the Luzerne Ordinance contains a provision permitting early redemption of such Notes prior to their due date. Luzerne County shall not undertake such early redemption without the prior written consent, first had and obtained, of Lackawanna County.

8. This Agreement shall not obligate either Lackawanna County or Luzerne County to pay any increased costs of construction of the Project not provided for in the Construction Agreement or other construction contracts entered into with regard to the Project, including but not limited to cost overruns or change orders, unless such County shall agree, in writing, to such cost increase.

9. This Agreement contains the entire Agreement between the parties hereto, and there have been and are no oral agreements between said parties of any kind whatsoever as a condition precedent to or to induce anyone in the signing hereof or otherwise concerning this Agreement or the subject matter hereof.

10. This Agreement shall be governed by and construed under and in accordance with the laws of the Commonwealth of Pennsylvania.

11. This Agreement shall not be altered, amended or reformed, other than by written instrument, duly signed and executed by all parties hereto.

12. This waiver of any term, condition, covenant or provision of this agreement shall in no way be deemed or considered a waiver of any other term, condition, covenant or provision.

13. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall be construed and enforced as if such invalid, illegal or unenforceable provision had never been contained therein.

14. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

15. Any notice to or demand upon the parties hereto, or either of them, shall be deemed to have been properly given if mailed to such party by post paid registered mail, return receipt requested, at the respective addresses first above written.

IN WITNESS WHEREOF, LUZERNE County has executed this Agreement, by its Board of Commissioners, attested by its Chief Clerk, with its seal hereunto affixed, and Lackawanna County has executed this Agreement by its Board of Commissioners, its Controller and its Treasurer, attested by its Administrative Director, with its seal hereunto affixed.

LUZERNE COUNTY

ATTEST:

*[Signature]*  
Chief Clerk

\_\_\_\_\_  
\_\_\_\_\_  
Board of Commissioners

ATTEST:

\_\_\_\_\_  
Administrative Director  
Approved as to Form:  
\_\_\_\_\_  
Counsel to Luzerne County

LACKAWANNA COUNTY

*[Signature]*  
*[Signature]*  
*[Signature]*  
Board of Commissioners

\_\_\_\_\_  
Counsel to Lackawanna County

\_\_\_\_\_  
Controller  
\_\_\_\_\_  
Treasurer