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COUNTY OF DAUPHIN
Commonwealth of Pennsylvania

ORDINANCE NO. 3-2017

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF DAUPHIN, PENNSYLVANIA DETERMINING TO INCUR DEBT IN THE AMOUNT NOT TO EXCEED \$2,210,000; DETERMINING THAT SUCH DEBT SHALL BE INCURRED AS LEASE RENTAL DEBT TO BE EVIDENCED BY A GUARANTEED NOTE OF 2017 (PHASE II SOLAR PROJECT) (FEDERALLY TAXABLE), TO BE AUTHORIZED AND TO BE ISSUED BY DAUPHIN COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY; BRIEFLY DESCRIBING THE PROJECT FOR WHICH SAID DEBT WAS INCURRED AND SPECIFYING THE REMAINING USEFUL LIFE OF SAID PROJECT; AUTHORIZING AND DIRECTING PROPER OFFICERS OF THE COUNTY TO EXECUTE, ATTEST, SEAL AND DELIVER, AS APPROPRIATE, A GUARANTY AGREEMENT WITH RESPECT TO AFORESAID GUARANTEED NOTE; APPROVING THE FORM OF SAID GUARANTY AGREEMENT; AUTHORIZING AND DIRECTING THE CHAIRMAN OR VICE CHAIRMAN OF THE BOARD OF COMMISSIONERS AND THE CHIEF CLERK OF THE COUNTY TO PREPARE, VERIFY AND FILE, AS APPLICABLE, THE DEBT STATEMENT, THE BORROWING BASE CERTIFICATE TO BE APPENDED TO THE DEBT STATEMENT, AND OTHER APPROPRIATE DOCUMENTS REQUIRED BY THE LOCAL GOVERNMENT UNIT DEBT ACT, 53 Pa. C.S. § 8001 ET SEQ.; GUARANTEEING PAYMENT OF THE PRINCIPAL OF AND INTEREST ON AFORESAID GUARANTEED NOTE AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO; SPECIFYING THE MAXIMUM AMOUNT OF THE GUARANTY OBLIGATIONS OF THE COUNTY PURSUANT TO SUCH GUARANTY AGREEMENT; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE COUNTY WITH RESPECT TO THE GUARANTY AGREEMENT; AUTHORIZING PROPER OFFICERS OF THE COUNTY TO EXECUTE ALL REQUIRED, NECESSARY OR DESIRABLE CERTIFICATES AND DOCUMENTS IN CONNECTION WITH SAID LEASE RENTAL DEBT AND SAID PROJECT; AUTHORIZING PROPER OFFICERS OF THE COUNTY TO TAKE ALL OTHER REQUIRED, NECESSARY OR DESIRABLE ACTION IN CONNECTION WITH SAID PROJECT AND THE EXECUTION, DELIVERY OR ACCEPTANCE OF SAID GUARANTY AGREEMENT; PROVIDING FOR THE EFFECTIVENESS OF THIS ORDINANCE; PROVIDING FOR THE SEVERABILITY OF PROVISIONS OF THIS ORDINANCE; AND PROVIDING FOR THE REPEAL OF ALL INCONSISTENT ORDINANCES OR RESOLUTIONS OR PARTS OF ORDINANCES OR RESOLUTIONS.

WHEREAS, the County of Dauphin, Pennsylvania (the “**County**”) exists under laws of the Commonwealth of Pennsylvania (the “**Commonwealth**”) and is a “local government unit,” as such term is defined under the Local Government Unit Debt Act, 53 Pa. C.S. § 8001 *et seq.* (the “**Debt Act**”); and

WHEREAS, Dauphin County Industrial Development Authority (the “**Authority**”) is a public instrumentality and a body politic and corporate organized and existing under the laws of the Commonwealth of Pennsylvania, having been duly organized by the County pursuant to the provisions of

the Act of August 23, 1967, P.L. 251, of the Commonwealth of Pennsylvania, as amended and supplemented, known as the Economic Development Financing Law (the “Act”); and

WHEREAS, the County heretofore requested the Authority to pursue the development of a solar photovoltaic facility to be situated in the County for the purposes, among other things, of reducing electric energy costs to the County and promoting alternative energy (the “**Solar Facility**”); and

WHEREAS, the Authority with the assistance of certain grants funds heretofore developed and constructed a one megawatt solar photovoltaic facility located at 220 Hetrick Lane, Harrisburg, Dauphin County, Pennsylvania 17112 (“**Phase I Solar Project**”); and

WHEREAS, the Authority heretofore modified and expanded the Solar Facility to generate an additional one megawatt of solar energy (“**Phase II Solar Project**”); and

WHEREAS, in order to finance to costs of the Phase II Solar Project, the Authority issued its Guaranteed Note of 2012 (Phase II Solar Project) (Federally Taxable), in the principal amount of \$2,550,000 (the “**2012 Note**”), to Fulton Bank, N.A. (the “**2012 Noteholder**”); and

WHEREAS, the Authority desires to refinance the 2012 Note in order to reduce the amount of debt service due annually by extending the term of the Note an additional 10 years (the “**Refunding Project**”); and

WHEREAS, in order to finance the Refunding Project, the Authority is willing to enter into a credit facility, in the principal sum not to exceed \$2,210,000, with Fulton Bank, N.A. (the “**Bank**”) pursuant to which the Bank has agreed, upon certain terms and conditions, to loan said sum to the Authority to be applied for and toward payment of costs of the Refunding Project; and

WHEREAS, the Authority’s obligation to repay said loan will be evidenced by its Guaranteed Note of 2017 (Phase II Solar Project) (Federally Taxable), in the principal amount not to exceed \$2,210,000 (the “**Note**”), to be issued and delivered under and pursuant to a loan agreement by and between the Bank and the Authority; and

WHEREAS, the County desires the Authority to undertake the Refunding Project, and as inducement to the Authority to undertake the Refunding Project and to issue its Note, the County is willing to guarantee the full payment of the principal of and the interest on the Note, when due, pursuant to a guaranty agreement (the “**Guaranty**”) and the authority set forth in the Debt Act; and

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Commissioners of the County of Dauphin, Pennsylvania, as follows:

1. The Project and Recitals. The Board of Commissioners of the County hereby approves the Refunding Project and requests and authorizes the Authority to proceed to undertake the Refunding Project, the financing thereof and the payment of all "costs" related thereto. The description of the Refunding Project contained in the recitals to this Ordinance hereby is incorporated into this Section by reference as if set out at length. The foregoing recitals and all terms defined therein are incorporated herein, and such defined terms may hereafter be used as if set out at length.

2. Cost and Realistic Useful Life. Reasonable cost estimates have been obtained for the Refunding Project with the assistance of financial advisors and other persons qualified by experience. The total cost of the Refunding Project is at least \$2,210,000. The Board of Commissioners of the County hereby determines that the remaining useful life of the Phase II Solar Project originally financed with

proceeds of the 2012 Note, which 2012 Note is being refunded with proceed of the Note is at least twenty-five (25) years.

3. Incurrence of Lease Rental Debt. The Board of Commissioners of the County hereby determines to incur "debt," as such term is defined in the Debt Act, as "lease rental debt," as such term is defined in the Debt Act, for the purpose of assisting in the financing of the Refunding Project.

4. Amount of Lease Rental Debt. The debt to be incurred, as lease rental debt, as set forth in Section 3 hereof, shall be in the maximum principal amount of \$2,210,000, and shall be evidenced by the County's execution and delivery of the Guaranty, pursuant to which the County agrees to guarantee the payment of principal of and interest on the Note, when due. The Note shall be issued under and pursuant to a loan agreement by and between the Authority and the Bank, and secured by, *inter alia*, the Guaranty executed by the County, substantially in the form referred to in subsection 5(a) hereof. The term of the Note does not exceed the estimated remaining useful life of the Phase II Solar Project which is set forth in Section 2 above.

5. The Guaranty.

(a) *Authorization and Approval of Guaranty.* The County shall enter into the Guaranty, substantially in the form referred to in this subsection (a), with respect to the Note to be issued by the Authority. The Guaranty shall be substantially in the form presented to this meeting, which form is approved; and a copy of the Guaranty, in the form so presented to this meeting and so approved, shall be filed with the Chief Clerk of the County for inspection, at reasonable times, by interested persons requesting such inspection. A copy of the form of the Guaranty is attached hereto as Exhibit A.

(b) *Execution by Proper Officers.* The Chairman or Vice Chairman of the Board of Commissioners and the Chief Clerk of the County are hereby authorized and directed to execute, attest, seal and deliver the Guaranty, with such insertions, deletions and amendments as the officers of the County executing the Guaranty and the Solicitor to the County shall deem necessary. The execution, attestation and delivery of the Guaranty by appropriate officers of the County shall constitute conclusive evidence of such approval; Provided, however, that such execution and delivery of the Guaranty shall be subject to compliance by the County with applicable provisions of the Debt Act. Said officers of the County are authorized to take all other required, necessary or desirable action in connection with the Refunding Project and with the execution and delivery of the Guaranty.

(c) *Delivery to the Bank.* The County authorizes delivery of the Guaranty to the Bank for the purposes set forth in the Guaranty.

6. Filing with Department of Community and Economic Development. The Chairman or Vice Chairman of the Board of Commissioners and the Chief Clerk of the County are authorized and directed to make application to the Pennsylvania Department of Community and Economic Development (the "**Department**") for approval with respect to said lease rental debt, as required by the Debt Act, and to pay or cause to be paid to the Department all proper filing fees required by the Debt Act and to take all other required and appropriate action.

Accordingly, the Chairman or Vice Chairman of the Board of Commissioners and Chief Clerk of the County are authorized and directed: (a) to prepare, verify and file with the Department, a debt statement as required by the Debt Act; (b) to prepare, execute and file with the Department the borrowing base certificate to be appended to the debt statement referred to in subparagraph (a) of this Section; (c) to

prepare, execute and file the application with the Department, together with a complete and accurate transcript of the proceedings relating to the incurring of debt, of which debt the Note, upon issue, and the Guaranty, upon execution and delivery, will be evidence, as required by the Debt Act; (d) to pay or to cause to be paid to the Department all filing fees required by the Debt Act in connection with the foregoing; and (e) to take other required, necessary and/or appropriate action, and further, the same proper officers are authorized, at their discretion, hereafter to prepare and file, as required, with the Department, appropriate statements required by the Debt Act which are necessary to qualify all or a portion of lease rental debt of the County, if any shall be subject to exclusion as self liquidating debt, for exclusion from the appropriate debt limit of the County as such self liquidating debt.

7. Execution of Documents. Proper officers and officials of the County are hereby authorized and directed to execute, attest and deliver any and all necessary or appropriate certificates, instruments, agreements or documents and to do any and all necessary or appropriate things in connection with the transactions hereby contemplated, including, without limitation, fulfilling the requirements of the terms and conditions approved by the Authority with respect to the Note.

8. Guaranty Covenant. The County hereby guarantees the full payment of the principal of and interest on the Note and in furtherance thereof covenants and agrees with the holders from time to time of the Note that if the Authority shall fail to pay the full amount of the principal of and interest on the Note when the same becomes due and payable, at the times and places, under the terms and conditions, and in the manner prescribed in the Note, the County will pay the full amount of such principal and interest to the holders of the Note.

The County covenants to and with the holders of the Note, from time to time, that, subject to the terms and conditions of and as set forth more fully in the Guaranty, the County (a) shall include the amounts payable in respect of the Guaranty for each fiscal year in which such sums are payable in its budget for that year, (b) shall appropriate such amounts from its general revenues for the payment of such payment, and (c) shall duly and punctually pay or cause to be paid from any of its revenues or funds the amount payable in respect of the Guaranty, at the dates and place and in the manner stated in the Guaranty, according to the true intent and meaning thereof. The County pledges its full faith, credit and taxing power for such budgeting, appropriation and payment in respect of the Guaranty. For the purpose of complying with the covenants of this Section, the County shall, subject to the terms and conditions hereof and of the Guaranty, budget the amounts set forth in Exhibit B hereto for the fiscal year in which such amounts are payable and shall appropriate and shall pay, in the manner provided in the Guaranty, such amounts. This covenant shall be specifically enforceable in accordance with the Debt Act.

In the event that the County is obligated to make payments under the Guaranty, the maximum amounts required to be paid thereunder, if and as necessary on an annual basis, from the general revenues of the County, shall be as set forth on Exhibit B hereto. Exhibit B is incorporated herein by reference with the same force and effect as if fully set forth in the text hereof. If at any time the County is required to make any payment under the Guaranty, the proper officers of the County are hereby authorized and directed to do so.

9. General Authorization. Proper officers of the County are authorized and directed to execute all documents and to take such other action as may be necessary to carry out the intent and purposes of this Ordinance and the undertakings of the County under the Guaranty.

10. Effective Date. This Ordinance shall become effective in accordance with the provisions of the Debt Act.

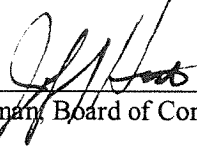
11. Severability. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of the County that the remainder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

12. Repealer. All ordinances and resolutions or parts thereof, insofar as the same are inconsistent herewith, are repealed hereby.

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DULY ENACTED AND ORDAINED this 12th day of July, 2017, by the Board of Commissioners of the County of Dauphin, Pennsylvania, in lawful session duly assembled.

COUNTY OF DAUPHIN
Commonwealth of Pennsylvania



Chairman, Board of Commissioners

ATTEST:



Chief Clerk

(SEAL)

Vice Chairman, Board of Commissioners



Secretary, Board of Commissioners