

Comm mty. 6/29/05/jr

COUNTY OF DAUPHIN,

Pennsylvania

Resolution

No 20-2005

Session of 2005

June 29, 2005

OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF DAUPHIN, PENNSYLVANIA (THE "COUNTY"), AFFIRMING AND SUPPLEMENTING THE GUARANTY, PURSUANT TO THE ACT OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, APPROVED APRIL 28, 1978, ACT NO. 52, AS REENACTED AND CODIFIED BY ACT NO. 177, APPROVED DECEMBER 19, 1996, AS AMENDED, KNOWN AS THE LOCAL GOVERNMENT UNIT DEBT ACT (THE "DEBT ACT") PURSUANT TO A SWAP GUARANTY AGREEMENT OF THE COUNTY, TO APPLY TO AND INCLUDE PERIODIC PAYMENTS TO BE MADE BY THE HARRISBURG AUTHORITY (THE "AUTHORITY") UNDER AN ADDITIONAL SWAP CONFIRMATION UNDER A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO TO BE ENTERED INTO BY THE COUNTY IN THE NOTIONAL AMOUNT OF NINETY-SIX MILLION FOUR HUNDRED EIGHTY THOUSAND DOLLARS (\$96,480,000), IN CONNECTION WITH THE AUTHORITY'S GUARANTEED RESOURCE RECOVERY FACILITY REVENUE BONDS, SERIES D OF 2003 (THE "BONDS") PURSUANT TO AN INTEREST RATE MANAGEMENT

PLAN (AS SUPPLEMENTED) ADOPTED BY THE AUTHORITY AND BEING HEREBY ADOPTED BY THE COUNTY IN THE FORM ATTACHED HERETO; AFFIRMING STANDARDS FOR PROVIDERS AND FOR SELECTION THEREOF; DETERMINING THE BEST FINANCIAL INTEREST OF THE COUNTY; REQUIRING CERTIFICATION OF FAIRNESS AND REASONABLENESS BY THE FINANCIAL ADVISOR, WHO ARE HEREBY APPOINTED; AUTHORIZING AND DIRECTING THE PROPER OFFICIALS OF THIS COUNTY TO EXECUTE, TO ATTEST, TO SEAL AND TO DELIVER, AS APPROPRIATE, AN AFFIRMATION AND SUPPLEMENT TO ITS GUARANTY AND TO THE REIMBURSEMENT AGREEMENT PERTAINING THERETO AND ANY OTHER NECESSARY DOCUMENTS; APPROVING THE FORM OF SUCH AFFIRMATION AND SUPPLEMENTS; AUTHORIZING THE PROPER OFFICERS OF THIS COUNTY TO TAKE ALL OTHER REQUIRED, NECESSARY OR DESIRABLE ACTION; SPECIFYING THE AMOUNT OF THE GUARANTY OBLIGATIONS OF THIS COUNTY PURSUANT TO SUCH SWAP GUARANTY AGREEMENT AND THE SOURCES OF PAYMENT OF SUCH GUARANTY OBLIGATIONS; AMENDING ORDINANCE 4-2003 AS HERETOFORE AMENDED, AS REQUIRED BY SECTION 8284(a)(2) OF THE DEBT ACT; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THIS COUNTY WITH RESPECT TO THE SWAP GUARANTY AGREEMENT; STATING THAT THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT IS BEING AWARDED BY PRIVATE SALE BY NEGOTIATION; PROVIDING FOR THE EFFECTIVENESS OF THIS RESOLUTION ROVIDING 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

WITNESSETH:

WHEREAS, this County (the "County") is a third class county and is a "local government unit" under provisions of the Act of the General Assembly of the of the Commonwealth of Pennsylvania (the "Commonwealth"), as reenacted, amended and supplemented, from time to time, known as the Local Government Unit Debt Act (the "Debt Act"); and

WHEREAS, The Harrisburg Authority (the "Authority") is a body politic and corporate organized and existing under the Municipality Authorities Act, as amended and supplemented, 53 Pa. C.S. §5601 et seq., of the Commonwealth; and

WHEREAS, the City of Harrisburg (the "City") is a municipal corporation of the Commonwealth and is also a "local government unit" under provisions of the Debt Act; and

WHEREAS, the Authority owns and operates the Resource Recovery and Cogeneration Facility ("Facility") and has issued various series of bonds and notes (collectively, "Bonds") to fund costs of acquisition, maintenance and improvement thereof, including the retrofit and modernization thereof ("Retrofit"); and

WHEREAS, pursuant to a Solid Waste Management Agreement, dated as of December 1, 1993, as amended (the "Management Agreement"), between the City and the Authority, the City manages, operates and performs certain other functions with respect to the Facility; and

WHEREAS, on December 15, 2003 the Authority funded as a project (the "Retrofit Bonds Project") financing the comprehensive retrofit/modernization of the Facility, including bringing the Facility into compliance with federal and state air quality requirements, funding a debt service reserve fund for the Retrofit Bonds, providing working capital to the Authority to pay principal of and interest on certain previously issued Bonds during the shutdown and retrofit period, paying capitalized interest on the Retrofit Bonds, paying costs of operating the transfer station and maintaining the Facility during the shutdown and construction period, and paying the costs of issuance of the Retrofit Bonds including bond insurance and guaranty fees, by issuing \$96,480,000 aggregate principal amount of its Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003 (the "2003D Bonds"), \$14,500,000 aggregate principal amount of its Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series E of 2003 (the "2003E Bonds") and \$14,020,000 aggregate principal amount of its Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series F of 2003 (the "2003F Bonds") (the 2003D, 2003E and 2003F Bonds, collectively, the "Retrofit Bonds") pursuant to a Trust Indenture dated as of December 1, 2003 (the "Retrofit Indenture") between the Authority and Commerce Bank/Pennsylvania, National Association, as trustee (the "Retrofit Trustee"); and

WHEREAS, the 2003 D Bonds were issued as variable rate bonds bearing interest at a specified rate for a multi-year term and two fixed to variable interest rate swap transactions were simultaneously entered into pursuant to an ISDA master agreement and schedule, plus confirmations and supplemental documents (collectively, "Swap Documents") intended to lower the net interest cost on the 2003D Bonds to the Authority and the Authority purchased an interest rate cap pursuant to an additional confirmation ("Cap Document") intended to cap the Authority's variable interest rate swap exposure (the Swap and Cap Documents entered into by the Authority, collectively, the "Qualified Interest Rate Management Agreement"); and

WHEREAS, the Authority obtained and adopted an "Interest Rate Management Plan" or "Plan" as described in the Local Government Unit Debt Act (the "Debt Act") in connection with the award of the Qualified Interest Rate Management Agreement and presented such Interest Rate Management Plan to the City and the County for the City's and the County's adoption; and

WHEREAS, the County and the City appointed independent financial advisors to review the Interest Rate Management Plan in accordance with the Debt Act; and

WHEREAS, the County and the City each guaranteed the Authority's periodic scheduled payments required under the Qualified Interest Rate Management Agreement (the "County Swap Guaranty" and the "City Swap Guaranty", respectively) as part of the Retrofit Bonds Project; and

WHEREAS, the Authority obtained a swap financial guaranty insurance policy (the "Swap Policy") from Financial Security Assurance Inc. (the "Retrofit Bond Insurer") guaranteeing payment of the scheduled periodic payments under the Swap Documents; and

WHEREAS, the County Swap Guaranty guarantees periodic payments under the Qualified Interest Rate Management Agreement to the extent same are not made because of (i) the inadequacy of Receipts and Revenues under the Retrofit Indenture and (ii) the failure of the City to make such payments under the City Swap Guaranty; and

WHEREAS, to induce inter alia the City to execute and deliver the City Swap Guaranty and the County to execute and deliver the County Swap Guaranty, the Authority, the City and the County entered into a Reimbursement Agreement to provide for, among other things, repayments to the City and the County for amounts paid by each of them under their respective guarantees plus other amounts specified in the Reimbursement Agreement (the "Reimbursement Agreement"); and

WHEREAS, the Retrofit Bonds and the periodic payments under the Qualified Interest Rate Management Agreement are special limited obligations of the Authority, payable solely from the Receipts and Revenues of the Authority's Facility, as such term is defined in the 1998 Indenture and the Retrofit Indenture, as well as from moneys paid by the City and County pursuant to the City Guarantees and the County Guarantees; and

WHEREAS, the Swap Document confirmations described above entered into by the Authority on December 30, 2003 consisted of two Swap Transaction Confirmations with Royal Bank of Canada (the "Bank"), Reference No. 1277733/1295315 for Swap Transaction maturing December 1, 2008 in the original notional amount of \$31,480,000 (the "2008 Confirmation") and Reference No. 12777734/1295316 for Swap Transaction maturing December 1, 2013 in the original notional amount of \$65,000,000 (the "2013 Confirmation") (collectively, the "Original Swap Confirmations"); and

WHEREAS, the Authority's Interest Rate Management Plan requires at least annual evaluation of risks associated with outstanding Interest Rate Management Agreements to permit the Authority to consider the need or desirability of modifying existing Agreement provisions to manage risk; and

WHEREAS, in each of the Original Swap Confirmations, the Authority is to pay a BMA-based variable rate and receive a fixed rate; and

WHEREAS, the original Plan advised that Interest Rate Risk was high because the Authority was paying a variable rate and was exposed to a rise in short term tax-exempt rates; and

WHEREAS, the Authority has considered the advisability in the light of current low long term interest rates of supplementing the Original Swap Confirmations by entering into an additional new swap confirmation (the "Additional Swap Confirmation") to provide that effective June 1, 2006 and continuing until December 1, 2033, in addition to the existing undertakings between the Authority and the Bank, the Authority pay a fixed rate not exceeding 3.35% (the "Authority Fixed Payment") and receive (i) for as long a period as possible (the "BMA Period") the same BMA-based variable rate and (ii) receive commencing at the end of the BMA Period a LIBOR-based variable rate equal to 68% of LIBOR for a period ending December 1, 2033; and

WHEREAS, after due consideration the Authority desires to enter into the Additional Swap Confirmation; and

WHEREAS, to acknowledge as Parity Obligations amounts payable by the Authority as regularly scheduled payments under the Additional Swap Confirmation and any related obligations to the Swap Insurer and to acknowledge as Subordinated Obligations, Qualified Swap Termination Payments payable by the Authority under the Additional Swap Confirmation and to secure such obligations under the Retrofit Indenture, the Authority and the Retrofit Trustee shall enter into a First Supplemental Trust Indenture dated as of July ____, 2005 (the "First Supplemental Indenture" and together with the Retrofit Indenture, the "Indenture"); and

WHEREAS, the effect of the Additional Swap Confirmation will be to make unnecessary the Cap Document; and

WHEREAS, present market conditions do not support a cost effective termination of the Cap Document (a "Cap Termination") at this time, but such a cost effective termination opportunity could arise if long-term interest rates increase appreciably; and

WHEREAS, the Authority desires to instruct its swap and financial advisors to monitor market conditions and inform it of future possible Cap Termination opportunities; and

WHEREAS, the Authority has requested the County to supplement the County Swap Guaranty to guaranty the additional Authority Fixed Payment and to affirm the applicability of the County Swap Guaranty to the Additional Swap Confirmation, to affirm the Interest Rate Management Plan as supplemented and to authorize and implement any related auxiliary undertakings and authorizations; and

WHEREAS, the County and the City have each retained independent financial advisors to review the Interest Rate Management Plan as supplemented and the Additional Swap Confirmation and to provide the necessary certification with respect to the Additional Swap Confirmation; and

WHEREAS, after due consideration the County desires to effect the foregoing actions requested by the Authority.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Dauphin County, Pennsylvania, and it is hereby adopted by the authority of the same, as follows:

1. (a) The County hereby affirms its determination that Providers of a Qualified Interest Rate Management Agreement (each a "Qualified Provider") must be rated in at least the third highest rating category of a nationally recognized rating agency. Selection of the provider shall be by private sale by negotiation. This City affirms and adopts the finding of the Authority that the Additional Swap Confirmation under the Qualified Interest Rate Management Agreement is in its best financial interest. Before execution of the Additional Swap Confirmation under the Qualified Interest Rate Management Agreement, each of the Authority,

this City and the County shall obtain from its independent advisors a finding that the financial terms and conditions thereof are fair and reasonable to the Authority, based, inter alia, on the Interest Rate Management Plan and the supplement thereto in substantially the form presented to this meeting as Appendix I attached hereto, which is hereby adopted by this County.

(b) The form of the Additional Swap Confirmation in substantially the form to be executed is attached hereto as Appendix II.

(c) The form of the Additional Swap Confirmation between the Authority and Royal Bank of Canada presented at this meeting is hereby approved in substantially such form with such changes, insertions and variations therein as Bond Counsel, the swap advisors and Counsel to the Authority may advise and as such officers of the Authority shall approve, such approval to be conclusively evidenced by their execution thereof. The maximum notional amount under the Additional Swap Confirmation shall be \$96,480,000. Commencing June 1, 2006, the Authority shall pay a fixed rate not exceeding 3.35% under the Additional Swap Confirmation and receive the variable payments described in the foregoing preamble.

(d) Public Financial Management, Inc. swap advisor to the County, shall also serve as independent financial advisors to the County for this purpose.

2. This County ratifies and affirms the County Swap Guaranty and authorizes and approves the issuance of a supplement thereto to guaranty payment of the Authority Fixed Payment. The Board of Commissioners or the County Clerk of this County, as appropriate, are hereby authorized and directed to execute, attest, seal and deliver an affirmation of and supplement to the County Swap Guaranty in substantially the form set forth in Exhibit "A" hereto with such insertions, deletions and amendments as the officers of this County executing said document and the Solicitor to this County shall deem necessary or which may be required by the Retrofit Bond Insurer or the County or the Qualified Provider to accomplish the foregoing. The execution, attestation and delivery of such supplement to and affirmation of the County Swap Guaranty by appropriate officers of this County shall constitute conclusive evidence of such approval. Said officers of this County are authorized to take all other required, necessary or desirable action in connection with the execution and delivery of such supplement to and affirmation of the County Swap Guaranty.

3. In the event that this County is obligated to make payments under the County Swap Guaranty, the maximum periodic payments required to be paid thereunder, if and as necessary on a semiannual and/or an annual basis, from the general revenues of this County, shall be as set forth on Exhibit "B-1" and Exhibit "B-2" hereto, which are incorporated herein by reference with the same force and effect as if fully set forth in the text hereof. Exhibit B-1 sets forth the maximum periodic payments to be paid by the County on the swaps under the Swap Documents, calculated at the maximum rate on the initial notional amounts plus the Authority Fixed Payment. Exhibit B-2 sets forth the maximum periodic payments to be paid by the County on the cap. If at any time this County is required to make any payment under the County Swap Guaranty, the proper officers of the County are hereby authorized and directed to do so. Pursuant to Section 8284(a)(2) of the Debt Act, a combined schedule of maximum net payments per fiscal year for periodic payments guaranteed hereunder plus maximum lease rental debt

service on the 2003D Bonds guaranteed by this County pursuant to a separate proceeding pursuant to Ordinance No. 4-2003 heretofore approved by the Department of Community and Economic Development (LRA-4096) is attached hereto as Exhibit D. The foregoing Ordinance No. 4-2003 was previously amended by Resolution 32-2003 authorizing the County Swap Guaranty and is hereby further amended by adding such combined schedule thereto as Exhibit D.

4. This County covenants to and with the provider of the Qualified Interest Rate Management Agreement that, from time to time, subject to the terms and conditions of and as set forth more fully in the County Swap Guaranty, as supplemented and affirmed, this County (a) shall include the periodic scheduled payments payable in respect of such County Swap Guaranty, as supplemented and affirmed, 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 amounts payable in respect of such County Swap Guaranty, as supplemented and affirmed, at the dates and place and in the manner stated in such County Swap Guaranty, as supplemented and affirmed, according to the true intent and meaning thereof. This County pledges its full faith, credit and taxing power for such budgeting, appropriation and payment in respect of such County Swap Guaranty, as supplemented and affirmed. For the purpose of complying with the covenants of this Paragraph 4, this County shall, subject to the terms and conditions hereof and of the County Swap Guaranty, as supplemented and affirmed, budget the amounts set forth in Exhibits "B-1" through "B-2" hereto for the fiscal year in which such amounts are payable and shall appropriate and shall pay, in the manner provided in the County Swap Guaranty, as supplemented and affirmed, such amounts. This covenant shall be specifically enforceable in accordance with the Debt Act.

5. The Chairman, Vice Chairman or the Chief Clerk of this County, as appropriate, are authorized and directed to cause to be prepared and filed with the Department of Community and Economic Development the certified copy of this Ordinance with all attachments required by Section 8284 of the Debt Act.

6. Proper officers and officials of this 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, executing a bond insurance commitment or commitments and an affirmation and supplement to the Reimbursement Agreement. The Chairman, Vice Chairman or the Chief Clerk of this County, as appropriate, are hereby authorized and directed to execute, attest, seal and deliver an affirmation of and supplement to the Reimbursement Agreement in substantially the form set forth in Exhibit "C" hereto with such insertions, deletions and amendments as the officers of this County executing said document and Special Counsel to this County shall deem necessary or which may be required by the Retrofit Bond Insurer or the County or the Qualified Provider to accomplish the foregoing. The execution, attestation and delivery of such supplement to and affirmation of the Reimbursement Agreement by appropriate officers of this County shall constitute conclusive evidence of such approval.

7. In the event that the Authority fails to make payment of fees, costs, expenses and charges for which the Authority is liable or responsible with respect to the Qualified Interest Rate Management Agreement other than periodic payments thereunder, including, but not limited to, the fees, costs, expenses and charges payable by the Authority to the provider of the Qualified Interest Rate Management Agreement, the County agrees to make payment of such fees, costs, expenses and charges to the extent not paid by the Authority; provided that, such amounts payable by the County pursuant to this Paragraph 7 shall *not* constitute lease rental debt of the County or the guarantee of periodic payments under the Qualified Interest Rate Management Agreement pursuant to the County Swap Guaranty and shall *not* be subject to the pledge of the County's full faith, credit and taxing power; and provided further that, nothing herein shall preclude the County from seeking reimbursement from the Authority of the amounts so paid by the County.

8. This Ordinance shall become effective in accordance with the provisions of the Debt Act.

9. 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 Resolution, it being the intent of this County that the remainder of this Ordinance shall remain in full force and effect.

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

EXHIBITS

- Appendix I Interest Rate Management Plan and Supplement
- Appendix II Form of Additional Swap Confirmation
- Exhibit "A" Form of Affirmation and Supplement of County Swap Guaranty Agreement
- Exhibit "B-1" Table of Annual Maximum Swap Periodic Payments
- Exhibit "B-2" Table of Annual Maximum Cap Periodic Payments
- Exhibit "C" Form of Affirmation and Supplement to Reimbursement Agreement
- Exhibit "D" Schedule of Annual Maximum Net Payments
Plus Maximum Lease Rental Debt Service
on The Harrisburg Authority Guaranteed Resource Recovery
Facility Revenue Bonds, Series D of 2003

CERTIFICATE

I, the undersigned Chief Clerk of the County of Dauphin County, Pennsylvania (the "County"), certify that: the foregoing is a true and correct copy of a Resolution that duly was adopted by affirmative vote of a majority of all members of the Council of the County at a meeting duly held on the 29th day of June, 2005; said Resolution duly has been recorded in the minute book of the Board of Commissioners of the County; a notice with respect to the intent to enact said Resolution has been published as required by law; said Ordinance was available for public inspection by any interested citizen requesting the same in accordance with the requirements of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania and such notice; and said ordinance has not been amended, altered, modified or repealed as of the date of this Certificate.

I further certify that the Board of Commissioners of the County met the advance notice requirements of the Sunshine Act, Act No. 1998-93 of the General Assembly of the Commonwealth of Pennsylvania, approved October 15, 1998, as amended, by advertising the time and place of said meeting and by posting prominently a notice of said meeting at the principal office of the County or at the public building in which said meeting was held.

I further certify that: the total number of members of the Council of the County is three (3); the vote of members of the Board of Commissioners of the County upon said Ordinance was called and duly was recorded upon the minutes of said meeting; and members of the Board of Commissioners of the County voted upon said Ordinance in the following manner:

Vote

Hon. Jeffrey T. Haste
Chairman

Yes

Hon. Dominic DiFrancesco, II
Vice Chairman

Yes

Hon. George P. Hartwick, III

Yes

IN WITNESS WHEREOF, I set my hand and affix the official seal of the County, this 29th day of June, 2005.


Chief Clerk

(SEAL)

APPENDIX I

INTEREST RATE MANAGEMENT PLAN AND SUPPLEMENT

APPENDIX II

FORM OF ADDITIONAL SWAP CONFIRMATION

EXHIBIT A

**Form of Affirmation and Supplement of
County Swap Guaranty Agreement**

EXHIBIT B-1

Table of Annual Maximum Swap Periodic Payments

THE HARRISBURG AUTHORITY

EXHIBIT B-2

Table of Annual Maximum Cap Periodic Payments

THE HARRISBURG AUTHORITY

Cap Confirmation Dated December 30, 2005 as amended

EXHIBIT C

**Form of Affirmation and Supplement to
Reimbursement Agreement**

EXHIBIT D

**Schedule of Annual Maximum Net Payments
Plus Maximum Lease Rental Debt Service
on The Harrisburg Authority Guaranteed Resource Recovery
Facility Revenue Bonds, Series D of 2003**