

**RESOLUTION R-2022-157
LUZERNE COUNTY COUNCIL**

AUTHORIZING THE ISSUANCE OF A TAX AND REVENUE ANTICIPATION NOTE, SERIES OF 2023 IN THE PRINCIPAL AMOUNT NOT TO EXCEED FOURTEEN MILLION DOLLARS (\$14,000,000); PROVIDING FOR THE DATED DATE, INTEREST RATE, MATURITY DATE, PAYMENT AND PLACE OF PAYMENT IN RESPECT OF THE NOTE; ACCEPTING THE PROPOSAL ATTACHED HERETO AS EXHIBIT "C" FROM THE FINANCIAL INSTITUTION OR ENTITY NAMED THEREIN FOR THE PURCHASE OF THE NOTE; AUTHORIZING THE PROPER OFFICERS OF THE COUNTY TO EXECUTE AND DELIVER THE NOTE AND CERTAIN OTHER DOCUMENTS AND CERTIFICATES IN CONNECTION THEREWITH; AUTHORIZING AND DIRECTING THE PREPARATION, CERTIFICATION AND FILING OF THE NECESSARY DOCUMENTS WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT OF THE COMMONWEALTH OF PENNSYLVANIA; SETTING FORTH A FORM OF THE NOTE

WHEREAS, the County of Luzerne, Pennsylvania (the "County"), anticipates receiving taxes and other revenues during the fiscal year ending December 31, 2023, which taxes and other revenues are currently uncollected; and

WHEREAS, the County has estimated, on a monthly basis, its expected taxes, revenues and expenditures for the fiscal year ending December 31, 2023, and has determined that during a portion of such fiscal year it will experience a "cumulative cash flow deficit" as such phrase is defined in the regulations promulgated under Sections 103 and 148 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the County has determined to borrow monies for the purpose of funding, in part, such cumulative cash flow deficit by issuing a note to be repaid from the anticipated taxes and revenues, all in accordance with the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, Act 53 Pa.C.S., Chapters 80-82, as reenacted and amended (the "Debt Act"); and

WHEREAS, the County has received an acceptable proposal for the purchase of its Tax and Revenue Anticipation Note as hereinafter described; and

WHEREAS, as required by Section 8126 of the Debt Act, officials of the County have heretofore made an estimate of the taxes and revenues to be received during such fiscal year ending December 31, 2023 (the "Estimate"), and, by their execution of a certificate with respect thereto dated this date and attached hereto as **Exhibit "A"** (the "Certificate"), have certified to such Estimate.

NOW, THEREFORE, BE IT RESOLVED by the Council of the County of Luzerne, Pennsylvania (the "Council"), in lawful session duly assembled, as follows:

Section 1. For the reasons and purposes recited above, the County hereby exercises its power and authority to borrow money and authorizes the issuance and sale of its Tax and Revenue Anticipation Note, Series of 2023, in the principal amount not to exceed Fourteen Million Dollars (\$14,000,000) substantially in the form attached hereto as **Exhibit "B"** (the "Note") in anticipation of the receipt of current taxes and revenues to be received during the fiscal year ending December 31, 2023 as provided in the Certificate, such Note to be issued, sold and delivered as hereinafter provided.

Section 2. The Chair or Vice-Chair of the Council of the County or the Acting County Manager, attested by the Clerk the Council of the County, is hereby authorized and directed, in the name and on behalf of the County, to prepare and file or cause to be filed with the Department of Community and Economic Development of the Commonwealth of Pennsylvania a certified copy of this Resolution, a Certificate setting forth the Estimate and a true copy of the accepted Proposal (as hereinafter defined) for the purchase of the Note, all as set forth in and required by Section 8128 of the Debt Act. The Chair or Vice-Chair of the Council of the County or the Acting County Manager, attested by the Clerk of County Council, is also hereby authorized and directed, in the name and on behalf of the County, to prepare and verify a certificate, in accordance with Sections 103 and 148 of the Code and the regulations applicable thereto, setting forth the anticipated use of the proceeds, to prepare and deliver to the Purchaser of the Note, the Certificate required by Section 8127 of the Debt Act relating to the total amount of the County's tax and revenue anticipation notes outstanding on the date of delivery of the Note, and to take any and all other action, and to execute and deliver any and all other documents and instruments, as may be necessary, proper or desirable to effect the issuance and sale of the Note as contemplated herein. The certification made on the date of adoption of this Resolution by the aforementioned officials of the County, relating to the Estimate, is hereby ratified and approved.

Section 3. The Note shall be designated "County of Luzerne, Pennsylvania, Tax and Revenue Anticipation Note, Series of 2023," shall be issued as a physical certificate in registered form, without coupons, shall be in the principal amount not to exceed Fourteen Million Dollars (\$14,000,000), shall be dated the date of issuance, shall bear interest at the fixed rate of interest set forth in the Proposal, from the date of delivery until maturity, shall mature on June 30, 2023 and be pre-payable prior to maturity, have such mandatory sinking fund redemption provisions, be payable as to principal and interest at the place and in the manner, and to the extent as set forth in the Proposal attached as **Exhibit "C"** hereto.

Section 4. The Note shall be executed by the Chair or Vice-Chair of Council of the County or the Acting County Manager, shall have the corporate seal of the County affixed thereto, and shall be duly attested by the Clerk of Council of the County. The Chair or Vice-Chair of Council of the County or the Acting County Manager is further authorized and directed to deliver the Note to the Purchaser hereinafter named upon the terms and conditions hereinafter provided in the Proposal and the Note, and to execute and deliver such other documents and instruments, attested to by the Clerk of Council of the County, and to take such other action as may be necessary or appropriate to effect the issuance and sale of the Note in accordance with this Resolution, the Debt Act, the Proposal and the Note, and as required by Note Counsel (as defined below).

Section 5. The Note, when issued, together with any other tax and revenue anticipation notes issued by the County during fiscal year 2023, will be a general obligation of the County secured by a pledge of, security interest in, and a lien and charge on, the taxes and other revenues to be received by the County during the period when the Note is outstanding; and the Chair or Vice-Chair of Council or the Acting County Manager of the County is hereby authorized and directed to prepare and file, or to have filed by Note Counsel, such financing statements as may be necessary to fully perfect such pledge, security interest, lien and charge pursuant to the Pennsylvania Uniform Commercial Code and Section 8125 of the Debt Act.

Section 6. The County hereby covenants that it will not make any use of the proceeds of the Note or do or suffer any other action which, if such use or action had been reasonably expected on the date of issuance of the Note, would cause the Note to be an “arbitrage note” or “private activity note” as such terms are defined in Section 148 or Section 141 of the Code and the regulations applicable thereto and further covenants that it will comply with Section 148 and Section 141 of the Code, and with any regulations applicable thereto, throughout the term of the Note, including without limitation, any requirements relating to a rebate of certain excess earnings pursuant to Section 148(f) of the Code of any regulations applicable thereto now existing or promulgated hereafter. In connection therewith, the Chair or Vice-Chair of Council of the County or the Acting County Manager, attested by the Clerk of Council of the County, is hereby authorized and directed to execute and to deliver, in the name and on behalf of the County, any and all documents or other instruments which Saul Ewing LLP, as Note Counsel (“Note Counsel”), may reasonably request to provide its opinion that the Note is not an “arbitrage note” or “private activity note” within the meaning of Section 148 and Section 141 of the Code and the regulations applicable thereto.

Section 7. The formal proposal (the “Proposal”) of the lender identified therein (the “Purchaser”), presented to the Council and attached hereto as **Exhibit “C,”** is hereby accepted and the Note is hereby awarded to the Purchaser at a private sale for the aggregate purchase price as provided in the Proposal. The terms of the Proposal are incorporated herein by reference with the same effect as if set forth in full at this place. The Chair or Vice-Chair of Council of the County or the Acting County Manager, attested by the Clerk of Council of the County, is hereby authorized and directed to, accept the Proposal, in the name of and on behalf of the County, by executing the County's acceptance on an original copy of the Proposal, to deliver a fully executed and completed copy of the same to the Purchaser and to file the original with the records of the County. The Chair or Vice-Chair of Council of the County or the Acting County Manager is hereby authorized to deliver the Note to the Purchaser upon receipt of the full principal amount of the purchase price for such Note and in compliance with all conditions precedent to such delivery as required by the Debt Act, this Resolution, the Proposal and the Note; and such Chair or Vice-Chair of Council of the County, attested by the Clerk of Council of the County, is hereby authorized and directed to prepare, verify and deliver to the Purchaser concurrently with the delivery of the Note, the Certificate required by Section 8127 of the Debt Act, a copy of which certificate shall be retained with the records of the County until the Note has been paid in full.

Section 8. The Form of the Note shall be substantially as set forth and attached hereto as **Exhibit “B,”** which form is hereby incorporated by reference and adopted as if fully recited at length herein and said form is hereby approved by this Council, with such changes, insertions and variations as are necessary or appropriate to reflect the final terms, including, but not limited to, series designation, interest rate, principal amount and sinking fund provisions, of the Note as specified to the County in the Proposal and such other changes as the Chair or Vice-Chair of Council of the County or the Acting County Manager may approve upon advice of the Solicitor of the County, such approval to be evidenced by such officer's execution and delivery of the Note.

Section 9. The proper officers of the County are hereby authorized to establish a sinking fund for the Note with the Purchaser, if necessary. The County Director of Budget and Finance or other proper officer of the County is hereby authorized and directed to make deposits into the sinking fund to be held for the payment of principal and interest on the Note as provided in the Note.

Deposit by the County into the sinking fund of the amount of good funds necessary to pay the Note in full shall satisfy in full the obligation of the County to pay principal and interest with respect to the Note.

Section 10. The proper officers of the County are hereby authorized, jointly and severally, to do any and all things necessary to effectuate the issuance, execution, delivery and sale of the Note, including the execution and delivery of any and all additional documents, representations, declarations, note purchase agreements, loan agreements, reimbursement agreements, security agreements, intercreditor agreements, sinking fund agreements, pledge agreements, escrow agreements, assignments, financing statements, tax and other certificates, authorizations, contracts, agreements, insurance binders and other papers as may be necessary to effectuate any of the foregoing or as may be required by Note Counsel, and such execution and delivery shall be conclusive evidence of the authorization and approval thereof by the County.

Section 11. Saul Ewing LLP is hereby appointed Note Counsel in connection with the issuance and sale of the Note.

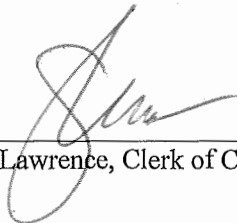
Section 12. The Acting County Manager and the County Director of Budget and Finance or any other proper official of the County is hereby authorized and directed to pay at, or subsequent to, the closing for the issuance of the Note, all costs and expense of the issuance incurred by or on behalf of the County or required to be paid by the County, all in accordance with the provisions of the Proposal. All such expenses incurred in connection with issuance of the Note shall be paid out of the proceeds derived from the issuance of the Note and the Acting County Manager and the County Director of Budget and Finance is authorized to approve requests for payment of such expenses and to direct the Purchaser to pay such expenses directly from the proceeds of the Note.

Section 13. This Resolution shall become effective on the earliest possible date in accordance with the terms of the County Charter and shall further be deemed part of the Note and incorporated therein by reference and enforceable by the holder of the Note.

DULY ADOPTED, THIS 29th day of November, 2022, BY THE COUNCIL OF THE COUNTY of LUZERNE, PENNSYLVANIA, IN LAWFUL REGULAR SESSION DULY ASSEMBLED.

ROLL CALL VOTE (10-0)
YES: Bienias, Lescavage, McDermott, McGinley, Mitchell, Perry, Radle, Thornton, SJ Urban and Wolovich

LUZERNE COUNTY COUNCIL

Attest: 
Sharon Lawrence, Clerk of Council

By: 
Kendra Radle, Chair

LUZERNE COUNTY MANAGER

By: 
Brian Swetz, Acting County Manager

CERTIFICATE

COUNTY OF LUZERNE, PENNSYLVANIA
\$14,000,000 Tax and Revenue Anticipation Note,
Series of 2023

CERTIFICATE AS TO TAXES AND REVENUES TO BE COLLECTED

Pursuant to Sections 8122 and 8126 of the Local Government Unit Debt Act, the undersigned officers of the County of Luzerne, Pennsylvania (the "County") DO HEREBY CERTIFY as follows in connection with the authorization by the County of its Tax and Revenue Anticipation Note, Series of 2023, in a principal amount of \$14,000,000 (the "Note"):

Section 1. This Certificate is given as of a date not more than thirty (30) days prior to the authorization, by resolution, by the Council of the County of the issuance and sale of the Note.

Section 2. The Note will be outstanding for a period ending no later than June 30, 2023.


Section 3. The undersigned have carefully estimated that the aggregate amount of moneys to be received by the County from taxes presently levied and assessed, or anticipated to be levied and assessed, and other revenues to be received (including subsidies and reimbursements) during the 2023 fiscal year during the period when the Note will be outstanding is not less than \$135,383,500 as shown in Column (C) of the attached Cash Flow Calculation Worksheet.

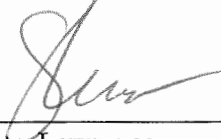
Section 4. In making the foregoing estimate, the undersigned have considered the past and anticipated collection experience of the County and current and projected economic conditions.

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IN WITNESS WHEREOF, the undersigned have set their hands on November 29, 2022.

COUNTY OF LUZERNE, PENNSYLVANIA

By: 
Kendra M. Radle, Chair

By: 
Sharon Lawrence,
Clerk of County Council

[SIGNATURE PAGE –CERTIFICATE AS TO TAXES AND REVENUES TO BE COLLECTED]

EXHIBIT "A"

MAXIMUM ANNUAL CUMULATIVE CASH FLOW DEFICIT CALCULATION
FYE 12/31/23

County of Luzerne, Pennsylvania
Cumulative Cash Flow Deficit Calculation for Fiscal Year Ending December 31, 2023

A	B	C	D	E	F
Month	Opening Balance	Estimated Receipts	Estimated Disbursements	Month Surplus/(Deficit)	Cumulative Surplus/(Deficit)
January	7,000,000	996,000	11,224,000	-10,228,000	-3,228,000
February	-3,228,000	1,811,000	11,956,250	-10,145,250	-13,373,250
March	-13,373,250	35,514,750	11,462,875	24,051,875	10,678,625
April	10,678,625	66,601,000	11,200,000	55,401,000	66,079,625
May	66,079,625	15,971,000	19,531,250	-3,560,250	62,519,375
June	62,519,375	14,489,750	15,487,875	-998,125	61,521,250
					Highest 2023 Projected Deficit (\$13,373,250)
					Less: Working Capital Reserve
					Expenditures through 11/30/2022 114,650,000
					5% (5,732,500)
					Maximum Allowable 2023 TAN <u>(\$19,105,750)</u>

EXHIBIT "B"

R-1

\$14,000,000

COUNTY OF LUZERNE, PENNSYLVANIA
TAX AND REVENUE ANTICIPATION NOTE,
SERIES OF 2023

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATED DATE</u>
____%	June 30, 2023	January __, 2023

REGISTERED OWNER: MANUFACTURERS AND TRADERS TRUST COMPANY

PRINCIPAL SUM: FOURTEEN MILLION DOLLARS

The County of Luzerne, Pennsylvania (the "County"), for value received, hereby promises to pay to the Registered Owner hereof on the Maturity Date set forth above, the principal sum of FOURTEEN MILLION DOLLARS (\$14,000,000), together with interest on said sum computed at the annual rate of Three and six-hundred eleven thousandths of one percent (3.611%) (on a 30/360 day basis) payable on the Maturity Date, subject to the further provisions of this Note specified below and the "Commitment Letter" issued by the Registered Owner (collectively, the "Commitment"), a copy of which is attached hereto as Exhibit A, the terms and conditions of which are incorporated herein in their entirety as if fully set forth herein. Both the principal of and interest on this Note shall be payable in lawful money of the United States of America directly to the Registered Owner hereof by wire transfer in immediately available funds to an account designated by the Registered Owner.

This Note is the Tax and Revenue Anticipation Note, Series of 2023, in the aggregate principal amount of \$14,000,000 (the "Note"), authorized and issued in accordance with the provisions of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, as amended (the "Act"), and pursuant to a Resolution adopted by the County on November __, 2022 (the "Resolution") and filed, together with other required documents, with the Pennsylvania Department of Community and Economic Development. Reference is hereby made to the Act and the Resolution for a statement of the rights and limitations of rights of the Registered Owner of the Note under the Act, to all of which the Registered Owner hereof by acceptance of this Note assents. The Registered Owner's rights and remedies with respect to any event of default and the enforcement of the County's obligations, warranties, representations or undertakings as specified in this Note or the Resolution shall be governed by the provisions of the Act and the rights and remedies of a secured creditor under Pennsylvania Uniform Commercial Code Article 9, including the rights of mandamus and injunction as provided for in the Act.

This Note is issued under and in accordance with the Act, for the purpose of providing funds for current expenses payable in the current fiscal year in anticipation of the receipt of taxes

and other revenues by the County from the date of original delivery of the Note to the stated Maturity Date hereof.

It is the intention of the County that the interest payable upon this Note will not be includable in gross income of the holder hereof for purposes of federal income taxation under the United States Internal Revenue Code of 1986, as amended (the "Code"). The County hereby covenants that it will not do anything that would endanger the tax-exempt status of the interest referred to herein. The County covenants that it will not make any investment or other use of any portion of the "proceeds" of this Note (within the meaning of Sections 103 and 141 through 150 of the Code or any applicable regulations thereunder) which would cause the Note to be an "arbitrage bond" as such term is defined in Section 148 of the Code or which would otherwise cause the interest on this Note to be includable in gross income of the holder hereof for purposes of federal income taxation under the Code. The County covenants to comply with the requirements of Sections 103 and 141 through 150 of the Code, and all applicable regulations promulgated with respect thereto, including, but not limited to, the requirements regarding the use or investment of the proceeds of the Note and the rebate requirements in Section 148(f) of the Code.

Under the laws of the Commonwealth of Pennsylvania, the interest on the Note shall at all times be free from taxation within the Commonwealth of Pennsylvania, but this exemption shall not extend to gift, estate, succession or inheritance taxes or any other taxes not levied or assessed directly on this Note or the interest thereon. Profits, gains or income derived from the sale, exchange or other disposition of this Note are subject to state and local taxation.

The Note is subject to prepayment at the option of the County, in whole or in part, at any time, without penalty, in accordance with the terms of the Commitment.

The Note is secured under the Resolution by the pledge of, security interest in and a lien and charge on the taxes and other revenues of the County specified in the Resolution to be received during the period when the Note is outstanding, together with all proceeds thereof. Such pledge, security interest, lien and charge have been perfected and are enforceable in the manner provided by the Act.

Certain events shall be deemed an Event of Default. Events of Defaults and Remedies are defined and described in the Act and incorporated herein by reference. If an Event of Default occurs, the interest rate on the unpaid principal balance of the Note shall increase to five (5%) per annum above the otherwise applicable rate on the Note (the "Default Rate") and any judgment entered thereon in connection with a claim to collect amounts due hereunder shall bear interest at such Default Rate, to the extent permitted under the laws of the Commonwealth of Pennsylvania, including the Act.

If a Determination of Taxability (as defined below) shall occur, this Note shall bear interest at the taxable equivalent rate of **4.458%** (the "Taxable Rate") for all periods thereafter so long as such Determination of Taxability continues to exist. A "Determination of Taxability" means a final determination by the Internal Revenue Service or a court of competent jurisdiction that the interest paid or to be paid on the Note is or was includable in the holder's gross income for federal income tax purposes.

The Registered Owner will afford the County the opportunity, at the County's sole cost and expense, to contest any action or event constituting a Determination of Taxability, including, without limitation, (i) the validity of any legislation which causes the interest on the Note not to be excludable from the gross income for federal income tax purposes; (ii) the validity of any opinion of nationally recognized note counsel that interest on the Note is includable in the gross income for federal income tax purposes; or (iii) any challenge to the validity of the tax exemption with respect to the interest on the Note, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals). In order for the County to exercise its right to contest set forth herein, the County shall, on demand, immediately reimburse the Registered Owner for any and all expenses (including reasonable attorneys' fees for services that may be required or desirable, in the reasonable judgment of the Registered Owner) that may be incurred with any such contest, and shall, on demand, immediately reimburse the Registered Owner for any and all penalties or other charges payable by the Registered Owner for failure to include such interest in its gross income. The taxable rate shall become effective immediately upon the occurrence of a Determination of Taxability and shall apply during the pendency of any contest or appeal by the County. If the appeal or contest results in a reversal of the Determination of Taxability, the rate of interest shall revert to the Interest Rate stated on the face of this instrument and the Registered Owner shall repay to the County the excess amount of interest or other amounts paid by the County on account of such Determination of Taxability.

This Note may be exchanged, and its transfer may be effected, only by the Registered Owner hereof in person or by his/her/its duly authorized custodian in writing. Upon such exchange and registration of such transfer, the County shall immediately issue a new registered note of the same series, maturity and interest rate and for the same aggregate principal amount as the note to be exchanged and deliver the same to the new Registered Owner per his/her/its delivery instructions.

Whenever the due date for payment of interest on or principal of this Note shall be a Saturday, a Sunday, a legal holiday or a day on which banking institutions in the Commonwealth of Pennsylvania are authorized or required by law to close, then payment of such interest, principal or redemption price need not be made on such date, but may be made on the next succeeding day which is not a Saturday, a Sunday, a legal holiday or a day upon which such banking institutions are authorized or required by law to close, with the same force and effect as if made on the due date for payment of principal, interest or redemption price and no interest shall accrue on the amount due for any period after such due date.

It is hereby certified that all actions required by the Act to be taken to render this Note valid and obligatory have been duly taken pursuant to the Act, that all acts, conditions and things required by the laws of the Commonwealth of Pennsylvania to exist, to have happened or to have been performed precedent to and in the authorization and issuance of this Note exist, have happened and have been performed in regular and due form and manner and as required by law; and that all existing indebtedness of the County is within every limitation prescribed by the Constitution and the statutes of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the County has caused this Note to be executed by the Chair of Council of the County, its seal to be hereunto affixed and the same to be attested by the Clerk of Council of the County.

(SEAL)

COUNTY OF LUZERNE, PENNSYLVANIA

By: Kendra Radtke
Chair

Attest: [Signature]
Clerk of County Council

ASSIGNMENT FOR TRANSFER

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto _____ (Tax Identification or Social Security No. _____) the within note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within note on the books kept for registration thereof, with full power or substitution in the premises.

Date:

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner of the within note as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

EXHIBIT "C"

FIDELITY BANK COMMITMENT LETTER

Fidelity BANK

November 23, 2022

County of Luzerne
Brian Swetz-Division Head of Budget and Financial Service
200 N. River St.
Wilkes-Barre, PA 18711
C/O Scott Shearer & Melissa Hughes-PFM Financial Advisors, LLC.

RE: 2023 Tax and Revenue Anticipation Note

Dear Mr. Swetz,

Thank you for the opportunity in allowing Fidelity Bank (the "Bank") the opportunity to provide a proposal on the 2023 Tax and Revenue Anticipation TRAN (the "TRAN") in the amount of \$14,000,000.00 for the County of Luzerne, Luzerne County, Pennsylvania (the "County").

The below discussion provides a description of the terms and conditions of the proposed 2023 Tax and Revenue Anticipation Note. Upon receiving the County's approval, the Bank will seek internal credit approval of the obligation. After Bank approval, the necessary documents will be prepared, and a closing date will be scheduled.

The proposal and the subsequent TRAN issued is subject to the following requirements: (i) the County of Luzerne, Luzerne County, Pennsylvania compliance with all the provisions of the Pennsylvania Local Government Unit Debt Act; (ii) the statutory and other requirements by which we as a banking association are governed; and (iii) the County's, compliance with all of the terms and conditions set forth in this letter.

- 1) **Amount of TRAN**
 - A. Up to \$14,000,000.00-All proceeds of the TRAN will be advanced on January 3, 2023
 - B. Up to \$14,000,000.00-60-day draw period
- 2) **Term of Note**

Maturity Date on or before June 30, 2023.
- 3) **Rate of Interest Per Annum**

The TRAN shall bear interest on the outstanding principal balance at a non-bank qualified fixed tax-exempt rate based upon a 30/360-day count basis.

The non-bank qualified fixed tax-exempt rate for this financing will **3.611%** through maturity.



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If an event of default occurs, the interest rate on the unpaid principal shall be increased by five (5) percentage points per year above the otherwise applicable rate per year, and any judgement entered hereon or otherwise in connection with any suit to collect amounts due hereunder shall bear interest at such default rate.

If the interest on the TRAN is determined at any time during the term of the TRAN to not be "Tax-Exempt" or it is determined the TRAN served as an arbitrage TRAN under Federal Law, the TRAN will reset to its taxable equivalent rate (4.458%). The County will pay to the Bank the difference between the amount of interest which the Bank would have received at the "Taxable Rate" and the actual amount of interest paid. The County will also pay all interest and penalties assessed.

4) **Repayment Terms**

All principal and interest will be made in a single payment prior to the maturity date of June 30, 2023.

5) **Security**

The TRAN, when issued, together with any other tax and revenue anticipation notes issued by the County during the fiscal year ending December 31, 2023 will be a general obligation of the County, and payable from and equally and ratably secured by a pledge of, security interest in, and lien upon, the taxes and other revenues of the County to be received during the period in which the TRAN and any other notes are outstanding, as set forth in the Resolution. The security interest in the TRAN shall be evidenced by the filing of a financing statement with the Secretary of the Commonwealth of Pennsylvania.

If the amounts due on the TRAN are not paid within the fiscal year in which the Notes are issued, the Act provides that the TRAN will be deemed to be non-electoral debt of the County enforceable in the manner of a general obligation of the County, which, unless otherwise funded, shall be included in the budget of the County for the ensuing fiscal year and payable from the taxes and revenues of such ensuing year without regard to any other debt limitations which may be imposed upon the County by the Act, all in accordance with Section 8125 of the Act.

6) **Prepayment Penalty**

Prepayment allowed at any time without penalty during the term of the TRAN.

7) **Fees and Expenses**

The Documentation Review Fee for this financing will be a maximum of Two Thousand Five (\$2,500) by Bank Counsel. The Origination Fee will be waived for this financing.

All expenses associated with the preparation and/or review of the TRAN documents by the County's Bond Counsel will be the responsibility of the County. If closing does not take place,

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all costs and expenses shall be payable to the Bank. To the extent permitted by law, the County agrees to indemnify the Bank against all claims caused by the County's negligence, which may be incurred in connection with this borrowing.

8) Conditions/Documentation

The Bank proposes the issuance of the TRAN based upon the following conditions and documentation:

- Original Executed Commitment Letter
- Original Executed Tax and Revenue Anticipation Note
- Original Executed Authorizing Resolution
- Original Executed Secretary's Certificate
- Certification of Tax and Revenue to be collected during the term of the Note
- Original Executed Legal Opinion Letter as noted
- Internal Revenue Service Form 8038-G as required
- UCC Filing
- Evidence of appropriate DCED information filing
- Evidence of 2022 TRAN being paid in full
- Approved budget passed by December 31, 2022, and provide a copy to the Bank
- Other documents required by the Bank and its Counsel for a transaction of similar structure
- The Bank's completion of all due diligence deemed necessary

In addition, an opinion of legal counsel shall be prepared and delivered to the Bank evidencing the fact that the borrowing is (i) subject to Section 265 of the Federal Revenue Code of 1986, as amended (the "Code") (relating to the disallowance of the interest deduction); (ii) interest on the TRAN is excluded from gross income for Federal income tax purposes; (iii) interest on the TRAN is not subject to the Pennsylvania corporate net income tax and the Pennsylvania personal income tax, and (iv) the TRAN is a valid and binding obligation of the County.

All documentation shall have the Bank listed as "**Fidelity Bank**" and provided at least five (5) days prior to closing for review.

9) Affirmative and Negative Covenants

In addition to negative covenants typically required by the Bank for similar transactions to similar County's, the following affirmative covenants shall apply:

- The County shall covenant to budget and appropriate for debt service in its annual operating budget.
- The County shall covenant to submit its financial report within 270 from the close of the County's fiscal year.

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- The County shall covenant that it will not incur any additional debt if after giving effect to such debt would exceed its Statutory Limits.

10) **Events of Default**

The Events of Default shall be governed by the provisions of the Act and the rights and remedies of a secured creditor under Pennsylvania Uniform Commercial Code Section 9, including the rights of mandamus and injunction as provided in the Act.

11) **Acceptance**

This proposal expires on December 15, 2022, if not accepted by the County.

On behalf of Fidelity Bank, we are pleased to be of assistance to the County of Luzerne on the 2023 Tax and Revenue Anticipation Note.

If any questions arise concerning the 2023 TRAN proposal, please do not hesitate to contact me at 570-504-2204.

Sincerely,

Ryan McGowan

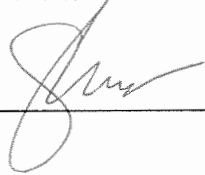
Ryan McGowan
Public Finance
Vice President



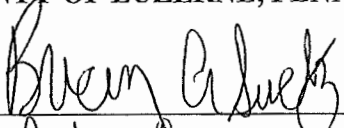
Fidelity BANK

Accepted this ___ day of _____, 2022.

ATTEST:



COUNTY OF LUZERNE, PENNSYLVANIA

By: 

Title: 