

**BOROUGH OF FANWOOD,
UNION COUNTY, NEW JERSEY**

ORDINANCE: O-2021-15-S

**ORDINANCE AUTHORIZING THE EXECUTION AND ACKNOWLEDGMENT AND DELIVERY
BY THE BOROUGH OF FANWOOD OF CERTAIN AGREEMENTS IN RELATION TO
BOROUGH GUARANTEED LEASE REVENUE NOTES/BONDS (FANWOOD PUBLIC
WORKS FACILITY PROJECT) OF THE UNION COUNTY IMPROVEMENT AUTHORITY**

WHEREAS, the Union County Improvement Authority (the "Authority") has been duly created by an ordinance of the Board of Chosen Freeholders (subsequently renamed as the "Board of County Commissioners") of the County of Union, New Jersey (the "County"), as a public body corporate and politic of the State of New Jersey (the "State") pursuant to and in accordance with the County Improvement Authorities Law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State, as amended and supplemented from time to time (the "Act"); and

WHEREAS, the Borough of Fanwood, New Jersey (the "Borough") has requested that the Authority finance and undertake the acquisition of the site and the planning, design, construction and equipping of the Borough's public works facility to be located at 536 North Avenue (Block 68, Lot 31) in the Borough (the "Improvements") and

WHEREAS, the Authority is desirous of assisting in the financing of the Improvements, to the extent permitted by law; and

WHEREAS, the Authority expects to obtain funds to assist the financing of the Improvements through the issuance of its notes or bonds in an amount not to exceed \$8,000,000 Borough Guaranteed Lease Revenue Notes/Bonds (Fanwood Public Works Facility Project) (the "Obligations") issued pursuant to a Bond Resolution to be adopted by the Authority entitled "Borough Guaranteed Lease Revenue Bond Resolution (Fanwood Public Works Facility Project)" (the "Bond Resolution"); and

WHEREAS, pursuant to the Act, specifically Section 34 thereof (N.J.S.A. 40:37A-77), the Authority is authorized to enter into and perform any lease or other agreement with the Borough for the lease to or use by the Authority of all or any part of any public facility or facilities as determined in Section 11 of the Act (N.J.S.A. 40:37A-54); and

WHEREAS, the Borough intends to lease the real property upon which the Improvements are situated to the Authority pursuant to the terms of a Ground Lease to be dated as of the first day of the month of issuance of the Obligations between the Borough, as lessor, and the Authority, as lessee (together with any amendments thereof or supplements thereto in accordance with its terms, the "Ground Lease");

WHEREAS, pursuant to the Act, specifically Section 35 thereof (N.J.S.A. 40:37A-78), the Authority is authorized to enter into and perform any lease or other agreement with the Borough for the lease to or use by the Borough of all or any part of any public facility or facilities as determined in Section 11 of the Act (N.J.S.A. 40:37A-54); and

WHEREAS, the Authority intends to lease the Improvements and the real property upon which the Improvements are situated to the Borough pursuant to the terms of a Lease and Agreement to be dated as of the first day of the month of issuance of the Obligations between the Authority,

as lessor, and the Borough, as lessee (together with any amendments thereof or supplements thereto in accordance with its terms, the "Lease Agreement"); and the Borough; and

WHEREAS, in accordance with the terms of the Lease Agreement, (i) the Borough will manage and operate the Improvements, collect and disburse the revenues realized and pay the expenses incurred in connection therewith; and

WHEREAS, in order to induce the prospective purchasers of the Obligations to purchase same, and to provide additional security, the Obligations shall otherwise be secured by a guarantee ordinance adopted by the Borough unconditionally and irrevocably guaranteeing the principal of (including mandatory sinking fund installments, if any) and interest on the Obligations, all pursuant to Section 37 of the Act (N.J.S.A. 40:37A-80); and

WHEREAS, in accordance with Section 13 ("Section 13") of the Act (N.J.S.A. 40:37A-56), prior to the issuance of the Obligations, the Authority shall make a detailed report with respect to such financing to the Board of County Commissioners of the County, which report shall include copies or a description of, without limitation, the various financing documents; and

WHEREAS, in accordance with N.J.S.A 40A:5A-6 and N.J.S.A. 40:37A-80 the Authority shall make application, on behalf of the Authority and the Borough to the Local Finance Board in the Division of Local Government Services of the Department of Community Affairs of the State (the "Local Finance Board") for the Local Finance Board's review of the financing, including, *inter alia*, the Bond Resolution, the Lease Agreement, the Ground Lease, the Borough Guaranty, and Continuing Disclosure Agreement (the "Financing Documents"); and

WHEREAS, in accordance with the terms of Section 37 of the Act (N.J.S.A. 40:37A-80) and the Borough Guaranty, the Borough shall be obligated, if necessary, to levy *ad valorem* taxes upon all the taxable property within the Borough without limitation as to rate or amount to make the timely payment of the principal of (including mandatory sinking fund installments, if any) and interest on the Obligations; and

WHEREAS, the Authority believes: (i) it is in the public interest to accomplish such purpose; (ii) said purpose is for the health, wealth, convenience or betterment of the inhabitants of the Borough; (iii) the amounts to be expended for said purpose are not unreasonable or exorbitant; and (iv) the proposal is an efficient and feasible means of providing for the needs of the inhabitants of the Borough and will not create an undue financial burden to be placed upon the Borough.

NOW, THEREFORE, BE IT ORDAINED BY THE BROUGH COUNCIL OF THE BOROUGH OF FANWOOD, NEW JERSEY, as follows:

Section 1. The Mayor, Borough Administrator, Chief Financial Officer or such other authorized officer of the Borough (each an "Authorized Officer") are hereby each severally authorized and directed, upon the satisfaction of all the legal conditions precedent to the execution or acknowledgment and delivery by the Borough, of the Financing Documents to be so executed or acknowledged by the Borough.

Section 2. The Clerk of the Borough is hereby authorized and directed, upon the execution or acknowledgment of the Financing Documents in accordance with the terms of Section 1 hereof, to attest to the Authorized Officer's execution or acknowledgment of such documents and is

hereby further authorized and directed to thereupon affix the seal of the Borough to such documents

Section 3. Upon the execution or acknowledgment and attestation of and if required, the placing of the seal on the Financing Documents as contemplated by Sections 1 and 2 hereof, the Authorized Officer is hereby authorized and directed to (i) deliver the fully executed or acknowledged, attested and sealed documents to the other parties thereto and (ii) perform such other actions as the Authorized Officer deems necessary, desirable or convenient in relation to the execution and delivery thereof.

Section 4. The Borough Council of the Borough hereby authorize the performance of any act, the execution or acknowledgment and delivery of any other document, instrument or closing certificates, which the Authorized Officer, deems necessary, desirable or convenient in connection with this contemplated transaction, and the Borough Council hereby directs the Authorized Officer to execute or acknowledge, and cause the Clerk of the Borough to attest and affix the seal to any such documents, instruments or closing certificates, the authorization of which actions shall be conclusively evidenced by the execution or acknowledgment, attestation, affixation and delivery, as the case may be, thereof by such persons. Such closing certificates shall include, without limitation, (a) a determination that any information provided by the Borough in connection with the preparation and distribution of (i) any preliminary official statement or supplement with relation to the Obligations is "deemed final" for the purposes and within the meaning of Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1934, as amended ("Rule 15c2-12") and (ii) any official statement or supplement with relation to the Obligations constitutes a final Official Statement for the purposes and within the meaning of Rule 15c2-12, (b) a determination that the Continuing Disclosure Agreement complies with Rule 15c2-12, (c) a determination that any information provided by or on behalf of the Borough or relating to the Borough, the Improvements, the Financing Documents or the transactions contemplated thereby in connection with the preparation and distribution of any such Preliminary Official Statement or the Official Statement complies with Section 10 and Rule 10b-5 of the Securities Exchange Act, and (d) any representations, warranties, covenants, certificates or instruments required by any issuer of a municipal bond insurance policy or any other form of credit enhancement securing all or a portion of the Obligations or the issuer of a rating on all or a portion thereof.

Section 5. The Borough authorizes the Authority to issue its notes or bonds to finance the Improvements.

Section 6. The Clerk of the Borough is hereby directed to publish and post notice of this ordinance as required by law.

Section 7. Upon the adoption hereof, the Clerk of the Borough shall forward certified copies of this ordinance to the Borough Administrator, Chief Financial Officer, Borough Attorney, the Authority, and Bond Counsel to the Authority.

Section 8. This ordinance shall take effect at the time and in the manner prescribed by law.

Introduction: June 21, 2021
MOTION: McElroy Barker SECOND: Mitchell
YES: Councilmembers Carter, Glaser, McElroy-Barker, Mitchell, Walsh
NO: None
ABSTAIN: None
ABSENT: Councilmember Banks
Public Hearing: July 19, 2021
Adoption: July 19, 2021
Motion: Glaser Second: Mitchell
YES: Councilmembers Carter, Banks, Glaser, McElroy-Barker, Mitchell, Walsh
NO: None
ABSTAIN: None
ABSENT: None

APPROVAL: Colleen Mahr, Mayor

ATTEST: Kathleen Holmes, Borough Clerk