

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

ORDINANCE: O-2021-16-S

**ORDINANCE AUTHORIZING THE GUARANTY BY THE BOROUGH OF FANWOOD,
NEW JERSEY OF PAYMENT OF PRINCIPAL OF AND INTEREST ON THE
BOROUGH GUARANTEED LEASE REVENUE NOTES/BONDS (FANWOOD PUBIC
WORKS FACILITY PROJECT) OF THE UNION COUNTY IMPROVEMENT
AUTHORITY IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING
\$8,000,000**

WHEREAS, the County of Union, New Jersey (the "County"), pursuant to the Improvement Authorities Law of the State of New Jersey (the "State"), constituting Chapter 183 of the Pamphlet Laws of the State of 1960, as amended and supplemented (N.J.S.A. 40:37A-44 et seq.) (the "Act"), has heretofore duly created a body corporate and politic known as The Union County Improvement Authority (the "Authority"); and

WHEREAS, pursuant to Section 80 of the Act, the Borough of Fanwood, New Jersey (the "Borough") is authorized to guaranty unconditionally the punctual payment of the principal of and interest on any obligations of the Authority; and

WHEREAS, the Borough, in order to assist the Authority with the financing and undertaking of 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 "Project"), has determined to provide for the guaranty of Borough Guaranteed Lease Revenue Notes/Bonds (Fanwood Pubic Works Facility Project) of the Authority or the refunding of said notes or bonds (the "Obligations") under the resolution of the Authority entitled "Borough Guaranteed Lease Revenue Bond Resolution (Fanwood Pubic Works Facility Project)" or the bond resolution(s) authorizing the refunding of said Obligations (the "Bond Resolution");

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF FANWOOD, NEW JERSEY, (not less than two-thirds of all members thereof affirmatively concurring), AS FOLLOWS:

Section 1. This guaranty shall be adopted by the governing body of the Borough in the manner provided for adoption of a bond ordinance as provided in the Local Bond Law, constituting Chapter 169 of the Pamphlet Laws of 1960 of the State, as amended and supplemented (the "Local Bond Law").

Section 2. Pursuant to and in accordance with the terms of the Act, specifically Section 37 of the Act (N.J.S.A. 40:37A-80), the Borough is hereby authorized to and hereby shall fully, unconditionally and irrevocably guaranty the punctual payment of the principal of and interest on the Obligations in an aggregate principal amount not exceeding at any time \$8,000,000, which Obligations are to be issued to finance and/or

refinance the Project, on such terms and conditions as may be agreed to by and between the Borough and the Authority and as are reflected in this guaranty and in the guaranty certificate on the face of each Obligation. Upon the endorsement of the Obligations referred to in Section 3 below, the Borough shall be fully, unconditionally and irrevocably obligated to pay the principal of and interest on the Obligations in the same manner and to the same extent as in the case of Obligations issued by the Borough, and, accordingly, the Borough shall be unconditionally and irrevocably obligated to levy *ad valorem* taxes upon all the taxable property within the Borough for the payment thereof, without limitation as to rate or amount, when required under the provisions of applicable law. This full, unconditional and irrevocable guaranty of the Borough effected hereby to pay the principal of and interest on the Obligations when due, in accordance with the terms hereof, shall not be abrogated for any reason. Any Obligations which are no longer considered outstanding under the Bond Resolution shall not be counted for the purpose of the \$8,000,000 limitation contained in this guaranty.

Section 3. The Mayor or Chief Financial Officer of the Borough shall, by manual or facsimile signature, execute an endorsement on each of the Obligations evidencing this guaranty by the Borough as to the punctual payment of the principal thereof and interest thereon. The endorsement on each Obligation shall be in substantially the following form, and absent the fully executed endorsement in such form on any such Obligation, such Obligation shall not be entitled to the benefits of this guaranty:

GUARANTY BY THE BOROUGH OF FANWOOD, NEW JERSEY

The payment of the principal of and interest on the within Bond shall be fully, irrevocably and unconditionally guaranteed by the Borough of Fanwood, a body corporate and politic of the State of New Jersey (the "Borough"), in accordance with the provisions of N.J.S.A. 40:37A-80 and the guaranty ordinance of the Borough finally adopted pursuant thereto, and the Borough is fully, irrevocably and unconditionally liable for the payment, when due, of the principal of and interest on this Bond, and if necessary the Borough shall levy *ad valorem* taxes upon all the taxable property within the Borough, without limitation as to rate or amount, in order to make such payment.

IN WITNESS WHEREOF, the Borough of Fanwood, New Jersey, has caused this guaranty to be executed by the Mayor or Chief Financial Officer.

**BOROUGH OF FANWOOD, NEW
JERSEY**

By: Mayor or Chief Financial Officer

The Mayor or Chief Financial Officer is hereby further authorized to execute such other certificates or agreements relating to this guaranty that may be required by the

Authority to comply with the terms of the financing documents relating to the Obligations, including, without limitation, (i) any agreements or certificates detailing the time and method that payment under this guaranty shall be made by the Borough, (ii) any letters of representations or similar undertakings to be executed in connection with the sale of the Obligations, setting forth certain representations, warranties and covenants of the Borough as an inducement to the purchase of the Obligations, (iii) any certificates deeming "final" (for the purposes of Rule 15c2-12 of the U.S. Securities and Exchange Commission) any Preliminary or final Official Statements of the Authority in connection with the Obligations, and (iv) any note/bond purchase agreement or continuing disclosure agreement executed in connection with the sale of the Obligations. Such further agreements or certificates shall not abrogate the Borough's responsibilities hereunder.

The Mayor or Chief Financial Officer is hereby further authorized to execute one or more continuing disclosure agreement(s) or other instrument(s) undertaking the secondary disclosure obligations of the Borough required by Rule 15c2-12 of the United States Securities and Exchange Commission in connection with the issuance of any Obligations by the Authority.

Section 4. It is hereby found, determined and declared by the governing body of the Borough that:

(a) This guaranty may be adopted notwithstanding any statutory debt or other limitations, including particularly any limitation or requirement under or pursuant to the Local Bond Law, but the aggregate principal amount of the Obligations that shall be entitled to the benefits of this guaranty, being an amount not to exceed \$8,000,000 outstanding at any time, shall after their issuance be included in the gross debt of the Borough for the purpose of determining the indebtedness of the Borough under or pursuant to the Local Bond Law.

(b) The principal amount of Obligations entitled to the benefits of this guaranty and included in the gross debt of the Borough shall be deducted, and is hereby declared to be and to constitute a deduction, from such gross debt under and for all the purposes of the Local Bond Law (i) from and after the time of issuance of the Obligations until the end of the fiscal year beginning next after the completion of the acquisition or construction of the project to be financed from the proceeds of the Obligations, and (ii) in any annual debt statement filed pursuant to the Local Bond Law as of the end of said fiscal year or any subsequent fiscal year, if the revenues or other receipts or moneys of the Authority in such fiscal year are sufficient to pay its expenses of operation and maintenance in such fiscal year and all amounts payable in such fiscal year on account of the principal of and interest on all such guaranteed Obligations, all Obligations of the Borough issued as provided in Section 36 of the Act (N.J.S.A. 40:37A-79), and all Obligations of the Authority issued under the Act.

Section 5. The following matters are hereby determined, declared, recited and stated:



(a) The maximum outstanding principal amount of Obligations of the Authority that are hereby and hereunder guaranteed as to the punctual payment of the principal thereof and interest thereon at any time is \$8,000,000.

(b) The purpose described in this guaranty is not a current expense of the Borough, and no part of the cost thereof has been or shall be assessed on property specially benefited thereby.

(c) A supplemental debt statement of the Borough has been duly made and filed in the office of the Clerk of the Board, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State, and such debt statement shows that while the gross debt of the Borough, as defined in the Local Bond Law, is increased by this guaranty by \$8,000,000, in accordance with the provisions of the Act, the net debt of the Borough is not increased, and the obligation of the Borough authorized by or incurred pursuant to the terms of this guaranty is permitted by an exception to the debt limitations of the Local Bond Law, which exception is contained in the Act.

(d) All other items to be contained in a bond ordinance adopted pursuant to the Local Bond Law are hereby determined to be inapplicable to the Borough's guaranty of the Obligations hereby.

Section 6. This guaranty shall take effect at the time and in the manner provided by law.

Certified to be a true copy of an ordinance introduced and adopted upon first reading by the Council of the Borough of Fanwood at the duly held Meeting on the 1 st day of February, 2021.	
Introduction: June 21, 2021	 APPROVAL: Colleen Mahr, Mayor
MOTION: McElroy Barker SECOND: Mitchell	
YES: Councilmembers Carter, Glaser, McElroy-Barker, Mitchell, Walsh	
NO: None	
ABSTAIN: None	
ABSENT: Banks	
Public Hearing: July 19, 2021	
Adoption: July 19, 2021	
Motion: Glaser Second: Mitchell	
YES: Councilmembers Banks, Carter, Glaser, McElroy-Barker, Mitchell, Walsh	
NO: None	 ATTEST: Kathleen Holmes, Borough Clerk
ABSTAIN: None	
ABSENT: None	