

ORDINANCE NO. 19-02

**BOROUGH OF NORTH PLAINFIELD
COUNTY OF SOMERSET
STATE OF NEW JERSEY**

**AN ORDINANCE OF THE BOROUGH OF NORTH PLAINFIELD,
IN THE COUNTY OF SOMERSET, NEW JERSEY APPROVING
THE FORM AND AUTHORIZING THE EXECUTION AND
DELIVERY OF A LEASE PURCHASE AGREEMENT WITH THE
SOMERSET COUNTY IMPROVEMENT AUTHORITY
RELATING TO THE ISSUANCE OF COUNTY GUARANTEED
LEASE REVENUE BONDS (BOROUGH OF NORTH PLAINFIELD
PROJECT) AND ANY NOTES ISSUED IN ANTICIPATION
THEREOF BY THE SOMERSET COUNTY IMPROVEMENT
AUTHORITY**

WHEREAS, the Somerset County Improvement Authority (the "Authority"), a public body corporate and politic constituting an instrumentality of the State of New Jersey (the "State") established and created under the provisions of the County Improvement Authorities Law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State and the acts amendatory thereof and supplemental thereto (the "Act"), is authorized pursuant to the terms of the Act to provide public facilities, as such term is defined in the Act, within the County of Somerset, New Jersey (the "County"), including the financing of the acquisition of same; and

WHEREAS, the Borough of North Plainfield, in the County of Somerset, New Jersey (the "Borough"), desires to acquire certain property from a private owner commonly known as 641 Somerset Street and designated as Block 110, Lot 2.14 (comprising 12.2± acres) (the "Open Space Lot"), and Block 110, Lots 2.02 through 2.13 (comprising 2.13± acres) (the "Affordable Housing Lots"; and together with the Open Space Lot, the "Property"), on the Borough's Tax Assessment Maps and the existing buildings and structures thereon; and

WHEREAS, upon acquisition of the Property, the Authority will demolish and remove such buildings and structures located thereon (such acquisition and demolition are hereinafter referred to as the "Project"); and

WHEREAS, the Open Space Lot will be utilized by the Borough as a public park and the Affordable Housing Lots will be utilized by the Borough to make provision for affordable housing; and

WHEREAS, the County will contribute \$3,000,000 from its Open Space Trust Fund to assist with the acquisition of the Open Space Lot and the demolition and removal of any buildings thereon (the "County Contribution"); and

WHEREAS, the County Contribution will be available at the time of closing on the Open Space Lot and, as such, no moneys will need to be borrowed to cover the County's share in anticipation of its receipt; and

WHEREAS, the Borough has requested the Authority's assistance in financing the Project as described herein; and

WHEREAS, the Authority has agreed to finance the Project on behalf of the Borough through the issuance of bonds and any notes issued in anticipation thereof; and

WHEREAS, the Project constitutes a "public facility" as such term is defined in the Act; and

WHEREAS, in order to finance the acquisition of the Project, the Authority will issue bonds in one or more series, including renewals, if any, in an aggregate principal amount not to exceed \$5,750,000, to be designated as "County Guaranteed Lease Revenue Bonds (Borough of North Plainfield Project)" (inclusive of any project notes issued in anticipation thereof, the "Bonds"), with such further designation and in accordance with the terms of a resolution of the Authority entitled, "Resolution Authorizing the Issuance of County Guaranteed Lease Revenue Bonds (Borough of North Plainfield Project) of the Somerset County Improvement Authority and Determining Other Matters Related Thereto" (together with any amendments thereof or supplements thereto in accordance with the terms thereof, the "General Bond Resolution"); and

WHEREAS, the Authority will use proceeds from the sale and issuance of the Bonds to, among other things, acquire the Project and, simultaneously therewith, enter into a lease purchase agreement with the Borough to be dated as of the first day of the month of issuance of the Bonds (together with any amendments thereof or supplements thereto in accordance with its terms, the "Lease Agreement"), pursuant to which the Authority will lease the Project to the Borough for its use; and

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, including the Lease Agreement, with the Borough for the lease to or use by the Borough of all or any part of any public facility, including the Project, on any terms and conditions that may be agreed upon by the Borough and the Authority; and

WHEREAS, the Bonds shall be secured by valid and binding general obligation lease payments of the Borough under the Lease Agreement, in scheduled lease payment amounts sufficient to pay in a timely manner the principal and redemption premium, if any, of and interest on the Bonds; and

WHEREAS, the Authority and the Borough have requested that the County unconditionally guaranty the payment of the principal of (including sinking fund installments, if any) and interest on the Bonds to finance the Project; and

WHEREAS, to provide an inducement to the prospective purchasers of the Bonds to purchase same and to provide additional security to the holders thereof, the County will, in accordance with N.J.S.A. 40:37A-80, fully, unconditionally and irrevocably guaranty the payment of the principal of (including sinking fund installments, if any) and interest on the Bonds in an aggregate principal amount not to exceed \$5,750,000 in accordance with the terms of a guaranty ordinance of the County to be finally adopted by the Board of Chosen Freeholders as evidenced by a guaranty agreement to be entered into by and between the County and the Authority (the "County Guaranty Agreement") and by a guaranty certificate (collectively, the "County Bond Guaranty") to be executed by an authorized County representative on the face of the Bonds, 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 Bonds, the Authority will have made a detailed report to the Board of Chosen Freeholders, which report will include, without limitation, the Bonds, the General Bond Resolution and the Lease Agreement (collectively, the "Financing Documents"); and

WHEREAS, to the extent applicable, this ordinance is also intended to satisfy the provisions of N.J.S.A. 40A:12-1 et seq. concerning the acquisition of real property by a municipality.

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF NORTH PLAINFIELD, IN THE COUNTY OF SOMERSET, NEW JERSEY, AS FOLLOWS:

The Project, as further described in the Lease Agreement (a form of which is on file in the office of the Clerk of the Borough), is hereby approved and the Mayor, Business Administrator and the Chief Financial 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 Lease Agreement for the Project, and such other agreements, certificates or documents that may be necessary or useful and convenient in connection with the execution of the Lease Agreement (collectively, the "Project Documents"), to execute or acknowledge and deliver such Project Documents in substantially the forms on file in the office of the Clerk of the Borough, with such changes thereto as such Authorized Officer, after consultation with general counsel to the Borough, bond counsel to the Borough and other professional advisors to the County and the Authority (together, the "Consultants"), deems in their discretion to be necessary, desirable or convenient for the execution thereof and to consummate the transactions contemplated hereby and thereby, which execution thereof shall conclusively evidence such Authorized Officer's approval of any changes to the forms thereof, including without limitation the amendment of debt service/lease payment schedules in the Lease Agreement for the issuance of additional series of Bonds (which includes bonds and notes issued in anticipation of bonds, or to refund prior series of bonds or notes), the insertion, from time to time, of the final financing terms in the Lease Agreement that will result from the sale of the Bonds, which financing terms shall be limited only by those financing term parameters set forth in the application of the Authority filed with the Local Finance Board, in the Division of Local Government Services, Department of Community Affairs, and the parameters set forth herein.

The Clerk of the Borough is hereby authorized and directed, upon the execution or acknowledgment of the documents set forth in Section 1 hereof in accordance with Section 1 hereof, to attest to each 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.

Upon the execution or acknowledgment and attestation of and if required, the placing of the seal on the documents set forth in Section 2 hereof as contemplated by Sections 1 and 2 hereof, each 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 such Authorized Officer deems necessary, desirable or convenient in relation to the execution and delivery thereof.

The Borough hereby authorizes the preparation and the distribution of financial statements and demographic and other information concerning the Borough, the Project, the General Bond Resolution, the Lease Agreement and the Project Documents and the transactions contemplated thereby contained in any Preliminary Official Statements and final Official Statements to be issued by the Authority, from time to time, in connection with the marketing and sale of the Bonds. In furtherance of such authorization, the Borough Council hereby directs each Authorized Officer to take such action and execute such certificates, documents or instruments as such Authorized Officer, after consultation with the Consultants, deems in his or her sole discretion to be necessary, desirable or convenient in connection with the preparation and distribution of the

Preliminary Official Statement(s) and the final Official Statement(s) to market and sell the Bonds at the most efficient and economical cost to the Borough.

Each Authorized Officer is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the execution and delivery of the Lease Agreement, Project Documents, the leasing of the Project, the undertaking of the Project and all related transactions contemplated by this ordinance and by the Project Documents and necessary or desirable in connection with the issuance of the Bonds, including all determinations with respect to the refunding of Bonds and the severance or conveyance of any property from the Lease Agreement (to the extent permitted thereby).

Each Authorized Officer is hereby authorized to enter, from time to time, into the appropriate undertakings to provide secondary market disclosure on behalf of the Borough pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of the Bonds and to amend such undertakings from time to time in connection with any change in law, or interpretation thereof, provided each such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the Borough fails to comply with its undertakings, the Borough shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

The full faith and credit of the Borough are hereby pledged to the punctual payment of all payments due under the Lease Agreement. The obligation to make such payments shall be a general obligation of the Borough, and the Borough shall be obligated to levy *ad valorem* taxes upon all the taxable property within the Borough for the payments due under the Lease Agreement without limitation as to rate or amount.

To the extent applicable, the Borough hereby covenants that it will comply with any conditions subsequent imposed by the Internal Revenue Code of 1986, as amended (the "Code") or the Authority, in order to preserve the exemption from federal taxation of interest on the Bonds, including the requirement to rebate all net investment earnings on the gross proceeds above the yield on the Bonds, if necessary.

The provisions of this ordinance are severable. To the extent any clause, phrase, sentence, paragraph or provision of this ordinance shall be declared invalid, illegal or unconstitutional, the remaining provisions shall continue to be in full force and effect.

This ordinance shall take effect in accordance with applicable law.

ADOPTED ON FIRST READING

DATED: February 11, 2019

PUBLISHED:

February 15, 2019

RICHARD K. PHOENIX, RMC,
Clerk of the Borough of North Plainfield