

ORDINANCE 2023-14

**A BOND ORDINANCE OF THE BOROUGH OF ISLAND HEIGHTS,
COUNTY OF OCEAN, STATE OF NEW JERSEY, PROVIDING FOR
THE WATER METER REPLACEMENT PROJECT AND
APPROPRIATING ONE MILLION TWO HUNDRED THOUSAND
DOLLARS (\$1,200,000.00) THEREFOR AND AUTHORIZING THE
ISSUANCE OF UP TO ONE MILLION TWO HUNDRED THOUSAND
DOLLARS (\$1,200,000.00) AGGREGATE PRINCIPAL AMOUNT BONDS
OR NOTES TO FINANCE THE COST THEREOF**

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL (not less than two-thirds (2/3) of all the members thereof affirmatively concurring), **AS FOLLOWS:**

Section 1. Description of Project:

The Borough of Island Heights (the “**Borough**”) hereby authorizes the following water infrastructure improvement project to improve, maintain and support compliance by the Borough with the drinking water regulations of the State of New Jersey and thereby improve the Borough’s water system (the “**Water Meter Replacement Project**”):

**IMPROVEMENT OR
APPROPRIATION
PURPOSE**

ESTIMATED COST

Water Meter Replacement Project, including replacement of approximately 925 portable water meters with new units within the Borough, including all other necessary or desirable structures, appurtenances, work, equipment, material and all costs of surveying, construction, planning, design, engineering, preparation of plans and specifications, permits, bid documents, construction inspection, administration, accounting, architectural, financial and legal.

\$1,200,000.00

Section 2. Permanent Funding of Appropriation

(a) To provide funds to permanently fund the costs of the Water Meter Replacement Project (the “**Project Costs**”), the issuance by the Borough of bonds in the aggregate principal amount of up to **ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00)** is hereby authorized, approved, ratified and confirmed. It is anticipated that the Borough will issue general obligation bonds of the Borough to the New Jersey Infrastructure Bank (the “**I-Bank**”) and the State of New Jersey, acting by and through the New Jersey Department of Environmental Protection (the “**State**”) pursuant to the New Jersey Infrastructure Bank Financing Program (the “**I-Bank Financing Program**”) to pay the Project Costs.

(b) In accordance with N.J.S.A. 40A:2-11(c), no down payment shall be required in connection with the issuance of the bonds for the Water Meter Replacement Project as this Bond Ordinance authorizes an obligation referred to in N.J.S.A. 40A:2-7(h) for purposes that are self-liquidating as described in N.J.S.A. 40A:2-45.

Section 3. Temporary Construction Financing From I-Bank Prior to Issuance of Bonds

In anticipation of the issuance of the bonds, the Borough hereby authorizes, if necessary or desirable, the issuance, sale and award of construction project notes (the “**Construction Project Notes**”) pursuant to the I-Bank’s construction financing program (the “**I-Bank Construction Financing Program**”). The Construction Project Notes shall be substantially in the form provided by the I-Bank in the I-Bank Construction Financing Program’s loan agreement. The execution and delivery of the Construction Project Notes and all additional documents and instruments related thereto by the Mayor, Chief Financial Officer and Borough Clerk (collectively, the “**Authorized Officials**”) is hereby authorized. The Authorized Officials are each hereby authorized to determine, pursuant to the terms and conditions established by the I-Bank and the State under the I-Bank Construction Financing Program’s loan agreement and the terms and conditions of this Ordinance and any subsequent Resolution of the Mayor and Council, the following items with respect to the Construction Project Notes: (a) the aggregate principal amount of the Construction Project Notes to be issued, which amount shall not exceed \$1,200,000.00; (b) the maturity of the Construction Project Notes, which shall be no later than two years after the date of issuance thereof; (c) the date of the Construction Project Notes; (d) the interest rate of the Construction Project Notes, which shall not exceed six (6.0%) per annum; (e) the purchase price for the Construction Project Notes; and (f) such other matters with respect to the Construction Project Notes as may be necessary, desirable or convenient in connection with the sale, issuance and delivery thereof. The Authorized Officials are hereby further authorized to manually execute and deliver and the Borough Clerk is hereby further authorized to attest by manual signature to such execution and to affix, imprint, engrave or reproduce the corporate seal of the Borough to any document, instrument or closing certificate deemed necessary, desirable or convenient by the Authorized Officials in their respective sole discretion, after consultation with the Consultants, to be executed in connection with the execution and delivery of the Construction Project Notes and the consummation of the transactions contemplated thereby, which determination shall be conclusively evidenced by the execution of each such document, instrument or closing certificate by the party authorized under this resolution to execute such document, instrument or closing certificate.

Section 4. Authorization of Bond Anticipation Notes In Lieu of I-Bank Construction Financing

If the Borough shall elect to forego the I-Bank Construction Financing Program, then prior to the issuance of permanent bonds and to temporarily finance the Water Meter Replacement Project stated in Section 1, above, negotiable notes of the Borough in a principal amount not exceeding **ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00)** are hereby authorized to be issued pursuant to the limitations prescribed by the Local Bond Law. All such note(s) shall mature at such time as may be determined by the Chief Financial Officer or such other Financial Officer designated by Resolution for these purposes (both being hereinafter referred to in this Section as Chief Financial Officer); provided that no note shall mature later than one (1) year from its issue date. Such note(s) shall bear interest at a rate or rates and shall be in such form as may be determined by the Chief Financial Officer. The Chief Financial Officer shall determine all matters in connection with any note(s) issued pursuant to this Bond Ordinance, and the signature of the Chief Financial Officer upon such note(s) shall be conclusive evidence as to all such determinations. The Chief Financial Officer is hereby authorized to sell the note(s) from time to time at public or private sale in such amounts as the Chief Financial Officer may determine and not less than par, and to deliver the same from time to time to the purchasers thereof upon receipt of the purchase price plus accrued interest from their dates to the date of delivery thereof as payment thereof. Such Chief Financial Officer is authorized and directed to report in writing to the Mayor and Council at the meeting next succeeding the date when any sale or delivery of the note(s) pursuant to this Bond Ordinance is made. Such report shall include the

amount, the description, the interest rate, the maturity schedule of the note(s) sold, price obtained and the name of the purchaser. All note(s) issued hereunder may be renewed from time to time for periods not exceeding one (1) year for the time period specified in and in accordance with the provisions and limitations of N.J.S.A. 40A:2-8(a) of the Local Bond Law. The Chief Financial Officer is further directed to determine all matters in connection with said note or notes and not determined by this Bond Ordinance. The Chief Financial Officer's signature upon said note(s) shall be conclusive evidence of such determination.

Section 5. Additional Matters

The following additional matters are hereby determined, declared and recited and stated:

- (a) The said purposes described in Section 1 of this Bond Ordinance are not current expenses and are properties or improvements which the s may lawfully undertake as a self-liquidating purpose of a municipal public utility. No part of the cost thereof has been or shall be specifically assessed on property specifically benefited thereby.
- (b) The average period of usefulness of said purposes authorized herein, taking into consideration the respective amounts of said obligations authorized for such purposes, computed in accordance with N.J.S.A. 40A:2-22 is forty (40) years.
- (c) The supplemental debt statement required by the Local Bond Law has been duly prepared and filed in the office of the Borough Clerk and a complete duplicate thereof has been electronically filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey, and such statement shows that the gross debt of the Borough as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided for in this Bond Ordinance by **ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00)**, and that the net debt of the Borough determined as provided in the Local Bond Law is not increased by this Bond Ordinance. The said obligations authorized by this Bond Ordinance will be within the debt limitations prescribed by the Local Bond Law.
- (d) Amounts not exceeding **THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00)** in the aggregate for interest on said bonds, costs of issuing said bonds, engineering and inspection costs, legal expenses, a reasonable proportion of the compensation and expenses of employees of the Borough in connection with the improvements as authorized herein, and other items of expense listed in and permitted under N.J.S.A. 40A:2-20 of the Local Bond Law have been included as part of the costs of said improvement and are included in the foregoing estimate thereof.

Section 6. Maturity of Bonds

The bonds shall mature at such time or times not exceeding forty (40) years from the date thereof or as may be approved by the Local Finance Board of the Division of Local Government Services of the Department of Community Affairs of the State of New Jersey ("**Local Finance Board**") pursuant to N.J.S.A. 58:11B-9(a) and 40A:2-26 of the Local Bond Law, as may be applicable. All other terms of the notes and bonds, including, without limitation, the dates thereof, the rate or rates of interest to be paid thereon, the provisions for redemption prior to maturity thereof, and the place or places for payment thereof, shall be as determined by subsequent resolution or resolutions of the Borough Council as permitted by N.J.S.A. 40A:2-16 of the Local Bond Law.

Section 7. Authorization to Contract

The Borough is hereby authorized and directed to enter into any and all contracts or agreements necessary, desirable or convenient to effectuate the financing program with the I-Bank authorized by this Bond Ordinance.

Section 8. Execution of Documents

The Mayor, Chief Financial Officer and the Borough Clerk are hereby jointly and severally authorized and directed to take all actions and execute all documents and instruments necessary or appropriate to carry out the purposes of this Bond Ordinance, including, without limitation, the furnishing of such documentation and information as may be required by the Director of the Local Finance Board. All prior actions taken by such officials in connection with the financing program authorized by this Bond Ordinance are hereby ratified and confirmed.

Section 9. Covenants

The Borough hereby covenants to take any action necessary or refrain from taking such action in order to preserve the tax-exempt status of the bonds and notes authorized hereunder as is or may be required under the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the “Code”), including compliance with the Code with regard to the use, expenditure, investment, timely reporting and rebate of investment earnings as may be required thereunder.

Section 10. Ratification of Prior Actions

Any action taken by any officials of the Borough in connection with the improvements described in Section 1 hereof are hereby ratified and confirmed notwithstanding that such actions may have been taken prior to the effective date of this Bond Ordinance and shall be deemed to have been taken pursuant to this Bond Ordinance.

Section 11. Application of Grants

Any grant moneys received for the purposes described in Section 1 hereof shall be applied either to direct payment of the cost of the improvements or to payment of the obligations issued pursuant to this Bond Ordinance. The amount of obligations authorized but not issued hereunder shall be reduced to the extent that such funds are so used.

Section 12. Full Faith and Credit

The full faith and credit of the Borough are hereby pledged to punctual payment of the principal and interest on the said obligations authorized by this Bond Ordinance. Said obligations shall be direct, unlimited obligations of the Borough, and the Borough shall be obligated to levy *ad valorem* taxes upon all of the taxable property within the Borough for the payment of said obligations and interest thereon without limitation of rate or amount.

Section 13. Official Intent to Reimburse Expenditures

The Borough reasonably expects to reimburse any expenditures towards the cost of the improvements or purposes described in Section 1 of this Bond Ordinance and paid prior to the issuance of any bonds or notes authorized by this Bond Ordinance with the proceeds of such bonds or notes. No funds from sources other than the bonds or notes authorized herein has been or is reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside by the Borough, or any member of the same “control group” as the Borough, within the meaning of Treasury Regulations Section 1.150-1(f), pursuant to their budget or financial policies with respect to any expenditures to be reimbursed. This Section is intended to be and hereby is a declaration of the Borough’s official intent to reimburse any expenditures towards the costs of the improvements or purposes described in Section 1 hereof to be incurred and paid prior to the issuance of bonds or notes authorized herein in accordance with Treasury Regulations Section 1.103-18, and no action (or inaction) will be an artifice or device in accordance with Treasury Regulation Section yield restrictions or arbitrage rebate requirements.

Section 14. Effective Date

This Bond Ordinance shall take effect twenty (20) days after the first publication hereof after final passage, as provided by the Local Bond Law.

Section 15. Capital Budget

The capital or temporary capital budget of the Borough is hereby amended to conform with the provisions of this Bond Ordinance to the extent of any inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with the adopted capital or temporary capital budget, a revised capital or temporary budget has been filed with the Division of Local Government Services.

The foregoing Ordinance was Duly Adopted by the Mayor and Council at their Regular Meeting conducted on December 12, 2023 in the Borough.

Sean Asay
Borough Clerk