

**ORDINANCE 2017-06**

**AN ORDINANCE OF THE TOWNSHIP OF HILLSBOROUGH, 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 (TOWNSHIP OF HILLSBOROUGH 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 therein, within the County of Somerset, New Jersey, including financing for the acquisition of same; and

**WHEREAS**, the Township of Hillsborough, New Jersey (the “Township”) desires to acquire approximately 335 +/- acres of land located on certain premises designated as Block 177, Lot 23.02, Block 175, Lot 39.04 and Block 12, Lot 13 as shown on the Tax Maps of the Township and to do any necessary environmental remediation on such property (collectively, the “Project”) for municipal purposes, which acquisition is expected to occur within the next 6 months; and

**WHEREAS**, the Township has requested the Authority’s assistance in financing the Project as described herein; and

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

**WHEREAS**, the Authority has agreed to finance the Project on behalf of the Township through the issuance of bonds, and any notes issued in anticipation thereof, and shall, in connection therewith, acquire the Project and simultaneously lease the Project to the Township pursuant to a lease purchase agreement; and

**WHEREAS**, in order to finance the Project the Authority will issue bonds, and possibly notes issued in anticipation thereof, in one or more series, including renewals, in an aggregate principal amount not to exceed \$20,000,000, to be designated as “County Guaranteed Lease Revenue Bonds, Series 20\_\_ (Township of Hillsborough Project)” (collectively, 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 (Township of Hillsborough 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, finance the Project, and simultaneously therewith, enter into a lease purchase agreement with the Township to be dated as of the first day of the month of issuance of the initial series of Bonds (together with any amendments thereof or supplements thereto in accordance with its terms, the “Lease Purchase Agreement”), pursuant to which the Authority will lease the Project to the Township for its use (the transactions contemplated hereinabove shall be referred to as the “Financing”); 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 Purchase Agreement, with the Township for the lease to or use by the Township of all or any part of any public facility, including the acquisition of land, on any terms and conditions which may be agreed upon by the Township and the Authority; and

**WHEREAS**, the Bonds shall be secured by valid and binding general obligation lease payments of the Township under the Lease Purchase 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**, in order to further secure the interests of the holders of the Bonds, the County will fully, unconditionally and irrevocably guarantee the payment of the principal of and interest on the Bonds in an aggregate principal amount not to exceed \$20,000,000 in accordance with the terms of a guaranty ordinance of the County to be finally adopted by the Board of Chosen Freeholders (the “County Guaranty”) as evidenced by a guaranty agreement 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; 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 initial series of Bonds, the Authority will have made a detailed report to the Board of Chosen Freeholders, which report will include, without limitation, the General Bond Resolution, the Bonds and the Lease Purchase 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 TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HILLSBOROUGH, IN THE COUNTY OF SOMERSET, NEW JERSEY, AS FOLLOWS:**

**Section 1.** The Project, as further described in the Lease Purchase Agreement (a form of which is on file in the office of the Municipal Clerk), is hereby approved and the Mayor, Administrator and the Chief Financial Officer of the Township (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 Township of the Lease Purchase Agreement for the Project, and to execute or acknowledge and deliver such Lease Purchase Agreement in substantially the form on file in the office of the Clerk of the Township, with such changes thereto as such Authorized Officer, after consultation with counsel to the Township, bond counsel to the Township and other professional advisors to the County and the Authority (together, the “Consultants”), deems in his or her discretion to be necessary, desirable or convenient for the execution thereof and to consummate the transactions contemplated hereby, which execution thereof shall conclusively evidence such Authorized Officer’s approval of any changes to the form thereof, including without limitation the amendment of debt service/lease payment schedules in the Lease Purchase 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 Purchase 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. In addition, any Authorized Officer are each hereby severally authorized and directed to execute and acknowledge or deliver such other agreements, certificates or documents that may be necessary or useful and convenient in connection with the execution of the Lease Purchase Agreement and the issuance, from time to time, of the Bonds to be so executed or acknowledged by the Township (collectively, the “Project Documents”) in such form as such Authorized Officer, after consultation with the Consultants, deems in his or her discretion to be necessary, desirable or convenient for the execution thereof and to consummate the transactions contemplated hereby, which execution thereof shall conclusively evidence such Authorized Officer’s approval thereof.

**Section 2.** The Clerk of the Township 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 Township to such documents.

**Section 3.** 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.

**Section 4.** The Township hereby authorizes the preparation and the distribution of financial statements and demographic and other information concerning the Township, the Project, the General Bond Resolution, the Bonds, the Lease Purchase 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 Township Committee 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 economical cost to the Township.

**Section 5.** 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 Purchase 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 Purchase Agreement (to the extent permitted thereby).

**Section 6.** 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 Township 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 Township fails to comply with its undertakings, the Township shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

**Section 7.** The full faith and credit of the Township are hereby pledged to the punctual payment of all payments due under the Lease Purchase Agreement. The obligation to make such payments shall be a general obligation of the Township, and the Township shall be obligated to levy *ad valorem* taxes upon all the taxable real property within the Township for the payments due under the Lease Agreement without limitation of rate or amount.

**Section 8.** To the extent applicable, the Township 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 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.

**Section 9.** 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.

**Section 10.** This ordinance shall take effect in accordance with applicable law; provided, that this ordinance shall not take effect before the Local Finance Board shall have issued its findings in respect of the Financing.

**ATTEST:**

**TOWNSHIP OF HILLSBOROUGH**

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Pamela Borek, Clerk

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Carl Suraci, Mayor

*Introduced: July 13, 2017*  
*Published: July 23, 2017*  
*Public Hearing: July 11, 2017*  
*Adopted: July 11, 2017*  
*Published: July 21, 2017*