



# BOROUGH OF RIVERDALE NEW JERSEY



## ORDINANCE NO. 9-2017

### ORDINANCE AUTHORIZING THE EXECUTION OR ACKNOWLEDGMENT AND DELIVERY OF CERTAIN AGREEMENTS IN CONNECTION WITH THE MORRIS COUNTY IMPROVEMENT AUTHORITY'S 2016 COUNTY GUARANTEED LEASING PROGRAM

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**WHEREAS**, The Morris County Improvement Authority (including any successors and assigns, the "Authority") has been duly created by resolution no. 42 entitled "Resolution of the Board of Chosen Freeholders of Morris County, New Jersey creating the Morris County Improvement Authority" duly adopted by the Board of Chosen Freeholders (the "Board of Freeholders") of the County of Morris (the "County") in the State of New Jersey (the "State") on April 10, 2002 as a public body corporate and politic of 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, and the acts amendatory thereof and supplemental thereto (the "Act") and other applicable law;

**WHEREAS**, the Authority is authorized by the Act, including without limitation Section 11 thereof (N.J.S.A. 40:37A-54(a)), to purchase, lease or otherwise acquire public facilities, including capital equipment (the "Equipment") for the benefit of certain local governmental units located within the County, including (i) the County, (ii) municipalities within the County (collectively, the "Municipal Local Units"), (iii) school districts that provide service to one or more Municipal Local Units (the "School District Local Units") and (iv) other local governmental units that provide service to one or more Municipal Local Units, including County, municipal or regional authorities (the "Other Local Units" and together with the County, the Municipal Local Units and the School District Local Units, the "Local Units");

**WHEREAS**, the Authority created a county guaranteed leasing program (the "County Guaranteed Leasing Program", the "Program" or "CGLP") whereby a Local Unit can submit a request (the "Application") to the Authority to borrow funds from or on behalf of the Authority under the Authority's CGLP to finance or refinance the lease purchase of certain capital equipment and, if applicable, other personal property (the "Equipment;" the financing of the Equipment under the CGLP may be referred to herein as the "Project"), pursuant to which Program the Authority can provide a low cost, efficient means for financing Projects of the Local Unit;

**WHEREAS**, pursuant to the Act, specifically Section 34 thereof (N.J.S.A. 40:37A-77), a private lessor, including without limitation a leasing finance company procured through a competitive process (the "Finance Company"), may sell, lease, lend, grant or convey to the Authority or permit the Authority or its Local Unit lessees to use, maintain or operate any real or personal property, including without limitation the Equipment;

**WHEREAS**, pursuant to the Act, including without limitation Section 35 thereof (N.J.S.A. 40:37A-78), the Authority is authorized, without public bidding, to enter into and perform any lease, sublease or other agreement with, among others, a Local Unit, for the lease to or use by the Local Unit 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(l)), including without limitation the Equipment;

**WHEREAS**, the Authority created the CGLP to provide low cost, timely and turnkey lease purchase financing to Local Units desiring to lease finance or refinance their Equipment needs;

**WHEREAS**, under the CGLP, from time to time, as Local Units express the desire to enter into the Program and take the required authorization actions (the "Local Unit Official Action") therefore, the Lessor provides funds, at tax-exempt rates to the Local Units against purchase orders or other evidence of such Local Units' Equipment needs within the hereinafter defined Overall Maximum Program Amount, whereupon the Equipment will be owned by the Finance Company, leased to the Authority under the Master Lease (defined below), and subleased by the Authority, as lessor, to the Local Unit, as lessee, which Local Unit will have the right to quiet use of and be obligated to maintain, the Equipment, all under a sublease purchase agreement (the



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“Sublease”) to be entered into by the Authority and each such Local Unit in accordance with all applicable law, including without limitation Section 35 of the Act (N.J.S.A. 40:37A-78);

**WHEREAS**, upon expiration of the Sublease, the Equipment will be sold by the Finance Company through the Authority to the Local Unit for nominal consideration, which Local Unit will thereafter possess clear title to the Equipment;

**WHEREAS**, under the Master Lease and the Sublease, (i) the County and the Municipal Local Units make general obligation Sublease payments directly to the Finance Company, as assignee under the Master Lease of such payments otherwise due the Authority under the Sublease, and (ii) the School District Local Units and the Other Local Units make contractually obligated, subject to appropriation, Sublease payments directly to the Finance Company, as assignee under the Master Lease of such payments otherwise due the Authority under the Sublease;

**WHEREAS**, under the CGLP and applicable law, including without limitation Section 34 of the Act (N.J.S.A. 40:37A-77), the Authority, as lessee, entered into a master lease purchase agreement (the “Original Master Lease”) with the Finance Company for the lease of Equipment to be determined in accordance with each Sublease (as hereinafter defined) entered into with Local Units under the Program, in an original maximum Program amount (until increased or renewed by the Authority, the County and the Local Finance Board, the “Original Maximum Program Amount”) in an amount not to exceed \$10,000,000;

**WHEREAS**, the Authority issued to the Finance Company a performance bond (the “Original Bond”) in a principal amount up to the Original Maximum Program Amount, which Original Bond was issued directly to the Finance Company as sole Bondholder, and which Bond will be payable to the Finance Company only upon a deficiency in Sublease payments due and owing by the respective Local Units, in which case the County will have fully, unconditionally and irrevocably guaranteed the payment of the principal of the Original Bond up to the Original Maximum Program Amount, plus interest thereon, through (i) the final adoption of a guaranty ordinance by the Board of Freeholders, (ii) the execution by an authorized officer of the County of a guaranty certificate on the face of each bond and (iii) as may be required by any rating agency, Finance Company or other entity giving approval to the CGLP, an agreement setting forth the County’s obligation to make any such guaranty payments in accordance with and within the parameters set forth in the guaranty ordinance, all in accordance with all applicable law, including Section 37 of the Act (N.J.S.A. 40:37A-80), (collectively, the “Original County Guaranty”);

**WHEREAS**, the Original Bond was authorized by the Act, all other applicable law, and a bond resolution (the “Original Bond Resolution”) of the Authority adopted pursuant to N.J.S.A. 40:37A-60 and -62 of the Act;

**WHEREAS**, on June 14, 2006 the Authority obtained the approval of the Local Finance Board for (i) the extension of the Program until July 31, 2007 and (ii) an additional \$10,000,000 authorization thereby increasing the Original Maximum Program Amount (until further increased or renewed by the Authority, the County and the Local Finance Board, the “2006 Increased Program Amount”) in an amount not to exceed \$20,000,000;

**WHEREAS**, the Authority, entered into an amendment No. 1 to Master Lease (the “Amendment No. 1 to Master Lease”) with the Finance Company for the lease of Equipment to be determined in accordance with each Sublease entered into with Local Units under the Program, in the 2006 Increased Program Amount in an amount not to exceed \$20,000,000;

**WHEREAS**, the Authority issued to the Finance Company a performance bond (the “2006 Amended Bond”) in a principal amount up to the 2006 Increased Program Amount, which 2006 Amended Bond was issued directly to the Finance Company as sole Bondholder, and which 2006 Amended Bond was payable to the Finance Company only upon a deficiency in Sublease payments due and owing by the respective Local Units, in which case the County will have fully, unconditionally and irrevocably guaranteed the payment of the principal of the Revised Bond up



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to the 2006 Increased Program Amount, plus interest thereon, through (i) the final adoption of an amendment to the original guaranty ordinance by the Board of Freeholders, and (ii) the execution by an authorized officer of the County of a guaranty certificate on the face of the Amended Bond, all in accordance with all applicable law, including Section 37 of the Act (N.J.S.A. 40:37A-80), (collectively, the "2006 Amended County Guaranty");

**WHEREAS**, the 2006 Amended Bond was authorized by the Act, all other applicable law, and a supplemental bond resolution amended and supplementing the terms of the Original Bond Resolution (the "2006 Supplemental Bond Resolution") of the Authority adopted pursuant to N.J.S.A. 40:37A-60 and -62 of the Act;

**WHEREAS**, on June 13, 2007 the Authority obtained the approval of the Local Finance Board for (i) the extension of the Program until July 31, 2008 and (ii) an additional \$10,000,000 authorization thereby increasing the Original Maximum Program Amount (until further increased or renewed by the Authority, the County and the Local Finance Board, the "Overall Maximum Program Amount") in an amount not to exceed \$30,000,000;

**WHEREAS**, the Authority, entered into an amendment No. 2 to Master Lease (the "Amendment No. 2 to Master Lease") with the Finance Company for the lease of Equipment to be determined in accordance with each Sublease entered into with Local Units under the Program, in the Overall Maximum Program Amount in an amount not to exceed \$30,000,000;

**WHEREAS**, the Authority issued to the Finance Company a performance bond (the "2007 Amended Bond") in a principal amount up to the Overall Maximum Program Amount, which 2007 Amended Bond was issued directly to the Finance Company as sole Bondholder, and which 2007 Amended Bond was payable to the Finance Company only upon a deficiency in Sublease payments due and owing by the respective Local Units, in which case the County will have fully, unconditionally and irrevocably guaranteed the payment of the principal of the Revised Bond up to the Overall Maximum Program Amount, plus interest thereon, through (i) the final adoption of an amendment to the original guaranty ordinance by the Board of Freeholders and (ii) the execution by an authorized officer of the County of a guaranty certificate on the face of the Amended Bond, all in accordance with all applicable law, including Section 37 of the Act (N.J.S.A. 40:37A-80), (collectively, the "2007 Amended County Guaranty");

**WHEREAS**, the 2007 Amended Bond was authorized by the Act, all other applicable law, and a supplemental bond resolution amended and supplementing the terms of the Original Bond Resolution (the "2007 Supplemental Bond Resolution") of the Authority adopted pursuant to N.J.S.A. 40:37A-60 and -62 of the Act;

**WHEREAS**, the Program has been successful in lending the proceeds of a portion of the Overall Maximum Program Amount to Local Units;

**WHEREAS**, the Authority made an application to the Local Finance Board for the extension of the Program until July 31, 2009 (the "2008 Program Extension");

**WHEREAS**, the Local Finance Board, at a meeting held on June 9, 2008 did issue favorable Findings with respect to the 2008 Program Extension;

**WHEREAS**, the Authority made an application to the Local Finance Board for the extension of the Program until July 31, 2010 (the "2009 Program Extension");

**WHEREAS**, the Local Finance Board, at a meeting held on August 12, 2009 did issue favorable Findings with respect to the 2009 Program Extension;

**WHEREAS**, the Authority made an application to the Local Finance Board for the extension of the Program until July 31, 2011 (the "2010 Program Extension");



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**WHEREAS**, the Local Finance Board, at a meeting held on June 9, 2010 did issue favorable Findings with respect to the 2010 Program Extension;

**WHEREAS**, the Authority made an application to the Local Finance Board for the extension of the Program until July 31, 2012 (the "2011 Program Extension");

**WHEREAS**, the Local Finance Board, at a meeting held on May 11, 2011 did issue favorable Findings with respect to the 2011 Program Extension;

**WHEREAS**, the Authority made an application to the Local Finance Board for the extension of the Program until July 31, 2013 (the "2012 Program Extension");

**WHEREAS**, the Local Finance Board, at a meeting held on July 11, 2012 did issue favorable Findings with respect to the 2012 Program Extension;

**WHEREAS**, the Authority made an application to the Local Finance Board for the extension of the Program until July 31, 2014 (the "2013 Program Extension");

**WHEREAS**, the Local Finance Board, at a meeting held on May 8, 2013 did issue favorable Findings with respect to the 2013 Program Extension;

**WHEREAS**, the Authority made an application to the Local Finance Board for the extension of the Program until July 31, 2015 (the "2014 Program Extension");

**WHEREAS**, the Local Finance Board, at a meeting held on May 16, 2014 did issue favorable Findings with respect to the 2014 Program Extension;

**WHEREAS**, the Authority made an application to the Local Finance Board for the extension of the Program until July 31, 2016 (the "2015 Program Extension");

**WHEREAS**, the Local Finance Board, at a meeting held on June 10, 2015 did issue favorable Findings with respect to the 2015 Program Extension;

**WHEREAS**, the Authority made an application to the Local Finance Board for the extension of the Program until July 31, 2017 (the "2016 Program Extension");

**WHEREAS**, the Local Finance Board, at a meeting held on April 13, 2016 did issue favorable Findings with respect to the 2016 Program Extension;

**WHEREAS**, the Borough of Riverdale, in the County of Morris, New Jersey (the "*Participant*"), has submitted a request to finance the Equipment set forth on **Exhibit A** attached hereto; and

**WHEREAS**, in order to participate in the Program, the Participant shall enter into a Sublease in substantially the form attached hereto as **Exhibit B**.

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

• **Section 1.** The Participant's Project and the financing of the Participant's Project through the Financing Documents are hereby approved.

• **Section 2.** The Mayor, the Clerk and the Chief Financial Officer of the Participant (collectively, the "*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 Participant of the Sublease and the other Financing Documents to be so executed or acknowledged by the Participant, to execute or acknowledge and deliver such documents in substantially the form attached hereto as **Exhibit B**, with such changes thereto as the Authorized Officer, and solely within the discretion of any Authorized Officer, after consultation with counsel and any other professional advisors to the Participant and the Authority (the "*Consultants*" it being



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expressly understood by the Participant that the use of Consultants by the Participant is at the option of the Participant, and is not required by the Authority), deems in his sole discretion to be necessary, desirable or convenient for the execution thereof and to consummate the transactions contemplated hereby, which execution thereof shall conclusively evidence the Authorized Officer's approval of any changes to the forms thereof, including, without limitation, the insertion of the final financing terms in the Sublease that will result from the negotiation with the Authority as approved by the Consultants, so long as such final financing terms are within the parameters of those listed in the Application and the Findings.

• **Section 3.** Each of the Clerk and the Chief Financial Officer of the Participant is hereby authorized and directed, upon the execution or acknowledgment of the documents set forth in Section 2 hereof in accordance with the terms of Section 2 hereof, to attest to the Authorized Officer's execution or acknowledgment of such documents, and each is hereby further authorized and directed, when required by the Authority, to thereupon affix the seal of the Participant to such documents.

• **Section 4.** 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 2 and 3 hereof, the Authorized Officer is hereby authorized and directed to (i) deliver such fully executed or acknowledged, attested and sealed Financing 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 or in order to effect the transaction contemplated thereby.

• **Section 5.** The governing body of the Participant hereby (i) ratifies all actions taken by any Authorized Officer of the Participant, (ii) authorizes the performance of any act and the execution or acknowledgment and delivery of any other document, instrument or closing certificates that the Authorized Officer, after consultation with the Consultants, deems necessary, desirable or convenient in connection with this contemplated transaction, and (iii) hereby directs the Authorized Officer to execute or acknowledge, 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.

• **Section 6.** This ordinance shall constitute an appropriation for the purposes of N.J.S.A. 40A:4-57 and all other applicable law.

• **Section 7.** This ordinance shall take effect at the time and in the manner prescribed by law.

• **Section 8.** Upon the adoption hereof, the Clerk of the Participant shall forward certified copies of this ordinance to the Authorized Officer, John Bonanni, Chairman of the Authority, and Matthew D. Jessup, Esq., McManimon, Scotland & Baumann, LLC, bond counsel to the Authority.

Adopted this \_\_\_ day of  
\_\_\_\_\_, 2017

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Abubakar Jalloh, Borough Clerk

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Paul M. Carelli, Mayor

## NOTICE OF PENDING ORDINANCE

The ordinance published herewith was introduced and passed upon first reading at a meeting of the governing body of the Borough of Riverdale, a municipal corporation of the State of New Jersey, held on June 14, 2017. It will be further considered for final passage, after public hearing thereon, at a meeting of the governing body to be held at Borough Hall, in the Borough on July 12, 2017 at 7:30 o'clock p.m., and during the week prior to and up to and including the date of such meeting, copies of said ordinance will be made available at the Clerk's office to the members of the general public who shall request the same.

Abubakar Jalloh, Borough Clerk