

Ordinance 69-2007

ORDINANCE OF THE BOROUGH OF MADISON, IN THE COUNTY OF MORRIS, NEW JERSEY AUTHORIZING THE EXECUTION OR ACKNOWLEDGMENT AND DELIVERY OF CERTAIN AGREEMENTS IN CONNECTION WITH THE MORRIS COUNTY IMPROVEMENT AUTHORITY'S LEASE REVENUE BONDS, SERIES 2007B.

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 law, to purchase, lease or otherwise acquire public facilities for the benefit of certain local governmental units located within and including the County, including without limitation, the Borough of Lincoln Park ("Lincoln Park") and the Borough of Madison ("Madison" and together with Lincoln Park, the "Lease Local Units"); the Lease Local Units and the County shall be collectively referred to as, the "Local Units");

WHEREAS, pursuant to the Act, including Section 34 thereof (N.J.S.A. 40:37A-77), the Authority shall obtain a leasehold interest in and to the hereinafter defined Lease Local Unit Projects (including existing improvements, the "Ground Leased Property") pursuant to the terms of that certain Ground Lease to be dated as of the first date of the month of issuance of the Series 2007 Bonds (the "Ground Lease") between the respective Lease Local Units, as lessor and the Authority, as lessee;

WHEREAS, the County has requested the Authority's assistance in financing (i) various bridge improvements, (ii) various road improvements and (iii) the acquisition of equipment all as more fully set forth on Exhibit A (the "County Project") to a resolution authorizing the issuance of a general obligation bond (the "County General Obligation Bond") to the Authority pursuant to N.J.S.A. 40A:2-27(a)(2) (the "County Bond Resolution");

WHEREAS, (A) Lincoln Park has requested the Authority's assistance in (i) refinancing bond anticipation notes originally issued for the purpose of financing the construction and renovation of borough buildings and (ii) raising additional funds for the continued construction and renovation of borough buildings (collectively, the "Lincoln Park Project") and (B) the Borough of Madison has requested the Authority's assistance in financing the acquisition of land for open space (the "Madison Project" and together with the Lincoln Park Project, the "Lease Local Unit Projects") as set forth on Exhibit A to the respective Property and Infrastructure Lease Agreements, to be entered into between the Authority and each Lease Local Unit in connection herewith (the "Project Lease Agreement");

WHEREAS, the Authority intends to finance the Lease Local Unit Projects through the issuance of the Authority's "Property and Equipment Leasing Program Local Unit Lease Revenue Bonds, Series 2007" with such further series designation to represent one bond for each Lease Local Unit and collectively in the aggregate principal amount to not to exceed \$28,500,000 (the "Series 2007 Lease Local Unit Bonds" and together with the County General Obligation Bond, the "Series 2007 Local Unit Bonds");

WHEREAS, the Series 2007 Lease Local Unit Bonds will be issued pursuant to the terms of the Authority's bond resolution entitled "RESOLUTION AUTHORIZING THE ISSUANCE OF PROPERTY AND EQUIPMENT LEASING PROGRAM LOCAL UNIT LEASE REVENUE BONDS, SERIES 2007 OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY" (the "Lease Local Unit Bond Resolution"), the Act and other applicable law;

WHEREAS, the Series 2007 Lease Local Unit Bonds shall be issued in one series for each participating Lease Local Unit;

WHEREAS, each Lease Local Unit will have finally adopted an ordinance guarantying the principal of and interest on the respective series of Series 2007 Lease Local Unit Bonds applicable to such Lease Local Unit, all pursuant to N.J.S.A. 40:37A-80 of the Act (collectively, the "Local Unit Guaranties"), prior to the respective issuance of such series of Series 2007 Lease Local Unit Bonds;

WHEREAS, pursuant to the terms of the Project Lease Agreements, the Authority contemplates leasing the applicable Lease Local Unit Projects to the Lease Local Units for the respective terms set forth therein;

WHEREAS, the principal of, and interest on the applicable series of Series 2007 Lease Local Unit Bonds shall be paid from certain rental payments made by the Lease Local Units in accordance with the terms of the Project Lease Agreements and as otherwise set forth in the Lease Local Unit Bond Resolution and, with respect to the Series 2007 Lease Local Unit Bonds shall be otherwise secured by the Local Unit Guaranties;

WHEREAS, the Authority shall deposit the proceeds of the Series 2007 Lease Local Unit Bonds issued under the Lease Local Unit Bond Resolution with a trustee to be designated under the Lease Local Unit Bond Resolution (the "Trustee") to pay the cost of: (i) the acquisition, construction, renovation or installation of the Lease Local Unit Projects; (ii) certain accrued interest to the extent set forth in the Lease Local Unit Bond Resolution; (iii) certain costs of issuance to be identified in the Lease Local Unit Bond Resolution; (iv) capitalized interest on the Series 2007 Lease Local Unit Bonds, if any and (v) such other items as shall be set forth in the Lease Local Unit Bond Resolution;

WHEREAS, the Series 2007 Local Unit Bonds will be purchased with the proceeds from the Authority's "Property and Equipment Leasing Program County Guaranteed Pooled Revenue Bonds, Series 2007" in an aggregate amount not to exceed \$34,500,000 (the "Series 2007 Pooled Bonds") to be issued under the Authority bond resolution entitled "RESOLUTION AUTHORIZING THE ISSUANCE OF PROPERTY AND EQUIPMENT LEASING PROGRAM COUNTY GUARANTEED POOLED REVENUE BONDS, SERIES 2007 OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY" (the "Pooled Bond Resolution");

WHEREAS, the issuance of the Series 2007 Pooled Bonds for the purpose of acquiring the Series 2007 Local Unit Bonds to finance the Local Unit Projects shall collectively be referred to as the "Series 2007 Project");

WHEREAS, the principal of, redemption premium, if any, and interest on the Series 2007 Pooled Bonds shall be secured by the pledge of the Trust Estate as defined in the Pooled Bond Resolution by the Authority to the Trustee named therein, which Trust Estate shall include, among other things, the Project Lease Agreements and the principal of, redemption premium, if any, and interest on the Series 2007 Local Unit Bonds, the payment on which shall be made by the Local Units in accordance with the Local Bond Law or other law as applicable, and which in the case of Local Units shall be made from the levy of *ad valorem* taxes upon all the taxable property within the jurisdiction of such Local Units, without limitation as to rate or amount, and which Series 2007 Local Unit Bonds shall be assigned by the Authority to the Trustee as further

security for the payment of the Series 2007 Pooled Bonds in accordance with the terms of the Pooled Bond Resolution and the Project Lease Agreements;

WHEREAS, payment of the principal of (including mandatory sinking fund installments, if any) and interest on the Series 2007 Pooled Bonds shall be fully, unconditionally and irrevocably guaranteed in an amount not to exceed \$34,500,000 in accordance with (i) the terms of a guaranty ordinance of the County to be finally adopted by the Board of Freeholders, (ii) by a guaranty certificate to be executed by an authorized officer of the County on the face of each Series 2007 Pooled Bond and (iii) as may be required by any rating agency, underwriter, Series 2007 Pooled Bond purchaser or other entity that will allow the Authority to sell the Series 2007 Pooled Bonds at the lowest possible cost to the Local Units, an agreement setting forth the County's obligation to make any such guaranty payments in accordance with and within the parameters set forth in this ordinance (collectively, the "County Guaranty"), all pursuant to Section 37 ("Section 37") of the Act (N.J.S.A. 40:37A-80) and other applicable law, which payments shall also be included as part of the Trust Estate applicable to the Series 2007 Pooled Bonds pledged by the Authority to the Trustee under the Pooled Bond Resolution;

WHEREAS, in accordance with the terms of the Pooled Bond Resolution, the County Guaranty and the Project Lease Agreements, the Trustee shall not notify the County of the possible need for payments from the County under the County Guaranty to pay all of a portion of the principal of and interest on the Series 2007 Pooled Bonds when due until the respective payment dates for the Local Units under their Series 2007 Local Unit Bonds and Project Lease Agreements shall have passed and the Local Units shall have failed to make their required payments thereunder in full;

WHEREAS, those Local Units constituting "materially obligated persons" within the meaning and for the purposes set forth in Rule 15c2-12 ("Rule 15c-12") promulgated by the Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1934, as amended, will be required to enter into those certain "Local Unit Continuing Disclosure Agreements" to be dated as of the first day of the month of issuance of the Series 2007 Local Unit Bonds (as the same may be amended and supplemented from time to time in accordance with their respective terms, the "Local Unit Continuing Disclosure Agreements") with the Authority and the Trustee, as dissemination agent (the "Dissemination Agent") in order to satisfy the secondary market disclosure requirements of Rule 15c2-12;

WHEREAS, pursuant to the terms of the Pooled Bond Resolution, as a "materially obligated person" within the meaning and for the purposes set forth in Rule 15c2-12, the County will be required to enter into that certain "County Continuing Disclosure Agreement" to be dated as of

the first day of the month of issuance of the Series 2007 Pooled Bonds (as the same may be amended and supplemented from time to time in accordance with its terms, the "County Continuing Disclosure Agreement") with the Dissemination Agent in order to satisfy the secondary market disclosure requirements of Rule 15c2-12;

WHEREAS, pursuant to the terms of the Pooled Bond Resolution, the Authority (i) shall not be considered a "materially obligated person" within the meaning and for the purposes set forth in Rule 15c2-12 and (ii) shall be required to provide certain material events notices in accordance with Rule 15c2-12, and accordingly, the Authority (a) may be required to enter into a separate continuing disclosure agreement, and (b) shall be required to provide such material events notices under the terms of the Local Unit Continuing Disclosure Agreements, all in order to satisfy the secondary market disclosure requirements of Rule 15c2-12 (the "Authority Continuing Disclosure Agreement" and together with the Local Unit Continuing Disclosure Agreements and the County Continuing Disclosure Agreement, the "Continuing Disclosure Agreements");

WHEREAS, in order to market and sell the Series 2007 Pooled Bonds, the Authority will have to (i) make an application (the "Local Finance Board Application") to, and seek, obtain, and officially recognize the findings from the Local Finance Board (the "Local Finance Board") in the Department of Local Government Services of the State Department of Community Affairs, all in accordance with N.J.S.A. 40A:5A-6, 7 and 8 of the Local Authorities Fiscal Control Law, which Local Finance Board Application, hearing and process shall to the extent permitted by applicable law, incorporate the requests for approval by the Local Finance Board of the issuance of the Series 2007 Local Unit Bonds and the Series 2007 Pooled Bonds, (ii) authorize the distribution of a preliminary official statement "deemed final" within the meaning and for the purposes of Rule 15c2-12 describing the terms of the Series 2007 Bonds, the Series 2007 Project and the other transactions contemplated hereby (the "Preliminary Official Statement"), (iii) enter into a bond purchase agreement with an underwriter to be selected by a fair and open process (the "Underwriter") by the Authority in accordance with its policy for the selection of underwriters as established by Authority resolution no. 02-10 adopted July 24, 2002 and entitled "RESOLUTION Adopting a Policy for the Selection of Underwriters and other Ancillary Service Providers in connection with the Sale of Securities" for the sale of all of the Series 2007 Pooled Bonds (the "Bond Purchase Agreement"), (iv) execute and deliver a final Official Statement incorporating the terms of the sale of the Series 2007 Pooled Bonds and certain other information into the Preliminary Official Statement (the "Official Statement"), (v) obtain the required resolutions and ordinances of the Local Units necessary in order to authorize the Local Unit Projects and the financing of the Local Unit Projects through the Series 2007 Project (the Local Unit Official Action"), (vi) cause the Local Units to make certain representations, warranties and covenants concerning the loans, the Series 2007 Local Unit Bonds and the transactions contemplated hereby prior to their respective execution and delivery of the Project Lease Agreements, but no later than the execution and delivery of the Bond Purchase Agreement (the "Local Unit Letter of Representations") and (vii) cause the Local Units to make certain

representations, warranties and covenants concerning the applicable Local Unit Projects and Series 2007 Local Unit Bonds, the use of the funds attributable to the Local Unit Projects and the transactions contemplated hereby prior to their respective execution and delivery of the Project Lease Agreements, but no later than the execution and delivery of the Bond Purchase Agreement, all in connection with preserving the exclusion of the interest of the Series 2007 Pooled Bonds from the gross income of the holders thereof for federal income tax purposes (the "Local Unit Tax Letter of Representations" and together with the Preliminary Official Statement, the Bond Purchase Agreement, the Official Statement and the Local Unit Letter of Representations, the "Sale Documents");

WHEREAS, the Authority shall have no obligation with respect to the Series 2007 Project other than the financing thereof; 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 Series 2007 Bonds, the Authority will have made a detailed report of the Series 2007 Project to the Board of Freeholders, which report will include, without limitation, descriptions of the Pooled Bond Resolution, the Lease Local Unit Bond Resolution, the Series 2007 Pooled Bonds, the Series 2007 Lease Local Unit Bonds, the master forms of the Project Lease Agreements, the master forms of the Continuing Disclosure Agreements, and if necessary, desirable or convenient as determined by the Authority and the County, such other applicable agreements that may include one or more of the Local Finance Board Application or any Sale Documents (collectively, the "Financing Documents").

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

Section 1. Madison's Project and the financing of Madison's Project through the Financing Documents are hereby approved.

Section 2. The Mayor of Madison (the "Authorized Officer") is hereby each authorized and directed, upon the satisfaction of all the legal conditions precedent to the execution or acknowledgment and delivery by Madison of the Project Lease Agreements and the other Financing Documents to be so executed or acknowledged by Madison, to execute or acknowledge and deliver such documents in substantially the forms attached hereto as Exhibit A, with such changes thereto as the Authorized Officer, after consultation with counsel, and any other professional advisors to Madison and the Authority (the "Consultants"), 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 Project Lease Agreements that will result from the negotiation with the Authority as approved by the Consultants, so long as such final financial terms are within the parameters of those listed in the Local Finance Board Application and related findings.

Section 3. The Borough Clerk of the governing body of Madison 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 is hereby further authorized and directed, when required by the Authority, to thereupon affix the seal of Madison 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.

Section 5. The governing body of Madison hereby authorizes the preparation and the distribution of financial statements and demographic and other information concerning Madison, Madison's Project, the Financing Documents and the transactions contemplated thereby as are otherwise necessary, convenient or desirable to cause the Authority and other parties to enter into the various Financing Documents. In furtherance of such authorization, the governing body of Madison hereby directs the Authorized Officer to take such action and execute such certificates, documents or instruments as the Authorized Officer, after consultation with the Consultants, deems in his sole discretion to be necessary, desirable or convenient in connection with the preparation and distribution of such documents to market the Series 2007 Bonds on the most efficient basis and at the most economical cost to Madison, including without limitation, the execution and delivery of certificates in such form as is required by the Authority, the Underwriter and the Consultants.

Section 6. The governing body of Madison hereby authorizes the performance of any act, the execution or acknowledgment and delivery of any other document, instrument or closing certificates, which the Authorized Officer or the Chief Financial Officer, after consultation with the Consultants, deems necessary, desirable or convenient in connection with this contemplated transaction, and the governing body of Madison hereby directs the Authorized Officer and the Chief Financial 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 7. This ordinance shall take effect at the time and in the manner prescribed by law.

Section 8. A public hearing shall be held on this ordinance on October 10, 2007 at 7:45 p.m. or as soon as practical thereafter in the 2nd Floor Council Chamber of the Hartley Dodge Memorial,

Kings Road, located in the Borough of Madison, at which time and place all interested individuals will have an opportunity to be heard.

Section 9. The Borough Clerk of the governing body of the Borough of Madison is hereby directed to publish and post notice of this ordinance as required by law.

Section 10. Upon the adoption hereof, the Borough Clerk of the Borough of Madison shall forward certified copies of this ordinance to the Authorized Officer, Ronald Kevitz, Esq., County Counsel, John Bonanni, Chairman of the Authority, and Stephen B. Pearlman, Esq., DeCotiis, FitzPatrick, Cole & Wisler, LLP, Bond Counsel to the Authority.

ADOPTED AND APPROVED

ELLWOOD R. KERKESLAGER, Mayor

Attest:

MARILYN SCHAEFER, Borough Clerk

Introduced and passed: September 24, 2007

Published, Madison Eagle: September 27, 2007

Hearing and consideration for final adoption: Wednesday, October 10, 2007

Published upon final adoption, Madison Eagle: October 18, 2007

Exhibit A

Attach Forms of Lease, Ground Lease and Continuing Disclosure Agreement

SCHEDULE A

Description of Equipment and/or Property

Block 1401, Lot 5, approximately 53 acres, located at 180 Park Avenue, Florham Park, New Jersey, vacant land to be purchased by the Borough of Madison to be used for open space purposes.