

County of Passaic

Board of County Commissioners



OFFICE OF COUNTY COMMISSIONERS

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Clerk Of The Board

Date: Feb 02, 2024 - 12:00 PM

Agenda: 2024-01

AMENDED AND RESTATED GUARANTY ORDINANCE OF THE COUNTY OF PASSAIC, NEW JERSEY, SECURING THE PASSAIC COUNTY IMPROVEMENT AUTHORITY'S COUNTY OF PASSAIC GUARANTEED REVENUE BONDS (VETERANS HOUSING PROJECT), SERIES 2024 IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$20,000,000

THIS ORDINANCE WAS REQUESTED BY:
CLERK TO THE COUNTY
COMMISSIONER BOARD

REVIEWED BY:

Matthew P. Jordan, Esq.

APPROVED AS TO FORM AND LEGALITY:

Nadege D. Allwaters, Esq.

Official Resolution#	
Meeting Date	2/2/2024
Introduced Date	1/19/2024
Adopted Date	
Agenda Item	2.
CAF#	
Purchase Req. #	
Result	

Board of County Commissioners Regular Meeting

COMMITTEE NAME

2024-01

AMENDED AND RESTATED GUARANTY ORDINANCE OF THE COUNTY OF PASSAIC, NEW JERSEY, SECURING THE PASSAIC COUNTY IMPROVEMENT AUTHORITY'S COUNTY OF PASSAIC GUARANTEED REVENUE BONDS (VETERANS HOUSING PROJECT), SERIES 2024 IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$20,000,000

WHEREAS, The Passaic County Improvement Authority (the “*Authority*”) has been duly created by resolution duly adopted by the Board of County Commissioners (the “*Board of County Commissioners*”) of the County of Passaic, New Jersey (the “*County*”) as a public body corporate and politic of the State of New Jersey (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 Passaic County Affordable Housing Corporation (the “*Corporation*”), a New Jersey not-for-profit corporation and a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “*Code*”), proposes to acquire certain real estate (the “*Project Site*”) located in the Borough of Pompton Lakes (the “*Borough*”), and to construct thereon a multifamily rental housing project (the “*Housing Project*”), comprising approximately 65 one-bedroom units, exclusively for use by low and moderate income senior citizen households with preference for veterans and Borough residents;

WHEREAS, the Project Site is expected to be acquired by the Corporation pursuant to a Purchase and Sale Agreement (the “*Purchase and Sale Agreement*”) to be entered into between the County, as seller, and the Corporation, as buyer, as authorized by a resolution adopted by the Board of County Commissioners on December 28, 2021;

WHEREAS, pursuant to the Purchase and Sale Agreement, the Corporation will agree to pay the purchase price for the Project Site in multiple installments over time (the “*Deferred Project Site Purchase Payments*”), as and when sufficient Project operating revenues are available for such payments;

WHEREAS, the Corporation expects to enter into a Housing Assistance Payments Contract (the “*HAP Contract*”) with the Passaic County Public Housing Agency (the “*Agency*”), by which the Agency will agree, subject to the satisfaction of certain requirements, to make certain periodic subsidy payments to the Corporation (the “*HAP Payments*”), which are expected to be derived from periodic payments from the United States Department of Housing and Urban Development to the Agency, in support of the affordable housing units to be provided by the Housing Project;

WHEREAS, the Corporation expects to charge rents in respect of the use and occupancy of the units comprising the Housing Project (the “*Rents*”), which rents shall be subject to certain limitations imposed by the HAP Contract and applicable federal and state regulations;

WHEREAS, in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “*LRHL*”), the governing body of the Borough has, by resolution adopted on April 28, 2021, designated a portion of the Borough, including the Project Site, as a non-condemnation area in need of redevelopment (the “*Redevelopment Area*”);

WHEREAS, in accordance with the LRHL, the governing body of the Borough has, by ordinance finally adopted on July 19, 2023, adopted a redevelopment plan governing the Redevelopment Area (the “*Redevelopment Plan*”);

WHEREAS, in accordance with the LRHL, the Borough’s designated redevelopment entity, the Pompton Lakes Redevelopment Agency, by resolution, has designated or will designate the Corporation as the redeveloper of the Project Site and has authorized or will authorize the execution and delivery of a redevelopment agreement with the Corporation, by which the Corporation will agree to construct the Housing Project;

WHEREAS, in accordance with the Long-Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the governing body of the Borough, by ordinance, has authorized or will authorize the execution and delivery of a financial agreement with the Corporation, by which the Corporation will agree to pay certain service charges in lieu of property taxes on the Project Site and the Project;

WHEREAS, pursuant to Section 37 (“*Section 37*”) of the Act (N.J.S.A. 40:37A-80) and other applicable law, the Board of County Commissioners of the County is adopting this amended and restated guaranty ordinance (the “*Guaranty Ordinance*”) in support of the redevelopment project consisting of the construction of the Housing Project by the Corporation;

WHEREAS, the County and the Authority have determined that it in their best interests to, among other things: (i) cause the Authority to issue its County of Passaic Guaranteed Revenue Bonds (Veterans Housing Project), Series 2024 (the “*Series 2024 Bonds*”) for the purpose of financing the costs of constructing the Housing Project, (ii) cause the County to adopt this Guaranty Ordinance, execute the hereinafter-defined Guaranty Agreement and execute a certificate of guaranty on the face of each Series 2024 Bond (collectively, the “*County Guaranty*”), authorizing the guaranty of the principal of and interest on the Series 2024 Bonds, (iii) cause the County to authorize and execute the hereinafter-defined Subsidy and Deficiency Agreement for the Series 2024 Bonds to provide for an initial County capital contribution and certain ongoing County subsidy payments and deficiency payments pursuant to N.J.S.A. 40:37A-79 of the Act as more fully described herein, and (iv) cause the County and the Authority to take any and all other actions deemed necessary, desirable and convenient in connection with matters detailed herein (collectively, the “*Series 2024 Project*”);

WHEREAS, the Series 2024 Bonds shall be sold by negotiated sale to one or more entities as determined by the Authority, as underwriter(s) (collectively, the “*Underwriter*”) of the Series 2024 Bonds, the terms of which sale shall be as set forth in that certain Bond Purchase Agreement (as defined herein);

WHEREAS, the Series 2024 Bonds shall be issued pursuant to the terms of a bond resolution to be adopted by the governing body of the Authority, as may be amended and supplemented from time to time in accordance with its terms, including by a Certificate of an Authorized Officer of the Authority to be dated the date of issuance of the Series 2024 Bonds (collectively, the “*Bond Resolution*”), the Act and other applicable law;

WHEREAS, the payment of the principal (including mandatory sinking fund installments, if any) of, and interest (at interest rates not to exceed the maximum rates set forth in the Local Finance Board Application) on the Series 2024 Bonds, but not any redemption premium, shall be fully, unconditionally and irrevocably guaranteed in accordance with (i) the terms of this Guaranty Ordinance, (ii) a guaranty certificate to be executed by an authorized officer of the County within each Series 2024 Bond and (iii) a Guaranty Agreement to be dated the date of issuance of the Series 2024 Bonds (as the same may be amended and supplemented from time to time in accordance with its terms, the “*Guaranty Agreement*”) by and between the County and the Authority, setting forth, among other things, the County’s obligation to make any such guaranty payments in accordance with and within the parameters set forth in this Guaranty Ordinance and the Bond Resolution, all pursuant to Section 37 and other applicable law, which payments are included as part of the Trust Estate (as defined in the Bond Resolution) applicable to the Series 2024 Bonds pledged by the Authority to the Trustee under the Bond Resolution (the “*Trustee*”);

WHEREAS, simultaneously with the issuance of the Series 2024 Bonds, the Authority and the Corporation will each enter into a Loan Agreement (the “*Loan Agreement*”), by which the Corporation will agree to make certain periodic loan repayments to the Authority (the “*Loan Repayments*”) in amounts that are sufficient, in both time and amount, to pay all debt service requirements in respect of the Bonds, taking into account various credits, as provided therein;

WHEREAS, the Loan Repayments are expected to be derived from, and will be secured by a pledge and assignment of, all revenues received by the Corporation, including but not limited to the Rents and the HAP Payments;

WHEREAS, simultaneously with the issuance of the Series 2024 Bonds, the County, the Authority and the Trustee will each enter into a Capital Contribution, Subsidy and Deficiency Agreement to be dated the date of issuance of the Series 2024 Bonds (as the same may be amended and supplemented from time to time in accordance with its terms, the “*Subsidy and Deficiency Agreement*”), setting forth, among other things, the rights to receive payment from the County, subject to annual appropriation, pursuant to N.J.S.A. 40:37A-79 of the Act, representing (i) an initial capital contribution in support of the Housing Project, (i.e., the Capital Contribution, as defined therein), (ii) certain scheduled payments to be made by the County in support of the Housing Project (i.e., the Subsidy Payments, as defined therein) and (iii) certain voluntary payments in the case of any Deficiency (as defined herein), prior to any mandatory payment under the County Guaranty (i.e., the Deficiency Payments, as defined therein);

WHEREAS, the debt service payable on the Series 2024 Bonds is expected to be paid from, and will be secured by, the revenues received by the Corporation, together with any Subsidy Payments and Deficiency Payments made from time to time by the County;

WHEREAS, payment of the principal of (including mandatory sinking fund installments, if any) and interest on the Series 2024 Bonds, shall be secured by the Trust Estate (as defined in the Bond Resolution), including the above-referenced sources and any payments made from time to time by the County under the County Guaranty (the “*Guaranty Payments*”);

WHEREAS, pursuant to the Loan Agreement and the Bond Resolution, all revenues received by (or for the benefit of) the Corporation will be deposited with the Trustee and will thereupon be used to make Loan Repayments, pay the costs of operating and maintaining the Housing Project, provide necessary reserves, pay the Deferred Project Site Purchase Payments to the County, and reimburse the County for any and all Deficiency Payments and Guaranty Payments;

WHEREAS, to further secure the payment of the Deferred Project Site Purchase Payments and the reimbursement of the Deficiency Payments and the Guaranty Payments, the Corporation will, simultaneously with the issuance and delivery of the Series 2024 Bonds, execute and deliver a Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement, and Fixture Filing to be dated the date of issuance of the Series 2024 Bonds (the “*County Security Document*”), granting to the County a first lien mortgage on the Project Site and the Housing Project and a security interest in the Corporation’s personal property, accounts, rents and general intangibles, subject only to such lien (if any) as may be granted by the Corporation to the Authority or the Trustee to secure payment of the Loan Repayments, and assigning to the County all leases and proceeds thereof, subject only to such assignment (if any) as may be granted by the Corporation to the Authority or the Trustee to secure payment of the Loan Repayments;

WHEREAS, the County Security Document shall secure only the County, and shall not constitute security for the Series 2024 Bonds;

WHEREAS, as a “materially obligated person” within the meaning and for the purposes set forth in Rule 15c2-12 of the U.S. Securities and Exchange Commission (“*Rule 15c2-12*”), the County will be required to enter into that certain County Continuing Disclosure Agreement dated the first day of the month of issuance of the Series 2024 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 named therein, in order to satisfy the secondary market disclosure requirements of Rule 15c2-12;

WHEREAS, pursuant to the terms of the County Continuing Disclosure Agreement, the Authority shall (i) not be considered a “materially obligated person” within the meaning and for the purposes set forth in Rule 15c2-12, and (ii) be required to provide certain material events notices in accordance with Rule 15c2-12, and accordingly, the Authority shall be required to provide such material events notices under the terms of the County Continuing Disclosure Agreement, all in order to satisfy the secondary market disclosure requirements of Rule 15c2-12;

WHEREAS, the Corporation, as a “materially obligated person” within the meaning and for the purposes set forth in Rule 15c2-12, shall be required to enter into that certain Corporation Continuing Disclosure Agreement dated the first day of the month of issuance of the Series 2024 Bonds (as the same may be amended and supplemented from time to time in accordance with its terms, the “*Corporation Continuing Disclosure Agreement*”) with the dissemination agent named therein, in order to satisfy the secondary market disclosure requirements of Rule 15c2-12;

WHEREAS, in accordance with the Act and N.J.S.A. 40A:5A-6, 7 and 8 of the Local Authorities Fiscal Control Law, the Authority has made an application (the “*Local Finance Board Application*”) seeking findings from the Local Finance Board (the “*Local Finance Board*”) in the Department of Local Government Services of the State Department of Community Affairs;

WHEREAS, the Local Finance Board issued positive findings in respect of the Local Finance Board Application;

WHEREAS, in order to market and sell the Series 2024 Bonds by negotiated sale the Authority shall have authorized (a) 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 2024 Bonds (the “*Preliminary Official Statement*”); (b) the execution and delivery of a bond purchase agreement (the “*Bond Purchase Agreement*”) with the Underwriter to purchase all or a portion of the Series 2024 Bonds; and (c) the execution and delivery of a final Official Statement incorporating the terms of the sale of the Series 2024 Bonds and certain other information into the Preliminary Official Statement (the “*Official Statement*”, and together with the Preliminary Official Statement, and the Bond Purchase Agreement, and any of the same or other offering or sale documents that may be required, the “*Sale Documents*”);

WHEREAS, in accordance with Section 13 (“*Section 13*”) of the Act (N.J.S.A. 40:37A-56), the Authority has heretofore made a detailed report regarding the Series 2024 Project to the Board of County Commissioners, consisting of the Local Finance Board Application, which includes, without limitation, descriptions of the Series 2024 Bonds, the Bond Resolution, the Loan Agreement, the County Security Document, County Continuing Disclosure Agreement, the Corporation Continuing Disclosure Agreement, the County Guaranty, the Guaranty Agreement, the Subsidy and Deficiency Agreement and, to the extent available, the Sale Documents (collectively, the “*Financing Documents*”), and which report shall be accepted by the County by resolution adopted, or to be

adopted, by the Board of County Commissioners pursuant to Section 13;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PASSAIC, NEW JERSEY, as follows:

Section 1. This Guaranty Ordinance shall be adopted by the governing body of the County in the manner provided for adoption of a bond ordinance as provided in the Local Bond Law, constituting Chapter 169 of the Pamphlet Laws of 1960 of the State, as amended (the "*Local Bond Law*").

Section 2. Pursuant to and in accordance with the terms of the Act, specifically Section 37, the County is hereby authorized to and hereby shall fully, unconditionally and irrevocably guarantee the punctual payment of the principal, when due, of (including sinking fund installments, if any) and interest on the Series 2024 Bonds in an aggregate principal amount not exceeding \$20,000,000, which Series 2024 Bonds are to be issued to finance the Series 2024 Project as described in the preambles hereof. Notwithstanding the provisions of any other Program Document, upon the endorsement of the Series 2024 Bonds referred to in Section 3 below by an authorized officer of the County, the County shall be fully, unconditionally and irrevocably obligated to pay, when due, the principal of (including sinking fund installments, if any) and interest on the Series 2024 Bonds to the extent the Trustee, for any reason, has insufficient monies on any such payment dates to pay the principal of and interest on the Series 2024 Bonds in full when due on any such payment dates, in the same manner and to the same extent as in the case of bonds issued by the County, and accordingly, the County shall be fully, unconditionally and irrevocably obligated to levy *ad valorem* taxes upon all the taxable property within the County for the payment thereof without limitation as to rate or amount. The full faith and credit of the County are hereby pledged for the full and punctual performance of said County guaranty. This full, unconditional and irrevocable guaranty of the County effected hereby to pay the principal of (including sinking fund installments, if any) and interest on the Series 2024 Bonds when due in accordance with the terms hereof and of the Program Documents may not be waived, setoff or otherwise abrogated by action or inaction of the Authority, the County, the Corporation or for any other reason.

Section 3. The Director of the Board of County Commissioners (the "*Commissioner-Director*") shall, by manual or facsimile signature, and is hereby directed to execute an endorsement on each of the Series 2024 Bonds evidencing this guaranty by the County as to the punctual payment of the principal of (including sinking fund installments, if any), when due, and interest thereon. The endorsement on each Series 2024 Bond shall be in substantially the following form, and absent the fully executed endorsement in such following form on any such Series 2024 Bonds, such Series 2024 Bonds shall not be entitled to the benefits of this Guaranty Ordinance:

“GUARANTY OF THE COUNTY OF PASSAIC, NEW JERSEY

The payment of the principal of (including sinking fund installments, if any) and interest on the within Series 2024 Bond shall be fully, irrevocably and unconditionally guaranteed by the County of Passaic, New Jersey (the "County") in accordance with the provisions of N.J.S.A. 40:37A-80 and the guaranty ordinance of the County finally adopted pursuant thereto and the Guaranty Agreement executed by the County in connection therewith, and the County is fully, irrevocably and unconditionally liable for the payment, when due, of the principal of (including sinking fund installments, if any) and interest on this Series 2024 Bond, and if necessary the County shall levy *ad valorem* taxes upon all the taxable property within the County without limitation as to rate or amount in order to make such payments on time and in full.

IN WITNESS WHEREOF, the County has caused this County Guaranty to be executed by the manual or facsimile signature of its Commissioner-Director.

COUNTY OF PASSAIC, NEW JERSEY

**By: _____
Commissioner-Director”**

The Commissioner-Director is hereby further authorized to execute or acknowledge such other certificates or agreement relating to this full, irrevocable and unconditional guaranty that may be required by the Authority to comply with the terms of the Program Documents, including without limitation, (i) the Guaranty Agreement in substantially the form attached hereto as **Exhibit A**, with such changes thereto as the Commissioner-Director, in consultation with counsel to the County and other professional advisors 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 Commissioner-Director's approval of any changes to the forms thereof, (ii) any letters of representation or similar undertakings to be executed in connection with the sale of the Series 2024 Bonds, setting forth certain representations, warranties and covenants of the County as an inducement to the purchase of the Series 2024 Bonds, (iii) any certificates deeming "final" (for the purposes of Rule 15c2-12 of the U.S. Securities and Exchange Commission) any Preliminary or final Official Statements of the Authority in connection with the Series 2024 Bonds and (iv) any bond purchase agreement executed in connection with the sale of the Series 2024 Bonds. Such further agreements or certificates shall not in any manner relieve the County from its obligations hereunder, and shall contain only such terms as are consistent with or within the parameters herein set forth.

The Commissioner-Director, Deputy Commissioner-Director or Director of Finance is hereby further authorized to execute one or more continuing disclosure agreement(s) or other instrument(s) undertaking the secondary disclosure obligations of the County required by Rule 15c2-12 of the U.S. Securities and Exchange Commission in connection with the issuance of the Series 2024 Bonds by the Authority.

Section 4. It is hereby found, determined and declared by the governing body of the County that:

(a) This Guaranty Ordinance may be adopted notwithstanding any statutory debt or other limitations, including particularly any limitation or requirement under or pursuant to the Local Bond Law, but the aggregate principal amount of the Series 2024 Bonds which shall be entitled to the benefits of this Guaranty Ordinance, being an amount not to exceed \$20,000,000, shall, after their issuance, be included in the gross debt of the County for the purpose of determining the indebtedness of the County under or pursuant to the Local Bond Law.

(b) The principal amount of Series 2024 Bonds entitled to the benefits of this Guaranty Ordinance and included in the gross debt of the County shall be deducted and is hereby declared to be and to constitute a deduction from such gross debt under and for all the purposes of the Local Bond Law (i) from and after the time of issuance of the Series 2024 Bonds until the end of the fiscal year beginning next after the completion of acquisition, construction, installation or renovation of the Series 2024 Bonds, and (ii) in any annual debt statement filed pursuant to the Local Bond Law as of the end of said fiscal year or any subsequent fiscal year if the revenues or other receipts or moneys of the Authority in such year are sufficient to pay its expenses of operation and maintenance in such year and all amounts payable in such year on account of the principal of and interest on all such guaranteed Series 2024 Bonds, all bonds of the County issued as provided in Section 36 of the Act (N.J.S.A. 40:37A-79) and all bonds of the Authority issued under the Act.

Section 5. The following matters are hereby determined, declared, recited and stated:

(a) The maximum principal amount of Series 2024 Bonds (including one or more series of bonds) of the Authority which are hereby and hereunder fully, unconditionally and irrevocably guaranteed as to the punctual payment of the principal thereof (including sinking fund installments, if any) and interest thereon is \$20,000,000; the maximum principal amount of Series 2024 Bonds (including one or more series of bonds) of the Authority that may be outstanding at any one time is \$20,000,000; and the estimated cost of the Series 2024 Project to be financed in accordance with the transactions contemplated hereby is approximately \$26,500,000.

(b) The purpose described in this Guaranty Ordinance is not a current expense of the County and no part of the cost thereof has been or shall be assessed on property specially benefited thereby.

(c) The Series 2024 Bonds of each series shall mature within thirty-five (35) years from the date of issue.

(d) A supplemental debt statement of the County has been duly made and filed in the office of the Clerk of the Board, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State, and such debt statement shows that while the gross debt of the County, as defined in the Local Bond Law, is increased by this Guaranty Ordinance by \$20,000,000 in accordance with the provisions of the Act, the net debt of the County is not increased, and the obligation of the County authorized by or incurred pursuant to the terms of this Guaranty Ordinance is permitted by an exception to the debt limitations of the Local Bond Law which exception is contained in the Act, so long as the payment obligations of the County hereunder are not called

upon.

(e) Other than the publication requirements set forth below, all other items to be contained in a bond ordinance adopted pursuant to the Local Bond Law are hereby determined to be inapplicable to the County's guaranty of the Series 2024 Bonds hereby.

Section 6. To the extent one or more series of the Series 2024 Bonds are not issued in 2024, references herein to "2024" may without any further action be changed to the year of issuance of such Series 2024 Bonds and all dates related to such year of issuance shall be automatically adjusted.

Section 7. The Clerk of the Board of County Commissioners is hereby directed to publish and post notice of this Guaranty Ordinance as required by applicable law, including the Act and Local Bond Law.

Section 8. This Guaranty Ordinance amends and restates in its entirety Ordinance No. 2023-05 finally adopted by the Board of County Commissioners on July 18, 2023.

Section 9. This Guaranty Ordinance shall take effect at the time and in the manner provided by law.

Exhibit A

Form of County Guaranty Agreement