

AN ORDINANCE OF THE COUNTY OF SOMERSET, STATE OF NEW JERSEY AUTHORIZING THE GUARANTY OF THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON NOT EXCEEDING \$25,000,000 AGGREGATE PRINCIPAL AMOUNT OF COUNTY GUARANTEED LEASE REVENUE BONDS, SERIES 2017 (TOWNSHIP OF MONTGOMERY PROJECT), ISSUED BY THE SOMERSET COUNTY IMPROVEMENT AUTHORITY, FOR THE PURPOSE OF PROVIDING ADDITIONAL SECURITY THEREFOR AND DETERMINING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH

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 (the "County"), including the financing of the acquisition of same; and

WHEREAS, the Township of Montgomery, New Jersey (the "Township") has acquired certain property, specifically the Convatec site on Orchard Road, also known as Block 20001, Lot 10.05 on the Montgomery Township Tax Assessment Maps (rev. 2015) and comprising 45.061± acres, and the improvements thereon including the reconstruction thereof, and construction of further improvements as necessary, all as located within the Township for municipal purposes (the "Facility"), and the Township has requested the Authority's assistance in the refinancing of such Facility as described herein; and

WHEREAS, the Facility constitutes a "public facility" as such term is defined in the Act; and

WHEREAS, the Authority has agreed to refinance the costs of the Facility on behalf of the Township through the issuance of bonds and/or project notes, and shall, in connection therewith, lease the Facility to the Township pursuant to a lease purchase agreement; and

WHEREAS, in order to refinance the costs of the Facility, the Authority will issue bonds in one or more series, including renewals, if any, in an aggregate principal amount not to exceed \$25,000,000, to be designated as "County Guaranteed Lease Revenue Bonds, Series 2017 (Township of Montgomery Project)" (inclusive of any project notes issued in anticipation thereof, and any bonds or notes issued to refund said bonds or notes, 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, Series 2016 (Township of Montgomery 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, refinance the costs of the Facility 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 Bonds (together with any amendments thereof or supplements thereto in accordance with its terms, the "Lease Agreement"), pursuant to which the Authority will continue to lease the Facility to the Township for its use (the transactions contemplated hereinabove shall be referred to as the "Project"); 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 Agreement, with the Township for the lease to or use by the Township of all or any part of any public facility, including the Facility, 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 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, the Authority and the Township have requested that the County unconditionally guaranty the payment of principal of and interest on the Bonds to refinance the Project; and

WHEREAS, to provide an inducement to the prospective purchasers of the Bonds to purchase same and to provide additional security to the holders thereof, the County will, in accordance with N.J.S.A. 40:37A-80, fully, unconditionally and irrevocably guarantee the payment of the principal of and interest on the Bonds in an aggregate principal amount not to exceed \$25,000,000 in accordance with the terms of this 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 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 Agreement (collectively, the "Financing Documents"); and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF SOMERSET, STATE OF NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring), as follows:

SECTION 1. The recitals are fully incorporated herein by this reference.

SECTION 2. This guaranty ordinance shall be adopted by the Board in the manner provided for adoption of a bond ordinance as provided in the Local Bond Law, *N.J.S.A. 40A:2-1 et seq.*, as amended and supplemented (the "Local Bond Law").

SECTION 3. Pursuant to and in accordance with the terms of the Act, specifically Section 37 of the Act (N.J.S.A. 40:37A-80), the County is hereby authorized to and hereby shall fully, unconditionally and irrevocably guaranty the punctual payment of the principal of and interest on the Bonds, including renewals, if any, in an aggregate principal amount not exceeding \$25,000,000, which Bonds are to be issued to refinance the Project as described in the recitals hereto, on such terms and conditions as may be agreed to by and between the County and the Authority in the Financing Documents and in such other documents related thereto and as are reflected in this guaranty ordinance and in the guaranty certificate on the face of each Bond. Upon the endorsement of the Bonds referred to in Section 4 below, the County shall be fully, unconditionally and irrevocably obligated to pay the principal of and interest on the Bonds 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 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 when required under the provisions of applicable law. The full faith and credit of the County are hereby pledged for the full and punctual performance of said County Bond Guaranty.

SECTION 4 The Freeholder Director is hereby authorized and directed to execute by manual or facsimile signature an endorsement on each of the Bonds evidencing this County Bond Guaranty by the County as to the punctual payment of the principal of and interest on the Bonds. The endorsement on each Bond shall be in substantially the following form, and absent the fully executed endorsement in such following form on any such Bond, such Bond shall not be entitled to the benefits of the County Bond Guaranty:

"GUARANTY OF THE COUNTY OF SOMERSET, STATE OF NEW JERSEY

The payment of the principal of and interest on the within Bond shall be fully, irrevocably and unconditionally guaranteed by the County of Somerset, State of 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 County is fully, irrevocably and unconditionally liable for the payment, when due, of the principal of and interest on this 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 payment.

IN WITNESS WHEREOF, the County has caused this County Bond Guaranty to be executed by the manual or facsimile signature of its Freeholder Director, all as of the date of the within Bond.

COUNTY OF SOMERSET, STATE OF NEW JERSEY

By: _____

Freeholder Director"

The Freeholder Director is hereby further authorized and directed to negotiate, with the advice of counsel to the County, approve, execute or acknowledge such other certificates or agreements relating to this full, irrevocable and unconditional County Bond Guaranty that may be required in connection with the Authority's issuance of the Bonds, including, without limitation, (i) the County Guaranty Agreement, (ii) any letters of representations or similar undertakings to be executed in connection with the sale of the Bonds, setting forth certain representations, warranties and covenants of the County as an inducement to the purchase of the 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 Bonds, and (iv) any bond purchase agreement or continuing disclosure agreement executed in connection with the sale of the Bonds. Such further agreement or certificate shall not in any manner relieve the County from its obligations hereunder.

SECTION 5. The following additional matters are hereby found, determined and declared by the County:

(a) This guaranty ordinance may be adopted notwithstanding any statutory or other debt limitations, including, particularly, any limitation or requirement under or pursuant to the Local Bond Law, but the aggregate principal amount of the Bonds that shall be entitled to the benefits of this County Bond Guaranty, being an amount not to exceed \$25,000,000, 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 Bonds entitled to the benefits of the County Bond Guaranty 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 Bonds until the end of the fiscal year beginning next after the completion of the Project, 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 relative to the Project 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 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 6. The following matters are hereby determined, declared, recited and stated:

(a) The maximum principal amount of Bonds of the Authority that are hereby and hereunder fully, unconditionally and irrevocably guaranteed as to the punctual payment of the principal thereof and interest thereon is \$25,000,000; the maximum principal amount of Bonds of the Authority that may be outstanding at any one time is \$25,000,000.

(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 Bonds shall mature within thirty (30) 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 Deputy Clerk of the Board of Chosen Freeholders, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs, 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 the amount of the Bonds issued by the Authority, which amount shall not exceed \$25,000,000, upon the satisfaction of the conditions set forth in *N.J.S.A. 40:37A-80*, 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) 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 Bonds hereby.

SECTION 7. The County hereby covenants and agrees to comply with the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended and supplemented (the "Rule"), including the secondary market disclosure requirements contained therein, and agrees to covenant to such compliance in the Guaranty Agreement. The Freeholder Director, County Director of Finance and any other authorized County representative are each hereby authorized and directed to execute and deliver a continuing disclosure agreement to the Authority and the other parties thereto (the "Continuing Disclosure Agreement"), prepare operating data and financial information for inclusion in the Authority's preliminary and final Official Statements, approve and "deem final" the Authority's preliminary and final Official Statements, to the extent the information contained therein relates to the County, and to execute and deliver all certificates, documents and agreements to the Authority and any other applicable party in connection therewith and to file budgetary, financial and operating data on an annual basis and notices of certain enumerated events as required to comply with and in accordance with the provisions of the Rule and the Continuing Disclosure Agreement.

SECTION 8. To the extent one or more series of the Bonds are not issued in 2017, references herein to "2017" may without any further action be changed to the year of issuance of such Bonds and all dates related to such year of issuance shall be automatically adjusted.

SECTION 9. A public hearing shall be held on this ordinance on November 8, 2017 at 6:30 p.m. in the County Building, 20 Grove Street, Somerville, New Jersey 08876.

SECTION 10. The Deputy Clerk of the Board is hereby directed to publish and post notice of this ordinance as required by law.

SECTION 11. Upon the adoption hereof, the Deputy Clerk of the Board shall forward certified copies of this ordinance to the Freeholder Director, County Counsel, County Bond Counsel, the chief administrator of the Authority, Bond Counsel to the Authority, Christopher B. Langhart, Esq., of McManimon, Scotland & Baumann, LLC, and Township Counsel.

SECTION 12. Pursuant to Section 13, the County hereby consents to the undertaking of the refinancing of the Project by the Authority in connection with the acquisition and lease purchase of the Facility in an amount of not to exceed \$25,000,000.

SECTION 13. This guaranty ordinance shall take effect at the time and in the manner provided by law.

I, Kathryn Quick, Deputy Clerk of the Board of Chosen Freeholders of the County of Somerset in the State of New Jersey, do hereby certify that the foregoing is a true copy of a Resolution adopted by said Board of Chosen Freeholders at its regularly convened meeting of October 24, 2017.

Kathryn Quick, Deputy Clerk of the Board