

**TOWNSHIP OF FRANKLIN
ORDINANCE NUMBER 3935-11**

BOND ORDINANCE PROVIDING FOR VARIOUS ENERGY IMPROVEMENTS, IN AND BY THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF SOMERSET, STATE OF NEW JERSEY (THE "TOWNSHIP"); APPROPRIATING \$1,760,000 THEREFOR (INCLUDING A GRANT RECEIVED OR EXPECTED TO BE RECEIVED IN THE AMOUNT OF \$555,500) AND AUTHORIZING THE ISSUANCE OF \$1,147,142 BONDS OR NOTES OF THE TOWNSHIP TO FINANCE PART OF THE COSTS THEREOF

BE IT ORDAINED AND ENACTED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF SOMERSET, STATE OF NEW JERSEY (not less than two-thirds of all the members thereof affirmatively concurring), **AS FOLLOWS:**

SECTION 1. The improvements or purposes described in Section 3 of this bond ordinance are hereby authorized as general improvements or purposes to be undertaken by the Township of Franklin, in the County of Somerset, State of New Jersey (the "Township"). For the said improvements or purposes stated in Section 3, there is hereby appropriated the sum of \$1,760,000, said sum being inclusive of a \$555,500 grant received or expected to be received from the Energy Efficiency and Conservation Block Grant Program (the "Grant"), and the down payment for said improvements or purposes required by the Local Bond Law, N.J.S.A. 40A:2-1 et seq. (the "Local Bond Law") in the amount of \$57,358. The \$57,358 down payment is now available therefor from the general capital improvement fund by virtue of a provision or provisions in a previously adopted budget or budgets of the Township for down payment or for capital improvement purposes.

SECTION 2. For the financing of said improvements or purposes described in Section 3 hereof and to meet the part of said \$1,760,000 appropriation not provided for by application hereunder of the Grant or said down payment, negotiable bonds of the Township are hereby authorized to be issued in the principal amount of \$1,147,142 pursuant to the Local Bond Law. In anticipation of the issuance of said bonds and to temporarily finance said improvements or purposes, negotiable notes of the Township in the principal amount not exceeding \$1,147,142 are hereby authorized to be issued pursuant to and within the limitations prescribed by said Local Bond Law.

SECTION 3. (a) The improvements hereby authorized, and the purposes for the financing of which said bonds or notes are to be issued, are various energy improvements, including but not limited to, the acquisition and installation, as applicable, of replacement roof

chillers, an integrated energy management system, and various energy efficient lighting fixtures and controls at the Municipal Building, as well as various other energy improvements to the Senior Center and Public Safety Building, such improvements shall include but are not limited to, as applicable, all engineering and design work, construction planning, preparation of plans and specifications, permits, bid documents, construction inspection and contract administration, and all work, materials, equipment, labor and appurtenances necessary therefor or incidental thereto.

(b) The estimated maximum amount of bonds or notes to be issued for said improvements or purposes is \$1,147,142.

(c) The estimated cost of said improvements or purposes is \$1,760,000, the excess thereof over the said estimated maximum amount of bonds or notes to be issued therefor is the Grant in the amount of \$555,500 and the down payment in the amount of \$57,358 available for such improvements or purposes.

SECTION 4. Except for the Grant, in the event the United States of America, the State of New Jersey, and/or the County of Somerset make a contribution or grant in aid to the Township for the improvement and purpose authorized hereby and the same shall be received by the Township prior to the issuance of the bonds or notes authorized in Section 2 hereof, then the amount of such bonds or notes to be issued shall be reduced by the amount so received from the United States of America, the State of New Jersey, and/or the County of Somerset. Except for the Grant, in the event, however, that any amount so contributed or granted by the United States of America, the State of New Jersey, and/or the County of Somerset shall be received by the Township after the issuance of the bonds or notes authorized in Section 2 hereof, then such funds shall be applied to the payment of the bonds or notes so issued and shall be used for no other purpose. This Section 4 shall not apply, however, with respect to any contribution or grant in aid received by the Township as a result of using funds from this bond ordinance as “matching local funds” to receive such contribution or grant in aid.

SECTION 5. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the Chief Financial Officer of the Township, provided that no

note shall mature later than one (1) year from its date. The notes shall bear interest at such rate or rates and be in such form as may be determined by the Chief Financial Officer. The Chief Financial Officer of the Township shall determine all matters in connection with the notes issued pursuant to this bond ordinance, and the signature of the Chief Financial Officer upon the notes shall be conclusive evidence as to all such determinations. All notes issued hereunder may be renewed from time to time in accordance with the provisions of N.J.S.A. 40A:2-8.1. The Chief Financial Officer is hereby authorized to sell part or all of the notes from time to time at a public or private sale and to deliver them to the purchaser thereof upon receipt of payment of the purchase price and accrued interest thereon from their dates to the date of delivery thereof. The Chief Financial Officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the notes pursuant to this bond ordinance is made. Such report must include the principal amount, the description, the interest rate, the price obtained, the name of the purchaser, and the maturity schedule of the notes so sold.

SECTION 6. The capital budget of the Township is hereby amended to conform with the provisions of this bond ordinance to the extent of any inconsistency herewith and a resolution in the form promulgated by the Local Finance Board showing full detail of the amended capital budget and capital programs as approved by the Director of the Division of Local Government Services, within the New Jersey Department of Community Affairs, is on file in the office of the Clerk and is available for public inspection.

SECTION 7. The following additional matters are hereby determined, declared, recited and stated:

(a) The improvements or purposes described in Section 3 of this bond ordinance are not current expenses and are improvements which the Township may lawfully undertake as a general improvement, and no part of the cost thereof has been or shall be specially assessed on property specially benefited thereby.

(b) The period of usefulness of said improvements within the limitations of said Local Bond Law, according to the reasonable life thereof computed from the date of the bonds authorized by this bond ordinance, is fifteen (15) years.

(c) The supplemental debt statement required by the Local Bond Law has been duly made and filed in the Office of the Clerk of the Township and a complete executed duplicate thereof has been filed in the Office of the Director of the Division of Local Government Services, within the New Jersey Department of Community Affairs, and such statement shows that the gross debt of the Township as defined in the Local Bond Law is increased by the authorization of the bonds or notes provided for in this bond ordinance by \$1,147,142 and the said obligations authorized by this bond ordinance will be within all debt limitations prescribed by said Local Bond Law.

(d) An amount not exceeding \$160,000 for items of expense listed in and permitted under Section 20 of the Local Bond Law is included in the estimated cost indicated herein for the purposes or improvements described in Section 3 hereof.

SECTION 8. The full faith and credit of the Township are hereby pledged to the punctual payment of the principal of and the interest on the bonds or notes authorized by this bond ordinance. The bonds or notes shall be direct, unlimited obligations of the Township, and the Township shall be obligated to levy *ad valorem* taxes upon all the taxable property within the Township for the payment of the principal of the bonds or notes and the interest thereon without limitation as to rate or amount.

SECTION 9. The Township reasonably expects to reimburse any expenditures toward the costs of the improvements or purposes described in Section 3 hereof and paid prior to the issuance of any bonds or notes authorized by this bond ordinance with the proceeds of such bonds or notes. This Section 9 is intended to be and hereby is a declaration of the Township's official intent to reimburse any expenditures toward the costs of the improvements or purposes described in Section 3 hereof to be incurred and paid prior to the issuance of bonds or notes authorized herein in accordance with Treasury Regulations §1.150-2. No reimbursement allocation will employ an "abusive arbitrage device" under Treasury Regulations §1.148-10 to avoid the arbitrage restrictions or to avoid the restrictions under Sections 142 through 147, inclusive, of the Internal Revenue Code of 1986, as amended (the "Code"). The proceeds of any bonds or notes authorized herein used to reimburse the Township for costs of the improvements or purposes described in Section 3 hereof, or funds

corresponding to such amounts, will not be used in a manner that results in the creation of “replacement proceeds”, including “sinking funds”, “pledged funds” or funds subject to a “negative pledge” (as such terms are defined in Treasury Regulations §1.148-1), of any bonds or notes authorized herein or another issue of debt obligations of the Township other than amounts deposited into a “bona fide debt service fund” (as defined in Treasury Regulations §1.148-1). The bonds or notes authorized herein to reimburse the Township for any expenditures toward the costs of the improvements or purposes described in Section 3 hereof will be issued in an amount not to exceed \$1,147,142. The costs to be reimbursed with the proceeds of the bonds or notes authorized herein will be "capital expenditures" in accordance with the meaning of section 150 of the Code. All reimbursement allocations will occur not later than eighteen (18) months after the later of (i) the date the expenditure from a source other than any bonds or notes authorized herein is paid, or (ii) the date the improvements or purposes described in Section 3 hereof is “placed in service” (within the meaning of Treasury Regulations §1.150-2) or abandoned, but in no event more than three (3) years after the expenditure is paid. The Township covenants to maintain the exclusion from gross income under Section 103(a) of the Internal Revenue Code of 1986, as amended, of the interest on all bonds and notes issued under this ordinance.

SECTION 10. The Township is hereby authorized to negotiate any and all agreements and documents in connection with any financing through the New Jersey Direct Install Program or other similar energy efficiency program. The Mayor, Chief Financial Officer, Township Attorney, Township Bond Counsel, the Township Clerk and any other authorized officer of the Township are each hereby authorized and directed, as applicable, to negotiate, approve, execute, attest, deliver and perform any and all agreements and documents in connection with any financing through the New Jersey Direct Install Program.

SECTION 11. This bond ordinance shall take effect twenty (20) days after the first publication hereof after final adoption, as provided by the Local Bond Law.

ORDINANCE NO. 3935-11

This is a true copy of an ordinance adopted by the Township Council, Township of Franklin, Somerset County, New Jersey.

Introduced: April 26, 2011
Public Hearing: May 10, 2011
Adoption: May 10, 2011
Published: May 12, 2011
Effective Date: June 1, 2011

Ann M. McCarthy, RMC, CMC, Township Clerk