

ORDINANCE NO. 2016-05

AN ORDINANCE OF THE BOROUGH OF BERLIN, IN THE COUNTY OF CAMDEN, NEW JERSEY, PROVIDING FOR VARIOUS CAPITAL IMPROVEMENTS AND RELATED EXPENSES IN AND FOR THE BOROUGH AND APPROPRIATING \$1,750,000 FOR SAID PURPOSES; AUTHORIZING THE ISSUANCE OF \$1,665,660 PRINCIPAL AMOUNT OF OBLIGATIONS OF THE BOROUGH TO FINANCE SAID PURPOSES; AND PROVIDING FOR OTHER MATTERS RELATING THERETO.

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF BERLIN, IN THE COUNTY OF CAMDEN, NEW JERSEY (not less than two-thirds of the full membership thereof affirmatively concurring), AS FOLLOWS:

**Section 1. Description of Projects**

The Borough of Berlin, in the County of Camden, New Jersey (the "Borough") hereby authorizes the acquisition, construction or installation, as the case may be, of the capital improvement projects listed on Exhibit "A" attached hereto and incorporated herein by reference, together with all appurtenances, work and material necessary or incidental thereto (collectively, the "Projects"). Exhibit "A" sets forth the amount of the appropriation for each Project, the amount of the down payment for each Project, the maximum amount of debt in the form of bonds or notes to be issued for each Project, and the average period of usefulness for each Project. Additional information regarding each of the Projects is on file with the Borough Clerk and is incorporated herein by reference.

**Section 2. Appropriation for Projects - Down Payment**

The Borough hereby appropriates the sum of \$1,750,000 for the purpose of paying the costs of the Projects, including the sum of \$84,340 which is hereby appropriated as the down payment for said purposes pursuant to the Local Bond Law (constituting Chapter 169 of the 1960 Laws of New Jersey, as amended). It is hereby determined and stated that the amount of the down payment is not less than five percent (5%) of the obligations authorized by this Ordinance (except for such obligations that are for purposes that are self-liquidating, if any) and that the amount appropriated as a down payment has been made available prior to final adoption of this Ordinance by provisions in prior or current budgets of the Borough for capital improvements and down payments.

### **Section 3. Useful Life**

It is hereby determined and stated that the average period of usefulness for the Projects, taking into consideration the respective amounts authorized for the separate purposes, according to their respective reasonable useful lives, is not less than 22.07 years.

### **Section 4. Estimated Cost**

It is hereby determined and stated that the estimated cost of the improvements described in Section 1 hereof is \$1,750,000, that the amount of this appropriation is \$1,750,000 and that such estimated cost includes the aggregate amount of \$285,000 for items of expense permitted to be included in the cost of said improvements under Section 20 of the Local Bond Law, including engineering and inspection costs, legal expenses, accounting, printing and other expenses of authorizing and issuing the obligations hereinafter authorized, interest on the obligations and other expenses as set forth in said Section 20 of the Local Bond Law.

### **Section 5. General Improvement Projects**

The Projects described in Section 1 hereof shall be undertaken as general improvement projects, no part of the cost of which has been or shall be assessed against properties benefited thereby. It is hereby determined and stated that the purposes described in Section 1 hereof are not current expenses and are improvements which the Borough may lawfully make as general improvements.

### **Section 6. Authorization of Bonds**

(a) For the purpose of financing a portion of the costs of the improvements authorized in Section 1 hereof, there is hereby authorized pursuant to the Local Bond Law the issuance of bonds of the Borough in an aggregate principal amount not to exceed \$1,665,660.

(b) The Chief Financial Officer of the Borough and the Mayor of the Borough are hereby authorized and directed to execute all bonds authorized under this Ordinance on behalf of the Borough and the Borough Clerk is hereby authorized and directed to affix to such bonds the seal of the Borough and to attest the same. The Chief Financial Officer of the Borough is authorized to deliver all such bonds to the purchaser thereof against receipt of the purchase price therefor. All such Borough officials are authorized to take such other action and execute such other documents as may be necessary or appropriate to effect the issuance or delivery of the bonds authorized under this Ordinance.

### **Section 7. Authorization of Notes**

(a) Pending the issuance of the bonds authorized in Section 6(a) hereof, there is hereby authorized the issuance of bond anticipation notes of the Borough in an aggregate principal amount not to exceed \$1,665,660; provided, however, that if bonds are issued pursuant to Section 6(a) hereof, the aggregate amount of notes authorized to be issued under this Section 7(a) shall be reduced by an amount equal to the principal amount of bonds so issued.

(b) If the aggregate principal amount of outstanding obligations issued pursuant to Section 6(a) and Section 7(a) hereof shall at any time exceed \$1,665,660 the proceeds thereof shall, to the extent of such excess, be applied to the payment of the obligations then outstanding. Whenever funds have been deposited with a bank or trust company and committed or reserved for the payment thereof, the principal amount of the obligations for which sufficient funds have been so deposited shall be deemed no longer outstanding under this Ordinance.

(c) All bond anticipation notes issued hereunder shall mature at such times as may be determined by the Chief Financial Officer of the Borough, provided that no note shall mature later than one 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 of the Borough. The Chief Financial Officer shall determine all other matters in connection with notes pursuant to this Ordinance, and the execution of the notes on behalf of the Borough shall be conclusive evidence as to all such determinations. All notes issued hereunder may be renewed from time to time subject to the provisions of the Local Bond Law. The Chief Financial Officer of the Borough is hereby authorized to sell part or all of the notes from time to time at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The Chief Financial Officer of the Borough is directed to report in writing to the governing body of the Borough at the meeting next succeeding the date when any sale or delivery of the notes pursuant to this Ordinance is made. Such report must include the amount, the interest rate and the maturity schedule of the notes sold, the price obtained and the name or names of the purchasers.

#### **Section 8. Supplemental Debt Statement**

It is hereby determined that the Supplemental Debt Statement required pursuant to the Local Bond Law has been duly filed in the Office of the Borough Clerk prior to the passage on first reading of this Ordinance, that a complete executed duplicate thereof has been duly filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey prior to the final passage of this Ordinance, and that said Supplemental Debt Statement shows that the gross debt of the Borough, as defined in the Local Bond Law, is increased by the authorization of obligations hereunder in the amount of \$1,665,660 and that the issuance of the obligations authorized by this Ordinance is within all the debt limitations prescribed by the Local Bond Law

#### **Section 9. Amendment of Capital Budget**

The capital budget of the Borough is hereby amended to conform with the provisions of this Ordinance to the extent of any inconsistency herewith. The amended capital budget and capital program as approved by the Director of the Division of Local Government Services is on file with the Borough Clerk and is available in the office of said Clerk for public inspection.

#### **Section 10. Pledge of Credit and Taxes**

For the punctual payment of the principal of and interest on all obligations authorized to be issued by this Ordinance, the entire full faith, credit and taxing power of the Borough is

hereby irrevocably pledged. The obligations shall be direct, unlimited general obligations of the Borough, and, unless paid from other sources, the Borough shall levy ad valorem taxes upon all taxable property within the Borough for the payment of the principal of and interest on the obligations without limitation as to rate or amount.

### **Section 11. Covenant as to Federal Income Tax Exemption**

The Borough hereby covenants with the owners of all obligations authorized to be issued by this Ordinance not to take or omit to take any action so as to cause interest on the obligations to be no longer exempt from federal income taxes. The Borough further covenants with the owners of the obligations that it will not authorize or make any prohibited payment or any investment of any proceeds of any obligations or make any other use of such proceeds which would cause such obligations to be "arbitrage bonds" as such term is defined in Section 148 of the Internal Revenue Code of 1986 as the same may be amended or superseded from time to time and the regulations issued thereunder, and the Borough further covenants to rebate to the United States Treasury any excess earnings on the gross proceeds of such obligations, as necessary, and to otherwise comply with said Section 148 and said regulations throughout the term of all such obligations.

### **Section 12. Official Intent**

The Borough reasonably expects to reimburse itself from proceeds of the obligations authorized by this Ordinance for capital expenditures with respect to the Projects initially paid for from current or other available funds of the Borough. This constitutes a declaration of "official intent" within the meaning of Treasury Regulations §1.150-2. The Borough hereby certifies that this declaration is reasonable on the date hereof in that (i) it is consistent with the budgetary and financial circumstances of the Borough, (ii) no funds (other than the proceeds of the obligations authorized by this Ordinance) are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside by the Borough pursuant to its budget or financial policies with respect to the capital expenditures to be reimbursed, and (iii) the Borough does not have a pattern of failing to reimburse itself for capital expenditures actually paid and for which an official intent was declared, other than due to unforeseeable extraordinary circumstances beyond the Borough's control. The Borough acknowledges that in order to reimburse itself for capital expenditures incurred with respect to the Projects, the obligations authorized by this Ordinance must be initially issued not later than eighteen months after the later of the date the relevant capital expenditure is initially paid or the date the relevant capital improvement is placed into service.

### **Section 13. Grants**

To the extent that the Borough receives grants in aid of any Project, any such grant proceeds from time to time received by the Borough shall be used for financing the Project for which such grant was made by application thereof either to direct payment of the costs of such Project, or to payment, or reduction of the authorization, of the obligations of the Borough authorized therefor by this Ordinance. Any such funds so received may, and all such funds so received which are not required for direct payment of the costs of the Project shall, be held and

applied by the Borough as funds applicable only to the payment of obligations of the Borough authorized by this Ordinance.

**Section 14. Subsequent Resolutions**

Pursuant to Section 16 of the Local Bond Law, all matters with respect to the obligations authorized by this Ordinance not contained or determined in this Ordinance, including, without limitation, the maturity or maturities, rate or rates of interest and redemption provisions thereof, may be determined by resolution or resolutions hereafter to be adopted in the manner provided by law.

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**Section 15. Effective Date**

This Ordinance shall take effect twenty (20) days after the first publication thereof after final adoption, as provided by the Local Bond Law.

THE BOROUGH OF BERLIN IN THE COUNTY  
OF CAMDEN, NEW JERSEY

Introduction: 2-11-16

Enactment:

Attest: Charles Scott

[Signature]  
Mayor