

COUNTY OF MERCER, NEW JERSEY  
**ORDINANCE NO. 2021- 3**

1<sup>st</sup> Reading.....July 15, 2021.....

Date to County Executive..August..13,..2021

2<sup>nd</sup> Reading.....August 12, 2021.....

Date Returned..August..13,..2021.....

Public Hearing..August..12,..2021

Date Adopted:

Date Resubmitted to Board.....

.....August..12,..2021

Approved as to Form and Legality

.....

.....September..1,..2021

.....

Effective Date

County Counsel

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MERCER, NEW JERSEY, AUTHORIZING THE GUARANTY BY THE COUNTY OF THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE MERCER COUNTY IMPROVEMENT AUTHORITY'S COUNTY GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE REFUNDING BONDS, SERIES 2021A (FEDERALLY TAXABLE) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$13,500,000 FOR THE PURPOSE OF PROVIDING ADDITIONAL SECURITY FOR THE PAYMENT OF SAID BONDS; AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A COUNTY GUARANTY AGREEMENT; AND DETERMINING CERTAIN MATTERS IN CONNECTION THEREWITH

RECORD OF VOTE														
First Reading							Second Reading							
FREEHOLDER	Aye	Nay	N.V.	Abs.	Res.	Sec.	FREEHOLDER	Aye	Nay	N.V.	Abs.	Res.	Sec.	
Cannon	X					✓	Cannon	X					✓	
Cimino				X			Cimino	X						
Colavita				X			Colavita				X			
Koontz	X				✓		Koontz	X				✓		
Melker				X			Melker	X						
Walter	X						Walter	X						
Frisby	X						Frisby	X						

X—Indicates Vote      Abs.—Absent      N.V.—Not Voting  
 Res.—Resolution Moved      Sec.—Resolution Secended

Rejected  By.....

Approved

Reconsidered

By Board.....

County Executive

Override

Vote      Aye      Nay

.....  
 Chair of the Board

.....  
 Clerk to the Board

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**WHEREAS**, The Mercer County Improvement Authority (including any successors and assigns, the “Authority”) has been duly created by ordinance of the Board of County Commissioners (formerly known as the Board of Chosen Freeholders) (the “Board of Commissioners”) of the County of Mercer (the “County”) in the State of New Jersey (the “State”) 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 (as codified at N.J.S.A. 40:37A-44 et seq., the “Act”) and other applicable law; and

**WHEREAS**, the Authority has developed a program (the “Renewable Energy Program”) for the procurement, financing, design, permitting, acquisition, construction, installation, operation and maintenance of a renewable energy project, including solar panels, and any related electrical modifications or other work required in connection therewith (the “Renewable Energy Program”, and together with any "Completion Project" as defined in the hereinafter defined Trust Indenture, the “Project”) for and on behalf of the Mercer County Community College (the "County College" or “Local Unit”) on the grounds of the County College at 1200 Old Trenton Road, West Windsor, New Jersey (the “Local Unit Facility”); and

**WHEREAS**, one of the goals of the Renewable Energy Program is to expand the use of renewable energy sources available and utilized by the Local Unit at its Local Unit Facility, with the attendant environmental and financial benefits associated therewith, and to reduce the energy-related operating costs to the Local Unit for its Local Unit Facility, all intended to be offered at no net cost to the Local Unit; and

**WHEREAS**, in order to implement the Renewable Energy Program, and to finance the costs of the Project and other costs associated with the Renewable Energy Program, on December 23, 2011, the Authority issued its County of Mercer Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2011A (Federally Taxable) in the aggregate principal amount of \$29,550,000 (the “Series 2011A Bonds”); and

**WHEREAS**, the Series 2011A Bonds were issued pursuant to the terms of that certain “RESOLUTION AUTHORIZING THE ISSUANCE OF COUNTY GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE BONDS, SERIES 2011A OF THE MERCER COUNTY IMPROVEMENT AUTHORITY” adopted by the governing body of the Authority on October 21, 2011, and a Trust Indenture (the “Original Trust Indenture”), dated as of December 1, 2011, by and between the Authority and Deutsche Bank National Trust Company, as trustee (the “Trustee”), all in accordance with Sections 17-19 of the Act (N.J.S.A. 40:37A-60, 61 and 62) and all other applicable law; and

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**WHEREAS**, the Authority has determined to issue its not-to-exceed \$13,500,000 principal amount of County of Mercer Guaranteed Renewable Energy Program Lease Revenue Refunding Bonds, Series 2021A (Federally Taxable) (the “Series 2021A Refunding Bonds”) to refund, on a current basis, among other things, the principal of and interest on the callable Series 2011A Bonds maturing on and after September 15, 2022 on or after September 15, 2021 (the “Series 2011A Bonds to be Refunded”), which refunding is being undertaken to: (i) effectuate the terms of that certain Settlement Agreement to be executed by and among MasTec, the SunLight Entities, and the Mercer County Parties (as such terms are defined therein) (the “2021 Settlement Agreement”); (ii) to amend certain provisions of the Trust Indenture and the Lease Purchase Agreement; and (iii) achieve debt service savings on the Series 2011A Bonds; and

**WHEREAS**, the Series 2021A Refunding Bonds will be issued pursuant to: (i) that certain “RESOLUTION AUTHORIZING THE ISSUANCE OF COUNTY GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE REFUNDING BONDS, SERIES 2021A (FEDERALLY TAXABLE), OF THE MERCER COUNTY IMPROVEMENT AUTHORITY AND DETERMINING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH” to be adopted by the governing body of the Authority (the “Bond Resolution”); and (ii) the provisions of Section 2.04 of the Original Indenture relating to the issuance of refunding bonds as additional bonds, as amended by the First Supplemental Indenture of Trust, to be dated on or about September 15, 2021, authorizing the issuance and sale of the Series 2021A Refunding Bonds (the “First Supplemental Indenture” and together with the Original Indenture, the “Trust Indenture”), all in accordance with Sections 17-19 of the Act (N.J.S.A. 40:37A-60, 61 and 62) and all other applicable law; and

**WHEREAS**, the principal of, redemption premium, if any, and interest on the Series 2021A Refunding Bonds shall be secured by the pledge of the Trust Estate (as defined in the Trust Indenture) by the Authority to the Trustee, which Trust Estate shall include, among other things, all right, title and interest of the Authority in, to and under; (i) the Revenues (which includes (a) all Basic Lease Payments (as defined in the Trust Indenture) made by the Sunlight General Mercer Solar, LLC (the “Company”) under the Company Lease Agreement (as defined in the Trust Indenture), as amended, together with all Power Purchase Price Payments (as defined in the Trust Indenture) made by the Local Unit and assigned to the Trustee, (b) those Additional Lease Payments (as defined in the Trust Indenture) related to the Purchase Option Price or the Mandatory Purchase Price (as each such term is defined in the Trust Indenture) made by the Company under the Company Lease Agreement, and (c) any investment income which is derived from the investment of any funds which are held by the Trustee) and Assigned Company

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Receipts (as defined in the Trust Indenture), (ii) all moneys payable by the County under this guaranty ordinance, and (iii) any other documents or agreements required by the Authority to be assigned to the Trustee hereunder, including contracts giving rise to the right to receive Renewable Energy Credits (as defined in the Trust Indenture) arising from the Renewable Energy Program; and

**WHEREAS**, to induce the prospective purchasers of the Series 2021A Refunding Bonds to purchase the same and provide additional security to the holders thereof, the County desires, in accordance with Section 37 of the Act, N.J.S.A. 40:37A-80, to unconditionally and irrevocably guaranty the punctual payment of the principal of and interest on the Series 2021A Bonds as further described herein; and

**WHEREAS**, the payment of the principal of (including mandatory sinking fund installments, if any) and interest on the Series 2011A Refunding Bonds, but not any redemption premium, shall be fully, unconditionally and irrevocably guaranteed in accordance with (i) the terms of this guaranty ordinance of the County, (ii) a guaranty certificate to be executed by an authorized officer of the County on the face of each Series 2021A Refunding Bond and (iii) a County Guaranty Agreement (Mercer County Renewable Energy Program Refunding Bonds, Series 2021A) (the “County Guaranty Agreement”) 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 Trust Indenture (collectively, the “County Guaranty”), all pursuant to Section 37 of the Act (N.J.S.A. 40:37A 80); and

**WHEREAS**, in accordance with Section 13 of the Act (N.J.S.A. 40:37A-56), prior to the issuance of the Series 2021A Refunding Bonds, the Authority shall have made a detailed report related to the Board of Commissioners setting forth, among other things, the status of the Renewable Energy Program and the details of the Settlement Agreement thereupon, and details related to the Bond Resolution, the Trust Indenture (including the First Supplemental Indenture), the Company Lease Purchase Agreement, as amended, the County Guaranty (including the County Guaranty Agreement), and any other documents to be executed in connection with the issuance of the Series 2021A Refunding Bonds and the Renewable Energy Program (collectively, the “Program Documents”).

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NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MERCER, NEW JERSEY (NOT LESS THAN TWO-THIRDS OF ALL THE MEMBERS THEREOF AFFIRMATIVELY CONCURRING), AS FOLLOWS:

**Section 1.** This guaranty ordinance shall be adopted by the Board of Commissioners as 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 2021A Refunding Bonds in an aggregate principal amount not exceeding \$13,500,000, which Series 2021A Refunding Bonds are to be issued to, among other things, refinance the Series 2011A Bonds as described in the preambles hereof. Notwithstanding the provisions of any other Program Document, upon the endorsement of the Series 2021A Refunding Bonds referred to in Section 3 below by an authorized officer of the County, the County shall be unconditionally and irrevocably obligated to pay, when due, the principal of (including sinking fund installments, if any) and interest on the Series 2021A Refunding 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 2021A Refunding 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 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. This 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 2021A Refunding 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 or for any other reason.

**Section 3.** The County Executive shall, by manual or facsimile signature, and is hereby directed to execute an endorsement on each of the Series 2021A Refunding 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 2021A Refunding Bond shall be in substantially the following form, and absent the fully executed endorsement in such following form on any such Series 2021A Refunding Bond, such Series 2021A Refunding Bond shall not be entitled to the benefits of this guaranty ordinance:

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“GUARANTY OF THE COUNTY OF MERCER, NEW JERSEY”

The payment of the principal of (including sinking fund installments, if any) and interest on the within Series 2021A Refunding Bond shall be fully, irrevocably and unconditionally guaranteed by the County of Mercer, 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 any 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 2021A Refunding 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.

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

COUNTY OF MERCER, NEW JERSEY

By: \_\_\_\_\_  
County Executive

The County Executive and Chief Financial Officer/County Treasurer are each hereby authorized and directed to enter into, execute and deliver in the name of the County and on its behalf, the County Guaranty Agreement, if necessary or desirable, setting forth such matters with respect to the guaranty authorized by this guaranty ordinance as the County Executive or Chief Financial Officer/County Treasurer (after consultation with counsel to the County) deems appropriate, and the Clerk of the Board and Deputy Clerk of the Board are each authorized and directed to attest to the signature of the County Executive or Chief Financial Officer/County Treasurer and to affix the seal of the County to the Guaranty Agreement. The County Executive and the Chief Financial Officer/Treasurer are each hereby further authorized and directed to execute or acknowledge such other certificates or agreements 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, any agreement or certificate detailing the time and method that payment under this guaranty shall be made by the County. Such further agreement or certificate 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.

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**Section 4.** It is hereby found, determined and declared by the Board of Commissioners, as 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 2021A Refunding Bonds which shall be entitled to the benefits of this guaranty ordinance, being an amount not to exceed \$13,500,000, 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 2021A Refunding 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 2011 Bonds until the end of the fiscal year beginning next after the completion of acquisition, construction, installation or renovation 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 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 2021A Refunding 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 2021A Refunding Bonds of the Authority that 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 \$13,500,000; and the maximum principal amount of Series 2021A Refunding Bonds of the Authority that may be outstanding at any one time is \$13,500,000.

(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.

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(c) A supplemental debt statement of the County has been duly made and filed in the office of the Clerk of the Board of Commissioners, 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 \$13,500,000 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.

(d) 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 2021A Refunding Bonds hereby.

**Section 6.** This guaranty ordinance shall take effect at the time and in the manner provided by law.

**Section 7.** A public hearing shall be held on this guaranty ordinance on July \_\_\_\_, 2021 at \_\_\_\_\_ p.m. in the Board of Commissioners meeting room, located at Room 211, McDade Administration Building, 640 South Broad Street, Trenton, NJ 08650.

**Section 8.** The Clerk of the Board of 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 9.** Upon the adoption hereof, the Clerk of the Board of Commissioners shall forward certified copies of this resolution to Phillip S. Miller, Executive Director of the Authority; County Counsel; David Miller, County Chief Financial Officer; and DeCotiis, FitzPatrick, Cole & Giblin, LLP, Bond Counsel to the Authority.



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## NOTICE OF PENDING GUARANTY ORDINANCE

PUBLIC NOTICE IS HEREBY GIVEN that the following bond ordinance was duly introduced and passed upon first reading at a regular meeting of the governing body of the Board of County Commissioners of the County of Mercer, State of New Jersey, held on June 24, 2021. Further notice is hereby given that said bond ordinance will be considered for final passage and adoption, after public hearing thereon, at a regular meeting of said governing body to be held at the Commissioner's meeting room, located at Room 211, McDade Administration Building, 640 South Broad Street, Trenton, NJ 08650, on July \_\_, 2021 at \_\_\_\_\_ p.m., and during the week prior to and up to and including the date of such meeting, copies of said bond ordinance will be made available at the Clerk of the Board's office in the McDade Administration Building to the members of the general public who shall request the same.

JERLENE H. WORTHY,  
Clerk of the Board  
of County Commissioners

## NOTICE OF ADOPTION OF GUARANTY ORDINANCE

PUBLIC NOTICE IS HEREBY GIVEN that the ordinance published herewith has been finally adopted by the Board of County Commissioners of the County of Mercer, New Jersey on July \_\_, 2021 and the 20-day period of limitation within which a suit, action or proceeding questioning the validity of such guaranty ordinance can be commenced, as provided in the Local Bond Law, has begun to run from the date of the first publication of this notice.

JERLENE H. WORTHY,  
Clerk of the Board  
of County Commissioners

## CLERK'S CERTIFICATE

I, JERLENE H. WORTHY, Clerk of the Board of County Commissioners (the "Board"), in the County of Mercer, State of New Jersey, HEREBY CERTIFY as follows that:

1. The attached copy of Ordinance No. \_\_\_\_\_ of said Board entitled as set forth below and finally adopted on July \_\_, 2021, has been compared by me with the original thereof officially recorded in the Ordinance Book of the Board and is a true and correct copy thereof and of the whole of said original Ordinance. The title of said Ordinance is as follows:

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**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MERCER, NEW JERSEY, AUTHORIZING THE GUARANTY BY THE COUNTY OF THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE MERCER COUNTY IMPROVEMENT AUTHORITY'S COUNTY GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE REFUNDING BONDS, SERIES 2021A (FEDERALLY TAXABLE) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$13,500,000 FOR THE PURPOSE OF PROVIDING ADDITIONAL SECURITY FOR THE PAYMENT OF SAID BONDS; AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A COUNTY GUARANTY AGREEMENT; AND DETERMINING CERTAIN MATTERS IN CONNECTION THEREWITH**

2. Said Ordinance was introduced in writing and read and passed on first reading at a regular meeting of said Board duly called and held on June 24, 2021 (a true and correct copy of an extract of the minutes of the meeting is attached hereto), and was passed on second reading and finally adopted by the recorded affirmative vote of at least two-thirds of all the members of said Board, at a regular meeting thereof duly called and held on July \_\_, 2021 (a true and correct copy of an extract of the minutes of the meeting is attached hereto), following the holding of a public hearing thereon at which all interested persons were given an opportunity to be heard.
3. Said Ordinance was published in full after first reading, on \_\_\_\_\_, 2021, together with the Notice of Pending Guaranty Ordinance, containing the date of introduction, time and place of further consideration of said Ordinance (a true and correct copy of the affidavit of publication of said Ordinance is attached hereto).
4. On \_\_\_\_\_, 2021, said Ordinance was posted on the bulletin board in the McDade Administration Building together with notice of the availability of copies of said Ordinance at the Office of the Clerk of the Board, and such copies of said Ordinance were made available to all members of the general public requesting the same.
5. After final passage and approval, said Ordinance was published in full, together with a Notice of Adoption of Guaranty Ordinance, on July \_\_, 2021 in \_\_\_\_\_, a newspaper circulating in the County, and no protest by any person against making the improvement or issuing the indebtedness authorized in said Ordinance, nor any petition requesting that a referendum vote be taken on the action proposed in the Ordinance has been presented to the governing body or to me or filed in my office nor has any such action or proceeding questioning the validity of such Ordinance been commenced within 20 days after such publication (a true and correct copy of the affidavit of publication of said Ordinance is attached hereto).

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6. Said Ordinance when introduced was complete in the form in which it was finally adopted and remained on file in the Office of the Clerk of the Board for public inspection from the date of introduction to the date of final adoption (a certified copy of the adopted Ordinance is attached hereto) .
7. The attached copy of a Supplemental Debt Statement has been compared by me with the original Supplemental Debt Statement of said Board, prepared as of \_\_\_\_\_ \_\_, 2021, and sworn to on \_\_\_\_\_ \_\_, 2021, by \_\_\_\_\_, who was then the Chief Financial Officer of said County, and filed in the office of said Clerk on \_\_\_\_\_ \_\_, 2021, and that the same is a true and complete copy of said original Supplemental Debt Statement.
8. A complete, executed duplicate of the said original Supplemental Debt Statement was duly filed (before final adoption by the Board) in the Office of the Director of the Division of Local Government Services of the State of New Jersey on \_\_\_\_\_ \_\_, 2021.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Board this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

(SEAL)

JERLENE H. WORTHY,  
Clerk of the Board  
of County Commissioners

## ATTACHMENTS

- A) Certified copy of Ordinance
- B) Extract of minutes of the Board meeting at which Ordinance was introduced
- C) Extract of minutes of the Board meeting at which Ordinance was finally adopted
- D) Affidavit of Publication of Notice of Pending Guaranty Ordinance
- E) Affidavit of Publication of Notice of Adoption of Guaranty Ordinance
- F) Supplemental Debt Statement (filed copy)