

ORDINANCE NO. 6627-09

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED FIVE MILLION SEVEN HUNDRED TWENTY THOUSAND DOLLARS (\$5,720,000) PRINCIPAL AMOUNT OF GENERAL OBLIGATIONS OF THE CITY OF NEWPORT NEWS, VIRGINIA, IN THE FORM OF GENERAL OBLIGATION GENERAL IMPROVEMENT BONDS OF THE CITY OF NEWPORT NEWS, VIRGINIA, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF CAPITAL IMPROVEMENT PROJECTS OF AND FOR THE CITY, INCLUDING, WITHOUT LIMITATION, SEWER REHABILITATION PROJECTS AND OTHER CAPITAL IMPROVEMENTS TO THE WASTEWATER TREATMENT AND SANITARY SEWER SYSTEM OWNED AND OPERATED BY SUCH CITY; APPROVING THE FORM OF SUCH BONDS AND DELEGATING TO THE CITY MANAGER OR ACTING CITY MANAGER AUTHORITY TO APPROVE CERTAIN DETAILS OF SUCH BONDS; APPOINTING THE CITY TREASURER AS REGISTRAR AND PAYING AGENT FOR SUCH BONDS; PROVIDING FOR THE ISSUANCE OF SUCH BONDS TO THE VIRGINIA RESOURCES AUTHORITY, AS ADMINISTRATOR OF THE VIRGINIA WATER FACILITIES REVOLVING FUND, TO EVIDENCE THE BORROWING TO BE MADE BY SUCH CITY FROM SUCH FUND PURSUANT TO A FINANCING AGREEMENT BY AND BETWEEN SUCH AUTHORITY AND SUCH CITY; AND AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF SUCH FINANCING AGREEMENT AND THE TAX COMPLIANCE AGREEMENT REFERRED TO THEREIN.

WHEREAS, in the judgment of the Council (the "Council") of the City of Newport News, Virginia (the "City"), it is desirable to authorize the issuance of not to exceed \$5,720,000 principal amount of general obligations of the City in the form of General Obligation General Improvement Bonds to provide funds to pay the cost of capital improvement projects of and for the City, including, without limitation, sewer rehabilitation projects and other capital improvements to the wastewater treatment and sanitary sewer system owned and operated by the City;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS, VIRGINIA:

SECTION 1. Pursuant to Chapter 26 of Title 15.2 of the Code of Virginia, 1950, the same being the Public Finance Act of 1991, for the purpose of providing funds to pay the cost of capital improvement projects of and for the City, including, without limitation, sewer rehabilitation projects and other capital improvements to the wastewater treatment and sanitary sewer system owned and operated by the City, there are authorized to be issued not to exceed Five Million Seven Hundred Twenty Thousand Dollars (\$5,720,000) principal amount of general obligation bonds of the City to be designated "General Obligation General Improvement Bonds" (the "Bonds").

SECTION 2. The Bonds shall be issued to or for the benefit of the Virginia Resources Authority ("VRA"), as administrator of the Virginia Water Facilities Revolving Fund (the "Fund"), pursuant to the terms, conditions and provisions of, and to evidence the borrowing to be made by the City from VRA under, a commitment letter (the "Commitment Letter"), in substantially such form as has been executed by the City in previous transactions of a similar nature with VRA, which when accepted by the City will be evidenced by an acceptance (the "Acceptance"), in substantially such form as has been executed by the City in previous transactions of a similar nature with VRA and a Financing Agreement (the "Financing Agreement"), by and between the VRA and the City, as the Borrower thereunder, such Financing Agreement to be in substantially such form as has been executed in previous transactions of a similar nature with VRA. The City Manager or the Acting City Manager is hereby authorized and directed to execute and deliver to VRA the Commitment Letter, the Acceptance and the Financing Agreement in substantially the forms approved in the immediately preceding sentence, together with such changes as the City Manager or the Acting City Manager shall approve upon the advice of counsel (including the City Attorney and Bond Counsel to the City), such approval to be conclusively evidenced by his execution and delivery thereof. The City Manager or the Acting City Manager is hereby further authorized and directed to execute and deliver to the VRA a Tax Compliance Agreement (as such term is defined in Section 1.1 of the Financing Agreement) and such other closing documents relating to the borrowing to be made by the City from the VRA under the Financing Agreement as the City Manager or the Acting City Manager shall, upon the advice of the City Attorney or Bond Counsel to the City, deem to be necessary or desirable.

There is hereby delegated to the City Manager or the Acting City Manager authority to determine by certificate the dated date of the Bonds, the principal amount of the Bonds (*provided* that such principal amount of the Bonds shall not exceed Five Million Seven Hundred Twenty Thousand Dollars (\$5,720,000)), the dates on which principal of and interest (or "Cost of Funds" as defined in the Financing Agreement) on the Bonds shall be payable (*provided* that the final maturity date of the Bonds shall not be later than thirty-five (35) years after the dated date of the Bonds) and the interest rate to be borne by the Bonds (*provided* that such interest rate, exclusive of any "Supplemental Interest", if and when payable under the Financing Agreement, shall not exceed six percent (6.00%) per annum).

SECTION 3. The full faith and credit of the City are irrevocably pledged to the punctual payment of the principal of and interest on the Bonds as the same become due. In each year while the Bonds, or any of them, are outstanding and unpaid, the Council is authorized and required to levy and collect annually, at the same time and in the same manner as other taxes in the City are assessed, levied and collected, a tax upon all taxable property within the City, over and above all other taxes, authorized or limited by law and without limitation as to rate or amount, sufficient to pay when due the principal of and interest on the Bonds to the extent other funds of the City are not lawfully available and appropriated for such purpose.

SECTION 4. The Bonds shall be executed, for and on behalf of the City, by the manual signature of the Mayor of the City and shall have the corporate seal of the City impressed thereon, attested by the manual signature of the City Clerk or the Deputy City Clerk of the City.

The Bonds shall be in substantially the form set forth as Exhibit A to the definitive form of the Financing Agreement.

The City Treasurer is hereby appointed as the Registrar and Paying Agent for the Bonds.

SECTION 5. (a) The City covenants that it shall not take or omit to take any action the taking or omission of which will cause the bonds issued by the VRA, a portion of the proceeds of which are being used to purchase the Bonds from the City pursuant to the Financing Agreement (the "VRA Bonds"), to be "arbitrage bonds," within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, including regulations applicable to the VRA Bonds (the "Code"), or otherwise cause interest on the VRA Bonds to be includable in the gross income for federal income tax purposes of the registered owners thereof under existing law.

(b) The City covenants that it shall not permit the proceeds of the Bonds or the facilities financed with the proceeds of the Bonds to be used in any manner that would result in (i) 5% or more of such proceeds or facilities being financed with such proceeds being used in any trade or business carried on by any person other than a governmental unit, as provided in Section 141(b) of the Code, (ii) 5% or more of such proceeds or facilities being financed being used with respect to any output facility (other than a facility for the furnishing of water), within the meaning of Section 141(b)(4) of the Code, or (iii) 5% or more of such proceeds or facilities being financed with such proceeds being used directly or indirectly to make or finance loans to any person other than a governmental unit, as provided in Section 141(c) of the Code; *provided, however*, that if the VRA and the City receive an opinion of nationally recognized bond counsel that compliance with any such covenants need not be complied with to prevent the interest on the VRA Bonds from being includable in the gross income for federal income tax purposes of the registered owners thereof under existing law, the City need not comply with such covenants.

SECTION 6. The Mayor, the City Manager, the Acting City Manager, the City Attorney, the City Treasurer, the City Clerk and other appropriate officers and employees of the City shall take all actions as shall be necessary to carry out the provisions of this Ordinance.

SECTION 7. All ordinances and proceedings in conflict herewith are, to the extent of such conflict, repealed. This Ordinance shall constitute the "Local Resolution" as such term is defined in Section 1.1 of the Financing Agreement.

SECTION 8. The City Clerk is hereby directed to file a copy of this Ordinance, certified by the City Clerk to be a true copy hereof, with the Circuit Court of the City of Newport News, Virginia.

SECTION 9. That this ordinance shall be in effect on and after the date of its adoption, September 8, 2009.

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PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON SEPTEMBER 8, 2009

Mabel Washington Jenkins, CMC
City Clerk

Joe S. Frank
Mayor

A true copy, teste:

City Clerk