

COUNCIL OF THE CITY OF ABERDEEN
Ordinance No. 10-O-09

Introduced By: Mayor Michael E. Bennett

Date Introduced: May 24, 2010

Date Adopted:

Date Effective:

ORDINANCE NO. 10-O-09

CITY OF ABERDEEN
WATER QUALITY BOND, SERIES 2010

AN ORDINANCE TO AUTHORIZE AND EMPOWER THE MAYOR AND CITY COUNCIL OF ABERDEEN, A MUNICIPAL CORPORATION OF THE STATE OF MARYLAND (THE "CITY"), TO ISSUE UPON THE FULL FAITH AND CREDIT OF THE CITY A GENERAL OBLIGATION BOND IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED TEN MILLION DOLLARS (\$10,000,000), TO BE DESIGNATED AS "CITY OF ABERDEEN WATER QUALITY BOND, SERIES 2010" (THE "BOND"), PURSUANT TO THE AUTHORITY OF SECTIONS 31 THROUGH 37, INCLUSIVE OF ARTICLE 23A OF THE ANNOTATED CODE OF MARYLAND (2005 REPLACEMENT VOLUME AND 2009 SUPPLEMENT), SECTIONS 9-1601 THROUGH 9-1622 INCLUSIVE OF THE ENVIRONMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND (2007 REPLACEMENT VOLUME AND 2009 SUPPLEMENT), AND THE CHARTER OF THE CITY, TO FINANCE OR REFINANCE THE COSTS OF THE CONSTRUCTION OF ENHANCED NUTRIENT REMOVAL (ENR) UPGRADES, EXPANSION AND IMPROVEMENTS TO THE CITY'S WASTE WATER TREATMENT PLANT, TOGETHER WITH RELATED COSTS AND THE COSTS OF ISSUANCE; PRESCRIBING, APPROVING AND ADOPTING THE FORM AND TENOR OF THE BOND, THE TERMS AND CONDITIONS FOR THE ISSUANCE AND SALE OF THE BOND BY PRIVATE SALE, WITHOUT PUBLIC BIDDING TO THE MARYLAND WATER QUALITY FINANCING ADMINISTRATION (THE "ADMINISTRATION") AND ALL OTHER DETAILS INCIDENT THERETO; AUTHORIZING THE MAYOR ON BEHALF OF THE CITY, TO ADJUST AND FIX CERTAIN DETAILS OF THE BOND, INCLUDING FIXING THE FINAL PRINCIPAL AMOUNT OF THE BOND AND CERTAIN OTHER MATTERS AS PROVIDED HEREIN; AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH THE ADMINISTRATION PURSUANT TO WHICH ADVANCES WILL BE MADE UNDER THE BOND; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON THE BOND WILL BE PAYABLE IN THE FIRST INSTANCE FROM REVENUES RECEIVED BY THE CITY FROM A DEDICATED SOURCE; PROVIDING FOR THE LEVYING AND COLLECTION OF AD VALOREM TAXES SUFFICIENT FOR THE PROMPT PAYMENT OF INSTALLMENTS OF THE PRINCIPAL OF AND INTEREST

ON THE BOND; PLEDGING THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE CITY TO THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BOND; AUTHORIZING AND DIRECTING THE MAYOR AND OTHER OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO COMPLETE AND CLOSE THE SALE AND DELIVERY OF THE BOND; AND GENERALLY PROVIDING FOR AND DETERMINING VARIOUS MATTERS IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF THE BOND.

RECITALS

WHEREAS, the Mayor and City Council of Aberdeen, a municipal corporation of the State of Maryland (the “City”) is authorized and empowered pursuant to Sections 31 through 37, inclusive, of Article 23A of the Annotated Code of Maryland (2005 Replacement Volume and 2009 Supplement) (“Article 23A”), Sections 9-1601 through 9-1622, inclusive, of the Environment Article (2007 Replacement Volume and 2009 Supplement) (the “WQFA Act”), and the Charter of the City (the “Charter”), to issue its general obligation bond to be designated as “City of Aberdeen Water Quality Bond, Series 2010” in the aggregate principal amount not to exceed \$10,000,000 (the “Bond”) to finance and refinance the costs of the planning, design and construction for the Enhanced Nutrient Removal (ENR) at the existing 4.0 million gallons per day (mgd) City of Aberdeen Advanced Wastewater Treatment Plant (WWTP) to achieve effluent concentration goals of 3 mg/l for Total Nitrogen and 0.3 mg/l for Total Phosphorous, together with the costs of issuance and other related costs (the “Project”);

WHEREAS, the public purposes for which the proceeds of the Bond are authorized to be spent, the amounts (or maximum amounts) authorized to be spent for each such public purpose, are a portion of the cost for the Project;

WHEREAS, the WQFA Act, which established the Maryland Water Quality Financing Administration (the “Administration”) and authorized a state water pollution control revolving fund (“SRF”), authorizes the Administration to make a loan from the SRF to a “local

government” (as defined in the WQFA Act) for the purpose of financing all or a portion of the costs of a “wastewater facility” (as defined in the WQFA Act);

WHEREAS, the City is a “local government” within the meaning of the WQFA Act;

WHEREAS, pursuant to Section 9-1606(a) and (b) of the WQFA Act, the City desires to issue and sell its bond to the Administration at private sale without public bidding and based on the findings set forth hereinabove, the City has determined that it is in the best interest of the City to authorize and execute a Loan Agreement (as defined below) and to sell the Bond at private negotiated sale to the Administration;

WHEREAS, the City has determined to enact this Ordinance in order to provide for the issuance and sale, the designation, form, tenor, denomination, maturity or maturities, and the rate or rates of interest payable upon the Bond, and to provide for the levy annually of *ad valorem* taxes upon the assessable property within the City sufficient, together with other taxes and other available funds to provide for the payment of the interest on and principal of the Bond issued under this Ordinance;

WHEREAS, the Bond issued hereunder is within the legal limitations on the indebtedness of the City;

WHEREAS, the final aggregate principal amount of Bond together with certain details of the Bond, including, but not limited to, the form of the Bond, the form of various documents as are necessary to implement the financing authorized by this Ordinance, maturity schedule, interest rate or rates, redemption provisions, date of sale, manner of sale (if different from private (negotiated) sale), and purchaser, and appointment of escrow deposit agent if necessary for the Bond, shall be determined as provided herein;

NOW, THEREFORE, in accordance with the provisions of the Article 23A, the WQFA Act, and the Charter

SECTION 1. Be it enacted by the Mayor and City Council of Aberdeen that all terms defined in the foregoing recitals shall have the meanings given such terms herein.

SECTION 2. Be it further enacted by the Mayor and City Council of Aberdeen that as a part or all of the aggregate indebtedness authorized by this Ordinance, the City shall borrow upon its full faith and credit and unlimited taxing power, the Bond, as a single, fully-registered bond in the maximum principal amount not to exceed Ten Million Dollars (\$10,000,000), designated as "City of Aberdeen Water Quality Bond, Series 2010", pursuant to the authority of Article 23A, WQFA Act, the Charter for all or part of the Project. It is the intent of the City that not less than \$50,000 of the costs of the Project be reimbursed to the City out of such bond proceeds for certain costs incurred by the City prior to the adoption of this Ordinance.

SECTION 3. The Project shall constitute a "wastewater facility" within the meaning of Section 9-1601(n) of the WQFA Act.

SECTION 4. Such borrowing and indebtedness of the City shall be made and incurred pursuant to Section 9-1606 and Section 9-1614(b) of the WQFA Act and in accordance with the provisions of a Loan Agreement between the City, as the Borrower, and the Administration (the "Loan Agreement"), the form of which is attached hereto as Exhibit A, with such amendments, insertions, variations or revisions as may be deemed necessary or appropriate and acceptable to the Mayor of the City (the "Mayor") by Executive Order ("Executive Order") in accordance with the provisions of this Ordinance. The City hereby approves the form of and authorizes the execution and delivery by the Mayor of the Loan Agreement set forth in Exhibit A attached

hereto, including all covenants and conditions set forth therein, with such amendments, insertions, variations or amendments as approved by the Mayor by Executive Order.

SECTION 5. The Bond shall be dated as of the date of its delivery, shall be in the form attached hereto as Exhibit B and shall be numbered R-1; shall be registered in the name of the Administration or its designee; shall be payable in principal installments; and shall bear interest at such rate not to exceed 25% of average of the Bond Buyer-II bond index for the month preceding the delivery date of the Bond. The maturity of the Bond and the date of final maturity shall appear in the executed Bond. In no event shall the final date of maturity of the bond exceed twenty-five (25) years from the date of issuance of the Bond.

The principal installments payable on the Bond, payment dates, the rate of interest to be borne by the Bond (or the manner of determining the principal payments and rate of interest), final maturity of the Bond, shall be described in Exhibit B subject to insertions and changes, if any, as may be determined and approved by the Mayor in the Executive Order, provided, however, in no event shall the principal amount of the Bond exceed \$10,000,000. Execution of the Bond by the Mayor shall constitute conclusive evidence of such approval.

SECTION 6. The City will also execute and deliver in connection with the issuance of the Bond and such other documents, agreements, instruments and certificates (the "Water Quality Documents") as the Mayor, upon advice of legal counsel, shall deem necessary or appropriate for the financing of the Project. The Loan Agreement, the Bond and the Water Quality Documents are collectively referred to herein as the "Loan Documents". Because this Ordinance is being adopted before all of the details of the sale of the Bond have been determined, the Mayor by Executive Order, pursuant to the powers reserved unto him under this Ordinance, is hereby authorized to make such changes to the form of the Loan Agreement and

Bond , including insertions therein or additions or deletions thereto, as he may deem necessary or appropriate to conform the terms of the Loan Agreement and Bond to the terms of the financing to be provided to the City by the Administration; provided, however, that such changes, additions or deletions are not in substance inconsistent with or contrary to the requirements set forth in this Ordinance, and the principal amount of the Bond shall not exceed \$10,000,000.

SECTION 7. The Loan Agreement and the Bond shall be executed on behalf of and in the name of the City by the Mayor, such execution to be made by the manual or facsimile signature of the Mayor. The corporate seal of the City shall be affixed to the Loan Agreement and to the Bond, and each shall be attested by the manual signature of the City Clerk. If any officer whose signature shall appear on the Loan Documents shall cease to be such officer before the delivery of such Loan Documents, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery. The Loan Documents, as executed by the Mayor, shall be valid and legally binding obligations of the City in accordance with their terms.

SECTION 8. Notwithstanding any section of Article 23A or the Charter, as authorized by Section 9-1606 of the WQFA Act, the Bond may be sold at private sale to the Administration, public advertisement and sale of the Bond not being required by the terms of the WQFA Act. Such private sale is determined to be in the best interests of the City.

SECTION 9. For the purpose of paying the maturing principal of and interest on the Bond when due, the City has established, pursuant to Ordinance No. 10-0-06, a dedicated source of revenues, as shall be described in the Loan Agreement, entitled "ENR Fee" equal to an annual charge of \$76.56 for each single residential customer and an annual fee of \$76.56 for each Equivalent Dwelling Unit for commercial, institutional, industrial and all other sewer customers.

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In the event such revenues are insufficient to meet the debt service requirements in any fiscal year in which the Bond is outstanding, the City shall first use other available water and sewer revenues to meet the debt service requirements and, in addition, in the event of a shortfall of such revenue to pay debt served on the Bond, the City shall levy in such fiscal year upon all real and tangible personal property within its jurisdictional limits, subject to assessment for unlimited taxation, *ad valorem* taxes in rate and amount sufficient to provide for the prompt payment of such principal and interest on the Bond in such fiscal year, and, if the proceeds from the collection of taxes so levied in any such fiscal year are inadequate for such payment, additional taxes shall be levied in the succeeding fiscal year to make up such deficiency. The full faith and credit and unlimited taxing power of the City are hereby irrevocably pledged to the payment of the principal of and interest on the Bond as and when they become due and payable and to the levy and collection of the taxes hereinabove described as and when such taxes may become necessary in order to provide sufficient funds to meet the debt service requirements of the Bond. The City hereby covenants and agrees with the registered owner of the Bond to levy and collect the taxes hereinabove described and to take any action that may be appropriate from time to time during the period that the Bond remains outstanding and unpaid to provide the funds necessary to pay promptly the principal and interest due thereon.

SECTION 10. The Bond is being issued in connection with the Administration's Maryland Water Quality Revolving Loan Fund Program and will evidence the City's obligation to repay the obligations under the Loan Agreement. The Loan Agreement limits the ability of the City to prepay the Bond in accordance with restrictions upon the ability of the Administration to redeem the Administration's revenue bonds if the loan is made from proceeds of the Administration's revenue bond issue. Accordingly, the City may prepay the Bond only in

accordance with the provisions of the Loan Agreement and the terms governing prepayment as set forth in the Bond.

SECTION 11. The Mayor shall be the certifying official for the City responsible for the execution and delivery on the date of the issuance of the Bond of a tax certificate and compliance agreement of the City that complies with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations thereunder. The Mayor is hereby authorized and directed to execute and deliver the tax certificate and compliance agreement to counsel rendering an opinion on the excludability from gross income of interest on the Bond for purposes of federal income taxation on the date of the issuance of the Bond. The tax certificate and compliance agreement shall set out the reasonable expectations of the City as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Bond or of any moneys, securities or other obligations to the credit of any account of the City which may be deemed to be Bond proceeds under Section 148 or the arbitrage regulations. The City covenants with the owner of the Bond that the facts, estimates and circumstances set forth in the tax certificate and compliance agreement will be based on the City's reasonable expectations on the date of the issuance of the Bond and will be, to the best of the certifying officials' knowledge, true, correct and complete as of that date.

SECTION 12. The City covenants and agrees with the registered owner of the Bond that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Bond proceeds that would cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code and the arbitrage regulations. The City further covenants that it will comply with Section 148 of the Code and the regulations thereunder which are applicable to the Bond on the date of issuance of the Bond and which may subsequently lawfully

be made applicable to the Bond. The City further covenants that it shall make such use of the proceeds of the Bond, to the extent possible regulate the investment of the proceeds thereof, and take such other and further actions as may be required to maintain the excludability from gross income, for federal income tax purposes, of interest on the Bond. All officers, employees and agents of the City are hereby authorized and directed to take such actions, and to provide such certificates of facts and estimates regarding the amount and use of the proceeds of the Bond, as may be necessary or appropriate from time to time to comply with, or to evidence the City's compliance with, the covenants set forth in this Section.

SECTION 13. Be it further enacted by the Mayor and City Council of Aberdeen, that authority is hereby conferred respectively on the Mayor, the City Manager, and the City Attorney, or any of them, and they are hereby directed to take the following actions on behalf of the City:

(a) to execute, acknowledge, seal and deliver the Loan Documents substantially in the forms determined administratively by the Mayor in the Executive Order; and

(b) to execute, acknowledge, seal and deliver such other and further certificates, certifications, agreements, documents and instruments and take such other actions as they or any one or more of them may deem necessary or appropriate to consummate the transactions contemplated by this Ordinance.

SECTION 14. Be it further enacted by the Mayor and City Council of Aberdeen, that the City hereby declares that it is in the public interest of the City that the issuance, sale and delivery of the Bond be exempt from the provisions of Sections 10 and 11 of Article 31 of the Annotated Code of Maryland, as amended.

SECTION 15. Be it further enacted by the Mayor and City Council of Aberdeen, that the City covenants and agrees with the registered owners from time to time of the Bond as follows:

(a) The City covenants that it will not make any use of the proceeds of the Bond or any moneys, securities or other obligations on deposit to the credit of the City or otherwise which may be deemed by the Internal Revenue Service to be proceeds of the Bond pursuant to the Code, and the regulations promulgated thereunder, which would cause any of the Bond to be “arbitrage bonds” or “private activity bonds” within the meaning of the Code.

(b) The City further covenants that it will comply with those provisions of the Code which are applicable to the Bond on the date of issuance of the Bond and which may subsequently lawfully be made applicable to the Bond. To the extent that provisions of the Code apply to only a portion of the Bonds, proceeds of the Bonds or other moneys, securities or other obligations deemed to be proceeds, it is intended that the covenants of the City contained in this Section be construed so as to require the City to comply with the provisions of the Code only to the extent of such applicability.

(c) The City further covenants that it will not (i) take any action, (ii) fail to take any action, or (iii) make any use of the proceeds of the Bond which would cause the interest on any of the Bond to be or become subject to federal income taxes in the hands of the registered holders of the Bond.

SECTION 16. Be it further enacted by the Mayor and City Council of Aberdeen, that the Treasurer of the City is hereby designated and appointed as bond registrar, paying agent and authenticating agent for the Bond (the “Bond Registrar”). The Bond Registrar shall maintain books of the City for the registration and transfer of the Bond.

The City and the Bond Registrar may deem and treat the person in whose name any Bond shall be registered upon the books of the City as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal or accreted amount of and premium, if any, and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or, upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary.

The Bond, upon surrender thereof at the principal office of the Bond Registrar with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his duly authorized attorney, may, at the option of the registered owner thereof, be exchanged for an equal aggregate principal amount of Bond of the same maturity and of any other authorized denominations.

SECTION 17. In the event any Bond is mutilated, lost, stolen or destroyed, the City may execute, and the Bond Registrar may authenticate, a new Bond of like date, maturity, interest rate and denomination as that of the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Bond Registrar, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the City and the Bond Registrar evidence of such loss, theft or destruction satisfactory to the City and the Bond Registrar, together with indemnity satisfactory to them. In the event any such Bond shall be about to mature or have matured or been called for redemption, instead of issuing a duplicate Bond, the Bond Registrar may pay the same without surrender thereof. The City and the Bond

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Registrar may charge the registered owner of such Bond their expenses and reasonable fees, if any, in this connection.

SECTION 18. Be it further enacted by the Mayor and City Council of Aberdeen, that the provisions of this Ordinance are severable, and if any provision, sentence, clause, section or part hereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been passed if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included herein, as if the person or circumstances to which this Ordinance or any part here are inapplicable had been specifically exempted therefrom.

This ordinance shall be effective twenty (20) days after passage.

COUNCIL OF THE CITY OF ABERDEEN

Michael E. Bennett, Mayor

Ruth E. Elliott, Councilwoman

Bruce E. Garner, Councilman

Sandra J. Landbeck, Councilwoman

Ruth Ann Young, Council President

ATTEST:

SEAL:

Monica A. Correll, City Clerk

Exhibit A – Form of Loan Agreement
Exhibit B - Form of Bond

EXHIBIT A

Form of Loan Agreement

EXHIBIT B

Form of Bond