

Ordinance No. 2009-06

AN ORDINANCE OF THE COUNCIL OF THE MAYOR AND COUNCIL OF BOONSBORO TO AUTHORIZE AND EMPOWER THE MAYOR AND COUNCIL OF BOONSBORO (THE "TOWN") TO ISSUE AND SELL FROM TIME TO TIME, UPON ITS FULL FAITH AND CREDIT, ONE OR MORE SERIES OF GENERAL OBLIGATION BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$5,991,000, EACH SERIES OF BONDS TO BE ISSUED AND SOLD FOR THE PUBLIC PURPOSE OF FINANCING, REIMBURSING OR REFINANCING ALL OR A PORTION OF THE COST OF ACTIVITIES RELATING TO THE PLANNING, DESIGN, ENGINEERING, CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF THE BOONSBORO WASTEWATER TREATMENT PLANT BIOLOGICAL NUTRIENT REMOVAL (BNR) AND ENHANCED NUTRIENT REMOVAL (ENR) UPGRADE AND EXPANSION PROJECT, INCLUDING, WITHOUT LIMITATION, SEQUENTIAL BATCH REACTORS, TERTIARY FILTRATION, CHLORINATION/DECHLORINATION AND SLUDGE DIGESTION IMPROVEMENTS AND FACILITIES, TOGETHER WITH RELATED COSTS AND COSTS OF ISSUANCE AND, IF THE COUNCIL SO DETERMINES PURSUANT TO A SUBSEQUENT RESOLUTION, CAPITALIZED INTEREST; DETERMINING THAT ANY SUCH SERIES OF BONDS BE SOLD AT PRIVATE NEGOTIATED SALE WITHOUT ADVERTISEMENT OR PUBLICATION OF NOTICE OF SALE, UNLESS OTHERWISE PROVIDED IN A SUBSEQUENT RESOLUTION; AUTHORIZING THE ADOPTION OF A SUBSEQUENT RESOLUTION OR RESOLUTIONS TO DETERMINE AND PROVIDE FOR VARIOUS MATTERS RELATING TO THE AUTHORIZATION, SALE, SECURITY, ISSUANCE, DELIVERY, PAYMENT AND PREPAYMENT OF AND FOR ANY SERIES OF BONDS; AUTHORIZING THE ISSUANCE AND SALE FROM TIME TO TIME OF ONE OR MORE SERIES OF GENERAL OBLIGATION BONDS IN ORDER TO REFUND ANY BONDS ISSUED PURSUANT TO THE AUTHORITY OF THIS ORDINANCE AND TO PAY RELATED COSTS, INCLUDING ISSUANCE COSTS AND FUNDED INTEREST, PROVIDED THAT, THE AGGREGATE PRINCIPAL AMOUNT OF ANY SUCH ISSUE OF REFUNDING BONDS (OR PORTION THEREOF TO BE APPLIED TO REFUNDING ANY BONDS ISSUED PURSUANT TO THIS ORDINANCE) MAY NOT EXCEED 130% OF THE AGGREGATE PRINCIPAL AMOUNT OF THE BONDS REFUNDED THEREFROM; PROVIDING THAT ANY SUCH SERIES OF REFUNDING BONDS SHALL BE SOLD BY NEGOTIATION AT PRIVATE SALE UNLESS OTHERWISE PROVIDED BY RESOLUTION AND AUTHORIZING THE ADOPTION OF A SUBSEQUENT RESOLUTION OR RESOLUTIONS TO MAKE ANY FURTHER DETERMINATIONS DEEMED NECESSARY OR DESIRABLE IN CONNECTION WITH THE ISSUANCE OF ANY SUCH SERIES OF REFUNDING BONDS; PROVIDING THAT DEBT SERVICE ON ANY SUCH SERIES OF BONDS OR REFUNDING BONDS WILL BE PAYABLE IN THE FIRST INSTANCE FROM WASTEWATER SYSTEM REVENUES; PLEDGING THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE TOWN TO THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON ANY SUCH SERIES OF OBLIGATIONS; PROVIDING FOR THE LEVY OF AD VALOREM TAXES UPON ALL REAL AND PERSONAL PROPERTY WITHIN THE TOWN'S CORPORATE LIMITS SUBJECT TO ASSESSMENT FOR UNLIMITED

MUNICIPAL TAXATION TO PAY THE PRINCIPAL OF AND INTEREST ON ANY SUCH SERIES OF OBLIGATIONS IN EACH FISCAL YEAR, SUBJECT TO REDUCTION TO THE EXTENT OTHER REVENUES OR FUNDS ARE AVAILABLE FOR SUCH PURPOSE; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON ANY SUCH SERIES OF OBLIGATIONS ALSO MAY BE PAID FROM ANY OTHER SOURCES OF REVENUE LAWFULLY AVAILABLE TO THE TOWN FOR THAT PURPOSE; PROVIDING THAT ANY OF THE BONDS OR THE REFUNDING BONDS AUTHORIZED HEREBY MAY BE CONSOLIDATED WITH ANY BONDS AND/OR REFUNDING BONDS AUTHORIZED BY ONE OR MORE OTHER ORDINANCES OF THE COUNCIL AND ISSUED AS A SINGLE SERIES OF BONDS AND/OR REFUNDING BONDS; AUTHORIZING AND DIRECTING OFFICIALS AND EMPLOYEES OF THE TOWN TO TAKE ANY AND ALL ACTION NECESSARY TO COMPLETE AND CLOSE THE ISSUANCE, SALE AND DELIVERY OF ANY SUCH SERIES OF BONDS OR REFUNDING BONDS; AND OTHERWISE GENERALLY RELATING TO THE ISSUANCE, SALE, DELIVERY AND PAYMENT OF AND FOR ANY SUCH SERIES OF BONDS OR REFUNDING BONDS.

RECITALS

WHEREAS, The Mayor and Council of Boonsboro, a municipal corporation of the State of Maryland (the "Town"), is authorized and empowered by Sections 31 to 37, inclusive, of Article 23A of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Enabling Act"), and Section 716 of the Charter of the Town of Boonsboro, as published in Municipal Charters of Maryland, Volume 1, 2008 Replacement Edition, as replaced, supplemented or amended (the "Charter"), to borrow money for any proper public purpose and to evidence such borrowing by the issuance and sale of its general obligation bonds; and

WHEREAS, the Town has determined to undertake the planning, design, engineering, construction, improvement and equipping of the Boonsboro Wastewater Treatment Plant Biological Nutrient Removal (BNR) and Enhanced Nutrient Removal (ENR) upgrade and expansion project, including, without limitation, sequential batch reactors, tertiary filtration, chlorination/dechlorination and sludge digestion improvements and facilities, in order to improve effluent limits and expand capacity, and to pay for related costs and activities, the acquisition of necessary property rights and equipment, related site and utility improvements and related financial and legal expenses and costs of issuance, and has determined to borrow money for the public purpose of financing, reimbursing or refinancing costs of such activities; and

WHEREAS, the United States Department of Agriculture, acting through Rural Development or the Rural Utilities Service, or any related department, agency or instrumentality (any such entity, "USDA"), has preliminarily indicated that it can loan the Town \$5,991,000 for project purposes; and

WHEREAS, the Town presently intends to borrow money needed for project purposes from USDA; and

WHEREAS, notwithstanding the Town's present expectation to borrow money from USDA, the Council, pursuant to a subsequent resolution or resolutions, may provide for the sale of

any series of the bonds authorized hereby to any other purchaser or purchasers or to any combination of USDA and any other purchasers; and

WHEREAS, the Town has obtained interim financing from Susquehanna Bank in order to pay project costs, and intends to use proceeds of the bonds authorized hereby to prepay or pay all or a portion of such interim financing; and

WHEREAS, the Town Manager has advised that issuance of the bonds provided for herein shall not cause the Town to violate the debt limit provided for in Section 716(a)(1) of the Charter (which debt limit, as currently written, is construed as four per centum (4%) rather than ten per centum (10%) pursuant to the provisions of the Maryland Truth in Taxation Act of 2000); and

WHEREAS, subsequent to the issuance of any series of bonds authorized hereby, the Town may desire to refund or advance refund all or a portion of such series of bonds pursuant to the authority of Section 24 of Article 31 of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Refunding Act"); and

WHEREAS, it is intended that any series of bonds or refunding bonds issued pursuant to the authority of this Ordinance and any other applicable Maryland law may be issued as one or more bonds and any of such bonds may be issued in the form of a draw-down and/or installment bond as provided herein; and

WHEREAS, the Town has determined to pledge its full faith and credit and unlimited taxing power to the prompt payment of debt service on any series of bonds or refunding bonds authorized hereby but the Town expects to pay the principal of and interest on any such series of bonds or refunding bonds in the first instance from revenues received in connection with the operation of the wastewater system serving the Town and surrounding areas, including fees for use or connection, or from any other funds available for such purpose (including payments received by the Town pursuant to certain development agreements); provided that, the Town may use proceeds of any bonds authorized hereby to pay debt service on any interim borrowing incurred for project purposes, and the Town may apply proceeds of any refunding bonds authorized hereby to pay debt service on any bonds issued pursuant to the authority of this Ordinance; and

WHEREAS, the Town has determined to issue any series of bonds or refunding bonds authorized hereby in accordance with the terms and conditions provided for in a resolution or resolutions to be adopted by the Council pursuant to this Ordinance.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE COUNCIL OF THE MAYOR AND COUNCIL OF BOONSBORO, THAT:

SECTION 1. The Recitals to this Ordinance are deemed a substantive part of this Ordinance and are incorporated by reference herein.

SECTION 2. Pursuant to the authority of the Enabling Act, the Charter and any other applicable Maryland law, the Town hereby determines to borrow money and incur indebtedness for the public purpose of financing, reimbursing or refinancing all or a portion of the cost of any one or more activities relating to the planning, design, engineering, construction, improvement and

equipping of the Boonsboro Wastewater Treatment Plant Biological Nutrient Removal (BNR) and Enhanced Nutrient Removal (ENR) upgrade and expansion project, including, without limitation, sequential batch reactors, tertiary filtration, chlorination/dechlorination and sludge digestion improvements and facilities, in order to improve effluent limits and expand capacity, together with related costs and activities, the acquisition of necessary property rights and equipment, related site and utility improvements and related financial and legal expenses and costs of issuance and, if the Council so determines pursuant to a subsequent resolution, interest during construction and for a reasonable period thereafter (collectively, the "Project"). Proceeds of the Bonds (as defined in Section 3) may be applied to prepay or pay principal, premium and/or interest on any interim borrowing incurred by the Town for the Project, and any such expenditure shall be considered an expenditure for Project purposes.

SECTION 3. To evidence the borrowing and indebtedness authorized in Section 2 of this Ordinance, the Town, acting pursuant to the authority of the Enabling Act, the Charter and any other applicable Maryland law, hereby determines to issue and sell from time to time, upon its full faith and credit, one or more series of its general obligation bonds in an aggregate principal amount not to exceed Five Million Nine Hundred Ninety-one Thousand Dollars (\$5,991,000) (individually, a "Bond" and, collectively, the "Bonds"); provided that, no Bonds shall be issued in an amount that would cause the Town to violate the debt limit set forth in Section 716(a)(1) of the Charter. Each Bond shall be designated as the Council may determine in the Resolution (as defined in Section 7). Any such series may consist of one or more bonds and any bond may be issued in installment and/or draw-down form.

SECTION 4. Pursuant to the authority of the Enabling Act, the Charter and any other applicable Maryland law, the Town hereby determines to sell each series of the Bonds at private negotiated sale without advertisement or publication of notice of sale due to the attractive loan program offered by USDA or, for any series of bonds sold to another purchaser, the ability to time the market, negotiate flexible terms, and thereby achieve a beneficial interest rate or rates, unless, pursuant to the Resolution, the Council determines to sell any such series of the Bonds at public sale after solicitation of competitive bids upon determining that such a public sale is in the best interests of the Town.

SECTION 5. Pursuant to the authority of the Enabling Act, the Charter and any other applicable Maryland law, and subject to any limitations contained therein, the Town hereby determines and provides that each series of the Bonds shall be issued and sold for a price or prices as provided in the Resolution.

SECTION 6. The proceeds of each series of the Bonds shall be used and applied by the Town exclusively and solely for the public purposes described in Section 2 of this Ordinance, unless a supplemental ordinance is enacted by the Council to provide for the use and application of such proceeds for some other proper public purpose authorized by the Enabling Act, the Charter or other applicable Maryland law.

SECTION 7. Pursuant to the authority of the Enabling Act, the Charter and this Ordinance, the Council, prior to the issuance, sale and delivery of any series of the Bonds, shall adopt a resolution or resolutions (individually or collectively, the "Resolution") specifying, prescribing, determining, providing for and approving such matters, details, forms (including,

without limitation, the complete form of the Bonds of such series), documents or procedures as may be required by the Enabling Act, the Charter, other applicable Maryland law or this Ordinance or as the Council may deem appropriate for the authorization, sale, security, issuance, delivery, payment or prepayment of or for such series of the Bonds. The Resolution shall set forth, approve or provide for the approval of, among other things, the designation of such series of the Bonds; the aggregate principal amount of such series of the Bonds; the denominations of such series of the Bonds; the maturity or maturities of such series of the Bonds; the principal installment or installments, or the method of determining the principal installment or installments, payable on such series of the Bonds; the rate or rates of interest, or the method of determining the rate or rates of interest, which may be fixed or variable, payable on such series of the Bonds; provisions relating to the prepayment of such series of the Bonds; the procedures for the sale of such series of the Bonds at private negotiated sale without advertisement or publication of notice of sale, unless the Resolution shall provide for the sale of such series of the Bonds by the solicitation of competitive bids at public sale, in which case the Resolution shall set forth the procedures for the solicitation of competitive bids at public sale (including any advertising or bidding requirements) and the award of such series of the Bonds to the successful bidder, if appropriate; and all other terms and conditions pursuant to which such series of the Bonds will be issued, sold and delivered. The Resolution may provide for the payment by the Town to the applicable lender of (i) late fees and/or additional interest or penalties in appropriate circumstances and (ii) any ongoing fees or administrative costs. For any series of the Bonds sold to USDA, the Resolution may specify, prescribe, determine, approve or provide for any other matters, documents or security required by such lender for participation by the Town in its financing program. With respect to any series of the Bonds sold to a purchaser or purchasers other than USDA, the Council, pursuant to the Resolution, may authorize, approve or otherwise provide for (i) any commitment fee or similar fee and any other costs payable in connection with such series of the Bonds, and (ii) any other matters, agreements or documents necessary to enhance the marketability of or as security for any such series of the Bonds, including (without limitation) any credit enhancement, liquidity enhancement, ratings, continuing disclosure undertaking required to satisfy the requirements of Securities and Exchange Commission Rule 15c2-12 and disclosure documents or offering documents. Any Resolution may specify, prescribe, determine, provide for and approve the details required by this Section 7 for more than one series of the Bonds.

SECTION 8. Pursuant to the authority of the Refunding Act and the Charter, the Town is hereby authorized and empowered to issue and sell from time to time, upon its full faith and credit, one or more series of general obligation bonds (individually, a "Refunding Bond" and, collectively, the "Refunding Bonds") for the purpose of refunding or advance refunding any of the Bonds issued pursuant to the authority of this Ordinance then outstanding, including the payment of any prepayment premium and any interest accrued or to accrue to the date of prepayment, purchase or maturity of the Bonds to be refunded, and paying costs and expenses in connection with the issuance, sale and delivery of such Refunding Bonds, and, to the extent determined by the Council in a resolution or resolutions, interest on such Refunding Bonds, for the public purpose of realizing savings to the Town in the aggregate cost of debt service on either a direct comparison, present value or other basis or in order to accomplish any debt restructuring that is permitted by applicable law; provided that, the aggregate principal amount of any such issue of Refunding Bonds (or portion thereof to be applied to refunding Bonds issued pursuant to this Ordinance) may not exceed one hundred thirty percent (130%) of the aggregate principal amount of the Bonds refunded therefrom. Any such series of the Refunding Bonds may consist of one or more bonds and any bond may be issued in installment form. Prior to the issuance, sale

and delivery of any series of the Refunding Bonds, the Council shall adopt a resolution or resolutions authorizing such series of the Refunding Bonds and specifying, describing, determining, providing for and approving such matters, details, forms, documents or procedures as may be authorized or required by applicable law. Unless the Council determines otherwise in a resolution providing for any series of the Refunding Bonds, such series of the Refunding Bonds shall be sold on a negotiated basis without solicitation of bids. Any such sale on a negotiated basis is hereby determined to be in the public interest due to the ability to time the market, negotiate flexible terms and thereby achieve a beneficial rate or rates by undertaking a private (negotiated) sale.

SECTION 9. The Council is hereby authorized, pursuant to a subsequent resolution or resolutions, to make any further determinations or approvals or provide for any matters or actions deemed necessary or desirable in connection with the issuance of any series of the Refunding Bonds authorized hereby, including, without limitation, (i) any determination authorized by the Refunding Act, (ii) to commit or provide for the commitment of the Town to pay to the purchaser or purchasers of any series of the Refunding Bonds (A) any commitment fee or similar fee and any other costs in connection with such purchaser's or purchasers' agreement to purchase such series of the Refunding Bonds and/or (B) any breakage compensation or other amount that may be determined to be due to such purchaser or purchasers in the event the Town fails to deliver such series of the Refunding Bonds and, in connection therewith, to approve or provide for the approval of, and the execution and delivery of, any agreement relating to such payment or payments (which such agreement may, but shall not be required to be, contained within any purchase or similar agreement for such series of the Refunding Bonds), and (iii) to provide for any credit enhancement, liquidity enhancement, ratings, disclosure or offering documents or continuing disclosure undertakings relating to such series of the Refunding Bonds.

SECTION 10. (a) The full faith and credit and unlimited taxing power of the Town are hereby irrevocably pledged to the prompt payment of the principal of and interest on each series of the Bonds and the Refunding Bonds authorized hereby (each, a series of the "Obligations") as and when the same are payable and to the levy and collection of the taxes hereinbelow described as and when such taxes may become necessary in order to provide sufficient funds to meet the debt service requirements of such series of the Obligations. The Town shall levy or cause to be levied, for each and every fiscal year during which each such series of the Obligations may be outstanding, ad valorem taxes upon all real and tangible personal property within its corporate limits subject to assessment for unlimited municipal taxation in rate and amount sufficient to provide for the payment, when due, of the principal of and interest on such series of the Obligations payable in each such fiscal year and, in the event the proceeds from the collection of the taxes so levied may prove inadequate for such purposes in any fiscal year, additional taxes shall be levied in the subsequent fiscal year to make up any deficiency. The Town hereby covenants with the registered owner of each Obligation to take any action that lawfully may be appropriate from time to time during the period that such Obligation remains outstanding and unpaid to provide the funds necessary to pay promptly the principal and interest due thereon.

(b) Notwithstanding the provisions of subsection (a) above, the principal of and interest on each series of the Obligations will be payable in the first instance from revenues received in connection with the operation of or connection to the Town's wastewater system. To the extent

of any such revenues received or receivable in any fiscal year, the taxes hereby required to be levied may be reduced proportionately.

(c) The foregoing provisions shall not be construed so as to prohibit the Town from paying the principal of and interest on any series of the Obligations from the proceeds of the sale of any other obligations of the Town (including, with respect to any Bonds, from proceeds of any Refunding Bonds authorized hereby) or from any other funds legally available for that purpose, including, without limitation, any payments received from certain development agreements entered into by the Town. The Town may apply to the payment of the principal of or interest on each series of the Obligations any funds received by it from the State of Maryland or the United States of America, or any governmental agency or instrumentality, or from any other source, if the funds are granted or paid to the Town for the purpose of assisting the Town in accomplishing the type of project or projects which such series of the Obligations are issued to finance or refinance, and to the extent of any such funds received or receivable in any fiscal year, the taxes hereby required to be levied may be reduced proportionately.

SECTION 11. Pursuant to a subsequent resolution or resolutions, the Council may determine that any of the Bonds or the Refunding Bonds authorized hereby may be consolidated with any bonds and/or refunding bonds authorized by one or more other ordinances of the Council and issued as a single series of bonds and/or refunding bonds.

SECTION 12. The Mayor, the Town Manager, the Treasurer, the Clerk and all other appropriate officials and employees of the Town are hereby authorized and directed to take any and all action necessary to complete and close the issuance, sale and delivery of any series of the Bonds or the Refunding Bonds authorized hereby and to execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith, including to evidence compliance with the debt limit contained in Section 716(a)(1) of the Charter.

SECTION 13. The title of this Ordinance shall be deemed to be, and is, a fair summary of this Ordinance for publication and all other purposes.

SECTION 14. This Ordinance shall become effective as indicated on the signature page hereof either (i) at the expiration of twenty (20) calendar days following approval by the Mayor or passage by the Council over the Mayor's veto or (ii) if passed on an emergency basis in accordance with the provisions of Section 210 of the Charter, upon approval by the Mayor or passage by the Council over the Mayor's veto. In either such case, this Ordinance shall be subject to petition to referendum in accordance with the provisions of Section 212 of the Charter and in no event may any series of the Bonds be delivered until the applicable petition-to-referendum period has expired without a valid petition having been submitted or this Ordinance shall have been approved at referendum in accordance with the provisions of Section 212 of the Charter.

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THE MAYOR AND COUNCIL OF BOONSBORO

(SEAL)

Howard W. Long
Howard W. Long, Assistant Mayor

Kevin M. Chambers
Kevin M. Chambers, Councilmember

Richard E. Hawkins, Sr.
Richard E. Hawkins, Sr., Councilmember

Cynthia Kauffman
Cynthia Kauffman, Councilmember

Natalie J. Mose
Natalie J. Mose, Councilmember

Barbara B. Wetzel
Barbara B. Wetzel, Councilmember

Introduced: July 6, 2009

Passed [as introduced] July 6 [as amended] [on an emergency basis] [check applicable box]: July 6, 2009

Approved by the Mayor: July 6, 2009

ATTEST:

Barbara A. Rodenhiser
Barbara A. Rodenhiser
Clerk

Charles F. Kauffman, Jr.
Charles F. Kauffman, Jr.
Mayor

Effective: July 6, 2009

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