

Resolution No.: 22-21
Introduced: May 3, 2022
Adopted: May 17, 2022

**COUNTY COUNCIL
FOR FREDERICK COUNTY, MARYLAND**

By County Council

SUBJECT: Authorizing and empowering Frederick County, Maryland (the “County”) to amend the terms of the outstanding Frederick County, Maryland Water Quality Bond, Series 2009 (ARRA) Ballenger Creek – McKinney WWTP ENR Expansion dated December 18, 2009 (the “2009 Bond”); authorizing an Amended and Restated Loan Agreement by and between the County and the Maryland Water Quality Financing Administration in connection with the 2009 Bond and approving the terms thereof, and generally providing for and determining various matters and details in connection with the amendment of the terms of the 2009 Bond.

R E C I T A L S:

Title VI of the Federal Water Pollution Control Act (commonly known as the “Clean Water Act”), as amended by the Water Quality Act of 1987 (“Title VI”), authorizes the Environmental Protection Agency (the “EPA”) to award grants to qualifying States to establish and capitalize State water pollution control revolving funds (SRFs) for the purpose of providing loans and certain other forms of financial assistance (but not grants) to finance, among other things, the construction of publicly-owned wastewater treatment facilities, and the implementation of estuary conservation management plans and nonpoint source management programs.

As contemplated by Title VI, the General Assembly of Maryland at its 1988 session enacted the Maryland Water Quality Financing Administration Act, codified at Sections 9-1601 through 9-1622 of the Environment Article of the Annotated Code of Maryland, as amended, (the “Act”), establishing the Maryland Water Quality Financing Administration (the “Administration”) and establishing a SRF designated the Maryland Water Quality Revolving Loan Fund (the “Fund”) to be maintained and administered by the Administration. The Act authorizes the Administration, among other things, to make a loan from the Fund to a “local government” (as defined in the Act) for the purpose of financing all or a portion of the cost of a “wastewater facility” project (as defined in the Act).

Frederick County, Maryland (formerly County Commissioners of Frederick County, Maryland), a body politic and corporate and political subdivision of the State of Maryland (the “County”) is a “local government” within the meaning of the Act.

Sections 2-13-1 through 2-13-31 of the Code of Public Local Laws of Frederick County, as amended (the “Water & Sewer Act”) authorize and empower the County to issue and sell bonds upon its full faith and credit to provide funds for the design, construction, establishment, purchase or condemnation of water, sewerage and solid waste systems.

On December 18, 2009, pursuant to the terms of the Act and the Water & Sewer Act, the County issued its Frederick County, Maryland Water Quality Bond, Series 2009 (ARRA) Ballenger Creek – McKinney WWTP ENR Expansion (the “2009 Bond”). The 2009 Bond was purchased by the Administration pursuant to the terms of a Loan Agreement (the “Original Loan Agreement”) dated as of December 18, 2009. As of the date hereof, the 2009 Bond is registered in the name of the Administration, matures on February 1, 2032, and is outstanding in the principal amount of \$66,182,586.00.

The County and the Administration now wish to amend the terms of the 2009 Bond and the Original Loan Agreement for the purpose of extending the final maturity of the 2009 Bond to February 1, 2043 and converting the 2009 Bond from a tax-exempt obligation to a taxable obligation of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND:

SECTION 1. Acting pursuant to the Act and the Water & Sewer Act, it is hereby found and determined that amending the terms of the 2009 Bond as no longer constituting a tax-exempt obligation of the County and amending and restating the terms of the Original Loan Agreement to extend the maturity date of the 2009 Bond to February 1, 2043 is advisable and in the public interest.

The 2009 Bond, as amended in accordance with the provisions hereof, is sometimes referred to herein as the “Bond”. The Original Loan Agreement, as amended and restated in accordance with the provisions hereof, is sometimes referred to herein as the Loan Agreement. The Bond and the Loan Agreement are sometimes referred to collectively herein as the “

SECTION 2. The County hereby authorizes the execution and delivery of the Bond in substantially the form attached hereto as “Exhibit A” and made a part hereof, with such modifications as may be deemed necessary or appropriate and approved by the officer or officers of the County executing the same, and the Bond and all of the covenants and conditions set forth therein are hereby ratified, approved and adopted as the obligation of the County.

SECTION 3. The County hereby authorizes the execution and delivery of the Loan Agreement in substantially the form attached hereto as “Exhibit B” and made a part hereof, with such modifications as may be deemed necessary or appropriate and approved by the officer or officers of the County executing the same, and the Loan Agreement and all of the covenants and conditions set forth therein, including, without limitation, payment to the Administration of the annual Administrative Fee described therein, are hereby ratified, approved and adopted as the obligation of the County.

SECTION 4. Pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder, the amendment and restatement of the 2009 Bond shall constitute a “reissuance”, a defined therein. The County hereby covenants and agrees with the registered owner or owners of the Bond that the Bond is not reissued as a tax-exempt obligation of the County.

SECTION 5. The Loan Agreement and the Bond shall be executed on behalf of and in the name of the County by the County Executive of the County. The corporate seal of the County shall be affixed to the Loan Agreement and the Bond, attested by the signature of the Chief Administrative Officer. The principal of and interest on the Bond shall be paid in accordance with the terms and conditions of the Loan Agreement and the Bond. The annual Administrative Fee (as defined in the Loan Agreement) shall be paid in accordance with the Loan Agreement. The Loan Agreement and the Bond shall be valid and legally binding obligations of the County enforceable in accordance with their terms.

The execution of the Loan Agreement and the Bond by such officer shall be conclusive evidence of the approval by the County of all changes in the form of the Loan Agreement and the Bond and of the due execution of the Loan Agreement and the Bond by the County.

The Director of Finance and the officers of the County authorized to execute the Loan Agreement and the Bond are expressly authorized to execute and deliver from time to time such amendments to the Loan Agreement as shall be deemed necessary or appropriate by such officers to cure any defect or ambiguity in the Loan Agreement, to add any provision thereto beneficial to the County or to comply with Administration practices and policy from time to time, so long as neither the aggregate principal amount of the Bond, the amount of any principal installment thereunder in any year, nor the interest rate thereon shall be increased.

In the event any official of the County, whose signature shall appear on any Bond described in this Resolution, or on other documents pertaining thereto, shall cease to be such official prior to the delivery of said Bond, or document, or in the event that any official shall take office subsequent to the sale of the Bonds, his/her signature shall nevertheless be valid, sufficient and binding for the purposes herein intended.

SECTION 6. The Bond shall be payable in the amounts, at the times and at the places as provided therein and in the Loan Agreement. The maturing principal of and interest on the Bond, when due shall be payable in the first instance from revenues derived by the County from its water and sewer facilities which revenues are deposited into the County’s Water and Sewer Enterprise Fund, however, such revenues are not specifically pledged to the payment of principal of the interest on the Bond. In the event that funds available to the County from all sources are insufficient to pay the principal of or the interest on the Bond in any fiscal year in which the Bond is outstanding, the County shall levy in such fiscal year upon all legally assessable property within the corporate limits of Frederick County 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 County are hereby irrevocably pledged to the payment of the principal of and interest on the Bond as and when it becomes 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 County 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.

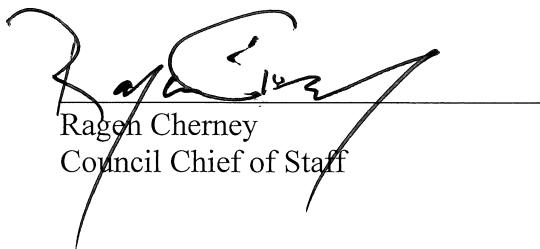
SECTION 7. The County Executive, the Chief Administrative Officer, the Director of Finance, the Director of the Division of Utilities and Solid Waste Management of the County, and such other officers, officials and employees of the County as the County Executive shall designate, are authorized hereby to do any and all things, execute all instruments, documents and certificates, and otherwise take all action necessary, proper, or expedient in connection with the issuance, reissuance, sale and delivery of the Bond and the making of the Loan. The County Executive, the Chief Administrative Officer, the Director of Finance, the Director of the Division of Utilities and Solid Waste Management of the County and all other officers, officials and employees of the County are authorized and directed hereby to do all acts and things required of them by the provisions hereof and of the Loan Agreement and the Bond for the full, punctual, and complete performance of all of the terms, covenants, provisions and agreements of this Resolution, the Loan Agreement and the Bond. All action necessary, proper, or expedient in connection with the issuance, reissuance, sale and delivery of the Bond and the making of the Loan previously undertaken by any authorized officers, officials and employees of the County are hereby ratified and approved.

SECTION 8. This Resolution shall take effect immediately upon its adoption.

Adopted this 17th day of May, 2022.

The undersigned hereby certifies that this Resolution was approved and adopted on the 17th day of May, 2022.

ATTEST:



Ragen Cherney
Council Chief of Staff

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND

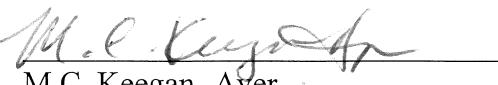
By: 
M.C. Keegan- Ayer
President

EXHIBIT A

Form of Bond

EXHIBIT B

Form of Loan Agreement