

Introduced: Mr. Byrd
1st Reading: July 8, 2019
Passed: August 12, 2019
Posted: August 13, 2019
Effective: August 12, 2019

ORDINANCE NO. 1370

AN ORDINANCE TO AUTHORIZE THE ISSUANCE, SALE AND DELIVERY BY THE CITY OF GREENBELT, MARYLAND OF ITS "CITY OF GREENBELT, MARYLAND WATER QUALITY BOND, SERIES 2019" IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000), PURSUANT TO THE PROVISIONS OF ORDINANCE NO. 1359 PASSED ON SEPTEMBER 25, 2017; PRESCRIBING THE FORM, MATURITY, INTEREST RATE AND PROVISIONS FOR PAYMENT AND REDEMPTION OF SAID BOND; CONFIRMING THE COVENANTS OF THE CITY TO PROVIDE FOR THE LEVY AND COLLECTION OF TAXES SUFFICIENT FOR THE PROMPT PAYMENT OF THE MATURING PRINCIPAL OF AND INTEREST ON SAID BOND; DETERMINING THAT THE BOND SHALL BE SOLD BY PRIVATE SALE TO THE MARYLAND WATER QUALITY FINANCING ADMINISTRATION, WITHOUT COMPETITIVE BID; FURTHER PROVIDING FOR THE USE OF THE PROCEEDS OF THE BOND; AND PROVIDING FOR THE EXECUTION AND DELIVERY OF THE BOND AND A LOAN AGREEMENT, AND ALL OTHER DETAILS WITH RESPECT TO THE SALE AND DELIVERY OF SAID BOND.

WHEREAS, the Council of the City of Greenbelt, Maryland (the "City") on September 25, 2017, passed an ordinance ("Ordinance No. 1359") authorizing the City to obtain a loan from the Maryland Water Quality Financing Administration (the "Administration") evidenced by a bond of the City in an aggregate principal amount not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000) for the public purpose of financing, in whole or in part, the public improvement project to repair the Greenbelt Lake Dam as required by the Maryland Department of the Environment Consent Order DSD-2010-5 (the "Project"); and

WHEREAS, Title VI of the Federal Water Pollution Control Act, as amended by the Water Quality Act of 1987 (the "Clean Water Act"), authorizes the United States 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 to finance, among other things, the construction and improvement of publicly-owned wastewater treatment facilities and the implementation of estuary conservation management plans and nonpoint source management programs; and

WHEREAS, as contemplated by the Clean Water Act, the General Assembly of Maryland at its 1988 session enacted the Maryland Water Quality Financing Administration Act, as amended, codified at Sections 9-1601 through 9-1622 of the Environment Article of the Annotated Code of Maryland (the "MWQFA Act"), establishing the Administration and establishing an SRF designated the Maryland Water Quality Revolving Loan Fund (the "Fund") to be maintained and administered

by the Administration. The MWQFA Act, as amended, authorizes the Administration, among other things, to make loans from the Fund to a “local government” (as defined in the MWQFA Act) for the purpose of financing all or a portion of the cost of a “wastewater facility” project (as defined in the MWQFA Act). The City is a “local government” within the meaning of the MWQFA Act. The Project constitutes a “wastewater facility” within the meaning of the MWQFA Act; and

WHEREAS, the Council of the City has determined that it is in the best interests of the City to issue and sell the bond authorized by Ordinance No. 1359 as a single issue to be designated City of Greenbelt, Maryland Water Quality Bond, Series 2019 (the “Bond”); and

WHEREAS, in accordance with the procedures described in Section 55(e) of the Charter of the City, the Council of the City has determined that it is in the best interests of the City to negotiate the sale of the Bond in lieu of taking bids and has waived the bidding procedures by a vote of not less than 2/3 of its members; and

WHEREAS, the Council of the City has determined that it is in the best interests of the City to enter into a loan agreement with the Administration and evidence such loan with the Bond on the terms herein set forth.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Greenbelt, Maryland, that:

- SECTION 1. Pursuant to the authority of the Maryland Water Quality Financing Administration Act, codified at Sections 9-601 to 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland (the “MWQFA Act”), Sections 19-301 through 19-309 of the Local Government Article of the Annotated Code of Maryland (the “Enabling Act”), Sections 3 and 55 of the Charter of the City of Greenbelt (the “Charter”), Ordinance No. 1359, and the laws of the State of Maryland, the City shall borrow money and incur indebtedness to finance the costs of the Project, together with the financial, accounting, legal, bond counsel, financial advisor, paying agent, registrar and accrued interest expenses, in the aggregate principal amount not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000).
- SECTION 2. To evidence the indebtedness, the City shall issue and sell upon its full faith and credit and unlimited taxing power, its Water Quality Bond, Series 2019 in the aggregate principal amount not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000), to be designated “City of Greenbelt, Maryland Water Quality Bond, Series 2019” (the “Bond”) and the form of Bond is attached as Exhibit F to Appendix A hereto.
- SECTION 3. The Bond shall be sold at private negotiated sale to the Administration. The date of sale shall be determined by the Mayor and the Administration.
- SECTION 4. The Bond shall be issued and sold by the City pursuant to a loan agreement substantially in the form attached to this Ordinance as

Appendix A, between the City and the Administration (the “Loan Agreement”) and the terms and conditions stated in the Loan Agreement are hereby approved as the terms and conditions and the manner in which the Bond shall be sold, issued and delivered. Appropriate variations in the Bond and/or the Loan Agreement may be made and approved by the Mayor to finalize the terms of the Bond and to carry into effect the purposes of this Ordinance, or to comply with recommendations of legal counsel, or bond counsel.

SECTION 5. The Bond shall be dated as of the date of its initial delivery to the Administration, and shall be initially issued and sold as one fully registered bond numbered R-1. The Bond shall be subject to redemption prior to maturity, shall otherwise have the terms, tenor, details and specifications as set forth in the form of Bond, and shall be completed in accordance with the provisions of this Ordinance, with such changes therein as the Mayor shall approve (such approval to be conclusively evidenced by the execution and delivery of the Bond by the Mayor). The covenants and conditions set forth in such form are incorporated into this Ordinance by reference and shall be binding upon the City as though set forth in full herein.

SECTION 6. Based on an anticipated delivery date of the Bond in calendar year 2019 and an estimated completion date for the Project in calendar year 2020, the principal of the Bond shall mature and be due and payable in thirty (30) annual installments, beginning on such date as approved by the Mayor in the Loan Agreement, and payable annually thereafter, as approved by the Mayor in the Loan Agreement, in the amounts specified in the debt service schedule appended to the Bond, provided that the Mayor may make changes in the debt service schedule; provided further that the Bond shall mature no later than 30 years after the completion date of the Project and the aggregate principal amount of the Bond shall not exceed \$2,500,000. The principal of the Bond shall be payable at the principal office of the Administration.

SECTION 7. The Bond shall bear interest at the rate of 25% of the average of the Bond Buyer 11-Bond Index for the month preceding the month of issuance of the Bond (subject to adjustment as approved by the Mayor in the Loan Agreement), provided that, the rate determined by such calculation may be rounded down by the Administration in its sole discretion. Based on the anticipated delivery date of the Bond set forth in Section 6, interest due on the unpaid principal amounts advanced on Bond under the Loan Agreement shall be payable on February 1, 2020 and semiannually thereafter on August 1 and February 1 in each year in which the Bond is outstanding, or on such other dates as approved by the Mayor in the Loan Agreement. Interest payments due under the Bond will be payable by electronic funds transfer, check or draft to the Administration.

- SECTION 8. The City shall pay (i) a late charge for any payment of principal or interest on the Bond that is received later than the tenth (10th) day following its due date, in an amount equal to 5% of such payment, and (ii) interest on overdue installments of principal and (to the extent permitted by law) interest at a rate equal to the Default Rate provided for in the Loan Agreement, which Default Rate shall be equal to 100% of the average of the Bond Buyer 11-Bond Index for the calendar month prior to the month in which the Bond is delivered, provided that the rate determined by such calculation may be rounded down by the Administration in its sole discretion. Amounts payable pursuant to this section shall be immediately due and payable to the Administration, and interest at the Default Rate shall continue to accrue on overdue installments of principal and (to the extent permitted by law) interest until such amounts are paid in full.
- SECTION 9. The City hereby covenants and agrees to pay all administrative fees and expenses charged by the Administration under the Loan Agreement.
- SECTION 10. The Bond shall be executed in the name of the City and on its behalf by the Mayor, whose signature may be by facsimile, and the corporate seal of the City shall be imprinted thereon, attested by the City Clerk, whose signature may be by facsimile; provided that at least one of such signatures shall be a manual signature. In case any official of the City whose signature appears on the Bond shall cease to be such official prior to the authentication and delivery of the Bond, or in the case that any such official shall take office subsequent to the date of issue of the Bond, his or her signature, in either event, shall nevertheless be valid for the purposes herein intended.
- SECTION 11. The Bond will be delivered as soon as practicable, upon due notice and at the expense of the City, at such place as may be agreed upon between the Administration and the City, upon payment of the principal amount of the Bond in immediately available funds. The Mayor, the City Manager, the City Treasurer and all other officials and employees of the City are expressly authorized, empowered and directed to take any and all action necessary to complete and close the sale, issuance and delivery of the Bond to the Administration and to execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith.
- SECTION 12. Proceeds of the loan from the Administration shall be used and applied for the public purpose of financing, in whole or in part, the public improvement project to repair the Greenbelt Lake Dam as required by the Maryland Department of the Environment Consent Order DSD-2010-5.
- SECTION 13. All of the covenants of the City set forth in Ordinance No. 1359 with respect to the levy and collection of *ad valorem* taxes to provide for payment of the principal of and interest on the Bond, are hereby ratified, confirmed, and approved and declared to be binding upon the City.

SECTION 14. The City Manager, is hereby appointed bond registrar (the “Bond Registrar”) and paying agent (the “Paying Agent”).

SECTION 15. (a) The Mayor and the City Manager shall be the officers of the City responsible for issuing the Bond within the meaning of Section 1.1482(b)(2) of the Arbitrage Regulations (defined below). The Mayor and the City Manager shall also be the officers of the City responsible for the execution and delivery (on the date of the issuance of the Bond) of a certificate or certificates of the City (a “Tax Certificate and Compliance Agreement”) that complies with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended (“Section 148”), and the applicable regulations thereunder (the “Arbitrage Regulations”), and such officials are hereby authorized and directed to execute and deliver a Tax Certificate and Compliance Agreement to counsel rendering an opinion on the validity of the Bond on the date of the issuance of the Bond.

(b) The City shall set forth in the Tax Certificate and Compliance Agreement its reasonable expectations 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 on deposit to the credit of any account of the City which may be deemed to be proceeds of the Bond pursuant to Section 148 or the Arbitrage Regulations (collectively, the “Bond Proceeds”). The City covenants that the facts, estimates and circumstances set forth in the Tax Certificate and Compliance Agreement will be based on the City’s reasonable expectations as of the date of the issuance of the Bond and will be, to the best of the certifying officials’ knowledge, true and correct as of that date.

(c) The City covenants and agrees with the registered owner or owners 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 a “arbitrage bond” within the meaning of Section 148 and the Arbitrage Regulations. The City further covenants that it will comply with Section 148 and the Arbitrage Regulations which are applicable to the Bond on the date of issuance thereof and which may subsequently be made applicable thereto as long as the Bond remains outstanding and unpaid. The Mayor and the City Manager are hereby authorized and directed to prepare or cause to be prepared and to execute any certification, opinion or other document, including, without limitation, a Tax Certificate and Compliance Agreement, which may be required to assure that the Bond will not be deemed to be a “arbitrage bond” within the meaning of Section 148 and the Arbitrage Regulations. All officers, employees and agents of the City are hereby authorized and directed to take such actions, and to provide such certifications 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.

(d) The City further covenants that it shall make such use of the proceeds of the Bond, 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.

(e) The City further covenants with the registered owner or owners of the Bond (i) that it will not take any action or (to the extent that it exercises control or direction) permit any action to be taken that would cause the Bond or a portion of the Bond to be "federally guaranteed" within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) that it will not make or (to the extent that it exercises control or direction) permit to be made, any use of the proceeds of the Bond or a portion of such proceeds that would cause the Bond or a portion of the Bond to be a "private loan bond" within the meaning of Section 141(c) of the Code.

(f) The Mayor and the City Manager may make such covenants or agreements in connection with the issuance of the Bond as they or either of them shall deem advisable in order to assure the registered owner or owners of the Bond that interest thereon shall be and remain excludable from gross income for federal income tax purposes, and such covenants or agreements shall be binding on the City so long as the observance by the City of any such covenants or agreements is necessary in connection with the maintenance of the exclusion of the interest on the Bond from gross income for federal income tax purposes. The foregoing covenants and agreements may include such covenants and agreements on behalf of the City regarding compliance with the provisions of the Code as the Mayor or the City Manager shall deem advisable in order to assure the registered owner or owners of the Bonds that the interest thereon shall be and remain excludable from gross income for federal income tax purposes, including (without limitation) covenants or agreements relating to the investment of Bond Proceeds, the payment of certain earnings resulting from such investment to the United States, limitations on the times within which, and the purpose for which, Bond Proceeds may be expended, or the use of specified procedures for accounting for and segregating Bond Proceeds. Such covenants and agreements may be set forth in a Tax Certificate and Compliance Agreement.

SECTION 16. The Mayor, the City Manager, and the City Treasurer are authorized to distribute current financial information concerning the City to the Administration.

SECTION 17. The City confirms that Ordinance No. 1359 will serve and constitute as a declaration of official intent within the meaning of, and for the purposes set

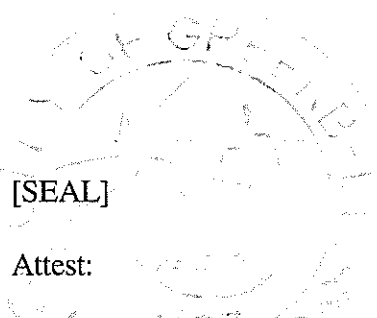
forth in, Section 1.150-2 of the Income Tax Regulations prescribed by the U.S. Treasury Department.

SECTION 18. With respect to all documents, certificates and other forms the execution, authentication and delivery of which is authorized herein, the official(s) or representative(s) authorized to execute, authenticate or deliver such documents, certificates or other forms is (are) hereby authorized to do so with such changes from the forms approved herein as may be necessary, prudent or desirable to effect the transactions contemplated by Ordinance No. 1359 or this Ordinance.

SECTION 19. The Mayor, City Manager and City Treasurer are authorized to execute and deliver such other and further documents as may be necessary or appropriate to complete sale and delivery of the Bond.

SECTION 20. The provisions of this Ordinance shall constitute a contract between the City and the registered owners of the Bond so long as the Bond or any portion thereof hereby authorized remain unpaid.

PASSED by the Council of the City of Greenbelt, Maryland, at its meeting on July 8, 2019.



[SEAL]

Attest:

Bonita Anderson
Bonita Anderson, City Clerk

Emmett V. Jordan
Emmett V. Jordan, Mayor

Appendix A

[Form of Loan Agreement]