



Legislation Text

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Resolution of The City of Hampton, Virginia Authorizing The Issuance of General Obligation Public Improvement And Refunding Bonds of The City of Hampton in The Maximum Principal Amount Not to Exceed \$65,515,000 to Finance Certain Capital Improvement Projects And to Refund The City's General Obligation Bond Anticipation Note Series 2017, And Providing for The Form, Details And Payment of Such Bonds

PURPOSE/BACKGROUND:

This Resolution is proposing that City Council authorize the issuance of General Obligation Public Improvement and Refunding Bonds in the maximum principal amount not to exceed \$65,515,000 to finance the cost of general capital improvement projects of the City, including, but not limited to, the construction of improvements and additions to public buildings and public school facilities, improvements to public infrastructure, including streets and roads, improvements to parks and other recreational facilities, the acquisition of real property and equipment for public purposes and to refund the city's General Obligation Bond Anticipation Note series 2017.

The Resolution , if adopted, with authorize the Director of Finance, with the approval of the City Manager , for and on behalf of the City, to sell such bonds for such purposes, to provide for the form, details and payment of the bonds.

Discussion:

Impact:

General obligation and public improvement and refunding bonds of the City of Hampton in the maximum principal amount not to exceed \$65,515,000

Recommendation:

Approve

WHEREAS, the Public Finance Act of 1991, Sections 15.2-2600 et seq. of the Code of Virginia of 1950, as amended (the "Public Finance Act"), permits the issuance of bonds, when authorized by the Council of the City (the "Council") of Hampton, Virginia (the "City"), at one time or from time to time, in order to finance the cost of capital improvement projects for the purposes hereinafter described and to refund bonds or notes previously issued for such purposes;

WHEREAS, it is the consensus of the Council of the City that the City should authorize the issuance and sale of general obligation public improvement bonds in the maximum principal amount not to exceed \$65,515,000 to finance the cost of general capital improvement projects of the City, including, but not limited to, the construction of improvements and additions to public buildings

and public school facilities, improvements to public infrastructure, including streets and roads, improvements to parks and other recreational facilities, and the acquisition of real property and equipment for public purposes, and to refund the City's General Obligation Bond Anticipation Note, Series 2017 issued in the original principal amount of \$9,250,000 (the "2017 BAN");

WHEREAS, the City has advanced or expects to advance its own funds to pay certain expenditures related to the capital improvement projects to be financed from the bonds, and the City intends to receive reimbursement for such expenditures from the proceeds of the bonds; and

WHEREAS, a public hearing on the proposed issuance of the bonds for the capital improvement projects has been advertised and held in the manner required by Section 15.2-2606 of the Public Finance Act.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA AS FOLLOWS:

§ 1. **Authorization of Bonds.** The issuance of the bonds is authorized in the maximum principal amount not to exceed \$65,515,000 (the "Bonds") in order to finance the costs of capital improvement projects for the purposes hereinafter described, to refund the 2017 BAN and to pay issuance and related costs of the Bonds. The Bonds shall be designated "General Obligation Public Improvement Bonds", may be issued in separate series and may also include such other term or terms as part of their designation as the officers herein authorized deem appropriate. The word "Refunding" shall be included in the designation of any series of bonds issued to refund the 2017 BAN, and any series of bonds issued on taxable bases shall include the word "Taxable" in their designation.

§ 2. **Use of Proceeds.** Proceeds of the Bonds shall be used by the City to (i) finance in whole or in part, a program of general capital improvement undertakings for the following purposes: construction, reconstruction, improvements and equipment for public institutional, operational, cultural, educational, public safety, animal control and entertainment buildings and facilities, parks, playgrounds, cemeteries, libraries and museums, and acquisition of real property for such purposes as appropriate; construction, reconstruction, improvements and equipment for public schools; construction, reconstruction, improvements and equipment for various infrastructure needs, including traffic control facilities, streets, sidewalks and other public ways, bridges, storm sewers, drains and culverts, and refuse disposal facilities; participation in redevelopment, conservation and community development programs, including the construction, reconstruction, improvement and equipment for targeted public facilities included in these programs, among others; (ii) to refund the 2017 BAN and (iii) to pay issuance and other costs related to or incurred in connection with the issuance of the Bonds as herein provided.

§ 3. **Terms of Sale; Delegation of Authority.** The Council hereby approves the following terms of the sale of the Bonds. The Bonds may be sold all at one time or at different times, in either case in one or more series as tax-exempt or taxable obligations, as may be determined by the Director of Finance of the City in consultation with the City's financial advisor ("Financial Advisor") and the City's bond counsel, with the approval of the City Manager of the City.

The Bonds shall be sold upon recommendation of the Financial Advisor, at either competitive bid, negotiated sale or private placement, at such price or prices as the Director of Finance, with the approval of the City Manager, shall determine to be in the best interest of the City,

provided (i) the true interest cost of the Bonds in the aggregate shall not exceed 5.00%, taking into account any original issue discount or premium, but excluding any credit enhancement premium (ii) the sale price of the Bonds to the underwriters or other initial purchasers thereof shall not be less than 98% of the aggregate principal amount of the Bonds, not taking into account any original issue discount or premium, (iii) the final maturity of the Bonds shall not be later than 25 years from their dated date or such lesser period as set forth in the City's general obligation bond debt policy, and (iv) any optional redemption premium shall not exceed two percent (2%) of the principal amount of the Bonds. The Director of Finance, with the approval of the City Manager, is authorized to negotiate and acquire credit enhancement for the Bonds if it is determined in the City's best interest to do so based upon the recommendation of the Financial Advisor.

The actions of the Director of Finance, with the approval of the City Manager, in selling the Bonds shall be conclusive, and no further action shall be necessary on the part of the Council. This Resolution is intended to grant to the Director of Finance and the City Manager full and complete authority to finalize the terms of the Bonds, to provide for their issuance and sale and to execute and deliver any and all documentation in connection therewith without further approval by Council, subject to the requirements and conditions of this Resolution, the Public Finance Act, the City Charter and the Constitution and other laws of the Commonwealth of Virginia.

§ 4. **Redemption and Purchase.** Subject to the following paragraph, the Bonds may be subject to redemption or purchase prior to maturity at the option of the City on or after dates, if any, determined by the Director of Finance, with the approval of the City Manager, in whole or in part at any time, at a redemption price or purchase equal to the principal amount to be redeemed, together with any accrued interest to the redemption or purchase date and a redemption or purchase premium, if any, as set forth in paragraph 3 hereof, not to exceed 2% of the principal amount to be redeemed or purchased, such redemption or purchase premium to be determined by the Director of Finance, with the approval of the City Manager. Any portion of the Bonds issued as term bonds may be subject to mandatory sinking fund redemption as determined by the Director of Finance, with the approval of the City Manager with such redemption terms being set forth in the Bonds.

If less than all of the Bonds are called for optional redemption or purchase, the maturities of bonds to be redeemed or purchased shall be selected by the Director of Finance in such manner as such officer may determine to be in the best interest of the City. If less than all the bonds of a particular maturity are called for redemption or purchase, the bonds within such maturity to be redeemed or purchased shall be selected by the Securities Depository, herein defined, for the Bonds, if any, pursuant to its rules and procedures or, if the book-entry system is not in effect, shall be selected by the Registrar, herein defined, by lot in such manner as the Registrar in its discretion may determine. In either case, (a) the portion of any bond to be redeemed or purchased shall be in the principal amount of \$5,000, or an integral multiple thereof, and (b) in selecting bonds for redemption or purchase, each bond shall be considered as representing that number of bonds that is obtained by dividing the principal amount of such bond by \$5,000. The City shall cause notice of the call for redemption identifying the bonds or portions thereof to be redeemed to be sent by facsimile or electronic transmission, registered or certified mail or overnight express delivery, not less than 30 nor more than 60 days prior to the redemption date, to the Securities Depository for the bonds or its nominee as the registered owner thereof, or, if the book-entry system is not in effect, to the persons shown on the registration books of the Registrar to be the registered owners of the bonds. If the book-entry system is in effect, the City shall not be responsible for giving notice of redemption to anyone other than the Securities Depository for the bonds or its nominee; provided, however, the City

will comply with any redemption notice requirement set forth in paragraph 15 hereof relating to its continuing disclosure undertaking. If a portion of a bond is called for redemption, a new bond in principal amount of the unredeemed portion thereof shall be issued to the registered owner upon surrender thereof.

§ 5. **Bond Details.** The Bonds shall be in registered form and shall be designated by title, date and series, bear interest from the date, be payable on the payment dates, and mature at such time or times not exceeding 25 years from their date, subject to the limitations set forth above, and in amounts as either serial or term bonds, or both, with sinking fund payments, if any, all as determined by the Director of Finance, with the approval of the City Manager.

Each bond shall be issued in the denomination of \$5,000 or any integral multiple thereof and shall bear interest at such rate as shall be determined at the time of sale, calculated on the basis of a 360-day year and a 30-day month, payable semiannually as determined by the Director of Finance, with the approval of the City Manager, subject to the terms of this Resolution.

Principal and premium, if any, shall be payable to the registered owners upon surrender of bonds as they become due at the office of the Registrar. Interest shall be payable by check or draft mailed to the registered owners at their addresses as they appear on the registration books kept by the Registrar on the date prior to each interest payment date that shall be determined by the Director of Finance, with the approval of the City Manager (the "Record Date"); provided however, any Record Date contained in the bond certificate shall be deemed the determination of such officers. Principal, premium, if any, and interest shall be payable in lawful money of the United States of America.

Initially, unless the bonds are issued in a private placement, one bond certificate for each maturity of the Bonds shall be issued to and registered in the name of The Depository Trust Company, New York, New York ("DTC"), or its nominee. The City has heretofore entered into a Blanket Issuer Letter of Representations relating to a book-entry system to be maintained by DTC with respect to the Bonds. "Securities Depository" shall mean DTC or any other securities depository for the Bonds appointed pursuant to this Section.

In the event that (a) the Securities Depository determines not to continue to act as the securities depository for the Bonds by giving notice to the Registrar, and the City discharges its responsibilities hereunder, or (b) the City, in its sole discretion, determines (i) that beneficial owners of Bonds shall be able to obtain certificated bonds or (ii) to select a new Securities Depository, then the City's Director of Finance shall, at the direction of the City, attempt to locate another qualified securities depository to serve as Securities Depository and authenticate and deliver certificated bonds to the new Securities Depository or its nominee, or authenticate and deliver certificated bonds to the beneficial owners or to the Securities Depository participants on behalf of beneficial owners. In delivering certificated bonds, the City's Director of Finance shall be entitled to rely on the records of the Securities Depository as to the beneficial owners or the records of the Securities Depository participants acting on behalf of beneficial owners. Such certificated bonds will then be registrable, transferable and exchangeable as set forth herein.

So long as there is a Securities Depository for the Bonds, (1) it or its nominee shall be the registered owner of the Bonds, (2) notwithstanding anything to the contrary in this Resolution, determinations of persons entitled to payment of principal, premium, if any, and interest, transfers of

ownership and exchanges, and receipt of notices shall be the responsibility of the Securities Depository and shall be effected pursuant to rules and procedures established by such Securities Depository, (3) the Registrar and the City shall not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Securities Depository, its participants or persons acting through such participants, (4) references in this Resolution to registered owners of the Bonds shall mean such Securities Depository or its nominee and shall not mean the beneficial owners of the Bonds, and (5) in the event of any inconsistency between the provisions of this Resolution and the provisions of the above-referenced Blanket Issuer Letter of Representations, such provisions of the Blanket Issuer Letter of Representations, except to the extent set forth in this paragraph and the immediately preceding paragraph, shall control.

§ 6. **Preparation, Execution and Delivery of Bonds.** The City Manager, the Director of Finance and the City Clerk are authorized and directed to take all proper steps to have the Bonds prepared and executed in accordance with their terms and to deliver the Bonds to or for the account of the purchasers thereof upon payment therefor. The Bonds shall be signed by the manual or facsimile signatures of the City Manager or the Director of Finance, and the City's seal may be affixed thereto or a facsimile thereof printed thereon and attested by the manual or facsimile signature of the City Clerk. The Bonds may also be signed by the Mayor of the City. No bond signed by facsimile signatures shall be valid until it has been authenticated by the manual signature of an authorized officer or employee of the Registrar and the date of authentication noted thereon.

§ 7. **Form of Bonds.** The Bonds shall be in the form or forms as the Director of Finance may select, with such terms and provisions not inconsistent with this Resolution as may be approved by the officers signing the Bonds, whose approval shall be evidenced conclusively by the execution and delivery thereof.

§ 8. **Pledge of Full Faith and Credit.** The power and obligation of the City to pay principal of, premium, if any, and interest on the Bonds shall be unlimited and the City shall levy and collect ad valorem taxes upon all taxable property within the City, without limitation as to rate or amount, sufficient to pay the principal of, premium, if any, and interest on the Bonds to the extent other funds of the City are not sufficient or available for such purpose. The full faith and credit of the City are pledged for the payment of principal of, premium, if any, and interest on the Bonds.

§ 9. **Duties of Registrar.** The Registrar shall be selected by the Director of Finance, with the approval of the City Manager. The Director of Finance may also serve as Registrar. The Registrar shall maintain registration books for the registration of the Bonds. Upon surrender of any bond to the Registrar, together with an assignment duly executed by the registered owner or his duly authorized attorney or legal representative in such form as shall be satisfactory to the Registrar, the City shall execute, and the Registrar shall authenticate and deliver in exchange, a new bond or bonds having an equal aggregate principal amount, in authorized denominations, of the same form and maturity, bearing interest at the same rate, and registered in names as requested by the then registered owner or such owner's duly authorized attorney or legal representative. Any such exchange shall be at the expense of the City, except that the Registrar may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto.

The Registrar shall treat the registered owner as the person exclusively entitled to payment of principal, premium, if any, and interest and the exercise of all other rights and powers of the owner, except that interest payments shall be made to the person shown as owner on the

registration books as of the Record Date.

§ 10. **Legal Debt Limit.** The Council has ascertained and hereby determines and states that the maximum principal amount of the Bonds authorized by this Resolution, taking into account the refunding of the 2017 BAN, and all other outstanding general obligation bonds or other general obligation indebtedness heretofore issued or contracted by the City for any purpose, or in any manner, does not exceed 10% of the assessed valuation of the real estate in the City subject to taxation, as shown by the last preceding assessment for taxes, and as a result, the Bonds are within the limitation of indebtedness as provided in Section 6.16 of the City Charter, Section 15.2-2634 of the Public Finance Act and Article VII, Section 10 of the Virginia Constitution.

§ 11. **Offering Documents.** The City Manager and the Director of Finance are authorized and directed to have prepared and distributed, in accordance with standard practices of municipal securities, one or more Preliminary Official Statements of the City describing the Bonds as authorized herein, the security therefor, and providing any other pertinent or relevant information. The Director of Finance shall make such completions, omissions, insertions and changes in such Preliminary Official Statement not inconsistent with this Resolution as are necessary or desirable to complete it as a final Official Statement. The City shall arrange for the delivery to the purchasers of the Bonds of a reasonable number of copies of the final Official Statement, within seven (7) business days after the date the Bonds have been awarded or their sale negotiated, for delivery to each potential investor requesting a copy of the final Official Statement and to each person to whom any underwriter or bidder and members of the underwriting or bidding group initially sell Bonds.

§ 12. **Offering Document Determination.** The Director of Finance is authorized, on behalf of the City, to deem such Preliminary Official Statement in final form, and such Official Statement in final form, each to be final as of its date within the meaning of Rule 15c2-12 (the "Rule") of the Securities and Exchange Commission (the "SEC"), except for the omission in such Preliminary Official Statement of certain pricing and other information allowed to be omitted pursuant to the Rule. The distribution of such Preliminary Official Statement and such Official Statement in final form shall be conclusive evidence that each has been deemed final as of its date by the City, except for the omission in such Preliminary Official Statement of such pricing and other information.

§ 13. **Tax Compliance Undertakings.**

(a) The City covenants that it shall not take or omit to take any action the taking or omission of which will cause any of the Bonds issued as tax-exempt obligations to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, including regulations issued pursuant thereto (the "Code"), or otherwise cause interest on the Bonds issued as tax-exempt obligations to be includable in the gross income for federal income tax purposes of the registered owners thereof under existing law. Without limiting the generality of the foregoing, the City shall comply with any provision of law that may require the City at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds of the Bonds, unless the City receives an opinion of nationally recognized bond counsel that such compliance is not required to prevent interest on the Bonds issued as tax-exempt obligations from being includable in the gross income for federal income tax purposes of the registered owners thereof under existing law. The City shall pay any such required rebate from its legally available funds.

(b) Such officers of the City as may be requested are authorized and

directed to execute appropriate certificates setting forth facts and covenants related to the expected use and investment of the proceeds of the Bonds issued as tax-exempt obligations in order to show that such expected use and investment will not violate the provisions of Section 148 of the Code and any elections such officers deem desirable regarding rebate of earnings to the United States for purposes of complying with Section 148 of the Code. Such certificates, covenants and elections shall be in such form as may be requested by bond counsel for the City.

(c) The City covenants that it shall not permit the proceeds of the Bonds issued as tax-exempt obligations or the facilities financed with the proceeds of such Bonds to be used in any manner that would result in (a) 10% or more of such proceeds or the facilities financed with such proceeds being used in a trade or business carried on by any person other than a governmental unit or 5% or more of such proceeds or facilities financed with such proceeds being used for such purpose where such use is unrelated or disproportionate to the governmental use of such proceeds, as provided in Section 141(b) of the Code, (b) 5% or more of such proceeds or the facilities financed with such proceeds 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 (c) 5% or more of 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 City receives an opinion of nationally recognized bond counsel that any such covenants need not be complied with to prevent the interest on the Bonds issued as tax-exempt obligations 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.

(d) Notwithstanding the foregoing, if between the date of adoption of this Resolution and the date of issuance of the Bonds, changes to federal tax law impose new or additional requirements to establish and maintain the tax-exempt status of bonds issued as tax-exempt obligations; impose requirements for the issuance of bonds under any tax-advantaged status to be established or impose requirements generally for the issuance of governmental obligations, the Director of Finance, with the approval of the City Manager, is authorized to comply with any generally applicable requirements and with any specific requirements applicable to the tax status of the Bonds selected by such officers.

§ 14. **Post-Issuance Tax Compliance.** The Post Issuance Policies and Procedures previously established by the City Manager and Director of Finance as directed by Council to ensure compliance with the Tax Compliance Undertakings shall apply to the Bonds, and shall be administered by the Director of Finance and such other officers and staff as the Director of Finance may designate and authorize for such purpose.

§ 15. **Continuing Disclosure Undertakings.** The City desires to assist the purchasers of the Bonds in complying with the provisions of Section (b)(5)(i) of the Rule. In order to accomplish this, the City covenants to do the following to the extent required or requested:

(A) Annual Disclosure.

(1) The City shall provide annually certain financial information and operating data in accordance with the provisions of Section (b)(5)(i) of the Rule, as follows:

(a) audited financial statements, prepared in accordance with generally

accepted accounting principles; and

(b) the operating data with respect to the City of the type appearing in portions of the Official Statement in final form under the headings “Authorization of Debt”, “General Obligation Bonded Debt”, “Certain Debt Ratios”, “General Governmental Revenues” and “General Governmental Expenditures”.

(2) The City shall annually provide the financial information and operating data described in subsection (1) above (the “Continuing Disclosure”) within 180 days after the end of the City’s fiscal year, commencing with the City’s fiscal year in which the Bonds are issued, to the Municipal Securities Rulemaking Board (“MSRB”) through its Electronic Municipal Market Access System or such other system as the MSRB may designate for such purpose.

(3) Any of the Continuing Disclosure may be included by specific reference to other documents previously provided to the MSRB or filed with the SEC; provided, however, that any final official statement incorporated by reference must be available from the MSRB.

(4) The City shall provide in a timely manner to the MSRB notice specifying any failure of the City to provide the Continuing Disclosure by the date specified.

If the City fails to comply with any covenant or obligation specified in this Section, any holder (within the meaning of the Rule) of the Bonds then outstanding may, by notice to the City, proceed to protect and enforce its rights and the rights of the holders by an action for specific performance of the City’s covenant to provide financial information and operating data.

(B) Event Disclosure. The City shall provide notice in a timely manner to the MSRB of the occurrence of any of the following events with respect to the Bonds, such notice to be provided not more than ten business days after the occurrence of the event:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancement reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (7) modifications to rights of Bond holders, if material;

- Bonds, if material;
- (8) Bond calls, if material, and tender offers;
 - (9) defeasances;
 - (10) release, substitution, or sale of property securing repayment of the
 - (11) rating changes;
 - (12) bankruptcy, insolvency, receivership or similar event of the City;
 - (13) the consummation of a merger, consolidation or acquisition involving the City or sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
 - (14) appointment of a successor or additional trustee or the change of name of a trustee, if material.

(C) Termination. The covenants and obligations of the City specified in subsections (A) and (B) to the extent they apply shall terminate upon the redemption, defeasance (within the meaning of the Rule) or payment in full of all the Bonds.

(D) Amendment. The City reserves the right to modify its obligations specified in subsections (A) and (B) without the consent of bondholders, provided that such modification complies with the Rule as it exists at the time of modification. The City shall, within a reasonable time thereafter, send to the MSRB, a description of such modification(s).

(E) Additional Disclosure. The City may from time to time disclose certain information and data in addition to the Continuing Disclosure. Notwithstanding anything herein to the contrary, the City shall not incur any obligation to continue to provide, or to update, such additional information or data.

§ 16. **Filing of Resolution.** The City Clerk, with the assistance of the City Attorney, is authorized and directed to see to the immediate filing of a certified copy of this Resolution in the Circuit Court of the City of Hampton and is directed to make a copy of this Resolution continuously available for inspection by the general public during normal business hours at the City Clerk's office from the date of adoption hereof through the date of the issuance of the Bonds.

§ 17. **Confirmation and General Authorization.** All other actions of officers of the City in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bonds are approved and confirmed. The officers of the City are authorized and directed to execute and deliver all certificates and instruments and to take all such further action as may be considered necessary or desirable in connection with the issuance, sale and delivery of the Bonds, including entering into agreements to evidence its continuing disclosure undertaking and contracts and arrangements for the purchase of the Bonds in connection with a negotiated sale with one or more underwriters, to provide credit enhancement or insurance for all or a portion of the

Bonds, to provide for the redemption of the 2017 BAN and make any election or provide any notice in connection therewith, and to provide for the investment of the proceeds of the Bonds.

§ 18. **Investment Authorization.** The City Council hereby authorizes the Director of Finance to utilize the State Non-Arbitrage Program of the Commonwealth of Virginia (“SNAP”) in connection with the investment of the proceeds of the Bonds or any portion thereof, if the Director of Finance determines that the utilization of SNAP is in the best interest of the City. The City Council acknowledges that the Treasury Board of the Commonwealth of Virginia is not, and shall not be, in any way liable to the City in connection with SNAP, except as otherwise provided in any contract with SNAP.

§ 19. **Effective Date.** This Resolution shall be in force and effect upon adoption.