

CITY OF BAINBRIDGE ISLAND, WASHINGTON

ORDINANCE NO. 2009-07

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to contracting indebtedness; amending provisions of Ordinance 2009-02 to permit the previously authorized indebtedness to pay for a portion of the cost of upgrades to the City's wastewater treatment plant to be in the form of either revenue bonds or limited tax general obligation bonds; providing for certain terms and covenants of the bonds; ratifying and confirming the effectiveness of Ordinance 2009-02; and providing for other matters properly related thereto.

Passed April 22, 2009

*This document prepared by:*

*Foster Pepper PLLC  
1111 Third Avenue, Suite 3400  
Seattle, Washington 98101*

*(206) 447-4400*

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THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Recitals and Findings.** The following recitals and findings describe the background and set the context for this amendatory ordinance. Capitalized terms not otherwise defined herein have the meanings given in Section 2 of Ordinance No. 2009-02 (the "Bond Ordinance").

(1) *Bond Authorization under Ordinance No. 2009-02.* The City on March 11, 2009 passed Ordinance No. 2009-02, which provided for the issuance of bonds in an amount not to exceed \$7,130,000 for, among other purposes, the purpose of carrying out the Project and paying the costs of issuance of the Bonds. The Project consists of carrying out certain additions and alterations to, and betterments and extensions of the City's wastewater treatment plant, and the expected cost is now expected to be less than \$6,000,000.

(2) *Threatened Litigation.* On February 19, 2009, the City received a letter from a law firm representing a citizen group threatening litigation with respect to those authorized bonds. The City and its counsel have reviewed the claims and the City hereby determines (without commenting on whether the claims raised may or may not have merit) that it is in the interests of the City and the utility ratepayers to open a dialogue with the citizen group to try to understand their concerns rather than incur costs to ratepayers in potential litigation.

(3) *Interim Financing.* In order to provide time for this process without incurring additional utility costs for City-caused delays under existing construction contracts, the City determines that it is in the best interest of the City and the utility ratepayers to obtain interim financing in order to make the payments due under the existing construction contracts. The City intends to refund the interim financing with an issuance of bonds as authorized by the Bond Ordinance, as amended by this ordinance.

(4) *Amendments to Terms and Covenants of Authorized Bonds.* The purpose of adopting this amendatory ordinance is to permit the structuring of the interim or permanent borrowing for the Project to be secured by a pledge of Net Revenue of the Waterworks Utility or,

alternatively, to be secured by a pledge of revenues from the Sewer System only. This amendatory ordinance also authorizes the preparation of a contingent loan agreement from the general fund to provide credit enhancement to either form of revenue borrowing. No borrowing may be undertaken except pursuant to approval of the specific terms by the City Council in a Bond Sale Resolution.

**Section 2. No Effect on Limited Tax General Obligation Refunding Bonds, 2009.**

All provisions of the Bond Ordinance not amended by this ordinance are hereby ratified and confirmed and remain in full force and effect and nothing in this amendatory ordinance in any way affects the provisions of the Bond Ordinance as it relates to the City's outstanding Limited Tax General Obligation Refunding Bonds, 2009, dated April 1, 2009.

**Section 3. Note Authorization.** If the City Council determines it to be in the best interests of the City and its ratepayers, it may adopt a Bond Sale Resolution approving the terms of issuance of short-term obligations (having a maturity of three years or less) pending the issuance of Bonds as long-term financing. The terms of such short-term obligations shall be set forth and approved in a Bond Sale Resolution, notwithstanding Sections 4 through 8 of Ordinance No. 2009-02, which are applicable only to Bonds issued as long-term financing. The Finance Director shall serve as Bond Registrar for any such short-term obligations and, if such short-term obligations are structured as a line of credit, the Finance Director is hereby designated as the officer authorized to make draws in such amounts and at such times as he may determine are required to finance the costs of the Project, those Draws to be made in accordance with the terms and provisions set forth in the Bond Sale Resolution and the Bond Ordinance (as amended by this ordinance).

**Section 4. Amendments.** Deleted language is indicated with strikethrough and new language is indicated with double underlining.

(a) Subsection (1) of Section 1 of Ordinance No. 2009-02 is hereby amended to read as follows:

(1) *Authorization.* The City Council finds and determines it to be in the best interest of the City to authorize the issuance and sale of ~~limited tax general obligation~~ bonds in one or more series, for the purposes of (a) carrying out the Project; (b) carrying out the Refunding Plan with respect to the refunding of all or a portion of the 1998 Bonds; and (c) paying the costs of issuance of the Bonds. Depending on developing market conditions, the City Finance Director is authorized and directed to prepare for and conduct the sale of the Bonds authorized by this ordinance on a negotiated basis and, if necessary, to obtain interim financing (such as issuing and selling one or more short-term bond anticipation notes) to be refinanced upon issuance of the Bonds, the terms of which sale shall be subject to approval by the City Council in one or more Bond Sale Resolutions. The par amount of the Project Bonds shall not exceed ~~\$7,130,000~~ \$6,000,000.

(b) Section 3 of Ordinance No. 2009-02 is hereby amended to read as follows:

**Section 3. Authorization of the Bonds.** The City shall borrow money on the credit of the City and issue negotiable limited tax general obligation bonds evidencing indebtedness to provide the funds for the purposes described in this Section 3. The Bonds shall be issued for general municipal purposes and may be issued in any combination or as multiple separate series. No Bonds may be issued and sold except pursuant to a Bond Sale Resolution approving the terms of such sale. The general indebtedness to be incurred shall be within the limit of up to 1½% of the value of the taxable property within the City permitted for general municipal purposes without a vote of the qualified voters therein.

Alternatively, one or more series of Bonds issued for the purpose of providing funds for the Project or to refund bonds previously issued for utility purposes, may be issued as Revenue Obligations secured by a pledge of either (as approved by the City Council in a Bond Sale Resolution) Net Revenues of the Waterworks Utility or, Sewer System Revenues, on a basis as set forth in Section 11 of Ordinance No. 2009-02, as amended by Section 3(d) of Ordinance No. 2009-07.

The Bonds are more specifically described as follows:

(a) The Project Bonds shall be issued in an amount not to exceed \$7,130,000~~6,000,000~~ to pay a portion of the costs of the Project and the costs associated with the issuance of the Project Bonds, including but not limited to all legal costs incurred in connection with the issuance of the Project Bonds. Pursuant to a Bond Sale Resolution, the City Council may provide for the issuance and sale of bond anticipation notes or other short-term obligations to provide interim financing, which interim financing is anticipated to be refinanced by the issuance of the Project Bonds.

(b) The Refunding Bonds shall be issued in an amount not to exceed that amount necessary to carry out a current refunding, to be set forth in a Refunding Plan, of that portion of the then-outstanding 1998 Bonds (including paying the administrative costs of carrying out the other elements of the Refunding Plan) and paying the costs of issuance of the Refunding Bonds.

The Mayor, City Administrator, Director of Finance and Administrative Services, City Attorney, and other proper City officials are authorized and directed to do everything necessary for the issuance, sale and delivery of the Bonds (subject to approval of the terms of such Bonds in a Bond Sale Resolution), including without limitation taking such legal action as the City Attorney may deem appropriate in connection with the issuance of the Bonds, and for the proper application and use of the proceeds of the sale thereof. The actions heretofore taken in furtherance of and not inconsistent with the purposes of this ordinance are hereby ratified and confirmed.

(c) Section 10 of Ordinance No. 2009-02 is hereby amended to read as follows:

**Section 10. Pledge of Taxes.** For as long as any of the Bonds issued as limited tax general obligation bonds (or secured by a contingent loan authorized by the City Council in a Bond Sale Resolution) are outstanding, the City irrevocably pledges to include in its budget and annually to levy taxes within the constitutional and statutory tax limitations provided by law without a vote of the electors of the City on all of the taxable property within the City in an amount sufficient, together with other money legally available and to be used therefor, to pay when due the principal of and interest on the Bonds, and the full faith, credit and resources of the City are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

(d) Section 11 of Ordinance No. 2009-02 is hereby amended to read as follows:

**Section 11. Additional Pledge of ~~Waterworks~~ Utility Revenue.** The Bond Sale Resolution may provide that, for For as long as any of the Project Bonds are outstanding, the City ~~further~~ pledges to establish, maintain and collect rates and charges for water, sewer and drainage services that will be adequate to produce Waterworks Utility Revenue fully sufficient to provide, in the following order: (a) for the Maintenance and Operation Expense of the Waterworks Utility; (b) for the punctual payment of the principal of and interest on all outstanding Revenue Obligations, if any, for which payment has not otherwise been provided and all amounts that the City is obligated to set aside into a debt service fund and any reserve fund securing such Revenue Obligations, and all other payment obligations related thereto; (c) for the punctual payment of the principal of and interest on all outstanding Subordinate Obligations, including the Project Bonds, and for all amounts that the City is obligated to set aside in the Debt Service Fund for such Project Bonds; and (d) for the payment of any and all other amounts that the City is obligated to pay from Net Revenue of the Waterworks Utility, including without limitation any Public Works Trust Fund Loans. Consistent with BIMC §3.44.010, the City intends to repay the Project Bonds authorized by this ordinance from revenues of the sewer system and, in the event that revenues from the water or SSWM systems are required to be used for repayment of the Project Bonds, the City intends to treat such use as an interfund loan that shall be repaid to the water or SSWM system (as applicable) by the sewer system.

The Project Bonds ~~shall~~may be Subordinate Bonds or Revenue Obligations (including Sewer System Obligations). If the Project Bonds are Subordinate Bonds, and the lien of the Project Bonds on Net Revenues of the Waterworks Utility is subordinate to payment of Operating and Maintenance Expenses of the Waterworks System and to payment of

principal of and interest on any Revenue Obligations of the City to which such revenues are pledged, and the City reserves the right to issue Revenue Obligations in the future on a lien superior to the lien with regard to the Subordinate Obligations.

If the Bond Sale Resolution provides that the Project Bonds are to be Revenue Obligations (or Sewer System Obligations), then for as long as any of the Project Bonds are outstanding and designated as Revenue Obligations (or as Sewer System Obligations, as applicable), the City pledges to establish, maintain and collect rates and charges for services that will be adequate to produce Waterworks Utility Revenue (or of the Sewer System Revenues, if the Bonds are Sewer System Obligations) that are fully sufficient to provide for the punctual payment of the principal of and interest on all outstanding Revenue Obligations (or, if the Bonds are Sewer System Obligations, on all outstanding Sewer System Obligations and that portion of any Revenue Obligations allocated to the Sewer System), if any, for which payment has not otherwise been provided, all amounts that the City is obligated to set aside into a debt service fund and any reserve fund securing such Revenue Obligations (or Sewer System Obligations, if applicable), and all other payment obligations related thereto. This pledge shall constitute a lien and charge upon the revenues so pledged prior and superior to any other liens and charges whatsoever, subject only to Maintenance and Operation Expense. Revenue Obligations (including Sewer System Obligations) shall be payable only from a debt service fund established for that purpose and shall not be a general obligation of the City, the State of Washington or any political subdivision thereof. In connection with the issuance of any Revenue Obligations, the Bond Sale Resolution may provide for any covenants reasonably required by a purchaser of that series of Bonds.

For purposes of this ordinance, “Sewer System Revenues” means Waterworks Utility Revenue allocable solely to the Sewer System and remaining after payment of the Maintenance and Operation Expense allocable to the Sewer System within the Waterworks Utility. Sewer System Revenues shall be available to pay, in the following order: (a) Maintenance and Operation Expenses of the Sewer System of the Waterworks Utility; (b) the principal of and interest on all outstanding Sewer System Obligations, if any, for which payment has not otherwise been provided and all amounts that the City is obligated to set aside into a debt service fund and any reserve fund securing such Sewer System Obligations, and all other payment obligations related thereto; (c) payment of the principal of and interest on (in the following order): (i) that portion of any outstanding Revenue Obligations allocated to the Sewer System, (ii) that portion of any Subordinate Obligations allocated to the Sewer System, and (iii) all amounts that the City is obligated to set aside in the Debt Service Fund or reserve fund for such bonds; and (d) for the payment of any and all other amounts allocable to the Sewer System that the City is

obligated to pay from Net Revenue of the Waterworks Utility, including without limitation any Public Works Trust Fund Loans.

“Sewer System Obligations” means Revenue Obligations payable solely from and secured by a pledge of the Sewer System Revenues. Sewer System Obligations are not general obligations of the City and do not include any portion of any obligation secured by a general obligation pledge.

The City may additionally, in a Bond Sale Resolution, designate as Subordinate Obligations or as Revenue Obligations (including Sewer System Obligations) that portion of the Refunding Bonds that is allocated to carrying out the refunding of the portion of the Refunded Bonds allocated to utility purposes, and may make an appropriate additional pledge of Net Revenues of the Waterworks Utility or of Sewer System Revenues to the indebtedness so designated.

(e) Section 17 of Ordinance No. 2009-02 is hereby amended to read as follows:

**Section 17. Debt Service Funds and Deposit of Bond Proceeds.**

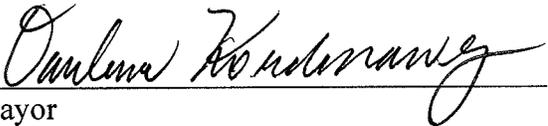
The Bond Sale Resolution shall provide for the creation or designation of a Debt Service Fund for the purpose of paying principal of and interest on the Bonds. All taxes collected for (and, as to any bonds issued as Subordinate Obligations, the Net Revenues allocated to), or as to any Bonds issued as Revenue Obligations or Sewer System Obligations, the revenues collected for and allocated to, the payment of the principal of and interest on the Bonds shall be deposited into the Debt Service Fund. The Bond Sale Resolution shall further provide for and direct the deposit of the principal proceeds and premium, if any, received from the sale and delivery of the Bonds and may provide for the creation of such reserve accounts as may be required to be pledged as security for the repayment of a series of Bonds issued as Revenue Obligations. Until needed to be used for the purposes for which the Bonds were issued and to pay costs of issuance of the Bonds, the principal proceeds may be invested temporarily in any legal investment, and the investment earnings may be retained in the fund into which the proceeds are deposited and may be spent for the purposes of that fund, except that earnings subject to a federal tax or rebate requirement may be withdrawn from the that fund and used for those tax or rebate purposes. The proceeds of that portion of any series of Bonds issued for refunding purposes shall be deposited and used in accordance with the applicable Refunding Plan set forth in the Bond Sale Resolution and in accordance with Section 19 of this ordinance.

**Section 5. Contingent Loan Authorization.** Furthermore, if the City Council determines it to be in the best interests of the City and its ratepayers, it may authorize, in a Bond Sale Resolution, a contingent loan arrangement by which the City will agree to provide interfund loans, repayable in accordance with the terms set forth in that Bond Sale Resolution, when and as

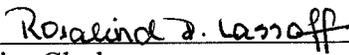
necessary to provide credit enhancement to any series of Bonds issued as revenue bonds payable from the Net Revenues of the Waterworks Utility or from the Sewer Revenues, and to which the City may pledge its full faith and credit as set forth in Section 10 of the Bond Ordinance, as amended by this ordinance.

**Section 6. Effective Date of Ordinance.** This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Bainbridge Island, Washington, at a regular open public meeting thereof, this 22<sup>nd</sup> day of April, 2009.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Foster Pepper PLLC, Bond Counsel

**CERTIFICATION**

I, the undersigned, City Clerk of the City of Bainbridge Island, Washington (the "City"), hereby certify as follows:

1. The attached copy of Ordinance No. 2009-07 (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on April 22, 2009, as that ordinance appears on the minute book of the City; and the Ordinance will be in full force and effect five days after publication in the City's official newspaper.
2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the passage of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this 22<sup>nd</sup> day of April, 2009.

CITY OF BAINBRIDGE ISLAND, WASHINGTON

Rosalind D. Vassoff  
City Clerk