



Legislation Text

File #: RES. 2019-R027, **Version:** 1

To authorize the issuance of general obligation public improvement refunding bonds of the City of Richmond, Virginia in the maximum principal amount of up to \$15,500,000 to refund all or portions of certain general obligation bonds previously issued by the City; to authorize the Director of Finance, with the approval of the Chief Administrative Officer, for and on behalf of the City, to sell such refunding bonds for such purposes; to provide for the form, details and payment of such bonds; and to authorize the issuance of taxable bonds in the same maximum principal amount and payable over the same period as such general obligation public improvement refunding bonds.

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 Richmond, Virginia (the “City”), at one time or from time to time, in order to finance the cost of capital improvement projects and to refund bonds previously issued for such purposes; and

WHEREAS, the City previously issued its General Obligation Public Improvement Refunding Bonds, Series 2009B, in the original principal amount of \$34,340,000 (the “Prior Bonds”) pursuant to ordinances and resolutions duly adopted by the Council; and

WHEREAS, the Council has determined that current market conditions will enable the City to achieve debt service savings by refunding the Prior Bonds or certain portions thereof; and

WHEREAS, the Council desires to provide that all or a portion of the general obligation public improvement refunding bonds authorized by this resolution may be issued as taxable bonds (the “Taxable Bonds”); and

WHEREAS, such refunding will be accomplished through the issuance of one or more new series of general obligation public improvement refunding bonds of the City, the proceeds of which will be used to pay the principal of, premium, if any, and accrued interest on the Prior Bonds or portions thereof to be refunded; and

WHEREAS, it is the consensus of the Council that the City should authorize the issuance and sale of either tax-exempt or taxable general obligation public improvement refunding bonds or both in the maximum principal amount of \$15,500,000 (the “Bonds”) to refund all or certain portions thereof and to pay the costs of issuing such bonds and related costs;

NOW, THEREFORE,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF RICHMOND:

§ 1. The issuance of the Bonds, as either tax-exempt or taxable, is authorized in the maximum principal amount of up to \$15,500,000 in order to refund the Prior Bonds, or selected maturities or portions of maturities thereof, and to pay the costs of issuance of the Bonds and costs related thereto as herein authorized. The Bonds shall be designated “General Obligation Public Improvement Refunding Bonds” or “General Obligation Public Improvement Refunding Bonds (Federally Taxable)”, as appropriate, and may be combined with the issuance of general obligation bonds for public improvements and designated “General Obligation Public Improvement and Refunding Bonds”, as appropriate, and may also include such other term or terms as part of their designation as the officers herein authorized deem appropriate. The Council elects to issue the Bonds under the provisions of the Public Finance Act.

§ 2. The Director of Finance of the City (the “Director of Finance”) is authorized and directed to select the principal maturities of the Prior Bonds or portions of such maturities to be refunded and to cause to be called for optional redemption any such maturity or portion thereof to be redeemed prior to its stated maturity in accordance with the provisions of such bonds. Such selections shall be based upon levels of debt service savings as the Director of Finance deems to be sufficient in his opinion to warrant refunding, and such selections may also be selected for the purpose of restructuring debt service payments whether or not any savings are achieved from such restructuring, provided the Director of Finance determines such restructuring will achieve other efficiencies in the management or timing of the servicing of the City’s debt. In connection with the refunding herein authorized, the Director of Finance is authorized to retain the services of independent

consultants to provide verification reports (the “Verification Agent”) on aspects of the refunding to the extent useful and customary in similar transactions and is further authorized to retain the services of one or more escrow agents (the “Escrow Agent”) to the extent needed to hold portions of the proceeds of such Bonds and other funds as needed pending their application to refund the Prior Bonds or portions thereof selected to be refunded.

§ 3. The Bonds shall be in registered form and shall be designated by title, date and series, bear interest from their date, be payable on the payment dates, be issued in the denomination, and mature at such time or times not exceeding 30 years from their date 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 Chief Administrative Officer of the City (the “Chief Administrative Officer”).

Principal of and premium, if any, on the Bonds shall be payable to the registered owners upon surrender of bonds as they become due at the office of the Registrar, as hereinafter defined. Interest shall be payable by check or draft mailed to the registered owners of the Bonds 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 Chief Administrative Officer (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.

The Director of Finance, with the approval of the Chief Administrative Officer, may (a) enter into an agreement for a book-entry system for the Bonds with a qualified securities depository (the “Securities Depository”) and (b) appoint the paying agent and registrar for the Bonds (the “Registrar”).

§ 4. The Bonds may be subject to redemption 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 Chief Administrative Officer. The Director of Finance, with the approval of the Chief Administrative Officer, is authorized and directed to approve such optional redemption provisions for the Bonds as such officer or officers determine to be in the

best interest of the City.

Any term bonds may be subject to mandatory sinking fund redemption as determined by the Director of Finance, with the approval of the Chief Administrative Officer.

§ 5. The Bonds shall be signed by the manual or facsimile signatures of the Chief Administrative Officer and the Director of Finance, and the City's seal shall be affixed thereto or a facsimile thereof printed thereon and attested by the manual or facsimile signature of the City Clerk. 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.

§ 6. 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.

§ 7. 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. The full faith and credit of the City are pledged for the payment of principal of, premium, if any, and interest on the Bonds.

§ 8. The Registrar shall maintain registration books for the registration of the Bonds. Upon surrender of any bond at the corporate trust office of 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 his 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.

§ 9. The Council has ascertained and hereby determines and states that the maximum principal amount of the Bonds authorized by this resolution and all other outstanding general obligation bonds or other outstanding general obligation indebtedness heretofore issued or contracted by the City for any purpose, or in any manner, does not exceed ten percent of the assessed valuation of the real estate in the City subject to taxation, as shown by the last preceding assessment for taxes, and that, accordingly, the Bonds are within the limitation of indebtedness as provided in Section 7B.02 of the Charter and Section 15.2-2634 of the Public Finance Act.

§ 10. The Council hereby approves the following terms of the sale of the Bonds. The Bonds may be sold all at one time in a single transaction or in two or more separate sales transactions as may be determined by the Director of Finance, with the approval of the Chief Administrative Officer. The Bonds shall be sold by competitive bid or by negotiation with one or more underwriters or other purchasers, who need not be the same if the Bonds are sold in separate sales transactions, as the Director of Finance may determine pursuant to the Public Finance Act, at such prices as the Director of Finance, with the approval of the Chief Administrative Officer, shall determine to be in the best interest of the City, provided that in no event shall (i) the net interest cost of the Bonds, after taking into account any premium or discount on the Bonds, exceed eight percent per year; (ii) the sale price of the Bonds to the underwriters, excluding any original issue discount, be less than 97 percent of the aggregate principal amount thereof, and (iii) the final maturity of the Bonds be later than 30 years from their dated date or such lesser period as set forth from time to time in the City's general obligation bond debt policy. The Director of Finance, with the approval of the Chief Administrative Officer, is authorized to enter into a line of credit, a loan or other alternative financing with a bank, which line of credit, loan or other

alternative financing may provide for a maximum amount not in excess of the amount herein authorized which may be drawn down and repaid from time to time by the City; provided, however, that the interest rate on any line of credit, loan or other alternative financing borrowing will not exceed the then current prime rate as quoted by the bank providing such line of credit, loan or other alternative financing; and to negotiate and acquire credit enhancement for the Bonds, the line of credit, the loan, other alternative financing or other Bond anticipation financing or a portion thereof. The Director of Finance, with the approval of the Chief Administrative Officer, is also authorized to enter into contracts with respect to the Bonds, including those commonly known as interest rate swap agreements and contracts providing for payments based on levels of, or changes in, interest rates, for the purpose of placing the Bonds on the interest rate, cash flow or other basis desired by such officers, to the extent and in the manner permitted by Section 15.2-2626 of the Public Finance Act; provided that the form of such contract or arrangement shall have been previously approved by resolution or resolutions hereafter adopted by the Council. This resolution is intended to grant to the Director of Finance and the Chief Administrative Officer full and complete authority to finalize the terms of the Bonds and to provide for their issuance and sale consistent with the requirements of this resolution, the Public Finance Act, the Charter and the Constitution and other laws of the Commonwealth of Virginia. The Director of Finance is authorized to negotiate, execute and deliver one or more bond purchase agreements with the underwriters or other purchasers of the Bonds if the Bonds are sold by negotiation, including agreements contemplating the then current sale coupled with a future or forward delivery of all or certain of the Bonds if the Director of Finance deems any such arrangement advantageous to the City. A copy of any such purchase agreement shall be filed with the City Clerk. If the Bonds are sold by competitive bid, the Director of Finance shall file a certificate following the award of the Bonds setting forth the final terms of the Bonds with the City Clerk. In connection with the obtaining of any credit line, credit enhancement, interest rate swap or similar agreements, the Director of Finance, with the approval of the Chief Administrative Officer, is authorized to include in the borrowing the cost of obtaining such credit line, credit enhancement, interest rate swap or similar agreements.

The actions of the Director of Finance in selling the Bonds, together with the approvals herein required of the Chief Administrative Officer, shall be conclusive, and no further action shall be necessary on the part of the Council.

§ 11. The Chief Administrative Officer 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 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 business days after (i) the date the Bonds have been awarded or (ii) an agreement for their purchase and sale has been entered into, and shall further arrange for delivery to each potential investor requesting a copy of the final Official Statement and to each person to whom such underwriters or bidders and members of the underwriting or bidding group initially sell bonds. The Bonds may be described in a preliminary and final official statement which combine the issuance of the Bonds with the issuance of other obligations of the City.

§ 12. The Director of Finance is authorized, on behalf of the City, to deem such Preliminary Official Statement 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. The Chief Administrative Officer, 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.

§ 14. The City covenants that it shall not take or omit to take any action the taking or omission of which will cause the Bonds 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 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 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. This Section shall not apply to Taxable Bonds.

§ 15. 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 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. This Section shall not apply to Taxable Bonds.

§ 16. The City covenants that it shall not permit the proceeds of the Bonds or the facilities financed with the proceeds of the Bonds to be used in any manner that would result in (a) five percent 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, as provided in Section 141(b) of the Code, (b) five percent 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) five percent

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 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. This Section shall not apply to Taxable Bonds.

§ 17. 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 relating to and describing (i) a statement of General Fund Revenues and Other Financing Sources and a statement of General Fund Expenditures and Other Financing Uses in the section relating to discussions of certain financial information, (ii) schedules relating to property assessments, real estate tax levies and collections and personal property tax levies and collections in the section relating to revenues of the City, and (iii) schedules relating to legal debt margin, percentage of bonded debt to assessed values of real estate and bonded debt per capita and percentage of debt service to total General Fund Expenditures and Transfers in the section relating to debt of the City.

(2) The City shall annually provide the financial information and operating data described in

subdivision (1) above (the “Continuing Disclosure”) within 220 days after the end of the Citys fiscal year, commencing with the Citys fiscal year in which the Bonds are issued, to the Municipal Securities Rulemaking Board (the “MSRB”) for publication on its Electronic Municipal Market Access (“EMMA”) System, or as otherwise designated by the Rule, and to the appropriate state information depository if any then exists (“SID”).

- (3) Any of the Continuing Disclosure may be included by specific reference to other documents previously provided to the MSRB and to the SID, if any, 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 and to the SID, if any, 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 Citys covenant to provide financial information and operating data.

(B) Event Disclosure. The City shall provide in a timely manner not in excess of ten business days to the MSRB and to the SID, if any, notice of the occurrence of any of the following events with respect to the Bonds:

- (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 any 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 materials notices or determinations with respect to the tax status of thesecurity, or other material events affecting the tax-exempt status of the Bonds;

(7) modifications to rights of bondholders, if material;

(8) Bond calls, if material, and tender offers;

(9) defeasance of all or any portion of the Bonds;

(10) release, substitution, or sale of property securing repayment of the Bonds, if material;

(11) rating changes;

(12) bankruptcy, insolvency, receivership or similar event of the obligated person;

(13) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, 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;

(14) appointment of a successor or additional trustee or the change of name of a trustee, if material;

(15) incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and

(16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

(C) Termination. The covenants and obligations of the City specified in subsections (A) and (B) to

the extent they shall 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 and the SID, if any, 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.

§ 18. 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 Richmond 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.

§ 19. The Director of Finance is authorized and directed to execute one or more escrow deposit agreements (the "Escrow Agreement") between the City and an Escrow Agent, appointed by the Director of Finance with the approval of the Chief Administrative Officer, providing for the deposit and investment of a portion of the Bond proceeds, together with other funds to the extent needed, for the refunding of the Prior Bonds selected for redemption or payment at maturity. The Escrow Agreement shall be in form approved by the Director of Finance in collaboration with the City Attorney. The execution thereof by the Director of Finance shall constitute conclusive evidence of the Director of Finance's approval of such agreement. The Escrow Agreement shall provide for the irrevocable deposit of a portion of the Bond proceeds thereunder, together with other funds to the extent needed, which shall be sufficient, when invested in obligations that are permissible investments for public sinking funds pursuant to Section 2.2-4500 of the Code of Virginia of 1950,

as amended, together with interest earnings thereon, to provide for payment of principal of and premium, if any, and interest on the Prior Bonds being redeemed or paid at maturity; provided, however, to the extent that the Bonds are not issued as Taxable Bonds, that such Bond proceeds shall be invested in such manner that none of the Bonds will be “arbitrage bonds” within the meaning of Section 148 of the Code.

§ 20. 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, but not limited to, (i) obtaining municipal bond insurance or other forms of credit enhancement for the Bonds, (ii) performance of the City’s obligations under the Escrow Agreement and (iii) entering into any arrangements as required or appropriate with the Verification Agent, and paying all costs related to any of the activities herein authorized. The authorization granted herein to the Director of Finance, the Chief Administrative Officer and the City Attorney shall apply equally to any person serving in such capacity on an interim or acting basis pending a permanent appointment to any such office.

§ 21. This resolution shall be in force and effect upon adoption, and any and all resolutions in conflict with the provisions hereof are repealed.