

Introduced by: Councilmember Snipper

First Reading: April 5, 2010

Second Reading: April 19, 2010

Effective Date: April 19, 2010

CITY OF TAKOMA PARK, MARYLAND

ORDINANCE NO. 2010-18

An Ordinance Authorizing the Issuance and Sale of City of Takoma Park General Obligation Bond, 2010 Series B, for the Purpose of Paying a Deficit/Unfunded Liability to the State Retirement and Pension System of Maryland.

WHEREAS, a majority of the City of Takoma Park's non-sworn employees are covered by the State Retirement and Pension System of Maryland; and

WHEREAS, the City has a deficit of approximately \$1,400,000.00 arising from less asset value than accrued benefit for prior and current City employees under the State Retirement and Pension System of Maryland; and

WHEREAS, the City's deficit is being paid over a period of 40 years and the State Retirement and Pension System of Maryland assesses interest on the outstanding deficit amount equivalent to the assumed annual rate of return on retirement system investments, which interest rate is currently ~~7.75~~ 7.5%; and

WHEREAS, the State Retirement and Pension System of Maryland's assumed rate of return is considerably higher than present market interest rates; and

WHEREAS, due to the present low interest rates, the Council has determined it is financially advantageous for the City to secure tax-exempt financing and to pay off the State Retirement and Pension System of Maryland deficit; and

WHEREAS, City issued a Request for Proposals for the purchase of a general obligation bond to be issued by the City in the amount of up to \$1,400,000.00 by private negotiated sale; and

WHEREAS, the City received two bids from separate financial institutions and, by Ordinance No. 2010-14 adopted on March 22, 2010, accepted the financing proposal of SunTrust Bank to provide tax-exempt bank qualified financing to the City for a 10-year term at a fixed interest rate of 3.59%; and

WHEREAS, pursuant to Section 823 of the City of Takoma Park Charter, the Council has determined that the City shall borrow up to \$1,400,000.00 on its full faith and credit and shall evidence such borrowing by the issuance and sale of its bond, to be known as "City of Takoma Park General Obligation Bond, 2010 Series B," for the purpose of paying off the City's State Retirement and Pension System of Maryland deficit.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, pursuant to the authority of Section 823 of the City of Takoma Park Charter, as follows:

Section 1. Recitals.

The “Whereas” clauses of this Ordinance are incorporated and deemed a substantive part of this Ordinance.

Section 2. Authorization, Terms, Form of Bonds.

- a. The City of Takoma Park (“City”) is a municipal corporation of the State of Maryland organized and operating under a Charter (the “Charter”) adopted in accordance with Article XI-E of the Constitution of Maryland and Article 23A of the Annotated Code of Maryland, as amended (the “Maryland Code”).
- b. The City Council approves and authorizes the City’s borrowing, on its full faith and credit, for the purpose of paying off the deficit in the City’s portion of the State Retirement and Pension System of Maryland, as set forth in this Ordinance.
- c. The City is authorized and empowered by Sections 31 to 37, inclusive, of Article 23A of the Maryland Code and by Section 823 of the Charter to borrow money for any proper public purpose and to evidence such borrowing by the issuance and sale of its general obligation bonds, notes, or other certificates of indebtedness.
- d. The City, through its properly designated officers, shall borrow upon its full faith and credit and shall issue and sell upon its full faith and credit a general obligation bond in the principal amount of up to One Million Four Hundred Thousand Dollars (\$1,400,000.00), to be known as “City of Takoma Park General Obligation Bond, 2010 Series B” (the “Bond”). The proceeds of the Bond shall be used for the purpose of paying the deficit arising from less asset value than accrued benefit for prior and current City employees under the State Retirement and Pension System of Maryland, and the payment of related issuance costs.
- e. The Bond shall bear a fixed interest rate of 3.59% percent per annum, with interest thereon to be paid quarterly in arrears, and with a maturity of ten (10) years. Payments of principal and interest on the Bond shall be amortized, quarterly, over ten (10) years with payments to commence three (3) months from the date the Bond is issued. The City shall have the ability to prepay the Bond, in whole, at any time with no penalty.
- f. All other terms and conditions of the Bond shall be substantially as indicated on the Specimen Bond, which is attached as Exhibit “A” and made a part of this Ordinance.
- g. Pursuant to the provisions of Section 823(a) of the City of Takoma Park Charter the Bond shall be sold at a private negotiated sale to Sun Trust Bank (the “Bank”) and the Council finds that such private negotiated sale is in the best interests of the City.

Section 3. Execution.

The Bond shall be executed in the name of the City and on its behalf by the Mayor, and the corporate seal of the City shall be imprinted thereon, attested by the Finance Director of the City. 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 any such Bond, or in the case that any such official shall take office subsequent to the date of issue of any such Bond, his or her signature, in either event, shall be valid for the intended purposes.

Section 4. Delivery and Registration of Bond.

a. 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 Bank and the City, upon payment of the principal amount of the Bonds in immediately available funds

b. The Finance Director shall act as registrar for the Bond and shall maintain registration books for the registration and registration of transfer of the Bond. No security or bonds shall be required of the Finance Director in the performance of the duties of registrar for the Bond.

c. The City may deem and treat the person or entity in whose name any Bond shall be registered upon the books of the City as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal, premium, if any, of and interest on such Bonds and for all other purposes.

Section 5. Covenants.

a. The Mayor and the Finance Director shall be the officers of the City responsible for issuing the Bond within the meaning of Section 1.148-2(b)(2) of the Arbitrage Regulations (defined below). The Mayor and the Finance Director 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 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 “arbitrage bonds” 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 Finance Director 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 “arbitrage bonds” 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 Bonds or any portion of the Bonds 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 Bonds or a portion of such proceeds that would cause the Bonds or a portion of the Bonds to be a “private loan bond” within the meaning of Section 141(c) of the Code.

f. The Mayor and the Finance Director 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 Bonds from gross income for federal income tax purposes. The foregoing covenants and agreements may include such covenants or agreements on behalf of the City regarding compliance with the provisions of the Code as the Mayor or Finance Director shall deem advisable in order to assure the registered owner or owners of the Bond 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 6. Authority to Take Action; Public Hearing.

a. The Mayor, Finance Director, City Attorney, and all other officers and employees of

the City are expressly authorized, empowered and directed to take any and all action necessary to complete and close the sale and delivery of the Bond to the Bank, and to execute and deliver all documents, certificates and instruments necessary and appropriate in connection therewith, including, without limitation, any documents, certificates or instruments containing covenants or representations of the City for the benefit of the Bank that are reasonably requested by the Bank.

b. As required by Section 823(b) of the City of Takoma Park Charter when a proposed indebtedness is greater than five percent (5%) of the City revenues budgeted for that year, the Council held a public hearing on the proposed issuance of the Bond on April 5, 2010, and the Council did not take final action on adoption of this Ordinance less than fourteen (14) days following said public hearing.

Section 7. Ordinance a Contract.

The provisions of this Ordinance shall constitute a contract between the City and the registered owner or owners of the Bond, and this Ordinance shall not be repealed, modified or altered in any manner materially adverse to the interests of such owner or owners while the Bond or any portion thereof remains outstanding and unpaid without the consent of the owner or owners of the Bond.

Section 8. Effective Date; Miscellaneous.

This Ordinance shall take effect from the date of its adoption, and the laws of the State of Maryland shall govern its construction and the construction of the Bonds. Any copy of this Ordinance duly certified by the City Clerk, or his or her successor in office, shall constitute evidence of the contents and provisions hereof.

ADOPTED THIS 19TH DAY OF APRIL, 2010, BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, BY ROLL-CALL VOTE AS FOLLOWS:

Aye: Williams, Wright, Clay, Robinson, Seamens, Snipper, Schultz
Nay: None
Absent: None
Abstain: None

Explanatory Note:

Underlining indicates additions and ~~strikeouts~~ indicate deletions made to Ordinance No. 2010-18 after first reading on April 5, 2010.

City of Takoma Park, Maryland
Exhibit "A" to Ordinance No. 2010-18

FORM OF SPECIMEN BOND

**United States of America
State of Maryland
City of Takoma Park**

**CITY OF TAKOMA PARK
GENERAL OBLIGATION BOND, 2010 SERIES B**

Date of Issuance: _____, 2010

\$1,400,000.00

THE CITY OF TAKOMA PARK (the "City"), a municipal corporation duly organized and existing under the Constitution and laws of the State of Maryland, for value received, acknowledges itself indebted and promises to pay to

SunTrust Bank (the "Bank")

or registered assigns or legal representative, the principal amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00), less the amount of any prepayments permitted hereunder, together with interest on the aggregate unpaid principal amount hereunder from the Date of Issuance set forth herein until payment is made in full.

Interest on the unpaid principal amount shall accrue at the rate of 3.59% per annum. Payments shall be made as follows: forty (40) quarterly installments of principal and accrued interest in the amount of \$41,812.76, commencing on _____, 2010 and continuing on the ___ day of _____ [month] and _____ [month] in each year, as set forth in the attached Schedule of Payments. The entire unpaid balance, together with accrued interest on the aggregated unpaid principal amount, if not sooner paid, shall be due and payable ten (10) years from the Date of Issuance ("final maturity").

Principal and interest shall be payable in lawful money of the United States of America and the final installment of principal of this Bond, at maturity or prior prepayment, shall be payable upon presentation and surrender of this Bond at the office of the Finance Director of the City, who has been appointed Registrar with respect to this Bond.

Principal of this Bond may be prepaid at the option of the City, as a whole, at any time or from time to time, without payment of any premium or penalty.

The full faith and credit and unlimited taxing power of the City is irrevocably pledged for the payment of the principal of and interest on this Bond.

This Bond is the duly authorized general obligation tax-exempt Bond of the City, designated as the "City of Takoma Park General Obligation Bond, 2010 Series B," dated _____, 2010, and is issued pursuant to the authority of Section 12 of Article 31 of the Annotated Code of Maryland, as amended, Sections 31 through 39, inclusive, of Article 23A of the Annotated Code of Maryland, as

amended, and Ordinance No. 2010-18, adopted by the Council of the City of Takoma Park, Maryland, on April 19, 2010 and effective on April 19, 2010 (the "Ordinance"), in which Ordinance the City designated this Bond as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code, as amended.

The Registrar shall treat the registered owner of this Bond as the person or entity exclusively entitled to payment of principal and interest and the exercise of all other rights and powers of the owner.

In case the date any installment due under this Bond is a date on which banking institutions are authorized or obligated by law to close at the place where the office of the Bank is located, then payment of such installment need not be made on such date, but may be made on the next succeeding business day, but if made on such next succeeding business day, additional interest shall accrue until the date the installment is actually paid.

Payment of all installments shall be made at the office of the Bank, 1445 New York Avenue, NW, Washington, DC 20005-2108, unless the Registrar shall be given written notice by the Bank of a different place of payment at least thirty (30) days before any installment is due.

It is declared by the City: (i) that this Bond has been authorized for a valid public purpose which the City is empowered to undertake and perform; (ii) that the City is authorized by law to issue and sell its bonds to provide funds for such public purpose and for the payment of this Bond and the interest hereon; (iii) that, by the adoption of the Ordinance, the City has also pledged to the payment of this Bond and the interest hereon, the proceeds of the taxes or other charges levied or imposed for the payment of such Bond and the interest thereon, until such time as this Bond and the interest hereon are fully paid; (iv) that this Bond, together with all outstanding indebtedness of the City, is within any debt and other limit prescribed by the Constitution or statutes of the State of Maryland or the Charter of the City of Takoma Park; and (v) that all other acts, conditions and things required by the Constitution and laws of the State of Maryland and the Charter of the City of Takoma Park, to happen, exist or be performed precedent to and in the issuance of this Bond have happened, exist and have been performed.

IN WITNESS WHEREOF, the City of Takoma Park has caused this Bond to be signed in its name by the manual signature of its Mayor, its corporate seal to be affixed hereto, and attested by the manual signature of the Treasurer, and its Date of Issuance is _____, 2010.

Attest:

CITY OF TAKOMA PARK, MARYLAND

Yovonda D. Brooks, Finance Director

By: _____
Bruce R. Williams, Mayor

[SEAL]