

ORDINANCE NO. 3625

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED AN ORDINANCE TO AUTHORIZE AND EMPOWER MAYOR AND CITY COUNCIL OF CUMBERLAND (THE "CITY") TO ISSUE AND SELL FROM TIME TO TIME, UPON ITS FULL FAITH AND CREDIT, ONE OR MORE SERIES OF GENERAL OBLIGATION BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,200,000, EACH SERIES OF BONDS TO BE ISSUED AND SOLD AND THE PROCEEDS THEREOF TO BE USED AND APPLIED FOR THE PUBLIC PURPOSE OF FINANCING (INCLUDING BY REIMBURSING PRIOR PROJECT EXPENDITURES) OR REFINANCING A PORTION OF THE COSTS OF ACQUIRING, CONSTRUCTING, INSTALLING, IMPROVING, INSPECTING AND EQUIPPING A WATER STORAGE TANK AT THE RIDGEDALE RESERVOIR, TOGETHER WITH RELATED COSTS, COSTS OF ISSUANCE AND, TO THE EXTENT THE MAYOR AND CITY COUNCIL SO PROVIDES IN A SUBSEQUENT RESOLUTION, CAPITALIZED INTEREST, AS PROVIDED HEREIN; DETERMINING THAT ANY SUCH SERIES OF BONDS BE SOLD TO THE MARYLAND WATER QUALITY FINANCING ADMINISTRATION BY PRIVATE SALE, WITHOUT PUBLIC BIDDING; AUTHORIZING THE APPROVAL OF ONE OR MORE LOAN AGREEMENTS WITH THE MARYLAND WATER QUALITY FINANCING ADMINISTRATION PURSUANT TO A SUBSEQUENT RESOLUTION OR RESOLUTIONS; PLEDGING ANY MONEYS THAT THE CITY IS ENTITLED TO RECEIVE FROM THE STATE OF MARYLAND, INCLUDING THE CITY'S SHARE OF THE STATE INCOME TAX, TO SECURE ITS OBLIGATIONS UNDER THE

LOAN AGREEMENTS; AUTHORIZING THE ADOPTION OF A SUBSEQUENT RESOLUTION OR RESOLUTIONS TO DETERMINE AND PROVIDE FOR VARIOUS MATTERS RELATING TO THE AUTHORIZATION, SALE, SECURITY, ISSUANCE, DELIVERY, PAYMENT AND PREPAYMENT OF AND FOR ANY SERIES OF BONDS; AUTHORIZING AND DIRECTING THE PAYMENT OF ANY FEES OR COSTS PROVIDED FOR IN THE LOAN AGREEMENTS WHICH ARE NOT PAYABLE FROM BOND PROCEEDS AND PROVIDING THAT THE CITY'S OBLIGATION TO PAY SUCH AMOUNTS SHALL BE ABSOLUTE AND UNCONDITIONAL AS PROVIDED IN THE LOAN AGREEMENTS; PROVIDING THAT THE CITY SHALL USE AND APPLY PROCEEDS OF ANY SUCH SERIES OF BONDS ONLY AS PERMITTED BY THE LOAN AGREEMENTS, THE CLEAN WATER ACT (AS DEFINED IN THE LOAN AGREEMENTS) AND THE ACT (AS DEFINED IN THE LOAN AGREEMENTS); AUTHORIZING THE ISSUANCE FROM TIME TO TIME OF ONE OR MORE SERIES OF GENERAL OBLIGATION BOND ANTICIPATION NOTES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,200,000, PRIOR TO AND IN ANTICIPATION OF ANY SERIES OF BONDS IN ORDER TO FINANCE OR REIMBURSE PROJECT COSTS ON AN INTERIM BASIS; AUTHORIZING THE ISSUANCE FROM TIME TO TIME OF ONE OR MORE SERIES OF GENERAL OBLIGATION BONDS IN ORDER TO REFUND ANY OF THE BONDS ISSUED PURSUANT TO THE AUTHORITY OF THIS ORDINANCE AND TO PAY RELATED COSTS, PROVIDED THAT, THE AGGREGATE PRINCIPAL AMOUNT OF ANY SUCH ISSUE OF REFUNDING BONDS DOES NOT EXCEED ONE HUNDRED THIRTY PERCENT (130%) OF THE

AGGREGATE PRINCIPAL AMOUNT OF THE BONDS REFUNDED THEREFROM; AUTHORIZING THE ADOPTION OF A SUBSEQUENT RESOLUTION OR RESOLUTIONS TO MAKE ANY FURTHER DETERMINATIONS DEEMED NECESSARY OR DESIRABLE IN CONNECTION WITH THE ISSUANCE AND SALE OF ANY SUCH SERIES OF BOND ANTICIPATION NOTES OR REFUNDING BONDS; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON ANY SERIES OF BONDS, BOND ANTICIPATION NOTES OR REFUNDING BONDS WILL BE PAYABLE IN THE FIRST INSTANCE FROM REVENUES RECEIVED BY THE CITY IN CONNECTION WITH THE OPERATION OF THE WATER SUPPLY SYSTEM SERVING THE CITY AND SURROUNDING AREAS; PROVIDING FOR THE LEVY OF AD VALOREM TAXES UPON ALL REAL AND PERSONAL PROPERTY WITHIN THE CITY'S CORPORATE LIMITS SUBJECT TO ASSESSMENT FOR UNLIMITED MUNICIPAL TAXATION TO PAY THE PRINCIPAL OF AND INTEREST ON ANY SUCH SERIES OF OBLIGATIONS IN EACH FISCAL YEAR; PLEDGING THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE CITY TO THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON ANY SUCH SERIES OF OBLIGATIONS; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON ANY SUCH SERIES OF OBLIGATIONS ALSO MAY BE PAID FROM ANY OTHER SOURCES OF REVENUE LAWFULLY AVAILABLE TO THE CITY FOR THAT PURPOSE; AUTHORIZING AND DIRECTING OFFICIALS AND EMPLOYEES OF THE CITY TO TAKE ANY AND ALL ACTION NECESSARY TO COMPLETE AND CLOSE THE ISSUANCE, SALE AND DELIVERY OF ANY SUCH SERIES OF BONDS, BOND ANTICIPATION

NOTES OR REFUNDING BONDS; PROVIDING THAT THIS TITLE SHALL BE DEEMED A FAIR SUMMARY OF THIS ORDINANCE FOR ALL PURPOSES; AND OTHERWISE GENERALLY RELATING TO THE ISSUANCE, SALE, DELIVERY AND PAYMENT OF AND FOR ANY SUCH SERIES OF BONDS, BOND ANTICIPATION NOTES OR REFUNDING BONDS.

#### RECITALS

1. Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland (the “City”), is authorized and empowered by Sections 9-1601 to 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland, as replaced, supplemented or amended (the “Environment Article”), Sections 31 to 37, inclusive, of Article 23A of the Annotated Code of Maryland, as replaced, supplemented or amended (the “Enabling Act”), and Sections 81 and 82A of the Charter of the City of Cumberland, as published in Municipal Charters of Maryland, Volume 2, 1990 Replacement Edition, as replaced, supplemented or amended (the “Charter”), to borrow money for any proper public purpose in connection with the water supply system serving the City and surrounding areas and to evidence such borrowing by the issuance and sale of its general obligation bonds.

2. The City has determined to undertake improvements at the existing Ridgedale Reservoir by constructing a water storage tank to replace the current method of finished water storage at such reservoir and, in connection therewith, to borrow money to finance (including by reimbursing prior project expenditures) or refinance a portion of the acquisition, construction, installation, improvement, inspection and equipping costs incurred in connection with the construction phase of such undertaking, together with the acquisition of necessary property rights and equipment, related utilities and site improvements, related financial and legal expenses and

costs of issuance and, to the extent the Mayor and City Council so provides in a subsequent resolution, capitalized interest, and to evidence this borrowing by the issuance and sale of one or more series of its general obligation bonds. The City expects to pay a portion of the total costs of such project from other available sources.

3. The City has determined that any such series of bonds shall be sold to the Maryland Water Quality Financing Administration (the “Administration”) by private sale, without public bidding.

4. In connection with the issuance and sale of any series of its general obligation bonds, and pursuant to the Environment Article, the City will enter into one or more loan agreements with the Administration.

5. The City has determined to pledge its full faith and credit and unlimited taxing power to the prompt payment of debt service on any such series of bonds, and the City expects to pay the principal of and interest on any such series of bonds in the first instance from revenues received in connection with the operation of the water supply system serving the City and surrounding areas.

6. The City, as authorized by the Environment Article, has determined to pledge any moneys that the City is entitled to receive from the State of Maryland, including the City’s share of the State income tax, to secure its obligations under any loan agreements with the Administration.

7. Prior to issuing any such series of bonds to the Administration, the City may need to obtain interim financing in order to finance project costs on a timely basis through the issuance of one or more series of its general obligation bond anticipation notes pursuant to the authority of Section 12 of Article 31 of the Annotated Code of Maryland, as replaced, supplemented or amended (the “Bond Anticipation Note Enabling Act”), and the Charter.

8. Subsequent to the issuance to the Administration of any series of bonds provided for herein, the City may desire to refund or advance refund all or a portion of such series of bonds pursuant to the authority of Section 24 of Article 31 of the Annotated Code of Maryland, as replaced, supplemented or amended (the “Refunding Act”).

9. It is intended that any series of bonds, bond anticipation notes or refunding bonds issued pursuant to the authority of this Ordinance and other applicable Maryland law may be issued as one or more bonds or notes and any of such bonds or notes may be issued in the form of a draw-down and/or installment bond or note as provided herein.

10. The City has determined to issue any series of bonds, bond anticipation notes or refunding bonds authorized hereby in accordance with the terms and conditions provided for in a subsequent resolution or resolutions to be adopted by the Mayor and City Council pursuant to this Ordinance.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND:

SECTION 1. Pursuant to the authority of the Environment Article, the Enabling Act and the Charter, the City hereby determines to borrow money and incur indebtedness for the public purpose of financing (including by reimbursing prior project expenditures) or refinancing a portion of the costs incurred during the construction phase of the acquisition, construction, installation, improvement, inspection and equipping of a water storage tank at the Ridgedale Reservoir, together with the acquisition of necessary property rights and equipment, related utilities and site improvements, related financial and legal expenses, costs of issuance and, to the extent the Mayor and City Council so provides in the Resolution (as defined in Section 8), capitalized interest (collectively, the “Project”). The total cost of the Project not otherwise payable from other sources is not expected to exceed Two Million Two Hundred Thousand Dollars (\$2,200,000). In the event

the City issues any BANs (as defined in Section 11), proceeds of any Bonds (as defined in Section 2) may also be applied to prepay or pay principal, premium and/or interest on such BANs, and any such expenditure shall be considered an expenditure for Project purposes.

SECTION 2. To evidence the borrowing and indebtedness authorized in Section 1 of this Ordinance, the City, acting pursuant to the authority of the Environment Article, the Enabling Act and the Charter, hereby determines to issue and sell from time to time, upon its full faith and credit, one or more series of its general obligation bonds in an aggregate principal amount not to exceed Two Million Two Hundred Thousand Dollars (\$2,200,000) (individually, a “Bond” and, collectively, the “Bonds”). Each Bond shall be designated “Mayor and City Council of Cumberland Drinking Water Bond” and by series or by such other designation or designations as the Mayor and City Council may determine in the Resolution (as defined in Section 8). Any such series may consist of one or more bonds and any Bond may be issued in installment form and/or draw-down form.

SECTION 3. Pursuant to the authority of the Environment Article, the Enabling Act and the Charter, the City hereby determines to sell each series of the Bonds to the Administration by private sale, without public bidding, due to the ability to time the market and the benefit of negotiated flexible terms and a beneficial interest rate or rates offered by the Administration.

SECTION 4. Pursuant to the authority of the Environment Article, the Enabling Act and the Charter, the City hereby determines and provides that each series of the Bonds shall be issued and sold for a price which may be at, above or below the par value of such Bonds, as provided in the Resolution.

SECTION 5. The proceeds of each series of the Bonds shall be used and applied by the City exclusively and solely for the public purposes described in Section 1 of this Ordinance, unless

a supplemental ordinance is enacted by the Mayor and City Council to provide for the use and application of such proceeds for some other proper public purpose authorized by the Environment Article, the Enabling Act or the Charter.

SECTION 6. As required by the Environment Article, the City is hereby authorized to enter into one or more loan agreements with the Administration (each, a “Loan Agreement” and collectively, the “Loan Agreements”) in connection with any series of the Bonds. The final or substantially final form of each Loan Agreement shall be approved by the Mayor and City Council pursuant to the Resolution and the execution and delivery of each Loan Agreement shall be authorized by the Mayor and City Council pursuant to the Resolution.

SECTION 7. As authorized by Section 9-1606(d) of the Environment Article, the City hereby pledges any moneys that the City is entitled to receive from the State of Maryland, including the City’s share of the State income tax, to secure its obligations under the Loan Agreements. Such pledge shall be evidenced and detailed in each Loan Agreement.

SECTION 8. Pursuant to the authority of the Enabling Act and this Ordinance, the Mayor and City Council, prior to the issuance, sale and delivery of any series of the Bonds, shall adopt a subsequent resolution or resolutions (in each such case, the “Resolution”) specifying, prescribing, determining, providing for and approving such matters, details, forms (including, without limitation, the complete form of the Bonds of such series), documents or procedures as may be required by the Environment Article, the Enabling Act, the Charter or this Ordinance or as the Mayor and City Council may deem appropriate for the authorization, sale, security, issuance, delivery, payment or prepayment of or for such series of the Bonds. The Resolution shall set forth, approve or provide for the approval of, among other things, the aggregate principal amount of such series of the Bonds; the maturity or maturities of such series of the Bonds; the principal installment or installments of, or

the method of determining the principal installment or installments of, such series of the Bonds; the rate or rates of interest, or the method of determining the rate or rates of interest, which may be fixed or variable, payable on such series of the Bonds; provisions relating to the prepayment of such series of the Bonds; the procedures for the sale of such series of the Bonds by private sale, without public bidding; and all other terms and conditions pursuant to which such series of the Bonds will be issued, sold and delivered. Any Resolution may specify, prescribe, determine, provide for and approve the details required by this Section 8 for more than one series of the Bonds.

SECTION 9. The City is hereby authorized and directed to pay any fees or costs provided for in any Loan Agreement which are not payable from Bond proceeds, including, without limitation, any administrative fees and any ongoing fees or costs. The obligation of the City to pay such amounts shall be absolute and unconditional as further provided in any Loan Agreement.

SECTION 10. Notwithstanding anything to the contrary contained in this Ordinance, the City shall use and apply proceeds of each series of the Bonds only as permitted by the related Loan Agreement, the Safe Drinking Water Act (as defined in such Loan Agreement) and the Act (as defined in such Loan Agreement).

SECTION 11. Pursuant to the authority of the Bond Anticipation Note Enabling Act and the Charter, the City may issue and sell from time to time, upon its full faith and credit, one or more series of its general obligation bond anticipation notes in an aggregate principal amount not to exceed Two Million Two Hundred Thousand Dollars (\$2,200,000) (collectively, the “BANs”), prior to and in anticipation of the sale of any series of the Bonds in order to finance or reimburse costs of the Project on an interim basis. Any such series of the BANs may consist of one or more notes and any note may be issued in installment and/or draw-down form. Prior to the issuance, sale and delivery of any series of the BANs, the Mayor and City Council shall adopt a subsequent resolution

or resolutions pursuant to the authority of the Bond Anticipation Note Enabling Act, the Charter and this Ordinance authorizing such series of the BANs and specifying, prescribing, determining, providing for and approving such matters, details, forms, documents or procedures as may be authorized or required by applicable law. Unless the Mayor and City Council determines otherwise in a subsequent resolution or resolutions providing for any series of the BANs, such series of the BANs shall be sold at private sale, without advertisement or publication of notice of sale or solicitation of competitive bids, due to the ability to time the market, negotiate flexible terms and thereby achieve a beneficial rate or rates by undertaking a private (negotiated) sale.

SECTION 12. Pursuant to the authority of the Refunding Act and the Charter, the City is hereby authorized and empowered to issue and sell from time to time, upon its full faith and credit, one or more series of general obligation bonds (collectively, the “Refunding Bonds”) for the purpose of refunding or advance refunding any of the Bonds issued pursuant to the authority of this Ordinance then outstanding, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption, purchase or maturity of the Bonds to be refunded, and paying costs and expenses in connection with the issuance, sale and delivery of such Refunding Bonds, and, to the extent determined by the Mayor and City Council in a subsequent resolution or resolutions, interest on such Refunding Bonds, for the public purpose of realizing savings to the City in the aggregate cost of debt service on either a direct comparison, present value or other basis or in order to accomplish any debt restructuring that is permitted by applicable law; provided that, the aggregate principal amount of any such issue of the Refunding Bonds may not exceed one hundred thirty percent (130%) of the aggregate principal amount of the Bonds refunded therefrom. Any such series of the Refunding Bonds may consist of one or more bonds and any bond may be issued in installment form. Prior to the issuance, sale and

delivery of any series of the Refunding Bonds, the Mayor and City Council shall adopt a subsequent resolution or resolutions authorizing such series of the Refunding Bonds and specifying, prescribing, determining, providing for and approving such matters, details, forms, documents or procedures as may be authorized or required by applicable law. Unless the Mayor and City Council determines otherwise in a subsequent resolution or resolutions providing for any series of the Refunding Bonds, such series of the Refunding Bonds shall be sold on a negotiated basis, due to the ability to time the market, negotiate flexible terms and thereby achieve a beneficial rate or rates by undertaking a private (negotiated) sale.

SECTION 13. The Mayor and City Council is hereby authorized, pursuant to a subsequent resolution or resolutions, to make any further determinations or approvals or provide for any matters or actions deemed necessary or desirable in connection with the issuance of any series of the BANs or the Refunding Bonds authorized hereby, including, without limitation, (i) any determination authorized by the Bond Anticipation Note Enabling Act or the Refunding Act, as applicable, (ii) to commit or provide for the commitment of the City to pay to the purchaser or purchasers of any series of the BANs or the Refunding Bonds (A) any commitment fee or similar fee and any legal costs in connection with such purchaser's or purchasers' agreement to purchase such series of the BANs or the Refunding Bonds and/or (B) any breakage compensation or other amount that may be determined to be due to such purchaser or purchasers in the event the City fails to deliver such series of the BANs or the Refunding Bonds and, in connection therewith, to approve or provide for the approval of, and the execution and delivery of, any agreement relating to such payment or payments (which such agreement may, but shall not be required to be, contained within any purchase or similar agreement for such series of the BANs or the Refunding Bonds), and (iii) to approve or

provide for any offering documents, credit enhancement, liquidity enhancement, ratings, or continuing disclosure undertakings relating to such series of the BANs or the Refunding Bonds.

SECTION 14. (a) The principal of and interest on each series of the Bonds, the BANs or the Refunding Bonds authorized hereby (each, a series of the “Obligations”) will be payable in the first instance from revenues received by the City in connection with the operation of the water supply system serving the City and surrounding areas. In the event such moneys are insufficient in any fiscal year to provide for the prompt payment, when due, of the principal of and interest on such series of the Obligations, the City shall levy or cause to be levied, for each and every fiscal year during which such series of the Obligations may be outstanding, ad valorem taxes upon all real and tangible personal property within its corporate limits subject to assessment for unlimited municipal taxation in rate and amount sufficient to provide for the payment, when due, of the principal of and interest on such series of the Obligations payable in each such fiscal year and, in the event the proceeds from the collection of the taxes so levied may prove inadequate for such purposes in any fiscal year, additional taxes shall be levied in the subsequent fiscal year to make up any deficiency.

(b) The full faith and credit and unlimited taxing power of the City are hereby irrevocably pledged to the prompt payment of the principal of and interest on each series of the Obligations as and when the same are payable and to the levy and collection of the taxes hereinabove described as and when such taxes may become necessary in order to provide sufficient funds to meet the debt service requirements of such series of the Obligations. The City hereby covenants with the registered owner of each Obligation to take any action that may be appropriate from time to time during the period that such Obligation remains outstanding and unpaid to provide the funds necessary to pay promptly the principal and interest due thereon.

(c) The foregoing provisions shall not be construed so as to prohibit the City from paying the principal of and interest on any series of the Obligations from the proceeds of the sale of any other obligations of the City (including, without limitation, with respect to the BANs, from the proceeds of the Bonds authorized hereby and, with respect to the Bonds, from the proceeds of the Refunding Bonds authorized hereby) or from any other funds legally available for that purpose. The City may apply to the payment of the principal of or interest on any series of the Obligations any funds received by it from the State of Maryland or the United States of America, or any governmental agency or instrumentality, or from any other source, if the funds are granted or paid to the City for the purpose of assisting the City in accomplishing the type of project or projects which such series of the Obligations are issued to finance or refinance, and to the extent of any such funds received or receivable in any fiscal year, the taxes hereby required to be levied may be reduced proportionately.

SECTION 15. The Mayor, the City Administrator, the Director of Administrative Services, the Comptroller, the Treasurer, the City Clerk and all other appropriate officials and employees of the City are hereby authorized and directed to take any and all action necessary to complete and close the sale, issuance and delivery of any series of the Bonds, the BANs or the Refunding Bonds authorized hereby and to execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith.

SECTION 16. The title of this Ordinance shall be deemed to be, and is, a fair summary of this Ordinance for publication and all other purposes.

SECTION 17. This Ordinance shall become effective thirty (30) days after its passage pursuant to the provisions of Section 82A of the Charter, subject to the petition-to-referendum provisions of Section 82A(c) of the Charter.

MAYOR AND CITY COUNCIL OF  
CUMBERLAND

Lee N. Fiedler  
Mayor

ATTEST:  
Marjorie A. Eirich, City Clerk

Introduced: August 12, 2008

Passed: September 2, 2008

Effective: October 2, 2008

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