



**TOWN OF FALMOUTH**

**ORDER NO 77-2016**

**ORDER AUTHORIZING UP TO \$5,900,000 OF THE TOWN'S GENERAL OBLIGATION BONDS TO FINANCE THE REPLACEMENT OF THE MILL CREEK PUMP STATION AND INSTALLATION OF FORCE SEWER MAINS**

**BE IT HEREBY ORDERED THIS 11th DAY OF JANUARY, 2016, BY THE FALMOUTH TOWN COUNCIL, FALMOUTH MAINE, IN TOWN COUNCIL ASSEMBLED THAT:**

**Pursuant to 30-A M.R.S.A. §5772, the Charter of the Town of Falmouth and all other authority thereto enabling, the Town Council hereby authorizes issuance of the Town's general obligation bonds (and notes in anticipation thereof) in an amount not to exceed \$5,900,000, the proceeds of which, including premium, if any, and investment earnings thereon, may be used and are hereby appropriated to finance the replacement of the Mill Creek Pump Station and installation of force sewer mains (the "Mill Creek Project").**

**BE IT FURTHER ORDERED:**

1. That the Treasurer of the Town and the Chair of the Town Council be and hereby are authorized, in the name of and on behalf of the Town, to borrow up to \$5,900,000 to finance the Mill Creek Project and to prepare, issue, and sell the bonds and notes herein authorized in like amount at one time, or from time to time, as one or more separate bond issues, and to determine the date, form, minimum denomination, interest rates (as term bonds or serial bonds or some combination thereof), maturities (with the last maturity not to exceed the maximum term permitted by law) and all other details, terms and provisions, not inconsistent herewith, including the form and manner of their sale and award as they may

- approve, their approval to be conclusively evidenced by their execution thereof.
2. That the foregoing authorized borrowing and amount of bonds shall be reduced by the amount of funds, if any, appropriated from the Town's Wastewater Enterprise Fund for the same Mill Creek Project unless the Town Council specifically orders otherwise.
  3. That to the extent such loan (or portion thereof) may be financed under the Maine Municipal Bond Bank (the "Bond Bank") Clean Water Revolving Loan Fund Program, Treasurer of the Town and the Chair of the Town Council be and hereby are authorized and empowered, in the name and on behalf of the Town, to execute and deliver a Loan Agreement between the Town and the Bond Bank, with such usual and customary terms and provisions, not contrary to the general tenor hereof, as the Bond Bank may require in connection with the Clean Water State Revolving Loan Fund, and as the Treasurer and the Chair of the Town Council may approve, their approval to be conclusively evidenced by the execution thereof.
  4. That the Treasurer of the Town be and hereby is authorized to provide that the bonds and notes may be made subject to call for redemption, with or without premium, prior to their stated dates of maturity, as provided in 30-A M.R.S.A. §5772(6), as amended.
  5. That the bonds and notes shall be executed in the name of the Town and on its behalf by the manual or facsimile signatures of the Treasurer of the Town, countersigned by the Chair of the Town Council (provided that at least one of such signatures shall be a manual signature), sealed with the seal of the Town, attested by its Clerk.
  6. That the Treasurer of the Town be and hereby is authorized to select the underwriter, financial advisor and bond counsel for the bonds and notes and the Treasurer be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith.
  7. That if the bonds or notes, or any part of them, are issued on a tax-exempt basis, the Treasurer of the Town be and hereby is authorized and directed to covenant and certify in the name of the Town and on its behalf, that no part of the proceeds of the issue and sale of the bonds or notes shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such bonds or notes to be "arbitrage bonds" or "private activity bonds" within the meaning of Sections 148 and 141 of the Internal Revenue Code of 1986, as amended.

8. That if the bonds or notes, or any part of them, are issued on a tax-exempt basis, the Treasurer of the Town be and hereby is authorized and empowered to take all such action as may be necessary to designate the bonds or notes as qualified tax-exempt obligations for purposes of Section 265(b) of the Code; it being the Town Council's intention that the Treasurer, with advice of bond counsel, make the required Section 265(b) election with respect to such bonds or notes to the extent the election may be available and advisable as determined by the Treasurer.
9. That if the bonds or notes, or any part of them, are issued on a tax-exempt basis, the officers or officials executing the bonds or notes be and hereby are individually authorized to covenant and agree, on behalf of the Town, for the benefit of the holders of such bonds or notes, that the Town will file any required reports and take any other action that may be necessary to insure that interest on the bonds or notes will remain exempt from federal income taxation, and that the Town will refrain from any action that would cause interest on the bonds or notes to be subject to federal income taxation.
10. That the Treasurer of the Town is authorized to negotiate, execute, and deliver, in the name of and on behalf of the Town such contracts, agreements, loan agreements, tax certificates, arbitrage and use of proceeds certificates, certificates and other documents as may be necessary or advisable, with the advice of counsel for the Town, to carry out the provisions hereof, in order to effect the issuance, execution, sale, and delivery by the Town of the bonds or notes, which documents shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Treasurer such approval to be conclusively evidenced by his execution thereof.
11. That the Treasurer of the Town, the Chair of the Town Council and Clerk and other proper officials of the Town be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the bonds or notes.
12. The proceeds of the bonds or notes may be used and are hereby appropriated to finance costs of the Mill Creek Project and to pay issuance costs for the bonds or notes, interest and principal on the bonds or notes, underwriters' fees and costs, legal and accounting fees and costs, application fees, and other fees and expenses relating to the financing transaction.

13. That if any of the officers or officials of the Town who have signed or sealed the bonds or notes shall cease to be such officers or officials before the bonds or notes so signed and sealed shall have been actually authenticated or delivered by the Town, such bonds or notes nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such bonds or notes had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the Town by those persons who, at the actual date of the execution of such bonds or notes, shall be the proper officers and officials of the Town, although at the nominal date of such bonds or notes any such person shall not have been such officer or official.
14. That if the Treasurer of the Town, the Chair of the Town Council or Clerk are for any reason unavailable to approve and execute the bonds or notes or any other documents necessary or convenient to the issuance, execution and delivery of the bonds or notes, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.
15. That during the term any of the bonds (or bonds issued to refund such bonds) are outstanding, the Treasurer of the Town be and hereby is authorized to issue and deliver refunding bonds to refund some or all of the bonds then outstanding, and to determine the date, form, interest rate, maturities and all other details of such refunding bonds, including the form and manner of their sale and award. The Treasurer be and hereby is further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the Treasurer, countersigned by the Chair of the Town Council, sealed with the seal of the Town, attested by its Clerk, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof.
16. That to the extent not payable from other funds, an amount sufficient for the payment of the annual payments of principal and interest on the bonds issued hereunder shall be included in the tax levy of each year until the debt represented by said bonds is extinguished.
17. The following resolutions required by Section C(4)(e) of the State of Maine Revolving Loan Fund Rules, Chapter 595, Department of Environmental Protection and the Bond Bank (the "SRF Regulations"),

and governing the loan to be made to the Town under the State Revolving Loan Fund Program be and hereby are adopted:

(1) that a Project Account shall be created for the Mill Creek Project which shall be separate from all other accounts of the Town. If operating revenues are to be used to retire the debt, a sub-account will be established.

(2) that the Project Account shall be maintained in accordance with standards set forth by the Maine Municipal Bond Bank and in accordance with generally accepted government account standards.

(3) that a final accounting shall be made to the Bond Bank of the total cost of the Mill Creek Project upon completion of the project performance certification as set out in Section G(3) of the SRF Regulations and the Town acknowledges that the Bond Bank reserves the right at its sole discretion to be provided with a cost certification of the Mill Creek Project as built.

(4) that an annual audit of the Town, prepared by a certified public accountant or licensed public accountant be provided to the Bond Bank for the term of the loan.

(5) that the Town shall maintain insurance coverage on the Mill Creek Project in an amount adequate to protect the Bond Bank's interest for the term of the loan with the Bond Bank named as loss payee.

(6) that the Town will comply with any special conditions specified by the Department of Environmental Protection's environmental determination until all financial obligations to the State have been discharged.

(7) that the Town certify to the Bond Bank that it has secured all permits, licenses and approvals necessary and that it has a dedicated source of revenue for repayment.

(8) that the Town establish a rate, charge or assessment schedule in order to pay principal and interest. Such rate change or schedule shall provide total operations and debt service coverage at a level at which the coverage for the Bond Bank is sufficient.

(9) that the Town must demonstrate the ability to pay reasonably anticipated costs of operating and maintaining the financed Project.

(10) that the Town abide by the SRF Regulations, as revised and amended and relevant State statutes of the State of Maine

18. That it is the intent of the Town Council that this Bond Order shall constitute the Town's declaration of official intent within the meaning of Treasury Regulation 1.150-2.

**Attest:** \_\_\_\_\_

**Ellen Planer**  
**Town Clerk**