

ORDINANCE NO. 3820

REFUNDING BOND ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$22,000,000 AGGREGATE PRINCIPAL AMOUNT OF GENERAL OBLIGATION REFUNDING BONDS CONSISTING OF NOT TO EXCEED \$12,400,000 AGGREGATE PRINCIPAL AMOUNT OF GENERAL IMPROVEMENT REFUNDING BONDS, SERIES 2009 AND NOT TO EXCEED \$9,600,000 AGGREGATE PRINCIPAL AMOUNT OF OPEN SPACE TRUST FUND REFUNDING BONDS, SERIES 2009, BY THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF SOMERSET, STATE OF NEW JERSEY (THE "TOWNSHIP") FOR THE PURPOSE OF REFUNDING CERTAIN BONDS HERETOFORE ISSUED BY THE TOWNSHIP, AND APPROPRIATING THE PROCEEDS OF SUCH REFUNDING BONDS TO SUCH PURPOSE

WHEREAS, pursuant to the Local Bond Law, N.J.S.A. §40A:2-1 *et seq.*, as amended and supplemented (the "Local Bond Law"), the Township of Franklin, in the County of Somerset, State of New Jersey (the "Township") issued (i) \$5,276,750 General Improvement Bonds, Series 1997 dated July 15, 1997, \$1,951,750 of which are currently outstanding and maturing on or after July 15, 2009 and which bonds are subject to redemption on or after July 15, 2008 at a redemption price equal to 101% of the par amount to be redeemed (the "1997 Refunded Bonds"), (ii) \$19,065,000 General Improvement Bonds, Series 2002 dated May 1, 2002, \$9,065,000 of which are currently outstanding and maturing on or after May 1, 2012, which bonds are subject to redemption on or after May 1, 2011 at a redemption price equal to 100% of the par amount to be redeemed (the "2002 General Improvement Refunded Bonds") and (iii) \$21,975,000 Open Space Trust Fund Bonds, Series 2002 dated May 1, 2002, \$8,475,000 of which are currently outstanding and maturing on or after May 1, 2012, which bonds are subject to redemption on or after May 1, 2011 at a redemption price equal to 100% of the par amount to be redeemed (the "2002 Open Space Refunded Bonds" and together with the 2002 General Improvement Refunded Bonds, the "2002 Refunded Bonds") (the 1997 Refunded Bonds and the 2002 Refunded Bonds shall collectively be referred to as the "Refunded Bonds"); and

WHEREAS, the Township Council has determined that refunding bonds can be issued to refund, in whole or in part, such Refunded Bonds which, under current market conditions, can generate a net present value debt service savings to the Township equal to or greater than three percent (3%), which savings is the minimum amount required to obtain approval for such refunding from the Local Finance Board, Division of Local Government Services, Department of Community Affairs of the State of New Jersey (the "Local Finance Board"); and

WHEREAS, the Township has determined to provide for the refunding of the Refunded Bonds through the issuance by the Township of refunding bonds in an aggregate principal amount not to exceed \$22,000,000, consisting of \$12,400,000 General Improvement Refunding Bonds, Series 2009, and \$9,600,000 Open Space Trust Fund Refunding Bonds, Series 2009, as provided in this refunding bond ordinance.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF SOMERSET, STATE OF

**NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring)
AS FOLLOWS:**

Section 1. In order to finance the purposes described in Section 2 hereof, negotiable refunding bonds of the Township hereby designated as General Obligation Refunding Bonds, Series 2009 (the "Refunding Bonds") are hereby authorized to be issued in an aggregate principal amount not to exceed \$22,000,000, consisting of not to exceed \$12,400,000 General Improvement Refunding Bonds and \$9,600,000 Open Space Trust Fund Refunding Bonds. The proceeds of the Refunding Bonds are hereby appropriated to the purposes described in Section 2 hereof.

Section 2. (a) The purposes for which the Refunding Bonds are to be issued are (i) refunding the principal amount of 1997 Refunded Bonds, including the payment of interest accrued thereon to the date fixed for redemption and the redemption premium equal to one percent (1%) of the principal amount thereof, (ii) refunding the principal amount of 2002 Refunded Bonds, including the payment of interest accrued thereon to the date fixed for redemption, and (iii) paying the allocable portion of the costs of issuance relating to the Refunding Bonds, including printing, advertising, accounting, financial and legal services, rating agency fees, underwriter's discount, and bond insurance premium, if any.

(b) The 1997 Refunded Bonds mature in the principal amounts in each of the years and bear interest at the rates per annum as follows:

<u>Year (July 15)</u>	<u>General Improvement Bonds, Series 1997</u>	<u>Interest Rate</u>
2009	\$325,000	4.90%
2010	325,000	5.00%
2011	325,000	5.00%
2012	325,000	5.00%
2013	325,000	5.00%
2014	326,750	5.00%

The 1997 Refunded Bonds maturing on or after July 15, 2008 are subject to redemption at the option of the Township, in whole or in part, on any date, on or after July 15, 2007, upon notice as required therein at the respective prices expressed as percentages of the principal amount set forth below (the "Redemption Price"), plus in each case accrued interest to the date fixed for redemption.

<u>Redemption Date (both dates inclusive)</u>	<u>Redemption Price</u>
July 15, 2007 to July 14, 2008	102%
July 15, 2008 to July 14, 2009	101%
July 15, 2009 and thereafter	100%

Notice of redemption may be given by publishing such notice once a week for two (2) successive weeks in a newspaper of general circulation that carries financial news, is printed in the English language and is customarily published on each business day in the State of New York, the first of such publications to be at least thirty (30) but not more than sixty (60) days before the date fixed for redemption. Notice of redemption also shall be mailed by first class mail in a sealed envelope with postage prepaid to the owners of such 1997 Refunded Bonds at their respective addresses as they last appear on the registration books kept for that purpose by the Township or a duly appointed Bond Registrar. So long as DTC (or any successor thereto) acts as Securities Depository for such 1997 Refunded Bonds, Notice of Redemption shall be sent to such depository and shall not be sent to the beneficial owners of such 1997 Refunded Bonds. Any failure of such Securities Depository to advise any of its participants or any failure of any participant to notify any beneficial owner of any Notice of Redemption shall not affect the validity of the redemption proceedings. If the Township determines to redeem a portion of such 1997 Refunded Bonds prior to maturity, such 1997 Refunded Bonds shall be redeemed by the Township in inverse order of maturity and within any maturity shall be selected by the Township by lot.

If Notice of Redemption has been given as provided above, such 1997 Refunded Bonds or the portion thereof called for redemption shall be due and payable on the date fixed for redemption at the Redemption Price, together with accrued interest to the date fixed for redemption.

(c) The 2002 Refunded Bonds mature in the principal amounts in each of the years and bear interest at the rates per annum as follows:

<u>Year (May 1)</u>	<u>General Improvement Bonds, Series 2002</u>	<u>Interest Rate</u>	<u>Open Space Trust Fund Bonds, Series 2002</u>	<u>Interest Rate</u>
2012	\$1,250,000	4.125%	\$1,500,000	4.125%
2013	1,565,000	4.250%	1,395,000	4.250%
2014	1,565,000	4.375%	1,395,000	4.375%
2015	1,565,000	4.500%	1,395,000	4.500%
2016	1,565,000	4.625%	1,395,000	4.625%
2017	1,555,000	4.700%	1,395,000	4.700%

The 2002 Refunded Bonds maturing on or after May 1, 2012 are subject to redemption at the option of the Township, in whole or in part on any date, on or after May 1, 2011, upon notice as required therein, at one hundred percent (100%) of the principal amount being redeemed, plus accrued interest to the date fixed for redemption.

Notice of redemption shall be given by first class mail, at least thirty (30) but not more than sixty (60) days prior to the date fixed for redemption, in a sealed envelope with postage prepaid to the owners of the 2002 Refunded Bonds at their respective addresses as they last appear on the registration books kept for that purpose by the Township or a duly appointed Bond Registrar. So long as DTC (or any successor thereto) acts as Securities Depository for such 2002 Refunded Bonds, Notice of Redemption shall be sent to such

depository and shall not be sent to the beneficial owners of the 2002 Refunded Bonds. Any failure of the Securities Depository to advise any of its participants or any failure of any participant to notify any beneficial owner of any Notice of Redemption shall not affect the validity of the redemption proceedings. If the Township determines to redeem a portion of the 2002 Refunded Bonds prior to maturity, such 2002 Refunded Bonds shall be selected by the Township. The 2002 Refunded Bonds to be redeemed having the same maturity shall be selected by the Securities Depository in accordance with its regulations.

If Notice of Redemption has been given as provided above, such 2002 Refunded Bonds or the portion thereof called for redemption shall be due and payable on the date fixed for redemption at the Redemption Price, together with accrued interest to the date fixed for redemption. Interest shall cease to accrue on the 2002 Refunded Bonds after the date fixed for redemption.

(d) The aggregate cost of issuing the Refunding Bonds, as provided by N.J.S.A. §40A:2-51(b) (which amount includes all items described in Section 2(a)(iii) hereof) shall not exceed \$250,000. Such amount is included in the maximum authorized aggregate principal amount set forth in Section 1 hereof.

(e) The Refunded Bonds shall be called for redemption prior to maturity thereof as provided in the Refunded Bond certificates. A portion of the proceeds from the sale of the Refunding Bonds shall be deposited in trust to provide for the payment and retirement of the Refunded Bonds. Any moneys in trust may be invested as provided in N.J.S.A. §40A:2-60, and any moneys in excess of the amounts required for such purpose may be used for any lawful purpose of the Township.

Section 3. Any further provisions as to terms of sale, deposit, securing, regulation, investment, reinvestment, disposition or application of the proceeds of the Refunding Bonds, and matters in connection therewith, shall be determined by resolution of the Township adopted prior to the issuance of the Refunding Bonds.

Section 4. The Township Council hereby delegates to the Chief Financial Officer of the Township the power to sell the Refunding Bonds at a private sale, to determine the terms of the Refunding Bonds and to perform such other actions and make such other determinations, subject to the limitations to be set forth in a subsequent resolution of the Township.

Section 5. The Township Council hereby authorizes and delegates to the Chief Financial Officer, in consultation with Wilentz, Goldman & Spitzer, P.A., Bond Counsel to the Township ("Bond Counsel"), the authority to negotiate, to approve the terms of and to execute on behalf of the Township a Bond Purchase Contract for the purchase and sale of the Refunding Bonds with an underwriter to be determined by a subsequent resolution of the Township.

Section 6. All other matters relating to the Refunding Bonds shall be performed or determined by subsequent resolution of the Township, or the performance or

determination thereof shall be delegated by resolution of the Township to the Chief Financial Officer of the Township.

Section 7. A certified copy of this refunding bond ordinance, as introduced and adopted upon first reading, shall be filed with the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey prior to final adoption hereof, together with the statement signed by the Chief Financial Officer of the Township required by N.J.S.A. §40A:2-55.

Section 8. The full faith and credit of the Township are hereby pledged to the punctual payment of the principal of and the interest on the Refunding Bonds authorized by this refunding bond ordinance. The Refunding Bonds shall be direct, unlimited obligations of the Township, and, unless paid from other sources (such as the Open Space Trust Fund for the Open Space Trust Fund Refunding Bonds), the Township shall be obligated to levy *ad valorem* taxes upon all the taxable property within the Township for the payment of the Refunding Bonds and the interest thereon without limitation as to rate or amount.

Section 9. After passage upon first reading of this refunding bond ordinance, the Township Clerk is hereby authorized and directed to publish the full text of this refunding bond ordinance, together with the "NOTICE OF PENDING BOND ORDINANCE" (with appropriate completions, insertions and corrections), at least once in a newspaper qualified under N.J.S.A. §40A:2-19, at least seven (7) days prior to the date set for public hearing and further consideration for final passage (which date shall be at least ten (10) days after introduction and first reading). The Township Clerk is further directed to comply with all provisions of N.J.S.A. §40A:2-17(b) regarding postings, publications, and the provision of copies of this refunding bond ordinance. The Township Clerk is hereby authorized and directed to set the date of the public hearing for March 24, 2009.

Section 10. After final adoption of this refunding bond ordinance by the Township Council, the Township Clerk is hereby directed to publish the full text of this refunding bond ordinance, as finally adopted, together with the "NOTICE OF ADOPTION OF BOND ORDINANCE" (with appropriate completions, insertions and corrections), at least once in a newspaper qualified under N.J.S.A. §40A:2-19.

Section 11. The Township Council hereby covenants on behalf of the Township to take any action necessary or refrain from taking such action in order to preserve the tax-exempt status of the Refunding Bonds authorized hereunder as is or may be required under the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code"), including compliance with the Code with regard to the use, expenditure, investment, timely reporting and rebate of investment earnings as may be required thereunder.

Section 12. The purpose of the issuance of the Refunding Bonds is to effect a net present value debt service savings to the Township equal to or greater than three percent (3%).

Section 13. This bond ordinance shall take effect twenty (20) days after the first publication hereof after final adoption, as provided in the Local Bond Law, but not prior to the time that the consent of the Local Finance Board, Division of Local Government Services in the New Jersey Department of Community Affairs has been endorsed upon a certified copy of this refunding bond ordinance as finally adopted, as provided by N.J.S.A. §40A:2-55.

CERTIFICATION

I, ANN MARIE MCCARTHY, Township Clerk of the Township of Franklin, in the County of Somerset, State of New Jersey (the "Township"), DO HEREBY CERTIFY the foregoing Ordinance was introduced and adopted upon first reading on February 24, 2009 by the Township Council at a regular meeting, at which meeting a quorum was present and acting throughout, and which meeting was held in accordance with the requirements of the Open Public Meetings Law, and said Ordinance will be further considered for final adoption on March 24, 2009.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of this Township this ___ day of _____, 2009.

[SEAL]

ANN MARIE MCCARTHY, Township Clerk

**TOWNSHIP COUNCIL OF THE TOWNSHIP OF FRANKLIN
IN THE COUNTY OF SOMERSET, NEW JERSEY**

PUBLIC NOTICE

NOTICE OF PENDING BOND ORDINANCE

The bond ordinance published herewith was introduced and adopted upon first reading at a regular meeting of the Township Council of the Township of Franklin, in the County of Somerset, State of New Jersey, held on February 24, 2009, and will be further considered for final passage, after public hearing thereon, at a meeting of said Township Council to be held at the Township's Municipal Building, in said Township, on March 24, 2009.

ANN MARIE MCCARTHY, Township Clerk

**TOWNSHIP COUNCIL OF THE TOWNSHIP OF FRANKLIN
IN THE COUNTY OF SOMERSET, NEW JERSEY**

PUBLIC NOTICE

NOTICE OF ADOPTION OF BOND ORDINANCE

STATEMENT

The bond ordinance published herewith has been finally adopted by the Township Council of the Township of Franklin, in the County of Somerset, State of New Jersey on March 24, 2009, and the twenty (20) day period of limitation within which a suit, action or proceeding questioning the validity of such ordinance can be commenced, as provided in the Local Bond Law, has begun to run from the date of the first publication of this Statement.

ANN MARIE MCCARTHY, Township Clerk

CERTIFICATE OF INTRODUCTION

I, the undersigned Township Clerk of the Township of Franklin, in the County of Somerset, State of New Jersey, DO HEREBY CERTIFY that the foregoing is an extract from the Minutes of a regular meeting of the governing body of the Township duly called and held on February 24, 2009 at 8:00 p.m. at the Township's Municipal Building and that the following was the roll call:

Present:

Absent:

I FURTHER CERTIFY that the foregoing extract has been compared by me with the original minutes as officially recorded in my office in the Minute Book of the governing body and is a true, complete and correct copy thereof and of the whole of the original minutes so far as they relate to the subject matters referred to in the extract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Township this ____ day of _____, 2009.

[SEAL]

ANN MARIE MCCARTHY, Township Clerk

CERTIFICATE OF FINAL ADOPTION

I, the undersigned Township Clerk of the Township of Franklin, in the County of Somerset, State of New Jersey, DO HEREBY CERTIFY that the foregoing is an extract from the Minutes of a meeting of the governing body of the Township duly called and held on March 24, 2009 at 8:00 p.m. at the Township's Municipal Building and that the following was the roll call:

Present:

Absent:

I FURTHER CERTIFY that the foregoing extract has been compared by me with the original minutes as officially recorded in my office in the Minute Book of the governing body and is a true, complete and correct copy thereof and of the whole of the original minutes so far as they relate to the subject matters referred to in the extract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Township this ____ day of _____, 2009.

[SEAL]

ANN MARIE MCCARTHY, Township Clerk

TOWNSHIP CLERK'S CERTIFICATE

I, ANN MARIE MCCARTHY, DO HEREBY CERTIFY that I am the Township Clerk of the Township of Franklin, in the County of Somerset (the "Township"), a municipal corporation organized and existing under the laws of the State of New Jersey, and that as such I am duly authorized to execute and deliver this certificate on behalf of the Township. In such capacity, I have the responsibility to maintain the minutes of the meetings of the governing body of the Township and the records relative to all resolutions and ordinances of the Township. The representations made herein are based upon the records of the Township. I DO HEREBY FURTHER CERTIFY THAT:

1. Attached hereto is the ordinance introduced on February 24, 2009 and finally adopted on March 24, 2009.

2. After introduction, the ordinance was published as required by law on _____ (date) in _____ (name of newspaper).

3. Following the passage of the ordinance on first reading, and at least seven (7) days prior to the final adoption thereof, I caused to be posted in the principal municipal building of the Township at the place where public notices are customarily posted, a copy of said ordinance and a notice that copies of the ordinance would be made available to the members of the general public of the Township who requested copies, up to and including the time of further consideration of the ordinance by the governing body. Copies of the ordinance were made available to all who requested same.

4. After final passage, the ordinance was duly published as required by law on _____ (date) in _____ (name of newspaper). No protest signed by any person against making any improvement or incurring the indebtedness authorized therein,

nor any petition requesting that a referendum vote be taken on the action proposed in the ordinance has been presented to the governing body or to me or filed in my office within ten (10) days after said publication or at any other time after the final passage thereof.

5. The ordinance has not been amended, added to, altered or repealed and said ordinance is now in full force and effect.

6. A certified copy of this ordinance and a copy of the amended capital budget form has been filed with the Director of the Division of Local Government Services, as applicable.

7. The official seal of the Township is the seal, an impression of which is affixed opposite my signature on this Certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Township this ___ day of _____, 2009.

[SEAL]

ANN MARIE MCCARTHY, Township Clerk