

RESOLUTION NO. 12897-16

RESOLUTION OF THE COUNCIL OF THE CITY OF NEWPORT NEWS, VIRGINIA, AMENDING RESOLUTION NO. 12729-14 ADOPTED ON OCTOBER 28, 2014, ENTITLED “RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED FORTY MILLION DOLLARS (\$40,000,000) AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE REFUNDING BONDS, OF CITY OF NEWPORT NEWS, VIRGINIA, FOR THE PURPOSE OF PROVIDING FUNDS TO REFUND AND REDEEM CERTAIN OUTSTANDING WATER REVENUE BONDS OF THE CITY; AUTHORIZING THE ISSUANCE AND APPROVING THE SALE OF SUCH REFUNDING BONDS AT COMPETITIVE OR NEGOTIATED SALE AND DELEGATING TO THE CITY MANAGER CERTAIN POWERS WITH RESPECT THERETO; AUTHORIZING THE CITY MANAGER TO FIX THE MATURITIES, INTEREST RATES AND OTHER DETAILS OF SUCH REFUNDING BONDS; APPROVING THE FORM OF SUCH REFUNDING BONDS; APPOINTING THE REGISTRAR AND PAYING AGENT FOR SUCH REFUNDING BONDS; APPOINTING THE TRUSTEE AS ESCROW AGENT FOR THE REFUNDED BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT FOR EACH SERIES OF SUCH REFUNDING BONDS; AUTHORIZING THE DESIGNATION OF THE REFUNDED BONDS FOR REDEMPTION; AND MAKING CERTAIN FINDINGS AND DETERMINATIONS AND OTHERWISE PROVIDING WITH RESPECT TO THE ISSUANCE AND SALE OF SUCH REFUNDING BONDS”.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS, VIRGINIA:

SECTION 1. Findings and Determinations. It is hereby found and determined as follows:

(a) On October 28, 2014, the Council of the City adopted Resolution No. 12729-14 (hereinafter the “Supplemental Resolution”), entitled “RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED FORTY MILLION DOLLARS (\$40,000,000) AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE REFUNDING BONDS, OF CITY OF NEWPORT NEWS, VIRGINIA, FOR THE PURPOSE OF PROVIDING FUNDS TO REFUND AND REDEEM CERTAIN OUTSTANDING WATER REVENUE BONDS OF THE CITY; AUTHORIZING THE ISSUANCE AND APPROVING THE SALE OF SUCH REFUNDING BONDS AT COMPETITIVE OR NEGOTIATED SALE AND DELEGATING TO THE CITY MANAGER CERTAIN POWERS WITH RESPECT THERETO; AUTHORIZING THE CITY MANAGER TO FIX THE MATURITIES, INTEREST RATES AND OTHER DETAILS OF SUCH REFUNDING BONDS; APPROVING THE FORM OF SUCH REFUNDING BONDS; APPOINTING THE REGISTRAR AND PAYING AGENT FOR SUCH REFUNDING BONDS; APPOINTING THE TRUSTEE AS ESCROW AGENT FOR THE REFUNDED

BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT FOR EACH SERIES OF SUCH REFUNDING BONDS; AUTHORIZING THE DESIGNATION OF THE REFUNDED BONDS FOR REDEMPTION; AND MAKING CERTAIN FINDINGS AND DETERMINATIONS AND OTHERWISE PROVIDING WITH RESPECT TO THE ISSUANCE AND SALE OF SUCH REFUNDING BONDS”.

(b) The Supplemental Resolution supplements the Bond Resolution of the Council of the City adopted on January 23, 2007, as previously amended and supplemented (the “Bond Resolution”) entitled “RESOLUTION OF THE COUNCIL OF THE CITY OF NEWPORT NEWS, VIRGINIA, AUTHORIZING THE ISSUANCE OF WATER REVENUE BONDS OF THE CITY OF NEWPORT NEWS, VIRGINIA, AND PROVIDING FOR THE SECURITY OF THE HOLDERS THEREOF”.

(c) Section 13(c) of the Supplemental Resolution provides that “Prior to the issuance of the Refunding Bonds, the provisions of this Supplemental Resolution may be amended in whole or in part by a Supplemental Resolution adopted by the Council of the City without the consent of the Trustee, which shall be fully effective in accordance with its terms upon the filing with the Trustee of a copy thereof certified by the City Clerk or an Authorized Officer of the City.”

(d) As of the date of adoption of this Resolution, the Refunding Bonds authorized by the Supplemental Resolution have not been issued by the City.

SECTION 2. Amendments to Resolution No. 12729-14.

(a) Section 8 of the Supplemental Resolution shall be amended by adding a new paragraph (c) thereto which shall read as follows:

“(c) The City Manager, acting with the advice of the City’s financial advisor, shall determine at the time of sale of the Refunding Bonds whether the Refunding Bonds shall be secured by a Debt Service Reserve Fund. In the event that the Refunding Bonds are not secured by a Debt Service Reserve Fund, the Debt Service Reserve Requirement with respect to the Refunding Bonds for purposes of the Bond Resolution shall be \$0. Notwithstanding anything in the Bond Resolution to the contrary, in the event that the Refunding Bonds are not secured by a Debt Service Reserve Fund, the Refunding Bonds shall not be secured by, or benefit from, any amounts now or hereafter deposited in the Debt Service Reserve Fund established under the Bond Resolution.”

(b) Clause (a) of Section 10 of the Supplemental Resolution shall be amended and restated in its entirety to read as follows:

“(a) an amount, if any, or surety bond or insurance policy, if any, shall be deposited in the Debt Service Reserve Fund, if any, established for the Refunding Bonds, sufficient to ensure that there is on deposit in the Debt Service Reserve Fund an amount equal to the Debt Service Reserve Requirement, if any, on the Refunding Bonds.”

(c) Section 11 of the Supplemental Resolution shall be amended and restated in its entirety to read as follows:

“SECTION 11. Establishment of a Separate Account in Debt Service Reserve Fund. Pursuant to Section 5.6 of the Bond Resolution, there may be established a separate account in the Debt Service Reserve Fund for the Refunding Bonds to be designated “Reserve Account”. Contemporaneously with the issuance of the Refunding Bonds there may be deposited into the Debt Service Reserve Fund and credited to the Reserve Account for the sole benefit of the holders of the Refunding Bonds an amount (or surety bond or insurance policy) sufficient to ensure that there is on deposit in such Fund an amount equal to the Debt Service Reserve Requirement on the Refunding Bonds.”

(d) Paragraph (b) of Section 13 of the Supplemental Resolution shall be amended and restated in its entirety to read as follows:

“(b) The Refunding Bonds are hereby found, determined and declared to constitute and to be “Bonds” within the meaning of the quoted words as defined and used in the Bond Resolution. The Refunding Bonds shall be entitled to the benefits, security and protection of the Bond Resolution, equally and proportionately with any other Bonds hereafter issued thereunder; shall be payable from the Revenues of the System on a parity with all Bonds hereafter issued under the Bond Resolution; shall rank pari passu with all Bonds hereafter issued under the Bond Resolution; and shall be equally and ratably secured with all Bonds hereafter issued under the Bond Resolution by a prior and paramount lien and charge on the Revenues, without priority or distinction by reason of series, number, date, date of sale, date of issuance, date of execution and authentication or date of delivery, all as is more fully set forth in the Bond Resolution. Notwithstanding anything in this Supplemental Resolution or in the Bond Resolution to the contrary, the Refunding Bonds shall not be secured by or benefit from any Debt Service Reserve Fund established under the Bond Resolution in the event that the City determines that the Debt Service Reserve Requirement for the Refunding Bonds shall be \$0 as provided in Section 8 of this Supplemental Resolution. It is hereby further found, determined and declared that no default exists in the payment of the principal of or interest and premium, if any, on any Bond issued under the Bond Resolution and that all mandatory redemptions, if any, of Bonds required to have been made under the terms of the Bond Resolution or any Supplemental Resolution have been made.”

SECTION 3. Filing of this Supplemental Resolution with Circuit Court. The City Clerk be and hereby is authorized and directed to file a copy of this Supplemental Resolution, certified by the City Clerk to be a true and correct copy thereof, with the Circuit Court of the City of Newport News, Virginia.

SECTION 4. Effectiveness of Supplemental Resolution. This Supplemental Resolution shall be effective from and after March 8, 2016, the same being the date of the adoption of this Supplemental Resolution by the Council of the City.

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PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON MARCH 8, 2016

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk