

RESOLUTION NO. 2-13

A RESOLUTION AUTHORIZING ISSUANCE OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA UTILITY SYSTEM REFUNDING REVENUE CERTIFICATES IN AN AMOUNT NOT TO EXCEED \$10,000,000 TO FINANCE THE REFUNDING OF CERTAIN OUTSTANDING OBLIGATIONS OF THE UTILITIES COMMISSION; PROVIDING FOR THE PAYMENT OF SUCH CERTIFICATES FROM NET REVENUES FROM THE UTILITY SYSTEM; REQUESTING APPROVAL BY THE CITY OF NEW SMYRNA BEACH, FLORIDA; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA (the "Utilities Commission"), that:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is enacted pursuant to the provisions of Chapter 85-503, Laws of Florida; Section 16.Q of Resolution 28-78, adopted by the Utilities Commission on June 30, 1978, as amended (the "Original Resolution") and other applicable provisions of law.

SECTION 2. DEFINITIONS. Unless the context otherwise requires, the terms defined in this resolution shall have the meanings specified in this Section. Terms not otherwise defined in this Section shall have the meanings specified in the Original Resolution. Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

"Certificates" mean the Utilities Commission's Utility System Refunding Revenue Certificates, issued pursuant to this resolution and the Original Resolution.

"Original Resolution" shall mean Resolution 28-78, duly adopted by the Utilities Commission on June 30, 1978, as amended and supplemented from time to time.

"Outstanding Parity Certificates" shall mean the Utilities Commission's outstanding Utility System Revenue Certificates, Series 2007, Utilities System Revenue Certificates, Series 2009, Utility System Revenue Certificates, Series 2011, Utility System Revenue Certificates, Series 2012 and Utility System Revenue Certificates, Series 2013A.

"Refunded Obligations" means all or a portion of the Utilities Commission's outstanding Utility System Refunding Revenue Certificates, Series 2007.

"Refunding" shall mean the program for refinancing a portion of the outstanding obligations of the Utilities Commission through the issuance of the Certificates and the application of a portion of the proceeds thereof to pay the principal of, premium, if any, and interest on the Refunded Obligations.

"Resolution" means, collectively, the Original Resolution, this resolution and all resolutions amendatory hereof or supplemental hereto.

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared that:

A. The Utilities Commission now operates and maintains the Utilities System and derives and will continue to derive revenues from rates, fees, rentals and other charges made and collected for the services of the Utilities System.

B. The Utilities Commission has previously issued the Refunded Obligations and the Outstanding Parity Certificates.

C. After the Refunding and upon the release of the pledge of and lien upon the Net Revenues to pay the debt service on the Refunded Obligations, the Net Revenues pledged to the payment of the principal of and interest on the Certificates will be sufficient to pay the principal of and interest on all of the Certificates and the Outstanding Parity Certificates and to make all reserve fund and other payments provided for in this resolution and the Original Resolution.

D. It is necessary and in the best interests of the health, safety and welfare of the customers of the Utilities Commission and the inhabitants of the City of New Smyrna Beach that the Utilities Commission undertake the Refunding. The Utilities Commission is authorized pursuant to the provisions of the Act to undertake the Refunding.

E. The Utilities Commission is without adequate, currently available funds to pay the Refunding costs, and it is necessary and desirable and in the best interests of the Utilities Commission that it borrow the money necessary to accomplish the Refunding.

F. The Original Resolution provides for the issuance of Additional Parity Certificates under the terms, limitations and conditions provided therein.

G. The Utilities Commission will comply with the terms, limitations and conditions contained in the Original Resolution, on or prior to the date of delivery of the Certificates, and is, therefore, legally entitled to issue the Certificates herein authorized as an Additional Parity Certificate under the Original Resolution.

H. The Certificates herein authorized shall be payable on a parity and rank equally, as to lien on and source and security for payment from the Net Revenues under the Original Resolution with the Outstanding Parity Certificates.

I. The principal of and interest on the Certificates and all required sinking fund and other payments shall be payable solely from the Net Revenues as provided herein and in the Original Resolution. Neither the Utilities Commission nor the City of New Smyrna Beach shall be required to levy ad valorem taxes on any property within its corporate territory to pay the principal of and interest on the Certificates or to make any of the required sinking fund, reserve or other payments, and such Certificates shall not constitute a lien upon any property owned by or situated within the service territory of the Utilities Commission or situated within the corporate territory of the City of New Smyrna Beach.

J. It is necessary and desirable to authorize the solicitation of proposals to provide the Utilities Commission with the necessary financing for the Refunding.

SECTION 4. AUTHORIZATION OF REFUNDING. The Refunding is hereby specifically authorized.

SECTION 5. AUTHORIZING OF CERTIFICATES. Subject and pursuant to the provisions of this resolution and the Original Resolution, the issuance by the Utilities Commission of not exceeding \$10,000,000 Utility System Refunding Revenue Certificates for the purposes above; to be dated, to bear interest at a rate or rates not exceeding the maximum legal rate per annum, to be payable, to mature, to be subject to redemption and to have such other characteristics as shall be provided by subsequent resolution of the Utilities Commission, is hereby authorized. The Certificates may be issued in one or more series (which may be designated "Series 2013B") as shall be provided by such resolution.

SECTION 6. SECURITY FOR THE CERTIFICATES. The Certificates shall for all purposes be considered to be Additional Parity Certificates issued under the authority of the Original Resolution and shall be entitled to all the protection and security provided therein for the Outstanding Parity Bonds, shall be in all respects entitled to the same security, rights and privileges enjoyed by the Outstanding Parity Certificates, and the covenants and pledges contained in the Original Resolution shall be applicable to the Certificates in like manner as applicable to the Outstanding Parity Certificates.

A. The Certificates shall not be or constitute general obligations or an indebtedness of the Utilities Commission or the City of New Smyrna Beach as "bonds" within the meaning of any constitutional, statutory, or charter provision or limitation, but shall be payable from and secured solely by a lien upon and pledge of the Net Revenues as provided in the Resolution and the Loan Agreement, on a parity with the lien upon and a pledge thereof in favor of the Registered Owners of the Outstanding Parity Certificates. No Holder of the Certificates shall ever have the right to compel the exercise of the ad valorem taxing power of the City of New Smyrna Beach or taxation in any form of any property of or in the City of New Smyrna Beach or the Utilities Commission, other than the Net Revenues in the manner provided in the Original Resolution, or any property of or located within the boundaries of the City of New Smyrna Beach or the Utilities Commission, for payment of the Certificates or for the making of any payments under the Original Resolution, this resolution or the Certificates.

B. The Certificates may be secured by amounts in the Reserve Fund if the Utilities Commission determines it necessary or desirable in connection with the sale of the Certificates and if so such amount shall be deposited therein from the proceeds of the Certificates.

SECTION 7. DESIGNATION FOR PURPOSES OF THE INTERNAL REVENUE CODE. To the extent permitted by the Internal Revenue Code (the "Code"), the Certificates shall be deemed designated by the Utilities Commission as "qualified tax-exempt obligations" under Section 265(b)(3)(B) of the Code.

SECTION 8. AUTHORIZATION TO SOLICIT PROPOSALS. The Utilities Commission hereby authorizes and directs the General Manager/CEO and Director of Finance to solicit proposals for the Refunding from financial institutions located or doing business within the State.

SECTION 9. REQUEST FOR APPROVAL OF CITY OF NEW SMYRNA BEACH. Pursuant to Article 15, Section 225 of the City Charter of the City, the Utilities Commission hereby requests the City Commission to approve the issuance of the Certificates herein authorized.

SECTION 10. REPEAL OF INCONSISTENT PROVISIONS. All resolutions or parts thereof in conflict with this resolution are hereby repealed to the extent of such conflict.

SECTION 11. SEVERABILITY. In the event that any portion or section of this resolution is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this resolution shall remain in full force and effect.

SECTION 12. EFFECTIVE DATE. This resolution shall take effect immediately upon its final passage and adoption.

THE ABOVE AND FOREGOING RESOLUTION was introduced at a _____ regular meeting of the Utilities Commission, City of New Smyrna Beach, Florida, held February 25, 2013, by Commissioner Griffith, who moved for its adoption, which motion was seconded by Commissioner Diesen, and upon roll call vote of the Commission was as follows:

CHAIRMAN	<u>William E. Hall</u>	<u>yes</u>
VICE CHAIRMAN	<u>James H. Wesim</u>	<u>yes</u>
SECY.-TREAS.	<u>James Zelle</u>	<u>yes</u>
ASST. SECY.-TREAS.	<u>William B. ...</u>	<u>YES</u>
COMMISSIONER	<u>Lee B. Duffin</u>	<u>YES</u>

APPROVED:

ATTEST:

William E. Hall
CHAIRMAN

James Zelle
SECRETARY-TREASURER



Approved as to Form and Correctness:

William P. L.
UTILITIES COMMISSION ATTORNEY