

## **ORDINANCE NO. 8620-14**

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA, AMENDING ORDINANCE NO. 3674-84, AND ORDINANCE NO. 6915-01; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA:

**SECTION 1. AUTHORITY FOR THIS ORDINANCE.** This Ordinance is enacted pursuant to Chapter 166, Part II, Florida Statutes, and other applicable provisions of law and pursuant to Section 21 of Ordinance No. 3674-84 (the "1984 Ordinance") and is supplemental to and amending of the Original Ordinance, as amended by Ordinance No. 6915-01 (the "2001 Ordinance").

**SECTION 2. DEFINITIONS.** All capitalized undefined terms shall have the same meaning as set forth in the Original Ordinance (as herein defined).

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

A. The Issuer now owns, operates and maintains the System and is empowered to maintain, operate, improve and extend such system and regulate and fix reasonable rates and charges for the services furnished thereby.

B. The Issuer derives Gross Revenues from rates, fees and charges made and collected for the services and facilities of the System supplying water and sanitary sewerage services and the Gross Revenues are not pledged or encumbered in any manner, except for payment of the Parity Bonds.

C. Any Series of Bonds and the project to be funded with the proceeds of such Series of Bonds, shall be issued under the authority of the 1984 Ordinance as amended by the 2001 Ordinance (collectively as amended, the "Original Ordinance") and such projects shall be undertaken upon approval by subsequent resolution of the Issuer as provided by law. The proceeds of any Series of Bonds shall be applied as provided in a supplemental ordinance or resolution.

D. Since enactment of the Original Ordinance, the requirements of the capital markets for the structure of debt instruments, specifically whether a debt service reserve is required to market bonds, the increased activity of banking and other similar financial institutions in the capital markets, and the enactment of various bond subsidy programs, the Original Ordinance needs to be amended to adjust to these changed market conditions.

E. Section 21 of the 2001 Ordinance provides for the material amendment of the 1984 Ordinance with the consent of the insurer under any bond insurance policy for a Series of Bonds then outstanding plus the consent of the Registered Owners of two-thirds in principal amount of the Bonds then outstanding (the "Required Consents"), and Section 20 of the 2001 Ordinance provides for the material amendment of the 2001 Ordinance with the consent of the Registered Owners or fifty-one percent or more in the principal amount of Bonds of each Series so affected and outstanding.

F. The amendments to the Original Ordinance contained in this Ordinance shall become effective upon the receipt of the consent of the Registered Owners of two-thirds in principal amount of the Bonds then outstanding together with the consent of any insurer under any bond insurance policy for a Series of Bonds then outstanding.

G. Each Series of Bonds authorized and issued pursuant to subsequent resolutions adopted on and after the date of enactment of this Ordinance shall be issued with the express understanding that the Registered Owners of such Series of Bonds consent to the amendments set forth in this Ordinance, and upon the receipt of the required consent for these amendments, each such Series of Bonds shall be subject to this Ordinance as if this Ordinance was fully in effect on the date of issuance of such Series of Bonds.

#### **SECTION 4. AMENDMENTS TO ORIGINAL ORDINANCE.**

A. Subject to the receipt of the Required Consents, Section 2 of the 1984 Ordinance, as amended in Section 2 of the 2001 Ordinance shall be amended to add the following new defined terms to read as follows:

"Balloon Bonds" means Bonds of a Series designated as such by Supplemental Resolution adopted in connection with the issuance thereof, for which either (1) no serial maturities or Sinking Fund Installments prior to the maturity thereof have been established, or (2) the aggregate of such serial maturities and Sinking Fund Installments that have been established is less than the amount necessary to amortize such Bonds on a substantially level debt service basis.

"Qualified Agreement" means, to the extent from time to time permitted pursuant to law, any contract or contracts entered into in connection with Bonds under which payments are, in whole or in part, based on interest rate, cash flow, or other basis desired by the Issuer, including, without limitation, contracts commonly known as current or forward interest rate swap or swaption agreements and interest rate floors or caps. Notwithstanding anything herein to the contrary, "Qualified Agreement" shall not include goods and service supply contracts.

"Variable Rate Bonds" shall mean obligations issued with a variable, adjustable, convertible or other similar rate which is not fixed in percentage at the date of issue for the entire term thereof as shall be determined by Supplemental Resolution of the Issuer.

B. Subject to the receipt of the Required Consents, the following defined terms contained in Section 2 of the 1984 Ordinance, as amended in Section 2 of the 2001 Ordinance shall be amended to read as follows (deletions are indicated by a ~~strikethrough~~ and additions are indicated by underlining):

"Bond Service Requirement" for any Fiscal Year, as applied to the Bonds of any series, shall mean the sum of:

(1) the amount required to pay the interest becoming due on the Bonds of such series during the Fiscal Year, except to the extent that such interest shall

have been provided by payments into the Sinking Fund out of bond proceeds for a specific period of time or by payments of investment income into the Sinking Fund from the Bond Service Account or any subaccounts therein. Whenever such income is applied in calculating a Bond Service Requirement for any purpose, such income shall also be excluded in the computation of Gross Revenues for such purpose.

(2) the amount required to pay the principal of Serial Bonds of such series maturing in such Fiscal Year.

(3) the Amortization Installments for Term Bonds of such series for such Fiscal Year.

(4) in the event the Issuer has purchased or entered into an agreement to purchase Federal Securities or Authorized Investments from moneys in the Bond Service Account, then the income received or to be received on such Federal Securities or Authorized Investments from the date of acquisition thereof to the date of maturity thereof, or when the Issuer issues a Series of Bonds pursuant to a subsidy program offered by another governmental unit which provides for a subsidy payment to the Issuer to pay all or any portion of interest or principal due on such Series of Bonds, unless otherwise designated for other purposes, such income or subsidy payment shall be taken into consideration in calculating the payments which will be required to be made into the Sinking Fund and the Bond Service Account therein. Whenever such income or subsidy payment is applied in calculating a Bond Service Requirement for any purpose, such income or subsidy payment shall also be excluded in the computation of Gross Revenues for such purpose.

(5) with respect to Balloon Bonds, the unamortized principal coming due on the final maturity date thereof shall be ignored and in lieu thereof there shall be added to the Annual Debt Service for the applicable period of time in which such final maturity occurs and to each year thereafter through the 30th anniversary of the issuance of such Bonds (the "Reamortization Period") the amount of substantially level principal and interest payments (assuming for such purposes such interest rate as a financial advisor selected by the Issuer and having experience in the pricing of municipal bonds shall determine is a reasonable estimate of the rate that such Balloon Bonds would bear based upon such Reamortization Period and the characteristics of such Balloon Bonds) that if paid in each year during the Reamortization Period would be sufficient to pay in full the unamortized portion of such Balloon Bonds by such anniversary.

(6) with respect to Variable Rate Bonds which are not subject to a Qualified Agreement, if any, the interest rate used to calculate the Bond Service Requirement shall be the higher of (i) the actual rate on the date of calculation, or if the indebtedness is not yet outstanding, the initial rate (if established and binding), (ii) if the indebtedness has been outstanding for at least twelve months, the average rate over the twelve months immediately preceding the date of calculation, and (iii) if the indebtedness has been outstanding for twelve months or less, (1) if interest on the indebtedness is excludable from gross income under the applicable provisions of the Internal Revenue Code, the most recently published Bond Buyer 25 Bond Revenue Index (or comparable index if no longer

published) plus fifty (50) basis points, or (2) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities plus fifty (50) basis points; provided, however, that for purposes of any rate covenant measuring actual debt service coverage during a test period, Variable Rate Bonds which are not subject to a Qualified Agreement shall be deemed to bear interest at the actual rate per annum applicable during the test period.

"Reserve Requirement" shall be such amount as determined by subsequent Resolution of the Issuer relating to a specific Series of Bonds adopted prior to the issuance of such Bonds, which may not exceed the lesser of (i) the Maximum Bond Service Requirement, (ii) 125% of the average annual Bond Service Requirement or (iii) the largest amount as shall not adversely affect the exclusion of interest on the Bonds from gross income for Federal income tax purposes. The Issuer shall determine by subsequent Resolution relating to a specific Series of Bonds adopted prior to the issuance of such Bonds whether such Series of Bonds will be secured by the Reserve Account, and if such Series of Bonds will be secured by a Reserve Account or a Reserve Subaccount, whether such Series of Bonds will be secured by a separate Series specific Reserve Subaccount or on a parity with other Series of Bonds in the Reserve Account or a Reserve Subaccount, and if secured with other Series of Bonds on a parity basis, which Series of Bonds will be so secured.

C. Subject to the receipt of the Required Consents, Section 16B of the 1984 Ordinance, as amended, modified and restated in Section 17D of the 2001 Ordinance shall be amended to read as follows (deletions are indicated by a ~~striketrough~~ and additions are indicated by underlining):

**D. DISPOSITION OF REVENUES.** All funds at any time remaining on deposit in the Revenue Fund shall be disposed of on or before the twentieth day of each month, commencing in the month immediately following the delivery of the 2001 Bonds, for so long as any Bonds remain Outstanding, only in the following manner and in the following order of priority:

(1) Funds shall first be used for deposit into the Operation and Maintenance Fund, which was established by the Original Ordinance, of such sums as are necessary for the Cost of Operation and Maintenance, for the next ensuing month.

(2) A sum as shall be determined by supplemental resolution of the Issuer shall be deposited into the Construction Fund and used for the purpose of paying Project Costs.

(3) From the moneys remaining in the Revenue Fund, the Issuer shall next deposit into the Sinking Fund created by the Original Ordinance, such sums as will be sufficient to pay (a) one-sixth (1/6) of all interest becoming due on the Bonds on the next semi-annual interest payment date; (b) commencing in the first month which is twelve (12) months or six (6) months prior to the first annual or semi-annual maturity date, respectively, of any Serial Bonds, one-twelfth (1/12) or one-sixth (1/6), respectively, of the amount of Serial Bonds which will become due and payable on the next annual or semiannual principal maturity

date, respectively, and (c) one-twelfth (1/12) of the Amortization Installment required to be made on the next annual payment date or one-sixth (1/6) of the Amortization Installment required to be made on the next semi-annual payment date into a "Bond Amortization Account", created and established in the Sinking Fund by the Original Ordinance. Such payments shall be credited to a separate special account for each series of Term Bonds outstanding, and if there shall be more than one stated maturity for Term Bonds of a series, then into a separate special account in the Sinking Fund for each such separate maturity of Term Bonds. The funds and investments in each such separate account shall be pledged solely to the payment of principal of the Term Bonds of the series or maturity within a series for which it is established and shall not be available for payment, purchase or redemption of Term Bonds of any other series or within a series, or for transfer to the Sinking Fund to make up any deficiencies in required payments therein. The Amortization Installments may be due either annually or semiannually, but in any event, the required payments as set forth above shall be made monthly commencing in the first month which is six (6) months or twelve (12) months, as the case may be, prior to the date on which the Amortization Installment is required to be made pursuant to (c) above.

Upon the sale of any series of Term Bonds, the Issuer shall by resolution, establish the amounts and maturities of such Amortization Installments for each series, and if there shall be more than one maturity of Term Bonds within a series, the Amortization Installments for the Term Bonds of each maturity. In the event the moneys deposited for retirement of a maturity of Term Bonds are required to be invested, in the manner provided below, the Amortization Installments may be stated in terms of either the principal amount of the investments to be purchased on, or the cumulative amounts of the principal amount of investments required to have been purchased by, the payment date of such Amortization Installment.

Moneys on deposit in each of the separate special accounts in the Bond Amortization Account shall be used for the open market purchase or the redemption of Term Bonds of the series or maturity of Term Bonds within a series for which such separate special account is established or may remain in said separate special account and be invested until the stated date of maturity of the Term Bonds. The resolution establishing the Amortization Installments for any series or maturity of Term Bonds may limit the use of moneys to any one or more of the uses set forth in the preceding sentence and may specify the type or types of investments permitted hereunder to be purchased.

(4) Moneys remaining in the Revenue Fund shall next be applied by the Issuer to maintain a either the Reserve Account or a separate Reserve Subaccount, which Reserve Account was created and established by the Original Ordinance and which each Reserve Subaccount is created by subsequent Resolution relating to a specific Series of Bonds adopted prior to the issuance of such Bonds, in a sum equal to the Reserve Requirement for each applicable Series of Bonds, all or a portion of which sum may be initially provided from the proceeds of the sale of the respective Series of Bonds and/or other moneys of the Issuer. The Issuer shall thereafter deposit into said Reserve Account or Reserve Subaccount, as applicable, an amount equal to one-twelfth (1/12) of twenty per cent (20%) of the difference between the amount, if any, so deposited

upon the delivery of the Bonds and the amount of the Reserve Requirement ~~on all outstanding~~ for the applicable Series of Bonds. No further payments shall be required to be made into such Reserve Account or Reserve Subaccount, as applicable, when there has been deposited therein and as long as there shall remain on deposit therein a sum equal to the ~~Maximum Bond Service Reserve Requirement on all applicable Series of~~ outstanding Bonds becoming due in any ensuing Fiscal Year.

Any withdrawals from the Reserve Account or a Reserve Subaccount shall be subsequently restored from the first moneys available in the Revenue Fund after all required current payments into the Sinking Fund and into the Reserve Account and each Reserve Subaccount, as applicable, including all deficiencies for prior payments into the Sinking Fund, have been made in full.

Moneys in the Reserve Account or a Reserve Subaccount, as applicable, shall be used only for the purpose of the payment of maturing principal (including Amortization Installments) of or interest on the Series of Bonds secured by such Reserve Account or Reserve Subaccount, as applicable, when the moneys in the Sinking Fund and allocated to such Series of Bonds are insufficient therefor, and for no other purpose. Upon the issuance by the Issuer of any Additional Bonds under the terms, limitations and conditions provided in this Ordinance and the Original Ordinance, the payments into the Reserve Account or Reserve Subaccount, as applicable, shall be increased so that the amount on deposit therein shall be equal to the ~~Maximum Bond Service Requirement on all Bonds outstanding and to be outstanding~~ Reserve Requirement established for such Series of Additional Bonds in accordance with the subsequent Resolution authorizing such Series of Additional Bonds.

Whenever the amount on deposit in the Reserve Account or any Reserve Subaccount exceeds the Reserve Requirement ~~on all Bonds then outstanding applicable to such Reserve Account or Reserve Subaccount~~, the excess may be withdrawn and deposited into the Sinking Fund to pay debt service on the respective Series of Bonds.

The Issuer shall not be required to make any further payments into the Sinking Fund or into the Reserve Account or any Reserve Subaccount when the aggregate amount of moneys in the Sinking Fund and the Reserve Account ~~are~~ or any Reserve Subaccount, as applicable, is at least equal to the aggregate principal amount of Bonds then outstanding and secured by the Sinking Fund and the respective Reserve Account or Reserve Subaccount, plus the amount of interest then due or thereafter to become due on the respective Series of Bonds then outstanding.

Notwithstanding the foregoing provisions, in lieu of the required deposits of Revenues into the Reserve Account, the Issuer may cause to be deposited into the Reserve Account or a Reserve Subaccount a surety bond or an insurance policy issued by a reputable and recognized insurer for the benefit of the Bondholders of the Series of Bonds to be secured by such Reserve Account or Reserve Subaccount, in an amount equal to the difference between the ~~Maximum Bond Service Reserve Requirement for such Series of Bonds~~ and the sums then on deposit in the applicable Reserve Account or Reserve Subaccount,

if any, which surety bond or insurance policy shall be payable (upon the giving of notice as required thereunder) on any interest payment date on which a deficiency exists which cannot be cured by funds in any other account held pursuant to this Ordinance and the Original Ordinance and available for such purpose. The insurer providing such surety bond or insurance policy shall be an insurer whose municipal bond insurance policies insuring the payment, when due, of the principal of and interest on municipal bond issues results in such issues being rated in one of the three highest rating ~~category~~ categories by Standard & Poor's Corporation or Moody's Investors Service, Inc., or their successors. If a disbursement is made from a surety bond or an insurance policy provided pursuant to this paragraph, the Issuer shall be obligated to either reinstate the maximum limits of such surety bond or insurance policy immediately following such disbursement or to deposit into the Reserve Account or Reserve Subaccount, as applicable, as herein provided in this paragraph for restoration of withdrawals from the Reserve Account or a Reserve Subaccount, as applicable, funds in the amount of the disbursement made under such policy, or a combination of such alternatives.

(5) The Issuer shall next apply and deposit the moneys in the Revenue Fund into the Renewal and Replacement Fund created by the Original Ordinance. The Issuer shall deposit into such Renewal and Replacement Fund an amount equal to one-twelfth (1/12) of five per centum (5%) of the Gross Revenues of the System for the previous Fiscal Year, or such other amount as is certified as necessary for the purposes of the Renewal and Replacement Fund by the Consulting Engineer and as approved by the City Commission. The moneys in said Renewal and Replacement Fund shall be used only for the purpose of paying the cost of extensions, enlargements or additions to or the replacement of capital assets of the System and emergency repairs thereto. Such moneys on deposit in such Fund shall also be used to supplement the Reserve Account if necessary in order to prevent a default in the payment of the principal of and interest on the Bonds.

(6) To the extent junior lien bonds are issued and outstanding (which subordinated bonds the Issuer reserves the right to issue), the Issuer shall next apply moneys in the Revenue Fund to the payment of principal of, redemption premium, if any, and interest on such subordinated debt of the Issuer.

(7) The balance of any moneys remaining in the Revenue Fund after the above required payments have been made may either be deposited into either the Renewal and Replacement Fund or the Sinking Fund, or may be used for the purchase or redemption of Bonds, or may be used by the Issuer for any lawful purpose of the Issuer.

D. Subject to the receipt of the Required Consents, Section 16C of the 1984 Ordinance, as amended, modified and restated in Section 17E of the 2001 Ordinance shall be amended to read as follows (deletions are indicated by a ~~strike through~~ and additions are indicated by underlining):

**E. INVESTMENT OF FUNDS.** The Operation and Maintenance Fund, the Sinking Fund, the Reserve Account (and any Reserve Subaccounts therein), the Renewal and Replacement Fund, the Revenue Fund, the Construction Fund,

and any other special funds herein and in the Original Ordinance established and created shall constitute trust funds for the purposes provided herein for such funds. All such funds shall be continuously secured in the same manner as state and municipal deposits are required to be secured by the laws of the State of Florida. Moneys on deposit in any of such funds and accounts may be invested and reinvested in Authorized Investments.

Investments made with moneys in the Construction Fund, the Revenue Fund, the Operation and Maintenance Fund, and the Sinking Fund (except the Bond Amortization Account therein), must mature not later than the date that such moneys will be needed. Investments made with moneys in the accounts in the Bond Amortization Account, in the Reserve Account (and any Reserve Subaccounts therein) and in the Renewal and Replacement Fund must mature, in the case of the accounts in the Bond Amortization Account not later than the stated date of maturity of each respective Amortization Installment of the Term Bonds to be retired from the sub-accounts in the Bond Amortization Account from which the investment is made, in the case of the Reserve Account (and any Reserve Subaccounts therein) not later than the final maturity of any the applicable Series of Bonds then outstanding, and in the case of the Renewal and Replacement Fund, not later than such date as shall be determined by the Issuer. Any and all income received by the Issuer from all such investments shall be deposited into the Revenue Fund, except however, that investment income earned in the Bond Amortization Account may be retained therein or deposited into the Sinking Fund and used to pay maturing principal of and interest on the Bonds, at the option of the Issuer.

The cash required to be accounted for in each of the foregoing funds and accounts established herein may be deposited in a single bank account, and funds allocated to the various accounts established herein may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash on deposit therein and such investments for the various purposes of such funds and accounts as herein provided.

The designation and establishment of the various funds in and by this Ordinance shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues and assets of the System for certain purposes and to establish certain priorities for application of such revenues and assets as herein provided.

**SECTION 5. SEVERABILITY OF INVALID PROVISIONS.** If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Bonds issued hereunder.



**SECTION 6. REPEALING CLAUSE.** All ordinances or resolutions or parts thereof of the Issuer in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

**SECTION 7. EFFECTIVE DATE.** This Ordinance shall take effect immediately upon its passage.

**SECTION 8. PUBLIC NOTICE.** Notice of the proposed enactment of this Ordinance has been properly advertised in a newspaper of general circulation in accordance with Chapter 166.041, Florida Statutes.

PASSED ON FIRST READING

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PASSED ON SECOND READING  
AND FINAL READING AND  
ADOPTED

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\_\_\_\_\_  
George N. Cretekos  
Mayor

Approved as to form:

Attest:

\_\_\_\_\_  
Pamela K. Akin  
City Attorney

\_\_\_\_\_  
Rosemarie Call  
City Clerk