

RESOLUTION 98-2

A RESOLUTION AMENDING RESOLUTION 93-27 OF THE CITY COUNCIL OF THE CITY OF COCOA, FLORIDA, AS SUPPLEMENTED, RELATED TO THE ISSUANCE BY THE CITY OF WATER & SEWER SYSTEM IMPROVEMENT REVENUE BONDS TO CLARIFY CERTAIN PROVISIONS THEREOF RELATED TO THE AUTHORITY TO ESTABLISH DIFFERENT RATE CLASSES AND THE REDUCTION AND WAIVER OF RATES, FEES, CHARGES, AND ASSESSMENTS UNDER LIMITED CIRCUMSTANCES; PROVIDING FOR SEVERABILITY AND REPEAL OF INCONSISTENT PRIOR RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE FOR THIS RESOLUTION.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COCOA, FLORIDA:

SECTION 1. FINDINGS. It is hereby found and determined that:

(A) On August 18, 1993, the City Council (the "Council") of the City of Cocoa, Florida (the "City"), duly adopted resolution 93-27, (the "Master Resolution").

(B) The Master Resolution, among other things, authorized the issuance by the City of \$12,610,000 Water and Sewer System Refunding Revenue Bonds, Series 1993A, dated August 1, 1993 and \$28,035,000 Water & Sewer System Improvement Revenue Bonds, Series 1993B (collectively, the "Series 1993 Bonds"), of which \$36,220,000 aggregate principal amount remains outstanding.

(C) The Master Resolution provides for the issuance of Additional Bonds in order to, among other things, finance the Costs of Improvements, upon meeting the requirements set forth therein.

(D) The City having complied with the terms, limitations and conditions contained in the Master Resolution related to the issuance of Additional Bonds adopted resolution 97-13 which authorized the issuance of the City of \$27,500,000 Water and Sewer System Improvement Revenue Bonds, dated April 1, 1997 (the "Series 1997 Bonds") of which \$27,500,000 principal amount remains outstanding.

(E) The Council has determined that it is in the best interests of the health, safety and general welfare of its citizens to establish certain economic incentives to attract users of the System who will substantially increase the City's tax base or offer additional jobs to citizens of the City.

(F) Certain ambiguities exist in the Master Resolution regarding the Council's scope of authority to create different classes of rates and its authority to waive or reduce the fees, charges, assessments, and rates, for users located within the City that prove to meet the criteria to be established by the City in order to grant such economic incentives.

(G) This resolution is necessary to clarify the ambiguities that exist and establish the scope of authority of the Council, within the framework of the Master Resolution, to establish guidelines and procedures by separate resolution or ordinance of the Council with respect to granting economic incentives while simultaneously protecting the rights and interests of the holders of the Bonds.

SECTION 2. AUTHORITY FOR THIS SUPPLEMENTAL RESOLUTION. This Supplemental Resolution is enacted pursuant to the provisions of the Master Resolution, the Act and other applicable provisions of law.

SECTION 3. DEFINITIONS. When used in this Supplemental Resolution, the terms defined in the Master Resolution shall have the meanings therein stated, except as such definitions shall be hereinafter amended and defined.

SECTION 4. MASTER RESOLUTION TO CONTINUE IN FORCE. Except as herein expressly provided, the Master Resolution and all the terms and provisions thereof are and shall remain in full force and effect. Section 809 of the Master Resolution is hereby amended and restated in its entirety to read as follows:

"Section 809. No Free Service; Preferential Rates. Except as provided below; the City will not render, or cause to be rendered, any free services of any nature by its Water and Sewer System or any part thereof.

If the City, or any department, agency, instrumentality, officer or employee thereof, shall avail itself of the Water and Sewer System or services provided by said Water and Sewer System or any part thereof, the same rates, fees, charges or assessments applicable to other customers receiving like services under similar circumstances shall be charged the City and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be Revenues derived from the operation of the Water and Sewer System and shall be deposited and accounted for in the same manner as other Revenues.

Except as provided below; the City shall not establish preferential rates for users. Notwithstanding the foregoing, the City may reasonably establish different classes of users of any component or components of the Water and Sewer System for purposes of charging different rates between classes (e.g. residential users, commercial users, users located inside City limits, users located outside City limits, etc.).

The City may reduce or waive the imposition of any rates, fees, charges or assessments for individual users located within the City limits of any component or components of the Water and Sewer System if the City determines and finds that it is in the best interests of the health, safety and general welfare of its citizens to grant such reduction or waiver. The waiver or reduction of such rates, fees, charges or assessments will require prior findings of the Council that (i) such action will result in a substantial increase in the City's tax base or offer additional jobs to the citizens of the City and (ii) such action will not impair the City's ability to meet the covenants contained in this Resolution. Such action shall require the affirmative vote of at least four members of Council."

SECTION 5. GENERAL AUTHORITY. The members of the City Council, the Mayor or Deputy Mayor, the City Clerk and any designated Deputy Clerk and the officers, attorneys and other agents or employees of the City are hereby authorized to do all acts and things required of them by this Supplemental Resolution or desirable or consistent with the requirements hereof, for the full punctual and complete performance of all the terms, covenants and agreements contained herein.

SECTION 6. SEVERABILITY AND INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy or 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 Series 1997 Bonds.

SECTION 7. REPEAL OF INCONSISTENT RESOLUTIONS. All resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 8. EFFECTIVE DATE. This supplemental resolution shall become effective immediately upon its adoption.

This Resolution has been duly adopted this 13th day of Jan., 1998.

(SEAL)

CITY COUNCIL OF THE CITY OF COCOA,
FLORIDA

By: Michael Colby
Mayor

ATTEST:

Jan Clark
City Clerk

APPROVED AS TO FORM:

D. B. Clark
City Attorney