

ORDINANCE NO. 83 – 23

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$100,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER AND SEWER REVENUE BONDS, SERIES 2023 OF THE CITY OF CAPE CORAL, FLORIDA TO FINANCE COSTS OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF VARIOUS CAPITAL IMPROVEMENTS TO THE CITY'S WATER AND SEWER UTILITY SYSTEM; PLEDGING THE HEREIN DESCRIBED PLEDGED FUNDS TO SECURE THE PAYMENT OF THE PRINCIPAL OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON SUCH BONDS; PROVIDING FOR CERTAIN RIGHTS OF THE HOLDERS OF SUCH BONDS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

SECTION 1. DEFINITIONS. When used in this Ordinance, the following terms shall have the following meanings, unless some other meaning is plainly intended:

"Bonds" shall mean the City of Cape Coral, Florida Water and Sewer Revenue Bonds, Series 2023 issued by the City pursuant to this Ordinance and the Resolution in one or more series.

"Cost" or **"Costs"** shall have the meaning ascribed thereto by the Resolution, as the same may be modified in the Resolution.

"City" shall mean the City of Cape Coral, Florida, a municipal corporation established by the State of Florida.

"Council" shall mean the City Council of the City.

"Gross Revenues" shall have the meaning ascribed thereto by the Resolution, as the same may be modified in the Resolution.

"Net Revenues" shall have mean Gross Revenues less Operating Expenses.

"Operating Expenses" shall have the meaning ascribed thereto by the Resolution, as the same may be modified in the Resolution.

"Ordinance" shall mean this Ordinance adopted by the Council on the date hereof, as it may be amended and supplemented from time to time.

"Pledged Funds" shall mean (1) the Net Revenues, (2) the Special Assessment Proceeds (as defined in the Resolution), if pledged in accordance with the Resolution, (3) until applied in accordance with the provisions of the Resolution, all moneys, including investments thereof, in the funds and accounts established by the Resolution (other than the Rebate Fund, as established in the Resolution), except to the extent moneys therein shall be required to pay Operating Expenses of the System in accordance with the terms of the Resolution, and (4) the Expansion Fees (as defined in the Resolution).

"Project" shall mean the various utility capital improvements to be constructed in the North 1 West Area as part of the utility expansion project that are intended to be paid from revenues of the System, as more particularly described in the plans and specifications on file with the City, as the same may be modified from time to time.

"Resolution" shall mean Resolution No. 98-86 adopted by the Council on August 20, 1986, as amended and supplemented, and as it may be further amended or supplemented from time to time.

"System" shall have the meaning ascribed thereto by the Resolution, as the same may be modified in the Resolution.

The words "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms shall refer to this Ordinance.

Words importing the singular number include the plural number, and vice versa.

SECTION 2. FINDINGS. The Council hereby finds and determines that:

(A) The City has various capital needs and requirements in the form of the Project which must be developed, constructed and installed in order to improve, maintain and protect the health, safety and welfare of the citizens of the City.

(B) The most efficient and cost-effective method of financing, refinancing and reimbursing Costs of the Project is through the issuance of the Bonds secured by the Pledged Funds, as provided herein and in the Resolution.

(D) The principal of, redemption premium, if any, and interest on the Bonds shall be paid from the Pledged Funds. The City shall never use or be required to use any ad valorem taxes for the payment of the Bonds. The Bonds shall not constitute general obligations of the City or a pledge of its faith and credit or taxing power, nor shall the Bondholders have any lien or encumbrance on any property of the City, including the System.

SECTION 3. AUTHORIZING THE FINANCING, REFINANCING AND REIMBURSEMENT OF THE PROJECT. The Council hereby authorizes and approves the acquisition, construction and equipping of the Project and the financing and refinancing thereof with proceeds of the Bonds. To the extent the City has incurred or incurs any interim indebtedness to finance any Costs of the Project on an interim basis the City is authorized to refinance such indebtedness with proceeds of the Bonds. The City also authorizes the reimbursement of Costs of the Project, if any, previously paid by the City from moneys on deposit in the water and sewer utility enterprise fund or any capital fund related thereto. It is the intent of the City that this Resolution meets the requirements of Treasury Regulations Section 1.150-2 and to be a declaration of official intent under such Section. The City covenants to comply in all respects with the applicable provisions of the Code relating to reimbursement.

SECTION 4. ISSUANCE OF THE BONDS. The Bonds are hereby authorized to be issued in the aggregate principal amount of not exceeding \$100,000,000. The title and designation of the Bonds may be modified by the Resolution to reflect the actual terms and series of such Bonds. The Bonds shall be issued for the principal purposes of (A) financing, refinancing and/or reimbursing Costs of the Project, (B) funding a debt service reserve, if required or deemed necessary or desirable by the Council or its designee pursuant to the Resolution, (C) capitalizing interest on the Bonds, if required or deemed necessary or desirable by the Council or its designee pursuant to the Resolution, and (D) paying costs and expenses of issuing the Bonds, including payment of any premium or fee for credit enhancement, if required or deemed necessary or desirable by the Council or its designee pursuant to the Resolution. The principal of, redemption premium, if any, and interest on the Bonds shall be payable from the Pledged Funds, all in the manner and to the extent provided herein and in the Resolution.

The Bonds shall be dated such date or dates, shall bear interest at such rate or rates, shall mature at such times and in such amounts as may be determined by the Resolution, and may be redeemable before maturity, at the option of the City, at such price or prices

and under such terms and conditions and parameters as may be established pursuant to the Resolution. The Council shall determine by the Resolution the form of the Bonds, the manner of executing such Bonds, and shall fix the denomination or denominations of such Bonds, the place or places and dates of payment of the principal and interest, which may be at any bank or trust company within or outside the State of Florida, and such other terms and provisions of the Bonds as it deems appropriate. The Bonds may be issued as capital appreciation Bonds, current interest paying Bonds, variable rate Bonds, serial Bonds, term Bonds, taxable Bonds, tax-exempt Bonds or any combination thereof, and as publicly offered Bonds or privately placed Bonds, all as shall be determined by the Resolution. In case any officer whose signature or a facsimile of whose signature shall appear on any of the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until such delivery. The Council may sell the Bonds in such manner and for such price as it may determine by the Resolution to be in the best interests of the City. The Bonds may be further secured by a municipal bond insurance policy or a letter of credit or such other credit enhancement as the Council or its designee deems appropriate pursuant to the provisions of the Resolution.

The Bonds may be issued without any other proceedings or the happening of any other conditions or things other than adoption of the Resolution and those proceedings, conditions or things which are specifically required by this Ordinance or the Resolution.

The proceeds of the Bonds shall be disbursed in such manner and under such restrictions, if any, as may be provided by the Resolution.

The Bonds shall be further secured by the Resolution which may include, but without limitation, provisions as to the rights and remedies of the holders of the Bonds, the application of funds and such other matters as are customarily in such an instrument.

SECTION 5. TAXING POWER NOT PLEDGED. The Bonds issued under the provisions of this Ordinance shall not be deemed to constitute a pledge of the faith and credit or taxing power of the City, but such Bonds shall be payable from the Pledged Funds in the manner and to the extent provided herein and in the Resolution, unless otherwise paid by such entity as shall provide credit enhancement on the Bonds, if any. The Bonds shall be on parity in all respects with the other obligations currently outstanding under the Resolution, including any subsequently issued Additional Bonds (as defined in the Resolution). The issuance of the Bonds under the provisions of this Ordinance shall not directly, indirectly or contingently obligate the City to levy or to pledge any form of ad valorem taxation whatever therefore. No holder of any such Bond shall ever have the right to compel any exercise of the ad valorem taxing power on the part of the City to pay any such Bond or the interest thereon against any property of the City, nor shall the Bonds constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City except the Pledged Funds.

SECTION 6. TRUST FUNDS. The Pledged Funds received pursuant to the authority of this Ordinance shall be deemed to be trust funds, to be held and applied solely as provided in this Ordinance and in the Resolution. Such Pledged Funds may be invested by the City, or its designee, in the manner provided by the Resolution. The Pledged Funds upon receipt thereof by the City shall be subject to the lien and pledge of the holders of the Bonds or any entity providing credit enhancement for the Bonds.

SECTION 7. REMEDIES OF BONDHOLDERS. The holders of the Bonds, except to the extent the rights herein given may be restricted by the Resolution, may, whether at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce and compel the performance of all duties required hereby, or by such Resolution, to be performed by the City.

SECTION 8. ALTERNATIVE METHOD. This Ordinance shall be deemed to provide an additional and alternative method for the doing of things authorized

hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may hereafter come into existence. This Ordinance, being necessary for the health, safety and welfare of the inhabitants and/or property owners of the City, shall be liberally construed to effect the purposes hereof.

SECTION 9. VALIDATION. To the extent deemed necessary by Bond Counsel, Nabors, Giblin & Nickerson, P.A., or desirable by the City Attorney, the City Attorney is authorized to institute appropriate proceedings for validation of the Bonds pursuant to Chapter 75, Florida Statutes.

SECTION 10. GENERAL AUTHORITY. The members of the Council of the City 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 Ordinance, 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 11. SEVERABILITY. In the event that any portion or section of this Ordinance 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 Ordinance which shall remain in full force and effect.

SECTION 12. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its enactment by the City Council of the City of Cape Coral, Florida.

ENACTED AT A REGULAR COUNCIL MEETING THIS ____ DAY OF _____, 2023.

JOHN GUNTER, MAYOR

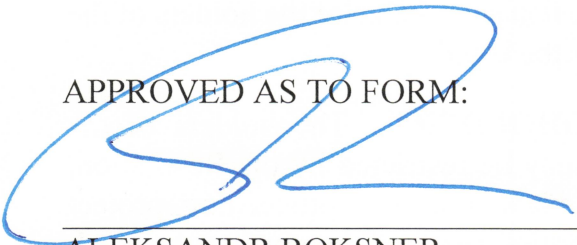
VOTE OF MAYOR AND COUNCILMEMBERS:

GUNTER	_____	CUMMINGS	_____
STEINKE	_____	WELSH	_____
SHEPPARD	_____	LONG	_____
HAYDEN	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS ____ DAY OF OCTOBER 2023.

KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:



ALEKSANDR BOKSNER
CITY ATTORNEY
Ord/Bonds Water & Sewer 2023