

## RESOLUTION 16-R-02-A

APPROVING ISSUANCE OF A \$596,106 PRINCIPAL AMOUNT GENERAL OBLIGATION BOND AND A \$1,482,350 PRINCIPAL AMOUNT GENERAL OBLIGATION BOND, EACH TO THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, WATER POLLUTION CONTROL REVOLVING FUND, AS REGISTERED OWNER, TO REFINANCE THE REMAINING BALANCES OF TWO USDA RURAL DEVELOPMENT LOANS OF THE CITY OF HARRINGTON, AS APPROVED BY THE ELECTORS; SETTING FORTH THE SUBSTANTIAL FORM OF THE BONDS INCLUDING THE INTEREST RATE, THE TIME OF PAYMENT OF INTEREST, THE TIME OF MATURITY, AND OTHER DETAILS OF THE BONDS; DETERMINING THAT THE BONDS WILL BE SOLD BY PRIVATE SALE AND AUTHORIZING EXECUTION OF FINANCING AGREEMENTS; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE CITY FOR THE BONDS; AND AUTHORIZING OTHER NECESSARY ACTION

WHEREAS, the City Council of the City of Harrington (the "City") pursuant to Section 16.3, 69 Del. Laws Ch. 115, as amended (the "Charter"), proposed to the electors of the City by Resolution dated July 20, 2015 (the "First Resolution") to borrow up to \$2,078,456 aggregate principal amount in order to refinance the remaining balances of two USDA Rural Development loans to provide debt service savings to the City (collectively, the "Refinancings") and placed notice of hearing on the First Resolution as required by the Charter; and

WHEREAS, the public hearing (the "Public Hearing") was held in accordance with the Charter on August 17, 2015 and the City thereafter passed a second resolution on August 17, 2015 (the "Second Resolution") in which the City Council determined to proceed with the proposed borrowing as authorized by the Charter and ordered a special election to be held upon not less than twenty-one days and not more than sixty days public notice, for the purpose of voting for or against the proposed loans. The passage of the Second Resolution calling the special election was considered the City Council's determination to proceed in the matter at issue as authorized by the Charter, Section 16.3.4(c); and

WHEREAS, the Mayor appointed three persons to act as a Board of Special Election and to conduct the special election and such special election was held on September 15, 2015 (the "Special Election" and, collectively with the First Resolution, the Public Hearing and the Second Resolution, the "Authorizing Acts"), and notice was properly given for the Special Election, whereby a majority of the electors approved the borrowing by voting in the Special Election which was conducted and certified in accordance with the provisions of Sections 16.3.4(d)-(h) of the Charter; and

WHEREAS, pursuant to the Authorizing Acts, the City now desires to borrow two million seventy-eight thousand four hundred and fifty-six dollars (\$2,078,456) in aggregate principal amount to fund the Refinancings; and

WHEREAS, the Delaware Department of Natural Resources and Environmental Control has authorized two loans to the City from the Delaware Water Pollution Control Revolving Fund in the aggregate principal amount of two million seventy-eight thousand four hundred and fifty-six dollars (\$2,078,456), with (i) one loan in the principal amount of \$596,106 for a term of twenty-six (26) years, with semiannual payment of principal and interest due six (6) months after closing on the loan, at an interest rate and administrative fee together equaling the combined rate of 2.0%, and (ii) the second loan in the principal amount of \$1,482,350 for a term of twenty-one (21) years, with semiannual payment of principal and interest due six (6) months after closing on the loan, at an interest rate and administrative fee together equaling the combined rate of 2.0%; and

WHEREAS, Section 16.3.3 of the Charter authorizes the City to borrow sums, not exceeding in the aggregate a sum equal to 25% of the total assessed value of all non-tax-exempt real property situated within the bounds of the City; and

WHEREAS, the City now proposes to issue a \$596,106 aggregate principal amount General Obligation Bond and a \$1,482,350 aggregate principal amount General Obligation Bond, both totaling in the aggregate \$2,078,456 (collectively, the "Bonds") to fund the Refinancings as approved by the electors in the Special Election; and

WHEREAS, the City desires to formalize, ratify, and confirm such action by adoption of a formal written resolution.

NOW, THEREFORE, BE IT HEREBY RESOLVED AND DETERMINED by the City Council of the City of Harrington, as follows:

Section 1. Authorization of the Incurrence of Indebtedness as Approved by the Electors. The City shall borrow the sum of two million seventy-eight thousand four hundred and fifty-six dollars (\$2,078,456) as approved by referendum of the electors in the Special Election held on September 15, 2015, by the issuance of the Bonds, which together with other indebtedness of the City does not exceed in the aggregate a sum equal to 25% of the total assessed value of all non-tax-exempt real property situated within the bounds of the City.

Section 2. Authorization of Issuance of the Bond. The City shall issue pursuant to the Charter, the Authorizing Acts and this Resolution, (i) \$596,106 aggregate principal amount of its General Obligation Bond and (ii) \$1,482,350 aggregate principal amount of its General Obligation Bond, each to provide funds for the Refinancings.

Section 3. Form and Terms of the Bonds. The Bonds shall be substantially in the Form of Bond provided in **Exhibit A** with appropriate omissions, insertions and variations. Such Form of Bond contains the interest rate and, once a closing date is determined, will contain dates for payment of principal, interest and fee, final maturity, and other terms of the Bonds as required by Section 16.3.5 of the Charter. One bond in the aggregate principal amount of \$596,106 will be

issued for a term of twenty-six (26) years, with semiannual payment of principal and interest due six (6) months after closing on the loan, at an interest rate and administrative fee together equaling the combined rate of 2.0%. The second bond in the aggregate principal amount of \$1,482,350 will be issued for a term of twenty-one (21) years, with semiannual payment of principal and interest due six (6) months after closing on the loan, at an interest rate and administrative fee together equaling the combined rate of 2.0%.

Section 4. Sale of the Bonds. The Bonds shall be sold at a private sale by negotiation to the Delaware Department of Natural Resources and Environmental Control, Delaware Water Pollution Control Revolving Fund (the "Department") pursuant to the terms of the Bonds and the Financing Agreements (as hereinafter defined).

Section 5. Covenant to Pay Debt Service - Pledge of Full Faith, Credit and Taxing Power. The City hereby covenants with the registered owner of the Bonds (the Department) pursuant to this resolution as follows: that the City will include in its budget for each fiscal year during the life of the Bonds, the amount of the debt service on the Bonds issued hereunder which will be payable in each such fiscal year so long as the Bonds shall remain outstanding; that the City shall appropriate such amounts from its general revenues to the payment of such debt service; that the City shall duly and punctually pay or cause to be paid the principal of the Bonds and the interest and fee thereon at the dates and places and in the manner stated in the Bonds according to the true intent and meaning thereof; and for such budgeting, appropriation and payment the City hereby pledges its full faith, credit and taxing power. The covenant contained in this Section 5 shall be specifically enforceable.

Section 6. Authorization of the Bonds and Financing Agreements. The Mayor and the Clerk of Council are hereby authorized to execute and deliver the Bonds and the Financing Agreements (the "Financing Agreements") by and between the City and the Department setting forth the terms of the loans and the City's obligation to repay the loans, which will be evidenced by the execution of the Financing Agreements and delivery of the Bonds.

Section 7. Further Action. The proper officers of the City are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, publish all notices and otherwise comply with the provisions of this Resolution, the Authorizing Acts and the Charter in the name and on behalf of the City.

Section 8. Charter Applicable to Bonds. This Resolution is adopted pursuant to, and the Bonds issued hereunder shall be subject to, the provisions of the Charter and all of the mandatory provisions thereof shall apply hereunder whether or not explicitly stated herein.

Section 9. Contract with Bondholder. This Resolution constitutes a contract with the Department as registered owner of the Bonds and shall be enforceable in accordance with the provisions of the laws of the State of Delaware.

Section 10. Severability. In case any one or more of the provisions contained in this Resolution or in the Bonds issued pursuant hereto shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not

affect any other provision of this Resolution or of said Bonds and this Resolution or said Bonds shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

Section 11. Repealer. All Resolutions and parts of Resolutions heretofore adopted to the extent that the same are inconsistent herewith are hereby repealed.

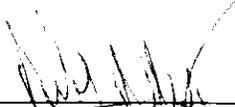
Section 12. Effective Date. This Resolution shall take effect on the date this Resolution is adopted by the City.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

ADOPTED AND RESOLVED this 19<sup>th</sup> day of January, 2016.

(CITY SEAL)

Attest:   
\_\_\_\_\_  
Kelly Blanchies,  
Clerk of Council

  
\_\_\_\_\_  
Anthony R. Moyer,  
Mayor

**Exhibit A  
Form of Bond**

**REGISTERED  
R-1**

**[\$596,106] [1,482,350]**

**UNITED STATES OF AMERICA  
STATE OF DELAWARE  
CITY OF HARRINGTON**

**GENERAL OBLIGATION BOND  
(USDA LOAN REFINANCING)  
SERIES \_\_\_\_-SRF**

Final Maturity Date: \_\_\_\_\_, 20\_\_

REGISTERED OWNER: Delaware Water Pollution Control Revolving Fund, acting by and through the Delaware Department of Natural Resources and Environmental Control.

PRINCIPAL AMOUNT: [Five Hundred Ninety-Six Thousand One Hundred and Six Dollars (\$596,106)]

[One Million Four Hundred Eighty-Two Thousand Three Hundred and Fifty Dollars (\$1,482,350)]

THE CITY OF HARRINGTON, a municipal corporation and political subdivision of the State of Delaware (hereinafter referred to as the "Borrower"), for value received hereby acknowledges itself indebted and promises to pay to the DELAWARE WATER POLLUTION CONTROL REVOLVING FUND, or to any other registered owner hereof, the principal sum of [FIVE HUNDRED NINETY-SIX THOUSAND ONE HUNDRED AND SIX DOLLARS (\$596,106)]/ [ONE MILLION FOUR HUNDRED EIGHTY-TWO THOUSAND THREE HUNDRED AND FIFTY DOLLARS (\$1,482,350)] or so much thereof as shall actually be advanced to the Borrower by the Delaware Water Pollution Control Revolving Fund acting by and through the Delaware Department of Natural Resources and Environmental Control (the "Department") pursuant to the Financing Agreement dated \_\_\_\_\_, 20\_\_ (the "Financing Agreement") between the Borrower and the Department.

The Bond is being issued in order to provide funds to (i) refinance the remaining balance of a USDA Rural Development loan to provide debt service savings to the Borrower, as more fully described in Exhibit A to the Financing Agreement (the "Refinancing") and (ii) pay the costs of issuing the Bond.

The Borrower shall pay to the Department on the principal amount outstanding hereunder interest at the rate of 1.0% per annum and an administrative fee at the rate of 1.0% per annum (collectively, interest and the administrative fee are referred to herein as "Fee"). Such Fee shall accrue starting on the date hereof (the "Closing") through the Final Maturity Date or prepayment in full hereof. The Borrower shall pay Fee and principal hereunder initially on \_\_\_\_\_, 20\_\_, such date being six months after the Closing (the "Amortization Start Date") and semiannually thereafter on each \_\_\_\_\_ and \_\_\_\_\_ (each, a "Payment Date"). After the Amortization Start Date, Fee and principal shall be payable on the outstanding principal amount hereunder semiannually, on each Payment Date, commencing on the Payment Date next succeeding the Amortization Start Date and continuing on each of the next [51]/[41] following Payment Dates, in an amount sufficient to amortize all principal with substantially equal semiannual payments of principal and Fee over [twenty-six (26)]/[twenty-one (21)] years. Once determined, Payment Dates shall remain the same throughout the term of this Bond.

[If by \_\_\_\_\_, 20\_\_, which is one year from the date of Closing, (i) the Borrower has not drawn down the principal amount of this Bond by more than ten percent (10%) of the Refinancing costs, and (ii) the Department has not received a Notice to Proceed as required by the Financing Agreement, the Department may in its discretion assess a penalty of one percent (1%) of the total principal amount authorized by this Bond (the "Penalty"). Such Penalty may be drawn by the Department from the principal amount allocated to this Bond. It is within the Department's complete discretion whether to impose the Penalty based upon its review of affirmative steps taken by the Borrower to complete the Refinancing and the totality of the circumstances surrounding any such delay in making draws on the principal amount of this Bond.]

Notwithstanding the foregoing, all unpaid principal and Fee shall be paid in full on \_\_\_\_\_, 20\_\_. The Fee hereon shall be calculated on the basis of a 360-day year and paid for the actual number of days elapsed. Both the principal of and Fee on this Bond are payable in lawful money of the United States of America. Principal and Fee on this Bond shall be paid by check or draft mailed or remitted electronically on the payment date to the Registered Owner, as shown on the books and records of the Borrower.

This Bond is authorized and issued pursuant to the Laws of the State of Delaware, including 69 Del. Laws Ch. 115, as amended, and resolutions adopted by the Borrower on July 20, 2015, August 17, 2015 and January 19, 2016, a public hearing held on August 17, 2015 and a favorable special election conducted on September 15, 2015.

At the option of the Borrower and upon providing prior written notice to the Registered Owner hereof, as shown on the books and records of the Borrower, this Bond may be prepaid or redeemed in whole or in part, without penalty, at any time, and any prepayment in part of this Bond shall be applied to all or a portion of the principal installments then outstanding as shall be specified by the Borrower. If all or a portion of this Bond is called for redemption, it or the portion so called will cease to bear Fee on the specified redemption date provided that funds for the payment of the principal amount of the portion of the Bond so called for redemption and the accrued Fee thereon to the redemption date are on deposit at the place of payment on the redemption date.

It is hereby certified and recited that all conditions, acts, and things required by the Constitution, statutes or laws of the State of Delaware to exist, be performed or happen, precedent to or in the issuance of this Bond, do exist, have been performed and have happened, and that the amount of this Bond, together with all other indebtedness of the Borrower, is within every debt and other limit prescribed by said Constitution, statutes or laws. This Bond is a valid and legally binding general obligation of the Borrower and, unless paid from other sources, the principal and Fee payable hereon will be paid from ad valorem taxes levied upon all real property subject to taxation by the Borrower. The full faith and credit of the Borrower are hereby pledged to the punctual payment of the principal of and Fee on this Bond according to its terms.

This Bond may be transferred by the Registered Owner hereof in person or by its attorney duly authorized in writing. The Borrower may deem and treat the Registered Owner as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal hereof and Fee due hereon and for all other purposes.

The provisions of this Bond shall be construed and enforced under the laws of the State of Delaware.

IN WITNESS WHEREOF, the Borrower has caused this Bond to be signed by the Mayor and attested by the Clerk of City Council, and the official corporate seal of the Borrower to be imprinted or impressed hereon, and this Bond to be dated \_\_\_\_\_, 20\_\_.

CITY OF HARRINGTON, DELAWARE

(CITY SEAL)

\_\_\_\_\_  
Anthony R. Moyer  
Mayor

\_\_\_\_\_  
Kelly Blanchies  
Clerk of City Council

**[END OF FORM OF BOND]**

CERTIFICATE OF CLERK OF COUNCIL

The undersigned, Clerk of Council of the City Council of the City of Harrington, HEREBY CERTIFIES that:

The foregoing Resolution authorizing the issuance of a General Obligation Bond in the aggregate principal amount of \$596,106 and a General Obligation Bond in the aggregate principal amount of \$1,482,350 of the City was duly moved and seconded and adopted by a majority vote of the City Council of said City at a duly called and convened public meeting of said Council held on January 19, 2016; and that the roll of the City Council was called and such members voted or were absent as follows:

<u>Name</u>		<u>Vote</u>
Anthony R. Moyer, Mayor	(if tie)	NA
Duane E. Bivans, Vice Mayor		Yes
Charles W. Porter		Yes
Amy Minner		Yes
Fonda Coleman		Yes
Eric Marquis		Yes
Kenneth W. Stubbs		Yes

and that such Resolution and the votes thereon have been duly recorded in the minutes.

**WITNESS** my hand and seal of the City this 19<sup>th</sup> day of January, 2016.

(CITY SEAL)

  
\_\_\_\_\_  
Clerk of Council