

RESOLUTION NO. R2013-02

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF MAYOR AND CITY COUNCIL OF CUMBERLAND (THE "CITY") SUPPLEMENTING AND AMENDING RESOLUTION NO. R2013-01, ADOPTED BY THE MAYOR AND CITY COUNCIL ON JUNE 4, 2013 AND EFFECTIVE ON JUNE 4, 2013 (THE "ORIGINAL RESOLUTION"), IN ORDER TO PROVIDE THAT THE MAYOR AND CITY COUNCIL OF CUMBERLAND TAX-EXEMPT REFUNDING BONDS OF 2013 PROVIDED FOR IN THE ORIGINAL RESOLUTION MAY BE APPLIED TO CURRENTLY REFUND AND PREPAY THE 2006 LEASE PURCHASE AGREEMENT IDENTIFIED IN THE ORIGINAL RESOLUTION AND PROVIDING FOR CERTAIN DETERMINATIONS AND ACTIONS TO BE MADE OR TAKEN IN CONNECTION WITH ANY SUCH CURRENT REFUNDING OF THE 2006 LEASE PURCHASE AGREEMENT; AND GENERALLY RELATING TO THE ISSUANCE, SALE, DELIVERY AND PAYMENT OF AND FOR THE TAX-EXEMPT BONDS PROVIDED FOR IN THE ORIGINAL RESOLUTION.

RECITALS

1. Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland (the "City"), has the power to issue or incur debt or other obligations in accordance with applicable provisions of Maryland and local law.

2. Pursuant to the authority of, as applicable, Sections 31 to 37, inclusive, of Article 23A of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Enabling Act"), Section 24 of Article 31 of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Refunding Act"), Sections 81 and 82A of the Charter of the City of Cumberland, as

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published in Municipal Charters of Maryland, Volume 3, 2008 Replacement Edition, as replaced, supplemented or amended (the “Charter”), Ordinance No. 3725, passed by the Mayor and City Council of the City (the “Mayor and City Council”) on October 9, 2012 and effective on November 8, 2012 (“Ordinance No. 3725”), Ordinance No. 3731, passed by the Mayor and City Council on January 29, 2013 and effective on February 28, 2013 (“Ordinance No. 3731”), Ordinance No. 3692, passed by the Mayor and City Council on May 24, 2011 and effective on June 23, 2011, as supplemented and amended by Ordinance No. 3732, passed by the Mayor and City Council on January 29, 2013 and effective on February 28, 2013 (collectively, “Amended Ordinance No. 3692”), and Resolution No. R2013-01, adopted by the Mayor and City Council on June 4, 2013 and effective on June 4, 2013 (the “Original Resolution”), the City authorized the issuance and sale, upon its full faith and credit, of two separate series of general obligation bonds respectively identified in the Original Resolution as (i) the “Mayor and City Council of Cumberland Taxable Redevelopment and Refunding Bonds of 2013” (the “Taxable Bonds”) and (ii) the “Mayor and City Council of Cumberland Tax-Exempt Refunding Bonds of 2013” (the “Tax-Exempt Bonds” and, together with the Taxable Bonds, the “Bonds”), subject to the further provisions of the Original Resolution.

3. As described in the Original Resolution, the City, as lessee, entered into an Energy Performance Contract Municipal Lease/Purchase Agreement dated as of December 29, 2006 (the “2006 Lease Purchase Agreement”), with Manufacturers and Traders Trust Company, as lessor (including any assignee or successor thereto, the “Lessor”), for the public purpose of financing or reimbursing a portion of the costs of the acquisition and installation of certain Equipment (as identified and defined therein). In order to acquire full and unencumbered title to the Equipment, the City is obligated under the 2006 Lease Purchase Agreement to make Rental Payments to the

Lessor on each November 1 and May 1, commencing November 1, 2007 and ending May 1, 2022, which Rental Payments are denominated into principal and interest components.

4. Sections 3.2 and 10.1 of the 2006 Lease Purchase Agreement provide that the term thereof may be terminated and the Lessor's interest in the Equipment transferred, conveyed and assigned permanently to the City, on any Rental Payment due date, with at least thirty (30) days' prior written notice to the Lessor, upon payment by the City of the Rental Payment due on such date and payment in full of the then-applicable Purchase Price as set forth in the Schedule of Payments to the 2006 Lease Purchase Agreement and all other sums required to be paid under the 2006 Lease Purchase Agreement.

5. The Original Resolution provides that, subject to the provisions thereof, the Taxable Bonds are to be issued in the maximum aggregate principal amount not to exceed Five Million Five Hundred Thousand Dollars (\$5,500,000.00) for the public purpose of (i) financing or reimbursing "costs" (as defined in Ordinance No. 3725) of the projects identified in Ordinance No. 3725 as "Memorial Campus Facility Demolition" and "Other Street Improvement Projects", (ii) currently refunding the Promissory Note (as defined in the Original Resolution) in whole or in part by prepaying all or a portion of the outstanding principal amount thereof, plus interest accrued thereon to the date of prepayment and any other amounts due in connection with such prepayment (including, without limitation, any minimum interest charge), in order to realize debt service savings on a direct comparison or present value basis or to effect a debt restructuring that in the aggregate effects such a reduction in the cost of debt service, and (iii) paying costs of issuance related to the purposes specified in clauses (i) and (ii).

6. The Original Resolution provides that, subject to the provisions thereof, the Tax-Exempt Bonds are to be issued in the maximum aggregate principal amount not to exceed Three

Million Dollars (\$3,000,000.00) for the public purpose of (i) advance refunding the 2006 Lease Purchase Agreement in whole as of any applicable Rental Payment date in accordance with the provisions of Sections 3.2 and 10.1 thereof by paying the Rental Payment due on such applicable date and the corresponding Purchase Price set forth on the Schedule of Payments to the 2006 Lease Purchase Agreement and any other amounts due on such date, in order to achieve debt service savings on a direct comparison or present value basis or to effect a debt restructuring that in the aggregate effects such a reduction in the cost of debt service, and (ii) financing or reimbursing all or a portion of related costs of issuance, including, without limitation, legal and financial costs and costs of any credit enhancement.

7. As further described in the Original Resolution, the next available Rental Payment date under the 2006 Lease Purchase Agreement is November 1, 2013. Accordingly, the Original Resolution provides (i) that, assuming the Tax-Exempt Bonds are issued on or about July 2, 2013, proceeds of the Tax-Exempt Bonds shall be applied to effect an advance refunding of the 2006 Lease Purchase Agreement on November 1, 2013, (ii) that the City shall enter into an Escrow Deposit Agreement with Manufacturers and Traders Trust Company, as Escrow Deposit Agent (or another Escrow Deposit Agent to be determined in accordance with the provisions of the Original Resolution), (iii) that proceeds of the Tax-Exempt Bonds to be applied to the advance refunding of the 2006 Lease Purchase Agreement, together with any other available moneys, shall be deposited with the Escrow Deposit Agent and may be invested within the limitations of applicable Maryland and federal law as described in Section 13 of the Original Resolution, (iv) for The Arbitrage Group, Inc. to provide escrow verification services in connection with the advance refunding of the 2006 Lease Purchase Agreement and (v) that, contingent upon the issuance of the Tax-Exempt Bonds, the City elects to prepay the 2006 Lease Purchase Agreement in whole on November 1, 2013.

8. As of June 13, 2013, the Lessor has verbally agreed to allow the City to prepay the 2006 Lease Purchase Agreement on or about the date of issuance of the 2006 Lease Purchase Agreement, which will allow the City to effect a current refunding of the 2006 Lease Purchase Agreement. The Lessor's permitting a current refunding of the 2006 Lease Purchase Agreement is beneficial to the City in that the City shall not be required to escrow moneys with the Escrow Deposit Agent to effect such refunding or to obtain an escrow verification report and, depending on market conditions, may allow the City to achieve greater debt service savings and/or to issue the Tax-Exempt Bonds in an aggregate principal amount less than the aggregate principal amount that would be required to effect an advance refunding of the 2006 Lease Purchase Agreement.

9. In an effort to provide maximum flexibility, the Mayor and City Council desire to supplement and amend the Original Resolution to provide that proceeds of the Tax-Exempt Bonds may be applied to a current refunding of the 2006 Lease Purchase Agreement rather than an advance refunding of the 2006 Lease Purchase Agreement.

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF CITY OF CUMBERLAND, THAT:

SECTION 1. (a) The Recitals to this Resolution are deemed a substantive part of this Resolution and are incorporated herein by reference. Capitalized terms used in the Sections of this Resolution that are not otherwise defined herein shall have the meanings given to such terms in the Recitals hereto or in the Original Resolution.

(b) References in this Resolution to any official by title shall be deemed to refer (i) to any official authorized under the Charter or other applicable law to act in such titled official's stead during the absence or disability of such titled official, (ii) to any person who has been elected, appointed or designated to fill such position in an acting capacity under the Charter, the code of City

ordinances (the “City Code”) or other applicable law, and/or (iii) to the extent an identified official commonly uses another title not provided for in the Charter or the City Code, the official, however known, who is charged under the Charter, the City Code or other applicable law or authority with the applicable responsibilities, rights, powers or duties referred to herein.

(c) With respect to any responsibility, right, power or duty delegated solely to the City Administrator by the terms of this Resolution, in the event of the absence or disability of the City Administrator at the time of exercise of any such responsibility, right, power or duty, and in the event that at such time no Acting City Administrator has been appointed or otherwise provided for, any such responsibility, right, power or duty may be exercised by the Mayor of the City (the “Mayor”).

(d) To the extent this Resolution does not specifically identify how any responsibility, right, power or duty delegated to the City Administrator by the terms hereof shall be evidenced, any such exercise may be evidenced conclusively by the execution and delivery by the City Administrator of an order with respect thereto.

SECTION 2. From and after the effective date of this Resolution, the Original Resolution is hereby supplemented and amended by adding the following Section 14A thereto immediately following the end of Section 14 of the Original Resolution and immediately preceding the beginning of Section 15 of the Original Resolution:

“SECTION 14A. (a) Notwithstanding the provisions of Sections 2, 12, 13 and 14 of this Resolution, and taking into account the date of issuance of the Tax-Exempt Bonds, in the event the Lessor allows the City to prepay the 2006 Lease Purchase Agreement on a date that will result in a current refunding of the 2006 Lease Purchase Agreement rather than an advance refunding of the 2006

Lease Purchase Agreement, the City Administrator, on behalf of the City, with the advice of the Comptroller, the financial advisor to the City and bond counsel to the City, is hereby authorized and empowered to agree to the prepayment of the 2006 Lease Purchase Agreement in a manner and on a date that results in a current refunding of the 2006 Lease Purchase Agreement.

(b) In the event the Lessor allows the 2006 Lease Purchase Agreement to be currently refunded, all references in this Resolution to the advance refunding of the 2006 Lease Purchase Agreement shall be deemed to be references to the current refunding of the 2006 Lease Purchase Agreement or to be otherwise inapplicable to the transactions contemplated by this Resolution, as the context may require, and references in other Sections of this Resolution to prepaying the 2006 Lease Purchase Agreement on a Rental Payment date may be disregarded.

(c) In the event the Lessor allows the 2006 Lease Purchase Agreement to be currently refunded, references in this Resolution to the Escrow Deposit Agent, the Escrow Deposit Agreement, the provision of escrow verification services or the provision of open market bidding services shall be disregarded; provided that, to the extent the Escrow Deposit Agent, the selected provider of escrow verification services or the selected bidding agent for bidding of open market securities is entitled to compensation for fees and expenses incurred in connection with services provided prior to issuance of the Bonds, such entities may be appropriately compensated for their services.

(d) Subject to the provisions of subsection (e) below, and notwithstanding the provisions of Sections 12(c) and (d) of this Resolution, in the event the Lessor allows the 2006 Lease Purchase Agreement to be currently refunded, the Treasurer or any other appropriate municipal official is each hereby designated and authorized to receive payment on behalf of the City of the proceeds of the sale of the Tax-Exempt Bonds and to invest such proceeds until needed for the respective purposes of the Tax-Exempt Project. There may be deducted from the total gross proceeds of the sale of the Tax-Exempt Bonds the amount of the Underwriter's discount and other expenses of sale of the Tax-Exempt Bonds, net of any amounts made available from other sources for the payment of such costs, which deducted amounts shall be applied to pay such expenses of the sale. In such case, the proceeds of the Tax-Exempt Bonds are hereby appropriated for the purposes of the Tax-Exempt Project (construed as including a current refunding of the 2006 Lease Purchase Agreement) and shall be deposited in the proper account or accounts of the City, may be invested within any limits prescribed by Maryland and any other applicable law, and shall be used and applied exclusively for the purposes described herein. If the proceeds received from the sale of the Tax-Exempt Bonds exceed the amount needed for the public purposes of the Tax-Exempt Project, the amount of such unexpected excess shall be set apart in a separate fund and applied to debt service on the Tax-Exempt Bonds, unless a supplemental ordinance or resolution, as applicable, is passed by the Mayor and City Council to provide for the expenditure of the excess for some other valid purpose authorized by the Enabling Act, the Refunding Act, the Charter or Amended Ordinance No. 3692, as applicable.



(e) Notwithstanding the provisions of subsection (d) of this Section 14A or any other provisions of this Resolution, that portion of the proceeds of the Tax-Exempt Bonds issued to provide funds to currently refund the 2006 Lease Purchase Agreement may be paid by the Underwriter at the written direction of the Mayor, the City Administrator or the Comptroller, or at the written direction of the financial advisor to the City acting on the City's behalf, directly to the prepayment of the 2006 Lease Purchase Agreement on the date of issuance of the Tax-Exempt Bonds.

(f) In the event the Lessor allows the 2006 Lease Purchase Agreement to be currently refunded, conditioned only upon the delivery of and payment for the Tax-Exempt Bonds, and notwithstanding the provisions of Section 14(b) of this Resolution, the Mayor and City Council hereby specifically elects to prepay the 2006 Lease Purchase Agreement on the earliest practicable date available (which may be, but need not be, the date of issuance of the Tax-Exempt Bonds), giving due consideration to any notice of prepayment required by the Lessor. The Mayor and City Council hereby authorizes and empowers each of the Mayor, the City Administrator and the Comptroller to (i) select the date of prepayment of the 2006 Lease Purchase Agreement, and (ii) give such notice of prepayment as may be required by the 2006 Lease Purchase Agreement or the Lessor or any documents relating thereto or in the form recommended by bond counsel to the City. Any such notice of prepayment may be given prior to the date of issuance and delivery of the Tax-Exempt Bonds and may be conditioned upon receipt of funds sufficient to effect such prepayment.

(g) In the event the Lessor allows the 2006 Lease Purchase Agreement to be currently refunded, the applicable official or officials respectively authorized by Sections 8 and 9(b) of this Resolution to approve the final Bond Purchase Agreement and the final Official Statement are hereby authorized and directed to include in such final Bond Purchase Agreement and such final Official Statement any changes, modifications or deletions necessary to reflect the current refunding of the 2006 Lease Purchase Agreement (as opposed to the originally contemplated advance refunding of the 2006 Lease Purchase Agreement).”

SECTION 3. From and after the effective date of this Resolution, the Original Resolution shall be deemed supplemented and amended as provided herein and all other terms and provisions of the Original Resolution shall remain in full force and effect and applicable to the sale, issuance and delivery of the Bonds.

SECTION 4. The provisions of this Resolution shall be liberally construed in order to effectuate the transactions contemplated hereby.

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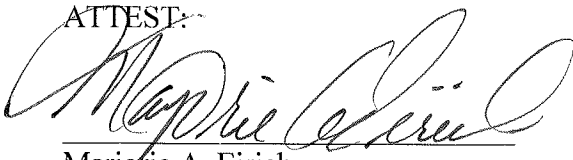
SECTION 5. This Resolution shall become effective immediately upon its adoption.

MAYOR AND CITY COUNCIL OF  
CUMBERLAND

(SEAL)

  
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Brian K. Grim, Mayor

ATTEST:

  
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Marjorie A. Eirich  
City Clerk

Introduced: June 18, 2013

Adopted: June 18, 2013

Effective: June 18, 2013

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