RESOLUTION NO. 28-78

A RESOLUTION AUTHORIZING THE ISSUANCE OF NOT EXCEEDING $32,000,000 PRINCIPAL AMOUNT OF UTILITIES SYSTEM REVENUE REFUNDING AND IMPROVEMENT CERTIFICATES, SERIES 1978, OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, FOR THE PURPOSE OF PAYING THE COST OF CONSTRUCTION OR ACQUISITION OF ADDITIONS, EXTENSIONS AND IMPROVEMENTS TO ITS COMBINED UTILITIES SYSTEM, AND TO PROVIDE FOR THE REFUNDING OF CERTAIN OUTSTANDING OBLIGATIONS OF THE CITY OF NEW SMYRNA BEACH, FLORIDA AND SAID COMMISSION HERETOFORE ISSUED; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF SAID CERTIFICATES; PROVIDING FOR THE PAYMENT OF SAID CERTIFICATES; PROVIDING THE TERMS, CONDITIONS AND LIMITATIONS UPON WHICH SAID COMMISSION MAY ISSUE ADDITIONAL CERTIFICATES PAYABLE ON A PARITY WITH SAID CERTIFICATES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF SUCH CERTIFICATES.

BE IT RESOLVED BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to Chapter 67-1754, Laws of Florida, Special Acts of 1967, and other applicable provisions of law.

SECTION 2. DEFINITIONS. The following terms shall have the following meanings herein, unless the context otherwise expressly requires:


B. "Authorized Investments" means (i) direct obligations of the United States of America, (ii) obligations fully guaranteed by the United States, (iii) Certificates of Deposit or Repurchase Agreements continuously and fully secured by obligations described in clauses (i) or (ii) above or insured by the Federal Deposit Insurance Corporation, maturing not later than the dates on which such moneys will be needed for the purposes of the particular fund or account from which such investment is made, or (iv) such other obligations as are permitted by the applicable laws of the State of Florida.

C. "Additional Parity Certificates" shall mean certificates issued in compliance with the terms, conditions and limitations contained in subsection 16 Q hereof (including the authorized but unissued principal amount of Series 1978 Certificates issued subsequent to the initial issuance of Series 1978 Certificates authorized hereunder) which have an equal lien on the Net Revenues pledged to the Certificates and rank equally in all respects with the Series 1978 Certificates initially issued hereunder.

D. "Certificates" shall mean the Series 1978 Certificates and any Additional Parity Certificates hereafter issued under the terms, conditions and limitations contained herein.
F. "City" shall mean the City of New Smyrna Beach, Florida.

G. "Consulting Engineers" shall mean the qualified and recognized engineer or firm of engineers, having a nationwide and favorable repute for skill and experience in the planning, construction, operation, and economics of facilities similar to the System, at the time retained by the Commission to perform the acts and carry out the duties as herein provided for such consulting engineers.

H. "Cost of Operation and Maintenance" of the System shall mean the current expenses, paid or accrued, of operation, maintenance and repair of the facilities constituting the System, as determined in accordance with generally accepted accounting principles, but shall not include any payments of Demand Charge Debt Service Components, taxes or payments in lieu of taxes paid to the City, extraordinary repairs or any allowance for renewals, replacements or reserves therefor, and depreciation.

I. "Escrow Deposit Agreement" shall mean the escrow deposit agreement, dated as of the date of issuance of the Series 1978 Certificates, entered into by and between the Commission and a bank or trust company or national banking association, as trustee, to be hereafter designated by resolution of the Commission, in connection with the refunding of the Outstanding Obligations.

J. "Demand Charge Debt Service Component" shall mean that portion of any rates, fees, charges or payments which the Commission is contractually obligated to pay to another entity for purchase of electrical output for the specific purpose of meeting principal or interest or both on that entity's obligations directly associated with such purchase from a specific project(s) and payable to such entity whether or not such project(s) is completed, operable, operating, or retired, and notwithstanding the suspension, interruption, interference, reduction or curtailment of the electrical output contracted for in whole or in part for any reason whatsoever. Demand Charge Debt Service Components shall be excluded in calculating the Cost of Operation and Maintenance, but shall rank on a parity as to payment with Certificates provided the conditions and limitations for the issuance of Additional Parity Certificates are met at the time such Demand Charge Debt Service Components are incurred. Otherwise, Demand Charge Debt Service Components shall be subordinate to the Certificates.

K. "Fiscal Year" shall mean the period commencing on October 1 of each year and ending on the succeeding September 30, or such other annual period as may be prescribed by law.

L. "Revenues" shall mean (i) the gross revenues consisting of all moneys received by the Commission from rates and charges for the sale of services from the combined Utilities System and, (ii) all income or earnings, including any income from the investment of moneys held hereunder, unless otherwise provided herein, and any Special Assessments, any connection fees, any special charges or penalties, revenues from rentals of property, all as derived by the Commission from the operation of the System. Revenues shall not include the proceeds from the sale of certificates or bonds or other evidences of indebtedness, the proceeds of the sale of properties, grants from governmental agencies, contributions in aid of construction (other than connection fees), customer deposits or income from the investment of moneys deposited pursuant to the Escrow Deposit Agreement.
M. "Certificate Holder" or "Holder" shall mean any person who shall be the bearer or owner of any outstanding Certificate or Certificates registered to bearer, or not registered, or the registered owner of any such obligation or obligations which shall at the time be registered other than to bearer.

N. "Net Revenues" of the System shall mean the Revenues after deduction of the Cost of Operation and Maintenance as defined in subsection M above.

O. "Maximum Annual Debt Service" shall mean the largest amount required to be paid in any Fiscal Year for principal of serial Certificates, for mandatory amortization installments for term Certificates and for interest becoming due on the Certificates.

P. "Outstanding Obligations" shall mean collectively the following obligations of the City and the Commission outstanding as of July 1, 1978 in the principal amounts as set forth below:

(i) Waterworks and Electric Revenue Certificates, Series 1955 of the City of New Smyrna Beach, Florida, dated July 1, 1955, outstanding in the principal amount of $1,113,000 and maturing serially on January 1 in each of the years 1979-1993;

(ii) Waterworks and Electric Revenue Certificates, Series 1962 of the City of New Smyrna Beach, Florida, dated January 1, 1962, outstanding in the principal amount of $2,100,000 and maturing serially on January 1 in each of the years 1979-2000;

(iii) Waterworks and Electric Revenue and Refunding Certificates, Series 1962 of the City of New Smyrna Beach, Florida, dated July 1, 1962, outstanding in the principal amount of $633,000 and maturing serially on January 1 in each of the years 1979-1987 and on January 1 in the year 1999;

(iv) Sewer Revenue Certificates, Series S-1963 of the City of New Smyrna Beach, Florida, dated January 1, 1963, outstanding in the principal amount of $495,000 and maturing serially on January 1 in each of the years 1979-2002;

(v) Waterworks and Electric Revenue Certificates, Series 1965 of the City of New Smyrna Beach, Florida, dated July 1, 1965, outstanding in the principal amount of $2,150,000 and maturing serially on January 1 in each of the years 1979-2004;


(vii) Sewer Revenue Certificates, Issue of 1965, Series B, of the City of New Smyrna Beach, Florida, dated January 1, 1965, outstanding in the principal amount of $605,000 and maturing serially on January 1 in each of the years 1979-2003;

(viii) Utilities Revenue Certificates, Series 1975 of the Utilities Commission, City of New Smyrna Beach, Florida, dated January 1, 1975, outstanding in the principal amount of $2,970,000 and maturing serially on January 1 in each of the years 1979-2004;
ix) Utilities Revenue Certificates, Series 1975A of the Utilities Commission, City of New Smyrna Beach, Florida, dated July 1, 1975, outstanding in the principal amount of $4,000,000 and maturing serially on January 1 in the years 1979-2005;

x) Water and Sewer Revenue General Obligation Refunding Bonds, Series 1976 of the City of New Smyrna Beach, Florida, dated July 1, 1976, outstanding in the principal amount of $6,400,000 and maturing serially on July 1 in each of the years 1979-2001 and

(xi) Utilities Revenue Refunding Certificates, Series 1976 of the Utilities Commission, City of New Smyrna Beach, Florida, dated July 1, 1976, outstanding in the principal amount of $570,000 and maturing serially on January 1 in each of the years 1979-1986.

Q. "Project" shall mean the acquisition and construction of those extensions, additions and improvements to the System described in the report(s) prepared by the Consulting Engineers, copies of which are on file or to be on file in the office of the Commission, including, but not limited to, the construction and acquisition of a new electric step-down substation facility, conversion of electric facilities from 4 kV to 23 kV, major 23 kV electric circuits, raw water transmission main, raw water supply, finished water mains and storage facilities, sewage collection systems, and other miscellaneous extensions, additions, and improvements to the System.

R. "Series 1978 Certificates" means not exceeding $32,000,000 principal amount of Utilities System Revenue Refunding and Improvement Certificates, Series 1978, of the Commission herein authorized to be issued.

S. "Special Assessments" shall mean all the proceeds derived from any special assessments, to the extent they are lawfully levied and collected, against the lands and real estate specially benefited by the acquisition and construction of a portion of any project heretofore financed by the issuance of the Outstanding Obligations or hereafter financed by Certificates issued hereunder. Such terms shall include the interest on such special assessments and any penalties or moneys received upon the foreclosure of the liens of such special assessments.

T. "Special Obligation Certificates" means not exceeding $25,000,000 principal amount of Special Obligation Certificates, Series 1978 of the Commission, to be issued simultaneously with the Series 1978 Certificates and which are to be issued to provide a portion of the funds needed to refund the Outstanding Obligations.

U. "System" shall mean the combined water system, sanitary sewer system, and electric system of the City, under the management, operation and control of the Commission, and as hereafter constructed or acquired, including the improvements, extensions, additions and betterments thereto to be constructed or acquired (whether from the proceeds of the Certificates or from any other sources), together with all lands or interest therein, including plants, buildings, machinery, franchises, pipes, mains, fixtures, equipment and all property, real or personal, tangible or intangible, now or hereafter owned or used in connection therewith.
W. "Resolution" or "this Resolution" shall mean this Resolution No. 28-78 of the Utilities Commission of the City of New Smyrna Beach, Florida.

Words imparting singular number shall include the plural number in each case and vice versa, and words imparting persons shall include firms and corporations.

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

A. The Commission now operates, maintains and controls the System, which is a combined municipal system for the supply and distribution of water and electricity and the collection, treatment and disposal of sewage within and without the City. The Commission, pursuant to Chapter 67-1754, Laws of Florida, Special Acts of 1967, was created and established to operate, maintain and control the System, as a part of the City of New Smyrna Beach, Florida and has full and complete control and jurisdiction over the System.

B. It is necessary for the protection of the health, safety and welfare of the users of the System that the System be improved by the construction or acquisition of additions, extensions and improvements thereto, including the construction and acquisition of the facilities constituting the Project.

C. The Commission and the City have heretofore issued and have now outstanding and unpaid the Outstanding Obligations, all of which were issued to finance or refinance various portions of the System.

D. The Revenues derived from the operation of the System are not pledged or encumbered in any manner except for the payment of the principal of and interest on the Outstanding Obligations.

E. The Commission deems it necessary and in the best interest of the Commission and the City to provide for the payment of the costs of construction or acquisition of the Project and the refunding of the Outstanding Obligations, all in the manner as provided by this Resolution.

F. For the payment and refunding of the Outstanding Obligations the Commission shall, as provided herein, irrevocably deposit part of the proceeds derived from the sale of the Series 1978 Certificates pursuant to the Escrow Deposit Agreement together with the proceeds derived from the sale of the Special Obligation Certificates to be authorized by the Commission and issued simultaneously with the Series 1978 Certificates, which shall be sufficient, at the time of such deposit, to provide for the payment of the Outstanding Obligations as the same shall become due and payable or are redeemed as provided in the proceedings which authorized the Outstanding Obligations, all as provided in this Resolution.

G. The estimated Revenues to be derived in each year hereafter from the operation of the System will be sufficient to pay all Costs of Operation and Maintenance of the System, the principal of and interest on the Series 1978 Certificates to be issued pursuant to this Resolution, as the same become due, and all sinking fund, reserve and other payments provided for in this Resolution.
H. The principal of and interest on the Certificates to be issued pursuant to this Resolution, and all the reserve, sinking fund and other payments provided for in this Resolution, will be paid solely from the Net Revenues derived from the operation of the System. Neither the City nor the Commission shall ever be compelled to exercise the ad valorem taxing power of the City or the power of taxation of real property in the City, or the application of any funds of the Commission (other than those herein provided) to pay the principal of and interest on the Certificates to be issued pursuant to this Resolution, or to make any of the reserve, sinking fund or other payments provided for in this Resolution, and the Certificates issued pursuant to this Resolution shall not constitute a general obligation debt of the Commission or the City or be a lien upon the System or upon any other property whatsoever of the Commission or of the City, except the Revenues and any other special funds pledged for the payment thereof.

I. The cost of the Project is estimated not to exceed $8,200,000 and such cost and the cost of providing for the refunding of the Outstanding Obligations shall be deemed to include, but not be limited to, the cost of construction of the Project and the placing of the same in operation; the cost of any lands or real estate, including easements or other interests therein, or any other property, real or personal, necessary therefor; capitalized interest on that portion of the Series 1978 Certificates issued to pay the cost of the Project, to the extent permitted by law; administrative expenses; capitalization of all or part of the reserve or other funds created and established pursuant to this Resolution; the amount of discount on the sale of the Series 1978 Certificates, if any; engineering and legal expenses; expenses for fiscal agents or financial services; expenses for estimates of costs and of revenues; premiums, if any, for the insurance of the payment of the principal of and interest on the Series 1978 Certificates; and all expenses as may be deemed necessary or incidental to the payment or refunding of the Outstanding Obligations and incurred by the Commission in connection with the issuance of the Series 1978 Certificates.

J. The Certificates authorized to be issued by this Resolution may be issued at one time or from time to time as determined by the Commission; provided, however, that a sufficient amount of Series 1978 Certificates authorized by this Resolution shall be issued simultaneously with the Special Obligation Certificates in order to provide a sufficient amount of certificate proceeds to provide for the refunding of the Outstanding Obligations in the manner provided in this Resolution.

SECTION 4. AUTHORIZATION OF CONSTRUCTION AND ACQUISITION OF PROJECT AND THE REFUNDING OF OUTSTANDING OBLIGATIONS. There is hereby authorized (i) the construction and acquisition of the Project pursuant to the plans and specifications as described in the report(s) of the Consulting Engineers currently on file or to be on file with the Commission, and (ii) the refunding of the Outstanding Obligations, all in the manner as provided by this Resolution.

SECTION 5. RESOLUTION TO CONSTITUTE CONTRACT. In consideration of the acceptance of the Certificates authorized to be issued hereunder by those who shall hold the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the Commission and such Certificate Holders, and the covenants and agreements set forth to be performed by the Commission shall be for the equal benefit, protection and security of all the
Certificate Holders, and the coupons attached thereto, all of which shall be of equal rank without preference, priority or distinction of any of the Certificates or coupons over any other thereof except as expressly provided therein and herein.

SECTION 6. AUTHORIZATION OF THE SERIES 1978 CERTIFICATES. Subject and pursuant to the provisions hereof, revenue certificates of the Commission to be known as "Utilities System Refunding and Improvement Certificates, Series 1978", are authorized to be issued in the aggregate principal amount of not exceeding Thirty-two Million Dollars ($32,000,000).

SECTION 7. DESCRIPTION OF CERTIFICATES. The Certificates shall be in the denomination of $5,000 each; and shall be dated; shall bear interest from the date thereof at such rate or rates per annum at not exceeding the maximum rate or rates permitted by law, payable at such time and at such place or places within or without the State of Florida; and shall mature annually or semi-annually in each years and in such amounts, all as provided for by subsequent resolution of the Commission.

The Series 1978 Certificates shall be issued in coupon form; shall be payable to bearer unless registered as hereinafter provided; shall be payable with respect to both principal and interest at such bank or banks to be subsequently determined by the Commission prior to their delivery and shall be payable in lawful money of the United States of America.

SECTION 8. EXECUTION OF CERTIFICATES AND COUPONS. The Certificates shall be executed in the name of the Commission by the Chairman of the Commission and countersigned and attested by the Secretary of the Commission, and its corporate seal or a facsimile thereof shall be affixed thereto or reproduced thereon. The facsimile signatures of the Chairman of the Secretary may be imprinted or reproduced on the Certificates, provided that at least one signature required to be placed thereon shall be manually subscribed. In case any officer whose signature shall appear on any of the Certificates shall cease to be such officer before the delivery of such Certificates, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Any Certificates may be signed and sealed on behalf of the Commission by such person who at the actual time of the execution of such Certificates shall hold the proper office with the Commission, although at the date of such Certificates such person may not have held such office or may not have been so authorized.

The coupons attached to the Certificates shall be authenticated with the facsimile signatures of any present or future Chairman and Secretary of the Commission, and the validation certificate on the Certificates shall be executed with the facsimile signature of the Chairman. The Commission may adopt and use for such purpose the facsimile signatures of any person who shall have been such Chairman or Secretary at any time on or after the date of the Certificates notwithstanding that he may have ceased to be such officer at the time such Certificates shall be actually delivered.

SECTION 9. NEGOTIABILITY AND REGISTRATION. The Certificates issued hereunder shall have all the qualities and incidents of investment securities under the Uniform Commercial Code—Investment Securities Law of the State of Florida, and each successive Holder, in accepting any of such Certificates or
the coupons appertaining thereto, shall be conclusively deemed to have agreed
that such Certificates have all the qualities and incidents of investment
securities under the Uniform Commercial Code—Investment Securities Law of the
State of Florida.

The Certificates may be registered at the option of the Holder as to
principal only at the office of the Secretary of the Commission, as Registrar,
or such other Registrar as may be hereafter duly appointed, such registration
to be noted on the back of the Certificates in the space provided therefor.
After such registration as to principal only, no transfer of the Certificates
shall be effective unless made at such office by written assignment of the
registered owner, or by his duly authorized attorney in a form satisfactory to
the Registrar, and similarly noted on the Certificates, but the Certificates
may be discharged from registration by being in like manner transferred to
bearer and thereupon transferability by delivery shall be restored. At the
option of the Holder, the Certificates may thereafter again from time to time
be registered or transferred to bearer as before. Such registration as to
principal only shall not affect the negotiability of the coupons which shall
continue to pass by delivery.

SECTION 10. CERTIFICATES MUTILATED, DESTROYED, STOLEN OR LOST. In case
any Certificate shall become mutilated, or be destroyed, stolen or lost, the
Commission may in its discretion issue and deliver a new Certificate with all
unmatured coupons attached, if any, of like tenor as the Certificate and at-
tached coupons, if any, so mutilated, destroyed, stolen or lost, in exchange
and substitution for such mutilated Certificate, upon surrender and cancella-
tion of such mutilated Certificate and attached coupons, if any, or in lieu of
any substitution for the Certificate and attached coupons, if any, destroyed,
stolen or lost and upon the Holder furnishing the Commission proof of his own-
ership thereof and satisfactory indemnity and complying with such other rea-
sonable regulations and conditions as the Commission may prescribe and paying
such expenses as the Commission may incur. All Certificates and coupons so
surrendered shall be cancelled by the Secretary of the Commission. If any
such Certificate or coupon shall have matured or be about to mature, instead
of issuing a substitute Certificate or coupon, the Commission may pay the
same, upon being indemnified as aforesaid, and if such Certificate or coupon
be lost, stolen or destroyed, without surrender thereof.

All such duplicate Certificates and coupons issued pursuant to this
section shall constitute original, additional contractual obligations on the
part of the Commission whether or not the lost, stolen or destroyed Certifi-
cates or coupons be at any time found by anyone, and such duplicate Certifi-
cates and coupons shall be entitled to equal and proportionate benefits and
rights as to lien on and source and security for payment from the funds, as
hereinafter pledged to the same extent as all other Certificates and coupons
issued hereunder.

SECTION 11. PROVISIONS FOR REDEMPTION. Certificates may be redeemed
prior to their stated dates of maturity, either in whole or in part, at such
time or times and upon such terms and at such prices as shall be determined by
resolution of the Commission adopted prior to or contemporaneously with the
sale of the Certificates. The Commission shall provide in the resolution
adopted as required by the first sentence of this Section for due and proper
notice of the redemption of any Certificates.
SECTION 12. FORM OF CERTIFICATE AND COUPON. The Certificates, the interest coupons to be attached thereto, and the certificate of validation thereto shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and which are herein authorized or permitted by this Resolution or in any subsequent resolution adopted prior to the issuance thereof:

No.  $5,000

UNITED STATES OF AMERICA
STATE OF FLORIDA
UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH
UTILITIES SYSTEM REVENUE
REFUNDING AND IMPROVEMENT CERTIFICATE
SERIES ________

The Utilities Commission, City of New Smyrna Beach, Florida (hereinafter called the "Commission"), for value received, hereby promises to pay to the bearer, or if this Certificate be registered, to the registered holder as herein provided, on the first day of __________, but solely from the special funds hereinafter mentioned and not otherwise, the principal sum of FIVE THOUSAND DOLLARS

and to pay interest thereon but solely from such special funds and not otherwise, at the rate of __________ per centum (___%) per annum from the date hereof until payment of the principal sum, such interest to the maturity thereof being payable on __________ and __________ in each year thereafter, upon the presentation and surrender of the annexed coupons as they severally fall due. Both principal and interest on this Certificate are payable in lawful money of the United States of America at the principal office of __________, or, at the option of the holder, at the principal office of __________.

This Certificate is one of an authorized series of Certificates in the aggregate principal amount of $____________ of like date, tenor and effect, except as to number, interest rate and date of maturity, issued to pay the cost of the construction and acquisition of extensions, additions and improvements to the combined water, sewer and electric systems of the City of New Smyrna Beach, Florida (hereinafter called "System"), and, together with the proceeds of $____________ Special Obligation Certificates, Series 1978, issued by the Commission simultaneously with Certificates of the series of which this Certificate is one, to provide for the refunding of certain outstanding obligations of the Commission and the City of New Smyrna Beach, Florida, under the authority of and in full compliance with the Constitution and laws of the State of Florida, including particularly Chapter 67-1754, Laws of Florida, Special Acts of 1967, and other applicable provisions of law, and a resolution duly adopted by the Commission on the __________ day of __________, 1978, (hereinafter called "Resolution"), and is subject to all the terms and conditions of such Resolution.

This Certificate and the coupons appertaining thereto are payable solely from and secured by a first lien upon and pledge of the net revenues derived by the Commission from the operation of the System, all in the manner and to the extent provided in the Resolution. Reference is hereby made to the Resolution, to all of the provisions of which any holder of this Certificate by his acceptance hereof hereby assents, for definitions of terms; a description of the net revenues of the Commission pledged to the payment of the interest on and principal of this Certificate and the nature and extent and manner of enforcement of such pledge; the covenants of the Commission as
to the fixing, establishing and maintaining of such rates and collecting of such fees, rentals and other charges for the System and revising the same from time to time as necessary to produce net revenues in satisfaction of such pledge; the conditions upon which other certificates may hereafter be issued under the Resolution payable on a parity with this Certificate from said net revenues and equally and ratably secured herewith; the conditions upon which the Resolution may be amended and supplemented with or without the consent of the holders of the Certificates, the rights and remedies of the holder hereof with respect thereto; the rights, duties and obligations of the Commission; the terms and provisions upon which the liens, pledges, charges, and covenants of the Commission made in the Resolution may be discharged at or prior to the maturity of this Certificate thereafter shall no longer be secured by the Resolution or be deemed to be outstanding thereunder, when moneys or certain specified securities sufficient to pay the principal hereof, and interest hereon to the maturity hereof, shall be held by a trustee for such purpose; and for the other terms and provisions thereof.

(Insert Redemption Provision and Notice of Redemption Provision)

This Certificate does not constitute a general indebtedness of the Commission or the City of New Smyrna Beach, Florida (the "City"), within the meaning of any constitutional, statutory or charter provision or limitation and it is expressly agreed by the holder of this Certificate and the coupons appertaining thereto that such holder shall never have the right to require or compel the exercise of the ad valorem taxing power of the City, or the taxation of real property in the City or the application of any other funds of the Commission or the City, for the payment of the principal of and interest on this Certificate or the making of any sinking fund, reserve, or other payments provided for in the Resolution.

This Certificate and the obligation evidenced thereby shall not constitute a lien upon the System, or any part thereof, or on any other property of the Commission or the City, but shall constitute a lien only on the net revenues derived from the operation of the System, all in the manner provided in the Resolution.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Certificate, exist, have happened and have been performed in regular and due form and time as required by the Constitution and laws of the State of Florida applicable thereto, and that the issuance of the Certificates of this issue does not violate any constitutional or statutory limitation or provision.

This Certificate and the coupons appertaining thereto shall have all the qualities and incidents of investment securities under the Uniform Commercial Code — Investment Securities Law of the State of Florida.

This Certificate may be registered as to principal only in accordance with the provisions endorsed hereon.

IN WITNESS WHEREOF, the Utilities Commission, City of New Smyrna Beach, Florida, for and on behalf of the City of New Smyrna Beach, Florida, has issued this Certificate and has caused the same to be executed by its Chairman and attested and countersigned by its Secretary, either manually or with their facsimile signatures, and the seal of the Commission or a facsimile thereof to be affixed, impressed, imprinted, lithographed or reproduced hereon and the interest coupons hereto attached to be executed with the facsimile signatures of such officer of the Commission all as of the day of 1978.
FORM OF COUPON

On the first day of __________, ____, unless the Certificate hereinafter mentioned shall have theretofor been duly called for previous redemption and payment of the redemption price duly made or provided for, the Utilities Commission, will pay to the bearer at the principal office of __________ or, at the option of the holder, at the principal office of __________, but solely from the special funds mentioned in said Certificate and not otherwise, the amount shown hereon, in lawful money of the United States of America, upon presentation and surrender of this coupon, being interest then due on its Utilities System Revenue Refunding and Improvement Certificates, Series 1978, __________, __________, 1978, No. __________.

UTILITY COMMISSION, CITY OF
NEW SMYRNA BEACH, FLORIDA

Chairman

(SEAL)
ATTESTED AND COUNTERSIGNED

Secretary

VALIDATION CERTIFICATE

This Certificate is one of the series of Certificates which were validated and confirmed by judgment of the Circuit Court of Volusia County, Florida, rendered on the __ day of ____________, 1978.
PROVISION FOR REGISTRATION

This Certificate may be registered as to principal only in the name of the holder on the books to be kept by the Secretary of the Commission as Registrar, or such other Registrar as may be hereafter duly appointed, such registration being noted hereon by such Registrar in the registration blank below, after which no transfer shall be effective unless made by written assignment on said books by the registered holder or attorney duly authorized and similarly noted in the registration blank below, but it may be discharged from registration by being transferred to bearer, after which it shall be transferable by delivery, but it may be again registered as before. Such registration shall not restrain the negotiability of the coupons by delivery.

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Chairman

UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA
SECTION 13. CERTIFICATES NOT DEBT OF CITY OR COMMISSION. Neither the Certificates nor coupons appertaining thereto shall be or constitute general obligations or indebtedness of the Commission or the City as "bonds" within the meaning of the Constitution of Florida, but shall be payable solely from and secured by a lien upon and a pledge of the special funds as herein provided. No Holder or Holders of any Certificates issued hereunder or of any coupons appertaining thereto shall ever have the right to compel the exercise of the ad valorem taxing power of the City or taxation in any form of any real property therein to pay such Certificates or the interest thereon or be entitled to payment of such principal and interest from any other funds of the Commission or the City except from the special funds in the manner provided herein.

SECTION 14. PLEDGE OF NET REVENUES. The payment of the principal of and interest on the Certificates shall be secured forthwith equally and ratably by a first lien on and pledge of the Net Revenues. The Commission hereby pledges the Net Revenues to the payment of the principal of and interest on the Certificates, for the reserves therefor and for all other required payments.

SECTION 15. APPLICATION OF CERTIFICATE PROCEEDS OF THE SERIES 1978 CERTIFICATES. All moneys received by the Commission from the sale of the Series 1978 Certificates originally authorized and issued pursuant to this Resolution shall be disbursed as follows:

A. The accrued interest derived from the sale of the Series 1978 Certificates shall be deposited in the Sinking Fund hereinafter established and used for the purpose of paying the interest becoming due and payable on the Series 1978 Certificates on their next interest payment date.

B. A sufficient amount of the proceeds of the Series 1978 Certificates shall be deposited in the Debt Service Reserve Fund hereinafter established which, together with all the moneys and securities on deposit in debt service reserve accounts created pursuant to the proceedings which authorized the issuance of the Outstanding Obligations, (which shall be transferred to the Debt Service Reserve Fund), shall be equal to the Maximum Annual Debt Service.

C. A sufficient amount of the proceeds of the Series 1978 Certificates shall be applied to payment of all costs and expenses in connection with the preparation, issuance and delivery of the Series 1978 Certificates, as more fully described in Section 31 hereof, to the extent such costs and expenses shall not be paid or reimbursement made therefor by the original purchasers of the Series 1978 Certificates.

D. A sufficient amount of the proceeds of the Series 1978 Certificates, together with the proceeds derived from the sale of the Special Obligation Certificates which shall be issued simultaneously with the Series 1978 Certificates, shall be deposited irrevocably in trust in the Escrow Deposit Trust Fund under the terms and provisions of the Escrow Deposit Agreement sufficient to pay the principal of, redemption premium, if any, and interest on the Outstanding Obligations as the same shall become due and payable or are redeemed as provided in the proceedings which authorized the Outstanding Obligations. Such moneys shall be invested in U.S. Obligations in the manner set forth in the Escrow Deposit Agreement, which investments shall mature at such times and in such amounts as shall be sufficient to pay the principal of and interest on the Outstanding Obligations as the same mature and become due and payable or are redeemed as provided in the proceedings which authorized the Outstanding Obligations. Such investments shall further provide sufficient income and earnings to pay the principal of and interest on the Special Obligation Certificates as the same mature and become due and payable in the manner provided in the Resolution which authorized their issuance and in the Escrow Deposit Agreement.
E. The balance of the Series 1978 Certificate proceeds shall be deposited in a "Construction Fund" in a bank or trust company which is eligible under the laws of the State of Florida to receive deposits of state and municipal funds, which fund is hereby established. No withdrawals shall be made from the Construction Fund except pursuant to a written requisition approved by the Consulting Engineers and filed with the chief financial officer of the System, specifying the purpose for which such withdrawal is to be made and certifying that such purpose is one of the purposes provided for in this Resolution; provided, however, that no such written approval shall be required for legal, financial and engineering expenses and fees in connection with the construction of the Project or the payment of capitalized interest, if any. If for any reason the moneys in said Fund, or any part thereof, are not necessary for, or are not applied to the purpose provided in this Resolution, then such unapplied proceeds shall be deposited, upon certification of the Consulting Engineers that such unapplied proceeds are not needed for the purposes of the Construction Fund, shall be deposited into the Renewal and Replacement Fund.

The moneys deposited in the Construction Fund may, pending their use for the purposes provided in this Resolution, be temporarily invested in Authorized Investments. All the income and earnings from such investment and reinvestment shall remain in and become a part of the Construction Fund and be used for the purposes of the Construction Fund.

Any moneys received by the Commission from the State of Florida or from the United States of America or any agencies thereof for the purpose of financing part of the cost of the additions, extensions and improvements to the System authorized herein, shall be deposited in the Construction Fund and used in the same manner as Certificate proceeds are used therein; provided, however, that separate accounts may be established in the Construction Fund for moneys received pursuant to the provisions of this paragraph whenever required by Federal or State regulations.

All the proceeds of the sale of the Certificates shall be and constitute trust funds for the purposes hereinabove provided and there is hereby created a lien upon such moneys, until so applied, in favor of the Holder of said Certificates.

SECTION 16. COVENANTS OF THE COMMISSION. Until the Certificates shall be discharged and satisfied as provided in Section 18, the Commission covenants with the Holders of any and all Certificates as follows:

A. ARBITRAGE COVENANT. The Commission will not direct the investment of the proceeds of the Certificates in a manner which would cause the Certificates to be "arbitrage bonds" as defined in Section 103(c) of the Internal Revenue Code of 1954, as amended, or the regulations thereunder, proposed or in effect, and applicable to the Certificates.

B. UTILITIES SYSTEM REVENUE FUND. The Revenues derived from the operation of the System, shall be deposited in a special fund in a bank or trust company which is eligible under the laws of the State of Florida to receive deposits of state and municipal funds, which fund is hereby established as the "Utilities System Revenue Fund" (hereinafter referred to as the "Revenue Fund"). The Revenue Fund shall constitute a trust fund for the purposes provided in this Resolution and shall for the purposes of an accounting be kept separate and distinct from all other funds of the Commission and used only for the purposes and in the manner provided for in Section 16 D hereof.
C. OPERATION AND MAINTENANCE. That it will maintain in good condition the System and all parts thereof, and will operate the same in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof.

D. DISPOSITION OF FUNDS. All moneys in the Revenue Fund shall be disposed of each month, commencing in the month immediately following the delivery of the Certificates, only in the following manner and in the following order of priority:

(1) To the "Operation and Maintenance Fund", which is hereby established, such sums as are necessary to pay the current Cost of Operation and Maintenance as such costs become due.

(2) To the "Sinking Fund" which is hereby established, such sums as will be sufficient to pay one-sixth (1/6) of all interest becoming due on Certificates on the next interest payment date and, in the event Certificates shall mature semi-annually commencing on the fifteenth (15th) day of the first month which is six (6) months prior to the first principal payment date of such Certificates to pay one-sixth (1/6) or, in the event Certificates shall mature annually, commencing on the fifteenth (15th) day of the first month which is twelve (12) months prior to the first principal payment date of such Certificates to pay one-twelfth (1/12), of all principal maturing on Certificates on the next maturity date. Such monthly payments shall be reduced proportionately after making allowance for the amounts of money, if any, deposited into the Sinking Fund from the proceeds of the sale of Certificates, or on deposit in the Sinking Fund and not required for the purposes of said Fund.

(3) To the "Redemption Fund" (and on a parity with the payments required by (2) above), in the event the mandatory amortization installments shall be payable semi-annually commencing on the fifteenth (15th) day of the first month which is six (6) months prior to the due date of the first mandatory amortization installment, such sums as will be necessary to pay one-sixth (1/6) or, in the event the mandatory amortization installments shall be payable annually commencing on the fifteenth (15th) day of the first month which is twelve (12) months prior to the due date of any mandatory amortization installment such sums as will be necessary to pay one-twelfth (1/12), of the amount of such mandatory amortization installment which shall become due and payable on any Term Certificates, as hereinafter defined, on such due date outstanding. For the purposes of this Resolution "mandatory amortization installment" shall mean an amount so designated which is established for the Term Certificates of any series of Certificates, provided that (i) each such installment shall be deemed to be due as subsequently determined of each applicable year and shall be in a multiple of $5,000, and (ii) the aggregate of such installments for such series shall equal the aggregate principal amount of Term Certificates of such series delivered upon original issuance. As used herein, "Term Certificates" shall mean any Certificates for the payment of the principal of which fixed Redemption Fund deposits are required to be made in years prior to the stated date of maturity of such Term Certificates, and which fixed Redemption Fund deposits in such years will be, in the aggregate, at least equal to the principal amount of such Term Certificates on the stated date of maturity thereof.
(4) To a fund to be designated by the Commission (and on a parity with the payments required by (2) and (3) above) revenues which shall simultaneously be applied to the payment of the monthly payment of Demand Charge Debt Service Components coming due, if any.

(5) To the Debt Service Reserve Fund (herein called "Reserve Fund"), which Reserve Fund is hereby established, such sums as shall be sufficient to pay an amount equal to one-twelfth of twenty percent (1/12 of 20%) of the initial difference, if any, between the Maximum Annual Debt Service and the amount on deposit in the Reserve Fund following the issuance of the Series 1978 Certificates or Additional Parity Certificates as the case may be; provided, however, that no payments shall be required to be made into the Reserve Fund whenever and so long as the amount deposited therein is equal to the Maximum Annual Debt Service. In the event moneys are withdrawn from the Reserve Fund, the amount so withdrawn shall be restored to said Fund in monthly installments in an amount equal to one-twelfth of twenty percent (1/12 of 20%) of the amount withdrawn.

Moneys in the Reserve Fund shall be used only for the purpose of the payment of maturing principal of, mandatory amortization installments of, if any, or interest on the Certificates when the moneys in the Sinking Fund and Redemption Fund shall be insufficient therefor, and for no other purpose; provided, however, that moneys in the Reserve Fund in excess of the amount required to be on deposit therein, in the discretion of the Commission, may be transferred to the Renewal and Replacement Fund and used as provided herein for said Fund.

(6) Upon the issuance by the Commission of any Additional Parity Certificates, the resolution authorizing the issuance of such Additional Parity Certificates shall provide (i) that payments into the Sinking Fund and the Redemption Fund shall be increased in such amounts as are necessary to make the payments required above for the principal of, mandatory amortization installments of, interest on and reserves for such Additional Parity Certificates on the same basis as heretofore provided with respect to the Series 1978 Certificates herein authorized, and (ii) that the sum required to be accumulated and maintained on deposit in the Reserve Fund shall at least equal an amount which, when added to the amount currently on deposit in the Reserve Fund for the Certificates theretofore issued, will equal the Maximum Annual Debt Service on all outstanding Certificates and the proposed Additional Parity Certificates becoming due in any current or ensuing Fiscal Year, as defined above. Any sum required pursuant to (ii) above may be paid in full, from the proceeds of such Additional Parity Certificates or accumulated as in paragraph (5) above or a combination thereof as provided in the resolution authorizing the issuance of such Additional Parity Certificates.

(7) To the payment of current debt service of any certificates or other obligations of the Commission issued to finance the cost of additions, acquisitions, extensions and improvements to the System which are junior and subordinate to the lien of the Certificates on the Revenues of the System.
(8) To the "Renewal and Replacement Fund", which fund is hereby established, an amount equal to one-twelfth (1/12) of not less than eight percent (8%) of the gross revenues consisting of all moneys received by the Commission for rates and charges for the sale of services from the combined System, for the second preceding Fiscal Year, after deducting from such gross revenues a sum equal to one hundred percent (100%) of the fuel expense and one hundred percent (100%) of the purchased power expenses incurred by the electric system during such Fiscal Year. The moneys in the Renewal and Replacement Fund shall be used (i) to pay the cost of extensions, enlargements or additions to, or the replacement of capital assets of the System, emergency repairs thereto, and, if necessary, operating expenses, (ii) to supplement the Reserve Fund, if necessary, in order to prevent a default in the payment of the principal of and interest on the Certificates, and (iii) if not needed for the above-stated purposes, such moneys may also be used for any lawful purpose, including the purchase or prior redemption of Certificates and the acquisition of additional facilities to be combined with the System.

The balance of any moneys remaining in the Revenue Fund after the above required payments have been made, may be deposited into the Renewal and Replacement Fund or, at the option of the Commission, used by the Commission for any lawful purpose.

The Operation and Maintenance Fund, the Sinking Fund, the Redemption Fund, the Reserve Fund, the Renewal and Replacement Fund, the Revenue Fund, and any other special funds herein established shall constitute trust funds for the purposes provided herein for such funds and shall be held and administered by the Commission. All such funds shall be continuously secured in the manner by which the deposit of public funds are authorized to be secured by the laws of the State of Florida or invested and reinvested in Authorized Investments maturing, in the case of moneys in the Sinking Fund and in the Redemption Fund, not later than the date on which the moneys therein will be needed; in the case of moneys in the Reserve Fund, not later than twenty-five (25) years from the date of investment; in the case of moneys in the Renewal and Replacement Fund, not later than twenty-five (25) years from the date of investment; and, in the case of moneys in the Revenue Fund and Operation and Maintenance Fund, not later than the date such moneys are needed for the purposes of such Funds. Any and all income received by the Commission from such investments as above described shall be deposited into the Revenue Fund.

E. RATE COVENANT. The Commission will fix, establish and maintain such rates and will collect such fees, rentals or other charges for the services of the System and revise the same from time to time, whenever necessary, as will always provide Revenues in each Fiscal Year, sufficient to pay one hundred percent (100%) of the Cost of Operation and Maintenance of the System, one hundred twenty-five percent (125%) of the amount required to be paid for principal of serial Certificates and for mandatory amortization payments for term Certificates and for interest becoming due on the Certificates and one hundred twenty-five percent (125%) of all parity Demand Charge Debt Service Components.
becoming due, plus one hundred percent (100%) of all reserve or other payments herein required. Such rates, fees, rentals or other charges shall not be reduced so as to be insufficient to provide Revenues for such purposes.

F. BOOKS AND RECORDS. The Commission shall also keep or cause to be kept books and records for the System which such books and records shall be kept separate and apart from all other books, records and accounts of the City and any Holder of the Certificates shall have the right at all reasonable times to inspect all records, accounts and data of the Commission and the City relating thereto.

G. ANNUAL AUDIT. The Commission shall, within ninety (90) days after the close of the Fiscal Year, cause the books and records relating to the System to be properly audited by a nationally recognized independent Certified Public Accountant. Such audits shall contain a complete report of operations of the System including, but not limited to, a comparison with the current budget and with the operations of the previous year, the balance sheet, a schedule of insurance in existence, a schedule of the application of all revenues of the System, a schedule of reserves and investments and income therefrom, and a certificate by the auditors stating whether the Commission is in default with respect to any covenant herein has been disclosed by reason of such audit. The auditors selected may be changed at any time by a written request signed by the Holders of a majority of the Certificates or their duly authorized representatives. A copy of such annual audit shall regularly be furnished to any Holder of any Certificates who shall have requested in writing that a copy be furnished him.

H. NO MORTGAGE OR SALE OF THE SYSTEM. The Commission will not sell, mortgage, pledge or otherwise encumber the System or any part thereof, of any revenues to be derived therefrom and will not sell, or otherwise dispose of any portion of the System except as herein provided:

a. If the original cost of such property to be sold, leased or otherwise disposed of in any Fiscal Year shall not be in excess of one-half (1/2) of one percent (1%) of the value of the gross plant investment of the System at original cost as shown in the most recent annual audit, the authorized officer in charge of the System before such sale shall make a finding in writing determining that such property comprising a part of such System is no longer necessary, useful or profitable in the operation thereof.

b. If the original cost of such property is in excess of one-half of one percent (1/2 of 1%) of the value of the gross plant investment of the System at original cost as shown in the most recent annual audit, the authorized officer in charge of the System and the Consulting Engineers before such sale shall each make a finding in writing determining that such property comprising a part of such System is no longer necessary, useful or profitable in the operation thereof, and shall further find that such sale, lease or other disposition of such property will not adversely affect the Revenues or the operation of the System to such an extent that the Commission will fail to comply with the covenants of this Resolution, and the Commission shall, by resolution duly adopted, approve and concur in the finding of such authorized officer and the Consulting Engineers.
The proceeds received, if any, from the sale, lease or disposition of any such property shall be deposited in the Renewal and Replacement Fund.

I. INSURANCE. The Commission will carry adequate fire and windstorm insurance on all buildings and structures and facilities of the System which are subject to loss through fire or windstorm, will carry adequate public liability insurance, and will otherwise carry insurance of all kinds and in the amounts normally carried in the operation of facilities and properties of similar size and character.

The proceeds of all insurance shall be available for and shall, to the extent necessary, be applied to the repair, replacement or reconstruction of the damaged or destroyed property. If such proceeds are more than sufficient for such purpose, the balance remaining shall be deposited to the credit of the Renewal and Replacement Fund. If such proceeds shall be insufficient for such purpose, the deficiency may be supplied out of any moneys in the Renewal and Replacement Fund or any other moneys available therefor.

All insurance policies shall be open to the inspection of the Certificate Holders and their representatives at all reasonable times.

Nothing in this section shall prohibit the Commission from instituting and maintaining self-insurance programs with regard to such risks as shall be consistent with the recommendations of a qualified insurance consultant.

J. NO FREE SERVICE. The Commission will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; the Commission and the City, including its departments, agencies and instrumentalities, shall use the services provided by the System, or any part thereof, and the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged to the Commission and the City and any such department, agency or instrumentality. Such charges shall be paid as they become due. The revenues so received shall be deemed to be Revenues-derived from the operation of the System, and shall be deposited and accounted for in the same manner as other Revenues derived from such operation of the System.

K. ENFORCEMENT OF COLLECTIONS. The Commission will diligently enforce and collect all fees, rates or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rates or other charges which shall become delinquent to the full extent permitted or authorized by the laws of the State of Florida; and that the Commission will, under reasonable rules and regulations, discontinue and shut off the supply of services and facilities of said System for nonpayment of such fees, rates or charges, and will not restore such services and facilities of said System until all such delinquent charges, with reasonable penalties and charges for restoration of service, have been paid in full.
L. REMEDIES. Any Holder of Certificates or any coupons appertaining thereto issued under the provisions hereof or any trustee acting for the Holders of such Certificates may by suit, action, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights, including the right to the appointment of a receiver, existing under the laws of the State of Florida, or granted and contained herein, and may enforce and compel the performance of all duties herein required or by any applicable statutes to be performed by the Commission or by any officer thereof.

Nothing herein, however, shall be construed to grant to any Holder of the Certificates any lien on any real property of the Commission or the City.

M. OPERATING BUDGET. The Commission shall annually prepare and adopt by proper proceedings of its governing body a detailed budget of the estimated expenditures for operation and maintenance of the System and the estimated Revenues of the System during the succeeding Fiscal Year. During that Fiscal Year the Commission shall cause to be prepared, for each month, a detailed report in which actual expenditures are compared with budget amounts and actual revenues with estimated revenues. The Commission shall review these reports, examine variances, and institute appropriate corrective action if they determine such variances are contrary to prudent utility management. The Commission shall mail copies of such annual budget to any Holder or Holders of Certificates who shall file his address with the Commission and request in writing that copies of all such budgets be furnished him or them, and shall make available such budgets and budget comparisons for operation and maintenance of the System at all reasonable times to any Holder or Holders of Certificates issued pursuant to this Resolution.

N. CONSULTING ENGINEERS. The Commission will annually retain an independent consulting engineer or engineering firm having a nationwide and favorable reputation for skill and experience for the planning, design, construction, operation and economics of facilities of comparable size and character as the System, for the purpose of providing the Commission competent engineering counsel affecting the economical and efficient operation of the System and in connection with the making of capital improvements and renewals and replacements to the System. The Commission may, however, employ additional engineers at any time with relation to specific engineering and services required in connection with the System.

The Commission may, at its option, annually, but shall for the Fiscal Year ending September 30, 1980, and at least tri-annually thereafter, cause to be prepared by the Consulting Engineers a report the System, with respect to the operation and management of the properties thereof, the sufficiency of the rates and charges for services, conclusions as to changes in the operation of the System, and the necessity for capital improvements. In making such report or survey the Consulting Engineers shall accept certified statements of the independent certified public accountants and other consultants of the Commission. Copies of each report shall be placed on file with the Commission and shall be opened to the inspection of any Holder of Certificates or other interested parties.
O. NO COMPETING FACILITIES. To the full extent permitted by law, the Commission will not grant, or cause, consent to, or allow the granting of, any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever, for the furnishing of services which will materially compete with those of the System.

P. ISSUANCE OF OTHER OBLIGATIONS. The Commission will not issue any other Certificates, except under the conditions and in the manner provided herein, payable from the Revenues of the System, herein provided for the Certificates, nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of the Certificates and parity Demand Charge Debt Service Components, upon said Revenues. Any other Certificates issued by the Commission in addition to the Series 1978 Certificates, herein authorized, payable from such Revenues, shall contain an express statement that such Certificates or other evidences of indebtedness are junior and subordinate in all respects to the Series 1978 Certificates, herein authorized, as to lien on and source and security for payment from the Revenues.

Q. ISSUANCE OF ADDITIONAL PARITY CERTIFICATES. For purposes of this Section 16 Q, "Additional Parity Obligations" shall mean Additional Parity Certificates and any Demand Charge Debt Service Components payable on a parity with the Certificates incurred in accordance with the provisions of this section. No Additional Parity Certificates payable on a parity with Series 1978 Certificates initially issued hereunder from the Revenues of the System shall be issued or incurred except for the construction and acquisition of additions, extensions and improvements to the System, or any part thereof, or for refunding purposes, and except upon the conditions and in the manner herein provided. Any Demand Charge Debt Service Component shall be deemed to be an outstanding Additional Parity Obligation for purposes of this Section 16 Q if the conditions hereinafter set forth are met.

Additional Parity Obligations may be issued or incurred payable on a parity from the Net Revenues of the System with the Series 1978 Certificates upon the conditions and in the manner provided as follows: (1) there shall be no default in the payment of the principal of, or interest or premium, if any, on the Certificates, and all payments required shall have been made into the funds and accounts as provided herein to the full extent required and further the Commission shall have not failed or taken formal action to correct such failure, to perform any of the covenants and obligations assumed hereunder for more than thirty (30) days after written notice specifying such failure and requiring same to be remedied shall have been given to the Commission by the holders of not less than ten percent (10%) in the aggregate of the Certificates then outstanding; (2) the Commission shall have obtained a certificate from an independent certified public accountant which shall state that the Commission shall have in the Fiscal Year preceding the issuance or incurrence of the proposed Additional Parity Obligations, compiled with the rate covenant as provided in Section 16 E herein; (3) the Commission shall have obtained a certificate from the Consulting Engineers showing that the annual Net Revenues of the System actually to be in operation from the date of delivery of the Additional Parity Obligations proposed to be issued or incurred through the first full Fiscal Year following commercial operation of each of the projects being funded by the proposed Additional Parity Obligations are projected to be in the aggregate at least 1.40 times the Annual Debt Service Requirement on the outstanding Series 1978 Certificates,
on all outstanding Additional Parity Obligations, and the obligations proposed to be issued with respect to each such project becoming due and payable in each Fiscal Year during such period (excluding capitalized amounts), and (4) the Commission shall have obtained a certificate from the Consulting Engineers showing that the annual Net Revenues of the System by at least the second full Fiscal Year following the scheduled date of commercial operation of each of the projects to be constructed or acquired, based on operations and price levels estimated to exist at such time, are projected to be in the aggregate at least 1.40 times the Maximum Annual Debt Service requirement (without reduction for capitalized amounts) of any future year on all outstanding Additional Parity Obligations and the Additional Parity Obligations proposed to be issued or incurred with respect to each such project. In preparing the certificates required in (3) and (4) herein, the Consulting Engineers may reflect and, if reflected, shall show the effect on their projections of any or all of the following: (a) any changes in the then existing rates, fees, rentals or other charges from the operation of the System and the projects under construction or to be constructed or acquired as have been agreed to or adopted formally by the Commission, or as affected by executed interchange agreements or contracts with other parties; (b) any increase in rates or charges required in any year for which the projections in the certificates have been prepared that the Commission will be required to adopt in order to meet the rate covenant of Section 16 E herein; (c) any increase in rates or charges required in any year to comply with any charter provisions setting forth a formula for establishing transfers or payments in lieu of taxes from revenues of the System to the City; (d) the estimated annual Net Revenues to be derived from the operation of any additional projects or acquisition anticipated to be accomplished from previous financings or from the proceeds of such proposed Additional Parity Obligations; (5) each resolution authorizing the issuance or incurrence of Additional Parity Obligations will recite that the covenants herein contained will be applicable to said Additional Parity Obligations and (6) the Additional Parity Certificates shall be dated, shall bear interest payable on April 1 and October 1 of each year, and shall mature on April 1 or on both April 1 and October 1 each year, as shall be determined by resolution of the Commission.

In the event Special Assessments are to be imposed for the facilities to be financed from the proceeds of the proposed Additional Parity Certificates, the Commission shall have received from the City prior to the authorization of the proposed Additional Parity Certificates, a resolution covenantee and agreeing that upon the completion of the facilities being financed it will expeditiously prepare a final assessment roll providing for the levy and collection of a predetermined amount of Special Assessments to be collected and remitted to the Commission.

R. COMPLETION OF PROJECT. The Commission will complete the Project in an economical and efficient manner and with all practicable dispatch.

S. CONNECTIONS WITH SEWER FACILITIES. The Commission will, to the full extent permitted by law, require all lands, buildings and structures within the boundaries of the Commission which can use the facilities and services of the portion of the System constituting the sewer facilities, to connect with and use the services of such sewer facilities, and to cease all other means and methods for the collection, purification, treatment and disposal of sewage and waste matter.
T. FRANCHISES. The Commission will request the City to covenant by resolution not to issue any electric, water or sewer franchises or permit the expansion of any service areas supplied by others in areas annexed by the City.

SECTION 17. SIMULTANEOUS DELIVERY. The Series 1978 Certificates authorized to be issued by this Resolution may be issued simultaneously or from time to time as the Commission may determine, provided, however, than an amount of Series 1978 Certificates shall be issued simultaneously with the Special Obligation Certificates as to provide a sufficient amount of proceeds to refund the Outstanding Obligations in the manner provided in this Resolution, shall be issued and delivered simultaneously at such time and place as shall be determined by the Commission.

SECTION 18. DISCHARGE AND SATISFACTION OF CERTIFICATES. The covenants, liens and pledges entered into, created or imposed pursuant to this Resolution may be fully discharged and satisfied with respect to the Certificates in any one or more of the following ways:

(a) by paying the principal of and interest on the Certificates when the same shall become due and payable; or

(b) by depositing in the Sinking Fund, or such other funds or accounts as the Commission may hereafter determine to create by resolution moneys sufficient at the time of such deposit to pay the Certificates, all appurtenant interest coupons and the redemption premium, if any, as the same become due on said Certificates on or prior to the redemption date or maturity date thereof; or

(c) by depositing in the Sinking Fund or such other funds or accounts as the Commission may hereafter determine to create by resolution moneys which, when invested in direct obligations of the United States of America or obligations fully guaranteed by the United States of America, will provide moneys which shall be sufficient to pay the Certificates, all appurtenant interest coupons and the redemption premium, if any, as the same shall become due on said Certificates on or prior to their redemption date or maturity date thereof.

In the event the Certificates are not subject to redemption, or the Commission elects not to exercise its option to redeem the Certificates, or, if the Commission elects to exercise its option to redeem the Certificates but the Certificates by their terms are not subject to redemption within the next succeeding sixty (60) days, the Commission shall publish a notice in a financial publication of general circulation in New York City that the deposit required by (b) or (c) above has been made and that the Certificates are deemed to have been paid in accordance with this subsection and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal, interest and redemption premium, if any, on the Certificates.
The foregoing Resolution was duly adopted by the Utilities Commission,
City of New Smyrna Beach, Florida on this 30th day of June, 1978, as amended
the 21st day of July, 1978.

/s/ Evan L. Williams
Chairman

/s/ Dennis D. Higginbotham Member

Upon such payment or deposit in the amounts and manner provided in this
Section, the Certificates shall no longer be deemed to be outstanding for the
purposes of this Resolution and all liability of the Commission with respect
to the Certificates shall cease, desist and be completely discharged and ex-
tinguished, and the Certificate Holders shall be entitled for payment solely
out of the moneys or securities so deposited.

SECTION 19. MODIFICATION OR AMENDMENT. No material modification or
amendment of this Resolution or of any resolution or ordinance amendatory her-
of or supplemental hereto may be made without the consent in writing of the
Holders of two-thirds or more in the principal amount of the Certificates then
outstanding; provided, however, that no modification or amendment shall permit
a change in the maturity of such Certificates or a reduction in the rate of
interest thereon or in the amount of the principal obligation thereof or af-
fect the promise of the Commission to pay the principal of and interest on the
Certificates as the same shall become due from the pledged funds or reduce the
percentage of the Holders of the Certificates required to consent to any mate-
rial modification or amendment hereof without the consent of the Holder or
Holders of all such Certificates; provided further, however, that no such mod-
ification or amendment shall allow or permit any acceleration of the payment
of principal or interest on the Certificates upon any default in the payment
thereof whether or not the Holders of the Certificates consent thereto.

SECTION 20. SEVERABILITY OF 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 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 Certificates or
coupons issued hereunder.

SECTION 21. SALE OF THE SERIES 1978 CERTIFICATES. The Certificates
shall be issued and sold in such manner and at such price or prices consistent
with the Act and the requirements of this Resolution, all at one time or in
installments from time to time, as shall be hereafter determined by the gov-
erning body of the Commission. The Series 1978 Certificates shall be sold and
delivered only if the Special Obligation Certificates are sold and delivered
at the same time so as to effect the complete refunding program described in
Section 3 of this Resolution.

SECTION 22. VALIDATION AUTHORIZED. The attorney for the Commission is
authorized and directed to prepare and file proceedings to validate the Series
1978 Certificates in the manner provided by law.

SECTION 23. REPEALING CLAUSE. All resolutions or parts thereof of the
Commission in conflict with the provisions herein contained are, to the extent
of such conflict, hereby superseded and repealed.

SECTION 24. EFFECTIVE DATE. This Resolution shall take effect upon its
passage in the manner provided by law but no Certificates shall be issued
hereunder until the Commission shall have conducted a public hearing or hear-
ings with respect to the adoption of the Resolution and the issuance of the
Certificates authorized hereby.

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The foregoing Resolution was duly adopted by the Utilities Commission, City of New Smyrna Beach, Florida on this 30th day of June, 1978, as amended the 21st day of July, 1978.

Evan L. Williams, Chairman

Barbara E. Bidwell, Secy.-Treas.

Dennis D. Higginbotham

James A. Pence

Nathan R. Haworth-absent

ATTEST:

Barbara L. Bidwell
Secy.-Treas.

SEAL