RESOLUTION NO. 2019-06

A RESOLUTION AUTHORIZING ISSUANCE OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA UTILITY SYSTEM IMPROVEMENT AND REFUNDING REVENUE CERTIFICATES IN AN AMOUNT NOT TO EXCEED $85,000,000 TO FINANCE THE REFUNDING OF CERTAIN OUTSTANDING OBLIGATIONS OF THE UTILITIES COMMISSION AND THE ACQUISITION AND CONSTRUCTION OF ADDITIONS AND IMPROVEMENTS TO THE UTILITIES SYSTEM; PROVIDING FOR THE PAYMENT OF SUCH CERTIFICATES FROM NET REVENUES FROM THE UTILITY SYSTEM; REQUESTING APPROVAL BY THE CITY OF NEW SMYRNA BEACH, FLORIDA. PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA (the "Utilities Commission"), that:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of Chapter 85-503, Laws of Florida, and other applicable provisions of law.

SECTION 2. DEFINITIONS. Unless the context otherwise requires, the terms defined in this resolution shall have the meanings specified in this Section. Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

"Certificates" means the revenue certificates of the Utilities Commission herein authorized.

"Certificate Resolution" shall mean the Prior Resolution or the new resolution referred to in paragraph 3.I. below, as applicable.

"Net Revenues" shall have the meaning set forth in the Certificate Resolution.

"Outstanding Certificates" shall mean the Utilities Commission’s outstanding Utility System Revenue Certificates, Series 2009, Utility System Revenue Certificates, Series 2013A and Utility System Refunding Revenue Certificates, Series 2013B.

"Prior Resolution" shall mean Resolution 28-78, duly adopted by the Utilities Commission on June 30, 1978, as amended and supplemented from time to time, pursuant to which the Outstanding Certificates and the Refunded Certificates were issued.

"Project" shall mean the acquisition and construction of capital improvements to the utility facilities of the Utilities Commission, substantially in accordance with the report, plans and specifications of the Utilities Commission heretofore filed or to be filed with the Utilities
Commission, as such report, plans and specifications may be revised and amended from time to time upon the approval of the Utilities Commission.

“Project Costs” shall mean, but shall not necessarily be limited to: the cost of the acquisition and construction of the Project, and the construction and acquisition of additions, extensions and improvements thereto; the acquisition of any lands or interests therein or any other properties deemed necessary or convenient therefor; engineering, accounting and legal fees and expenses; expenses for plans, specifications and surveys; expenses for estimates of costs and of revenues; the fees of fiscal agents, financial advisors and consultants; administrative expenses; the capitalization of interest on the Certificates for a reasonable period of time after the date of issuance thereof; discount upon the sale of the Certificates; the expenses and costs of issuance of the Certificates; such other expenses as may be necessary or incidental to the financing authorized by this Resolution, or to the Project and to the placing of the same in operation; and reimbursement to the Utilities Commission for any sums expended for the foregoing purposes.


“Refunding” shall mean the program for refinancing all or a portion of the outstanding obligations of the Utilities Commission through the issuance of the Certificates and the application of a portion of the proceeds thereof to pay the principal of, premium or prepayment penalty, if any, and interest on the Refunded Obligations.

“Refunding Costs” shall mean the cost of payment of the principal of, premium, if specified, and interest on the Refunded Certificates; expenses for estimates of costs and of revenues; the fees of fiscal agents, financial advisors and consultants; administrative expenses; the capitalization of interest on the Certificates for a reasonable period of time after the date of issuance and delivery thereof; discount upon the sale of the Certificates; the expenses and costs of issuance of the Certificates; the cost of purchasing any bond insurance or other credit facility; such other expenses as may be necessary or incidental to the financing authorized by this Resolution, and to the accomplishing thereof, and reimbursement to the Utilities Commission for any sums expended for the foregoing purposes.

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

A. The Utilities Commission now operates and maintains the Utilities System and derives and will continue to derive revenues from rates, fees, rentals and other charges made and collected for the services of the Utilities System.

B. The Utilities Commission has previously issued the Refunded Obligations.

C. After the Refunding and upon the release of the pledge of and lien upon the Net Revenues to pay the debt service on the Refunded Obligations, the Net Revenues pledged to the payment of the principal of and interest on the Certificates will be sufficient to pay the principal of and interest on all of the Certificates and the Outstanding Certificates and to make all reserve fund and other payments provided for in this resolution and the Certificate Resolution.
D. It is necessary and the best interests of the health, safety and welfare of the customers of the Utilities Commission and the inhabitants of the City of New Smyrna Beach that the Utilities Commission undertake the Refunding and the Project. The Utilities Commission is authorized pursuant to the provisions of the Act to undertake the Refunding and the Project.

E. The Utilities Commission is without adequate, currently available funds to pay the Refunding Costs and the Project Costs, and it is necessary and desirable and in the best interests of the Utilities Commission that it borrow the money necessary to accomplish the Refunding and the financing of the Project.

F. The estimated funds needed for the Project shall be provided from proceeds derived from the sale of the Certificates and other funds of the Utilities Commission available therefor.

G. The Utilities Commission will determine, prior to the sale of the Certificates herein authorized, whether it shall be beneficial to issue the Certificates herein authorized as Additional Parity Certificates under the Prior Resolution or to issue such Certificates under a new resolution providing for the terms, security and conditions thereof.

H. The Prior Resolution provides for the issuance of Additional Parity Certificates under the terms, limitations and conditions provided therein, and by complying with the terms, limitations and conditions contained in the Prior Resolution, on or prior to the date of delivery of the Certificates, the Utilities Commission will be legally entitled to issue the Certificates herein authorized as a “Additional Parity Certificates” under the Prior Resolution.

I. The Prior Resolution permits the issuance of additional Certificates which, until the October 1, 2020 final maturity date of the Outstanding Certificates, are subordinate to the payment of the Outstanding Certificates, which additional Certificates would be issued pursuant to a resolution supplemental to this resolution providing for the terms, limitations and conditions under which such additional Certificate may be issued.

J. The principal of and interest on the Certificates and all required sinking fund and other payments shall be payable solely from the Net Revenues as provided herein and in the Certificate Resolution. Neither the Utilities Commission nor the City of New Smyrna Beach shall be required to levy ad valorem taxes on any property within its corporate territory to pay the principal of and interest on the Certificates or to make any of the required sinking fund, reserve or other payments, and such Certificates shall not constitute a lien upon any property owned by or situated within the service territory of the Utilities Commission or situated within the corporate territory of the City of New Smyrna Beach.

SECTION 4. AUTHORIZATION OF REFLUNGING AND PROJECT. The Refunding is hereby specifically authorized. The Project is hereby specifically authorized.

SECTION 5. AUTHORIZING OF CERTIFICATES. Subject and pursuant to the provisions of this resolution and the Certificate Resolution, the issuance by the Utilities Commission of not exceeding $85,000,000 Utility System Improvement and Refunding Revenue Certificates for the purposes above; to be dated, to bear interest at a rate or rates not exceeding the maximum legal rate per annum, to be payable, to mature, to be subject to redemption and to
have such other characteristics as shall be provided by subsequent resolution of the Utilities Commission, is hereby authorized. The Certificates may be issued in one or more series as shall be provided by such resolution.

SECTION 6. SECURITY FOR THE CERTIFICATES. The Certificates be payable from and secured solely by a lien upon and pledge of the Net Revenues as provided in the Certificate Resolution and shall be entitled to all the protection and security provided therein for all certificates issued thereunder.

A. The Certificates shall not be or constitute general obligations or an indebtedness of the Utilities Commission or the City of New Smyrna Beach as “bonds” within the meaning of any constitutional, statutory, or charter provision or limitation, but shall be payable from and secured solely by a lien upon and pledge of the Net Revenues as provided in the Certificate Resolution. No Holder of the Certificates shall ever have the right to compel the exercise of the ad valorem taxing power of the City of New Smyrna Beach or taxation in any form of any property of or in the City of New Smyrna Beach or the Utilities Commission, other than the Net Revenues in the manner provided in the Certificate Resolution, or any property of or located within the boundaries of the City of New Smyrna Beach or the Utilities Commission, for payment of the Certificates or for the making of any payments under the Certificate Resolution, this resolution or the Certificates.

B. The Certificates may be secured by amounts in the Reserve Fund established under the Certificate Resolution if the Utilities Commission determines it necessary or desirable in connection with the sale of the Certificates and if so such amount shall be deposited therein from the proceeds of the Certificates.

SECTION 7. REQUEST FOR APPROVAL OF CITY OF NEW SMYRNA BEACH. Pursuant to Article 15, Section 225 of the City Charter of the City, the Utilities Commission hereby requests the City Commission to approve the issuance of the Certificates herein authorized.

SECTION 8. REPEAL OF INCONSISTENT PROVISIONS. All resolutions or parts thereof in conflict with this resolution are hereby repealed to the extent of such conflict.

SECTION 9. SEVERABILITY. In the event that any portion or section of this resolution is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this resolution shall remain in full force and effect.

SECTION 10. EFFECTIVE DATE. This resolution shall take effect immediately upon its final passage and adoption.
THE ABOVE AND FOREGOING RESOLUTION was introduced at a regular meeting of the Utilities Commission, City of New Smyrna Beach, Florida, held December 17, 2019, by Commissioner Griffith, who moved for its adoption, which motion was seconded by Commissioner Davenport, and upon roll call vote of the Commission was as follows:

CHAIRMAN

VICE CHAIRMAN

SECY.-TREAS.

ASST. SECY.-TREAS.

COMMISSIONER

APPROVED:

ATTEST:

CHAIRMAN

SECRETARY-TREASURER

Approved as to Form and Correctness:

UTILITIES COMMISSION ATTORNEY