MASTER BOND RESOLUTION

UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA

Utility System Revenue Bonds

Resolution No. 2020-02

Adopted March 23, 2020
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MASTER BOND RESOLUTION

A RESOLUTION AUTHORIZING THE ISSUANCE OF UTILITIES SYSTEM REVENUE BONDS 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 OUTSTANDING OBLIGATIONS OF SAID COMMISSION; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF SAID BONDS; PROVIDING FOR THE PAYMENT OF SAID BONDS; PROVIDING THE TERMS, CONDITIONS AND LIMITATIONS UPON WHICH SAID COMMISSION MAY ISSUE ADDITIONAL BONDS PAYABLE ON A PARITY WITH SAID BONDS; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.

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

ARTICLE I
STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

SECTION 1.01 AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to Chapter 85-503, Laws of Florida, Special Acts of 1985, as amended and supplemented from time to time, Chapter 15 of the Charter of the City of New Smyrna Beach, Florida, and other applicable provisions of law.

SECTION 1.02 DEFINITIONS. The following terms shall have the following meanings in this Resolution unless the context otherwise expressly requires. Words importing singular number shall include the plural number in each case and vice versa, words of one gender shall be deemed to include the other genders, and words importing persons shall include firms and corporations.

“Accountant” shall mean the Certified Public Accountant or firm of Certified Public Accountants at the time employed by the Commission to perform and carry out the duties imposed on the Accountant by this Resolution.

“Act” shall mean Chapter 85-503, Laws of Florida, Special Acts of 1985, as amended and supplemented from time to time, Chapter 15 of the Charter of the City of New Smyrna Beach, Florida and other applicable provisions of law.

“Additional Parity Obligations” shall mean additional bonds, notes, or other evidences of indebtedness of the Commission issued in compliance with the terms, conditions, and limitations contained in Paragraph J of Section 5.01 of this Resolution.

“Amortization Installment” with respect to any Current Interest Paying Term Bonds, shall mean an amount so designated which is established for the Current Interest Paying Term Bonds, provided that (i) each such installment shall be deemed to be due on such interest or principal
maturity date of each applicable year as is fixed by subsequent resolution of the Commission, and (ii) the aggregate of such installments shall equal the aggregate principal amount of Current Interest Paying Term Bonds authenticated and delivered on original issuance; and with respect to any Term Bonds issued as Capital Appreciation Bonds, shall mean the Compounded Amounts so designated by subsequent resolution of the Commission, provided that each such installment shall be deemed to be due on such date of each applicable year as is fixed by subsequent resolution of the Commission.

“Authorized Investments” shall mean any investments authorized pursuant to the laws of the State and the written investment policy adopted by the governing body the Commission in accordance with Section 218.415, Florida Statutes.

“Average Annual Debt Service Requirement” shall mean, as of each date on which a Series of Bonds is issued, the total amount of Debt Service Requirement which is to become due on all Bonds deemed to be Outstanding immediately after the issuance of such Series of Bonds divided by the total number of years for which Bonds are deemed to be Outstanding.

“Bond Registrar” shall mean the person or corporation designated by the Commission to maintain the registration books required to be maintained hereunder and to serve as paying agent for purposes of making payments of principal of and interest on the Bonds to the Registered Owners.

“Bond Year” shall mean the annual period ending on and including October 1. The Bond Year related to a Fiscal Year is the Bond Year ending on the succeeding October 1.

“Bonds” shall mean the Series 2020 Bonds and any Additional Parity Obligations hereafter issued under the terms and conditions set forth in this Resolution.

“Book-Entry Form” or “Book-Entry System” shall mean a form or system, as applicable, under which (i) Bonds are issued to a Depository or to its nominee, as Registered Owner, (ii) Bonds are held by and “immobilized” in the custody of such Depository, and (iii) records are maintained by the Depository and/or other persons to identify and record the transfer of beneficial interests in the Bonds.

“Build America Bond” shall mean any taxable bond issued by the Commission pursuant to Section 54AA of the Code for which either (1) the Commission receives direct subsidy payments in an amount equal to a percentage of the interest paid on such bond, or (2) the holder of such bond receives a tax credit in an amount equal to a percentage of the interest paid on such bond.

“Cede & Co.” shall mean Cede & Co., as nominee for DTC.

“Chairman” shall mean the Chairman or Vice Chairman of the Commission.

“Chief Financial Officer” shall mean the Chief Financial Officer or other most senior financial executive officer the Commission.

“City” shall mean the City of New Smyrna Beach, Florida, a municipal corporation of the State of Florida.
“Commission” shall mean the Utilities Commission, City of New Smyrna Beach, Florida, a public body corporate and politic, organized and existing under and pursuant to the laws of the State.

“Compounded Amounts” shall mean the accreted value of Compounding Interest Bonds, determined in accordance with a table of accreted values, as of any particular date of calculation. For purposes of calculating the Debt Service Requirement and the required payments into the Sinking Fund under the provisions of Article III of this Resolution, the Compounded Amount of any Compounding Interest Bonds shall be treated as principal maturing on the maturity date of Serial Bonds or as Amortization Installments due on Term Bonds, as the case may be. For the purposes of computing the amount of Registered Owners required for any notice, consent, request or demand hereunder for any purpose whatsoever, the principal amount of a Compounding Interest Bond shall be deemed to be its Compounded Amount as of the date of such determination.

“Compounding Interest Bonds” shall mean the Bonds of a series, the interest on which shall be compounded on a periodic basis and be payable at maturity.

“Conditional Output Contract” shall mean any contract or other arrangement with a Supplier, as defined herein, pursuant to which the Commission is obligated to purchase either electric capacity and energy or transmission services, or both, and to make payment for such electric capacity and energy or transmission services or both with respect to any computation period (for purposes of such computation not to exceed one calendar month or thirty-one (31) days) during any portion of which such electric capacity and energy or transmission services or both, were made available to the Commission, regardless of whether such services were actually taken or used by the Commission and shall include, but not by way of limitation of the generality of the foregoing, the St. Lucie Project Power Supply Contract between the Florida Municipal Power Agency and the Commission.

“Conditional Redemption” shall have the meaning set forth in Section 3.04 hereof.

“Consulting Engineer” shall mean such qualified and recognized consulting engineers or utility consultants, having a favorable reputation for skill and experience as consulting engineers or utility consultants to facilities similar to the System, from time to time retained to perform the acts and carry out the duties as herein provided for such consultant. The functions of the consulting engineer or utility consultants hereunder may be divided between or among more than one firm.

“Costs of Issuance” shall mean but shall not necessarily be limited to: expenses for estimates of costs; the fees of fiscal agents, accountants, verification agents, financial advisors, consulting engineers and other consultants with regard to the issuance of the Bonds; legal fees and expenses; administrative expenses; the cost of establishment of reasonable interest reserves for the payment of debt service on the Bonds; discount upon the sale of the Bonds; the expenses and costs of issuance of the Bonds; the cost of purchasing any Credit Facility with respect to the Bonds; such other expenses as may be necessary or incidental to the financing authorized by this Resolution, to the Refunding, and to the accomplishing thereof, and reimbursement to the Commission for any sums expended for the foregoing purposes.
“Credit Facility” a policy of municipal bond insurance, debt service reserve surety, letter of credit, or other credit or liquidity support in connection with the issuance of any Bonds.

“Credit Facility Provider” shall mean an insurance company or bank or other organization from whom the Commission has obtained a Credit Facility.

“Current Interest Paying Bonds” shall mean the Bonds of a series, the interest on which shall be payable on a semiannual or other periodic basis.

“Debt Service Requirement” as of any date of calculation and with respect to any period, as applied to the then outstanding Bonds shall mean the sum of:

(1) the amount required to pay the interest becoming due on the Bonds during such period, except to the extent that such interest shall have been provided from proceeds of the Bonds;

(2) the amount required to pay the principal of Serial Bonds maturing in such period; and

(3) the amount of the Amortization Installments for the Term Bonds for such period. In computing the Debt Service Requirement for any Fiscal Year for Bonds, the Commission shall assume that an amount of the Term Bonds equal to the Amortization Installments for the Term Bonds for such Fiscal Year will be retired by purchase or redemption in such period or that payment of such amount of Term Bonds at maturity will be fully provided for in such Fiscal Year. When determining the amount of principal of and interest on the Bonds which mature in any year, for purposes of this Resolution or the issuance of any Additional Parity Obligations, the stated maturity date of Term Bonds shall be disregarded, and the Amortization Installments, if any, applicable to Term Bonds in such year shall be deemed to mature in such year.

(4) For purposes of determining the Debt Service Requirement with respect to Designated Maturity Obligations, the unamortized principal coming due on the final maturity date thereof shall not be included and in lieu thereof there shall be added to the Debt Service Requirement for the Fiscal Year in which such final maturity occurs and to each Fiscal Year thereafter through the 25th anniversary of the final maturity of such Designated Maturity Obligation (the “Reamortization Period”) the amount of substantially level principal and interest payments (using the same interest rate actually applicable to such unamortized Bonds before maturity) that if paid in each year during the Reamortization Period would be sufficient to pay in full the unamortized portion of such Designated Maturity Obligations by such anniversary (the “Amortization Payment”); provided, however, for the current Fiscal Year interest coming due on such Designated Maturity Obligations shall be deducted from the Amortization Payment.

(5) For purposes of determining the Debt Service Requirement pursuant to this Section 1.02, the interest rate on outstanding Variable Rate Bonds shall be assumed to be one hundred ten percent (110%) of the greater of (i) the daily
average interest rate on such Variable Rate Bonds during the twelve months ending with the month preceding the date of calculation, or such shorter period that such Variable Rate Bonds shall have been Outstanding, or (ii) the rate of interest on such Variable Rate Bonds on the date of calculation. For purposes of determining the Maximum Debt Service Requirement for the issuance of Bonds or Additional Parity Obligations pursuant to Paragraph J of Section 5.01 of this Resolution, the interest rate on Variable Rate Bonds outstanding on the date of calculation shall be the same as the rate used in calculating the Debt Service Requirement as described above, and the interest on Variable Rate Bonds proposed to be issued as Bonds or Additional Parity Obligations under the provisions of Paragraph J of Section 5.01 shall be deemed to be the interest rate quoted as the 25 Revenue Bonds Bond Buyer Index for the last week of the month preceding the date of calculation as published in CREDIT MARKETS, or if that index is no longer published, the interest rate for the last week of such month as published in an index that a qualified independent consultant deems substantially equivalent. If Variable Rate Bonds are subject to purchase by or on behalf of the Commission at the option of the Registered Owner and if funds for the purchase thereof are being made available through an arrangement with a Credit Facility Provider, the “put” date or dates shall be ignored and the stated maturity dates thereof shall be used for purposes of this calculation; otherwise, the earliest “put” date shall be used for purposes of this calculation.

“Designated Maturity Obligations” shall mean all of the Bonds of a Series or a particular maturity thereof, so designated by the Commission by resolution prior to the issuance thereof, for which no Amortization Installments have been established.

“Development Fees” shall mean the fees and charges levied upon and collected from new users of the System as a contribution toward their equitable share of the cost of capital improvements required to serve new users of the System, together with the income from investment of such amounts, or other similar fees and charges, which by law or Commission policy established in connection with the imposition of such fees and charges, are required to be segregated and applied only to offset capital costs attributable to System improvement or expansion.

“Director of Engineering” shall mean the Director of Engineering of the Commission.

“DTC” shall mean The Depository Trust Company, New York, New York, a securities depository.

“Effective Date” shall have the meaning set forth in Section 6.04 hereof.

“Federal Securities” means direct obligations of the United States of America or obligations, the principal of and interest on, which are unconditionally guaranteed by the United States of America, none of which permit redemption prior to maturity at the option of the obligor.

“Fiscal Year” shall mean the 12-month period used by the Commission for its general accounting purposes as the same may be changed from time to time, said fiscal year currently extending from October 1 through September 30th.
“General Manager and CEO” shall mean the General Manager and Chief Executive Officer of the Commission.

“Gross Revenues” or “Revenues” shall mean all rates, fees, rentals or other charges or other income, any income from investment of moneys in the funds and accounts created pursuant to this Resolution received by the Commission or accrued to the Commission from the ownership or operation of the System, all as calculated in accordance with generally accepted accounting principles. Gross Revenues do not include (i) proceeds from the sale of Bonds or other evidences of indebtedness, (ii) proceeds from sale of property, (iii) grants from governmental agencies, (iv) contributions in aid of construction (other than connection fees), (v) customer deposits, (vi) Development Fees, or (vii) investment earnings on proceeds of a Series of Bonds held by the Commission in a project construction fund. Gross Revenues include amounts received by the Commission as direct subsidy, rebate or tax credit payments with respect to Build America Bonds.

“Letter of Representations” shall mean the Blanket Issue Letter of Representations, between the Commission and DTC regarding Bonds issued in book-entry only form, as updated from time to time.

“Maximum Debt Service Requirement” shall mean, as of any particular date of calculation, the Debt Service Requirement for the then current or any future Fiscal Year which is largest in dollar amount.

“Net Revenues” shall mean the Gross Revenues during such period plus the amounts, if any, paid from the Rate Stabilization Fund into the Revenue Fund during such period (excluding, for the purpose of avoiding double counting, amounts already included in the Revenues for such period representing interest earnings transferred from the Rate Stabilization Fund to the Reserve Fund) and minus the sum of (a) Operating Expenses, (b) the amounts, if any, paid from the Revenue Fund into the Rate Stabilization Fund during such period, and (c) any direct subsidy payments received from the United States Treasury relating to Build America Bonds issued pursuant to Section 54AA of the Code or any other interest subsidy or similar payments made by the Federal government to the extent interest corresponding to such subsidy or similar payments is excluded from the calculation of Debt Service Requirements.

“Operating Expenses” shall mean the then current expenses paid or accrued, of operation, maintenance and repair of said System, as calculated in accordance with generally accepted accounting principles applicable to the Commission, and shall include, without limiting the generality of the foregoing, payments under any Conditional Output Contracts, insurance premiums, accounting, legal, engineering and administrative expenses of the Commission relating solely to the System, labor, the cost of materials and supplies used for current operations, and any other current expenses required or permitted to be paid by the Commission for the operation, maintenance and repair of said System under this Resolution. “Operating Expenses” shall not include (i) any cost or expense of the construction, acquisition or capital repair of the System, or any part thereof, (ii) any amortization of the costs of issuance of debt obligations, (iii) any allowance for depreciation and amortization or renewals or replacements of capital assets of said System, (iv) payments under Unconditional Output Contracts, (v) any reserves for renewals or replacements, (vi) payments for any extraordinary repairs, (vii) any Unfunded OPEB Expense,
(viii) any Unfunded Pension Expense, or (ix) any unfunded expense which may be required to be accrued under future GASB implementations.

“Original Resolution” shall mean Resolution No. 28-78, duly adopted by the Commission on June 30, 1978, as heretofore amended and supplemented from time to time.

“Outstanding” refers to all obligations of the class concerned which shall have been issued and delivered with the exception of (a) obligations in lieu of which other obligations have been issued in exchange therefor or under agreement to replace lost, mutilated or destroyed obligations, and (b) obligations paid or for the payment of which provision has been made.

“Pledged Revenues” shall mean the Net Revenues.

“Rebate Liability” shall mean the sum of amounts payable under Section 148 of the Code as ‘arbitrage rebate’ necessary to maintain the exclusion from gross income under the Code of interest on any Series of the Bonds, determined under the regulations implementing such Section 148.

“Record Date” shall mean the fifteenth day prior to an interest payment date for the Bonds, or such other date as may be specified by Supplemental Resolution for Variable Rate Bonds.

“Registered Owner” shall mean any person who shall be the owner of any outstanding Bond or Bonds as shown on the books maintained by the Bond Registrar.

“Renewal and Replacement Fund Deposit” shall mean (i) an amount equal to one-twelfth (1/12th) of six percent (6%) of (x) the Gross Revenues received by the Commission in the second preceding Fiscal Year, less (y) fuel expense and purchased power expense for such Fiscal Years, or (ii) such amount as shall be determined by the Commission and set forth in the then current Annual Budget, provided that if the amount determined by the Commission is less than the amount determined under clause (i), the Consulting Engineer shall have advised the Commission that such lesser amount is adequate to provide for the purposes of such fund for the then-current Fiscal Year.

“Reserve Fund Insurance Policy” shall mean an insurance policy or surety bond deposited in the Reserve Fund in lieu of or in substitution for cash on deposit therein pursuant to Section 3.03(B)(3) hereof, if the claims paying ability of the company issuing such policy is rated, at the time of deposit, in one of the three highest rating categories of either Moody’s, S&P or Fitch, without regard to gradation.

“Reserve Fund Letter of Credit” shall mean an unconditional irrevocable letter of credit or line of credit (other than a Reserve Fund Insurance Policy) deposited in the Reserve Fund in lieu of or in substitution for cash on deposit therein pursuant to Section 3.03(B)(3) hereof, if the claims paying ability of the company issuing such letter of credit is rated at the time of deposit in one of the three highest rating categories of either Moody’s, S&P or Fitch, without regard to gradation.

“Reserve Account Requirement” shall be the lesser of (i) the Maximum Debt Service Requirement with respect to Bonds secured by the Reserve Fund and/or any account created therein, (ii) one hundred twenty-five percent (125%) of the Average Annual Debt Service Requirement with respect to Bonds secured by the Reserve Fund and/or any account created
therein, or (iii) the largest amount as shall not adversely affect the exclusion of interest on the Bonds from gross income for Federal income tax purposes with respect to Bonds secured by the Reserve Fund and/or any account created therein; provided. The Commission may establish by Supplemental Resolution a different Reserve Account Requirement or no Reserve Account Requirement for a Series of Bonds.

“Resolution” shall mean this Resolution together with all Supplemental Resolutions hereafter adopted by the Commission amendatory hereof or supplemental hereto.

“Secretary” shall mean the Secretary of the Commission.

“Serial Bonds” shall mean the Bonds which shall be stated to mature in annual installments and are not Term Bonds.

“Series” or “Series of Bonds” or “Bonds of a Series” shall mean all Bonds designated as being of the same Series issued and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter delivered in lieu thereof or in substitution therefor pursuant to this Resolution.

“Series 2020 Bonds” shall mean the Commission’s Utility System Revenue Refunding Bonds, Series 2020, as approved by Supplemental Resolution adopted subsequent to this Resolution.

“State” shall mean the State of Florida.

“Supplemental Resolution” shall mean any resolution of the Commission amending or supplementing this Resolution enacted and becoming effective in accordance with the terms of Section 4.02 hereof.

“Supplier” shall mean any entity with which the Commission has entered into a Conditional Output Contract or an Unconditional Output Contract, payments under which are pledged, assigned, or hypothecated by the Supplier to secure payment of debt service on any of such Supplier’s debt obligations, whether outstanding or to be outstanding and shall include, without limiting the generality of the foregoing, the Florida Municipal Power Agency.

“System” shall mean the combined water, sanitary sewer, and electric system of the City, under the management, operation and control of the Commission, and as hereafter construction or acquired, including all improvements, extensions, additions and betterments thereto, together will all lands or interests 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 by the City or the Commission in connection therewith. This definition shall be broadly interpreted to facilitate the purposes hereof.

“Taxable Bond” shall mean any Bond (other than Build America Bonds) which states, in the body thereof, that the interest income thereon is includable in the gross income of the Registered Owner thereof for federal income tax purposes (provided that a Bond which states that interest thereon is not so excluded while the Bond is held by a “substantial user,” as such term is used in the Code, shall not solely thereby be deemed to be a Taxable Bond).
“Term Bonds” shall mean the Bonds of a series all of which shall be stated to mature on one date and which shall be subject to retirement through mandatory redemption in installments by operation of the Bond Amortization Account created pursuant to Section 3.03 of this Resolution.

“Unfunded OPEB Expense” shall mean the noncash portion of the OPEB expense calculated pursuant to GASB Statement No. 45.

“Unfunded Pension Expense” shall mean the noncash portion of the pension expense calculated pursuant to GASB Statement No. 68.

“Unconditional Output Contract” shall mean any contract or any other agreement under which the Commission is obligated to purchase either electric capacity and energy or transmission services, or both, to make payment for such electric capacity and energy or transmission services or both with respect to any computation period (for purposes of such computation period not to exceed one month or thirty-one (31) calendar days), regardless of whether such capacity and energy or transmission services or both are made available to the Commission during such computation period, and which the Commission cannot, at its option, terminate without giving at least one year’s notice to the Supplier, as defined herein, and shall include, specifically, the St. Lucie Project Support Contract between the Florida Municipal Power Agency and the Commission.

“Variable Rate Bonds” shall mean any Bonds not bearing interest throughout their term at a fixed rate or rates determinable at the time of issuance of the Bonds (disregarding for this purpose interest rate adjustments relating to defaults or changes in tax or regulatory law).

ARTICLE II
DESCRIPTION, DETAILS, AND FORM OF BONDS

SECTION 2.01 AUTHORIZATION OF BONDS. Subject and pursuant to the provisions of this Resolution, obligations of the Commission to be known as “Utilities System [Refunding] Revenue Bonds” are hereby authorized to be issued by the Commission in such aggregate principal amount as shall be determined by the Commission by Supplemental Resolution.

SECTION 2.02 DESCRIPTION OF BONDS. The Bonds may be issued in one or more series and in installments and if issued in more than one series or installment, shall bear an appropriate suffix designation to distinguish each series or installment from any other. The Bonds of each series or installment shall all be dated as of a date to be fixed by Supplemental Resolution of the Commission in accordance with the terms of this Resolution but not later than their date of delivery; may be Term Bonds, Serial Bonds, Current Interest Paying Bonds, Compounding Interest Bonds, Variable Rate Bonds, or a combination thereof; shall be numbered; shall be in the denominations set by the Commission; shall bear interest at such rate or rates not exceeding the maximum rate allowable by law, which may be a variable rate, at the time of their issuance, such interest to be payable periodically or at maturity, and shall mature on such dates and in such years and amounts; all as shall be provided by Supplemental Resolution of the Commission adopted at or prior to the time of sale of the Bonds.
The Bonds shall be issued in fully registered form; shall be payable with respect to principal at the office of the Bond Registrar, as paying agent, or such other paying agent as shall be subsequently determined by the Commission; shall be payable in lawful money of the United States of America; and shall bear interest from their date, payable by check or draft mailed to the Registered Owner at his address as it appears upon the books of the Bond Registrar on the Record Date. The form of each Series Bonds shall be set forth in the Supplemental Resolution authorizing such Series of Bonds.

Notwithstanding any other provisions of this section, the Commission may, at its option, elect to use an immobilization system or book entry system with respect to issuance of the Bonds, provided adequate records will be kept with respect to the ownership of Bonds issued in book entry form or the beneficial ownership of Bonds issued in the name of a nominee. As long as Bonds are outstanding in book-entry form, the provisions of Section 2.03 and 2.04 of this Resolution shall not be applicable to such Bonds. The details of any alternative system of Bonds book-entry system as described in this paragraph, shall be as set forth in Section 2.07 hereof or as set forth in a Supplemental Resolution of the Commission duly adopted.

SECTION 2.03 EXECUTION OF BONDS. The Bonds shall be executed in the name of the Commission by its Chairman and its corporate seal or a facsimile thereof shall be affixed thereto or imprinted or reproduced thereon and attested by the Secretary. The signatures of the Chairman and Secretary may be manual or facsimile signatures. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to hold such office with the Commission before the Bonds so signed and sealed shall have been actually sold and delivered, the Bonds may nevertheless be sold and delivered as herein provided and may be issue as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bond may be signed and sealed on behalf of the Commission by such person as at the actual time of the execution of such Bonds shall hold the proper office with the Commission, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

The certificate of authentication of the Bond Registrar shall appear on the Bonds, and no Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Resolution unless such certificate shall have been duly executed on such Bond. The authorized signature of the Bond Registrar shall be either manual or in facsimile in accordance with law.

SECTION 2.04 NEGOTIABILITY AND REGISTRATION. The Bonds shall be and shall have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code Investment Securities laws of the State of Florida, and each successive Registered Owner in accepting any of the Bonds shall be conclusively deemed to have agreed that the Bonds shall be and have all of said qualities and incidents of such negotiable instruments.

There shall be a Bond Registrar, which shall be a duly qualified bank or trust company located within or without the State of Florida. The Bond Registrar shall be responsible for maintaining the books for the registration of the transfer and exchange of the Bonds.

All Bonds presented for transfer, exchange, redemption or payment (if so required by the Commission or the Bond Registrar) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the
Commission or the Bond Registrar, duly executed Registered Owner or by his duly authorized attorney.

Upon surrender to the Bond Registrar for transfer or exchange of any Bond accompanied by an assignment or written authorization for exchange, whichever is applicable, duly executed by the Registered Owner or his attorney duly authorized in writing, the Bond Registrar shall deliver in the name of the Registered Owner or the transferee or transferees, as the case may be, a new fully registered Bond or Bonds of authorized denominations and of the same maturity and interest rate for the aggregate principal amount which the Registered Owner is entitled to receive.

The Commission and the Bond Registrar may charge the Registered Owner a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such exchange or transfer following the delivery of the Bonds. The Bond Registrar or the Commission may also require payment from the Registered Owner or his transferee, as the case may be, of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new Bond shall be delivered.

New Bonds delivered upon any transfer or exchange shall be valid obligations of the Commission evidencing the same debt as the Bonds surrendered, shall be secured by this Resolution, and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

The Commission and the Bond Registrar may treat the Registered Owner of any Bond as the absolute owner thereof for all purposes, whether or not such Bond shall be overdue, and shall not be bound by any notice to the contrary. The person in whose name any Bond is registered shall be deemed the Registered Owner thereof by the Commission and the Bond Registrar, and any notice to the contrary shall not be binding upon the Commission or the Bond Registrar.

Whenever any Bond shall be delivered to the Bond Registrar for cancellation, upon payment of the principal amount thereof, or for replacement, transfer or exchange, such Bond shall be cancelled and destroyed by the Bond Registrar, and counterparts of a certificate of destruction evidencing such destruction shall be furnished to the Commission.

SECTION 2.05 BONDS, MUTILATED DESTROYED, STOLEN OR LOST. In case any Bonds shall become mutilated, or be destroyed, stolen or lost, the Bond Registrar may in its discretion issue and deliver a new Bond, of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Registered Owner furnishing the Bond Registrar proof of his ownership thereof and satisfactory indemnity in favor of both the Commission and the Bond Registrar and complying with such other reasonable regulations and conditions as the Bond Registrar and the Commission may prescribe and paying such expenses as the Bond Registrar and the Commission may incur. All Bonds so surrendered shall be canceled. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Bond Registrar may pay the same, upon being indemnified, as aforesaid, and if such Bond be lost, stolen or destroyed without surrender thereof.
Therefore, a Bond or Bonds of the same maturity, in definitive form in the authorized denominations and for the same aggregate principal amount as the Bond or Bonds in temporary form surrendered. The expense of such exchange shall be paid by the Commission and there shall be made no charge therefor to any Bondholder.

SECTION 2.06 FORM OF BONDS. The text of the Bonds shall be in substantially the form attached as Exhibit A hereto, with such omissions, insertions and variations as may be necessary, desirable, authorized or permitted by this Resolution or by any Supplemental Resolution adopted prior to the issuance of a Series of Bonds, or as may be necessary if such Bonds or a portion thereof are issued as Current Interest Paying Bonds, Compounding Interest Bonds, Variable Rate Bonds, or as may be necessary to comply with applicable laws, rules and regulations of the United States and of the State in effect upon the issuance thereof.

SECTION 2.07 BOOK-ENTRY SYSTEM. The Bonds may be issued in book-entry only form as referenced in Section 2.02 hereof. All payments for the principal of, interest and redemption premiums, if any, on the Bonds shall be paid by check, draft or wire transfer by the paying agent to the book-entry agent, without prior presentation or surrender of any Bond (except for final payment thereof); and shall constitute payment thereof pursuant to, and for all purposes of, the Resolution.

If less than all the outstanding Bonds of a single maturity are to be called for redemption, the Commission and the paying agent shall have no responsibility for the selection of the book-entry interests in the Bonds to be paid pursuant to the call for redemption, or for notification of that redemption or of that payment, or for payment to the beneficial owners of affected book-entry interests; all of which shall be handled by and in accordance with arrangements of the book-entry agent and its participants and others working through those participants.

To the extent permitted by the provisions of a letter of representations, the Commission shall issue Bonds directly to beneficial owners of the Bonds other than the book-entry agent, or its nominee, in the event that:

A. The agent determines not to continue to act as securities depository for the Bonds; or

B. the Commission has advised the agent of its determination that it is incapable of discharging its duties; or

C. the Commission determines that it is in the best interest of the Commission not to continue the book-entry system or that the interests of the beneficial owners of the Bonds might be adversely affected if the book-entry system is continued.

Upon occurrence of the events described in (a) or (b) above, the Commission shall attempt to locate another qualified securities depository, and shall notify holders of the Bonds through the agent if successful. If the Commission fails to locate another qualified securities depository to replace the agent, the Commission shall cause the Bond Registrar to authenticate and deliver replacement Bonds in certificate form to the beneficial owners of the Bonds.
In the event the Commission makes the determination noted in (c) above (the Commission undertakes no obligation to make any investigation to determine the occurrence of any events that would permit the Commission to make any such determination), or if the Commission fails to locate another qualified securities depository to replace the agent upon occurrence of the events described in (a) or (b) above, the Commission shall mail a notice to the agent for distribution to the beneficial owners of the Bonds stating that the agent will no longer serve as securities depository, the procedures for obtaining such Bonds in certificated form, and the provisions which govern the Bonds including, but not limited to, provisions regarding authorized denominations, transfer and exchange, principal and interest payments, and other related matters.

ARTICLE III
REDEMPTION OF BONDS

SECTION 3.01 PROVISIONS FOR REDEMPTION. Bonds subject to redemption prior to maturity pursuant to their terms or to the terms of a Supplemental Resolution shall be redeemable, upon notice given as provided in this Article III, at such times, at such Redemption Prices and upon such terms in addition to or different than the terms contained in this Article III as may be specified in such Bonds or in the Supplemental Resolution authorizing the Series of which such Bonds are a part.

SECTION 3.02 SELECTION OF BONDS TO BE REDEEMED. The Commission shall, at least five (5) days prior to the notice period for a redemption date (unless a shorter time period shall be satisfactory to the Bond Registrar) notify the Bond Registrar of such redemption date and of the principal amount of Bonds to be redeemed. For purposes of any redemption of less than all of the Outstanding Bonds of a single maturity, the particular Bonds or portions of Bonds to be redeemed shall be selected by the Bond Registrar from the Outstanding Bonds of the maturity or maturities designated by the Commission by such method and at such time as the Bond Registrar shall deem fair and appropriate and which may provide for the selection for redemption of Bonds or portions of Bonds.

If less than all of the Outstanding Bonds of a single maturity are to be redeemed, the Bond Registrar shall promptly notify the Commission and Paying Agent (if the Bond Registrar is not the Paying Agent for such Bonds) in writing of the Bonds or portions of Bonds selected for redemption and, in the case of any Bond selected for partial redemption, the principal amount thereof to be redeemed.

SECTION 3.03 NOTICE OF REDEMPTION. Unless waived by any Holder of Bonds to be redeemed, notice of any redemption made pursuant to this section shall be given by the Bond Registrar on behalf of the Commission by mailing a copy of an official redemption notice by first class mail, postage prepaid, at least thirty (30) days and not more than sixty (60) days prior to the date fixed for redemption to each Holder of Bonds to be redeemed at the address of such Holder shown on the registration books maintained by the Bond Registrar or at such other address as shall be furnished in writing by such Holder to the Bond Registrar; provided, however, that no defect in any notice given pursuant to this section to any Holder of Bonds to be redeemed nor failure to give such notice shall in any manner defeat the effectiveness of a call for redemption as to all other Holder of Bonds to be redeemed.
Every official notice of redemption shall be dated and shall state:

(i) the redemption date;

(ii) the Redemption Price;

(iii) if less than all outstanding Bonds are to be redeemed, the number (and, in the case of a partial redemption of any Bond, the principal amount) of each Bond to be redeemed;

(iv) that on the redemption date the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date;

(v) that such Bonds to be redeemed, whether as a whole or in part, are to be surrendered for payment of the Redemption Price plus accrued interest at the office of the Paying Agent; and

(vi) the CUSIP number of the Bonds to be redeemed, if assigned.

Prior to or upon any redemption date, the Commission shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of and accrued interest on all the Bonds or portions of Bonds which are to be redeemed on that date.

SECTION 3.04 CONDITIONAL REDEMPTION. In the case of an optional redemption, any notice of redemption may state that (1) it is conditioned upon the deposit of moneys, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent no later than the redemption date or (2) the Commission retains the right to rescind such notice on or prior to the scheduled redemption date (in either case, a “Conditional Redemption”), and such notice and optional redemption shall be of no effect if such moneys are not so deposited or if the notice is rescinded as described in this subsection. Any such notice of Conditional Redemption may be rescinded at any time prior to the redemption date if the Commission delivers a written direction to the Paying Agent directing the Paying Agent to rescind the redemption notice. The Paying Agent shall give prompt notice of such rescission to the affected Bondholders. Any Bonds subject to Conditional Redemption where redemption has been rescinded shall remain Outstanding, and neither the rescission nor the failure by the Commission to make such funds available shall constitute an Event of Default under this Resolution. The Paying Agent shall give immediate notice to the securities information repositories and the affected Bondholders that the redemption did not occur and that the Bonds called for redemption and not so paid remain Outstanding.

ARTICLE IV
BONDS NOT DEBT OF COMMISSION, PLEDGE OF REVENUES; APPLICATION OF REVENUES

SECTION 4.01 BONDS NOT DEBT OF COMMISSION. Neither the bonds nor the interest thereon shall be or constitute general obligations or indebtedness of the Commission or of the City or constitute “bonds” of the Commission or of the City within the meaning of any
constitutional, statutory, or charter provision or limitation, but shall be payable solely from and secured by a first lien upon and a pledge of the Pledged Revenues as herein provided. No Registered Owner or Owners of any Bonds issued hereunder shall ever have the right to compel the exercise of the ad valorem taxing power, if any, of the Commission or of the City or taxation in any form of any property of or in the City to pay such Bonds or the interest thereon or be entitled to payment of such principal and interest from any other funds of the Commission or of the City except from the Pledged Revenues in the manner provided herein. Neither the Bonds nor the interest thereon shall have or be a lien upon any property of the Commission, other than the Pledged Revenues in the manner provided in this Resolution, or any property of or located within the boundaries of the City.

SECTION 4.02 PLEDGE OF PLEDGED REVENUES. The payment of the principal of and interest on the Bonds shall be secured forthwith equally and ratably by a first lien on the Pledged Revenues and the Commission hereby pledges such Pledged Revenues to the payment of the principal of and interest on the Bonds, for the reserves therefor and for all other required payments hereunder.

SECTION 4.03 APPLICATION OF REVENUES. For as long as any of the principal of and interest on any of the Bonds shall be outstanding and unpaid or until (a) there shall have been set apart in the Sinking Fund, including the Bond Amortization Account therein, and the Reserve Fund, a sum sufficient to pay when due the entire principal of the Bonds remaining unpaid, together with interest accrued and to accrue thereon, or (b) provision for payment of the Bonds shall have been made in accordance with the terms of this Resolution and the Bonds shall have been defeased, the Commission covenants with the Registered Owners of any and all Bonds as follows:

A. REVENUE FUND. The entire Gross Revenues derived from the operation of the System shall upon receipt thereof be deposited into the “Utilities System Revenue Fund” (hereinafter referred to as the “Revenue Fund”), created and established under the Original Resolution and hereby continued.

B. DISPOSITION OF REVENUES. All moneys at any time remaining on deposit in the Revenue Fund shall be disposed of on or before the first day of each month, commencing in the month immediately following the delivery of any of the Bonds only in the following manner and in the following order of priority:

(1) Revenues shall be used to pay the current Operating Expenses of the System.

(2) From the moneys remaining in the Revenue Fund, the Commission shall next deposit into the “Utilities System Sinking Fund” (hereinafter called “Sinking Fund”) created and established under the Original Resolution and hereby continued, (a) on or before each interest payment date for any of the Bonds the amount required for the interest payable on such date; (b) on or before each principal maturity date, the principal amount of Serial Bonds which will mature and become due and payable on such date; and (c) on or before any redemption date for the Bonds, the amount required for the payment of interest on
the Bonds then to be redeemed; (d) on or before each principal maturity date, the
Compounded Amount of Compounded Interest Serial Bonds maturing and
becoming due and payable on such date; and (e) on or before each annual payment
date or semiannual payment date, the amount of the Amortization Installment for
Term Bonds required to be made on such date into a “Bond Amortization Account,”
which is hereby created and established in said Sinking Fund.

Payments into the Bond Amortization Account shall be credited to a
separate special account for each series of Term Bonds outstanding, and if there
shall be more than one stated maturity for Term Bonds of a series, then into a
separate special account in the Bond Amortization Account for each such separate
maturity of Term Bonds. The moneys and investments in each such separate
account shall be pledged solely to the payment of principal of the Term Bonds of
the series or maturity within a series for which it is established and shall not be
available for payment, purchase or redemption of Term Bonds of any other series
or within a series, or for transfer to the Sinking Fund to make up any deficiencies
in required payments therein.

Upon the sale of any series of Term Bonds, the Commission shall, by
resolution, establish the amounts and maturities of Amortization Installments for
each series, and if there shall be more than one maturity of Term Bonds within a
series, the Amortization Installments for the Term Bonds of each maturity. In the
event the moneys deposited for retirement of a maturity of Term Bonds are required
to be invested, in the manner provided below, then the Amortization Installments
may be stated in terms of either the principal amount of the investments to be
purchased on, or the cumulative amounts of the principal amount of investments
required to have been purchased by, the payment date of such Amortization
Installment.

Moneys on deposit in each of the separate special accounts in the Bond
Amortization Account shall be used for the open market purchase or the redemption
of Term Bonds of the series or maturity of Term Bonds within a series for which
such separate special account is established or may remain in said separate special
account and be invested until the stated date of maturity of the Term Bonds. The
resolution establishing the Amortization Installments for any series or maturity of
Term Bonds may limit the use of moneys to any one or more of the uses set forth in
the preceding sentence.

(3) From the moneys remaining in the Revenue Fund, the
Commission shall next deposit into the “Utilities System Debt Service Reserve
Fund” (hereinafter called “Reserve Fund”) created and established under the
Original Resolution and hereby continued, to the extent that amounts on deposit in
the Reserve Fund (or any account therein) are less than the applicable Reserve
Account Requirement, the Commission shall next make deposits into the Reserve
Fund (or any account therein) in the manner described below from moneys
remaining in the Revenue Fund. Any withdrawals from the Reserve Fund (or any
account therein) shall be subsequently restored from the first moneys available in
the Revenue Fund, after all required current payments for Operating Expenses as set forth above and all current applications and allocations to the Sinking Fund, including all deficiencies for prior payments have been made in full. Notwithstanding the foregoing, in case of withdrawal from the Reserve Fund (or any account therein), in no event shall the Commission be required to deposit into the Reserve Fund (or any account therein) an amount greater than that amount necessary to ensure that the difference between the applicable Reserve Account Requirement and the amounts on deposit in the Reserve Fund (or any account therein) on the date of calculation shall be restored not later than sixty (60) months after the date of such withdrawal (assuming substantially equal monthly payments into the Reserve Fund (or any account therein) for such sixty (60) month period).

Notwithstanding anything herein to the contrary, the Commission may establish a separate account in the Reserve Fund for one or more Series of Bonds and provide a pledge of such account to the payment of such Series of Bonds apart from the pledge provided herein. To the extent a Series of Bonds is secured separately by a account of the Reserve Fund, the Registered Owners of such Bonds shall not be secured by any other moneys in the Reserve Fund or any other account therein. Moneys in a separate account of the Reserve Fund shall be maintained at the Reserve Account Requirement applicable to such Series of Bonds secured by the account; provided the Supplemental Resolution authorizing such Series of Bonds may establish the Reserve Requirement relating to such separate account of the Reserve Fund at such level as the Commission deems appropriate. If funds in the Reserve Fund are less than the amount required, then moneys shall be deposited in the separate accounts in the Reserve Fund on a pro-rata basis.

Notwithstanding the foregoing, in lieu of or in substitution for the required deposits into the Reserve Fund (or any account therein), the Commission may cause to be deposited into the Reserve Fund (or any account therein) a Reserve Fund Insurance Policy and/or a Reserve Fund Letter of Credit in an amount equal to the difference between the applicable Reserve Account Requirement and the sums then on deposit in the Reserve Fund (or any account therein) plus the amounts to be deposited therein pursuant to the preceding paragraph.

In the event the Reserve Fund (or any account therein) contains both a Reserve Fund Insurance Policy or Reserve Fund Letter of Credit and cash, the cash shall be drawn down completely prior to any draw on the Reserve Fund Insurance Policy or Reserve Fund Letter of Credit. In the event more than one Reserve Fund insurance Policy or Reserve Fund Letter of Credit is on deposit in the Reserve Fund (or any account therein), amounts required to be drawn thereon shall be done on a pro-rata basis calculated by reference to the maximum amounts available thereunder.

Moneys in the Reserve Fund and accounts therein shall be used only for the purpose of the payment of Amortization Installments, principal of, or interest on the Bonds secured thereby when the other moneys allocated to the Sinking Fund
and Bond Amortization Account are insufficient therefore, and for no other purpose.

In the event of the refunding of any Series of Bonds, the Commission may withdraw from the Reserve Fund or the account therein securing such Series, all or any portion of the amounts accumulated therein with respect to the Bonds being refunded and deposit such amounts as required by the Supplemental Resolution authorizing the refunding of such Series of Bonds; provided that such withdrawal shall not be made unless (a) immediately thereafter, the Bonds being refunded shall be deemed to have been paid pursuant to the provisions hereof, and (b) the amount remaining in the Reserve Fund (or any account therein) after giving effect to the issuance of such refunding obligations and the disposition of the proceeds thereof shall not be less than the applicable Reserve Account Requirement for any Bonds then Outstanding which are secured thereby.

(4) The Commission shall next apply moneys in the Revenue Fund to the payment of current debt service requirements for any 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 Bonds on the Pledged Revenues.

(5) The Commission shall next apply and deposit monthly from moneys in the Revenue Fund into a special account to be known as the “Utilities System Renewal and Replacement Fund” (hereinafter referred to as the “Renewal and Replacement Fund”) created and established under the Original Resolution and hereby continued, an amount equal to the Renewal and Replacement Deposit. Notwithstanding the foregoing, failure of the Commission to make the required deposit to the Renewal and Replacement Fund in any month shall not constitute a default on the part of the Commission provided that the full amount required to be deposited in the Renewal and Replacement Fund in each Fiscal Year shall have been deposited therein by the end of such Fiscal Year. The moneys in the Renewal and Replacement Fund shall be used only (i) for the purpose of paying 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 Bonds, and (iii) if not needed for the foregoing purposes, may be used for any lawful purpose, including the prior redemption of Bonds.

(6) Moneys on deposit in the Revenue Fund shall next be used to make payments required to be made under Unconditional Output Contracts.

(7) Moneys on deposit in the Revenue Fund may, in the discretion of the Commission, next be deposited into a special account to be known as the Rate Stabilization Fund in such amounts as the Commission deems necessary or desirable. Each month the Commission shall transfer from the Rate Stabilization Fund to the Revenue Fund the amount budgeted for transfer into such Fund for the
then current month as set forth in the current Annual Budget or the amount otherwise determined by the Commission to be deposited into such Fund for the month.

(8) The balance of any moneys remaining in the Revenue Fund after the above-required payments have been made may be used (i) for the purchase of Bonds in the open market at such price or prices as shall be determined by the Commission, (ii) for the redemption of Bonds, or (iii) for any lawful purpose.

(9) The required deposits into the Sinking Fund, including the Bond Amortization Account therein, shall be reduced by any amounts on hand therein and available to pay the Debt Service Requirement, including any Development Fees deposited therein. Upon the issuance of any Additional Parity Obligations under the terms, limitations and conditions as are herein provided, the payments into the several funds in the Sinking Fund and, if Term Bonds are issued, into the Bond Amortization Account, and the Reserve Fund, shall be increased in such amounts as shall be necessary to make the payments for the principal of, interest on and reserves for such Additional Parity Obligations and, if Term Bonds are issued, the Amortization Installments, on the same basis as hereinabove provided with respect to the Bonds initially issued under this Resolution.

The Commission shall not be required to make any further payments into the Sinking Fund, Bond Amortization Account or Reserve Fund when the aggregate amount of money in the Sinking Fund, including the Bond Amortization Account therein, and the Reserve Fund, are at least equal to the aggregate of the Debt Service Requirements of the Bonds then outstanding, plus the amount of redemption premium, if any, then due and thereafter to become due on such Bonds then outstanding.

(10) Moneys on deposit in the Revenue Fund 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. Moneys on deposit in the Revenue Fund, the Sinking Fund, the Bond Amortization Account and the Rate Stabilization Fund may be invested and reinvested only in Authorized Investments, maturing not later than the date on which the moneys therein will be needed. Moneys to the credit of the Reserve Fund and the Renewal and Replacement Fund may be invested and reinvested in Authorized Investments, maturing not more than ten (10) years from the date of investment. Any and all income received by the Commission from such investments as above described shall be deposited into the Revenue Fund.

SECTION 4.04 DEVELOPMENT FEES. To the extent permitted by legal requirements applicable to Development Fees, the Commission may deposit Development Fees into the Sinking Fund, including the Bond Amortization Account therein. The Commission may reduce the respective deposits to the Sinking Fund and the Bond Amortization Account required by Paragraph B(2) of Section 4.03 of this Resolution by the amount of Development Fees available in such Fund or Account.
SECTION 4.05 SEPARATE ACCOUNTS. The moneys required to be accounted for in each of the foregoing funds and accounts established herein may be deposited in a single bank account, and funds allocated to the various funds and accounts established herein may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the moneys on deposit therein and such investments for the various purposes of such funds and accounts as herein provided.

The designation and establishment of the various funds and accounts in and by this Resolution shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues for certain purposes and to establish certain priorities for application of such revenues as herein provided.

ARTICLE V
COVENANTS OF THE COMMISSION; TAX COVENANTS

SECTION 5.01 COVENANTS OF THE COMMISSION. For as long as any of the principal of and interest on any of the Bonds shall be outstanding and unpaid or until (a) there shall have been set apart in the Sinking Fund including the Bond Amortization Account therein, and in the Reserve Fund, a sum sufficient to pay when due the entire principal of the Bonds remaining unpaid, together with interest accrued and to accrue thereon, or (b) provision for payment of the Bonds shall have been made in accordance with the terms of this Resolution and the Bonds shall have been defeased, the Commission covenants with the Registered Owners of any and all Bonds as follows:

A. OPERATION AND MAINTENANCE. The Commission will maintain the System and all parts thereof in good condition and will operate the same in an efficient and economical manner making such expenditures for equipment and for renewals, repairs and replacements as may be proper for the economical operation and maintenance thereof.

B. BUDGET. The Commission shall annually prepare and adopt by proper proceedings of the Commission, a detailed budget of the estimated expenditures for operation and maintenance and the estimated Gross Revenues of the System during such next succeeding Fiscal Year, and shall amend such budget from time to time as required by law. No expenditure for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amount provided therefor in such budget, as so amended.

C. RATE RESOLUTION. The Commission covenants to fix, establish, revise from time to time whenever necessary, maintain and collect always such fees, rates, rentals and other charges for the use of the product, services and facilities of the System which will always provide Net Revenues after the payment of Operating Expenses in each Fiscal Year sufficient to pay one hundred and twenty-five percent (125%) of the Debt Service Requirement in the related Bond Year on the outstanding Bonds and on all outstanding Additional Parity Obligations and one hundred percent (100%) of all reserve or other payments herein required to be paid in such year. Such rates, fees, rentals or other charges shall not be reduced so as to be insufficient to provide Net Revenues for such purposes.
D. **NO FREE SERVICE.** The Commission will not render or cause to be rendered any free service by the System for any user, nor will any preferential rates be established for users of the same class. Whenever the City, including its departments, agencies and instrumentalities, shall avail itself of services of the System, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged to 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.

E. **ENFORCEMENT OF COLLECTIONS.** The Commission will diligently enforce and collect the rates, fees and other charges for the services and facilities of the System herein pledged; will take all steps, actions and proceedings for the enforcement and collection of such rates, charges and fees as shall become delinquent to the full extent permitted or authorized by law; and will maintain accurate records with respect thereof. Upon failure of any user to pay for services rendered by the System the Commission will, under reasonable rules and regulations, shall shut off the supply of services and facilities of the System and shall not restore such services or facilities until all obligations owed to the Commission on account of services, including reasonable penalties and charges for restoration of services, shall have been paid in full.

F. **REPORT REGARDING SYSTEM.** The Commission will retain a Consulting Engineer on an annual basis for the purpose of providing to the Commission competent 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 shall at least once every five (5) years cause to be prepared by the Consulting Engineer a report or survey of the System, with respect to the adequacy of the management of the properties thereof, the sufficiency of the rates and charges for services, the proper maintenance of the properties of the System, and the necessity for capital improvements and recommendations thereof. In making such report, the Consulting Engineers may rely upon certified statements of the Accountant and other consultants to the Commission. Copies of each report or survey shall be placed on file with the Secretary of the Commission and shall be open to the inspection of any holder of Bonds or other interested parties. Copies of each report or survey shall be mailed to each Credit Facility Provider and rating agency upon request.

G. **BOOKS AND RECORDS.** The Commission shall also keep or cause to be kept books and records of the Revenues of the System which such books and records shall be kept separate and part from all other books, records and accounts of the Commission, and any Credit Facility Provider or any Registered Owner of any Bonds shall have the right at all reasonable times to inspect all records, accounts and data of the Commission relating thereto (upon reasonable notice and subject to applicable privacy laws relating to customer and employee personal information).

H. **ANNUAL AUDIT.** The Commission shall, within two hundred ten (210) days after the close of its Fiscal Year, cause the financial statements of the Commission to be audited by the Accountant or by the Auditor General of the State of Florida. Such financial statements shall contain a complete report of operations of the System including, but not limited to, a comparison with the current operating 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 Accountant stating no material default on the part of the Commission of any covenant herein has been disclosed by reason of such audit. A copy of such annual audit shall regularly be furnished electronically to any Credit Facility Provider and to any Registered Owner of any Bonds who shall have requested in writing that a copy of such audits be furnished him and provided an address for electronic delivery.

I. ISSUANCE OF OTHER OBLIGATIONS. The Commission will not issue any other obligations except under the conditions and in the manner provided herein, payable from the Pledged Revenues, nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrances or other charge having priority to or being on a parity with the lien of the Bonds and the interest thereon, upon said Pledged Revenues. Any other obligations issued by the Commission in addition to the Bonds or Additional Parity Obligations provided for below, payable from such Pledged Revenues, shall contain an express statement that such obligations are junior and subordinate in all respects to the Bonds as to lien on and source and security for payment from such Pledged Revenues.

J. ISSUANCE OF ADDITIONAL PARITY OBLIGATIONS. No Additional Parity Obligations, payable on a parity from the Pledged Revenues with the Bonds, herein authorized, shall be issued after the issuance of any Bonds, herein authorized, except for the construction and acquisition of additions, extensions and improvements to the System or for refunding purposes and except upon the conditions and in the manner provided.

(1) There shall been obtained and filed with the Commission a statement of the Chief Financial Officer: (a) stating that the books and records of the Commission relating to the collection and receipt of Revenues derived from the operation of the System pledged for the Bonds have been examined by him or her; (b) setting forth the amount of Net Revenues, as defined herein, received by the Commission for any twelve (12) consecutive month period within the twenty-four (24) consecutive months immediately preceding the date of delivery of such Additional Parity Obligations with respect to which such statement is made; (c) stating that the Net Revenues for such preceding twelve (12) month period adjusted only as provided in Subparagraph 2 below will equal at least one hundred twenty percent (120%) of the Maximum Debt Service Requirement on (i) all Bonds and all Additional Parity Obligations, if any, then Outstanding and (ii) the Additional Parity Obligations with respect to which such statement is made.

(2) If desirable, the Net Revenues for such preceding twelve (12) months may be adjusted as follows: (a) to reflect for such period changes made in the rates, fees, rentals or other charges from the operation of the System prior to the issuance of such Additional Parity Obligations; (b) to reflect any change in such Net Revenues caused by any new projects of the System having been placed into use and operation subsequent to the date of commencement of such period and prior to the date of issuance of such Additional Parity Obligations; and (c) to reflect the estimated Net Revenues to be derived from the operation of the additional projects (including acquisitions) to be completed from the proposed or previous financings.
(3) Each Supplemental Resolution authorizing the issuance of Additional Parity Obligations will recite that all of the covenants herein contained will be applicable to such Additional Parity Obligations.

(4) The Commission shall not be in material default in performing any of the covenants and obligations assumed hereunder, and all payments herein required to have been made into the accounts and funds, as provided hereunder, shall have been made to the full extent required.

(5) The Commission shall not be required to satisfy the provisions of the foregoing paragraphs (1) and (2) with respect to Additional Parity Obligations issued to refund outstanding Bonds or Additional Parity Obligations if the Commission shall cause to be delivered a certificate of the Chief Finance Officer setting forth the Maximum Debt Service Requirements (i) for the Bonds and Additional Parity Obligations then Outstanding and (ii) for all Series of Bonds and Additional Parity Obligations to be immediately Outstanding thereafter and stating that the Maximum Debt Service Requirements pursuant to (ii) above is not greater than that set forth pursuant to (i) above.

K. NO MORTGAGE OR SALE OF THE SYSTEM. The Commission will not sell, lease, mortgage, pledge or otherwise encumber the System, or any substantial part thereof, or any Revenues to be derived therefrom, except as herein provided.

The foregoing provision notwithstanding, the Commission shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System. If such property has a value of less than one percent (1%) of the fixed assets of the System according to the most recent audit and operating report, the Manager, in collaboration with the Director of Engineering, shall make a finding in writing that such property is no longer necessary, useful or profitable in the operation of the System.

If such property has a value of one percent (1%) or more of the fixed assets of the System according to the most recent audit and operating report, the Manager, in collaboration with the Director of Engineering and the Chief Financial Officer, shall make a finding in writing that such property is no longer necessary, useful or profitable in the operation of the System and that the estimated Net Revenues to be derived by the Commission from the System in the five (5) Fiscal years immediately succeeding the sale or other disposition of such property will be not less than the amount required pursuant to Section 5.01(C) of this Resolution, and the Commission shall by resolution duly adopted authorize such sale or other disposition of said property.

 Anything in this Paragraph L to the contrary notwithstanding, nothing herein shall restrict the Commission from authorizing the sale or other disposition of any of the property comprising a part of the System, if the Consulting Engineers certify that the Revenues of the System will not be materially adversely affected by reason of such sale or disposition.

If the proceeds derived from any such sale or other disposition of property are in excess of ten percent (10%) of the value of the fixed assets of the System according to the most recent annual audit and operating report, such proceeds shall be used for the retirement of outstanding Bonds. If
the proceeds derived from any such sale or other disposition of property are less than 10% of the value of the fixed assets of the System according to the most recent annual audit and operating report, such proceeds shall be placed in the Renewal and Replacement Fund or used for the retirement of Outstanding Bonds, in such proportions to be determined by the Commission.

The Commission may lease any properties or facilities of the System to other utilities (including government owned utilities), as further provided below, as long as the Manager of the System certifies that the lease will not adversely affect the Revenues to be derived from the System (which will include rent under the lease) to such an extent that the Commission will fail to comply with the covenants in this Resolution, and particularly the covenants contained in Section 5.01(C) hereof.

L. INSURANCE. The Commission will carry insurance on all buildings and structures of the works and properties of the System which are subject to loss, will carry adequate public liability insurance, and will otherwise carry insurance of all kinds and in the amounts normally carried in the operation of similar facilities and properties in Florida. Any such insurance shall be carried for the benefit of the Registered Owners of the Bonds. All moneys received for losses under any of such insurance, except public liability, shall be used, as necessary, to remedy the loss or damage for which such proceeds are received, either by repairing the property damaged or replacing the property destroyed as soon as practicable, and any balance deposited the Renewal and Replacement Fund. The Commission may elect to be a self-insurer through a pool, as to any or all of the foregoing, consistent with the recommendations of a qualified insurance consultant.

M. JOINT SUPPLY AND TRANSMISSION FACILITIES. The Commission is authorized and empowered to join with any other utility (including government owned utilities) for the purpose of jointly financing, acquiring, constructing, managing, operating, utilizing, and owning any production, treatment, storage, generation or transmission facilities and related facilities and, in the implementation of such purpose may, by providing in the agreement, create any organization, association or legal entity for the construction or use of joint facilities. In this connection, the Commission may enter into leases of production, treatment, storage, generation or transmission facilities and similar arrangements, with other utilities (including government owned utilities) or groups of utilities.

N. FRANCHISES; NO COMPETING FACILITIES. The Commission will request the City not to issue any electric, water or wastewater franchises or permit the expansion of any service areas granted to others in areas annexed by the City. 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, agency or instrumentality whatsoever, for the furnishing of services which will materially compete with those of the System.

O. CONNECTIONS WITH WASTEWATER FACILITIES. The Commission will, to the full extent permitted by law, require all lands, buildings and structures within the service area of the Commission which can use the facilities and services of the portion of the System constituting wastewater facilities, to connect with and use the services of such wastewater facilities, and to cease all other means and methods for the collection, purifications, treatment and disposal of sewage and waste matter.
SECTION 5.02 TAX COVENANTS. The Commission covenants with the Registered Owners of each Series of Bonds (other than Taxable Bonds and Build America Bonds) that:

A. The Commission will not use the proceeds of such Series of Bonds in any manner which would cause the interest on such Series of Bonds to be or become includable in the gross income of the Registered Owner thereof for federal income tax purposes.

B. Neither the Commission nor any person under its control or direction will make any use of the proceeds of such Series of Bonds (or amounts deemed to be proceeds under the Code) in any manner which would cause such Series of Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and neither the Issuer nor any other Person shall do any act or fail to do any act which would cause the interest on such Series of Bonds to become includable in the gross income of the Registered Owner thereof for federal income tax purposes.

C. The Commission will comply with all provisions of the Code necessary to maintain the exclusion of interest on such Series of Bonds from the gross income of the Registered Owner thereof for federal income tax purposes, including, in particular, the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code.

D. There is hereby created and established a fund to be known as the “Utilities Commission Rebate Fund” (the “Rebate Fund”), and a separate account therein for each Series of Bonds (other than Taxable Bonds). Not later than the end of each fifth Fiscal Year, the Commission shall calculate or cause to be calculated the Rebate Liability and shall deposit into the appropriate account in the Rebate Fund, from investment earnings on moneys deposited in the other funds and accounts created hereunder, or from any other legally available funds of the Commission, an amount necessary to make the amount therein equal to Rebate Liability, if any. The Issuer shall use such moneys deposited in the appropriate account in the Rebate Fund only for the payment of the Rebate Liability to the United States as required by this Section 5.04. In complying with the foregoing, the Issuer may rely upon any instructions or opinions from Bond Counsel.

If any amount shall remain in the Rebate Fund after payment in full of all Bonds issued hereunder that are not Taxable Bonds and after payment in full of the Rebate Liability to the United States in accordance with the terms hereof, such amounts shall be available to the Commission for any lawful purpose. Amounts in the Rebate Fund at the end of any Fiscal Year in excess of the then-current Rebate Liability may at the option of the Commission be transferred to the Revenue Fund.

The Rebate Fund shall be held separate and apart from all other funds and accounts of the Issuer, shall not be impressed with a lien in favor of the Bondholders and the moneys therein shall be available for use only as herein provided.

ARTICLE VI
EVENTS OF DEFAULT; REMEDIES

SECTION 6.01 EVENTS OF DEFAULT. It shall be an Event of Default under this Resolution if the Commission shall:
A. fail to deposit with the paying agent on or before each interest payment date sufficient funds to pay the portion of the Debt Service Requirement becoming due and payable on such interest payment date;

B. fail to comply in any material respect with any other covenant made in the Resolution, if (a) such failure shall continue for more than thirty (30) days following written notice of such failure to the Commission or (b) the Commission shall not (within thirty (30) days of receipt of such notice) have initiated steps to cure such default and thereafter have proceeded diligently to cure such default; provided, however, that a Credit Facility Provider may waive any such defect if compliance shall be determined to be impossible of performance; or

C. the Commission files a voluntary petition under the federal bankruptcy laws or any other applicable federal or state bankruptcy or insolvency law. In determining whether any Event of Default described in paragraph (A) above has occurred, no effect shall be given to any payments made pursuant to a Credit Facility.

The Commission will provide or cause to be provided immediate notice to the Credit Facility Provider of any Event of Default described in paragraph (A) above and notice within thirty (30) days of any other Event of Default.

SECTION 6.02 REMEDIES. The Registered Owners of not less than fifty-one percent (51%) in aggregate amount of Outstanding Bonds issued under the provisions hereof, or any trustee acting for the holders of such Bonds, may be 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 Owner of Bonds any lien on any property of the Commission or the City other than the Pledged Revenues in the manner provided herein or to permit acceleration of the payment of principal of and interest on the Bonds as a remedy hereunder. Notwithstanding anything to the contrary herein, if the Commission shall fail to make timely payment of principal of or interest on any Bonds, a Credit Facility Provider shall be deemed to be the sole Registered Owner of all such Bonds to which the Credit Facility may be in effect, with the exclusive right to direct the exercise of the remedies set forth herein.

ARTICLE VII
MISCELLANEOUS PROVISIONS

SECTION 7.01 MODIFICATION OR AMENDMENT. No adverse material modification or amendment of this Resolution or of any resolution or ordinance amendatory hereof or supplemental thereto may be made without the consent in writing of any Credit Facility Provider and of the Registered Owners of fifty-one percent (51%) or more in the principal amount of the Bonds then outstanding; provided, however, that no modification or amendment shall permit a change in the maturity of such Bonds or a reduction in the rate of interest thereon or in the amount of the principal obligation thereof or affecting the promise of the Commission to pay the principal of and interest on the Bonds as the same shall become due from the Pledged Revenues or reduce the percentage of the Registered Owners of the Bonds required to consent to any material
modification or amendment thereof without the consent of the Registered Owner or Owners of all such Bonds.

Without the consent of the Registered Owners of any Bonds or any notice to any Registered Owners, the Commission at any time and from time to time, may amend this Resolution for any of the following purposes:

1. to add to the covenants of the Commission for the benefit of the Registered Owners of the Bonds, or to surrender any right or power herein conferred upon the Commission; or

2. to correct any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Resolution which shall not be consistent with the provisions of this Resolution, provided such action shall not adversely affect the interests of the Registered Owners of the Bonds; or

3. to subject to the lien of this Resolution and the Bonds additional revenues; properties or collateral. Any such modifications or amendments, to the extent they relate to Bonds as to which a Credit Facility Provider has provided a Credit Facility, shall be made only with the consent of such Credit Facility Provider. The foregoing provisions notwithstanding, a Credit Facility Provider shall be entitled to consent to any such modifications or amendments on behalf of the Registered Owners of all Bonds as to which such Credit Facility may be in effect, and any such modifications or amendments, to the extent they relate to Bonds as to which a Credit Facility applies, shall be made only with the consent of such Credit Facility Provider; or

4. To modify any of the provisions of this Resolution in any other aspects provided that such modifications shall not be effective until after the Bonds Outstanding at the time such modification is adopted shall cease to be Outstanding, or until the holders thereof consent thereto, and any Bonds issued subsequent to any such modification shall contain a specific reference to the modifications contained in such Supplemental Resolution.

SECTION 7.02 DEFEASANCE. If, at any time, the Commission shall have paid, or shall have made provisions for payment of, the principal, interest and redemption premiums, if any, with respect to the Bonds, then, and in that event, the pledge of and lien on the Pledged Revenues in favor of the Registered Owners of the Bonds shall be no longer in effect. For purposes of the preceding sentence, deposit of Federal Securities which will provide (without reinvestment) moneys sufficient to pay the principal and/or redemption price of and interest on such Bonds as the same shall become due at maturity or upon prior redemption, shall be considered “provision for payment”. Nothing herein shall be deemed to require the Commission to call any of the Outstanding Bonds for redemption prior to maturity pursuant to any applicable optional redemption provisions, or to impair the discretion of the Commission in determining whether to exercise any such option for early redemption. In the event that the principal of or interest on any
Bonds shall be paid by the Credit Facility Provider, all of the covenants and agreements and other obligations of the Commission to the Registered Owners pursuant to this Resolution shall continue to exist and the Credit Facility Provider shall be subrogated to the rights of such Registered Owners.

SECTION 7.03 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 Bonds issued hereunder.

SECTION 7.04 REPEAL OF INCONSISTENT INSTRUMENTS. All ordinances and resolutions of the Commission or parts thereof in conflict herewith are hereby repealed.

SECTION 7.05 NO RECOURSE ON THE BONDS. No recourse shall be had for the payment of the principal or interest on the Bonds or for any claim based thereon or on the Resolution against any present or former member or officer of the Commission or any person executing the Bonds. Neither the members of the Commission or the governing body of the City, any person executing the Bonds, nor employees of the Commission shall be personally liable therefor or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 7.06 EFFECTIVE DATE. This Resolution shall become effective on the date of adoption hereof.
PASSED AND ADOPTED at a meeting duly called and held this 23rd day of March 2020.

(SEAL)

UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA

Chairman

William Biedenbach

ATTESTED:

SECRETARY

Lillian Conrad

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Bond Counsel

Peter Dams