

**MASTER STORMWATER UTILITY BOND ORDINANCE**

**ORDINANCE NO. 2021-64**

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**ORDINANCE NO. 2021-64**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AUTHORIZING, SUBJECT TO THE TERMS AND CONDITIONS HEREIN, THE ISSUANCE OF NOT TO EXCEED \$11,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF THE CITY'S STORMWATER UTILITY REVENUE BOND, SERIES 2021 FOR THE PRIMARY PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF PROJECTS RELATING TO THE CITY'S STORMWATER UTILITY SYSTEM; PROVIDING FOR THE ISSUANCE FROM TIME TO TIME OF STORMWATER UTILITY REVENUE BONDS OR NOTES; PLEDGING CERTAIN NET REVENUES OF THE STORMWATER UTILITY SYSTEM FOR THE PAYMENT THEREOF; PROVIDING FOR THE RIGHTS OF THE HOLDERS THEREOF; PROVIDING FOR THE ISSUANCE OF BOND ANTICIPATION NOTES; MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; REPEALING OTHER INSTRUMENTS; PROVIDING AN EFFECTIVE DATE.**

**BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA THAT:**

**SECTION 1. Authority for this Ordinance.** This Ordinance is enacted pursuant to the authority in the Constitution of the State of Florida, Chapter 166, Florida Statutes, the municipal charter of the City of Pompano Beach, Florida (the "City Charter"), and other applicable provisions of law (collectively, the "Act").

**SECTION 2. Definitions.** Subject to the provisions of Section 4 hereof, in addition to words and terms elsewhere defined in this Ordinance, or unless the context otherwise requires, the terms used in this Ordinance shall have the meanings specified in this Section 2.

"Accreted Value" shall mean, as of any date of computation with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Capital Appreciation Bond at its initial offering plus the interest accrued on such Capital Appreciation Bond from the date of delivery to the original purchasers thereof to the Compounding Date next preceding the date of computation, or the date of computation if a Compounding Date, plus, with respect to matters related to the payment upon redemption or acceleration of the Capital Appreciation Bond, if such date of computation shall not be a Compounding Date, a portion of the difference between the Accreted Value as of the immediately preceding Compounding Date (or the date of original issuance if the date of computation is prior to the first Compounding Date succeeding the date of original issuance) and the Accreted Value as of the immediately succeeding Compounding Date, calculated based on the assumption that Accreted Value accrues

during any period in equal daily amounts on the basis of a year of 360 days consisting of twelve months of thirty days each. Interest shall accrue on any Capital Appreciation Bond and be compounded periodically at such rate and at such times as provided for in any Supplemental Resolution relating to said Capital Appreciation Bond.

"Acquired Obligations" shall mean cash, direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged, Refcorp interest strips, CATS, TIGRS, STRPS, defeased municipal bonds rated AAA by S&P or Aaa by Moody's (or any combination thereof) or direct obligations or fully guaranteed certificates of beneficial ownership of the U.S. Export-Import Bank, certificates of beneficial ownership of the Farmers Home Administration, obligations of the Federal Financing Bank, participation certificates of the General Services Administration, Guaranteed Title XI financings of the U.S. Maritime Administration and project notes of the U.S. Department of Housing and Urban Development.

With respect to any Series of Bonds, the definition of Acquired Obligations set forth above may be further limited as set forth in a Supplemental Resolution of the Issuer effective prior to the issuance of such Bonds.

"Additional Parity Obligations" shall mean additional obligations issued or incurred in compliance with the terms, conditions and limitations contained herein and which (A) shall have a lien on the Pledged Revenues equal to that of the Outstanding Bonds and any Parity Contract Obligations, (B) shall be payable from the Pledged Revenues on a parity with the Outstanding Bonds and any Parity Contract Obligations, and (C) shall rank equally in all other respects with the Outstanding Bonds and any Parity Contract Obligations.

"Amortization Installment" shall mean an amount designated as such by Supplemental Resolution of the Issuer and established with respect to any Term Bonds.

"Appreciated Value" shall mean, with respect to any Capital Appreciation Income Bond: (A) as of any date of computation prior to the Interest Commencement Date, an amount equal to the principal amount thereof on the date of original issuance plus the interest accrued on such Bond from the date of original issuance of such Bond to the Compounding Date next preceding the date of computation or the date of computation if a Compounding Date, such interest to compound periodically at the times and at the rate provided in any Supplemental Resolution relating to said Bond, plus, if such date of computation shall not be a Compounding Date, a portion of the difference between the Appreciated Value as of the immediately preceding Compounding Date (or the date of original issuance if the date of computation is prior to the first Compounding Date succeeding the date of original issuance) and the Appreciated Value as of the immediately succeeding Compounding Date calculated based upon an assumption that Appreciated Value accrues during any period in equal daily amounts on the basis of a year of 360 days consisting of twelve months of thirty days each; and (B) as of any date

of computation on and after the Interest Commencement Date, the Appreciated Value on the Interest Commencement Date.

"Authorized Depository" shall mean any bank, trust company, national banking association, savings and loan association, savings bank or other banking association selected by the Issuer as a depository, which is authorized under Florida law to be a depository of municipal funds and which has qualified with all applicable state and federal requirements concerning the receipt of Issuer funds.

"Balloon Indebtedness" shall mean debt 25% or more of the original principal amount of which matures during any one Fiscal Year.

"Bond Anticipation Notes" shall mean notes described in Section 32 hereof of the Issuer issued in anticipation of any Series of Bonds and secured by, among other things, a first lien on the proceeds of the Bonds for which such Bond Anticipation Notes were issued.

"Bond Counsel" shall mean any attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the exclusion from gross income for federal income tax purposes of interest on obligations issued by states and political subdivisions.

"Bond Insurance Policy" shall mean the municipal bond new issue insurance policy or policies issued by an Insurer guaranteeing the scheduled payment of principal of and interest on any portion of such Series of Bonds when due as determined by Supplemental Resolution, if any.

"Bond Year" shall mean the period commencing on October 1 in each year and ending on September 30 of the following year.

"Bonds" shall mean: (A) the Series 2021 Bond herein authorized to be issued, (B) any Additional Parity Obligations issued hereafter in accordance with the provisions hereof, and (C) any Parity Contract Obligations; provided, however, "Bonds" may be issued or incurred in the form of bonds, notes, certificates of indebtedness or other evidences of indebtedness of any type or character, and shall exclude Subordinated Debt.

"Business Day" shall mean any day other than a Saturday, Sunday, legal holiday or a day on which banking institutions within the boundaries of the Issuer are required or authorized by law to be closed.

"Capital Appreciation Bonds" shall mean the aggregate principal amount of the Bonds that bear interest payable solely at maturity or upon redemption prior to maturity in the amounts determined by reference to the Accreted Value, all as shall be determined by Supplemental Resolution of the Issuer. In the case of Capital Appreciation Bonds that are convertible to Bonds with interest payable prior to maturity

or redemption of such Bonds, such Bonds shall be considered Capital Appreciation Bonds only during the period of time prior to such conversion.

"Capital Appreciation Income Bonds" shall mean shall mean any Bonds as to which accruing interest is not paid prior to the Interest Commencement Date specified in any Supplemental Resolution relating to such Bonds and with respect to which, until said Interest Commencement Date, the Appreciated Value is compounded periodically on each Compounding Date.

"City Attorney" shall mean the City Attorney of the Issuer or any assistant or deputy City Attorney of the Issuer.

"City Clerk" shall mean the City Clerk of the Issuer or any assistant or deputy City Clerk of the Issuer.

"City Manager" shall mean the City Manager of the Issuer or any assistant or deputy City Manager of the Issuer.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

"Compounding Date" shall mean, with respect to any Capital Appreciation Bond or Capital Appreciation Income Bond, the dates on which interest shall compound, as specified in any Supplemental Resolution relating to such Bonds.

"Consulting Engineers" shall mean one or more independent, qualified and recognized consulting engineers or firm of consulting engineers having favorable repute, skill and experience with respect to the planning and operation of the System who shall be retained from time to time by the Issuer.

"Contributions in Aid of Construction" shall mean any amount or item of money, services, or property received by the Issuer, any portion of which is provided at no cost to the System, which represents an addition or transfer to the capital of the System, and which is utilized to offset the acquisition, improvement or construction costs of the System.

"Cost of Operation and Maintenance" of the System shall mean the Issuer's current expenses, paid or accrued, of operation, maintenance and repair of the System, as calculated in accordance with generally accepted accounting principles, including, but not limited to, contractual services, repairs and maintenance, materials and supplies, engineering and other professional services, Paying Agent, Registrar and other fiduciary fees, credit enhancement fees, arbitrage rebate payments and penalties, other fees, fines and penalties, insurance premiums and charges for the accumulation of appropriate reserves for self-insurance, required payments for pension, retirement, health and hospitalization funds, but shall not include (A) capital expenditures, (B) expenses not periodically occurring, such as extraordinary repairs or conditions, (C) any reserve for renewals and replacement, (D) any allowance for depreciation or

amortization or similar charges, (E) any general administrative charges payable to the Issuer's general fund, (F) any Debt Service Requirement, (G) any debt service due on notes, bonds and similar obligations of the Issuer subordinate to the Bonds, including Subordinated Debt, (H) any costs of issuance associated with a Series of Bonds, (I) any payments or receipts relating to Qualified Agreements, or (J) any payments in lieu of taxes and/or franchise fees.

"Credit Facility" or "Credit Facilities" shall mean either individually or collectively, as appropriate, any Bond Insurance Policy, surety bond, letter of credit, line of credit, guaranty or other instrument or instruments that would enhance the credit of the Bonds of a Series or in which the entity providing such facility agrees to provide funds to pay the purchase price of Option Bonds upon their tender by the holders thereof.

"Credit Facility Issuer" or "Credit Facility Issuers" shall mean the provider or providers of a Credit Facility or Credit Facilities and shall include an Insurer.

"Debt Service Fund" shall mean the Debt Service Fund created and established pursuant to Section 16 of this Ordinance.

"Debt Service Requirement" shall mean, for any Bond Year, at any time, the amount required to be deposited in such Bond Year into the Debt Service Fund, as provided herein, including any Reimbursement Obligations that are not Subordinated Debt or otherwise subordinated to the Bonds. In calculating such amount (A) any interest shall not include interest to the extent it is to be paid or expected to be paid, taking into account any deductions expected to be made from such subsidy, from a direct subsidy payment expected to be received by the Issuer from the United States Treasury relating to Direct Subsidy Bonds or any other interest subsidy or similar payments made by the Federal government and (B) the Issuer shall subtract therefrom any amounts to be transferred from the Project Account for the purpose of paying interest on Outstanding Bonds.

With respect to Outstanding Variable Rate Bonds which are not subject to a Qualified Agreement, if any, the interest rate used to calculate the Debt Service Requirement shall be the highest of (1) the actual rate on the date of calculation, or if the indebtedness is not yet outstanding, the initial rate (if established and binding), or (2) (a) if interest on the indebtedness is excludable from gross income under the applicable provisions of the Code, the most recently published Bond Buyer 25 Bond Revenue Index (or comparable index if no longer published) plus fifty (50) basis points, but not to exceed the maximum interest rate per annum on such Outstanding Variable Rate Bonds or (b) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities plus fifty (50) basis points, but not to exceed the maximum interest rate per annum on such Outstanding Variable Rate Bonds; provided, however, that for purposes of any rate covenant measuring actual debt service coverage during a test period, Outstanding Variable Rate Bonds which are not subject to a Qualified Agreement shall be deemed to bear interest at the actual rate per annum applicable on the calculation date.

In the case of Outstanding Bonds issued as a line of credit (whether structured as a draw down loan or a revolving line of credit), with respect to the Debt Service Requirement the Issuer may elect, upon the effective date of such line of credit, to assume either (1) that the full amount available thereunder has been drawn on such date of issuance and thereafter, no additional indebtedness shall be deemed to arise when any funding occurs under any such line of credit (the "Full Draw LOC") or (2) that the amount of each draw may be treated as a separate issue of Bonds hereunder on each date on which a draw is made under such line of credit (the "Partial Draw LOC"), which election shall be set forth in the related Supplemental Resolution. If such Outstanding Bonds issued as a line of credit are not Variable Rate Bonds the applicable interest rate per annum may be set on the first draw under either a Full Draw LOC or a Partial Draw LOC, and may be adjusted, in the discretion of the Issuer, upon future draws of a Partial Draw LOC.

With respect to Balloon Indebtedness bearing interest at a fixed interest rate or Balloon Indebtedness and/or a line of credit that constitutes Outstanding Variable Rate Bonds, the Debt Service Requirement shall be determined assuming it is amortized over 25 years on an approximately level annual debt service basis.

If Outstanding Bonds are Option Bonds, the date or dates of tender shall be disregarded, unless actually tendered or notice of tender has been given, and the stated maturity dates thereof shall be used for purposes of this calculation.

If the Issuer has entered into a Qualified Agreement with respect to all or a portion of certain Variable Rate Bonds Outstanding hereunder or to be issued hereunder, the interest coming due on such Variable Rate Bonds or portion thereof for purposes of this definition shall be deemed to be based upon the synthetic fixed interest rate under the Qualified Agreement for the portion of the Variable Rate Bonds to which such Qualified Agreement applies, without giving any regard to fees and expenses incurred in connection with the purchase of a liquidity facility.

If the Issuer has entered into a Qualified Agreement with respect to certain Bonds Outstanding hereunder or to be issued hereunder which have a fixed rate of interest, the interest coming due on such Bonds for purposes of this definition shall be deemed to be based upon the assumptions described above for Variable Rate Bonds, without giving any regard to fees and expenses incurred in connection with the purchase of a liquidity facility.

In the case of Outstanding Capital Appreciation Bonds, the principal and interest portions of the Accreted Value becoming due at maturity or by virtue of an Amortization Installment in that Bond Year's calculation shall be included and in the case of Outstanding Capital Appreciation Income Bonds, the principal and interest portions of the Appreciated Value becoming due at maturity or by virtue of an Amortization Installment in that Bond Year's calculation shall be included.



"Direct Subsidy Bonds" shall mean any Taxable Bonds issued by the Issuer hereunder for which either (A) the Issuer receives direct subsidy payments or any other interest subsidy or similar payments made by the State and/or Federal Government in an amount equal to a percentage of the interest paid on such Bond or Bonds, or (B) the holder of such Bond or Bonds receives a tax credit in an amount equal to a percentage of the interest paid on such Bond or Bonds.

"Event of Default" shall have the meaning ascribed thereto in Section 21 hereof.

"Finance Director" shall mean the Finance Director of the Issuer or any assistant or deputy Finance Director of the Issuer or in their absence any other officer or employee of the Issuer serving a similar function.

"Financial Advisor" shall mean any financial advisor appointed from time to time by the Issuer with respect to Outstanding Bonds.

"Fiscal Year" shall mean the period commencing on October 1 of each year and ending on the next succeeding September 30 or such other annual period as may be prescribed by law from time to time for the Issuer.

"Fitch" shall mean Fitch Ratings, Inc., and any assigns or successors thereto.

"Gross Revenues" or "Revenues" shall mean all income or earnings, including rates, fees and charges, and all other moneys received by or accrued to the Issuer from the ownership, leasing, use or operation of the System and all parts thereof, including, without limitation, unencumbered, non-ad valorem special assessments not pledged for the repayment of, or as security for, any indebtedness of the Issuer, whether currently outstanding or hereafter issued, other than the Bonds and which are legally available to be used as contemplated hereunder, grant moneys received by the Issuer as a result of ownership, leasing, use or operation of the System, moneys received by the Issuer deposited into the Operating Fund (including without limitation receipts from interfund transfers) for any internal and external administrative services provided by the System, amounts transferred into the Operating Fund from the Rate Stabilization Account, investment income, if any, earned on any fund or account created pursuant to this Ordinance, and any payment received by the Issuer as contemplated in Section 28 hereof, all as calculated in accordance with generally accepted accounting principles, but "Gross Revenues" or "Revenues" shall not include (A) any direct subsidy payments received from the United States Treasury relating to Outstanding Direct Subsidy Bonds or any other interest subsidy or similar payments made by the Federal government, (B) non-ad valorem special assessments which are pledged for the repayment of, or as security for, any indebtedness of the Issuer, whether currently outstanding or hereafter issued, other than the Bonds, (C) condemnation awards or proceeds of insurance received with respect to the System, (D) Contributions in Aid of Construction, (E) impact fees, (F) proceeds from the sale of the System or any part thereof, (G) unrealized gains or losses from investments, or (H) moneys received by the Issuer relating to the System for capital projects from federal, state or local government grants or stipends.

"Holder" or "Bondholders" or any similar term shall mean any persons who shall be the registered owner of any Outstanding Bonds.

"Insurer" shall mean, with respect to any Series of Bonds, such Person, as specifically designated by Supplemental Resolution, as shall be insuring or guaranteeing the scheduled payment of principal of and interest on all or a portion of such Series of Bonds, when due.

"Interest Account" shall mean the special account of the same name created within the Debt Service Fund.

"Interest Commencement Date" shall mean, with respect to any particular Capital Appreciation Income Bonds, the date specified in any Supplemental Resolution relating to such Bonds (which date must be prior to the maturity date for such Bonds) after which interest accruing on such Bonds shall be payable on a periodic basis, with the first such payment date being the applicable interest payment date immediately succeeding such Interest Commencement Date.

"Interest Date" or "interest payment date" shall be such date or dates for the payment of interest on a Series of Bonds as shall be provided in Section 6 hereof.

"Issuer" shall mean the City of Pompano Beach, Florida, a municipal corporation of the State of Florida.

"Maximum Debt Service Requirement" shall mean, as of any particular date of calculation, the greatest amount of aggregate Debt Service Requirement for the then current or any future Bond Year, except that with respect to any Bonds for which Amortization Installments have been established, the amount of principal coming due on the final maturity date with respect to such Bonds shall be reduced by the aggregate principal amount of such Bonds that are to be redeemed from Amortization Installments which were to be made in prior Bond Years.

"Mayor" shall mean the Mayor or the Vice Mayor of the Issuer.

"Moody's" or "Moody's Investors Service" shall mean Moody's Investors Services, Inc., and any assigns or successors thereto.

"Net Revenues" of the System shall mean the Gross Revenues or Revenues, after deduction of the Cost of Operation and Maintenance.

"Operating Fund" shall mean the Operating Fund created and established pursuant to Section 16 of this Ordinance.

"Option Bonds" shall mean Bonds subject to tender for payment prior to their maturity at the option of the Holder thereof.

"Ordinance" shall mean this Ordinance, as from time to time may be amended or supplemented by any Supplemental Resolution, in accordance with the terms provided for hereunder and the Act.

"Outstanding" or "Bonds Outstanding" shall mean all Bonds which have been issued pursuant to this Ordinance, except:

(A) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity;

(B) Bonds for the payment or redemption of which cash funds or Acquired Obligations or any combination thereof shall have been theretofore irrevocably set aside in a special account with an escrow agent (whether upon or prior to the maturity or redemption date of any such Bonds) in an amount which, together with earnings on such Acquired Obligations, will be sufficient to pay the principal of, interest on and any redemption premium with respect to such Bonds at maturity or upon their earlier redemption; provided that, if such Bonds are to be redeemed before the maturity thereof, notice of such redemption shall have been given according to the requirements of this Ordinance or irrevocable instructions directing the timely publication of such notice and directing the payment of the principal of and interest on all such Bonds at such redemption dates shall have been given; and

(C) Bonds which are deemed paid pursuant to this Ordinance or in lieu of which other Bonds have been issued under Sections 11 and 13 hereof.

"Parity Contract Obligation" shall mean the net payment obligations of the Issuer arising under a Qualified Agreement, which are calculated on the basis of interest on a notional amount which may correspond with the principal amount of certain Bonds issued hereunder, or a particular series or maturity thereof, based upon a fixed or a variable rate index or formula, taking into account any like payment obligations of the Qualified Agreement Provider to the Issuer calculated in the same manner. Parity Contract Obligations include only regularly scheduled payments and/or receipts under a Qualified Agreement determined by reference to interest on a notional amount and shall not include any other payments and/or receipts under such Agreement (for example any termination fee, indemnification obligations or other fees payable to the Qualified Agreement Provider).

"Parity Contract Obligation Account" shall mean the special account of the same name created within the Debt Service Fund.

"Paying Agent" shall mean any paying agent for Bonds, which may be the Issuer, designated or appointed by or pursuant to a Supplemental Resolution and its successors or assigns, and any other Person which may at any time be substituted in its place pursuant to a Supplemental Resolution. Once appointed, no resignation or removal of the Paying Agent shall become effective until a successor has been appointed and has accepted the duties of Paying Agent.

"Permitted Investments" shall mean any legal investments under the laws of the State and any written investment policy of the Issuer.

"Person" shall mean an individual, a corporation, a partnership, a joint venture, an association, a joint stock company, a trust, any unincorporated organization or governmental entity or any agency or political subdivision thereof, unless the context shall otherwise indicate.

"Pledged Revenues" shall mean the Net Revenues of the System, and until applied in accordance with this Ordinance, the moneys on deposit in the various funds and accounts created pursuant to this Ordinance, except to the extent moneys on deposit in a subaccount of the Reserve Account or the Project Account shall be pledged solely for the payment of the Series of Bonds for which it was established in accordance with the provisions hereof and a related Supplemental Resolution.

"Principal Account" shall mean the special account of the same name created within the Debt Service Fund.

"Prior Subordinated Debt" shall mean, collectively, the Clean Water State Revolving Fund Loan Agreement SW062400 and Clean Water State Revolving Fund Loan Agreement SW06240, in each case entered into between the Issuer and the Florida Water Pollution Control Financing Corporation.

"Project" or "Projects" shall mean (A) any capital project of the Issuer relating to the System, which capital project shall include the Series 2021 Project or otherwise be fully described in a Supplemental Resolution relating to the Series 2021 Bond or Additional Parity Obligations which are issued to finance all or any portion thereof, or (B) the actual, proposed or potential acquisition, addition, extension, supplement, or replacement of the System or joint ownership of similar properties or any interest therein or any right to use the capacity from any facilities or services thereof, or (C) any other lawful purpose related to the System, all as determined by the Issuer and in accordance with plans and specifications on file or to be filed with the Issuer, as such Project or Projects may be amended or modified by the Issuer.

"Project Account" shall mean the Project Account created and established pursuant to Section 16 of this Ordinance.

"Project Costs" shall mean all costs authorized to be paid from the Project Account pursuant to Section 18 hereof to the extent permitted under the laws of the State. It is intended that this definition be broadly construed to encompass all costs, expenses and liabilities of the Issuer related to the System which on the date of this Ordinance or in the future shall be permitted to be funded with the proceeds of any Series of Bonds pursuant to the laws of the State.

"Prudent Utility Practice" shall mean, in respect of any particular municipal utility industry, any of the practices, methods and acts which, in the exercise of reasonable judgment, in light of the facts including without limitation geographic location, including but not limited to the practices, methods and acts engaged in or approved by a

significant portion of such utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. It is recognized that Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition.

"Qualified Agreement" means, to the extent from time to time permitted pursuant to law, any contract or contracts entered into in connection with Bonds under which payments are, in whole or in part, based on interest rate, cash flow, or other basis desired by the Issuer, including, without limitation, contracts commonly known as current or forward interest rate swap or swaption agreements and interest rate floors or caps. Notwithstanding anything herein to the contrary, "Qualified Agreement" shall not include goods and service supply contracts.

"Qualified Agreement Provider" means, an entity whose senior long term obligations, other senior long term obligations or claims paying ability or whose payment obligations under a Qualified Agreement are guaranteed by an entity whose senior long term debt obligations, other senior unsecured long term obligations or claims paying ability are rated at the time of execution of such Qualified Agreement in one of the top three ratings categories of Moody's, Fitch and/or S&P.

"Qualified Independent Consultant" shall mean one or more qualified and recognized independent consultants, having favorable reputes, skill and experience with respect to the acts and duties of the Qualified Independent Consultant to be provided to the Issuer, as shall from time to time be retained by the Issuer to perform the acts and carry out the duties herein provided for such consultants.

"Rate Stabilization Account" shall mean the Rate Stabilization Account created and established pursuant to Section 16 of this Ordinance.

"Record Date" shall mean, with respect to a Series of Bonds, each date that is on the 15<sup>th</sup> day of the calendar month immediately preceding an interest payment date on such Bonds, or the date otherwise applicable to a Series of Bonds and described in a Supplemental Resolution related to such Series of Bonds.

"Redemption Account" shall mean the special account of the same name created within the Debt Service Fund.

"Refunding Bonds" shall mean that amount of any Series of Bonds the proceeds of which will be applied, all or in part, to the refunding of any previously issued Bonds or Subordinated Debt.

"Registrar" shall mean any registrar for the Bonds, which may be the Issuer, designated or appointed by or pursuant to Supplemental Resolution and its successors and assigns, and any other Person which may at any time be substituted in its place

pursuant to Supplemental Resolution. Once appointed, no resignation or removal of the Registrar shall become effective until a successor has been appointed and has accepted the duties of Registrar.

"Reimbursement Obligation" shall have the meaning set forth in Section 29 hereof.

"Renewal and Replacement Account" shall mean the Renewal and Replacement Account created and established pursuant to Section 16 of this Ordinance.

"Reserve Account" shall mean the Reserve Account created and established pursuant to Section 16 of this Ordinance.

"Reserve Account Insurance Policy" shall mean an insurance policy or surety bond deposited in the Reserve Account or a subaccount therein in lieu of or in substitution for cash on deposit therein pursuant to Section 20(B)(3) hereof.

"Reserve Account Letter of Credit" shall mean an unconditional irrevocable letter of credit or line of credit (other than a Reserve Account Insurance Policy) deposited in the Reserve Account or a subaccount therein in lieu of or in substitution for cash on deposit therein pursuant to Section 20(B)(3) hereof.

"Reserve Requirement" shall have such meaning or meanings as set forth in Supplemental Resolution(s), and may be made applicable to the Reserve Account as a whole and/or to reserve subaccounts therein and which may be \$0.00 with respect to any Series of Bonds.

"Serial Bonds" shall mean Bonds that are stated to mature in annual installments, as shall be determined or provided for by Supplemental Resolution of the Issuer.

"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 Ordinance.

"Series 2021 Bond" shall mean the Issuer's proposed Stormwater Utility Revenue Bond, Series 2021, which is deemed to be a Bond for all purposes hereunder, authorized to be issued pursuant to Section 7 of this Ordinance, the details of which will be more fully set forth in one or more Supplemental Resolutions relating to the Series 2021 Bond effective prior to the issuance thereof.

"Series 2021 Project" shall mean the acquisition, construction and equipping of all or a portion of a Project that shall be more fully described in one or more Supplemental Resolutions relating to the Series 2021 Bond.

"Special Record Date" shall mean, with respect to any Series of Bonds, the date established by the Issuer in connection with the payment of overdue interest on such Bonds pursuant to Section 6 of this Ordinance.

"State" shall mean the State of Florida.

"S&P" shall mean S&P Global Ratings and any assigns and successors thereto.

"Subordinated Debt" shall mean any obligations payable on a junior, inferior and subordinate basis, as permitted by and described in Section 20(P) hereof.

"Subordinated Debt Service Account" shall mean the Subordinated Debt Service Account created and established pursuant to Section 16 of this Ordinance.

"Supplemental Resolution" shall mean any resolution or ordinance, as applicable, of the Issuer amending or supplementing this Ordinance enacted and becoming effective in accordance with the terms of Sections 22 or 23 hereof.

"System" or "Utility System" shall mean the complete stormwater management system now owned, operated and/or maintained by the Issuer for the collection and disposal of stormwater, among other things, and which the Issuer is responsible for maintaining, together with any and all acquisitions, improvements, extensions and additions thereto, hereafter constructed or acquired, together with all lands or interests therein, including plants, buildings, machinery, franchises, pipes, mains, fixtures, equipment and all property, real or personal, tangible or intangible (including agreements for the providing of such services), now or hereafter constructed and/or owned or used in connection therewith. Upon compliance with the provisions of Section 26 hereof, the term "System" may be deemed to include other utility functions added to the System, including, but not limited to a stormwater system, the acquisition, distribution and sale of natural gas, the providing of electricity, the providing of cable television services, the providing of telecommunication services or other utility functions that are authorized from time to time pursuant to the Act. Notwithstanding the foregoing definition of the term System, subject to satisfaction of the requirements in Section 20(G) hereof, such term shall not include any properties or interest in properties of the Issuer which the Issuer determines shall not constitute a part of the System for the purpose of this Ordinance.

"Taxable Bonds" shall mean any Bonds the interest on which is not intended at the time of issuance thereof to be excludable from the gross income of the holder thereof for federal income tax purposes; provided, however, notwithstanding anything to the contrary herein, for the purposes of Section 18, Section 20(b)6), Section 20(G) and Section 31 of this Ordinance, any references to Taxable Bonds shall be deemed to exclude Direct Subsidy Bonds, unless otherwise provided in a Supplemental Resolution relating to such Direct Subsidy Bonds.

"Term Bonds" shall mean Bonds which shall be stated to mature on one date, and shall have such Amortization Installments, as shall be determined or provided for by Supplemental Resolution of the Issuer.

“Utilities Director” shall mean the Person then serving in the capacity of Utilities Director of the Issuer in connection with the System.

"Variable Rate Bonds" shall mean Bonds issued with a variable, adjustable, convertible or other similar rate which is not fixed in percentage at the date of issue for the entire term thereof as shall be determined by Supplemental Resolution of the Issuer.

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

(A) The Issuer currently owns, operates and maintains the System and derives Gross Revenues from rates, fees, rentals and other charges made and collected for the services of such System. The Pledged Revenues are not now pledged or encumbered in any manner.

(B) It serves a paramount public purpose and is in the best interests of the Issuer and the residents thereof that the Issuer authorize the issuance from time to time, in one or more Series, of Bonds for the purpose of financing and refinancing the cost of acquiring, constructing and equipping Projects relating to the System from time to time.

(C) The Issuer deems it necessary and in its best interest to issue the Series 2021 Bond to finance the Series 2021 Project, subject to the terms and conditions hereof.

(D) Any Series of Bonds shall be issued upon approval by Supplemental Resolution of the Issuer and compliance with the terms hereof and as additionally provided in Section 7 with respect to the Series 2021 Bond. The proceeds of any Series of Bonds shall be applied in such manner as provided in a Supplemental Resolution.

(E) The principal of and interest and redemption premium, if any, on the Bonds and all reserve and other payments contemplated hereunder shall be payable from and secured solely by the Pledged Revenues. The Issuer shall never be required to levy ad valorem taxes on any real or personal property therein to pay the principal of and interest on the Bonds herein authorized or to make any other payments provided for herein, nor shall the Bonds be secured by the full faith and credit of the Issuer. The Bonds shall not constitute a lien upon any properties owned by or located within the boundaries of the Issuer or upon any property other than the Pledged Revenues.

**SECTION 4. Rules of Construction.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words defined in Section 2 hereof that appear in this Ordinance (including in lower case form) shall have the meanings ascribed to them in the definitions in Section 2 unless the context shall otherwise indicate. The words “Bond,” “Bondholder,” “owner,” “Holder,” and “Person” shall include the plural as well as the singular number and any other words importing singular number shall include the plural number in each case and vice versa and words importing persons shall include firms and corporations. The terms



"herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms shall refer to this Ordinance; the term "heretofore" shall mean before the date of adoption of this Ordinance; and the term "hereafter" shall mean after the date of adoption of this Ordinance.

**SECTION 5. This Ordinance to Constitute Contract.** In consideration of the acceptance of the Bonds authorized to be issued hereunder or as permitted hereby by those who shall hold the same from time to time, this Ordinance and any Supplemental Resolution shall be deemed to be and shall constitute a contract between the Issuer and such Holders. The covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the legal Holders of any and all of the Bonds, all of which shall be of equal rank and without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided therein, herein and in an applicable Supplemental Resolution.

**SECTION 6. Authorization of Bonds.** Subject and pursuant to the provisions hereof, obligations of the Issuer to be known as "Stormwater Utility [Refunding] Revenue Bonds," which may be issued in one or more Series from time to time, are hereby authorized to be issued to pay all or part of any Project Costs and for refunding, all or in part, Outstanding Bonds and Subordinated Debt. Proceeds of Bonds issued in accordance herewith may also be used to make deposits to the funds and accounts created and established hereunder and to pay costs of issuance and other expenses related to the issuance, sale and payment of the Bonds, including payments to Credit Facility Issuers, as contemplated by this Ordinance. The aggregate principal amount of the Bonds which may be executed and delivered under this Ordinance is not limited except as is or may hereafter be provided in this Ordinance or as limited by the Act or by law. The Issuer may determine by Supplemental Resolution that a Series of Bonds will be issued without being secured by the Reserve Account or a subaccount therein. One or more Supplemental Resolutions shall be adopted or enacted with respect to each Series of Bonds issued hereunder. All Bonds shall be authorized by ordinance of the Issuer to the extent then so required by the City Charter of the Issuer.

The Bonds may, if and when authorized by the Issuer pursuant to this Ordinance, be issued with such further appropriate particular designations added to or incorporated in such title for the Bonds of any particular Series as the Issuer may determine by Supplemental Resolution and as may be necessary to distinguish such Bonds from the Bonds of any other Series. Each Bond shall bear upon its face the designation so determined for the Series to which it belongs. The Bonds shall be in such amounts, if any, of Serial Bonds and/or Term Bonds and in the form of Capital Appreciation Bonds, Capital Appreciation Income Bonds, Option Bonds, Variable Rate Bonds or such other form of Bonds which may be marketable from time to time, or any combination thereof, as the Issuer may determine.

The Bonds shall be issued for such purpose or purpose, shall bear interest at such rate or rates not exceeding the maximum rate permitted by law, and shall be payable in lawful money of the United States of America on such dates, all as determined herein or by Supplemental Resolution of the Issuer.

The Bonds shall be issued in such denominations and such form, whether coupon or registered; shall be dated such date; shall bear such numbers, shall be payable at such place or places; shall contain such redemption provisions, shall have such Paying Agents and Registrars; shall mature in such years and amounts, and the proceeds shall be used in such manner, all as determined by Supplemental Resolution of the Issuer, and, additionally, in the case of the Series 2021 Bond, by Section 7 hereof. The Issuer may issue Bonds of a Series secured by a Credit Facility or enter into a Qualified Agreement with respect to a Series of Bonds, all as shall be determined by Supplemental Resolution of the Issuer.

Each Serial Bond or Term Bond shall bear interest from the interest payment date next preceding the date on which it is authenticated, unless authenticated on an interest payment date, in which case it shall bear interest from such interest payment date, or, unless authenticated prior to the first interest payment date, in which case it shall bear interest from its date; provided, however, that if at the time of authentication, payment of any interest which is due and payable has not been made, such Serial Bond or Term Bond shall bear interest from the date to which interest shall have been paid.

Unless otherwise set forth in a Supplemental Resolution effective prior to the issuance of a Series of Bonds, interest on Outstanding Bonds shall be calculated based upon a 360 day year consisting of twelve-30 day months.

The principal of and the interest and redemption premium, if any, on Outstanding Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. Subject to the provisions of any Supplemental Resolution, the interest on Serial Bonds or Term Bonds shall be payable by the Paying Agent on each interest payment date, or the first Business Day following an interest payment date if such interest payment date is not a Business Day, to the Person appearing on the registration books of the Issuer hereinafter provided for as the registered Holder thereof, by check or draft mailed to such registered Holder at his address as it appears on such registration books or by wire transfer to Holders of \$1,000,000 or more in principal amount of such Bonds. Unless otherwise provided in a Supplemental Resolution, payment of the principal of all Serial Bonds or Term Bonds (reduced by any Amortization Installments previously paid by the Issuer on any Term Bonds) shall be made upon the presentation and surrender of such Bonds as the same shall become due and payable; provided, however, presentation shall not be required when any Bonds are held in a book-entry system of registration.

Subject to the provisions of any Supplemental Resolution, the principal of, and redemption premium, if any, on the Bonds, the Accreted Value of Capital Appreciation Bonds and the Appreciated Value of Capital Appreciation Income Bonds shall be payable to or upon the order of the owner or his duly authorized attorney or legal representative, as the same falls due, upon the presentation and surrender of such Bonds at the designated corporate trust office of the Paying Agent or if the Issuer is the Paying Agent, at the office of the City Clerk.

If and to the extent that the Issuer shall fail to make a required payment or provision for payment of interest on any Bond on any Interest Date, that interest shall cease to be payable to the Person who was the owner of that Bond as of the applicable Record Date. When monies become available for payment of interest on such Bond, the Issuer shall establish a Special Record Date for the payment of that interest which shall not be more than twenty (20), nor fewer than ten (10), days prior to the date of the proposed payment. Notice of the proposed payment and of the Special Record Date therefor shall be mailed to each owner of record on the fifth day prior to such mailing at their address as it appears on the registration books of the Issuer maintained pursuant to Section 11 hereof, not fewer than ten (10) days prior to the Special Record Date. Thereafter, such interest shall be payable to the owners of such Bonds at the close of business on the Special Record Date. The provisions of this paragraph may be altered with respect to a Series of Bonds by the Supplemental Resolution applicable to such Series.

**SECTION 7. Description of Series 2021 Bond.** The Series 2021 Bond is hereby authorized to be issued in the aggregate principal amount of not to exceed \$11,000,000, with further details provided in a Supplemental Resolution effective prior to its delivery.

Notwithstanding anything to the contrary herein, the presentation and surrender of the Series 2021 Bond for payment of the principal on the Series 2021 Bond (reduced by any Amortization Installments previously paid by the Issuer on the Series 2021 Bond) as the same shall become due and payable shall not be required.

**SECTION 8. Execution of Bonds.** Except as otherwise provided in a Supplemental Resolution relating to a Series of Bonds, the Bonds shall be substantially in the form set forth in Section 15, shall be executed in the name of the Issuer with the manual or facsimile signature of the Mayor, and the official seal of the Issuer shall be imprinted thereon, attested with the manual or facsimile signature of the City Clerk. In case any one or more of the officers who shall have signed or sealed any of the Bonds, or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued 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 Issuer by such person who at the actual time of the execution of such Bond shall hold the proper office of the Issuer, although, at the date of such Bond, such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such offices at any time after the date of the enactment of this Ordinance, notwithstanding that either or both shall have ceased to hold such office at the time the Bonds shall be actually sold and delivered.

**SECTION 9. Authentication of Bonds.** Only such of the Bonds as shall have endorsed thereon a certificate of authentication substantially in the form hereinbelow set forth, duly executed by the Registrar, as authenticating agent, shall be entitled to any

benefit or security under this Ordinance. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Registrar and such certificate of the Registrar upon any such Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Ordinance. The Registrar's certificate of authentication on any Bond shall be deemed to have been duly executed if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication of all of the Bonds that may be issued hereunder at any one time.

**SECTION 10. Exchange of Bonds.** Any Bonds, upon surrender thereof at the designated office of the Registrar, together with an assignment duly executed by the Bondholder or his attorney or legal representative in such form as shall be satisfactory to the Registrar, may, at the option of the Bondholder, be exchanged for an aggregate principal amount of Bonds of the same Series equal to the principal amount of the Bond or Bonds so surrendered.

The Registrar shall make provisions for the exchange of Bonds at the designated office of the Registrar.

**SECTION 11. Negotiability, Registration and Transfer of Bonds.** The Registrar shall keep books for the registration of and for the registration of transfers of Bonds as provided in this Ordinance. The transfer of any Bonds may be registered only upon such books and only upon surrender thereof to the Registrar together with an assignment duly executed by the Bondholder or his attorney or legal representative in such form as shall be satisfactory to the Registrar. Upon any such registration of transfer, the Issuer shall execute and the Registrar shall authenticate and deliver in exchange for such Bond, a new Bond or Bonds registered in the name of the transferee, and in an aggregate principal amount equal to the principal amount of such Bond or Bonds so surrendered and of the same Series.

In all cases in which Bonds shall be exchanged, the Issuer shall execute and the Registrar shall authenticate and deliver, at the earliest practicable time, a new Bond or Bonds of the same type (e.g., Serial Bonds will be exchanged for Serial Bonds and Capital Appreciation Bonds will be exchanged for Capital Appreciation Bonds) and of the same Series in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchange or registration of transfer shall forthwith be canceled by the Registrar. The Issuer or the Registrar may make a charge for every such exchange or registration of transfer of Bonds sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer, but no other charge shall be made to any Bondholder for the privilege of exchanging or registering the transfer of Bonds under the provisions of this Ordinance. Neither the Issuer nor the Registrar shall be required to make any such exchange, registration or transfer of Bonds after the Record Date (or Special Record Date) and ending at the close of business on the next Interest Date (or date set for payment of interest for which the Special Record Date was set). The Issuer and Bond Registrar shall not be required to transfer or exchange any Bond: (A) during the fifteen

days immediately preceding the date of mailing of notice of the redemption of such Bond; or (B) after such Bond has been selected for redemption or has matured.

Each Bond delivered pursuant to any provision of this Ordinance in exchange or substitution for, or upon the transfer of the whole or any part of, one or more other Bonds, shall carry all of the right to interest which is accrued and unpaid, and which is to accrue, on the whole or part of the Bonds previously carried, and notwithstanding anything contained in this Ordinance, such newly delivered Bond shall be dated or bear such notation so that neither gain nor loss in interest the payment of which is not in default shall result from any exchange, substitution or transfer.

**SECTION 12. Ownership of Bonds; Execution of Instruments by Holders.**

The Person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal or redemption price of any such Bond, and the interest on any such Bonds shall be made only to or upon the order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond including the premium, if any, and interest thereon to the extent of the sum or sums so paid.

A blanket letter of representation has been entered into by the Issuer (the "Letter of Representation") with The Depository Trust Company ("DTC"). It is intended that any Series of Bonds, if so specified in a Supplemental Resolution relating to such Bonds, may be registered so as to participate in a global book-entry system with DTC as set forth herein and in such Letter of Representation. Upon initial issuance, the ownership of any other Series of Bonds held in book-entry only form pursuant to the Letter of Representation shall be registered by the Registrar in the name of Cede & Co., as nominee for DTC. With respect to Bonds registered by the Registrar in the name of Cede & Co., as nominee of DTC, the Issuer, the Registrar and Paying Agent shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which DTC holds Bonds from time to time as securities depository (each such broker-dealer, bank or other financial institution being referred to herein as a "Depository Participant") or to any Person on behalf of whom such a Depository Participant holds an interest in the Bonds (each such Person being herein referred to as an "Indirect Participant"). Without limiting the immediately preceding sentence, the Issuer, the Registrar and Paying Agent shall have no responsibility or obligation with respect to (A) the accuracy of the records of DTC, Cede & Co., or any Depository Participant with respect to the ownership interest in the Bonds, (B) the delivery to any Depository Participant or any Indirect Participant or any other Person, other than a registered owner of a Bond as shown in the registration books of the Registrar, of any notice with respect to the Bonds, including any notice of redemption or (C) the payment to any Depository Participant or Indirect Participant or any other Person of any amount with respect to principal of, premium, if any, or interest on, the Bonds. No Person other than a registered owner of a Bond as shown in the registration books of the Registrar shall receive a Bond certificate with respect to any Bond. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions hereof with respect to the

payment of interest by the mailing of checks or drafts to the registered owners of Bonds appearing as registered owners in the registration books maintained by the Registrar at the close of business on the Record Date (or Special Record Date), the name "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

In the event that the obligations of DTC under the Letter of Representations are terminated because the Issuer shall determine that it is in the best interests of the beneficial owners of the applicable Bonds that the Bonds no longer be held in book-entry only form and that they obtain certificated Bonds, the Issuer shall notify DTC of the availability through DTC of Bond certificates and the Issuer shall request from DTC that the Bonds shall no longer be restricted to being registered on the registration books in the name of Cede & Co., as nominee of DTC. If DTC grants a withdrawal request, the Issuer may determine that the Bonds shall be registered in the name of and deposited with a successor depository operating a universal book-entry system, as may be acceptable to the Issuer, or such depository's agent or designee, and if the Issuer does not select such alternate universal book-entry system, then the Bonds may be registered in whatever name or names registered owners of Bonds transferring or changing Bonds designate, in accordance with the provisions hereof. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Letter of Representations.

Any request, direction, consent or other instrument in writing required or permitted by this Ordinance to be signed or executed by Holders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Holders or their duly authorized attorneys or legal representatives. Proof of the execution of any such instrument and of the ownership of Bonds shall be sufficient for any purpose of this Ordinance and shall be conclusive in favor of the Issuer with regard to any action taken by either under such instrument if made in the following manner:

(A) The fact and date of the execution by any Person of any such instrument may be proved by the verification of any officer in any jurisdiction who, by the laws thereof, has power to take affidavits within such jurisdiction, to the effect that such instrument was subscribed and sworn to before him, or by an affidavit of a witness to such execution. Where such execution is on behalf of a Person other than an individual such verification or affidavit shall also constitute sufficient proof of the authority of the signer thereof.

(B) Ownership of Bonds should be proved by registration books of the Issuer, or the Registrar on behalf of the Issuer, maintained as provided in this Ordinance.

Nothing contained in this Ordinance shall be construed as limiting the Issuer to such proof, it being intended that the Issuer may accept any other evidence of the matters herein stated which it may deem sufficient. Any request or consent of the

Holder of any Bond shall bind every future Holder of the same Bond in respect of anything done by the Issuer pursuant to such request or consent.

**SECTION 13. Bonds Mutilated, Destroyed, Stolen or Lost.** In case any Bond shall become mutilated, or be destroyed, stolen or lost, the Issuer may, in its discretion, cause to be executed, and the Registrar shall authenticate and deliver, a new Bond of like date and tenor as the Bond so mutilated, destroyed, stolen or lost (e.g., Serial Bonds shall be issued in exchange for Serial Bonds and Capital Appreciation Bonds shall be issued in exchange for Capital Appreciation Bonds) 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 Holder furnishing the Issuer and the Registrar proof of their ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer and the Registrar may prescribe and paying such expenses as the Issuer and the Registrar may incur. All Bonds so surrendered shall be canceled by the Issuer. If any of the Bonds shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Bonds issued pursuant to this Section 13 shall constitute original, additional contractual obligations on the part of the Issuer whether or not the lost, stolen or destroyed Bonds be at any time found by anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien on and source and security for payment from the funds, as hereinafter pledged, to the same extent as all other Bonds issued hereunder.

**SECTION 14. Provisions for Redemption.** The Bonds of a Series shall be subject to redemption prior to their maturity, either in whole or in part, at the option of the Issuer, at such times and in such manner as shall be fixed by Supplemental Resolution of the Issuer effective prior to or at the time of sale of such Bonds.

The provisions of this Section may be modified as to any Series of Bonds by Supplemental Resolution effective prior to the issuance thereof.

If less than all of the Bonds of a Series or of any one maturity of a Series shall be called for redemption, the particular Bonds of such Series to be redeemed shall be selected by lot (by DTC or other applicable securities depository in accordance with its then current procedures, when the Bonds of such Series are held in book-entry only form) except to the extent otherwise provided in any Supplemental Resolution applicable to such Bonds.

Unless otherwise provided for in the related Supplemental Resolution, notice of such redemption shall, at least twenty (20) days prior to the redemption date, be filed with the Registrar, and mailed by the Registrar on behalf of the Issuer, first class mail, postage prepaid, to all Holders of Bonds to be redeemed at their addresses as they appear on the registration books hereinbefore provided for on the Record Date, but failure to mail such notice to one or more Holders of such Bonds, or any defect therein,

shall not affect the validity of the proceedings for such redemption with respect to Holders of Bonds to which notice was duly mailed hereunder and no defect occurred. Unless otherwise provided for in the related Supplemental Resolution, each such notice shall set forth the date fixed for redemption, the redemption price to be paid and, if less than all of such Bonds of one maturity are to be called, the distinctive numbers of such Bonds to be redeemed and, in the case of Bonds to be redeemed in part only, the portion of the principal amount thereof to be redeemed.

Any notice of optional redemption given pursuant to this Section 14 may state that it is conditional upon receipt by the Paying Agent of moneys sufficient to pay the redemption price, plus interest accrued to the redemption date, or upon the satisfaction of any other condition, or that it may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before payment of such redemption price and accrued interest if any such condition so specified is not satisfied or if any such other event occurs. Notice of such rescission shall be given by the Paying Agent to affected Holders of such Bonds as promptly as practicable upon the failure of such condition or the occurrence of such other event.

Official notice of redemption having been given as aforesaid or provided for as contemplated by Section 24(A) and (B), such Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Unless otherwise provided for in the Supplemental Resolution, upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar at the redemption price. Each check or other transfer of funds issued by the Registrar for the purpose of the payment of the redemption price of Bonds being redeemed shall bear the CUSIP number identifying, by issue and maturity, such Bonds being redeemed with the proceeds of such check or other transfer. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any such Bond, there shall be prepared for the Holder a new Bond or Bonds of the same maturity in the amount of the unpaid principal of such partially redeemed Bond. All such Bonds which have been redeemed shall be canceled and destroyed by the Registrar and shall not be reissued.

**SECTION 15. Form of Bonds.** The text of the Bonds, together with the certificate of authentication to be endorsed therein, shall be in substantially the following form, with such omissions, insertions and variations (e.g., to change reference from bonds to notes in issue names, if desired) as may be necessary, desirable, authorized or permitted by this Ordinance or by any Supplemental Resolution effective prior to the issuance of a Series of Bonds, or as may be necessary if such Bonds or a portion thereof are issued as Capital Appreciation Bonds, Capital Appreciation Income Bonds, Option 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.



[Remainder of page intentionally left blank]

[FORM OF BOND]

No. [R]-\_\_\_\_\_

\$\_\_\_\_\_

CITY OF POMPANO BEACH, FLORIDA  
STORMWATER UTILITY [REFUNDING] REVENUE [BOND(S)/NOTE(S)], SERIES  
\_\_\_\_\_

MATURITY DATE:      INTEREST RATE:      DATED DATE:      CUSIP:

Registered Owner:

Principal Amount:

The City of Pompano Beach, Florida (hereinafter called the "Issuer") for value received, hereby promises to pay to the order of the Registered Owner identified above or registered assigns, as herein provided, on the Maturity Date identified above (unless this Bond shall have been duly called for redemption prior to maturity and payment of the redemption price shall have been duly made or provided for) [upon the presentation and surrender hereof at the designated corporate trust office of \_\_\_\_\_, \_\_\_\_\_, Florida] from the sources hereinafter mentioned, the Principal Amount identified above] in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and to pay, solely from said sources, to the Registered Owner hereof by wire transfer or check transmitted to the Registered Owner at his address as it appears on the Bond registration books of the Issuer as it appears on the 15th day of the calendar month preceding the applicable interest payment date, interest on said Principal Amount at the Interest Rate per annum identified above on each \_\_\_\_\_ and \_\_\_\_\_ commencing \_\_\_\_\_, 20\_\_\_. [Notwithstanding the foregoing, presentation shall not be required] [when this Bond is held in a book-entry system of registration].

(Insert Optional and/or Mandatory Redemption Provisions)

Notice of such redemption shall be given in the manner required by the Ordinance (as defined below).

This Bond is one of an authorized issue of Bonds in the aggregate principal amount of \$\_\_\_\_\_ (the "Series 20\_\_ Bond[s]") of like date, tenor and effect, except as to number, principal amount, maturity, redemption provisions and interest rate, issued for the purpose of \_\_\_\_\_. The Series 20\_\_ Bond[s] are issued in full compliance with Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the municipal charter of the City of Pompano Beach, Florida, and other applicable provisions of law and Ordinance No. 2021-64 enacted by the Issuer on June 22, 2021, as amended and supplemented from time to time, and particularly as supplemented by Ordinance No. \_\_-\_\_\_\_\_ duly enacted by the Issuer on \_\_\_\_\_, 20\_\_ (hereinafter collectively called the "Ordinance") and is

subject to all the terms and conditions of such Ordinance. All capitalized undefined terms used herein shall have the meanings set forth in the Ordinance. Modifications or alterations of the Ordinance or any ordinances or resolutions supplemental thereto may be made only to the extent and in the circumstances permitted by the Ordinance.

[On parity and equal status with the \_\_\_\_\_,] this Bond is payable solely from and secured by the Pledged Revenues in the manner and to the extent provided in the Ordinance. The Issuer may issue Additional Parity Obligations on a parity with this Bond from time to time upon the conditions and within the limitations and in the manner provided in the Ordinance.

This Bond does not constitute a general indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provision or limitation, and it is expressly agreed by the Holder of this Bond that such Bondholder shall never have the right to require or compel the exercise of the ad valorem taxing power of the Issuer or taxation of any real or personal property therein for the payment of the principal of, premium, if any, and interest on this Bond or the making of any debt service fund, reserve or other payments provided for in the Ordinance.

It is further agreed between the Issuer and the Holder of this Bond that this Bond and the indebtedness evidenced thereby shall not constitute a lien upon the System, or any part thereof, or on any other property of or in the Issuer, but shall constitute a lien only on the Pledged Revenues, all in the manner provided in the Ordinance.

The Issuer has entered into certain covenants with the Holders of the Series 20\_\_ Bond[s] for the terms of which reference is made to the Ordinance. [Add DTC language, if applicable]

The Registered Owner of this Bond shall have no right to enforce the provisions of the Ordinance, or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Ordinance, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Ordinance.

It is certified that this Bond is authorized by and is issued in conformity with the requirements of the Constitution and Statutes of the State of Florida.

This Bond is and has all the qualities and incidents of a negotiable instrument under the laws of the State of Florida.

The transfer of this Bond is registrable by the Bondholder hereof in Person or by his attorney or legal representative at the designated corporate trust office of the Registrar but only in the manner and subject to the conditions provided in the Ordinance and upon surrender and cancellation of this Bond.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Ordinance until it shall have been authenticated by the execution by the Registrar of the certificate of authentication endorsed hereon.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the issuance of this Bond exist, have happened and have been performed in regular and due form and time as required by the statutes and Constitution of the State of Florida applicable thereto; and that the issuance of this Bond and of the issue of the Series 20\_\_\_ Bond[s] of which this Bond is one, is authorized by and is in conformity with, and does not violate, any constitutional, statutory or charter limitation or provision

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City of Pompano Beach, Florida has issued this bond and has caused the same to be executed by the manual signature of its Mayor, attested by the manual signature of its City Clerk, and its official seal or a facsimile thereof to be affixed or reproduced hereon, all as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF POMPANO BEACH, FLORIDA

(SEAL)

\_\_\_\_\_  
Mayor

ATTESTED:

\_\_\_\_\_  
City Clerk

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Series 20\_\_ Bond[s] of the issue described in the within-mentioned Resolution.

DATE OF AUTHENTICATION:

\_\_\_\_\_  
Registrar

By: \_\_\_\_\_  
Authorized Officer

ASSIGNMENT AND TRANSFER

For value received the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Please insert Social Security or other identifying number of transferee) \_\_\_\_\_ the attached bond of the City of Pompano Beach, Florida, and does hereby constitute and appoint, \_\_\_\_\_, attorney, to transfer the said Bond on the books kept for Registration thereof, with full power of substitution in the premises.

Date: \_\_\_\_\_

Signature Guaranteed by \_\_\_\_\_  
[member firm of the New York Stock Exchange or a commercial bank or a trust company.]

By: \_\_\_\_\_  
Authorized Officer

NOTICE: No transfer will be registered and no new Bonds will be issued in the name of the transferee, unless the signature to this assignment corresponds with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever and the Social Security or Federal Employer Identification Number of the transferee is supplied.

[END OF FORM OF BOND]

**SECTION 16. Creation of Funds and Accounts.** There are hereby created and established the following funds and accounts, which funds and accounts shall be trust funds held by the Issuer or in an Authorized Depository designated by the City Manager or the Finance Director for the purposes herein provided and used only in the manner herein provided:

(A) The "City of Pompano Beach Stormwater Utility Operating Fund" (hereinafter sometimes called the "Operating Fund") to be held by the Issuer and to the credit of which deposits of Gross Revenues shall be made as required by Section 20(A) hereof.

(B) The "City of Pompano Beach Stormwater Utility Debt Service Fund" (hereinafter sometimes called the "Debt Service Fund") to be held by the Issuer and to the credit of which deposits shall be made as required by Section 20(B)(2) hereof. In such fund there shall be maintained the following accounts: the Principal Account, the Interest Account, the Parity Contract Obligation Account and the Redemption Account. In such Fund, there may hereafter be established subaccounts pursuant to Supplemental Resolution.

(C) The "City of Pompano Beach Stormwater Utility Reserve Account" (hereinafter sometimes called the "Reserve Account") to be held by the Issuer and to the credit of which deposits shall be made as required by Section 20(B)(3) hereof. In such account, there may hereafter be established subaccounts pursuant to Supplemental Resolution.

(D) The "City of Pompano Beach Stormwater Utility Subordinated Debt Service Account" (hereinafter sometimes called the "Subordinated Debt Service Account") to be held by the Issuer and to the credit of which deposits shall be made as required by Section 20(B)(4) hereof. In such account, there may hereafter be established subaccounts pursuant to Supplemental Resolution.

(E) The "City of Pompano Beach Stormwater Utility Renewal and Replacement Account" (hereinafter sometimes called the "Renewal and Replacement Account") to be held by the Issuer and to the credit of which deposits shall be made as required by Section 20(B)(5) hereof.

(F) The "City of Pompano Beach Stormwater Utility Project Account" (hereinafter sometimes called the "Project Account") to be held by the Issuer and to the credit of which deposits shall be made as required by Section 18 hereof. Within such account there shall be created, established and maintained separate subaccounts for each Series of Bonds.

(G) The "City of Pompano Beach Stormwater Utility Rate Stabilization Account" (hereinafter sometimes called the "Rate Stabilization Account") to be held by the Issuer and to the credit of which deposits may be made as required by Section 20(R) hereof.

(H) The "City of Pompano Beach Stormwater Utility Surplus Account" (hereinafter sometimes called the "Surplus Account") to be held by the Issuer and to the credit of which deposits may be made as required by Section 20(B)(6) hereof.

The Operating Fund, the Debt Service Fund (including the accounts therein), the Reserve Account (including any subaccounts therein), the Renewal and Replacement Account, the Project Account (including any subaccounts therein), the Rate Stabilization Account, the Surplus Account and any other special funds herein established and created shall be deemed to be held in trust for the purposes provided herein and in a related Supplemental Resolution for such funds and shall not be subject to lien or attachment by any creditor of the Issuer except as otherwise provided in this Ordinance. The money in all such funds shall be continuously secured in the same manner as state and municipal deposits are authorized to be secured by the laws of the State.

Notwithstanding anything herein to the contrary, the cash required to be accounted for in each of the funds and accounts described in this Section 16 may be deposited in a single bank account with an Authorized Depository, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash on deposit therein for the various purposes of such funds and accounts as herein and therein provided. The designation and establishment of the various funds in and by this Ordinance 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 and assets of the System for certain purposes and to establish certain priorities for application of such revenues and assets as herein provided.

**SECTION 17. Application of Bond Proceeds.** The proceeds, including accrued interest, if any, and premium, if any, received from the sale of a Series of the Bonds shall be applied by the Issuer simultaneously with the delivery of such Series of the Bonds to the purchaser thereof, as provided in a Supplemental Resolution effective prior to the issuance of such Series of the Bonds.

**SECTION 18. Disbursements from Project Account.** Moneys on deposit from time to time in the subaccounts in the Project Account shall be used to pay or reimburse the following Project Costs for the Project in connection with which the applicable subaccount was established:

(A) Costs incurred directly or indirectly for or in connection with a Project or a proposed or future Project including, but not limited to, those for preliminary planning and studies, architectural, construction management services, legal, financial, engineering and supervisory services, labor, services, materials, equipment, accounts receivable, acquisitions, land, rights-of-way, improvements and installation;

(B) Premiums attributable to all insurance required to be taken out and maintained during the period of construction with respect to a Project to be acquired or constructed, the premium on each surety bond, if any, required with respect to work on



such facilities, and taxes, assessments and other charges hereof that may become payable during the period of construction with respect to such a Project;

(C) Costs incurred directly or indirectly in seeking to enforce any remedy against a contractor or subcontractor in respect of any default under a contract relating to a Project or costs incurred directly or indirectly in defending any claim by a contractor or subcontractor with respect to a Project;

(D) Financial, legal, accounting, appraisals, title evidence and printing and engraving fees, charges and expenses, and all other such fees, charges and expenses incurred in connection with the authorization, sale, issuance and delivery of such Series of Bonds;

(E) Capitalized interest funded from Bond proceeds, if any, for a reasonable period of time;

(F) Any other incidental and necessary costs including without limitation any expenses, fees and charges relating to the acquisition, construction or installation of a Project, and the making of extraordinary repairs, renewals and replacements, decommissioning or retirement of any portion of the System, including the cost of temporary employees of the Issuer retained to carry out duties in connection with the acquisition, construction or erection of a Project and costs related to transition of such Project into ownership by the Issuer;

(G) Costs incurred directly or indirectly in placing any Project in operation in order that completion of such Project may occur;

(H) Costs of acquiring an existing utility system from a Person, including but not limited to the costs relating to any real estate transaction related thereto;

(I) Any other costs relating to a Project or the System authorized pursuant to a Supplemental Resolution of the Issuer and permitted under the laws of the State and the Code (with respect to Bonds other than Taxable Bonds); and

(J) Reimbursements to the Issuer for any of the above items hereinbefore paid by or on behalf of the Issuer, to the extent deemed permissible by Bond Counsel (for reimbursements from proceeds of Bonds other than Taxable Bonds) and advisable by the Financial Advisor.

The Issuer may, in its sole discretion, modify or amend a Project to include such other Project components as it deems appropriate; provided that such modification or amendment shall not adversely impact the tax-exempt status of any Outstanding Bonds (other than Taxable Bonds).

When the construction of a Project shall have been completed, which fact shall be evidenced to the Finance Director by a certificate stating the date of such completion, signed and approved by the Consulting Engineers or the Utilities Director, the balance in the applicable subaccount of the Project Account relating thereto not

reserved for the payment of any remaining part of the cost thereof, or not otherwise required to be applied in any specified manner by any Supplemental Resolution relating to such Project, shall be transferred, at the discretion of the Issuer (1) to the credit of the Principal Account or (2) to the credit of the Redemption Account or (3) transferred to a new subaccount in the Project Account to pay the Cost of a different Project, provided that the Issuer first obtains an opinion of Bond Counsel that such proceeds of Bonds may be so retained and used without adversely affecting the tax-exempt status of such Bonds (provided, that such opinion is not required in connection with the use of proceeds of Taxable Bonds) or (4) as otherwise specified in a Supplemental Resolution; provided, that if the amounts relate to Taxable Bonds, such amounts may additionally be transferred, at the discretion of the Issuer, to the credit of the Interest Account, the Renewal and Replacement Account or the Surplus Account or as otherwise specified in a Supplemental Resolution.

Notwithstanding anything else in this Ordinance to the contrary, upon the occurrence and continuance of an Event of Default, the Holders of Bonds or, if the Holders have appointed a trustee, or a receiver shall have been appointed, the trustee or receiver acting for the Holders of Bonds shall, to the extent there are no other available funds held hereunder, use the remaining funds in each subaccount in the Project Account to pay principal of and interest on the Series of Bonds for which it was established.

**SECTION 19. Special Obligations of Issuer.** The Bonds and any Parity Contract Obligations shall not be or constitute general obligations or indebtedness of the Issuer as "bonds" within the meaning of the Constitution of the State, but shall be payable from and secured solely by a first lien upon and a pledge of the Pledged Revenues as herein provided. No Holder or Holders of any Bonds issued hereunder or any Credit Facility Issuer or Qualified Agreement Provider shall ever have the right to compel the exercise of the ad valorem taxing power of the Issuer or taxation in any form of any real or personal property therein, or to compel the Issuer to pay such principal and interest from any other funds of the Issuer.

Subject to the terms and conditions hereof and each Supplemental Resolution, the payment of principal of, redemption premium, if any, and interest on the Bonds and any Parity Contract Obligations shall be secured forthwith equally and ratably by, and the Issuer hereby grants to the Bondholders and any Qualified Agreement Provider (to the extent set forth in the related Qualified Agreement) an irrevocable lien on the Pledged Revenues, prior and superior to all other liens or encumbrances on such Pledged Revenues and the Issuer does hereby irrevocably pledge such Pledged Revenues to the payment of the principal of, redemption premium, if any, and interest on the Bonds and any Parity Contract Obligations, for the reserves therefor and for all other payments required hereunder. Such amounts hereby pledged and assigned shall immediately be subject to the lien of this pledge without any further physical delivery thereof or any further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer, irrespective of whether such parties have notice thereof.

**SECTION 20. Covenants of the Issuer.** For so long as any of the principal of and interest on any of the Bonds shall be Outstanding and unpaid or amounts shall be owed by the Issuer under any Qualified Agreement or until the Issuer has made provision for payment of principal, interest and redemption premiums, if any, with respect to the Bonds Outstanding, as provided herein, and any Subordinate Debt issued hereunder pursuant to a Supplemental Resolution, the Issuer covenants with the Holders of any and all Bonds Outstanding and any Qualified Agreement Provider and the holders of such Subordinate Debt as follows:

(A) **OPERATING FUND.** All Gross Revenues of the System and any direct subsidy payments received from the United States Treasury relating to Direct Subsidy Bonds or any other interest subsidy or similar payments made by the Federal government to the Issuer shall, upon receipt thereof, be deposited in the Operating Fund. All deposits into such Operating Fund shall be deemed to be held in trust for the purposes herein provided and used only for the purposes and in the manner herein provided.

(B) **DISPOSITION OF REVENUES.** All amounts on deposit in the Operating Fund shall be disposed of monthly, but not later than the twenty-fifth (25<sup>th</sup>) day of each month commencing in the month immediately following the delivery of the first Series of Bonds issued hereunder, only in the following manner and the following order of priority:

(1) The Issuer shall first fund the Cost of Operation and Maintenance for the next month.

(2) The Issuer shall next deposit into the Debt Service Fund and credit to the following accounts, in the following order (except that payments into the Interest Account and the Parity Contract Obligations Account shall be on parity with each other, and the payments into the Principal Account and the Redemption Account shall be on a parity with each other), the following identified sums:

(a) **Interest Account:** Taking into account actual and anticipated earnings in the Interest Account of the Debt Service Fund within the current Bond Year, such sum as will be sufficient to pay one-sixth (1/6<sup>th</sup>) of all interest coming due on all Outstanding Bonds on the next interest payment date (except as to Capital Appreciation Bonds and Capital Appreciation Income Bonds prior to their applicable Interest Commencement Date); provided, however, that monthly deposits of interest, or portions thereof, shall not be required to be made to the extent that money on deposit within such Interest Account is sufficient for such purpose. In the event the Issuer has issued Variable Rate Bonds pursuant to the provisions hereof, amounts transferred from the Operating Fund shall be deposited at such other or additional times and amounts as necessary to pay any interest coming due on such Variable Rate Bonds on the next interest payment date, all in the manner provided in a Supplemental Resolution of the Issuer. Any monthly payment from such

amounts to be deposited as set forth above, for the purpose of meeting interest payments for any Series of Bonds, shall be adjusted, as appropriate, to reflect the frequency of interest payment dates applicable to such Series. Moneys in the Interest Account may be used only for the purposes set forth in this paragraph (a). Deposits required pursuant to the foregoing shall be increased or decreased each month to the extent required to timely pay interest next becoming due and payable after making allowance for any accrued and capitalized interest, and to make up any deficiency or loss that may otherwise arise in such fund or account. Any direct subsidy payments received by the Issuer from the United States Treasury relating to Direct Subsidy Bonds or any other interest subsidy or similar payments made by the Federal government shall be used to pay interest on Bonds issued as Direct Subsidy Bonds. If the Issuer establishes separate subaccounts for any Series, deposits into each subaccount pursuant to this paragraph (a) shall be made on a pro rata and parity basis. Amounts representing capitalized interest with respect to a Series of Bonds on deposit in the Interest Account may only be applied to pay interest coming due on such Series of Bonds.

(b) Parity Contract Obligations Account: Taking into account the actual and anticipated earnings in the Parity Contract Obligations Account in the Debt Service Fund within the current Bond Year, a pro rata estimated amount necessary to build up over time the amount of any Parity Contract Obligation which will next be due and payable or reasonably expected to be due and payable under any Qualified Agreement on the next payment date thereunder; provided, however, that the monthly amount to be so deposited may be adjusted, as appropriate, to reflect the frequency of payment dates thereunder (e.g., if such Parity Contract Obligations are required to be paid semi-annually, the Issuer shall be required to deposit monthly an amount which is estimated to equal one-sixth ( $1/6^{\text{th}}$ ) of the next such payment). Moneys in the Parity Contract Obligations Account may be used only for the purposes set forth in this paragraph (b). Deposits required pursuant to the foregoing shall be increased or decreased each month to the extent required to timely pay Parity Contract Obligations next becoming due and payable and to make up any deficiency or loss that may otherwise arise in such fund or account. If the Issuer establishes separate subaccounts for any Series, deposits into each subaccount pursuant to this paragraph (b) shall be made on a pro rata and parity basis.

(c) Principal Account: Taking into account actual and anticipated earnings in the Principal Account of the Debt Service Fund within the current Bond Year, such sum as will be sufficient to pay one-twelfth ( $1/12^{\text{th}}$ ) of the principal portion of the Debt Service Requirement of the Outstanding Bonds which will mature and become due on such annual maturity dates beginning the month which is twelve (12) months prior to the first principal maturity date (including the Accreted Value and Appreciated Value of any Serial Capital Appreciation Bonds and Capital

Appreciation Income Bonds, respectively, coming due on such maturity date); provided, however, that monthly deposits for principal, or portions thereof, shall not be required to be made to the extent that money on deposit within such Principal Account is sufficient for such purpose. Any monthly payment from amounts transferred from the Operating Fund to be deposited as set forth above, for the purpose of meeting principal payments for any Series of Bonds, shall be adjusted, as appropriate, to reflect the frequency of principal payment dates applicable to such Series. Moneys in the Principal Account may be used only for the purposes set forth in this paragraph (c). Deposits required pursuant to the foregoing shall be increased or decreased each month to the extent required to timely pay principal next becoming due and payable and to make up any deficiency or loss that may otherwise arise in such fund or account. If the Issuer establishes separate subaccounts for any Series, deposits into each subaccount pursuant to this paragraph (c) shall be made on a pro rata and parity basis.

(d) Redemption Account: Taking into account actual and anticipated earnings in the Redemption Account of the Debt Service Fund within the current Bond Year, such sum as will be sufficient to pay one-twelfth (1/12<sup>th</sup>) of any Amortization Installment established for the mandatory redemption of Outstanding Bonds on such annual maturity date beginning the month which is twelve (12) months prior to the first Amortization Installment date (including the Accreted Value and Appreciated Value of any Term Capital Appreciation Bonds and Term Capital Appreciation Income Bonds, respectively, which are required to be redeemed during such Bond Year); provided, however, that monthly deposits into the Redemption Account, or portions thereof, shall not be required to be made to the extent that money on deposit in the Redemption Account is sufficient for such purpose. Any monthly payment from amounts transferred from the Operating Fund to be deposited as set forth above, for the purpose of meeting Amortization Installments for any Series of Bonds, shall be adjusted, as appropriate, to reflect the frequency of dates established for Amortization Installments applicable to such Series. The moneys in the Redemption Account shall be used solely for the purchase or redemption of the Term Bonds payable therefrom. The Issuer may at any time purchase any of said Term Bonds at prices not greater than the then redemption price of said Term Bonds. If the Term Bonds are not then redeemable prior to maturity, the Issuer may purchase said Term Bonds at prices not greater than the redemption price of such Term Bonds on the next ensuing redemption date. If Term Bonds are so purchased by the Issuer, the Issuer shall credit the account of such purchased Term Bonds against any current Amortization Installment to be paid by the Issuer. If the Issuer shall purchase or call for redemption in any year Term Bonds in excess of the Amortization Installment requirement for such year, such excess of Term Bonds so purchased or redeemed shall be credited in such manner and at such times as the

Issuer shall determine. Moneys in the Redemption Account in the Debt Service Fund may be used only for the purposes set forth in this paragraph (d). Deposits required pursuant to the foregoing shall be increased or decreased each month to the extent required to timely pay Amortization Installments next becoming due and payable and to make up any deficiency or loss that may otherwise arise in such fund or account. If the Issuer establishes separate subaccounts for any Series, deposits into each subaccount pursuant to this paragraph (d) shall be made on a pro rata and parity basis. The expenses in connection with the purchase or redemption of any Bonds shall be paid from any legally available funds of the Issuer, including amounts on deposit in the Surplus Fund, but excluding amounts on deposit in the other funds and accounts created hereby

(3) To the extent that the amounts on deposit in the Reserve Account (or any subaccount therein) are less than the applicable Reserve Requirement, if any, the Issuer shall next make deposits into the Reserve Account (or any subaccount therein) in the manner described below from moneys remaining in the Operating Fund. Any withdrawals from the Reserve Account (or any subaccount therein) shall be subsequently restored from the first moneys available in the Operating Fund, after all required current payments for Cost of Operation and Maintenance as set forth above and all current applications and allocations to the Debt Service Fund, including all deficiencies for prior payments have been made in full. Notwithstanding the foregoing, in case of withdrawal from the Reserve Account (or any subaccount therein), in no event shall the Issuer be required to deposit into the Reserve Account (or any subaccount therein) an amount greater than that amount necessary to ensure that the difference between the applicable Reserve Requirement and the amounts on deposit in the Reserve Account (or any subaccount therein) on the date of calculation shall be restored not later than seventy two (72) months after the date of such deficiency (assuming equal monthly payments into the Reserve Account (or any subaccount therein) for such seventy two (72) month period starting in the 13<sup>th</sup> month with no required deposits during the first twelve (12) month period).

Notwithstanding anything herein to the contrary, the Issuer may (a) provide that a Series of Bonds is not secured by the Reserve Account or a subaccount therein or (b) establish a separate subaccount in the Reserve Account for any Series of Bonds and provide a pledge of such subaccount 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 subaccount of the Reserve Account, the Holders of such Bonds shall not be secured by any other moneys in the Reserve Account or any other subaccount therein. Moneys in a separate subaccount of the Reserve Account shall be maintained at the Reserve Requirement applicable to such Series of Bonds secured by the subaccount; provided the Supplemental Resolution authorizing such Series of Bonds may establish the Reserve Requirement relating to such separate subaccount of the

Reserve Account at such level as the Issuer deems appropriate. Moneys shall be deposited in the separate subaccounts in the Reserve Account on a pro-rata and parity basis.

Moneys in the Reserve Account and subaccounts therein shall be used only for the purpose of the payment of Amortization Installments, principal of, or interest on the Outstanding Bonds secured thereby when the other moneys allocated to the Debt Service Fund are insufficient therefor, and for no other purpose.

If at any time the moneys held for the Reserve Account or a subaccount therein is in excess of the applicable Reserve Requirement, such excess shall be withdrawn and deposited, at the written direction of the Issuer, to the credit of the Principal Account or Redemption Account. In the event of the refunding of any Series of Bonds, the Issuer may withdraw from the Reserve Account or subaccount 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 (i) immediately thereafter, the Bonds being refunded shall be deemed to have been paid or defeased pursuant to the provisions hereof, and (ii) the amount remaining in the Reserve Account (or any subaccount 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 Requirement for any Bonds then Outstanding which are secured thereby.

Moneys on deposit in the Reserve Account (or any subaccount therein) may be used to pay the principal of and interest on the Series of Bonds Outstanding and secured thereby upon the final maturity or earlier redemption in full of such Series of Bonds.

Notwithstanding the foregoing, unless otherwise provided in a Supplemental Resolution relating to a Series of Bonds, in lieu of or in substitution for the required deposits into the Reserve Account (or any subaccount therein), the Issuer may cause to be deposited into the Reserve Account (or any subaccount therein) a Reserve Account Insurance Policy and/or a Reserve Account Letter of Credit in an amount equal to the difference between the applicable Reserve Requirement and the sums then on deposit in the Reserve Account (or any subaccount therein) plus the amounts to be deposited therein pursuant to the preceding paragraph.

In the event the Reserve Account (or any subaccount therein) contains both a Reserve Account Insurance Policy or Reserve Account Letter of Credit and cash, the cash shall be drawn down completely prior to any draw on the Reserve Account Insurance Policy or Reserve Account Letter of Credit. In the event more than one Reserve Account Insurance Policy or Reserve Account Letter of Credit is on deposit in the Reserve Account (or any subaccount therein),

amounts required to be drawn thereon shall be done on a pro-rata basis calculated by reference to the maximum amounts available thereunder.

If a disbursement is made from a Reserve Account Insurance Policy or Reserve Account Letter of Credit, the Issuer shall cause the maximum limits of such Reserve Account Insurance Policy or Reserve Account Letter of Credit to be reinstated as soon as it is able following such disbursement, from monies legally available to the Issuer, other than the funds and accounts created and established hereunder, and prior to funding any cash requirement of the Reserve Account (other than subaccounts therein having priority over the subaccount relating to the Reserve Account Insurance Policy or Reserve Account Letter of Credit) by depositing funds in the amount of the disbursement made under such instrument, with the issuer thereof, together with interest thereon to the date of reimbursement at the rate set forth in such Reserve Account Insurance Policy or Reserve Account Letter of Credit, but in no case greater than the maximum rate of interest permitted by law. In addition, the Issuer shall reimburse the issuer of the Reserve Account Insurance Policy or Reserve Account Letter of Credit for all reasonable expenses incurred by such issuer and required to be reimbursed by the terms of the Reserve Account Insurance Policy or Reserve Account Letter of Credit.

The Issuer may evidence its obligation to reimburse the issuer of any Reserve Account Insurance Policy or Reserve Account Letter of Credit by executing and delivering to such issuer a promissory note therefor, provided, however, that any such note shall not be a general obligation of the Issuer the payment of which is secured by its full faith and credit or taxing power, and shall be payable solely from the Pledged Revenues in the manner provided herein.

If any Reserve Account Insurance Policy or Reserve Account Letter of Credit shall terminate prior to the stated expiration date thereof, the Issuer agrees that it shall fund the Reserve Account (or subaccount therein) in the same manner and over the same time period as provided for above in the case of a withdrawal from the Reserve Account (or subaccount therein) in order that the amount on deposit in such account at the end of such period shall be equal to the applicable Reserve Account Requirement; provided the Issuer may, with the prior written consent of any Credit Facility Issuer affected, if any, obtain a new Reserve Account Insurance Policy or Reserve Account Letter of Credit in lieu of making the payments required by this paragraph.

Each Reserve Account Insurance Policy or Reserve Account Letter of Credit shall be payable to the Paying Agent for the related Series (upon the giving of notice as required thereunder) on any Interest Date or redemption date on which a deficiency exists which cannot be cured by funds in the Principal Account, Interest Account and Redemption Account available for such purpose. The issuer providing such Reserve Account Insurance Policy or Reserve Account Letter of Credit shall at the time the Reserve Account Insurance Policy or Reserve Account Letter of Credit is issued be either (A) an insurer: (1) whose



municipal bond insurance policies insuring the payment, when due, of the principal of and interest on municipal bond issues results in such issues being rated at least "A" (without regard to numerical or other modifiers) by S&P and/or Moody's and/or Fitch, or their successors; or (2) who holds one of the two highest policyholder ratings accorded insurers by A.M. Best & Company, or any comparable service; or (B) a commercial bank, insurance company or other financial institution the bonds payable or guaranteed by which have been, or whose obligation to pay is guaranteed by, a commercial bank, insurance company or other financial institution which has been, assigned ratings by S&P and Moody's, or their successors, in one of the two highest rating categories (without regard to numerical or other modifiers).

(4) From the moneys remaining in the Operating Fund, the Issuer shall next deposit into the Subordinated Debt Service Account an amount required to be paid as provided in the resolution, ordinance or agreement of the Issuer authorizing such Subordinated Debt, but for no other purposes. If the Issuer establishes separate subaccounts for Subordinated Debt, deposits into each subaccount pursuant to this paragraph (4) shall be made on a pro rata and parity basis.

(5) The Issuer shall next apply and deposit monthly from the moneys remaining on deposit in the Operating Fund into the Renewal and Replacement Account, an amount at least equal to one-twelfth (1/12th) of five percent (5%) of the Gross Revenues received during the immediately preceding Fiscal Year. The moneys in the Renewal and Replacement Account shall be used only for the purpose of paying the cost of extraordinary repairs, extensions, enlargements or additions to, or the replacement of capital assets of the System or emergency repairs thereto and the cost of acquiring, installing or replacing equipment of the System and engineering, legal and administrative expenses relating to the foregoing and the cost of providing a local share of moneys required to entitle the Issuer to receive federal or state grants or participate in federal or state assistance programs related to the System. Funds on hand in the Renewal and Replacement Account may also be used to pay the current Cost of Operation and Maintenance to the extent moneys on deposit in the Operating Fund are insufficient for such purposes. The moneys on deposit in such fund may also be used to supplement the Reserve Account (or any subaccount therein), if necessary, in order to prevent a default in the payment of the principal and interest on the Bonds. No further deposits shall be required to be made into the Renewal and Replacement Account when there shall be on deposit therein an amount equal to or greater than \$500,000, or such other lesser or greater amount as may be determined from time to time by the Consulting Engineers or the Utilities Director.

(6) The balance of any moneys remaining in the Operating Fund after the above required payments have been made shall be deposited into the Surplus Account and may be used for any lawful purpose related to the System, including for deposit to the Rate Stabilization Account as contemplated by

Section 20(R); provided, however, that none of such moneys shall be used for any purposes other than those hereinabove specified unless all current payments, including any deficiencies for prior payments, have been made in full and unless the Issuer shall have complied fully with all the covenants and provisions of this Ordinance.

The Issuer retains the right to prepay amounts which would become due hereunder in any Bond Year. If the amount transferred in any month to the credit of any of the funds or accounts shall be less than the amount required to be transferred under the foregoing provisions of this Section 20(B), the requirement therefor shall nevertheless be cumulative and the amount of any deficiency in any month shall be added to the amount otherwise required to be transferred in each month thereafter until such time as all such deficiencies have been made up.

Any moneys which shall have been withdrawn from the Debt Service Fund or that shall be deposited with the Paying Agent for the purpose of paying any of the Bonds hereby secured, either at the maturity thereof or upon call for redemption, shall be held in trust for the respective owners of such Bonds.

Notwithstanding anything to the contrary herein, the Issuer shall transfer monies from the Operating Fund at the times and in the amounts required in order to comply with the rebate covenants made by the Issuer in connection with any Series of Bonds (other than Taxable Bonds) at the time of issuance thereof.

(C) INVESTMENTS. Moneys in any fund or account created hereunder may be invested and reinvested in Permitted Investments which mature not later than the dates on which the moneys on deposit therein will be needed for the purpose of such fund. All income on such investments, except as herein otherwise provided, shall be deposited in the respective funds and accounts from which such investments were made and be used for the purposes thereof unless and until the maximum required amount is on deposit therein or, with respect to a subaccount in the Project Account, the amount required to acquire, construct and equip the Project for which the subaccount is established is on deposit therein, and thereafter shall be deposited in the Operating Fund.

In determining the amount of any of the payments required to be made pursuant to this Section 20(C), credit may be given for all investment income accruing to the respective funds and accounts described herein, except as otherwise provided.

In computing the amount in any fund or account, obligations purchased as an investment of moneys therein shall be valued at least annually at the market price thereof pursuant to generally accepted accounting principles.

(D) OPERATION AND MAINTENANCE. The Issuer 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.

(E) **RATE COVENANT.** The Issuer will fix, establish, revise from time to time whenever necessary, maintain and always collect such fees, rates, rentals and other charges for the use of the products, services and facilities of the System which will always provide Net Revenues in each Fiscal Year sufficient to pay one hundred twenty percent (120%) of the Debt Service Requirement on all Outstanding Bonds in the applicable Fiscal Year. In addition, such Net Revenues in each Fiscal Year shall also be sufficient to provide one hundred percent (100%) of any amounts required by the terms of this Ordinance or any Supplemental Resolution to be deposited into the Reserve Account (including any subaccount therein) or with any Credit Facility Issuer as a result of a withdrawal from the Reserve Account (including any subaccount therein), the Renewal and Replacement Account and debt service on other obligations payable from the Revenues of the System (including, but not limited to Subordinated Debt), and other payments, and all allocations and applications of Revenues in this Ordinance and/or any Supplemental Resolution required in such Fiscal Year.

The Issuer will, from time to time, as it deems necessary and appropriate, request a Qualified Independent Consultant to make recommendations as to a revisions of such fees, rates, rentals and other charges for the use of the products, services and facilities of the System and upon receiving such recommendations will make such revisions as may be necessary or proper to enable the Issuer to comply with the requirements of the preceding two paragraphs. Notwithstanding anything to the contrary herein, the failure to meet the covenant contained in the preceding paragraph will not constitute a default or an "Event of Default" hereunder if the Issuer complies as nearly as practicable with the recommendations of the Qualified Independent Consultant in respect of rates, fees, rentals and other charges and Net Revenues are sufficient to pay the principal of, redemption premium, if any, and interest on Bonds issued hereunder that are payable in such Fiscal Year; provided, however, notwithstanding the foregoing, a failure to provide Net Revenues sufficient to pay one hundred twenty percent (120%) of the Debt Service Requirement on all Outstanding Bonds in two consecutive Fiscal Years shall constitute an Event of Default hereunder without a further opportunity to cure.

For purposes of determining compliance with the rate covenant in this Section 20(E), any Pledged Revenues that were deposited into the Rate Stabilization Account and thereafter transferred to the Operating Fund to pay the Cost of Operation and Maintenance shall be deemed to be Gross Revenues, when so used.

Net Revenues shall not be reduced so as to render them insufficient to provide Revenues for the purposes provided therefor by this Ordinance.

(F) **BOOKS AND ACCOUNTS; AUDIT.** The Issuer shall keep proper books, records and accounts, separate and apart from all other records and accounts, showing correct and complete entries of all transactions of the System, and the Holders of any of the Bonds or any duly authorized agent or agents of such Holders shall have the right at

any and all reasonable times to inspect such books, records and accounts. The Issuer shall cause an audit of such books, records and accounts to be made by an independent firm of certified public accountants, following the close of each Fiscal Year of the Issuer in accordance with the applicable laws of the State.

Copies of each such audit report shall be placed on file with the Issuer and be made available at reasonable times for inspection by Holders of the Bonds.

(G) DISPOSITION OF SYSTEM.

The System may be sold or otherwise disposed of as a whole or substantially as a whole, only if the net proceeds to be realized, together with other moneys available for such purpose, shall be sufficient to fully retire all of the Outstanding Bonds issued pursuant to this Ordinance and all interest thereon, together with any prepayment premium, to their respective dates of maturity or earlier redemption dates and to make any termination payments required under any Qualified Agreement. The proceeds from such sale or other disposition of the System shall immediately be deposited first in the Debt Service Fund and then in the Subordinated Debt Service Account and shall be used only for the purpose of paying Parity Contract Obligations, and paying the principal of and interest on the Bonds and Subordinated Debt as the same shall become due, or the redemption of callable Bonds and Subordinated Debt, or the purchase of Bonds and Subordinated Debt at a price not greater than the redemption price of said Bonds and Subordinated Debt, or, if the Bonds or Subordinated Debt are not then redeemable prior to maturity, at prices not greater than the redemption price of such Bonds or Subordinated Debt on the next ensuing redemption date.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease, exchange or otherwise dispose of any of the tangible property or ownership interest in tangible property comprising a part of the System in the following manner, if any one of the following conditions exist: (1) such property is not necessary for the operation of the System or (2) such property is not useful in the operation of the System or (3) such property is not profitable in the operation of the System.

Prior to any sale, lease, exchange or other disposition of said property:

(a) if the amount to be received therefor is not in excess of one-half (1/2) of one percentum (1%) of the value of the gross plant investment in the System, the officer of the Issuer charged with the normal acquisition, construction, operation, maintenance and repair of the portion of the System for which disposition is sought, may determine that such property comprising a part of such System is either no longer necessary, useful or profitable in the operation thereof.

(b) if the amount to be received therefor is in excess of one-half (1/2) of one percentum (1%) of the value of the gross plant investment in the System, the officer of the Issuer charged with the normal acquisition, construction, operation, maintenance and repair of the portion of the System for which disposition is sought and the

Consulting Engineers shall each first make a finding in writing determining that such property comprising a part of such System is either no longer necessary, useful or profitable in the operation thereof, and the Issuer shall, by resolution duly adopted, approve and concur in the finding of such authorized officer and the Consulting Engineers.

The net proceeds realized from such disposal of a part of the System shall be deposited in the Renewal and Replacement Account to the extent necessary to make the amount on deposit therein equal to the amount then required to be on deposit therein; and any additional moneys not needed for said fund shall be used for any capital expenditures in connection with the System or the purchase or redemption of Outstanding Bonds.

No sale or any other disposition of assets of the System financed with proceeds of Bonds (other than Taxable Bonds) shall be consummated nor shall the proceeds of any such sale be applied unless prior to such consummation or application, there shall be delivered an opinion of Bond Counsel to the effect that such sale and the application of the proceeds as required herein will have no adverse impact on the exclusion from gross income for Federal income tax purposes of interest on any of the Bonds (other than Taxable Bonds) or other debt (that is not intended to be taxable debt) payable in any way from Gross Revenues.

Notwithstanding any other provision of this Section 20(G) of this Ordinance to the contrary, the Issuer may transfer ownership and/or operation of all or a portion of the System to any public body authorized by the laws of the State to own and/or operate such System on an installment sale basis provided that the Issuer (i) has received an opinion of Bond Counsel such sale will have no adverse impact on the exclusion from gross income for Federal income tax purposes of interest on any of the Bonds (other than Taxable Bonds) or other debt (that is not intended to be taxable debt) payable in any way from Gross Revenues and has received an opinion of the City Attorney or independent legal counsel stating that such sale is not prohibited by any applicable Florida law, and (ii) the Issuer adopts a resolution to the effect that, based upon such certificates and opinions of its Consulting Engineers, independent certified public accountants, Bond Counsel, Financial Advisor or other Qualified Independent Consultant as the Issuer shall deem necessary, desirable or appropriate, such transfer will not materially adversely affect the rights of the Holders of the Bonds.

(H) **INSURANCE AND CONDEMNATION.** The Issuer shall provide protection for the System both in accordance with the requirements of all agreements, if any, to which the Issuer may at the time be a party with respect to joint ownership of properties by the Issuer with others which is part of the System, and in accordance with Prudent Utility Practice. Said protection may consist of insurance, self insurance and indemnities. The Issuer will keep, or cause to be kept, the works, plants and facilities comprising the properties of the System insured, and will carry such other insurance against fire and other risks, accidents or casualties at least to the extent and of the kinds that insurance is usually carried by utilities operating like properties. Any insurance shall be in the form of policies or contracts for insurance with insurers of good

standing, shall be payable to the Issuer and may provide for such deductibles, exclusions, limitations, restrictions, and restrictive endorsements customary in policies for similar coverage issued to entities operating properties similar to the properties of the System. Any self insurance shall be in the amounts, manner and of the type provided by entities operating properties similar to the properties of the System. In the event of any loss or damage to the System covered by insurance, the Issuer will, with respect to each such loss, promptly repair, reconstruct or replace the parts of the System affected by such loss or damage to the extent necessary to properly conduct the operation of the business of the System in accordance with Prudent Utility Practice, shall cause the proceeds of such insurance to be applied for that purpose to the extent required therefor, and pending such application, shall hold the proceeds of any insurance policy covering such damage or loss in trust to be applied for that purpose to the extent required therefor. Any excess insurance proceeds received by the Issuer may be used by the Issuer for any lawful purpose. Notwithstanding the foregoing or any provisions of this Ordinance to the contrary, the Issuer shall not be required to maintain insurance with respect to facilities for which insurance shall not be available at reasonable cost or for facilities which, in accordance with Prudent Utility Practice, are not customarily insured.

In the event of a taking of a part of the System by eminent domain or sale of a part of the System in lieu of eminent domain, the Issuer will, with respect to each such taking, use the proceeds thereof to promptly replace the parts of the System affected by such taking in the same manner as the proceeds of insurance described above.

(I) NO FREE SERVICE. So long as any Bonds are Outstanding, unless otherwise provided by applicable law, and except in the case of an emergency or natural disaster or for health, safety or welfare reasons, the Issuer shall not furnish or supply the facilities, services and commodities of the System either free of charge or for a nominal charge to any Person. Subject to the foregoing, in the event any of the Issuer or its departments, agencies and instrumentalities shall avail itself of the System or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged to the Issuer and any such departments, agencies and instrumentalities, as applicable, and shall be paid as they accrue from legally available moneys sufficient to pay such charges. The Issuer shall promptly enforce the payment of any and all accounts owing to the Issuer and delinquent, to the extent permitted by applicable law, and except in the case of an emergency or natural disaster or for health, safety or welfare reasons, by discontinuing service or by filing suits, actions or proceedings, or by both discontinuance of service and filing suit; provided the foregoing regarding filing suits, actions or proceedings shall not apply to enforcement of payment of delinquent accounts of the Issuer or its departments, agencies and instrumentalities.

(J) [RESERVED]

(K) ENFORCEMENT OF COLLECTIONS. To the extent consistent with and authorized by applicable law and public policy, excepted as may be directed or permitted during a declared state of emergency, the Issuer will diligently enforce and

collect the Gross Revenues for the services and facilities of the System and will take all steps, actions and proceedings for the enforcement and collection of such Gross Revenues as shall become delinquent; and will maintain accurate records with respect thereof. The Gross Revenues shall, as collected, be held in trust to be applied as herein provided. Notwithstanding anything herein to the contrary, this covenant shall not, however, prevent the Issuer from implementing reasonable policies dealing with individual hardships and extenuating circumstances including without limitation the negotiation of fines and penalties as part of a full settlement on past due accounts or payment plans not to exceed 180 days or such other period of time as reasonably determined by the Issuer.

(L) OPERATING BUDGET. The Issuer shall annually, prior to commencement of each of its Fiscal Years, prepare and adopt a budget of the estimated Revenues and the Cost of Operation and Maintenance during such next succeeding Fiscal Year, which budget may be amended or supplemented from time to time. Nothing contained herein shall limit the amount which the Issuer may expend for the Cost of Operation and Maintenance in any Fiscal Year.

(M) NO COMPETING SYSTEM. To the extent permitted by law, the Issuer will not grant a franchise for the operation of any competing utility system or systems within the area served by the System until all Bonds issued and Outstanding hereunder, together with the interest thereon, and premium, if any, have been paid in full. Notwithstanding the foregoing, the Issuer shall not be required to duplicate services being provided by private or public utilities in the area being served by such private or public utilities on the date of issuance of the first Series of Bonds hereunder. In addition, the Issuer shall not be prohibited from allowing other private or public utilities to provide services within the area being served by the System, if the Issuer shall not be providing such service in such area on that date. Nothing herein shall be deemed to constitute the approval of the Issuer for any private or public utility (other than the System) to provide any services within the boundaries of the Issuer or within the area being served by the System or within any other area of the Issuer.

(N) SUPERVISORY PERSONNEL. The City Manager, in operating the System, will employ or designate, as manager, one or more of its qualified employees, or an independent contractor, who have demonstrated ability and experience in operating similar facilities.

(O) PAYMENT OF TAXES, ASSESSMENTS AND OTHER CLAIMS. The Issuer shall from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental claims or charges, or payments in lieu thereof, lawfully imposed upon the properties constituting the System or the Gross Revenues, impact fees when the same shall become due, as well as all lawful claims for labor and materials and supplies which, if not paid, might become a lien or charge upon such properties or any part thereof, or upon the Gross Revenues, impact fees or which might in any way impair the security of the Bonds, except assessments, charges or claims which the Issuer shall in good faith contest by proper legal proceedings.

(P) ISSUANCE OF OTHER OBLIGATIONS. The Issuer shall issue no bonds or obligations of any kind or nature payable from or enjoying a lien on the Pledged Revenues if such obligations have priority over the Bonds, including Parity Contract Obligations, with respect to payment or lien, nor shall the Issuer create or cause or permit to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of the Bonds, including any Parity Contract Obligations upon said Pledged Revenues. Notwithstanding any other provision in this Section 20(P), the Issuer may issue Bonds (which includes Parity Contract Obligations) under the conditions and in the manner provided herein. Any obligations of the Issuer, other than such Bonds, which are payable from the Pledged Revenues, including Subordinated Debt, shall contain an express statement or have other evidence to the effect 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. Unless otherwise provided in a Supplemental Resolution, nothing in this Ordinance shall be construed as in any way prohibiting or limiting the power of the Issuer to enter into agreements, incur obligations, undertake indebtedness or otherwise enter into any financing transactions to the extent such agreements, obligations, indebtedness or financing transactions do not impose any lien upon the Pledged Revenues and are payable from sources other than Pledged Revenues. A subordinate lien on Pledged Revenues is hereby granted to secure the Issuer's obligations with respect to the Prior Subordinated Debt and shall be payable pursuant to Section 20(B)(4) herein.

(Q) ISSUANCE OF ADDITIONAL PARITY OBLIGATIONS. No Additional Parity Obligations shall be issued except upon the conditions and in the manner hereinafter provided:

(1) There shall have been obtained and filed with the City Clerk a certificate of the Finance Director stating: (a) that the books and records of the Issuer relative to the System and the Net Revenues have been reviewed by the Finance Director; and (b) that the amount of the Net Revenues derived for any consecutive twelve (12) months out of the preceding twenty-four (24) months preceding the date of issuance of the proposed Additional Parity Obligations (the "Test Period") adjusted as provided in paragraphs (2), (3), (4), (5) and/or (6) below, is equal to not less than one hundred twenty percent (120%) of the Maximum Debt Service Requirement becoming due in any Bond Year thereafter on (a) all Bonds issued under this Ordinance, if any, then Outstanding, and (b) on the Additional Parity Obligations with respect to which such certificate is made.

(2) Upon recommendation of the Qualified Independent Consultant, the Net Revenues certified pursuant to clause (b) in the previous paragraph may be adjusted for purposes of this Section 20(Q) by including: (a) 100% of the additional Net Revenues which in the opinion of the Qualified Independent Consultant would have been derived by the Issuer from rate increases adopted before the Additional Parity Obligations are issued, if such rate increases had been in place throughout the Test Period, and (b) 100% of the additional Net Revenues estimated by the Qualified Independent Consultant to be derived during the first full twelve month period after the facilities of the System are



extended, enlarged, improved or added to with the proceeds of the Additional Parity Obligations with respect to which such certificate is made.

(3) Upon recommendation of the Qualified Independent Consultant, if the Additional Parity Obligations are to be issued for the purpose of acquiring a stormwater system and/or any other utility system in accordance with Section 26 hereof, the Net Revenues certified pursuant to Section 20(Q)(1)(b) may be adjusted by including: 100% of the additional estimated Net Revenues which in the written opinion of the Qualified Independent Consultant will be derived from the acquired facilities during the first full 12-month period after the issuance of such Additional Parity Obligations (the Qualified Independent Consultant's report shall be based on the actual operating revenues of the acquired utility for a recent 12-month period adjusted to reflect the Issuer's ownership and the Issuer's rate structure in effect with respect to the System at the time of the issuance of the Additional Parity Obligations).

(4) Upon recommendation of the Qualified Independent Consultant, if the number of connections as of the first day of the month in which the proposed Additional Parity Obligations are to be issued exceeds the average number of such connections during such twelve (12) consecutive month period, then the Net Revenues certified pursuant to Section 20(Q)(1)(b) may be adjusted to include the Net Revenues which would have been received in such twelve (12) consecutive months if those additional connections had also been connected to the System during all of such twelve (12) consecutive months.

(5) Upon recommendation of the Qualified Independent Consultant, if the Issuer shall have entered into a contract, which contract shall be for a duration of not less than the final maturity of the proposed Additional Parity Obligations, with any public body, whereby the Issuer shall have agreed to furnish services for the collection or disposal of stormwater or agreed to furnish services in connection with any stormwater system or any other utility system, then the Net Revenues certified pursuant to Section 20(Q)(1)(b) may be increased (to the extent such amounts were not reflected in such Net Revenues) by the minimum amount which the public body shall guarantee to pay in any one year for the furnishing of services by the Issuer, after deducting from such payment the estimated Cost of Operation and Maintenance attributable in such year to such services.

(6) Upon recommendations of the Qualified Independent Consultant, if there is an estimated increase in Net Revenues to be received by the Issuer as a result of additions, extensions or improvements to the System during the period of three (3) years following the completion of such additions, extensions or improvements financed with the proceeds of Bonds or Additional Parity Obligations, then the Net Revenues derived from the System certified pursuant to Section 20(Q)(1)(b) may be increased by fifty percent (50%) of the average annual additional Net Revenues calculated for such three year period.

(7) The Issuer need not comply with the provisions of paragraph (1) of this Section 20(Q) if and to the extent the Additional Parity Bonds are to be issued for refunding purposes, if the Issuer shall cause to be delivered a certificate of the Finance Director of the Issuer evidencing that the Maximum Debt Service Requirement for all Bonds issued hereunder that will be Outstanding after issuance of such Additional Parity Bonds is not greater than the Maximum Debt Service Requirement for all Bonds issued hereunder that were Outstanding prior to the issuance of such Additional Parity Bonds (excluding any Bonds or Subordinated Debt being paid in full at the time of issuance of such Additional Parity Bonds or defeased by proceeds of such Additional Parity Bonds).

(8) The Issuer need not comply with the provisions of paragraph (1) of this Section 20(Q) if and to the extent the Bonds to be issued are for the purpose of providing any necessary additional funds required for completion of any improvements to the System ("Completion Bonds") if originally financed with the proceeds of Bonds; provided that such Completion Bonds for which the Issuer need not comply with the provision of such paragraph (1) of this Section 20(Q) may not exceed 10% of the total principal amount of Bonds estimated to be required for such improvements to the System at the time of issuance of the initial Series of Bonds to finance such improvements.

(9) The Finance Director of the Issuer shall have certified that the Issuer is not in default in the carrying out of any of the obligations assumed under this Ordinance and no Event of Default shall have occurred under this Ordinance and shall be continuing, and all payments required by this Ordinance to be made into the funds and accounts established hereunder shall have been made to the full extent required (unless such default or Event of Default will be cured upon or as a result of the issuance of such Additional Parity Bonds or Completion Bonds).

(10) The Supplemental Resolution authorizing the issuance of the Additional Parity Obligations shall recite that all of the covenants contained herein will be applicable to such Additional Parity Obligations.

(11) Notwithstanding anything herein to the contrary, no Additional Parity Obligations shall be issued if an Event of Default would continue beyond such issuance.

(R) **RATE STABILIZATION ACCOUNT.** The Issuer may transfer into the Rate Stabilization Account such moneys which are on deposit in the Surplus Account as it deems appropriate, and may transfer such amount of moneys from the Rate Stabilization Account to the Operating Fund as it deems appropriate to be applied to the payment of the Cost of Operation and Maintenance of the System prior to using other amounts in the Operating Fund to pay the Cost of Operation and Maintenance of the System; provided, however, that moneys on deposit in the Rate Stabilization Account shall be applied to make payments pursuant to Section 20(B)(2) hereof when amounts

on deposit in the Operating Fund, the Renewal and Replacement Account and/or the Surplus Account are insufficient.

**SECTION 21. Defaults; Events of Default and Remedies.** Except as provided below, if any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default:"

- (A) Default in the due and punctual payment of any interest on any Bonds;
- (B) Default in the due and punctual payment of the principal of and premium, if any, on any Bonds, at the stated maturity thereof, or upon proceedings for redemption thereof;
- (C) Default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer contained in this Ordinance or in the Bonds and the continuance thereof for a period of sixty (60) days after written notice to the Issuer given by the Holders of not less than twenty-five percent (25%) of aggregate principal amount of Bonds then Outstanding; provided, however, that if such performance requires work to be done, actions to be taken, or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied, as the case may be, within such sixty (60) day period, no Event of Default shall be deemed to have occurred or exist if, and so long as the Issuer shall commence such performance within such sixty (60) day period and shall diligently and continuously prosecute the same to completion; provided that the foregoing shall not apply to the rate covenant set forth in Section 20(E), the provisions of which govern matters relating to the rate covenant and, provided further, that the foregoing may be modified by a Supplemental Resolution in connection with a Series of Bonds;
- (D) Failure by the Issuer promptly to remove any execution, garnishment or attachment of such consequence as will materially impair its ability to carry out its obligations hereunder;
- (E) Any act of bankruptcy or the rearrangement, adjustment or readjustment of the obligations of the Issuer under the provisions of any bankruptcy or moratorium laws or similar laws relating to or affecting creditors' rights;
- (F) Written notice shall have been received by the Issuer from a Credit Facility Issuer that an event of default has occurred under the agreement underlying a Credit Facility, to the extent said notice is established as an event of default under the terms of any Supplemental Resolution relating to a Series of Bonds; or
- (G) any other Event of Default described in a Supplemental Resolution for any Series of Outstanding Bonds occurs.

The term "default" shall mean default by the Issuer in the performance or observance of any of the covenants, agreements or conditions on its part contained in this Ordinance, any Supplemental Resolution or in the Bonds, exclusive of any period of

grace required to constitute a default or an "Event of Default" as hereinabove provided.

Notwithstanding the foregoing, the occurrence of any default under a Qualified Agreement, including without limitation, failure on the part of the Issuer to pay a termination fee under a Qualified Agreement, shall not be construed as or deemed to constitute an "Event of Default" hereunder; rather, such occurrence shall be remedied pursuant to such Qualified Agreement and applicable legal and equitable principles taking into account the parity status as to lien on Pledged Revenues which the counterparty to such Qualified Agreement enjoys as to Parity Contract Obligations only, relative to that of the Bondholders and their rights to payments hereunder.

Notwithstanding any other provision hereof, failure of the Issuer or the dissemination agent named therein to comply with any continuing disclosure undertaking relating to a Series of Bonds for purposes of Rule 15(c)2-12 of the Securities and Exchange Commission, or any successor law thereto, shall not be considered as a default or an "Event of Default" as hereinabove provided.

For purposes of Section 21(A) and (B) hereof, no effect shall be given to any payments made under any Credit Facility.

Nothing herein, however, shall be construed to grant to any Holder of the Bonds any lien on any property of the Issuer, except the Pledged Revenues.

The foregoing notwithstanding:

(1) No remedy conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy, but each remedy shall be cumulative and shall be in addition to any other remedy given to the Bondholders hereunder.

(2) No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient.

(3) No waiver of any default or Event of Default hereunder by the Bondholders shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

(4) Acceleration of the payment of principal of and interest on the Bonds shall not be a remedy hereunder in the case of an Event of Default.

(5) In case the time for the payment of interest on any Bond shall be extended by operation of law, whether or not such extension be by or with the consent of the Issuer, such interest so extended shall not be entitled in case of default or Event of Default hereunder to the benefit or security of this Ordinance except subject to the prior payment in full of the principal of all Bonds then

Outstanding and of all interest the time for the payment of which shall not have been extended.

Upon the happening and continuance of any Event of Default specified in this Section 21, the Holders of not less than twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding hereunder may proceed to protect and enforce the rights of the Holders, under Florida law or under this Ordinance, by such suits, actions or special proceedings in equity or at law, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as such Holders shall deem most effectual to protect and enforce such rights.

The Holder or Holders of Bonds in an aggregate principal amount of more than fifty percent (50%) in aggregate principal amount of Bonds then Outstanding may, by a duly executed certificate in writing, appoint a trustee for Holders of Bonds Outstanding, with authority to represent such Bondholders in any legal proceedings for the enforcement and protection of the rights of such Bondholders. Such certificate shall be executed by such Bondholders or their duly authorized attorneys or representatives, and shall be filed in the office of the City Clerk.

Upon the occurrence of an Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Bondholders under this Ordinance, the Holders shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the System and the funds and accounts created hereunder pending such proceedings, with such powers as the court making such appointment shall confer.

Notwithstanding any provision of this Ordinance to the contrary, for all purposes of this Section 21, in the event that following an Event of Default, a Credit Facility Issuer honors its obligations to make payments on a Series of Bonds, said Credit Facility Issuer shall be deemed to be the Holder of the Bonds secured by the related Credit Facility for purposes of this Section 21.

On the occurrence of an Event of Default, to the extent such rights may then lawfully be waived, neither the Issuer nor anyone claiming through or under it, shall set up, claim or seek to take advantage of any stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement of this Ordinance, and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent it may lawfully do so, the benefit of all such laws and all right of redemption to which it may be entitled.

In case any proceeding taken by any Holder(s) on account of any Event of Default shall have been discontinued or abandoned for any reason, then and in every such case, the Issuer and the Holder(s) shall be restored to their former positions and rights hereunder, respectively, and all rights and remedies of the Holders shall continue as though no such proceeding had been taken.

No Holder of any of the Bonds hereby secured shall have any right in any manner whatever by their action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the benefit of all Holders of such Bonds.

Upon an Event of Default, monies in the Debt Service Fund, Renewal and Replacement Account and Rate Stabilization Account, together with any other monies then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Ordinance or otherwise, shall be applied as follows:

First: to the payment of the Persons entitled thereto of all installments of interest then due and payable on the Bonds, in the order in which such installments become due and payable on the Bonds, and, if the amount available shall not be sufficient to pay in full any particular installment on the Bonds, then the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds;

Second: if all obligations described in the preceding paragraph have been satisfied, to the payment of the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which sufficient monies are held pursuant to the provisions of this Ordinance), in the order of their due dates, with interest upon such Bonds at the respective rates specified therein from the respective dates upon which they became due, and, if the amount available shall not be sufficient to pay in full the principal of Bonds due on any particular date, together with such interest, then to the payment first of such interest, ratably according to the amount of such interest due on such date, and then to the payment of such principal, ratably according to the amount of such principal due on such date, to the Persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds; and

Third: if all obligations described in the preceding paragraph have been satisfied, to the payment of the interest on and principal of the Bonds, to the purchase and retirement of Bonds and to the redemption of Bonds, all in accordance with the provisions of this Ordinance.

Notwithstanding the foregoing, if the principal of all the Bonds shall have become due and payable (for a reason other than acceleration, which is not a remedy), all such monies shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of

interest, or of any Bond over any other Bond, ratably, according to the amount due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

Whenever moneys are to be applied by the Issuer pursuant to the provisions of this Section 21, such moneys shall be applied by the Issuer at such times, and from time to time, as the Issuer in its sole discretion shall determine, having due regard to the amount of such monies available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such monies with the Paying Agent or otherwise setting aside such monies in trust for the proper purpose, shall constitute proper application by the Issuer; and the Issuer shall incur no liability whatsoever to any Holder, Credit Facility Issuer, or to any other person for any delay in applying any such funds, so long as the Issuer acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Ordinance as may be applicable at the time of application. Whenever the Issuer shall exercise such discretion in applying such funds it shall fix the date upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Issuer shall give such notice as it may deem appropriate of the fixing of any such date.

**SECTION 22. Amending and Supplementing of this Ordinance without Consent of Holders of Bonds.** This Ordinance may be modified and amended by the Issuer from time to time prior to the issuance of the Series 2021 Bond. Thereafter, the Issuer, from time to time and at any time and without the consent or concurrence of any Holder of any Bonds, may adopt or enact a Supplemental Resolution amendatory hereof or supplemental hereto if the provisions of such Supplemental Resolution shall not materially adversely affect the rights of the Holders of the Bonds then Outstanding, for any one or more of the following purposes:

(A) To make any changes or corrections in this Ordinance as to which the Issuer shall have been advised by Bond Counsel are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provisions or omission or mistake or manifest error contained in this Ordinance, or to insert in this Ordinance such provisions clarifying matters or questions arising under this Ordinance as are necessary or desirable;

(B) To provide for the sale, authentication and delivery of Bonds and any Parity Contract Obligations and the disposition of the proceeds from the sale thereof, in the manner and to the extent authorized by this Ordinance, and to add additional covenants and agreements of the Issuer for the purpose of further securing the payments of the Bonds and any Parity Contract Obligations;

(C) To surrender any right, power or privilege reserved to or conferred upon the Issuer by the terms of this Ordinance;

(D) To confirm, as further assurance, any lien, pledge or charge or the subjection to any lien, pledge or charge, created or to be created by the provisions of this Ordinance;

(E) To grant to or confer upon the Holders or any Qualified Agreement Provider any additional right, remedies, powers, authority or security that lawfully may be granted to or conferred upon them;

(F) To assure compliance with federal arbitrage provisions under Section 148 of the Code in effect from time to time or to make such changes as may be necessary to maintain the tax exemption applicable to any Series as said exemption was intended to exist, if at all, at the time of issuance of such Series;

(G) To provide such changes as may be necessary in order to adjust the terms hereof (but not including the provisions of Section 20(E) and Section 20(Q) hereof) so as to facilitate the issuance of Variable Rate Bonds, Option Bonds, the execution of any Qualified Agreement, or to obtain a Credit Facility;

(H) To provide for the combination of the System with any other utility provided the conditions set forth in Section 26 hereof are satisfied;

(I) To provide for the transfer of the ownership and/or operation of the System pursuant to a governmental reorganization as set forth in Section 25 hereof;

(J) To modify any of the provisions of this Ordinance in any other aspects provided that such modifications shall not be effective until after the Bonds Outstanding at the time such Supplemental Resolution is adopted or enacted shall cease to be Outstanding, or until the holders thereof consent thereto pursuant to Section 23 hereof, and any Bonds issued subsequent to any such modification shall contain a specific reference to the modifications contained in such Supplemental Resolution;

(K) To make covenants relating to Direct Subsidy Bonds, if appropriate;

(L) To qualify the Bonds or any of the Bonds for registration under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or to qualify this Ordinance as an "indenture" under the Trust Indenture Act of 1939, as amended;

(M) To implement or modify any secondary market disclosure requirements applicable to the Issuer; or

(N) To make any other change or modification of the terms hereof which, in the reasonable judgment of the Issuer, is not prejudicial to the rights or interests of the Holders.

Upon the enactment of any Supplemental Resolution pursuant to the provisions of this Section 22, this Ordinance shall be and be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this



Ordinance of the Issuer and all holders of Bonds then Outstanding and affected thereby shall thereafter be determined, exercised and enforced in all respects under the provisions of this Ordinance as so modified and amended, unless the Supplemental Resolution applies only to a specific Series of Bonds.

**SECTION 23. Amendment of this Ordinance with Consent of Holders of Bonds.** Except as provided in Section 22 hereof, no material modification or amendment of this Ordinance or of any resolution supplemental hereto shall be made without the consent in writing of the Holders of more than fifty percent (50%) in aggregate principal amount of Outstanding Bonds affected and any Qualified Agreement Provider affected thereby. For purposes of this Section 23, so long as legally permitted, to the extent any Outstanding Bonds affected are secured by a Credit Facility and the Credit Facility Issuer is not in default of its obligations under the related Credit Facility, then the consent of Credit Facility Issuer(s) shall be deemed to constitute the consent of the Holder of such Bonds.

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 reduce the percentage of the Holders of the Outstanding Bonds required to consent to any material modification or amendment hereof without the consent of the Holder or Holders of all Outstanding Bonds affected by such modification or amendment. For purposes of the immediately preceding sentence, a Credit Facility Issuer shall not consent on behalf of the Holders of the Bonds.

If at any time the Issuer shall determine that it is necessary or desirable to adopt or enact any Supplemental Resolution for any of the purposes of this Section 23, the Issuer shall cause notice of the proposed enactment of such Supplemental Resolution to be mailed, postage prepaid, to all owners of Outstanding Bonds affected by the proposed Supplemental Resolution at their addresses as they appear on the registration books and to any Qualified Agreement Provider and Credit Facility Issuer affected thereby. Such notice shall briefly set forth the nature of the proposed Supplemental Resolution and shall state that copies thereof are on file at the registered office of the Issuer for inspection by all Bondholders. The Issuer shall not, however, be subject to any liability to any Bondholder by reason of its failure to cause the notice required by this Section 23 to be mailed and any such failure shall not affect the validity of such Supplemental Resolution when consented to and approved as provided in this Section 23. A subsequent ordinance or resolution of the Issuer may provide that the form and manner of providing notice to Bondholders be in some different form if so determined by the Issuer.

Whenever the Issuer shall deliver to the City Manager an instrument or instruments in writing purporting to be executed by the Holders of not less than fifty percent (50%) in aggregate principal amount of the Outstanding Bonds affected by the proposed Supplemental Resolution and by any Qualified Agreement Provider and Credit Facility Issuer affected thereby, which instrument or instruments shall refer to the proposed Supplemental Resolution and shall specifically consent to and approve the adoption or enactment thereof in substantially the form thereof referred to in such

instrument, thereupon, but not otherwise, the Issuer may enact such Supplemental Resolution in substantially such form, without liability or responsibility to any owner of any Bond, whether or not such registered owner shall have consented thereto. Notwithstanding the foregoing, the Issuer may adopt or enact the proposed Supplemental Resolution prior to receiving the requisite consents provided the effective date of said Supplemental Resolution, by its terms, is delayed until, and conditioned upon, receipt of the required consents.

If the Holders of not less than fifty percent (50%) in aggregate principal amount of the Bonds Outstanding and affected by the Supplemental Resolution at the time of the adoption or enactment (or effective date) of such Supplemental Resolution shall have consented to and approved the adoption enactment thereof as herein provided, no Holder of any Bond shall have any right to object to the adoption or enactment of such Supplemental Resolution, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Issuer from adopting the same or from taking any action pursuant to the provisions thereof.

Any consent given by a Holder shall be binding with respect to all Bonds owned by said Holder on the date consent is given, and shall bind all future owners of said Bonds, so that said future owners shall have been deemed to consent to the proposed Supplemental Resolution to the same force and effect as if they had executed a consent as of the date of enactment thereof.

Upon the enactment of any Supplemental Resolution pursuant to the provisions of this Section 23, this Ordinance shall be and be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Ordinance of the Issuer and all holders of Bonds then Outstanding and affected thereby shall thereafter be determined, exercised and enforced in all respects under the provisions of this Ordinance as so modified and amended, unless the Supplemental Resolution relates solely to a specific Series of Bonds.

The consent of the Holders of any Series of Bonds to be issued hereunder or in connection with a Series of Outstanding Bonds to be remarketed shall be deemed given if the entity or entities serving as underwriter(s) or the initial marketing group or remarketing agent, or as agent for or in lieu of Holders of the Series of Bonds, consent in writing to such Supplemental Resolution and the substance of such Supplemental Resolution is disclosed in the official statement or other offering document pursuant to which such Series of Bonds are offered and sold to the public, if applicable.

Notwithstanding anything to the contrary herein, a Supplemental Resolution that relates only to the issuance of a particular Series of Bonds hereunder and that does not purport to alter or amend the rights or security of any holders of any Bonds of any other Series issued and Outstanding hereunder shall not be deemed or considered to be a Supplemental Resolution for purposes of this Section 23.

**SECTION 24. Defeasance.** The covenants and obligations of the Issuer shall be defeased and discharged under terms of this Ordinance as follows:

(A) If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to any Qualified Agreement Provider any and all Parity Contract Obligations and to the Holders of all Bonds Outstanding the principal, redemption premium, if any, and interest due or to become due thereon, at the times and in the manner stipulated herein, then the pledge of the Pledged Revenues and all covenants, agreements and other obligations of the Issuer to any Qualified Agreement Provider and the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to any Qualified Agreement Provider any and all Parity Contract Obligations and to the Holders of any Outstanding Bonds the principal, redemption premium, if any, and interest due or to become due thereon, at the times and in the manner stipulated herein, such Parity Contract Obligations and such Bonds shall cease to be entitled to any lien, benefit or security under this Ordinance, and all covenants, agreements and obligations of the Issuer to any Qualified Agreement Provider and the Holders of such Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

(B) The Outstanding Bonds, redemption premium, if any, and interest due or to become due for the payment or redemption of which moneys shall have been set aside and shall be held in trust (through deposit by the Issuer of funds for such payment or redemption or otherwise) at the maturity or redemption date thereof shall be deemed to have been paid within the meaning and with the effect expressed in paragraph (A) of this Section 24. Subject to the provisions of paragraph (C) and (D) of this Section 24, any Outstanding Bonds shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in paragraph (A) of this Section if (1) in case any of said Bonds are to be redeemed on any date prior to their maturity, the Issuer shall have given to the escrow agent instructions accepted in writing by the escrow agent to notify Holders of Outstanding Bonds in the manner required herein of the redemption of such Bonds on said date, and (2) there shall have been deposited with the escrow agent either moneys in an amount which shall be sufficient, or Acquired Obligations (including any Acquired Obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States) the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the escrow agent at the same time, shall be sufficient, to pay when due the principal of and premium, if any, and interest due and to become due on said Bonds on or prior to the redemption date or maturity date thereof, as the case may be. In the event of a defeasance pursuant to clause (ii) above, the Issuer shall cause to be delivered a verification report of an independent nationally recognized certified public accountants or such other firm recognized as providing the skill and expertise necessary to deliver a verification report. If a forward supply contract is employed in connection with the refunding, (a) such verification report shall expressly state that the adequacy of the escrow to accomplish the refunding project relies solely on the initial escrowed investments and the maturing principal thereof and interest income thereon and does not assume performance under or compliance with the forward supply contract, and (b) the applicable escrow agreement

shall provide that in the event of any discrepancy or difference between the terms of the forward supply contract and the escrow agreement and this Ordinance, the terms of the escrow agreement and this Ordinance shall be controlling.

(C) For purposes of determining whether Variable Rate Bonds shall be deemed to have been paid prior to the maturity or redemption date thereof, as the case may be, by the deposit of moneys, or Acquired Obligations and moneys, if any, in accordance with paragraph (B) of this Section 24, the interest to come due on such Variable Rate Bonds on or prior to the maturity date or redemption date thereof, as the case may be, shall be calculated assuming that interest thereon will accrue at the maximum rate of interest such Variable Rate Bonds may bear pursuant to the Supplemental Resolution authorizing the issuance thereof, or the maximum rate permitted by law if such Supplemental Resolution provides no maximum rate of interest.

(D) Option Bonds shall be deemed to have been paid in accordance with the second sentence of paragraph (B) of this Section 24 only if, in addition to satisfying the requirements of clauses (1) and (2) of such sentence, there shall have been deposited with the escrow agent moneys in an amount which shall be sufficient to pay when due the maximum amount of principal of and redemption premium, if any, and interest on such Bonds which could become payable to the Holders of such Bonds upon the exercise of any options provided to the Holders of such Bonds; provided, however, that if, at the time a deposit is made with the escrow agent pursuant to paragraph (B) of this Section 24, the options originally exercisable by the Holder of an Option Bond are no longer exercisable, such Bond shall not be considered an Option Bond for purposes of this paragraph (D). If any portion of the moneys deposited with the escrow agent for the payment of the principal of and redemption premium, if any, and interest on Option Bonds is not required for such purpose, the escrow agent shall, if requested by the Issuer, pay the amount of such excess to the Issuer free and clear of any trust, lien, security interest, pledge or assignment securing said Bonds or otherwise existing under this Ordinance.

Any escrow agent appointed by the Issuer shall be a bank or trust company duly authorized to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and having a combined capital, surplus and undivided profits aggregating not less than fifty million dollars (\$50,000,000).

The provisions of this Section 24 shall not operate to extinguish the covenants and obligations of the Issuer set forth in Section 31 hereof,

**SECTION 25. Governmental Reorganization.** Notwithstanding any other provisions of this Ordinance, this Ordinance shall not prevent any lawful reorganization of the governmental structure of the Issuer, including a merger or consolidation of the Issuer with another public body or the transfer of a public function of the Issuer to another public body, provided that any reorganization which affects the System shall provide that the System shall be continued as a single enterprise and that any public body which succeeds to the ownership and operation of the System shall also assume

all rights, powers, obligations, duties and liabilities of the Issuer under this Ordinance and pertaining to all Bonds and any Qualified Agreement.

**SECTION 26. Additional Utility Functions.** The Issuer may expand the utility functions of the System as they exist on the date hereof as permitted in the definition of "System" contained herein, provided that the Issuer has adopted resolutions of the Issuer to the effect that, based upon such certificates and opinions of its Consulting Engineers, independent certified public accountants, Bond Counsel, Financial Advisor or other Qualified Independent Consultant as the Issuer shall deem necessary, desirable or appropriate, the addition of such utility functions (A) will not impair the ability of the Issuer to comply with the provisions of this Ordinance, and (B) will not materially adversely affect the rights of the Holders of the Bonds.

**SECTION 27. Stormwater Utility Fees.** The Issuer will maintain in effect a schedule of rates, fees and charges for use of the System consistent, in all material respects, with the requirements of State law applicable from time to time relating to rates, fees and charges of stormwater utility systems in the State, including without limitation, Section .

**SECTION 28. Qualified Agreements.** Any payments received by the Issuer from a Qualified Agreement Provider shall constitute Gross Revenues hereunder. Any payments to a Qualified Agreement Provider under a Qualified Agreement so designated by the Issuer, can constitute Parity Contract Obligations or Subordinated Debt. Notwithstanding the foregoing, termination payments, indemnification payment, or other fees to be paid by the Issuer to a Qualified Agreement Provider under a Qualified Agreement and which do not constitute regularly scheduled payments determined by reference to interest on a notional amount may only constitute Subordinated Debt, and may not constitute Parity Contract Obligations.

The Issuer may enter into one or more Qualified Agreements with respect to one or more Series of Bonds (or portions thereof); provided, however, that if such Qualified Agreement is not entered into at the time of initial issuance of the Series of Bonds to which it relates, the requirements of Section 20(Q)(1) hereof must be met, applying the same as if \$1.00 in principal amount of Additional Parity Bonds is being issued as of the effective date of such Qualified Agreement.

**SECTION 29. Payments to Credit Facility Issuers.** Notwithstanding any other provision herein to the contrary, if any amount applied to the payment of principal of, premium, if any, and interest on the Bonds that would have been paid from the Debt Service Fund is paid instead by a Credit Facility, amounts deposited in the Debt Service Fund and allocable to such payment for such Bonds shall be paid by the Issuer, to the extent required in any agreement with the Credit Facility Issuer, to the Credit Facility Issuer having theretofore made said corresponding payment. A Supplemental Resolution may establish one or more subaccounts within the Debt Service Fund to segregate amounts to be paid to a Credit Facility Issuer and amounts paid from a Credit Facility. Such payments are referred to herein as "Reimbursement Obligations." Any

such Reimbursement Obligation shall be deemed to be a part of the Series to which the Credit Facility which gave rise to such Reimbursement Obligations relate.

Any Reimbursement Obligation may instead be secured by a pledge of and a lien on the Pledged Revenues on a subordinate basis to the lien created herein in favor of the Holders of the Bonds and any Qualified Agreement Provider.

**SECTION 30. Capital Appreciation Bonds and Capital Appreciation Income Bonds.** For the purposes of (A) receiving payment of the redemption price of a Capital Appreciation Bond if redeemed prior to maturity, (B) computing Debt Service Requirement, and (C) computing the amount of Holders required for any notice, consent, request or demand hereunder for any purpose whatsoever, the principal amount of a Capital Appreciation Bond shall be deemed to be its Accreted Value. For all of the foregoing purposes as they relate to Capital Appreciation Income Bonds, the principal amount of a Capital Appreciation Income Bond, on or prior to its Interest Commencement Date, shall be its Appreciated Value.

**SECTION 31. Tax Covenants.**

(A) The Issuer covenants with the Holders of each Series of Bonds (other than Taxable Bonds) that it shall 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 Holder thereof for federal income tax purposes.

(B) The Issuer covenants with the Holders of each Series of Bonds (other than Taxable Bonds) that neither the Issuer 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 Holder thereof for federal income tax purposes.

(C) The Issuer hereby covenants with the Holders of each Series of Bonds (other than Taxable Bonds) that it will comply with all provisions of the Code necessary to maintain the exclusion of interest on the Bonds from the gross income of the Holder 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) The Issuer may, if it so elects, issue one or more Series of Taxable Bonds the interest on which is (or may be) includable in the gross income of the Holder thereof for federal income tax purposes, provided that the issuance thereof will not cause the interest on any other Bonds theretofore issued hereunder to be or become includable in the gross income of the Holder thereof for federal income tax purposes. The covenants set forth in paragraphs (A), (B) and (C) above shall not apply to any Taxable Bonds.

**SECTION 32. Bond Anticipation Notes Authorized for Interim Financing.**

The Issuer is authorized to issue Bond Anticipation Notes, in one or more series, from time to time for the purposes authorized by this Ordinance, and for the purpose of obtaining interim financing. Prior to the sale of Bonds authorized by this Ordinance, the Issuer may issue its Bond Anticipation Notes as provided herein and as provided in Section 215.431, Florida Statutes or any successor or replacement statutes thereto. Any such Bond Anticipation Notes authorized by the Issuer shall be issued upon the adoption of a resolution or enactment of an ordinance by the Issuer specifying the amount of Bond Anticipation Notes to be issued, the series designation, the maturity of such Bond Anticipation Notes, the denomination, date and the rate of interest which shall be borne by such Bond Anticipation Notes which shall not be at a rate greater than the highest rate authorized by law. Any such Bond Anticipation Notes issued may be sold in the manner provided by Section 215.431, Florida Statutes or any successor or replacement statutes thereto and shall satisfy all other requirements contained therein, including those related to the maturity of such Bond Anticipation Notes.

**SECTION 33. Additional Rights to Credit Facility Issuers.** The Issuer may make such covenants as it may, in its sole discretion, determine to be appropriate with any Credit Facility Issuers or other financial institution that shall agree to insure or to provide for Bonds of any one or more Series credit or liquidity support that shall enhance the security or the value of such Bonds or with any issuer of a Reserve Account Insurance Policy or Reserve Account Letter of Credit. Such covenants may be set forth in the applicable Supplemental Resolution or in a written agreement between the Issuer and the Credit Facility Issuer or issuer of the Reserve Account Insurance Policy or Reserve Account Letter of Credit and shall be binding on the Issuer, the Registrar, the Paying Agent and all the Holders of Bonds the same as if such covenants were set forth in this Ordinance; provided, however, such covenants may not impair the rights of any existing Holders in any manner that, pursuant to Section 23 hereof, would require all of the Holders to consent.

**SECTION 34. Severability.** If any one or more of the covenants, agreements or provisions of this Ordinance should 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 or shall in any manner be held to adversely affect the validity of the Bonds, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Ordinance or of the Bonds issued hereunder.

**SECTION 35. Sale of Bonds.** The Bonds may be issued and sold at public or private sale at one time or in installments from time to time and at such price or prices as shall be consistent with the provisions of the requirements of this Ordinance, the Act and other applicable provisions of law.

**SECTION 36. Payments Due on Saturdays, Sundays or Holidays.** Subject to the provisions of any Supplemental Resolution with respect to a Series of Bonds, in any case where the date of maturity of interest on or principal of the Bonds or the date fixed

for redemption of Bonds shall be a day that is not a Business Day, then payment of such interest or principal and any redemption premium need not be mailed by the Paying Agent on such date but may be mailed on the next succeeding Business Day on which the Paying Agent is open for business with the same force and effect as if mailed (or wired if permitted by this Ordinance and a Supplemental Ordinance relating to a Series of Bonds) on the date of maturity of interest on or principal of the Bonds or the date fixed for redemption, and no interest shall accrue for the period after such date.

**SECTION 37. Manner of Giving Notice.** Any notice, demand, direction, request or other instrument authorized or required by this Ordinance to be given to or filed with the Issuer shall be deemed to have been sufficiently given or filed for all purposes of this Ordinance if and when sent by registered mail, return receipt requested to the Issuer at 100 W. Atlantic Boulevard, Pompano Beach, Florida, 33060, Attention: City Manager.

If, because of the suspension of delivery of registered mail or, for any other reason, the Issuer shall be unable to mail by registered mail any notice required to be mailed by the provisions of this Ordinance, the Issuer shall give such notice in such other manner as in the judgment of the Issuer shall most effectively approximate such mailing thereof, and the giving of such notice in such manner shall for all purposes of this Ordinance be deemed to be in compliance with the requirement for the mailing thereof.

**SECTION 38. General Authority.** The members of the City Commission of the Issuer and the Issuer's officers, attorneys and other agents and employees are hereby authorized to perform all acts and things required of them by this Ordinance or desirable or consistent with the requirements hereof for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Bonds and this Ordinance, and they are hereby authorized to execute and deliver all documents which shall be required by Bond Counsel to effectuate the sale of each Series of the Bonds to the initial purchasers thereof.

**SECTION 39. No Third Party Beneficiaries.** Except such other Persons as may be expressly described herein, in the Bonds, or in a Qualified Agreement, nothing in this Ordinance, or in the Bonds, expressed or implied, is intended or shall be construed to confer upon any Person, other than the Issuer and the Holders, any right, remedy or claim, legal or equitable, under and by reason of this Ordinance or any provision hereof, or of the Bonds or any Qualified Agreement, all provisions hereof and thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Persons who shall from time to time be the Holders and any Qualified Agreement Provider.

**SECTION 40. No Personal Liability.** Neither the members of the City Commission of the Issuer, any employees of the Issuer, nor any person executing the Bonds shall be personally liable therefor or be subject to any personal liability or accountability by reason of the issuance thereof.



**SECTION 41. Repeal of Inconsistent Instruments.** All ordinances and resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION 42. Open Meeting Findings.** It is hereby found and determined that all official acts by the City Commission concerning and relating to the enactment of this Ordinance were taken in open public meetings of the City Commission of the Issuer and that all deliberations of the City Commission of the Issuer or any of its committees that resulted in such official acts were in meetings open to the public, in compliance with all legal requirements, including without limitation Section 286.011, Florida Statutes and the Office of the Governor of the State of Florida Executive Orders, if applicable and in effect.

[Remainder of page intentionally left blank]

**SECTION 43. Effective Date.** This Ordinance shall become effective immediately upon enactment by the City Commission of the Issuer.

PASSED at a meeting of the City Commission held the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

ENACTED at a meeting and public hearing of the City Commission held the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

(SEAL)

\_\_\_\_\_  
Rex Hardin, Mayor

ATTEST:

\_\_\_\_\_  
Asceleta Hammond, City Clerk