

EXECUTION COPY

**CHARTER OF THE
CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT**

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**CHARTER OF THE
CITY OF RIVIERA BEACH UTILITY DISTRICT**

THIS CHARTER, enacted by the City of Riviera Beach, Florida ("City") as of _____, 2004 (the "Charter"), by Ordinance No: 2004-__ (the "Enabling Ordinance");

WHEREAS, Chapter 189, Florida Statutes (the "Special District Act"), authorizes the creation of special districts; and

WHEREAS, Section 189.4041, Florida Statutes, authorizes the creation of dependent special districts pursuant to a Charter adopted by Ordinance of the City; and

WHEREAS, the City has determined that it is in the City's best interests to create such a legal entity to acquire, own, improve, expand, operate and maintain the City's water and wastewater utilities.

NOW, THEREFORE, in consideration of the foregoing the Charter for "The City of Riviera Beach Utility Special District," a legal entity and public body and special district of the City, with all of the privileges, benefits, powers and terms of the Special District Act, the City's Charter, and this Charter, is hereby created for the purposes described herein, as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01 DEFINITIONS. The following definitions shall govern the interpretation of this Charter:

"Act" shall mean, collectively, the Special District Act, Chapter 166, Florida Statutes, Chapter 180, Florida Statutes, the City Charter, and other applicable provisions of law.

"AGRF" represents certain fixed costs of the District's Utility System not used and useful to the on-line customers incurred by the Utility System to preserve unused system capacity for future customers until such customers connect to the Utility System and begin paying monthly service fees. The Utility System has determined that based on industry standards, such preservation of capacity for future customers reasonably extends for a period of sixty months. Accordingly, AGRF is calculated based upon the then current monthly readiness to serve charge at the appropriate meter size for a connected customers times sixty, and shall be paid for all equivalent residential units (ERU's) associated with any future customers connecting the Utility System at the time of service initiation by the future customer.

"Board" shall mean the governing board of the District.

"City" shall mean the City of Riviera Beach, Florida.

"City Council" shall mean the City of Riviera Beach, Florida Council.

“City Utility Facilities” shall mean the water and wastewater facilities, property and assets owned by the City which shall be acquired by the District.

“Charter” shall mean this Charter, including any amendments hereto.

“Cost” when used in connection with a Project, shall mean (1) the District’s cost of construction; (2) costs of acquisition by or for the District of such Project; (3) costs of land and interests thereon and the cost of the District incidental to such acquisition; (4) the cost of any indemnity and/or surety bonds and premiums for insurance during construction; (5) all interest due to be paid on the Obligations relating to the Project during the period of acquisition and construction of such Project and for a reasonable period subsequent to completion of acquisition and construction as the Board may determine by resolution; (6) engineering, legal and other consulting fees and expenses; (7) costs and expenses of the financing incurred for such Project, including audits, fees and expenses of any paying agent, registrar, trustee, consultants, attorneys, engineers, credit enhancers or depository; (8) payments, when due (whether at the maturity of principal or the due date of interest or upon redemption) on any interim or temporary indebtedness incurred for such Project; (9) costs of machinery, equipment, supplies and spare parts required by the District for the commencement of operation of such Project or continuation of operation of such Project; and (10) any other costs properly attributable to such Project or to the issuance of Obligations which finance or refinance such Project, as determined by generally accepted accounting principles applicable to such Project, and shall include reimbursement to the District for any such items of cost paid by the District prior to issuance of the Obligations issued to finance such Project. Additional items of cost may be provided pursuant to the Financing Documents.

“Director” shall mean each individual member of the Board.

“District Facilities” shall mean the District’s water production, transmission, treatment and distribution facilities and property, and the District’s wastewater treatment, collection and disposal facilities and property, including reuse and reclaimed water facilities, as they may be modified, improved or expanded from time to time, which are owned, leased, operated, managed and/or used, from time to time, by the District to provide public water and wastewater services. District Facilities shall include all property, real or personal, tangible or intangible, now or hereafter owned, leased, operated or managed by the District in connection with the provision of public water and wastewater services, and any other facilities acquired by the District from time to time for the provision of any other utility services.

“Financing Documents” shall mean the resolution or resolutions duly adopted by the District Board, as well as any indenture of trust, trust agreement or other instrument relating to the issuance or security of the Obligations.

“Fiscal Year” shall mean the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be determined by the Board.

“Obligations” shall mean a series of bonds or other evidence of indebtedness, including, but not limited to, notes, commercial paper, capital leases or any other obligations of the District issued hereunder and pursuant to the Financing Documents. Obligations also include payments made to a counterparty in connection with an interest rate swap arrangement relating to other Obligations of the District.

“PILOT” shall mean a payment in lieu of taxes from the District to the City, as determined by City from time to time, which recognizes that the properties of the District are governmentally owned and exempt from payment of ad valorem and other applicable taxes to the City that would otherwise be due to the City to fund the provision of City services which benefit the properties and utility business of the District.

“Pledged Funds” shall mean (1) the revenues, fees, charges, special assessments and other moneys received by the District or its designee relating to its ownership or operation of the District Facilities, or any portion thereof, (2) until applied in accordance with the terms of the Financing Documents, all moneys in the funds, accounts and subaccounts established thereby, including investments therein, and (3) such other property, assets and moneys of the District as shall be pledged pursuant to the Financing Documents; in each case to the extent provided by the Board pursuant to the Financing Documents. The Pledged Funds pledged to one series of Obligations may be different than the Pledged Funds pledged to other series of Obligations. Pledged Funds do not include the fees, charges, special assessments and other moneys derived from a Special Purpose Project.

“Project” shall mean any structure, property or facility which the District, from time to time, may determine to construct or acquire as part of its District Facilities, together with all improvements, equipment, structures and other facilities necessary or appropriate in connection therewith. This term is to be broadly construed so as to include any lawful undertaking which will accrue to the benefit of the District Facilities, including joint ventures and acquisitions of partial interests or contractual rights. “Project” shall include, but not be limited to, acquisition of the City Utility Facilities, and the construction of any improvements thereto. “Project” may also include working capital, as well as any costs or judgments associated with litigation.

“Special District Act” shall mean Chapter 189, Florida Statutes, as amended from time to time.

“Special Purpose Obligations” shall mean Obligations issued to finance or refinance a Special Purpose Project.

“Special Purpose Project” shall mean a Project, the revenues and expenses of which, as determined by the District Board, are allocated solely to the financing and operations of such Project.

“State” shall mean the State of Florida.

“Utility Acquisition Agreement” shall mean the agreement between the District and the City relating to the acquisition of the Utility System.

“Utility Code” shall mean Chapter 20, Article III “Water”, and Chapter 20, Article IV “Wastewater Disposal System”, of the Code of Ordinances of the City, which Utility Code, as amended from time to time by the District, is adopted by the District as the Utility Code of the District.

“Utility Services Agreement” shall mean the agreement between the City and the District pursuant to which the City shall provide operating and management personnel to the District and shall provide other general fund services for the District, including, but not limited to, the services of the City Financial Department, Legal Department, Clerk’s Office and City Manager’s Office.

“Utility System” shall mean the District Facilities.

Capitalized terms used in this Charter shall have the meanings, if any, given to them above, and in addition shall have the meanings, if any, given to them in the Utility Code. Whenever any words are used in this Charter in the masculine gender, they shall be construed as though they were also used in the feminine or neuter gender in all situations where they would so apply, and whenever any words are used in this Charter in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply.

ARTICLE II

THE DISTRICT

SECTION 2.01 CREATION. Pursuant to the provisions of the Special District Act, as adopted and amended from time to time by the Florida Legislature, and the singular uniform method of creation of special districts set forth therein, the City hereby creates and establishes the “City of Riviera Beach Utility District”, a special district, legal entity, and local unit of special purpose government, with all of the privileges, benefits, powers and terms provided for herein and by the Act.

SECTION 2.02 PURPOSES. (A) The purpose of this Charter is for the establishment of the District in accordance with the Special District Act in order to: (i) acquire the City Utility Facilities, and to make improvements and extensions to such facilities; (ii) construct, own, improve, expand, operate, manage and maintain the District Facilities; (iii) provide the most economic and efficient water, wastewater and reclaimed water utility services to retail and bulk service customers within and without the municipal boundaries of the City in a non-discriminatory manner; and (iv) make provision for rates, fees and charges sufficient to fully fund the operations, maintenance, administration, renewal, replacement, expansion, debt service and reserves for the Utility System.

(B) The creation and organization of the District and the fulfillment of its objectives serves a public purpose, and is in all respects for the benefit of the persons or entities served and to be served by the District Facilities. The District is performing an essential governmental

function. All property of the District is and shall in all respects be considered to be public property, and the title to such property shall be held by the District for the benefit of the public. The use of such property shall be considered to serve a public purpose, until disposed of upon such terms as the District may deem appropriate. Insofar as provided for by law, all Obligations and interest or income thereon and all the property, facilities, services, activities and revenues of the District are declared to be nontaxable for any and all purposes by the State or federal government or any unit of the State or federal government to the same extent as if owned or issued directly by or on behalf of the City.

SECTION 2.03 DURATION OF DISTRICT. The District shall exist so long as any portion of the District Facilities is owned, operated, leased or managed by the District or the District has Obligations outstanding. At such time as the District no longer owns, operates, leases or manages any portion of the District Facilities and no Obligations are outstanding, the District shall automatically dissolve unless the City adopts a resolution providing otherwise. In the event of dissolution, any assets of the District shall be distributed to the City.

SECTION 2.04 GEOGRAPHIC BOUNDARY OF DISTRICT. The geographic boundary of the District shall encompass the municipal boundaries of the City. The District shall be authorized to provide water, wastewater and reclaimed water utility service both within and outside its geographic boundary to such areas currently being provided service by the City, as expanded from time to time by the District Board.

SECTION 2.05 DECLARATION REGARDING COMPREHENSIVE PLAN. The City declares that the creation of the District is consistent with the City's approved Comprehensive Plan.

SECTION 2.06 DISTRICT BEST ALTERNATIVE. The District is the best alternative for providing utility services as the creation of the District provides for better allocation of City resources, better financing opportunities for Projects and more flexibility for the provision of utility services.

SECTION 2.07 DISTRICT FINANCIAL DISCLOSURE, NOTICING AND REPORTING REQUIREMENTS. The District shall comply with the financial disclosure, noticing and reporting requirements set forth in the Special District Act, and other applicable laws.

ARTICLE III

BOARD OF DIRECTORS

SECTION 3.01 DIRECTORS.

(A) There shall be five (5) members of the Board of Directors of the District, which shall be appointed by the City Council. The current members of the City Council shall be the initial Board of Directors. The Mayor of the City shall automatically be an ex-officio member of the Board of Directors. The members of the Board of Directors shall serve terms equal to the

period of time remaining on the City Council members' terms of office. A member whose term has expired shall continue to serve on the Board until his or her replacement is appointed. Thereafter, the City Council shall appoint members of the Board of Directors for __ () year terms. Members of the Board of Directors may only be removed by a two-thirds (2/3) vote of the City Council for cause.

(B) In the event a member of the Board of Directors shall resign or be removed the City Council shall appoint such member's replacement to serve the un-expired term of the resigned or removed Director.

(C) The Board of Directors shall have plenary power to acquire, operate, manage, improve, repair, replace, extend, expand, and renew any type of utility property, to borrow money, grant liens to secure its obligations, to enter into contracts relating to its activities, condemn property through the exercise of eminent domain, and to fix, charge and collect rates, fees and charges for the use of, or in connection with, with facilities of the District without the necessity of review, oversight, input or approval from the City, the State or any other commission or authority of the foregoing.

(D) The City shall have no authority to require the District to use the District's funds or assets for any particular purpose, to cause the dissolution of the District, or to review the District's books, other than the general rights granted to the City under State Law. The City may, however, contract with the District to provide such services as may be deemed necessary or desirable by the City.

SECTION 3.02 ACTION.

(A) The affairs, actions and duties of the District shall be undertaken at a duly called meeting pursuant to Section 3.06 hereof.

(B) At any meeting of the District at which any official action is to be taken, a majority of all Directors shall constitute a quorum. A majority vote of a quorum of the Directors present at a duly called meeting shall constitute an act of the District, except as hereinafter provided or otherwise provided by law.

(C) A certificate, resolution or instrument signed by the Chairperson, Vice-Chairperson or such other person of the District as may be hereafter designated and authorized by the Board shall be evidence of the action of the District and any such certificate, resolution or other instrument so signed shall conclusively be presumed to be authentic. Likewise, all facts and matters stated therein shall conclusively be presumed to be accurate and true.

SECTION 3.03 OFFICERS. The Directors shall annually elect a Chairperson and Vice Chairperson of the Board. Pursuant to the Utility Services Agreement, the City Clerk, City Finance Director, and City Attorney shall act as the District Clerk, District Finance Director and District Attorney.

SECTION 3.04 AUTHORITY OF OFFICERS.

(A) The Chairperson and the Vice-Chairperson shall take such actions, have all such powers and sign all documents on behalf of the District and in furtherance of the purposes of this Charter as may be approved by resolution of the Board adopted at a duly called meeting.

(B) The Clerk, or its designee, shall keep minutes of all meetings, proceedings and acts of the Board, but such minutes need not be verbatim. Copies of all minutes of the meetings of the District shall be sent by Clerk to all Directors to the District. The Clerk may also attest to the execution of documents. The Finance Director shall have such powers and duties over the finances of the Board as over the finances of the City, and further powers and duties as may be approved by resolution of the Board adopted at a duly called meeting.

SECTION 3.05 POWERS AND DUTIES OF THE BOARD. The Board shall act as the governing board of the District and shall have, in addition to all other powers and duties described herein and provided by law, the following powers and duties:

(A) To fix the time and place or places at which its regular meetings shall be held, and to call and hold special meetings.

(B) To make and pass rules, regulations, resolutions and orders not inconsistent with the Constitution of the United States or of the State, the Act or this Charter, necessary for the governance and management of the affairs of the District, for the execution of the powers, obligations and responsibilities vested in the District, and for carrying into effect the provisions of this Charter.

(C) To create any and all necessary offices in addition to Chairperson, Vice-Chairperson, Clerk and Finance Director; to establish the powers, duties and compensation of all employees; and to require and fix the amount of all official bonds necessary for the protection of the funds and property of the District.

(D) To enter into the Utility Service Agreement and other required agreements with the City for the provision of services by the City to the District, including, but not limited to, secondment of City employees for the operation and administration of the District facilities and financial and accounting services.

(E) To employ or hire such attorneys or firm(s) of attorneys, as it deems appropriate to provide legal advice and/or other legal services to the District, and to employ and hire such other consultants as it deems appropriate.

(F) To acquire, by any means, including, but not limited to, eminent domain, any real or personal, tangible or intangible property, both within and without the boundaries of the District.

SECTION 3.06 MEETINGS.

(A) The Board shall convene at a meeting duly called by either a majority of the Directors, the Chairperson or the Utility Director. The Directors may establish regular meeting times and places. Meetings shall be conducted at such locations as may be determined by the majority of the Directors or the Chairperson. Notice of a meeting, unless otherwise waived, shall be furnished to each Director not less than seven (7) calendar days prior to the date of such meeting; provided the Chairperson or, in his absence or unavailability, the Vice-Chairperson, may call a meeting upon twenty-four (24) hours written notice, if such officer determines an emergency exists. All meetings shall be noticed in accordance with applicable law. Provided there is a quorum of Directors physically present at the meeting, the Board of Directors may permit any other Director to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Directors participating, and all members of the public present, may simultaneously hear each other during the meeting. A Director participating by this means is deemed to be present in person at the meeting.

(B) Within thirty (30) calendar days of the creation of the District, the duly appointed Directors shall hold an organizational meeting to elect officers and perform such other duties as are provided for under this Charter.

SECTION 3.07 EXPENSES. The District may establish, from time to time, procedures for reimbursement for reasonable expenses incurred in furtherance of the District's operation. The Directors shall determine compensation, if any, to be paid to the Directors, as limited by the requirements of law.

SECTION 3.08 LIABILITY. No Director, agent, officer, official or employee of the District shall be liable for any action taken pursuant to this Charter or for any omission, except gross negligence, or for any act of omission or commission by any other Director, agent, officer, official or employee of the District.

ARTICLE IV

POWERS AND DUTIES

SECTION 4.01 POWERS.

(A) The District shall have all powers to carry out the purposes of this Charter, including the following powers which shall be in addition to and supplementing any other privileges, benefits and powers granted by the Act:

(i) To exercise all powers that were exercisable by the City prior to transfer of the District Facilities to the District, and that would be exercisable by the City had the City retained ownership of the District Facilities.

(ii) To acquire, construct, own, operate, manage, maintain, dispose of, improve, extend and expand the District Facilities, and to have the exclusive control and jurisdiction thereof.

(iii) To provide for mandatory water, wastewater and reclaimed water or other utility service of potential customers upon availability of service by the District.

(iv) To fix, levy and collect rates, fees and other charges from persons or property, or both, for the use of the services, facilities and product of the District Facilities or to pay the operating or financing costs of the District Facilities available to potential users; to fix and collect charges for making connections with the District Facilities to impose impact fees, AGRF, and reservation fees on new customers of the District Facilities and, to the extent provided by law, to provide for reasonable penalties to be imposed on any customers or property for any such rates, fees or charges that are delinquent, all as more specifically described in the Utility Code.

(v) To enter into the Utility Services Agreement and to contract for the service of engineers, accountants, attorneys and other experts or consultants, and such other agents and employees as the Board may require or deem appropriate from time to time.

(vi) To acquire such lands and rights and interests therein, including lands under water and riparian rights and to acquire such personal property, tangible or intangible, as the District may deem necessary and appropriate in connection with the acquisition, ownership, expansion, improvement, operation and maintenance of the District Facilities, to hold and dispose of all real and personal property under its control, and to exercise the power of eminent domain in accordance with applicable law both within and outside the municipal boundaries of the City for the purpose of carrying out the intent of this Charter.

(vii) To exercise exclusive jurisdiction, control and supervision over the District Facilities and to make and enforce such rules and regulations for the maintenance, management and operation of the District Facilities as may be, in the judgment of the Board, necessary or desirable for the efficient operation of the District Facilities in accomplishing the purposes of this Charter.

(viii) To enter into charters and interlocal Agreements or join with any other special purpose or general purpose local governments, public agencies or authorities in the exercise of common powers or to assist the District in acquiring land and rights or interests therein, and to assume any such existing agreements of the City relating to the District Facilities.

(ix) To contract with private or public entities or persons to provide, treat or receive water or to provide or receive wastewater disposal, collection or treatment, or to provide or receive any other utility service. To contract with the City or any private or public entity or person for the operation or administration of the District or the District Facilities.

(x) To prescribe methods of pretreatment of industrial wastes not amenable to treatment with domestic wastewater before accepting such wastes for treatment and to refuse to accept such industrial wastes when not sufficiently pretreated as may be prescribed, and, to the extent permitted by law, to prescribe penalties for the refusal of any person or corporation to so pretreat such industrial wastes.

(xi) To the extent provided by law, to require and enforce the use of services, products and facilities of the District whenever and wherever they are accessible, and to require and enforce the installation and dedication to the District of water and wastewater facilities or easements as a condition precedent to the provision of service by the District or by another entity authorized by the District to provide interim service until District services, products and facilities are available.

(xii) To accomplish construction directly or by letting construction contracts to other entities, whether public or private, for all or any part of the construction of improvements to the District Facilities as determined by the Board in accordance with applicable law.

(xiii) To construct, maintain and operate connecting, intercepting, or outlet wastewater, wastewater and reclaimed water mains and pipes and water mains, conduits or pipelines in, along or under any streets, alleys, highways or other public places or ways regulated by or under the jurisdiction of the State or any political subdivision or municipal corporation when necessary or convenient for the purposes of the District.

(xiv) Subject to such provisions and restrictions as may be set forth in any Financing Document, to enter into contracts with the government of the United States or any agency or instrumentality thereof, the State, or with any municipality, county, district, District, political subdivision, private corporation, partnership, association or individual providing for or relating to the treatment, collection and disposal of wastewater, or the treatment, supply and distribution of water, or the treatment, supply and distribution of reclaimed water, and any other matters relevant thereto or otherwise necessary to effect the purposes of this Charter. To receive and accept from any federal or State agency, grants or loans for or in aid of the planning, construction, reconstruction or financing of improvements, additions or extensions to the District Facilities and to receive and accept aid or contributions or loans from any other source of either money, labor or other things of value, to be held, used and applied only for the purpose for which such grants, contributions or loans may be made.

(xv) To assume the ownership, lease, operation, management and/or control of any publicly or privately owned water, wastewater and reclaimed water facilities, including the assumption of the financial liabilities associated with such water, wastewater and reclaimed water facilities.

(xvi) To impose special assessments and to divide the District Facilities into separate units, benefit areas, subsystems or subdistricts, including Utility Systems, for

imposing special assessments, setting rates, accounting or financing improvements or additions, or any other purpose.

(xvii) To appoint advisory boards and committees to assist the Board in the exercise and performance of the powers and duties provided in this Charter.

(xviii) To sue and be sued in the name of the District.

(xix) To adopt and use a seal and authorize the use of a facsimile thereof.

(xx) To contract with the City to administer and operate the District Facilities, or any portion thereof.

(xxi) Subject to such provisions and restrictions as may be set forth herein and in any Financing Document, to sell or otherwise dispose of the District Facilities, or any portion thereof, upon such terms as the Board deems appropriate.

(xxii) To acquire, by purchase, gift, devise, eminent domain or otherwise, and to dispose of, real or personal property, tangible or intangible, or any estate therein.

(xxiii) To make and execute contracts or other instruments necessary or convenient to the exercise of its powers.

(xxiv) To provide for audits of the District as the Board deems appropriate and as required by applicable law.

(xxv) To maintain an office or offices at such place or places as the Board may designate from time to time.

(xxvi) To hold, control and acquire by donation or purchase, or dispose of, any public easements, dedications to public use, platted reservations for public purposes, or any reservations for those purposes authorized by this Charter and to make use of such easements, dedications and reservations for any of the purposes authorized by this Charter, and to utilize all easements, dedications and reservations in favor of or in the name of the City, which rights, to the extent legally necessary, are specifically assigned, licenses and granted to the District by the City.

(xxvii) To lease, as lessor or lessee, to or from any person, firm, corporation, association or body, public or private, facilities or property of any nature to carry out any of the purposes authorized by this Charter.

(xxviii) To incur or issue Obligations including Special Purpose Obligations to finance and refinance Projects including Special Purpose Projects.

(xxix) To assess, levy, impose, collect and enforce special assessments to provide assessable improvements upon all or any portion of the lands served by the District, both

within and outside the municipal boundaries of the District. Such special assessments may be apportioned among benefited property in a manner proportionate with the benefits received or commensurate with the burdens alleviated by the maintenance and use of property based upon such factors or combination of factors as determined by resolution of the Board. Such special assessments may, in the discretion of the Board, be imposed, collected and enforced using any methods and procedures authorized by law, including Section 197.3632, Florida Statutes; or the Board may adopt by resolution its own method or procedures or use any other method or means for levy, imposition, collection and enforcement not inconsistent with law.

(xxx) To apply for and accept grants, loans and subsidies from any governmental entity for the acquisition, construction, operation and maintenance of the District Facilities, and to comply with all requirements and conditions imposed in connection therewith.

(xxxi) To the extent allowed by law and to the extent required to effectuate the purposes hereof, to exercise all privileges, immunities and exemptions accorded municipalities and counties of the State under the provisions of the constitution and laws of the State.

(xxxii) To invest its moneys in such investments as directed by the Board in accordance with State law and which shall be consistent in all instances with the applicable provisions of the Financing Documents.

(xxxiii) To purchase such insurance as it deems appropriate.

(xxxiv) To make PILOT payments to the City, and to pay any other federal, state and local governmental fees and charges related to the operation and ownership of the District Facilities.

(xxxv) To do all acts and to exercise all of the powers necessary, convenient, incidental, implied or proper in connection with any of the powers, duties or purposes authorized by this Charter or the Act, provided that the District shall have no taxing power.

(B) In exercising the powers conferred by this Charter the Board shall act by resolution or motion made and adopted at duly noticed and publicly held meetings in conformance with applicable law.

(C) The provisions of Chapter 120, Florida Statutes, shall not apply to the District.

SECTION 4.02 ANNUAL BUDGET.

(A) Prior to October 1 of each year the Board will adopt an annual budget for the District. Such budget shall be prepared in the manner and within the time periods required for the adoption of a tentative and final budget for the City. The annual budget shall contain an

estimate of receipts by source and an itemized estimation of expenditures anticipated to be incurred to meet the financial needs and obligations of the District.

(B) The adopted budget shall be the operating and fiscal guide for the District for the ensuing Fiscal Year. The Board may from time to time amend the budget at any duly called regular or special meeting.

(C) This District is a Dependent Special District as defined in the Special District Act. Accordingly, the District shall provide financial reports in such form and in such manner as prescribed pursuant to this Charter, the Special District Act, Chapter 218, Florida Statutes, and other applicable laws.

(D) The Board shall cause to be made at least once a year, within one hundred eighty (180) days of the end of the Fiscal Year, a report of the District Facilities, including all matters relating to expansions, acquisitions, rates, revenues, expenses, principal and interest requirements of the Obligations and the status of all funds and accounts. Copies of such report shall be filed with the Clerk and shall be open to public inspection. The report shall be known as the "Annual District Facilities Report". The Annual District Facilities Report may be included as a part of any other report or reports required by law or may be issued separately. The Clerk shall provide the City with a copy of the Annual District Facilities Report.

SECTION 4.03 ADOPTION OF RATES, FEES OR OTHER CHARGES.

(A) The Board shall adopt by resolution a schedule of rates, fees or other charges for the use of the services, facilities and products of the District Facilities to be paid by each customer which may be connected with or provided service by such District Facilities. The District may establish separate rates, fees and charges for different portions of the District Facilities. Upon acquisition of the District Facilities by the District, the existing rates, fees and other charges of the City set forth in the Utility Code will be automatically adopted as the rates, fees and other charges of the District, until revised by the District Board, and the provisions of the Utility Code will be recodified by the City to reflect the provisions of this Charter.

(B) Such rates, fees and charges shall be adopted and revised by the Board so as to provide moneys, which, with other funds available for such purposes, shall be at least sufficient at all times to pay the expenses of operating, managing, expanding, improving and maintaining the District Facilities, including renewal and replacement reserves for such District Facilities, to pay the expenses of the Utility Services Agreement, and to pay the principal and interest on the Obligations as the same shall become due and reserves therefore, and to provide a reasonable margin of safety over and above the total amount of such payments. Notwithstanding any other provision in this Charter, such rates, fees and charges should always be sufficient to comply fully with any covenants contained in the Financing Documents. The District shall charge and collect such rates, fees and charges so adopted and revised, and such rates, fees and charges shall not be subject to the supervision or regulation by any other commission, board, bureau, agency or other political subdivision of the State.

(C) Such rates, fees and charges for the District Facilities shall be just and equitable and uniform for the users in the same class and may be based upon or computed upon any factor or combination of factors affecting the use of the services, products or facilities furnished to the customers of such District Facilities, as may be determined by the Board from time to time. No rates, fees or charges shall be fixed, adopted or revised under the foregoing provisions of this Section 4.04 until after notice in accordance with Section 180.136, Florida Statutes, is provided by the District.

(D) The rates, fees or charges adopted for any class of customers served shall be extended to cover any additional customers thereafter served which shall fall within the same class, without the necessity of any further hearing or notice.

(E) The rates, fees and charges of the District shall be automatically increased without further action of the District Board based upon the application of the Florida Public Service Commission utility price indices, as established from time to time by the Florida Public Service Commission pursuant to Florida Statute section 367.081(4)(a), as amended, to the then existing rates, fees and charges of the District. Prior to application of this automatic cost escalation provision, the District Utility Director shall submit to the Board at a Board meeting a report detailing the amount of the escalation and the new rates as revised. Unless the Board votes to withhold the automatic cost escalation, the District's rates, fees, and charges tariff shall be adjusted pursuant to this section as required effective as of the first billing cycle after the Board's meeting. The rates, fees and charges of the District shall further be automatically increased without further action of the Board based upon the implementation of a rate increase to the Board by any utility which provides utility service to the Board, or upon implementation or increase of any taxes or PILOT levied by a governmental authority against the Board, or upon an increase of costs incurred for water quality or wastewater quality testing required by the Department of Environmental Protection. Prior to application of this automatic cost escalation provision, the District Utility Director shall submit to the Board at a Board meeting a report detailing the amount of the escalation and the new rates as revised. Unless the Board votes to withhold the automatic cost escalation, the District's rates, fees, and charges tariff shall be adjusted pursuant to this section as required effective as of the first billing cycle after the Board's meeting. Notwithstanding the provisions of Section 4.03(C) hereof, no public hearing shall be required for the automatic adjustments set forth in this section (E).

SECTION 4.04 OBLIGATIONS.

(A) The Board shall have the power and it is hereby authorized to provide pursuant to the Financing Documents, at one time or from time to time in series, for the issuance of Obligations of the District, or notes in anticipation thereof, for one or more of the following purposes:

- (i) Paying all or part of the Cost of one or more Projects,
- (ii) Refunding any bonds or other indebtedness of the District,

- (iii) Assuming or repaying the indebtedness relating to District Facilities, acquired or leased by the District from a public or private entity,
- (iv) Setting aside moneys in a renewal or replacement account,
- (v) Funding a debt service reserve account,
- (vi) Capitalizing interest on the Obligations,
- (vii) Paying costs of issuance relating to the Obligations,
- (viii) Funding capital obligations of the District pursuant to Interlocal Agreements, including, but not limited to, the funding obligations of the City set forth in the East Central Regional Water Reclamation Facility Interlocal Agreement; and
- (ix) Any other purpose relating to this Charter.

The principal of and the interest on each series of Obligations shall be payable from the Pledged Funds, all as determined pursuant to the Financing Documents. The District may grant a lien upon and pledge the Pledged Funds in favor of the holders of each series of Obligations in the manner and to the extent provided in the Financing Documents. Such Pledged Funds shall immediately be subject to such lien without any physical delivery thereof and such lien shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the District.

(B) The Obligations of each series shall be dated, shall bear interest and such rate or rates, shall mature at such time or times not exceeding forty (40) years from their date or dates, may be made redeemable before maturity, at the option of the District, at such price or prices and under such terms and conditions, all as shall be determined by the Board pursuant to the Financing Documents. The Board shall determine the form of the Obligations, the manner of executing such Obligations, and shall fix the denomination of such Obligations and the place of payment of the principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any Obligations shall cease to be such officer before the delivery of such Obligations, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until delivery. The Board may sell Obligations in such manner and for such price as it may determine to be in the best interest of the District in accordance with the terms of the Financing Documents. In addition to the Pledged Funds, the Obligations may be secured by such credit enhancement as the Board determines to be appropriate pursuant to the Financing Documents. The Obligations may be issued as capital appreciation bonds, current interest bonds, term bonds, serial bonds, variable bonds or any combination thereof, all as shall be determined pursuant to the Financing Documents.

(C) Prior to the preparation of definitive Obligations of any series, the Board may issue interim receipts, interim certificates or temporary Obligations, exchangeable for definitive Obligations when such Obligations have been executed and are available for delivery. The

Board may also provide for the replacement of any Obligation which shall become mutilated, or be destroyed or lost. Obligations may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Charter, the Financing Documents or other applicable laws.

(D) The proceeds of any series of Obligations shall be used for such purposes, and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide pursuant to the Financing Documents.

(E) The Financing Documents may also contain such limitations upon the issuance of additional Obligations as the Board may deem appropriate, and such additional Obligations shall be issued under such restrictions and limitations as may be prescribed by such Financing Documents. The Financing Documents may contain such provisions and terms in relation to the Obligations and the Pledged Funds as the Board deems appropriate and which shall not be inconsistent herewith.

(F) Obligations shall not be deemed to constitute a general obligation debt of the District or the City or a pledge of the faith and credit of the District or the City, but such Obligations shall be payable solely from the Pledged Funds and any moneys received from the credit enhancers of the Obligations, in accordance with the terms of the Financing Documents. The issuance of Obligations shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of ad valorem taxation whatsoever therefor. No holder of any such Obligations shall ever have the right to compel any exercise of the ad valorem taxing power on the part of the City to pay any such Obligations or the interest thereon or the right to enforce payment of such Obligations, or the interest thereon, against any property of the District or the City, nor shall such Obligations constitute a charge, lien or encumbrance, legal or equitable, upon any property of the District or the City, except the Pledged Funds in accordance with the terms of the Financing Documents. The District shall have no ad valorem taxing power.

(G) All Pledged Funds shall be deemed to be trust funds, to be held and applied solely as provided in the Financing Documents. Such Pledged Funds may be invested by the District in such manner as provided in the Financing Documents.

(H) Any holder of Obligations, except to the extent the rights herein given may be restricted by the Financing Documents, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under the Financing Documents, and may enforce and compel the performance of all agreements or covenants required by this Charter, or by such Financing Documents, to be performed by the District or by any officer thereof.

(I) The Obligations may, but shall not be required to, be validated, at the sole discretion of the Board, pursuant to Chapter 75, Florida Statutes. Obligations may be issued pursuant to and secured by a resolution of the Board.

(J) In addition to the other provisions and requirements of this Charter, any Financing Documents may contain such provisions as the Board deems appropriate.

(K) All Obligations issued hereunder shall not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof and shall be incontestable in the hands of bona fide purchasers for value. No proceedings in respect to the issuance of such Obligations shall be necessary except such as are required by this Charter, the Financing Documents and general law. The provisions of the Financing Documents shall constitute an irrevocable contract between the District and the holders of the Obligations issued pursuant to the provisions thereof.

(L) Holders of Obligations shall be considered third party beneficiaries hereunder and may enforce the provisions hereof.

(M) The Board may enter into such swap, hedge or other similar arrangements relating to any Obligations as it deems appropriate.

(N) Special Purpose Obligations may be issued to finance and refinance Special Purpose Projects, and all provisions set forth above relating to Obligations shall apply to such Special Purpose Obligations.

SECTION 4.05 AD VALOREM TAXATION NOT AUTHORIZED. The District shall not have the power to levy and assess an ad valorem tax on any property within the District for any reason.

SECTION 4.06 CAPITAL IMPROVEMENT CHARGES.

(A) The District is empowered to levy and collect, and revise from time to time, Capital Improvement Charges relating to the District Facilities for capital improvements and debt service on such capital improvements under such conditions as shall be prescribed by the Board. Capital Improvement Charges may become Pledged Funds in accordance with the terms of the Financing Documents.

(B) All Capital Improvement Charges shall be reviewed at least once every three (3) years by the Board to determine whether such Capital Improvement Charges are equitable and proportionate to the current estimate of costs for providing the capital improvements.

SECTION 4.07 UNPAID FEES. The Board shall have the power, under such reasonable procedures as the Board may adopt from time to time, to discontinue and shut off either or both water and wastewater services until delinquent fees, rates or charges, including reasonable interest and charges for the discontinuance and the cost of restoration of such water and wastewater services, or both, are fully paid; and, for such purposes, the District may enter onto any lands, waters or premises of any person, firm, corporation or body, public or private, served by the District. The District shall have a municipal lien on all lands and premises served by the District for all unpaid rates, fees and charges until paid, which liens shall be prior to all other liens on such lands and premises except the lien of state, county and municipal taxes and shall be on a parity with such state, county and municipal taxes. Such liens, when delinquent for more than 30 days, may be foreclosed by the District in the manner provided by the laws of Florida for the foreclosure of mortgages on real property.

SECTION 4.08 DISTRICT APPROVAL OF CONSTRUCTION OF DISTRICT FACILITIES.

(A) The Board may adopt all necessary regulations by resolution that provide design and construction specifications and procedures for the dedication of facilities to the District.

(B) The District may require, as a condition precedent to the approval of any connection to the District Facilities, (i) that all subdivision-type infrastructure, or other contributed transmission or distribution infrastructure necessary to serve a particular project or customer, and necessary easements be dedicated to the District, (ii) that the developer make available interim treatment facilities or services or contract for same on an interim basis from an authorized service provider, and (iii) that the developer, or the person or entity the developer has contracted with, to provide interim treatment service, or lease back for nominal consideration and maintain such dedicated or contributed facilities until such time as the District provides services; provided in each case the foregoing actions shall be consistent with applicable regulations of the City.

SECTION 4.09 PLANNING REQUIREMENT.

(A) In addition to the other powers enumerated in this Charter, the District shall have the power to adopt a master plan for the provision of utility services by the District. Such master plan may include: the identification of current customers and the projections of future customers and their profiles (residential, commercial, industrial); a review and general inventory of all existing infrastructure and facilities; and an identification of water supply and treatment alternatives, available wastewater treatment and disposal alternatives, and available reclaimed water alternatives.

(B) Prior to the adoption of the annual budget, a five-year capital improvement plan shall be reviewed by the Board for a determination that the capital improvement plan is consistent with the City's comprehensive plan adopted pursuant to Chapter 163, Part II, Florida Statutes.

(C) All utility expansion or line extension policies adopted by the Board shall be consistent with the land development regulations, local comprehensive plans and other applicable regulations.

SECTION 4.10 FREE SERVICE. The District shall not provide free service to any class of users. Notwithstanding the foregoing, upon a finding by a majority of the Board plus one (1) that the provision of free or reduced service to any user of the system would avoid unjust hardship to such user, such user may be entitled to such benefit for a period not exceeding one (1) year.

ARTICLE V

MISCELLANEOUS

SECTION 5.01 DELEGATION OF DUTY. Nothing contained herein shall be deemed to authorize the unauthorized delegation of any of the constitutional or statutory duties of the State or the City or any officers thereof.

SECTION 5.02 IMMUNITY.

(A) All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the City shall apply to the officials, officers, agents or employees of the District when performing their respective functions and duties under the provisions of this Charter.

(B) The City intends to utilize Section 768.28, Florida Statutes, the Act, other Florida Statutes and the common law governing sovereign immunity to the fullest extent possible. The City may not be held jointly liable for the torts of the officers or employees of the District, or any other tort attributable to the District, and that the District alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. The City intends that the District shall have all of the privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State. Nothing in this Charter is intended to inure to the benefit of any third-party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

SECTION 5.03 LIMITED LIABILITY. The City shall in no manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the District, the Directors or any other agents, employees, officers or officials of the District, except to the extent otherwise mutually agreed upon, and neither the District, the Directors or any other agents, employees, officers or officials of the District have any District or power to otherwise obligate the City in any manner.

SECTION 5.04 AMENDMENTS. This Charter may not be amended so as to (A) permit any profits of the District to inure to the benefit of any private person, (B) permit the diversion or application of any of the moneys or other assets of the District for any purposes other than those specified herein, (C) adversely affect the tax-exempt status, if applicable, of interest on the Obligations, or (D) materially, adversely affect the security for any Obligations. This Charter may be amended only as follows: The District Board shall approve a recommended amendment to the Charter for presentation to the City Council. Such recommended amendment to the Charter shall be approved only by Ordinance duly adopted by the City Council.

SECTION 5.05 SEVERABILITY. In the event that any provision of this Charter shall, for any reason, be determined invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the other provisions of this Charter shall remain in full force and effect.

SECTION 5.06 CONTROLLING LAW. This Charter shall be construed and governed by Florida law.

SECTION 5.07 EFFECTIVE DATE. This Charter shall become effective immediately upon passage by the City Council.

SECTION 5.08 SAVINGS CLAUSE. In the event that the District is prohibited by law or contract from fully or partly owning and operating the District Facilities and exercising its powers, duties, responsibilities and obligations under the Charter (the "District Functions"), the City shall, on behalf of the District, perform such District Functions as necessary to fully implement the intent of this Charter, and the City shall include such performance of District Functions within the Utility Services Agreement, with the District reimbursing the City for such performance.

Passed and Adopted this _____ day of _____, 2004, by ordinance no. _____.