

LEGISLATIVE FILE #170794

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA FOR THE PURPOSE OF AMENDING AND EXTENDING THE EXPIRATION DATE OF THE LIQUIDITY FACILITY WITH RESPECT TO THE CITY OF GAINESVILLE, FLORIDA UTILITIES SYSTEM REVENUE BONDS, 2007 SERIES A, APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FOURTH AMENDMENT TO STANDBY BOND PURCHASE AGREEMENT AND A FIRST AMENDMENT TO LETTER AGREEMENT AND AUTHORIZING CERTAIN CITY OFFICIALS TO TAKE ALL OTHER ACTIONS DEEMED NECESSARY OR ADVISABLE IN CONNECTION WITH THE EXECUTION, AMENDMENT AND DELIVERY OF SUCH DOCUMENTS; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to (a) a resolution of the City of Gainesville, Florida (the "City") entitled "Utilities System Revenue Bond Resolution," adopted by the City on June 6, 1983, as heretofore supplemented, amended and restated (the "Bond Resolution") and (b) a resolution of the City, supplemental to the Bond Resolution, entitled "Eighteenth Supplemental Utilities System Revenue Bond Resolution," adopted by the City on February 26, 2007 (the "Eighteenth Supplemental Resolution"), the City has heretofore authorized the issuance of its Variable Rate Utilities System Revenue Bonds, 2007 Series A (the "2007 Series A Bonds"); and

WHEREAS, the 2007 Series A Bonds were issued as variable rate demand obligations, initially in the Weekly Mode (such term, and all other capitalized terms used herein without definition, having the respective meanings assigned thereto in the Bond Resolution or, if not defined therein, in the Eighteenth Supplemental Resolution), and are subject to mandatory and optional tender for purchase at certain times and under certain circumstances; and

WHEREAS, in order to provide liquidity support for the 2007 Series A Bonds, the City entered into a Standby Bond Purchase Agreement dated as of March 1, 2007 (as amended from time to time, the "Liquidity Facility") with State Street Bank and Trust Company (the "Bank"); and

WHEREAS, in accordance with Section 18 of Resolution No. 061002 adopted by the City on February 26, 2007, the General Manager entered into an extension of the Standby Bond Purchase Agreement extending the scheduled expiration date of the Liquidity Facility to April 1, 2018 upon such terms and conditions as determined by the General Manager to be advantageous to the City and commercially reasonable as confirmed by PFM Financial Advisors LLC as the City's financial advisor and the forms of such document or documents were approved by the City Attorney of the City as to form and legality prior to the execution thereof by the General Manager; and

WHEREAS, the Bank and the City wish to extend the scheduled expiration date of the Liquidity Facility to April 1, 2021; and

WHEREAS, in connection with the extension of the expiration date of the existing Liquidity Facility the City and the Bank have agreed to make certain amendments to the terms of the Liquidity Facility; and

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Gainesville, Florida as follows:

ARTICLE I

AUTHORITY

SECTION 101. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of the Act.

ARTICLE II

APPROVAL OF DOCUMENTS

SECTION 201. Authorization and Approval of Amendment and Extension of Liquidity Facility. The form of the Fourth Amendment to Standby Bond Purchase Agreement substantially in the form attached hereto as Exhibit A and the form of the First Amendment to Letter Agreement substantially in the form attached hereto as Exhibit B (collectively, the "Amendment Documents") are hereby approved, subject to such changes, insertions and omissions and such filling of blanks therein as may be approved and made in such Amendment Documents by the General Manager, Chief Financial Officer or any other Authorized Officer executing the same, in a manner consistent with the provisions of this Resolution and subject to the terms hereof, such execution to be conclusive evidence of such approval. Subject to the provisions set forth herein, the General Manager, the Chief Financial Officer or such other Authorized Officer, is hereby authorized to execute the Amendment Documents for and on behalf of the City pursuant to the terms hereof and the Clerk is hereby authorized to attest such signature to the extent required by the forms of the Amendment Documents, subject to the approval of the City Attorney as to form and legality.

SECTION 202. Ratification of Prior Actions. All prior actions of the City and its Authorized Officers, including, but not limited to, the delivery of notices and certifications required in accordance with the Bond Resolution and the Eighteenth Supplemental Resolution taken in connection with the execution and delivery of the Amendment Documents and this Resolution are hereby ratified.

ARTICLE III

MISCELLANEOUS

SECTION 301. Further Actions. Each Authorized Officer is hereby authorized and empowered to execute and deliver or cause to be executed and delivered such other documents and opinions and to do all such acts and things as may be necessary or desirable in connection with the adoption of this Resolution and the approval, execution and delivery of the Amendment Documents and the carrying out of their terms.

SECTION 302. Effective Date. This Resolution shall be effective immediately upon its adoption.

Passed and duly adopted in public session of the City Commission of the City of Gainesville, Florida on the 15th day of February, 2018.

THE CITY OF GAINESVILLE, FLORIDA

Mayor

ATTESTED:

Clerk of the Commission

Approved as to Form and Legality:

City Attorney

#55052362_v10

Exhibit A

FORM OF FOURTH AMENDMENT TO STANDBY BOND PURCHASE AGREEMENT

**FOURTH AMENDMENT
TO STANDBY BOND PURCHASE AGREEMENT
RELATING TO
VARIABLE RATE UTILITIES SYSTEM REVENUE BONDS, 2007 SERIES A**

This **FOURTH AMENDMENT TO STANDBY BOND PURCHASE AGREEMENT RELATING TO VARIABLE RATE UTILITIES SYSTEM REVENUE BONDS, 2007 SERIES A**, dated as of February 21, 2018 (this “Fourth Amendment”) is entered into by and between **THE CITY OF GAINESVILLE, FLORIDA** (the “City”) and **STATE STREET BANK AND TRUST COMPANY** (the “Bank”).

W I T N E S S E T H:

WHEREAS, the City and the Bank have entered into that certain Standby Bond Purchase Agreement (as amended prior to the date hereof, the “Agreement”), dated as of March 1, 2007, pursuant to which the City would enhance the liquidity of its Bonds (as defined in the Agreement), by providing for the purchase of the Bonds by the Bank under certain specific circumstances as described in the Agreement;

WHEREAS, the City wishes to enter into this Fourth Amendment with the Bank for the purpose of amending certain provisions of the Agreement and extending the Stated Termination Date of the Agreement; and

WHEREAS, the Bank is willing to enter into this Fourth Amendment with the City, subject to the following terms and conditions;

NOW THEREFORE, in consideration of the foregoing and other valuable consideration, the parties hereto agree as follows:

Section 1. AUTHORITY AND DEFINITIONS

- (a) This Fourth Amendment is entered into pursuant to Section 7.1 of the Agreement.
- (b) Capitalized terms used herein but not herein defined, shall have the meanings ascribed to them in the Agreement.

Section 2. AMENDMENTS

2.1 Section 4.16 of the Agreement is hereby amended and restated in its entirety to read as follows:

Section 4.16. Sovereign Immunity. The defense of sovereign immunity is not available to the City in any proceedings by the Bank to enforce any of the obligations of the City under this Agreement, the Letter Agreement or the Bonds, except to the extent that any such proceeding

seeks enforcement based on tort or similar claim and in such case such defense is available only to the extent set forth under Florida Statutes Section 768.28 or other similarly applicable provision of law, and, to the extent permitted by applicable law, the City consents to the initiation of any such proceedings in any court of competent jurisdiction and agrees not to assert the defense of sovereign immunity in any such proceedings.

2.2 Section 5.2 of the Agreement is hereby amended and restated in its entirety to read as follows:

Section 5.2 Financial and Other Information. The City shall furnish to the Bank:

(a) within one hundred eighty (180) days after the close of each Fiscal Year of the City, a balance sheet of Gainesville Regional Utilities as at the end of such year, and the related statements of revenues, expenses and changes in net assets and cash flows for the year then ended, accompanied by an unmodified audit report of an independent certified public accounting firm of recognized standing stating that they have been prepared in accordance with GAAP consistently applied;

(b) within sixty (60) days after the close of the first three quarters of each Fiscal Year of the City, an unaudited balance sheet of Gainesville Regional Utilities as at the end of such quarter, and the related statement of revenues, expenses and changes in net assets, in each case, for the three months then ended and setting forth in each case in comparative form the figures for the corresponding quarter of the prior Fiscal Year of the City;

(c) concurrently with the delivery of the financial statements referred to in the foregoing clauses (a) and (b), a certificate of an Authorized Officer stating whether any Default exists on the date of such certificate and, if any Default then exists, setting forth the details thereof and the actions which the City is taking or proposes to take with respect thereto; and

(d) promptly upon request, such financial and other information as the Bank may from time to time reasonably request.

2.3 Article V of the Agreement is hereby amended to insert the following Section 5.14 immediately following Section 5.13 contained therein:

Section 5.14. Sovereign Immunity. To the extent authorized by applicable law, the City agrees to waive sovereign immunity from suit and liability for the purposes of adjudicating a claim to enforce its duties and obligations under this Agreement, the Letter Agreement and any Bank Bonds or for damages for a breach of any of the foregoing, except to the

extent that any such proceeding seeks enforcement based on tort or similar claim and in such case such defense is available only to the extent set forth under Florida Statutes, Section 768.28 or other similarly applicable provision of law.

2.4 Section 6.2 of the Agreement is hereby amended and restated in its entirety to read as follows:

Section 6.2. No Right of Set-off. The Bank hereby waives any rights of set-off for any amounts owed hereunder or under the Letter Agreement with respect to any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Bank to or for the credit or the account of the City.

2.5 Section 7.22 of the Agreement is hereby amended and restated in its entirety to read as follows:

Section 7.22. Government Regulations. The Bank hereby notifies the City that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify and record information that identifies the City, which information includes the name and address of the City and other information that will allow the Bank to identify the City in accordance with the Patriot Act. The City shall, promptly following a request by the Bank, to the extent permitted by law, provide all documentation and other information that the Bank reasonably requests in order to comply with its ongoing obligations under applicable law or regulation, including, without limitation, “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, and shall comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act (“BSA”) laws and regulations, as amended.

The City shall (i) ensure that no Person who owns a controlling interest in or otherwise controls the City is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury or included in any Executive Orders, that prohibits or limits the Bank from making any advance or extension of credit to the City or from otherwise conducting business with the City and (ii) ensure that the Bond proceeds have not been, and shall not be, used to violate any of the regulations administered and enforced by OFAC or any enabling statute or Executive Order relating thereto. Further, the City shall comply, and cause any of its Affiliates to comply, with all applicable BSA laws and regulations, as amended. The City agrees to provide documentary and other evidence of the City’s identity as may be reasonably requested by the Bank at any time to enable the Bank to verify

the City's identity or to comply with any applicable law or regulation including, without limitation, Section 326 of the Patriot Act.

Section 3. EXTENSION OF STATED TERMINATION DATE

Each of the City and the Bank agree and acknowledge that the Stated Termination Date of the Agreement has been extended to April 1, 2021.

Section 4. CONDITIONS TO EFFECTIVENESS OF FOURTH AMENDMENT

This Fourth Amendment shall be effective on February 21, 2018 (the "Amendment Effective Date"), provided that all of the following conditions have been fulfilled:

- (a) Delivery by the parties hereto of an executed counterpart of this Fourth Amendment.
- (b) Delivery by the parties hereto of an executed counterpart of the First Amendment to Letter Agreement dated as of the date hereof.
- (c) All other legal matters pertaining to the execution and delivery of this Fourth Amendment shall be satisfactory to the Bank and its counsel.

Section 5. REPRESENTATIONS AND WARRANTIES

In order to induce the Bank to execute and deliver this Fourth Amendment, the City hereby makes each of the representations and warranties contained in Article IV of the Agreement as of the date hereof, *provided* that the representations and warranties contained in Sections 4.1, 4.2, 4.12 and 4.15 of the Agreement shall not be remade by the City as of the Amendment Effective Date and all references to the Agreement therein shall be deemed to also refer to the Agreement, as amended by this Fourth Amendment.

In addition to the foregoing, the City represents and warrants as follows:

- (a) The execution, delivery and performance by the City of this Fourth Amendment and the Agreement, as amended hereby, are within its powers, have been duly authorized by all necessary action and do not contravene any law or any contractual restriction binding on or affecting the City.
- (b) Other than the approval of the City Commission of the City (which has been received as of the Amendment Effective Date), no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the City of this Fourth Amendment or the Agreement, as amended hereby.
- (c) No Event of Default or Default exists or will be continuing.

- (d) The Agreement, as amended hereby, and this Fourth Amendment constitute legal, valid and binding obligations of the City, enforceable against the City, in accordance with their respective terms.

Section 6. COVENANTS

The City hereby reaffirms its agreement to observe and perform each covenant and obligation of the City contained in the Agreement.

Section 7. MISCELLANEOUS

- (a) Except as specifically amended herein, the Agreement shall continue in full force and effect in accordance with its terms. Reference to this specific Fourth Amendment need not be made in any note, document, agreement, letter, certificate, the Agreement or any communication issued or made subsequent to, or with respect to, the Agreement, it being hereby agreed that any reference in the Agreement to the “Agreement” shall be sufficient to refer to the Agreement, as hereby amended.
- (b) In case any one or more of the provisions contained herein should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby.
- (c) **THIS FOURTH AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, EXCEPT THAT THE CAPACITY, POWER OR AUTHORITY OF THE CITY TO ENTER INTO AND PERFORM THIS FOURTH AMENDMENT AND ANY ISSUE RELATING TO THE INTERPRETATION OF EITHER OF THE RESOLUTIONS OR THE BONDS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA.**
- (d) **THE CITY AND THE BANK EACH HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS FOURTH AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**
- (e) With respect to any suit, action or proceeding relating to, or arising from, this Fourth Amendment, each party hereto irrevocably submits to the jurisdiction of the federal courts located in the State of New York and agrees that any such suit, action or proceeding shall be had and maintained in such federal courts.
- (f) The City shall pay on demand the fees and expenses of, or incurred by counsel to, the Bank in the amount of \$_____ in connection with the negotiation, preparation, execution and delivery of this Fourth Amendment.

- (g) This Fourth Amendment may be signed in any number of counterpart copies, but all such copies shall constitute one and the same voluntary, legal and binding instrument.

[signature page immediately follows]

IN WITNESS WHEREOF, the City and the Bank have caused this Fourth Amendment to be duly executed as of the date first above written.

CITY OF GAINESVILLE, FLORIDA, as the
City

By: _____
Name: Edward J. Bielarski, Jr.
Title: General Manager for Utilities

Approved as to form
and legality:

Name: Nicole M. Shalley, Esq.
Title: City Attorney

**STATE STREET BANK AND TRUST
COMPANY**, as the Bank

By: _____
Name: Amy Baribeault
Title: Managing Director

FORM OF FIRST AMENDMENT TO LETTER AGREEMENT

**FIRST AMENDMENT TO
LETTER AGREEMENT**

This FIRST AMENDMENT TO LETTER AGREEMENT, dated as of February 21, 2018 (this “Amendment”), is entered into between THE CITY OF GAINESVILLE, FLORIDA (the “City”) and STATE STREET BANK AND TRUST COMPANY (the “Bank”).

W I T N E S S E T H:

WHEREAS, the City and the Bank entered into that certain Letter Agreement dated February 11, 2014 (the “Letter Agreement”), setting forth certain fees to be paid by the City to the Bank in connection with that certain Standby Bond Purchase Agreement, dated as of March 1, 2007 (as amended from time to time, the “Agreement”), which Agreement provides liquidity support for the City’s Variable Rate Utilities System Revenue Bonds, 2007 Series A (the “Bonds”);

WHEREAS, the City and the Bank have agreed to make certain modifications and amendments to the Letter Agreement; and

WHEREAS, the Bank is willing to enter into this Amendment with the City, subject to the following terms and conditions;

NOW THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. AUTHORITY AND DEFINITIONS

- (a) This Amendment is entered into pursuant the last paragraph of the Letter Agreement.
- (b) This Amendment amends the Letter Agreement.
- (c) Capitalized terms used herein but not herein defined, shall have the meanings ascribed to them in the Letter Agreement.

Section 2. AMENDMENTS

The Letter Agreement shall be amended as of the Amendment Effective Date (as defined in Section 3 to this Amendment) as follows:

- (a) Paragraph 2 of the Letter Agreement shall be amended in its entirety, as follows:

2. A. From and including March 1, 2014 through and including February 28, 2018, the City hereby agrees to pay to the Bank a nonrefundable commitment fee (the “Commitment Fee”) with respect to the Available Commitment of the Bank under the Agreement at the rate per annum set forth

below (the “Commitment Fee Rate”) to but excluding the Termination Date on the average daily amount of the Available Commitment (without regard as to whether any Bank Bonds are outstanding) during each period in respect of which payment is made. The applicable Commitment Fee Rate for any period shall be determined on the basis of the publicly announced long-term credit rating assigned to the Bonds or any Utilities System Revenue Bonds by any of S&P, Fitch or Moody’s (the “Credit Ratings”), without giving effect to any bond insurance policy or other credit enhancement securing the Bonds or such Utilities System Revenue Bonds:

<u>Credit Rating</u> <u>(S&P/Fitch/Moody’s)</u>	<u>Commitment Fee Rate</u>
AA-/AA-/Aa3 or better	0.39%
A+/A+/A1	0.44%
A/A/A2	0.54%
A-/A-/A3	0.69%
BBB+/BBB+/Baa1	0.84%
BBB/BBB/Baa2	0.99%

If the long-term ratings assigned by S&P, Fitch and Moody's, respectively, appear in more than one rating category (i.e., a split rating), the Commitment Fee Rate will be based on the category that includes the lowest rating. References to ratings above are references to rating categories as presently determined by S&P, Fitch and Moody's, respectively, and in the event of adoption of any new or changed rating system by any such rating agency, each of the ratings from the rating agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. Each change in the Commitment Fee Rate resulting from a change in the Credit Rating shall become effective on the date of announcement or publication by S&P, Fitch or Moody’s of a change in such rating or, in the absence of such announcement or publication, on the effective date of such changed rating. In the event that the Credit Rating assigned by any of S&P, Fitch or Moody’s falls below “BBB” or “Baa2”, respectively, or has been suspended, withdrawn or otherwise is unavailable for any reason, the Commitment Fee then in effect will increase automatically, without notice, to 1.00% per annum and such increased Commitment Fee Rate shall be payable until no such Credit Rating remains below “BBB” or “Baa2”, respectively, or is so suspended, withdrawn or unavailable, or the Agreement otherwise terminates. Upon the occurrence and during the continuance of an Event of Default under the Agreement, the Commitment Fee Rate then in effect will increase by an additional 1.00% per annum automatically and without notice to the City, commencing on the date such Event of Default occurs and such increased Commitment Fee Rate shall be payable until such Event of Default is cured (but solely to the extent curable under the Agreement) or is otherwise waived in writing by the Bank, or the Agreement otherwise terminates.

Such Commitment Fee shall be payable in immediately available funds quarterly in arrears, at or prior to 1:00 P.M. (New York City time), on each Quarterly Payment Date prior to the Termination Date (each such payment to be computed on the basis of a year of 365 days and the actual number of days elapsed), in respect of the Available Commitment from time to time in effect, and on the Termination Date. If the Available Commitment is terminated in its entirety, all accrued Commitment Fees shall be payable on the effective date of such termination.

B. From and including March 1, 2018 and thereafter, the City hereby agrees to pay to the Bank a nonrefundable commitment fee (the “Commitment Fee”) with respect to the Available Commitment of the Bank under the Agreement at the rate per annum set forth below (the “Commitment Fee Rate”) to but excluding the Termination Date on the average daily amount of the Available Commitment (without regard as to whether any Bank Bonds are outstanding) during each period in respect of which payment is made. The applicable Commitment Fee Rate for any period shall be determined on the basis of the publicly announced long-term credit rating assigned to the Bonds or any Utilities System Revenue Bonds by any of S&P, Fitch or Moody’s (the “Credit Ratings”), without giving effect to any bond insurance policy or other credit enhancement securing the Bonds or such Utilities System Revenue Bonds:

<u>Credit Rating</u> (S&P/Fitch/Moody’s)	<u>Commitment Fee Rate</u>
AA-/AA-/Aa3 or better	0.46%
A+/A+/A1	0.51%
A/A/A2	0.61%
A-/A-/A3	0.76%
BBB+/BBB+/Baa1	0.91%
BBB/BBB/Baa2	1.06%

If the long-term ratings assigned by S&P, Fitch and Moody's, respectively, appear in more than one rating category (i.e., a split rating), the Commitment Fee Rate will be based on the category that includes the lowest rating. References to ratings above are references to rating categories as presently determined by S&P, Fitch and Moody's, respectively, and in the event of adoption of any new or changed rating system by any such rating agency, each of the ratings from the rating agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. Each change in the Commitment Fee Rate resulting from a change in the Credit Rating shall become effective on the date of announcement or publication by S&P, Fitch or Moody’s of a change in such rating or, in the absence of such announcement or publication, on the effective date of such changed rating. In the event that the Credit Rating assigned by any of S&P, Fitch or Moody’s falls below “BBB” or “Baa2”, respectively, or has been suspended, withdrawn or otherwise is unavailable for any reason, the

Commitment Fee then in effect will increase automatically, without notice, to 1.00% per annum and such increased Commitment Fee Rate shall be payable until no such Credit Rating remains below “BBB” or “Baa2”, respectively, or is so suspended, withdrawn or unavailable, or the Agreement otherwise terminates. Upon the occurrence and during the continuance of an Event of Default under the Agreement, the Commitment Fee Rate then in effect will increase by an additional 1.00% per annum automatically and without notice to the City, commencing on the date such Event of Default occurs and such increased Commitment Fee Rate shall be payable until such Event of Default is cured (but solely to the extent curable under the Agreement) or is otherwise waived in writing by the Bank, or the Agreement otherwise terminates.

Such Commitment Fee shall be payable in immediately available funds quarterly in arrears, at or prior to 1:00 P.M. (New York City time), on each Quarterly Payment Date prior to the Termination Date (each such payment to be computed on the basis of a year of 365 days and the actual number of days elapsed), in respect of the Available Commitment from time to time in effect, and on the Termination Date. If the Available Commitment is terminated in its entirety, all accrued Commitment Fees shall be payable on the effective date of such termination.

(b) Paragraph 5 of the Letter Agreement shall be amended in its entirety, as follows:

5. In the event that the Available Commitment under the Agreement is terminated or otherwise permanently reduced by or on behalf of the City prior to March 1, 2019, the City agrees to pay to the Bank on such termination date or reduction date, as applicable, in addition to all other obligations of the City that may be due and payable at such time, a termination fee equal to the Commitment Fee which would have been payable to the Bank from (and including) such termination date or reduction date through March 1, 2019, calculated at the time of such termination on the basis of the then applicable Available Commitment (or, if as a result of a reduction of less than 100% of the Bank's Available Commitment, the reduced amount of such Available Commitment) and the then applicable Commitment Fee Rate. Notwithstanding the foregoing, such termination fee shall not be payable by the City to the Bank in the event that the termination of the Agreement in whole results from either of (i) (a) Moody's lowering or withdrawing the short-term rating on the Bank below “P-1”, or (b) S&P lowering or withdrawing the short-term rating on the Bank below “A-1”, or (ii) the Bank assesses increased costs against the City pursuant to Section 2.2(h) of the Agreement and the substitute bank (or banks) with respect to the Bonds agrees not to assess such fee increase relating to such additional costs or does not otherwise include such costs in its calculation of fees or other amounts charged to the City, all as demonstrated in writing to the reasonable satisfaction of the Bank. Termination of the Agreement shall be effective upon payment of the foregoing termination or reduction fee, if applicable, and the payment in full of all obligations of the City owing to the Bank (including, without limitation, such

increased costs in accordance with Section 2.2(h) of the Agreement) under the Agreement.

Section 3. CONDITIONS TO EFFECTIVENESS OF AMENDMENT

This Amendment shall be effective on February 21, 2018 (the "Amendment Effective Date"), provided that all of the following conditions have been fulfilled:

- (a) Delivery by the parties hereto of an executed counterpart of this Amendment.
- (b) Delivery by the parties thereto of an executed counterpart of the Third Amendment to Standby Bond Purchase Agreement dated February 21, 2018 between the Bank and the City.
- (c) All other legal matters pertaining to the execution and delivery of this Amendment shall be satisfactory to the Bank and its counsel.

Section 4. REPRESENTATIONS AND WARRANTIES

The City represents and warrants as follows:

- (a) The execution, delivery and performance by the City of this Amendment and the Letter Agreement, as amended hereby, are within its powers, have been duly authorized by all necessary action and do not contravene any law or any contractual restriction binding on or affecting the City.
- (b) Other than the approval of the City Commission of the City (which has been received as of the Amendment Effective Date), no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the City of this Amendment or the Letter Agreement, as amended hereby.
- (c) This Amendment and the Letter Agreement, as amended hereby, constitute legal, valid and binding obligations of the City, enforceable against the City, in accordance with their respective terms.

Section 5. COVENANTS

The City hereby reaffirms its agreement to observe and perform each covenant and obligation of the City contained in the Letter Agreement, as amended hereby.

Section 6. MISCELLANEOUS

- (a) Except as specifically amended herein, the Letter Agreement shall continue in full force and effect in accordance with its terms. Reference to this specific Amendment need not be made in any note, document, agreement, letter, certificate, the Letter Agreement or any communication issued or made subsequent to, or with respect to, the Letter Agreement, it being hereby agreed that any reference in the Letter Agreement to the “Letter Agreement” shall be sufficient to refer to the Letter Agreement, as hereby amended.
- (b) In case any one or more of the provisions contained herein should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby.
- (c) **THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK; PROVIDED THAT THE OBLIGATIONS OF THE CITY HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA.**
- (d) This Amendment may be signed in any number of counterpart copies, but all such copies shall constitute one and the same voluntary, legal and binding instrument.

[signature page immediately follows]

IN WITNESS WHEREOF, the City and the Bank have caused this Amendment to be duly executed as of the date first above written.

CITY OF GAINESVILLE, FLORIDA, as the
City

By: _____
Name: Edward J. Bielarski, Jr.
Title: General Manager for Utilities

Approved as to form
and legality:

Name: Nicole M. Shalley, Esq.
Title: City Attorney

**STATE STREET BANK AND TRUST
COMPANY**, as the Bank

By: _____
Name: Amy Baribeault
Title: Managing Director