

RESOLUTION NO. R-  
PASSED JANUARY 25, 1999

A RESOLUTION INCORPORATING BY REFERENCE AND ADOPTING, AND AUTHORIZING THE EXECUTION AND DELIVERY OF A THIRD AMENDMENT TO SECOND SUPPLEMENTAL SUBORDINATED UTILITIES SYSTEM REVENUE BOND RESOLUTION, AMENDING THE CITY OF GAINESVILLE, FLORIDA'S SECOND SUPPLEMENTAL SUBORDINATED UTILITIES SYSTEM REVENUE BOND RESOLUTION TO PROVIDE FOR THE APPLICATION OF THE PROCEEDS RESULTING FROM THE ISSUANCE BY THE CITY OF ADDITIONAL UTILITIES SYSTEM COMMERCIAL PAPER NOTES, SERIES C; APPROVING AN AMENDMENT TO THE AMENDED AND RESTATED ISSUING AND PAYING AGENCY AGREEMENT RELATING TO THE SERIES C COMMERCIAL PAPER NOTES IN CONNECTION THEREWITH; AUTHORIZING CERTAIN CITY OFFICIALS TO TAKE OTHER ACTIONS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA (THE "CITY"):

**SECTION 1. Authority for this Resolution.** This resolution is adopted pursuant to the provisions of the Charter of the City, Chapter 90-394, Laws of Florida, 1990, as amended, Chapter 166, Part II, Florida Statutes, as amended, and other applicable provisions of law.

**SECTION 2. Definitions.** Unless the context otherwise requires, the terms defined in this section shall have the meanings specified in this section. Reference is made to the Bond Resolution, to the Subordinated Resolution and to the Second Supplemental Subordinated Resolution herein defined for definitions of terms used in this resolution which are not defined in this section. Words importing a singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

A. "Amended and Restated Issuing and Paying Agency Agreement" shall mean the Amended and Restated Issuing and Paying Agency Agreement, dated as of February 1, 1995, between the City and Bankers Trust Company, relating to the Series C Commercial Paper Notes.

B. "Bond Resolution" shall mean the Utilities System Revenue Bond Resolution of the City adopted on June 6, 1983, as heretofore amended and supplemented.

C. "City" shall mean the City of Gainesville, Florida.

D. "First Amendment to Amended and Restated Issuing and Paying Agency Agreement" shall mean the First Amendment to Amended and Restated Issuing and Paying Agency Agreement authorized pursuant to Section 5 of this resolution, between the City and Bankers Trust Company, which amends the Amended and Restated Issuing and Paying Agency Agreement.

E. "Second Amendment to Second Supplemental Subordinated Resolution" shall mean the Second Amendment to Second Supplemental Subordinated Utilities System Revenue Bond Resolution of the City adopted on September 23, 1996, which amended the Second Supplemental Subordinated Resolution.

F. "Second Supplemental Subordinated Resolution" shall mean the Second Supplemental Subordinated Utilities System Revenue Bond Resolution of the City adopted on October 5, 1992, as heretofore amended and supplemented.

G. "Series A Bank Bonds" shall mean the Utilities System Subordinated Bank Bonds, Series A of the City authorized to be issued and sold pursuant to Article III of the Second Supplemental Subordinated Resolution.

H. "Series C Commercial Paper Notes" shall mean the Utilities System Commercial Paper Notes, Series C of the City authorized to be issued and sold pursuant to Article II of the Second Supplemental Subordinated Resolution.

I. "Subordinated Resolution" shall mean the Subordinated Utilities System Revenue Bond Resolution adopted by the City on January 26, 1989, as heretofore supplemented.

J. "Third Amendment to Second Supplemental Subordinated Resolution" shall mean the Third Amendment to Second Supplemental Subordinated Utilities System Revenue Bond Resolution of the City, which is attached hereto as Exhibit A and incorporated herein by reference for all purposes of this resolution, and which amends the Second Supplemental Subordinated Resolution.

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

A. Pursuant to the provisions of the Act, the Bond Resolution, the Subordinated Resolution and the Second Supplemental Subordinated Resolution, the City heretofore has authorized the issuance and sale, from time to time, of the Series C Commercial Paper Notes and associated Series A Bank Bonds.

B. Pursuant to (i) the Second Amendment to Second Supplemental Subordinated Resolution and (ii) agenda item no. 970861, approved by the City Commission of the City at a regular meeting duly called and held on February 9, 1998, the City increased the aggregate principal amount of the Series C Commercial Paper Notes and the Series A Bank Bonds that may be Outstanding at any one time to \$85,000,000, in order to finance an additional portion of the Cost of Acquisition and Construction of the System.

C. The amendments to the Second Supplemental Subordinated Resolution contained in the Second Amendment to Second Supplemental Subordinated Resolution did not provide for the application of the proceeds to be received by the City from the issuance of such additional principal amount of the Series C Commercial Paper Notes.

D. In order to provide for the application of the proceeds to be received by the City from the issuance of such additional principal amount of the Series C Commercial Paper Notes, it is necessary and required that the City adopt the Third Amendment to Second

Supplemental Subordinated Resolution and approve, and authorize the execution and delivery of, the First Amendment to Amended and Restated Issuing and Paying Agency Agreement.

**SECTION 4. Adoption of Third Amendment to Second Supplemental Subordinated Resolution.** The Third Amendment to Second Supplemental Subordinated Resolution, attached hereto as Exhibit A, is hereby approved and adopted. Such Resolution shall be executed and delivered as provided in Section 6 hereof.

**SECTION 5. Approval of First Amendment to Amended and Restated Issuing and Paying Agency Agreement.** The City hereby approves, in substantially the form attached hereto as Exhibit B, the First Amendment to Amended and Restated Issuing and Paying Agency Agreement attached as Exhibit B hereto and authorizes the officers of the City hereinafter authorized pursuant to Section 6 hereof, and each of them, to execute and deliver such First Amendment on behalf of the City, subject to completion thereof, and with such changes therein as the officer executing the same may approve as necessary or desirable and in the best interest of the City, such approval and acceptance to be evidenced conclusively by the execution and delivery of such First Amendment by such officer.

**SECTION 6. Authorization, Execution and Delivery of Documents.** The Mayor and the Mayor Pro Tem of the City are each hereby authorized to execute the Third Amendment to Second Supplemental Subordinated Resolution on behalf of the City, subject to the approval of the City Attorney as to form and legality. The Mayor, the Mayor Pro Tem and the General Manager for Utilities of the City are each hereby authorized to execute the First Amendment to Amended and Restated Issuing and Paying Agency Agreement on behalf of the City, subject to the completion thereof, and with such changes therein as the officer executing the same may approve as necessary and desirable and in the best interests of the City, such approval to be evidenced by the execution and delivery thereof, subject to the approval of the

City Attorney as to form and legality. The Clerk of the Commission is hereby authorized to cause the seal of the City to be affixed to any of the foregoing documents that is executed by the Mayor or the Mayor Pro Tem of the City and to attest the same. Such officers are each hereby authorized to deliver such documents on behalf of the City.

**SECTION 7. Further Actions.** Each Authorized Officer of the City 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 the Third Amendment to Second Supplemental Subordinated Resolution and the approval, execution and delivery of the First Amendment to Amended and Restated Issuing and Paying Agency Agreement and the carrying out of their terms.

**SECTION 8. Authorized Officers.** The Mayor, the Mayor Pro Tem, the General Manager for Utilities, the Assistant General Manager for Customer and Administrative Services, the Utility Finance Director or any other officer, employee or agent of the City as shall hereinafter be designated by resolution of the City shall be, and they hereby are, and each of them hereby is, authorized to take such action as may be required to be taken by Authorized Officers of the City hereunder, to execute such documents, instruments and papers, and to do such other acts and things, as may be necessary or advisable in connection with the adoption of the Third Amendment to Second Supplemental Subordinated Resolution and the execution, delivery and performance of the First Amendment to Amended and Restated Issuing and Paying Agency Agreement.

**SECTION 9. Severability.** If any one or more of the covenants, agreements or provisions of this resolution should be determined by a court of competent jurisdiction to be contrary to law, such provisions shall be deemed to be severable from the remaining provisions hereof and shall in no way effect the validity or enforceability of such remaining provisions.

**THIRD AMENDMENT TO  
SECOND SUPPLEMENTAL SUBORDINATED  
UTILITIES SYSTEM REVENUE BOND RESOLUTION**

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 amended and supplemented (the "Resolution"), (b) a resolution of the City, supplemental to the Resolution, entitled "Subordinated Utilities System Revenue Bond Resolution", adopted by the City on January 26, 1989, as heretofore supplemented (the "Subordinated Resolution"), and (c) a resolution of the City, supplemental to the Subordinated Resolution, entitled "Second Supplemental Subordinated Utilities System Revenue Bond Resolution", adopted by the City on October 5, 1992, as heretofore amended and supplemented (the "Second Supplemental Subordinated Resolution"), the City heretofore has authorized the issuance from time to time of its Utilities System Commercial Paper Notes, Series C (the "Series C Commercial Paper Notes") and its Utilities System Subordinated Bank Bonds, Series A (the "Series A Bank Bonds"); and

WHEREAS, pursuant to (a) a resolution of the City entitled "Second Amendment to Second Supplemental Subordinated Utilities System Revenue Bond Resolution", adopted by the City on September 23, 1996 (the "Second Amendment") and (b) agenda item no. 970861, approved by the City Commission of the City at a regular meeting duly called and held on February 9, 1998, the City increased the aggregate principal amount of the Series C Commercial Paper Notes and the Series A Bank Bonds that may be Outstanding at any one time to \$85,000,000, in order to finance an additional portion of the Cost of Acquisition and Construction of the System (such terms, and all other capitalized terms used herein without definition, having the respective meanings assigned thereto in the Resolution or, if not defined therein, in the Second Supplemental Subordinated Resolution); and

WHEREAS, the amendments to the Second Supplemental Subordinated Resolution contained in the Second Amendment did not provide for the application of the proceeds to be received by the City from the issuance of such additional principal amount of the Series C Commercial Paper Notes; and

WHEREAS, clause 3 of Section 1002 of the Resolution authorizes the City to adopt a Supplemental Resolution (including a Supplemental Subordinated Resolution, as such term is defined in the Subordinated Resolution), without the consent of the Holders of Outstanding Bonds, for the purpose of making any modification or amendment of the Resolution (including any Supplemental Resolution) which the Trustee determines will not have a material adverse effect on the interests of Bondholders; and

WHEREAS, clause 3 of Section 10.02 of the Subordinated Resolution authorizes the City to adopt a Supplemental Subordinated Resolution, without the consent of the Holders of Outstanding Subordinated Bonds, for the purpose of making any modification or amendment of the Subordinated Resolution (including any Supplemental Subordinated Resolution), upon the delivery of an Opinion of Counsel to the effect that the provisions of such Supplemental Subordinated Resolution will not have a material adverse effect on the interests of the Holders of Outstanding Subordinated Bonds; and

**SECTION 10. Effective Date.** This resolution shall take effect immediately upon its adoption.

Dated this 25th day of January, A.D., 1999.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk of the Commission

Approved as to Form and Legality:

By \_\_\_\_\_  
City Attorney

WHEREAS, it is hereby determined to be necessary and desirable that the Second Supplemental Subordinated Resolution be amended in the manner provided herein in order to provide for the application of the proceeds to be received by the City from the issuance of such additional principal amount of the Series C Commercial Paper Notes;

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

**ARTICLE I  
AUTHORITY**

**SECTION 101. Supplemental Subordinated Resolution.** This Third Amendment to Second Supplemental Subordinated Utilities System Revenue Bond Resolution (this “Third Amendment”) (a) is supplemental to, and is adopted in accordance with Article X of, the Resolution and (b) is supplemental to, and is adopted in accordance with Article X of, the Subordinated Resolution.

**SECTION 102. Authority for this Third Amendment.** This Third Amendment is adopted (i) pursuant to the provisions of the Act, (ii) in accordance with clause 3 of Section 1002 of the Resolution and (iii) in accordance with clause 3 of Section 10.02 of the Subordinated Resolution.

**ARTICLE II  
AMENDMENT OF  
SECOND SUPPLEMENTAL SUBORDINATED RESOLUTION  
TO PROVIDE FOR THE APPLICATION OF THE PROCEEDS  
OF ADDITIONAL SERIES C COMMERCIAL PAPER NOTES**

**SECTION 201. Amendment of Section 202 of the Second Supplemental Subordinated Resolution.** The first paragraph of Section 202 of the Second Supplemental Subordinated Resolution is hereby amended to read in its entirety as follows (with additions indicated by double-underscoring and deletions being struck-through):

The Series C Commercial Paper Notes may be issued during the period commencing on the Effective Date and ending on October 5, 2022 (or, if such day is not a Business Day (as defined in the Credit Agreement), the next preceding Business Day), for purposes of (i) paying the principal of, and interest on, maturing Series B Notes, (ii) repaying amounts owed under the Series B Bank Notes, (iii) financing a portion of the Cost of Acquisition and Construction of the System and ~~(iii)~~ (iv) paying the principal of, and interest on, maturing Series C Commercial Paper Notes and borrowings under the Credit Agreement.

**SECTION 202. Amendment of Section 207 of the Second Supplemental Subordinated Resolution.** Section 207 of the Second Supplemental Subordinated Resolution is hereby amended to read in its entirety as follows (with additions indicated by double-underscoring and deletions being struck-through):



**SECTION 207. Use of Series C Commercial Paper Note Proceeds.**

Except as provided in the following ~~three~~ ~~two~~ sentences, all Series C Commercial Paper Note proceeds shall be credited by the Issuing Agent to the Series C CP Note Payment Account and applied to the payment of principal of, and interest on, maturing Series C Commercial Paper Notes and, upon instructions of the City, to the payment of principal of, and interest on, the Series A Bank Bonds. On any date on which Series C Commercial Paper Notes are being issued to pay the principal of, and interest on, Series B Note(s) maturing on such date, all or a portion of the proceeds thereof, in an amount which, together with other moneys held by the Paying Agent under the Subordinated Indebtedness Resolution No. 2, shall equal the principal of, and interest on, the Series B Note(s) maturing on such date, shall be transferred to the Paying Agent under the Subordinated Indebtedness Resolution No. 2, for deposit in the CP Note Payment Account (as defined in the Subordinated Indebtedness Resolution No. 2). On any date on which Series C Commercial Paper Notes are being issued to repay amounts owed under the Series B Bank Notes, all or a portion of the proceeds thereof, in an amount which, together with other moneys being transferred on such date by or at the direction of the City to (or on behalf of) the holders of the Series B Bank Notes, shall equal the amounts owed under the Series B Bank Notes on such date, shall be transferred to (or on behalf of) the holders of the Series B Bank Notes. On any date on which Series C Commercial Paper Notes are being issued to finance a portion of the Cost of Acquisition and Construction of the System, so long as, immediately prior to and after giving effect to such issuance, no Tender Event (as defined in the Credit Agreement) shall have occurred and be continuing, all of the proceeds thereof shall be wired to the City for deposit in the Construction Fund, and shall be applied to the payment of such Cost of Acquisition and Construction of the System. Until so applied all proceeds of the Series C Commercial Paper Notes shall be held in cash and shall not be invested.

**SECTION 203. Amendment of Section 401 of the Second Supplemental Subordinated Resolution.** Paragraph 3 of Section 401 of the Second Supplemental Subordinated Resolution is hereby amended to read in its entirety as follows (with additions indicated by double-underscoring):

3. Amounts on deposit in the Series C CP Note Payment Account shall be applied to the payment of the principal of, and interest on, the Series C CP Notes and the Series A Bank Bonds or, upon direction of an Authorized Officer of the City (or a Designee thereof), so long as no Tender Event (as defined in the Credit Agreement) shall have occurred and be continuing, shall be wired to the City for deposit in the Construction Fund, and applied to the payment of a portion of the Cost of Acquisition and Construction of the System.

**ARTICLE III**

**EFFECTIVE DATE**

**SECTION 301. Effective Date.** This Third Amendment shall be effective upon (i) the delivery to the Trustee of a copy hereof certified by an Authorized Officer of the City,

(ii) the filing with the City of an instrument in writing made by the Trustee consenting hereto, in substantially the form attached hereto as Annex A and (iii) receipt by the City of an Opinion of Counsel as required by Section 10.02 of the Subordinated Resolution.

Third Amendment to Second Supplemental Subordinated Utilities System Revenue Bond Resolution approved and adopted January 25, 1999.

**THE CITY OF GAINESVILLE, FLORIDA**

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Mayor

ATTESTED:

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Clerk of the Commission

Approved as to Form and Legality:

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City Attorney

**CONSENT OF TRUSTEE**

\_\_\_\_\_, 1999

The undersigned, as Trustee, under Resolution R-83-27, incorporating by reference and adopting the Utilities System Revenue Bond Resolution of the City of Gainesville, Florida (the "City") adopted on June 6, 1983 (the "Bond Resolution"), as heretofore amended and supplemented, hereby acknowledges the filing with it of a copy of the Third Amendment to Second Supplemental Subordinated Utilities System Revenue Bond Resolution (the "Third Amendment") adopted by the City on January 25, 1999, certified by an Authorized Officer of the City pursuant to Section 1002 of the Bond Resolution, and hereby consents to the adoption of the Third Amendment.

**FIRST TRUST OF NEW YORK,  
NATIONAL ASSOCIATION**

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

[SEAL]

Attest:

\_\_\_\_\_  
Title:

**CLERK OF THE COMMISSION'S CERTIFICATE**

STATE OF FLORIDA:  
COUNTY OF ALACHUA:

I, Kurt M. Lannon, the duly appointed, qualified and acting Clerk of the Commission of the City of Gainesville, Florida, a municipal corporation, do hereby certify that the foregoing is a true and correct copy of the Third Amendment to Second Supplemental Subordinated Utilities System Revenue Bond Resolution, which was duly and regularly adopted by the City Commission of the City of Gainesville, Florida at a regular meeting on January 25, 1999.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official seal of the City of Gainesville, Florida, this 25th day of January A.D., 1999.

[SEAL]

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Clerk of the Commission

**FIRST AMENDMENT TO AMENDED AND RESTATED  
ISSUING AND PAYING AGENCY AGREEMENT**

This **FIRST AMENDMENT TO AMENDED AND RESTATED ISSUING AND PAYING AGENCY AGREEMENT** (this "First Amendment"), dated as of January 1, 1999, between the City of Gainesville, Florida, a municipal corporation organized and existing under the laws of the State of Florida (the "City"), and Bankers Trust Company, a New York banking corporation (the "Issuing Agent").

**WITNESSETH:**

**WHEREAS**, the City and the Issuing Agent heretofore have entered into an Amended and Restated Issuing and Paying Agency Agreement, dated as of February 1, 1995 (the "Original Agreement"), pursuant to which the Issuing Agent has agreed to act as the Subordinated Bond Paying Agent and Subordinated Bond Registrar for the Commercial Paper Notes (such terms, and all other capitalized terms used herein and not defined herein, having the respective meanings assigned thereto in the Original Agreement); and

**WHEREAS**, the City desires to issue additional Commercial Paper Notes for the purpose of paying a portion of the Cost of Acquisition and Construction of the System (as such terms are defined in the Bond Resolution referred to in the Subordinated Resolution); and

**WHEREAS**, in connection with the issuance of such additional Commercial Paper Notes, it is necessary and desirable to amend the Original Agreement in the manner provided herein;

**NOW, THEREFORE**, the parties hereto agree as follows:

1. **Amendment of Section 3(e) of the Original Agreement.** The first paragraph of Section 3(e) of the Original Agreement is hereby amended to replace the dollar amount of "\$70,000,000" in clause (x) thereof with the dollar amount of "\$85,000,000".

2. **Amendment of Section 6(c) of the Original Agreement.** The first sentence of Section 6(c) of the Original Agreement is hereby amended to read as follows (with additions indicated by double-underscoring):

Amounts on deposit in the Series C CP Note Payment Account shall be applied by the Issuing Agent to the payment when due of the Commercial Paper Notes (or obligations evidenced thereby) as provided in Section 7 hereof and, upon instructions of an Authorized Officer of the City (or a Designee thereof), shall be (i) transferred to the Agent under the Credit Agreement in payment of amounts due under the Series A Bank Bonds or (ii) wired to the City for deposit in the Construction Fund established pursuant to the Bond Resolution for application to the payment of a portion of the Cost of Acquisition and Construction of the System.

**3. Miscellaneous.**

(a) In all respects not specifically mentioned herein, the Original Agreement shall remain in full force and effect without change.

(b) THIS FIRST AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA.

(c) This First Amendment may be executed in any number of counterparts, all of which when taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this First Amendment, as of the date first above written.

**CITY OF GAINESVILLE, FLORIDA**

By \_\_\_\_\_  
Title: General Manager for Utilities  
Date:

Approved as to Form and Legality:

\_\_\_\_\_  
City Attorney

**BANKERS TRUST COMPANY**

By \_\_\_\_\_  
Title:  
Date: