

RESOLUTION NO. 170462

PASSED \_\_\_\_\_

**A RESOLUTION OF THE CITY OF GAINESVILLE, FLORIDA AUTHORIZING THE FORMS OF AN ISDA MASTER AGREEMENT, SCHEDULE AND CREDIT SUPPORT ANNEX TO HEDGE CERTAIN INTEREST RATE RISKS ASSOCIATED WITH THE CITY'S VARIABLE RATE UTILITIES SYSTEM REVENUE BONDS IN ONE OR MORE SERIES; DELEGATING AUTHORITY TO NEGOTIATE THE FINAL TERMS AND PRICING OF SUCH SWAPS AND TO AWARD THE SWAPS TO THE SUCCESSFUL BIDDER(S) AS DETERMINED PURSUANT TO THIS RESOLUTION; DELEGATING AUTHORITY TO DETERMINE CERTAIN OTHER MATTERS IN CONNECTION THEREWITH, SUBJECT TO CERTAIN DELEGATION PARAMETERS; AUTHORIZING CERTAIN CITY OFFICIALS TO TAKE OTHER ACTIONS IN CONNECTION WITH THE EXECUTION OF SWAP TRANSACTIONS THEREUNDER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Gainesville, Florida (the "City") anticipates approving the issuance of its Variable Rate Utilities System Revenue Bonds in one or more series (the "2017 Variable Rate Bonds") to finance a portion of the acquisition of the Gainesville Renewable Energy Center and related improvements thereto; and

**WHEREAS**, the 2017 Variable Rate Bonds will bear interest at a floating rate equal to a percentage of One-Month LIBOR plus a spread; and

**WHEREAS**, the City wishes to hedge its floating interest rate risk under a portion of the 2017 Variable Rate Bonds by entering into a Master ISDA Agreement and Schedule and a Credit Support Annex reflecting the terms outlined in the Credit Support Annex Term Sheet, all as attached hereto as composite Exhibit A (collectively, the "Swap Documents") with the successful bidder or bidders pursuant to a bidding process heretofore initiated by the City (the "Counterparty"), and to enter into trade confirmations with a trade date on or immediately after

the issuance and delivery of the 2017 Variable Rate Bonds (collectively, the “Confirmation”), in an aggregate notional amount equal to or less than \$150,000,000 and an effective date on or shortly after the issuance of the 2017 Variable Rate Bonds, as a hedge against the variable rate risk thereunder (collectively, the “Swap”); and

**WHEREAS**, the City has heretofore adopted on January 30, 2003, an Amended and Restated Utilities System Revenue Bond Resolution, as amended, authorizing the issuance of its Bonds and other obligations (as amended, the “General Bond Resolution”); and

**WHEREAS**, all capitalized undefined terms used herein shall have the meanings provided in the General Bond Resolution and in Section 1.02 hereof; and

**WHEREAS**, the Swap Documents will constitute Qualified Hedging Contracts, and the obligations thereunder (to the extent scheduled) will constitute Parity Hedging Contract Obligations under the General Bond Resolution and the termination payments and other Hedge Charges due thereunder shall constitute Subordinated Hedging Contract Obligations for purposes of the General Bond Resolution; and

**WHEREAS**, the City expects, based on an analysis of its Financial Advisor, that the issuance of the 2017 Variable Rate Bonds, coupled with the Swap Documents, when the trade is consummated, will result in expected net interest cost savings to the City over what it would be able to achieve had the City issued the 2017 Variable Rate Bonds initially at a fixed rate; and

**WHEREAS**, the City desires to delegate to the General Manager for Utilities and Chief Financial Officer, or either of them, subject to the delegation parameters and limitations set forth herein, the authority to complete the negotiation of the Swap, and to pay any associated costs

from legally available funds of the City, including proceeds of the 2017 Variable Rate Bonds and/or other Bonds issued simultaneously therewith to finance the Project;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF GAINESVILLE, FLORIDA THAT:**

**ARTICLE I  
DEFINITIONS AND STATUTORY AUTHORITY**

**Section 1.01 Authority.** This Resolution is adopted pursuant to the provisions of the Act.

**Section 1.02 Definitions.**

(a) All terms which are defined in Article I of the General Bond Resolution shall have the same meanings for purposes of this Resolution, unless otherwise defined herein.

(b) In this Resolution, in addition to the terms elsewhere defined herein, the following terms shall have the meanings as set forth below:

*“Chief Financial Officer”* shall mean the Chief Financial Officer for Utilities and who is the Utility Finance Director as referenced in the Bond Resolution.

*“City Attorney”* shall mean the City Attorney to the City or such other assistant City Attorney as designated by the City Attorney, including without limitation, the Utilities Attorney.

*“Clerk”* shall mean the Clerk of the Commission or any Deputy Clerk or any Acting Clerk of the City.

“Code” means the Internal Revenue Code of 1986, as amended, and any rules and applicable regulations thereunder in effect or proposed.

“Financial Advisor” means PFM Financial Advisors LLC, or such other entity as the City may designate as its Independent Registered Municipal Advisor.

“General Manager” shall mean the General Manager for Utilities.

“Mayor” shall mean the Mayor of the City or the Mayor-Commissioner Pro Tempore or such other member of the Commission delegated to act on behalf of the Mayor by the Commission.

“Project” means purchase of the Gainesville Renewable Energy Center, including tangible and intangible assets associated therewith, pursuant to an Asset Purchase Agreement by and between Gainesville Renewable Energy Center, LLC, as seller, and the City as buyer.

“Subordinated Bond Resolution” means the resolution adopted by the City on January 26, 1989 entitled “Subordinated Utilities System Revenue Bond Resolution”, as amended and supplemented from time to time in accordance with the terms thereof, including as amended and restated by the resolution adopted by the City on December 8, 2003 entitled “Amended and Restated Subordinated Utilities System Revenue Bond Resolution,” as amended from time to time.

“Swap Advisor” means PFM Swap Advisors LLC, or such other entity as the City may designate as its Qualified Independent Representative.

**ARTICLE II**  
**AUTHORIZATION TO CONDUCT BIDDING, SELECT COUNTERPARTY, EXECUTE**  
**SWAP DOCUMENTS AND EFFECTUATE TRADE**

**Section 2.01 Authorization Swap Documents; Delegation.** The Swap Documents, each in the form attached hereto as composite Exhibit “A” are hereby approved. The General Manager and the Chief Financial Officer are, or either of them is, hereby authorized and directed to conduct a negotiated bid of the Swap with counterparties designated by the Swap Advisor, to select the successful bidder[s], to complete the negotiation of the Swap Documents including the full negotiation of the Credit Support Annex and the approval of changes to the Swap Documents as they deem necessary, and to effectuate one or more interest rate hedges thereunder that will convert the floating rate of a portion of the 2017 Variable Rate Bonds to a synthetic fixed rate through the scheduled maturity date of the 2017 Variable Rate Bonds, all in accordance with the delegation parameters set forth below. Such officers, or either of them, are further authorized to negotiate and execute all Swap Documents and other documents necessary or related to effectuate the Swap, including without limitation, Dodd Frank Protocols and related documentation, and to take such further action, all as may be necessary or desirable to effectuate the Swap, provided in each case that the parameters described herein are satisfied.

The City is mindful that LIBOR, as a reference index published by International Continental Exchange Benchmark Administration Ltd. (“ICE”) as a sponsor, may be discontinued by the UK Financial Conduct Authority as early as 2021. Thus, the City hereby delegates to the General Manager and the Chief Financial Officer, in consultation with the Financial Advisor and Swap Advisor, the authority to the negotiate and determine (i) an appropriate substitution rate, whether now existing or subsequently developed, that is deemed approximately equivalent to LIBOR and (ii) an appropriate effective date of the substitution rate

(which could become immediately effective, effective upon determination that LIBOR as a reference rate is no longer reliable, or upon the date LIBOR ceases to be published), each of which may be determined by a LIBOR fallback protocol as published by the International Swaps and Derivatives Association.

**Section 2.02 Delegation Parameters.** Unless further approved by the Commission, the Swap Documents shall not be executed by the General Manager or the Chief Financial Officer and the Swap shall not be effectuated, until such time as the following conditions have been satisfied or subsequently waived by the Board:

(i) Each Counterparty shall constitute a Qualified Hedging Contract Provider and each Swap shall constitute a Qualified Hedging Contract under the General Bond Resolution;

(ii) The termination date of the Swap shall not be later than the final maturity date of the 2017 Variable Rate Bonds, and the notional amount of the Swap shall be equal to or less than, and shall amortize proportionally in accordance with, the amortization schedule for, the applicable portion of the 2017 Variable Rate Bonds;

(iii) (a) The fixed rate payable by the City under the Swap shall not exceed 4.0% (net of any offsetting spread to the 1-month LIBOR on the variable rate leg of the swap payable by the counterparty); and (b) the floating rate payable by Counterparty shall be a variable rate based on 1-month LIBOR.

(iv) The City shall have the option to terminate the swap on, and on each interest payment date after, the tenth (10<sup>th</sup>) anniversary of the trade date, without payment to either party;

(v) The Swap may be secured by a Bilateral Credit Support Annex (New York Law), within the parameters described in the CSA Term Sheet attached as part of Exhibit A, subject to the modifications thereto as described in Sections 2.10 and 3.03; and

(vi) The scheduled payments due under the Swap shall constitute Parity Hedging Contract Obligations and the termination payments and other Hedge Charges due thereunder shall constitute Subordinated Hedging Contract Obligations for purposes of the General Bond Resolution.

The General Manager or the Chief Financial Officer may rely conclusively upon the Financial Advisor and Swap Advisor for a determination that the City has complied with the conditions provided in clause (iv) above.

**ARTICLE III  
CERTAIN FINDINGS AND DETERMINATIONS;  
ADDITIONAL AUTHORIZATIONS**

**Section 3.01 Certain Findings and Determinations.** The City hereby finds and determines that:

(a) The factual recitals set forth in the WHEREAS clauses of this Resolution are hereby incorporated in this section as findings as if expressly set forth herein.

(b) The General Bond Resolution has been duly adopted and is in full force and effect.

(c) No “Event of Default” exists within the meaning of such term as defined in Section 801 of the General Bond Resolution.

(d) The City has the power and authority under the Act to enter into Qualified Hedging Contracts and the Swap will constitute a Qualified Hedging Contract within the meaning of the General Bond Resolution.

(e) The City has determined, after detailed analysis of risk factors and mitigates, and after consultation with its Swap Advisor and Financial Advisor, that the Swap is necessary to properly manage the City’s resources to effect the lowest possible costs combined with prudent management of the utilities, and that the best possible method for funding a portion of the acquisition of the Project is to finance a portion of the cost thereof with the 2017 Bonds issued at a variable interest rate and to synthetically convert that rate to a fixed rate through the use of the Swap. The City has further evaluated the risks associated with the floating to fixed rate structure and has determined that the proposed or expected benefits of this structure exceed the identified risks over those available in a traditional cash market transaction.

**Section 3.02 Pledge of Revenues.** The City hereby grants to each Counterparty a lien on the Trust Estate (as defined in the General Bond Resolution) to secure the City’s obligations under the Swap in the manner and to the extent provided in the General Bond Resolution. In furtherance of the foregoing, the obligations of the City to make monthly payments under interest rate hedging transactions entered into pursuant to Swap are hereby designated as Parity Hedging Contract Obligations under the General Bond Resolution and shall be entitled to the rights and benefits of such obligations thereunder, and the obligations of the City to make any termination payments and any other Hedge Charges under the Swap are hereby designated as



Subordinated Hedging Contract Obligations under the General Bond Resolution, entitled to the benefits thereof on a parity with other obligations issued or incurred by the City under the Subordinated Bond Resolution.

**Section 3.03 Further Authority.** The Mayor and Clerk, the General Manager, the Chief Financial Officer, or their respective designees (each an “*Authorized Officer*” and collectively, the “*Authorized Officers*”) and the City Attorney are each hereby authorized to do all acts and things required of them by this Resolution, the General Bond Resolution and the Swap Documents, for the full punctual and complete performance of all the terms, covenants and agreements contained herein and in the Swap Documents and the Clerk is hereby authorized to attest such signatures to the extent required by the Swap Documents, subject to the approval of the City Attorney as to form and legality. The Authorized Officers, or their respective designees, the Clerk and the City Attorney are each hereby authorized and directed to execute and deliver any and all papers, instruments and opinions and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated hereunder.

**Section 3.04 Severability.** If any one or more of the covenants, agreements or provisions of this Resolution should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Resolution.

**Section 3.05 No Third-Party Beneficiaries.** Except as herein otherwise expressly provided, nothing in this Resolution expressed or implied is intended or shall be construed to

confer upon any person, firm or corporation other than the parties described herein, any right, remedy or claim, legal or equitable, under or by reason of this Resolution or any provision hereof, this Resolution and all its provisions being intended to be and being for the sole and exclusive benefit of the parties described herein.

**Section 3.06 Controlling Law; Members of Issuer Not Liable.** All covenants, stipulations, obligations and agreements of the City contained in this Resolution shall be deemed to be covenants, stipulations, obligations and agreements of the City to the full extent authorized by the Act and provided by the Constitution and laws of the State. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, agent or employee of the City in his individual capacity, and neither the members of the City nor any official executing the Swap shall be liable personally on Swap or this Resolution or shall be subject to any personal liability or accountability by reason of the issuance or the execution by the City or such members thereof.

**Section 3.07 Effective Date.** This Resolution shall be fully effective immediately upon adoption.

*[Signature Page Follows]*

Passed and duly adopted in public session of the City Commission of the City of Gainesville, Florida on the 13<sup>th</sup> day of October, 2017.

CITY COMMISSION OF THE CITY OF  
GAINESVILLE, FLORIDA

ATTESTED:

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Clerk of the Commission

APPROVED AS TO FORM AND  
LEGALITY:

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

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**EXHIBIT A**

**COMPOSITE OF 1992 ISDA MASTER AGREEMENT,  
SCHEDULE, CREDIT SUPPORT ANNEX AND TERM SHEET**

(Multicurrency—Cross Border)



International Swap Dealers Association, Inc.

# MASTER AGREEMENT

dated as of \_\_\_\_\_, 2017

[NAME OF PARTY]  
("PARTY A")

and

[NAME OF PARTY]  
("PARTY B")

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

## 1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

## 2. Obligations

- (a) **General Conditions.**
  - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
  - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner

customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party (“Y”) of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—
  - (A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or
  - (B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) Liability. If:—

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if

Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) **Basic Representations.**

(i) **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorize such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding



obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) ***Absence of Certain Events.*** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) ***Absence of Litigation.*** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) ***Accuracy of Specified Information.*** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) ***Payer Tax Representation.*** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) ***Payee Tax Representations.*** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

#### **4. Agreements**

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) ***Furnish Specified Information.*** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document

would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorizations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organized, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located (“Stamp Tax Jurisdiction”) and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party’s execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) ***Credit Support Default.***

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) ***Misrepresentation.*** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) ***Default under Specified Transaction.*** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) ***Cross Default.*** If “Cross Default” is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such

Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor

was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in

respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) ***Credit Event Upon Merger.*** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) ***Additional Termination Event.*** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) ***Event of Default and Illegality.*** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

## **6. Early Termination**

(a) ***Right to Terminate Following Event of Default.*** If at any time an Event of Default with respect to a party (the “Defaulting Party”) has occurred and is then continuing, the other party (the “Non-defaulting Party”) may, by not more than 20 days’ notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, “Automatic Early Termination” is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).



(b) ***Right to Terminate Following Termination Event.***

(i) ***Notice.*** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) ***Transfer to Avoid Termination Event.*** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) ***Two Affected Parties.*** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) ***Right to Terminate.*** If:—

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20

days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) ***Calculations.***

(i) ***Statement.*** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) ***Payment Date.*** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) ***Payments on Early Termination.*** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.



(i) **Events of Default.** If the Early Termination Date results from an Event of Default:—

(1) *First Method and Market Quotation.* If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) *First Method and Loss.* If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) *Second Method and Market Quotation.* If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount (“X”) and the Settlement Amount of the party with the lower Settlement Amount (“Y”) and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss (“X”) and the Loss of the party with the lower Loss (“Y”).

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because “Automatic Early Termination” applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## **7. Transfer**

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

## **8. Contractual Currency**

(a) ***Payment in the Contractual Currency.*** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) ***Judgments.*** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term “rate of exchange” includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) ***Separate Indemnities.*** To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## 10. Offices; Multibranch Parties

If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organization of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.

Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.

If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

## 11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

### 13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement (“Proceedings”), each party irrevocably:—

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party’s Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit,



(ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

#### **14. Definitions**

As used in this Agreement:—

**“Additional Termination Event”** has the meaning specified in Section 5(b).

**“Affected Party”** has the meaning specified in Section 5(b).

**“Affected Transactions”** means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**“Affiliate”** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

**“Applicable Rate”** means:—

in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

in all other cases, the Termination Rate.

**“Burdened Party”** has the meaning specified in Section 5(b).

**“Change in Tax Law”** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

**“consent”** includes a consent, approval, action, authorization, exemption, notice, filing, registration or exchange control consent.

**“Credit Event Upon Merger”** has the meaning specified in Section 5(b).

**“Credit Support Document”** means any agreement or instrument that is specified as such in this Agreement.

**“Credit Support Provider”** has the meaning specified in the Schedule.

**“Default Rate”** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**“Defaulting Party”** has the meaning specified in Section 6(a).

**“Early Termination Date”** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**“Event of Default”** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**“Illegality”** has the meaning specified in Section 5(b).

**“Indemnifiable Tax”** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organized, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**“law”** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and **“lawful”** and **“unlawful”** will be construed accordingly.

**“Local Business Day”** means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

**“Loss”** means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of



Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

***“Market Quotation”*** means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the “Replacement Transaction”) that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

***“Non-default Rate”*** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

***“Non-defaulting Party”*** has the meaning specified in Section 6(a).

**“Office”** means a branch or office of a party, which may be such party’s head or home office.

**“Potential Event of Default”** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**“Reference Market-makers”** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**“Relevant Jurisdiction”** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organized, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**“Scheduled Payment Date”** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**“Set-off”** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**“Settlement Amount”** means, with respect to a party and any Early Termination Date, the sum of:—

the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

such party’s Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**“Specified Entity”** has the meaning specified in the Schedule.

**“Specified Indebtedness”** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**“Specified Transaction”** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap,

equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**“Stamp Tax”** means any stamp, registration, documentation or similar tax.

**“Tax”** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**“Tax Event”** has the meaning specified in Section 5(b).

**“Tax Event Upon Merger”** has the meaning specified in Section 5(b).

**“Terminated Transactions”** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if “Automatic Early Termination” applies, immediately before that Early Termination Date).

**“Termination Currency”** has the meaning specified in the Schedule.

**“Termination Currency Equivalent”** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the “Other Currency”), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

**“Termination Event”** means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**“Termination Rate”** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**“Unpaid Amounts”** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

**[NAME OF PARTY]**

**[NAME OF PARTY]**

By:.....

By:.....

Name:  
Title:  
Date:

Name:  
Title:  
Date:

9/5/17

**This Schedule  
is part of and  
is hereby incorporated  
into the  
Master Agreement**

dated as of \_\_\_\_\_, 2017

between

\_\_\_\_\_  
("PROVIDER")

and

**CITY OF GAINESVILLE, FLORIDA  
d/b/a GAINESVILLE REGIONAL  
UTILITIES (the "CITY")**

**Part 1**

**Termination Provisions**

In this Agreement:

1. "**Specified Entity**" means (a) in relation to the City, not applicable, and (b) in relation to Provider, not applicable.
2. "**Specified Transaction.**" The term "Specified Transaction" will have the meaning specified in Section 12 of this Agreement; provided that Specified Transactions shall only include interest rate transactions entered into to hedge floating rate risk with respect to the City's Senior Lien Revenue Bonds.
3. The "**Cross Default**" provisions of Section 5(a)(vi) of this Agreement will apply to Provider and the City and, for such purpose:
  - (a) Section 5(a)(vi) of this Agreement is hereby amended by deleting in the seventh line thereof the words ", or becoming capable at such time of being declared;" and (ii) inserting the following language at the end thereof: "Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (i) the default was caused solely by error or omission of an administrative or operational nature; (ii) funds were available to enable the party to make the payment when due; and (iii) the payment is made within two Local Business Days of such party's receipt of written notice of its failure to pay."
  - (b) "**Specified Indebtedness**" will have the meaning specified in Section 12 of this Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of a party's banking business; and

(c) **“Threshold Amount”** means (i) with respect to Provider, an amount equal to 3% of its stockholder’s equity as shown on its most recent consolidated annual audited financial statements and (ii) with respect to the City, an amount equal to \$50,000,000.

4. Section 5(a)(vii) of this Agreement is hereby amended by: (i) adding in Clause (1) thereof (third line) (A) after the word “amalgamation” the word “, succession,” and (B) after the word “merger” and before the closing parenthetical the words “or, in the case of Provider, any Credit Support Provider of Provider, or any applicable Specified Entity of Provider (as the case may be), reconstitution, reformation or reincorporation”; (ii) adding in Clause (5) thereof (fourteenth line) (A) after the word “amalgamation” the word “, succession,” and (B) after the word “merger” and before the closing parenthetical the words “or, in the case of Provider, any Credit Support Provider of Provider, or any applicable Specified Entity of Provider (as the case may be), reconstitution, reformation or reincorporation” ; and (iii) deleting Clause (6) thereof in its entirety and replacing it with following:

“(6) (A) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, or other similar official for it or for all or substantially all its assets, or (B) in the case of a Government Entity, (I) there is appointed or designated with respect to it an entity such as an organization, board, commission, authority, agency, or body to monitor, review, oversee, recommend, or declare a financial emergency or similar state of financial distress with respect to it, or (II) there is declared by it or any legislative or regulatory body or authority with competent jurisdiction over it the existence of a state of financial emergency or similar state of financial distress in respect of it;”.

5. (a) The “Credit Event Upon Merger” provisions of Section 5(b)(ii) of this Agreement will apply to Provider and to the City.

(b) Section 5(b)(ii) of this Agreement is hereby amended by deleting it in its entirety and replacing it with the following:

“(ii) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X, or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or, in the case of the City, all or substantially all of the project, program or other enterprise from which the funds specified in Part 3, Section 4 of this Schedule are derived in whole or in part) to, or reorganizes, incorporates, reincorporates, reconstitutes, or reforms into or as, or receives all or substantially all of the assets and/or liabilities or obligations of, another entity, or X, such Credit Support Provider, or such Specified Entity (as the case may be) effects a

recapitalization, liquidating dividend, leveraged buy-out, other similar highly-leveraged transaction, or stock buy-back or similar call on equity (or, without limiting the foregoing, with respect to the City, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, the City or any Credit Support Provider of the City generally, or with respect to the project, program or other enterprise from which the funds specified in Part 3, Section 4 of this Schedule are derived in whole or in part), and such action does not constitute the Additional Termination Event described in Part 1, Section 9(a) of the Schedule but the creditworthiness of X, such Credit Support Provider, or such Specified Entity (as the case may be) or any resulting, surviving transferee, reorganized, reconstituted, reformed, recapitalized or successor entity is materially weaker than that of X, such Credit Support Provider, or such Specified Entity (as the case may be) immediately prior to such action (and, in such event, X or any resulting, surviving, transferee, reorganized, reconstituted, reformed, recapitalized, or successor entity, as appropriate, will be the Affected Party); or”

6. The “Automatic Early Termination” provisions of Section 6(a) of this Agreement shall not apply to the City and Provider.
7. For purposes of Section 6(e) of this Agreement:
  - (i) Market Quotation will apply; and
  - (ii) The Second Method will apply.
8. Section 5(a) of this Agreement is hereby amended to delete therefrom clause (viii).
9. (a) It shall constitute an Additional Termination Event under Section 5(b)(iii) of this Agreement with respect to a party (which will be the Affected Party) if at any time such party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or, in the case of the City, all or substantially all of the System) to, or reorganizes, incorporates, reincorporates, reconstitutes, or reforms into or as, another entity (or, without limiting the foregoing, with respect to the City, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, the City or any Credit Support Provider of the City generally, or with respect to the funds specified in Part 3, Section 5(b) of this Schedule or the System) and, at the time of such consolidation, amalgamation, merger, transfer, reorganization, incorporation, reincorporation, reconstitution, reformation, or succession:

- (1) such party, such Credit Support Provider, or the resulting, surviving, transferee, or successor entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or
  - (2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such party, Credit Support Provider, or resulting, surviving, transferee, or successor entity of its obligations under this Agreement; or
  - (3) in the case of the City, the sources of payment for the obligations of the City as set forth in this Schedule are no longer available for the satisfaction of such party's, Credit Support Provider's, or resulting, surviving, transferee, or successor entity's obligations to Provider.
- (b) It shall constitute an Additional Termination Event under Section 5(b)(iii) of this Agreement with respect to Provider (which will be the Affected Party) if at any time (A) the rating of the long-term, unsecured, unenhanced senior debt (not taking into account any third party credit enhancement) of the Provider is withdrawn, suspended or falls below (1) Baa2 as determined by Moody's, or (2) BBB as determined by S&P or (B) the Provider fails to have any long-term, unsecured, unenhanced senior debt (not taking into account any third party credit enhancement) rated by S&P or Moody's.
- (c) It shall constitute an Additional Termination Event under Section 5(b)(iii) of this Agreement with respect to the City (which will be the Affected Party) if at any time (A) the long-term rating of the City's Senior Lien Revenue Bonds (not taking into account any third party credit enhancement) is withdrawn, suspended or falls below (1) Baa2 as determined by Moody's, or (2) BBB as determined by S&P or (B) the City fails to have a long-term Senior Lien Revenue Bonds (not taking into account any third party credit enhancement) rated by S&P or Moody's.

## **Part 2**

### **Documents to be delivered**

For the purpose of Section 4(a) of this Agreement:

1. Provider and the City shall deliver dated the date of execution and delivery hereof:
  - (a) in the case of Provider, an opinion of counsel to Provider in the form of Exhibit B hereto;
  - (b) in the case of the City, an opinion of the Office of the City Attorney of the City, counsel to the City; and in the case of Provider an opinion of \_\_\_\_\_ in the form of Exhibit D hereto.



- (c) in the case of the City, certified copies of the Bond Resolution and the Subordinated Bond Resolution;
  - (d) in the case of the City, certified copies of all action taken by it to authorize the execution, delivery and performance of this Agreement and the Confirmations;
  - (e) in the case of each party, a certificate of a duly authorized officer of the party as to the incumbency, and setting forth a specimen signature, of each of the persons (i) who has signed this Agreement on behalf of the party, and (ii) who will, until replaced by other persons duly authorized for that purpose, sign Confirmations on behalf of the party, or a signature book, secretary's certificate and incumbency certificate reasonably satisfactory in form and substance to the other party; and
  - (f) in the case of each Party, the Credit Support Annex attached hereto, dated the date hereof and executed by Provider and the City, which will constitute a Credit Support Document of each respective party for purposes of this Agreement.
2. The City agrees to furnish to Provider upon its request the City's audited financial statements within 180 days following the end of the City's fiscal year, or such later date as the City, after reasonable diligence, receives publicly available copies of the same from its accountants, and Provider agrees to furnish to the City Provider's audited annual balance sheet upon request by the City, to the extent not otherwise available on its public website. The financial statements furnished pursuant to this Section shall be "Specified Information" for purposes of Section 3(d) of this Agreement; provided, however, that Section 3(d) is hereby amended by adding in the third line thereof after the word "respect" and before the period, the phrase "or, in the case of audited or unaudited financial statements, a fair presentation of the financial condition of the relevant person."

### **Part 3**

#### **Miscellaneous**

1. **Definitions.**

***"Approval Date"*** means the date, if any, on which this Agreement is designated in writing to the Trustee by an Authorized Officer of the City as a Qualified Hedging Contract (as such terms are defined in the Bond Resolution).

***"Authorizing Law"*** means Chapter 90-394, Laws of Florida, 1990, as amended, being the Charter of the City, Chapter 166, Part II, Florida Statutes, as amended, and other applicable provisions of law.

***"Bond Resolution"*** means the resolution adopted by the City on June 6, 1983 entitled "Utilities System Revenue Bond Resolution", as amended and supplemented from time to time in accordance with the terms thereof, including as amended and restated by the resolution adopted by the City on January 30, 2003 entitled "Amended and Restated Utilities System Revenue Bond Resolution," and as thereafter amended.

**“Covered Document”** means the Bond Resolution.

**“Fitch”** means Fitch Ratings, its successors and assigns, and, if such corporation shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency jointly agreed to in good faith by both parties.

**“Government Entity”** means the City.

**“Incipient Illegality”** means (a) the enactment by the State or the City of legislation which, if adopted as law, would render unlawful (i) the performance by the City of any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of a Transaction or the compliance by the City with any other material provisions of this Agreement relating to such Transaction or (ii) the performance by the City or a Credit Support Provider of the City of any contingent or other obligation which the City (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction, (b) any assertion in any suit, action, proceeding, or forum by the City in respect of the City to the effect that performance under this Agreement or similar agreements is unlawful, or (c) the occurrence with respect to the City or any Credit Support Provider of the City of any event that constitutes an Illegality.

**“Junior Lien Revenue Bonds”** means any debt of the City having a second lien on the Revenues, subject only to (1) the prior payment of the Operation and Maintenance Expenses and (2) the lien on such Revenues pledged as security for the payment of the Senior Lien Revenue Bonds and Parity Hedging Contract Obligations, and shall include, without limitation, the Subordinated Bonds issued and to be issued by the City pursuant to (and as defined in) the Subordinated Bond Resolution.

**“Moody's”** means Moody's Investors Service, Inc., its successors and assigns, and, if such corporation shall no longer perform the functions of a securities rating agency, “Moody's” shall be deemed to refer to any other nationally recognized securities rating agency jointly agreed to in good faith by both parties.

**“Operation and Maintenance Expenses”** shall have the meaning ascribed to such term in the Bond Resolution.

**“Revenues”** shall have the meaning ascribed to such term in the Bond Resolution.

**“S&P”** means Standard & Poor's Credit Market Services, a division of The McGraw-Hill Companies, Inc., its successors and assigns, and, if such division shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency jointly agreed to in good faith by both parties.

**“Senior Lien Revenue Bonds”** means any unenhanced, unguaranteed debt of the City having a first and prior lien on the Revenues, subject only to the prior payment of the Operation and Maintenance Expenses, and shall include, without limitation, the Bonds issued and to be issued by the City pursuant to (and as defined in) the Bond Resolution.

“*State*” means the State of Florida.

“*Subordinated Bond Resolution*” means the resolution adopted by the City on January 26, 1989 entitled “Subordinated Utilities System Revenue Bond Resolution”, as amended and supplemented from time to time in accordance with the terms thereof, including as amended and restated by the resolution adopted by the City on December 8, 2003 entitled “Amended and Restated Subordinated Utilities System Revenue Bond Resolution,” as amended from time to time.

“*Swap Authorizing Resolution*” means Swap Authorizing Resolution No. \_\_\_\_\_ of the City Commission of the City, approved on \_\_\_\_\_ authorizing, among other things, the execution and delivery of this Agreement by the City and the entering into by the City of certain Transactions hereunder.

“*System*” shall have the meaning ascribed to such term in the Bond Resolution.

2. Governing Law; Jurisdiction; Sovereign Immunity.

- (a) This Agreement will be governed by and construed in accordance with New York law without reference to choice of law doctrine except that the capacity, power and authority of the City to enter into this Agreement and any issue relating to the interpretation of (a) the Swap Authorizing Resolution, (b) the Bond Resolution or (c) any other security agreement, resolution or instrument of the City, heretofore or hereafter incurred, will be governed by and construed in accordance with the laws of the State.
- (b) Section 11(b)(i) of this Agreement is hereby amended by deleting the phrase “the courts of the State of New York and”.
- (c) Section 11(c) of this Agreement is hereby amended to read in its entirety as follows:

“(c) *Sovereign Immunity.* The defense of sovereign immunity is not available to the City in any proceedings by Provider to enforce any of the City’s obligations under this Agreement, except to the extent any such proceeding seeks enforcement on tort or similar claim and in such case such defense is only available to the extent set forth under Florida Statutes Section 768.28 or other similar 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.”

3. Notices.

- (a) In connection with Section 10(a) of this Agreement, all notices to Provider shall, with respect to any particular Transaction, be sent to the address or telecopy

number specified in the relevant Confirmation and any notice for purposes of Section 6 of this Agreement shall be sent to the address or telecopy number specified below:

Address:

Attention:

Telex No.:

Facsimile No.:

Telephone No.:

With a copy to:

Address:

Attention:

Telex No.:

Facsimile No.:

Telephone No.:

- (b) In connection with Section 10(a) of this Agreement, all notices to the City shall, with respect to any particular Transaction, be sent to the address or telecopy number specified in the relevant Confirmation and any notice for purposes of Section 6 of this Agreement shall be sent to the address or telecopy number specified below:

Address: 301 S.E. 4<sup>th</sup> Avenue  
Gainesville, Florida 32614-7117  
Attention: Utility Chief Financial Officer  
Facsimile No.: (352) 334-2774  
Telephone No.: (352) 393-1312

4. Credit Support Document; Nature of City's Obligation; No Personal Recourse.

- (a) Credit Support Document. In relation to the Provider, the Credit Support Annex attached hereto as Exhibit A shall be deemed a Credit Support Document; and in relation to the City, the Credit Support Annex and the Bond Resolution shall be deemed Credit Support Documents.
- (b) Nature of City's Obligation; Amendments to Bond Resolution. The City shall (i) cause this Agreement to constitute a Qualified Hedging Contract and to cause the obligations of the City to make monthly payments under interest rate hedging transactions entered into pursuant to this Agreement to constitute a Parity Hedging Contract Obligation under the Bond Resolution, and shall deliver to Provider evidence thereof, and (ii) cause the obligation of the City to make any termination payments under this Agreement to constitute a Subordinated Hedging Contract Obligation under the Bond Resolution. The City's obligations hereunder shall be payable solely from "Revenues" in the manner and to the extent described therein

and not from any assets or other revenue sources (including ad valorem taxes) that might be available to the City. Pursuant to the Swap Authorizing Resolution, the City has pledged its Revenues (i) under the Bond Resolution to secure its obligations hereunder, to the extent they constitute Parity Hedging Contract Obligations, and (ii) under the Swap Authorizing Resolution to secure its termination payment obligations hereunder on a parity with its Junior Lien Revenue Bonds and Subordinated Indebtedness, to the extent they otherwise constitute Subordinated Hedging Contract Obligations.

The City hereby covenants that it will not amend, modify or restate the terms of the Bond Resolution in a manner that would adversely affect Provider's rights under the Bond Resolution, without the prior written consent of Provider. For the avoidance of doubt, amendments set forth in Resolution No. \_\_, incorporating by reference amendments reflected in the Second Amended and Restated Bond Resolution attached thereto, and amendments made pursuant to Sections 1001 and 1002 of the Bond Resolution, in each case, will not be deemed to adversely affect the Provider's rights hereunder and no further consent by Provider with respect to such amendments or modifications will be required.

The City agrees to deliver to Provider copies of all proposed amendments or modifications to the Bond Resolution to which Provider's consent is not required at least five (5) Local Business Days prior to their effective date (other than any supplement or modification of the Bond Resolution, the sole purposes of which is to authorize the issuance additional Bonds or Parity Contract Hedging Obligations (collectively, "Debt") in accordance with the terms thereof. The City further agrees that it will provide the Provider with a copy of any executed amendment or modification of the Bond Resolution (other than those solely related to the issuance of Debt thereunder) promptly following the execution thereof.

- (c) No Personal Recourse. Neither the members of the City Commission of the City nor the officers or employees of the City nor any person executing this Agreement or any Confirmation on behalf of the City shall be liable personally thereon or by reason of the delivery thereof, and no recourse shall be had for the payment of amounts due pursuant to this Agreement or any Confirmation or for any claim based hereon or on the Swap Authorizing Resolution against any member of the City Commission of the City or officer or employee of the City or any person executing this Agreement or any Confirmation.
5. Additional Provision Relating to Interest Rate Caps, Collars, Floors and Options. The condition precedent in Section 2(a)(iii) of this Agreement does not apply to a payment or delivery owing by a party if the other party shall have satisfied in full its payment or delivery obligations under this Agreement (including any Credit Support Annex) and shall at the relevant time have no future payment or delivery obligations, whether absolute or contingent, under this Agreement (including any Credit Support Annex).
6. General Conditions. Section 2(a)(iii) of this Agreement is hereby amended by: (i) deleting in the second line thereof the word "or" and replacing it with a comma; and

- (ii) adding in the second line thereof after the words “Potential Event of Default” the words “, or Incipient Illegality”.
7. Powers. Section 3(a)(ii) of this Agreement is hereby amended by: (i) adding in the first line thereof after the word “power” the words “(in the case of the City, pursuant to the Authorizing Law)”; (ii) adding in the fifth line thereof after the word “action” the words “and has made all necessary determinations and findings”; and (iii) adding in the fifth line thereof after the word “performance” and before the semicolon the words “, the individual(s) executing and delivering this Agreement and any other documentation (including any Credit Support Document) relating to this Agreement to which it is a party or that it is required to deliver are duly empowered and authorized to do so, and it has duly executed and delivered this Agreement and any Credit Support Document to which it is a party”.
8. Agreements.
- (a) The introductory clause of Section 4 of this Agreement is hereby deleted in its entirety and replaced by the following:
- “Each party agrees with the other (and, in the case of Section 4(d), the Government Entity agrees with the other party) that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party: -”
- (b) Section 4 of this Agreement is hereby amended by adding the following additional Subsection:
- “(d) *Notice of Incipient Illegality*. If an Incipient Illegality occurs, the Government Entity will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Incipient Illegality and will also give such other information about that Incipient Illegality as the other party may reasonably require.”
9. Reference Market-makers. The definition of “Reference Market-makers” in Section 12 of this Agreement is hereby amended by adding in the fourth line thereof after the word “credit” the words “or to enter into transactions similar in nature to Transactions”.
10. Netting of Payments. Subparagraph (ii) of Section 2(c) will apply to Transactions with effect from the date of this Agreement.
11. Affiliates. “Affiliate” will have the meaning specified in Section 12.
12. Settlement Amount. The definition of “Settlement Amount” in Section 12 of this Agreement is hereby amended by deleting in the third and fourth lines of Subparagraph (b) thereof the words “or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.”

#### Part 4

## Other Provisions

1. 2006 ISDA Definitions. Reference is hereby made to the 2006 ISDA Definitions (the “2006 Definitions”) published by the International Swaps and Derivatives Association, Inc., which is hereby incorporated by reference herein. Any terms used and not otherwise defined herein which are contained in the 2006 Definitions shall have the respective meanings set forth therein.
2. Inconsistency. In the event of any inconsistency between the provisions of this Schedule, the printed form of Agreement of which it is a part or the 2006 Definitions, the provisions set forth in this Schedule will prevail, and in the event of any inconsistency between the provisions of a Confirmation and this Schedule, the printed form of Agreement or the 2006 Definitions, the provisions set forth in the Confirmation will prevail for the purpose of the relevant Transaction.
3. Calculation Agent. The Calculation Agent will be Provider, unless Provider is a Defaulting Party and such Event of Default is continuing, in which case the Calculation Agent will be a Reference Market-Maker selected by the City.
4. Representations.
  - (a) Section 3 of this Agreement is amended to add the following clauses (e), (f), (g), (h), (i), G), (k) and (l) at the end thereof:

“(e) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. It has not received from the other party any assurance or guarantee as to the expected results of that Transaction

(f) **Evaluation and Understanding.** It is capable of assessing the merits of and evaluating and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the financial and other risks of that Transaction.

(g) **Status of Parties.** The other party is not acting as a fiduciary for or an advisor to it in respect of that Transaction.

**(h) Eligible Contract Participant.** It constitutes an “eligible contract participant” as such term is defined in Section 1(a)(18) of the Commodity Exchange Act, as amended.

**(i) Non-Speculation.** In the case of the City, this Agreement has been, and each Transaction hereunder will be (and, if applicable, has been), entered into for the purposes of managing its borrowings or investments and not for purposes of speculation.

**(j) Standardization, Creditworthiness, and Transferability.** The economic terms of this Agreement, any Credit Support Document to which it is a party, and each Transaction have been individually tailored and negotiated by it; it has received and reviewed financial information concerning the other party and has had a reasonable opportunity to ask questions of and receive answers and information from the other party concerning such other party, this Agreement, such Credit Support Document, and such Transaction; the creditworthiness of the other party was a material consideration in its entering into or determining the terms of this Agreement, such Credit Support Document, and such Transaction; and the transferability of this Agreement, such Credit Support Document, and such Transaction is restricted as provided herein and therein.

**(k) Termination Payments.** Each party acknowledges that, insofar as the Second Method is applicable, if an Early Termination Date is designated or deemed to occur due to an Event of Default it may owe a payment to the other party upon early termination in respect of the Settlement Amount even if such Early Termination Date is the result of an Event of Default with respect to such other party.

5. Additional Representations of the City. The City hereby further represents to Provider (which representations will be deemed to be repeated by the City at all times until the termination of this Agreement) that:

(a) **Valid Purpose.** The execution and delivery by the City of this Agreement, each Confirmation and any other documentation relating hereto, and the performance by the City of its obligations hereunder and thereunder, are in furtherance, and not in violation, of the public purposes for which the City is organized pursuant to the laws of the State.

(b) **Nature of Obligations.** The obligations of the City to make payments to Provider under this Agreement and each Transaction do not (1) constitute any kind of indebtedness of the City or (2) create any kind of lien on or security interest in any property or revenues of the City which, in either case (1) or (2), is proscribed by any constitution, charter, law, rule, regulation, government code,



constituent or governing instrument, resolution, guideline, ordinance, order, writ, judgment, decree, charge, or ruling to which the City (or any of its officials in their respective capacities as such) or its property is subject.

- (c) **No Agency.** It is entering into this Agreement and each Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise).
6. **Transfer.** The following amendments are hereby made to Section 7: (i) in the third line, insert the words “which consent will not be arbitrarily withheld or delayed,” immediately before the word “except”; and (ii) in clause (a), insert the words “or reorganization, incorporation, reincorporation, or reconstitution into or as,” immediately before the word “another”.
7. **Form of Confirmation.** Attached hereto as Exhibit A is a form of the confirmation to be executed by the parties in connection with each Transaction. Such form is attached hereto for reference only, and the parties agree that the actual Confirmations to be executed by the parties may contain such variations and omissions therefrom and additions thereto as the parties may agree.
8. **Severability.** If any term, provision, covenant, or condition of this Agreement, or the application thereof to any party or circumstance, shall be held to be invalid or unenforceable (in whole or in part) for any reason, the remaining terms, provisions, covenants, and conditions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid or unenforceable portion eliminated, so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter of this Agreement and the deletion of such portion of this Agreement will not substantially impair the respective benefits or expectations of the parties hereto; *provided, however*, that this severability provision will not be applicable if any provision of Section 2, 5, 6, or 11 (or any definition or provision in Section 12 to the extent it relates to, or is used in or in connection with, any such section) is held to be invalid or unenforceable.
9. **WAIVER OF JURY TRIAL.** EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY PROCEEDING.
10. **Consent to Recording.** Each party consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties, with or without the use of a warning tone, and their Affiliates in connection with this Agreement or any potential Transaction.
11. Section 6 Early Termination is hereby amended by adding the following:
- “(f) **Set-off.** Any amount (the “Early Termination Amount”) payable to one party (the Payee) by the other party (the Payer) under Section 6(e), in circumstances where there is a Defaulting Party or one Affected Party in the case where a Termination Event under Section 5(b)(ii) has occurred, will, at the option of the party (“X”) other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party or the Affected Party), be reduced by its set-

off against any amount(s) (the “Other Agreement Amount”) payable at such time by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) between the Payee and the Payer or instrument(s) or undertaking(s) issued or executed by one party to, or in favor of, the other party (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off). X will give notice to the other party of any set-off so effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

Nothing in this Section 6(f) shall be effective to create a charge or other security interest. This Section 6(f) shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).”

12. Reorganization of GRU. Any lawful reorganization of the governmental structure of the City, including a merger or consolidation of the City with another public body or the transfer of assets or a public function of the City to another public body (in either case, the “Governmental Successor”), shall not constitute a Credit Event Upon Merger under Section 5(b)(ii), and any transfer of this Agreement or any transaction hereunder shall be deemed a permitted transfer under Section 7(a) without the consent of Provider; provided in either case that (i) substantially all of the assets of the System are transferred to the Governmental Successor, (ii) the System shall be continued as a single enterprise and (iii) the Governmental Successor shall assume all rights, powers, obligations, duties and liabilities of the City under Bond Resolution and this Agreement. The governmental reorganization hereby expressly includes Governmental Successors created as a result of a referendum held pursuant to in accordance with House Bill No. 759 or any other actions of the City approving amendments to the City’s Charter to effectuate a reorganization of the management and operation of the System.

*[Remainder of page intentionally left blank]*

Please confirm your agreement to the terms of the foregoing Schedule by signing below:

PROVIDER

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

Approved as to Form and Legality:

CITY OF GAINESVILLE, FLORIDA

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

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

# ISDA®

International Swaps and Derivatives Association, Inc.

## CREDIT SUPPORT ANNEX

to the Schedule to the

### ISDA 1992 MASTER AGREEMENT

dated as of [                      ], 2017

between

\_\_\_\_\_ (“Party A”)

and

**CITY OF GAINESVILLE, FLORIDA**  
**d/b/a GAINESVILLE REGIONAL UTILITIES (“PARTY B”)**

This Annex supplements, forms part of, and is subject to, the ISDA Master Agreement referred to above (this “Agreement”), is part of its Schedule and is a Credit Support Document under this Agreement with respect to each party.

Accordingly, the parties agree as follows: -

#### **Paragraphs 1 - 12. Incorporation**

Paragraphs 1 through 12 inclusive of the ISDA Credit Support Annex (Bilateral Form) (ISDA Agreements Subject to New York Law Only) published in 1994 by the International Swaps and Derivatives Association, Inc. are incorporated herein by reference and made a part hereof.

**Secured Party and Pledgor Redefined.** Paragraph 1(b) is hereby amended in its entirety to read as follows:

“(b) **Secured Party and Pledgor.** Notwithstanding anything contained in this Annex to the contrary, (i) all references in this Annex to the “Secured Party”, all references in Paragraphs 2 and 9 of this Annex to “other party ” and references in Paragraph 11(b) of this Annex to “a party” and “that party”, will be to Party A exclusively, and (ii) all references in this Annex to the “Pledgor”, all references in Paragraphs 2 and 9 of this Annex to “Each party” or “a party”, and the reference in Paragraph 11(b) of this Annex to “other party”, will be to Party B exclusively.”

#### **Paragraph 13. Elections and Variables**

1994 NY Law CSA (End User Non-VM) Updated: 5/5/2017

(a) **Security Interest for “Obligations”.** The term “**Obligations**” as used in this Annex includes no obligations of Secured Party and no additional obligations with respect to Pledgor.

(b) **Credit Support Obligations.**

(i) **Delivery Amount, Return Amount and Credit Support Amount.**

(A) “**Delivery Amount**” has the meaning specified in Paragraph 3(a).

(B) “**Return Amount**” has the meaning specified in Paragraph 3(b).

(C) “**Credit Support Amount**” has the meaning specified in Paragraph 3.

(ii) **Eligible Collateral.** Subject to the provisions of this Annex, each of the following items will qualify as “**Eligible Collateral**”, provided that the Secured Party shall be entitled not to accept as **Eligible Collateral** any of the following which constitute **Ineligible Securities** as defined below:

	<b>Party B</b>	<b>Valuation Percentage</b>
(A) <i>Cash</i> : immediately available cash funds that are denominated in U.S. Dollars.	YES	100%
(B) <i>Treasury Bills</i> : a security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of Treasury, having a remaining maturity of less than one year.	YES	98%
(C) <i>Treasury Notes</i> : a security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of Treasury, having a remaining maturity of one year or more but not more than 5 years.	YES	98%
(D) <i>Treasury Bonds</i> : a security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of Treasury, having a remaining maturity of more than 5 years but not more than 30 years.	YES	96%

(iii) **Other Eligible Support.** Not applicable.

(iv) **Thresholds.**

(A) “**Independent Amount**” means for Party A: Not applicable

“**Independent Amount**” means for Party B: zero.

(B) “**Threshold**” means for Secured Party: Infinity

“**Threshold**” means for Pledgor: Infinity; provided, however, that upon the occurrence of a **Collateral Event**, the **Threshold** will be zero.

- (C) **“Minimum Transfer Amount”** means with respect to Secured Party: \$250,000  
**“Minimum Transfer Amount”** means with respect to Pledgor: \$250,000

*provided* that if an Event of Default or an Additional Termination Event has occurred and is continuing with respect to a party, the Minimum Transfer Amount for that party shall be zero, *provided further* that if the Secured Party is holding Posted Collateral and the Credit Support Amount required to be maintained by the Pledgor is, or is deemed to be, zero for any day, then for purposes of Paragraph 3(b), the Secured Party’s Minimum Transfer Amount for that day will be deemed to be zero with respect to that Posted Collateral.

- (D) **Rounding.** The Delivery Amount and the Return Amount will be rounded up and down respectively to the nearest integral multiple of \$10,000.

(c) **Valuation and Timing.**

- (i) **“Valuation Agent”** means Party A, provided it is acknowledged that the function of the Valuation Agent hereunder is administrative in nature, Party A is not acting as Party B’s agent, advisor or fiduciary for such purpose, and Party B shall remain responsible for making its own demands for a Delivery Amount or Return Amount based on the Valuation Agent’s calculations of Value and Exposure provided to Party B for the relevant Valuation Date. As specified in the definition of Exposure in Paragraph 12, any calculation of Exposure will be a mid-market estimate, and therefore will not show an actual market price at which an offer would be made for unwinding any Transaction. Instead, it will show a mathematical approximation of a market value derived from proprietary models as of a given date based on certain assumptions regarding past, present and future market conditions. All such models and assumptions are subject to change and shall remain the Valuation Agent’s proprietary and confidential property.
- (ii) **“Valuation Date”** means any Local Business Day, which in relation to a demand under Paragraph 3 shall be the Local Business Day immediately preceding the day of demand.
- (iii) **“Valuation Time”** means the close of business in New York City on the Valuation Date or date of calculation, as applicable; *provided* that the calculations of Value and Exposure will be made as of approximately the same time on the same date.
- (iv) **“Notification Time”** means 10:00 a.m., New York time, on a Local Business Day.
- (v) For purposes of Paragraph 8(b)(iv)(B), “Value” shall have its meaning as defined in Paragraph 12 of this Annex, except the words "multiplied by the applicable Valuation Percentage, if any" shall be disregarded.

- (d) **Conditions Precedent and Secured Party’s Rights and Remedies.** The following Termination Events will be a **“Specified Condition”** for the party specified (that party being the Affected Party if the Termination Event occurs with respect to that party):

	<b>Pledgor</b>
Additional Termination Events	YES

(e) **Substitution.**

- (i) **“Substitution Date”** has the meaning specified in Paragraph 4(d)(ii).
- (ii) **Consent.** The Pledgor is not required to obtain the Secured Party’s consent for any substitution

pursuant to Paragraph 4(d).

(f) ***Dispute Resolution.***

(i) ***“Resolution Time”*** means 1:00 p.m., New York time, on the Local Business Day following the date on which the notice is given that gives rise to a dispute under Paragraph 5.

(ii) ***Alternative.*** The provisions of Paragraph 5 will apply

(g) ***Holding and Using Posted Collateral.***

(i) ***Eligibility to Hold Posted Collateral; Custodians.***

(A) Subject to paragraph 6(c), the Secured Party will be entitled to hold Posted Collateral itself or through a Custodian pursuant to Paragraph 6(b).

(ii) ***Use of Posted Collateral.*** The provisions of Paragraph 6(c) will apply.

(h) ***Distributions and Interest Amount.***

(i) ***Interest Rate.*** The ***“Interest Rate”*** in respect of Cash in the form of U.S. Dollars for any day will be the Federal Funds (Effective) rate published in N.Y. Federal Reserve Statistical Release H.15(519) for that day (or if that day is not a New York Business Day, then for the next preceding New York Business Day).

For the purpose of computing the Interest Amount, the amount of interest computed for each day of the Interest Period shall be compounded daily.

(ii) ***Transfer of Positive Interest Amount or AV Negative Interest Amount.*** The Transfer of the amount of a positive Interest Amount will be made on the first Local Business Day of each calendar month; and the Transfer of an AV Negative Interest Amount will be made on the first Local Business Day of each calendar month.

The foregoing specified timing for the Transfer of Interest Amounts shall remain in effect in respect of Interest Amounts which are positive but shall also apply for the Transfer of AV Negative Interest Amounts, so that the Transfer of a positive Interest Amount and the Transfer of an AV Negative Interest Amount, as applicable, shall be made as provided herein, regardless of whether the amount to be transferred on any date is a positive Interest Amount or an AV Negative Interest Amount.

(iii) ***Alternative to Positive Interest Amount or AV Negative Interest Amount.*** The provisions of Paragraph 6(d)(ii) will apply.

(iv) ***ISDA 2014 Collateral Agreement Negative Interest Protocol Amendments.*** This Annex is hereby amended by incorporating the amendments specified for a “Protocol Covered Collateral Agreement” that is a “1994 New York Law CSA” appearing in Paragraphs 1(i) through (ix) of the Attachment to the ISDA 2014 Collateral Agreement Negative Interest Protocol as published by the International Swaps and Derivatives Association, Inc. on May 12, 2014.

(i) ***Additional Representation(s).*** Not applicable.

(j) ***Other Eligible Support and Other Posted Support.*** Not applicable.

- (k) ***Demands and Notices.*** All demands, specifications and notices under this Annex will be made to a party as follows unless otherwise specified from time to time by that party for purposes of this Annex in a written notice given to the other party:

**To Party A:**

*[To come]*

**To Party B:**

**CITY OF GAINESVILLE, FLORIDA  
d/b/a GAINESVILLE REGIONAL UTILITIES (the “CITY”)**

*[To Come]*

- (l) ***Addresses for Transfers.***
- (i) For each Transfer hereunder to Party A, instructions will be provided by Party A for that specific Transfer.
  - (ii) For each Transfer hereunder to Party B, instructions will be provided by Party B for that specific Transfer.
- (m) ***Other Provisions.***
- (i) ***Exposure.*** All calculations of “Exposure” under this Annex shall include all Transactions (whether or not evidenced by a Confirmation).
  - (ii) ***Grace Period.*** Clause (i) of Paragraph 7 is hereby amended by deleting the words “two Local Business Days” and substituting therefor “one Local Business Day”.

**[SIGNATURE PAGE FOLLOWS THIS PAGE]**



**IN WITNESS WHEREOF** the parties have executed this Credit Support Annex as of the date hereof.

\_\_\_\_\_, **Party A**

By: \_\_\_\_\_  
Name:  
Title:

**CITY OF GAINESVILLE, FLORIDA**  
**d/b/a GAINESVILLE REGIONAL UTILITIES, Party B**

By: \_\_\_\_\_  
Name:  
Title:

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**CSA TERM SHEET**

The parties anticipate entering into a bilateral Credit Support Annex (New York Law Form, 1994) as a Credit Support Document, with paragraph 13 thereof containing substantially the following terms (among others):

1. **Eligible Collateral.** The following items will qualify as "**Eligible Collateral**" for the party specified:

	<u>Party A</u>	<u>Party B</u>	<u>Valuation Percentage</u>
<u>USD-Cash</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	100.0
<u>Treasury Securities having a remaining maturity on such date of one year or less</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	99%
<u>Treasury Securities having a remaining maturity on such date greater than one year up to and including five years</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	97%
<u>Treasury Securities having a remaining maturity on such date greater than five years up to and including 10 years</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	94.5%

"*Treasury Securities*" means Obligations having ICAD codes of US-CASH, US-TBILL, US-TNOTE and US-BOND as set forth in the 2003 ISDA Collateral Asset Definitions.

2. **Independent Amount** - \$-0-
3. "**Threshold**" means, with respect to Party A and Party B, the amounts determined on the basis of the lower of the Credit Ratings of such Party's long term unsecured and unenhanced debt ratings (or in the case of Party B, its credit ratings on its Senior Lien Revenue Bonds) set forth in the following table, provided, however, that if such Party (i) has no Credit Rating, or (ii) such Credit Rating has been suspended or withdrawn, or (iii) an Event of Default has occurred and is continuing with respect to such Party, that Party's Threshold shall be U.S. \$0:

<b>CREDIT RATING (S&amp;P / Moody's)</b>	<b><u>THRESHOLD</u></b>
AA-/Aa3 or higher	US\$50,000,000
A-/A3 to A+/A1	US\$35,000,000
BBB+/Baa1	US\$15,000,000
BBB-/Baa3 to BBB/Baa2	US \$15,000,000
Below BBB-/Baa3	US \$0

4. **Minimum Transfer Amount:** \$250,000
5. **Holding and Using Posted Collateral.**

(A) Party A will be entitled to hold Posted Collateral pursuant to Paragraph 6(b), provided that the following conditions applicable to it are satisfied:

Party A is not a Defaulting Party.

(B) Party B will be entitled to hold Posted Collateral pursuant to Paragraph 6(b), provided that the following conditions applicable to it are satisfied:

Party B is not a Defaulting Party.

(ii) **Use of Posted Collateral.** The provisions of Paragraph 6(c) will apply to either party.

**6. Negative interest rate protocol** or the equivalent will apply.

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