

RESOLUTION NO. 210593

A RESOLUTION OF THE CITY OF GAINESVILLE, FLORIDA AUTHORIZING THE AMENDMENT AND EXTENSION OF AN EXISTING CREDIT AGREEMENT WITH RESPECT TO ITS UTILITIES SYSTEM COMMERCIAL PAPER NOTES, SERIES C; APPROVING THE FORM OF SECOND AMENDMENT TO CREDIT AGREEMENT AND AMENDED AND RESTATED FEE AGREEMENT EACH WITH BANK OF AMERICA, N.A., AND DELEGATING TO AUTHORIZED OFFICERS THE AUTHORITY TO NEGOTIATE AND FINALIZE THE TERMS THEREOF AND AUTHORIZING THE EXECUTION AND DELIVERY THEREOF; AUTHORIZING PROPER OFFICIALS TO DO ALL OTHER THINGS DEEMED NECESSARY OR ADVISABLE IN CONNECTION WITH THE EXTENSION OF THE CREDIT FACILITY; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Gainesville, Florida ("City") adopted on September 21, 2017 its Resolution No. 170395 incorporating by reference the Second Amended and Restated Utilities System Revenue Bond Resolution adopted by the City on September 21, 2017, as amended (the "Senior Bond Resolution"), and authorized the issuance of Bonds; and

WHEREAS, the City heretofore adopted on May 17, 2018 its Resolution No. 171090 incorporating by referenced the Second Amended and Restated Subordinated Utilities System Revenue Bond Resolution (the "Master Subordinated Bond Resolution"), as amended and supplementing the Senior Bond Resolution; and

WHEREAS, the City heretofore adopted on October 5, 1992, its Second Supplemental Subordinated Utilities System Revenue Bond Resolution, as amended and supplemented, including by a First Amendment Resolution adopted on November 14, 1994, Resolution No. 960411 adopted on September 23, 1996, Resolution No. 981021 adopted on January 25, 1999, Resolution No. 160562 adopted on December 1, 2016 and Resolution No. 171087 adopted on May 17, 2018 (collectively and together with the Senior Bond Resolution and the Master Subordinated Bond Resolution, the "Resolutions"), supplementing the Master Subordinated Bond Resolution authorizing the issuance of its Utilities System Commercial Paper Notes, Series C in a maximum aggregate principal amount of up to \$125,000,000 (the "Series C Commercial Paper Notes");

WHEREAS, the Series C Commercial Paper Notes are secured by a Credit Agreement dated November 30, 2015 between the City and Bank of America, N.A. (the "Bank"), as amended by the First Amendment to Credit Agreement dated July 19, 2018 between the City and the Bank, which is scheduled to expire by its terms on November 30, 2021 (the "Commercial Paper Credit Agreement"); and

WHEREAS, the City desires to approve the Second Amendment to Credit Agreement (the "Second Amendment to Credit Agreement") and the Amended and Restated Fee Agreement amending and restating the Fee Agreement dated November 30, 2015 relating to the Commercial

Paper Credit Agreement (the "*Fee Agreement*") and together with the Second Amendment to Credit Agreement the "*Amendments*") each in substantially the forms attached as Exhibit A hereto, with such changes as may be approved by the General Manager for Utilities or his designee or the Utility Chief Financial Officer, her designee, or such other Authorized Officer of the City in accordance with the authorizations set forth herein and to authorize the Authorized Officers, as hereafter defined, to take such other actions, provide such notices, and execute such other documents as may be required by the Resolutions, to effect the extension of the expiration date and the other amendments to the Commercial Paper Credit Agreement and the Fee Agreement and to authorize and approve such other amendments as determined by the General Manager for Utilities or Utility Chief Financial Officer to be advantageous to the City and commercially reasonable based upon advice of financial advisor to the System.

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

**ARTICLE I
DEFINITIONS**

Section 1.01 Authority; Definitions. All capitalized terms not otherwise defined herein shall have such meaning as given in the Resolutions. This Resolution is adopted pursuant to the provisions of Chapter 166, Florida Statutes, the City's Charter, the Resolutions and other applicable provisions of law (the "*Act*").

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

Section 2.01 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) It is in the best interest of the City to negotiate and to extend the expiration of the Commercial Paper Credit Agreement.

(c) It is in the best interest of the City to delegate in accordance with the terms hereof the extension of the Commercial Paper Credit Agreement.

**ARTICLE III
APPROVAL OF CREDIT FACILITY, REOFFERING CIRCULAR AND NOTICES**

Section 3.01 Authorization to Extend the Term of the Commercial Paper Credit Agreement. The extension of the expiration date of the Commercial Paper Credit Agreement with the Bank and the other amendments set forth in the Amendments, each in substantially the forms attached as Exhibit A hereto, with such changes, alterations and corrections, and the completion of blanks therein, as may be approved by the General Manager for Utilities, his designee, the Utility Chief Financial Officer, or her designee and such other Authorized Officer

of the City, or their respective designee (each an "*Authorized Officer*" and collectively, the "*Authorized Officers*") together with such other amendments as determined by the General Manager for Utilities or Utility Chief Financial Officer to be advantageous to the City and commercially reasonable based upon advice of financial advisor to the System, such approval to be presumed by the execution thereof by such Authorized Officer, subject to the approval of the City Attorney as to form and legality, is hereby approved by the City and in conjunction with the execution thereof by the Bank, the City authorizes and directs the Authorized Officer to execute such Amendments and to deliver the same to the Bank. The Clerk of the City Commission or any Deputy Clerk is, to the extent necessary, hereby authorized to attest the execution of the amendments.

Section 3.02 Authorization to Extend the Term or to Procure a Substitute Liquidity Facility or Substitute Credit Agreement in Substitution Therefor. The General Manager for Utilities or Utility Chief Financial Officer, or his or her respective designees, is hereby authorized in accordance with the Resolutions from time to time, (1) to extend the term of the Commercial Paper Credit Agreement, or (2) to procure substitute Credit Agreements or other facility in substitution for the Credit Agreement then in effect with respect thereto, in either such case, upon such terms and conditions as shall be determined by the General Manager for Utilities or Utility Chief Financial Officer, or such respective designees, to be advantageous to the City and commercially reasonable (which terms and conditions (including, without limitation, the amounts of the "commitment fee" and other fees payable by the City thereunder and the specification of the interest rates payable on loans or advances thereunder) may differ from the terms and conditions then in effect pursuant to such Credit Agreement then in effect), such determination to be confirmed in writing by the System's financial advisor to the extent provided below.

In connection with any such extension of the term of the Credit Agreement then in effect, the General Manager for Utilities or Utility Chief Financial Officer, or his or her respective designees, is hereby further authorized to execute and deliver, on behalf of the City, such documents and instruments (including, without limitation, an amendment to or amendment and restatement of such facilities then in effect and the related fee letter, dealer agreements, and issuing and paying agency agreement) as shall be determined by the General Manager for Utilities or Utility Chief Financial Officer, or his or her respective designees, to be (a) necessary or desirable and advantageous to the City and (b) in commercially reasonable form; provided, however, that if any such extension shall be on terms and conditions different from the terms and conditions of such facility as then in effect, then (a) such determination of the General Manager for Utilities or Utility Chief Financial Officer, or his or her respective designees, shall be confirmed in writing by the firm serving at that time as the System's financial advisor and (b) the form of each such document or instrument shall be approved by the City Attorney or his/her designee as to form and legality prior to the execution thereof by the General Manager for Utilities or Utility Chief Financial Officer, or his or her respective designees.

In connection with any such procurement of a Credit Agreement in substitution for the Credit Agreement then in effect, the General Manager for Utilities or Utility Chief Financial Officer, or his or her respective designees, is hereby further authorized to execute and deliver, on behalf of the City, such documents and instruments (including, without limitation, a credit agreement or other similar document and a fee letter, dealer agreements, and issuing and paying

agency agreement) as shall be determined by the General Manager for Utilities or Utility Chief Financial Officer, or his or her respective designees, to be (a) necessary or desirable and advantageous to the City and (b) in commercially reasonable form, such determination to be confirmed in writing by the firm serving at that time as the System's financial advisor; provided, however, that the form of each such document or instrument shall be approved by the City Attorney or his/her designee as to form and legality prior to the execution thereof by the General Manager for Utilities or Utility Chief Financial Officer, or his or her respective designees; and provided, further, that the procedures utilized in connection with any such procurement shall be consistent with any requirements of any law, rule, regulation, ordinance or resolution applicable thereto.

Section 3.03 Notices. The Authorized Officers are hereby authorized and directed to deliver such notices as may be required under the terms of each of the applicable Resolutions and the Commercial Paper Credit Agreement as may be necessary to effectuate the Amendments as described herein prior to the expiration thereof and all such prior actions, taken in conformance with the provisions hereof, are hereby ratified.

ARTICLE IV MISCELLANEOUS

Section 4.01 Further Authority. The Authorized Officers are each hereby authorized to do all acts and things required of them by this Resolution, the Resolutions, or otherwise, as may be necessary or desirable to effectuate the amendment and extension of the Commercial Paper Credit Agreement and the other amendments described herein. The Authorized Officers, collectively or individually, upon satisfaction of the conditions set forth herein, are hereby authorized to execute the Amendments on behalf of the City, each subject to completion thereof, and with such changes therein as the officer(s) executing the same may approve as necessary and desirable and in the best interests of the City, such approval to be evidenced by the execution and delivery thereof, subject to the approval of the City Attorney as to form and legality. The Authorized Officers, or their respective designees, are each hereby authorized and directed to execute and deliver any and all papers and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated hereunder, including, to the extent necessary, without limitation, amendments to the fee letter.

Section 4.02 Payment of Costs of Substitution. The Authorized Officers are hereby authorized to pay the costs of the amendment and extension of the Commercial Paper Credit Agreement, including those referenced in the fee letters, all other legal expenses, expenses for fiscal agents, financial advisors, accountants and other experts and such other expenses necessary or incidental and incurred by the City in connection with the extension of the Commercial Paper Credit Agreement and other amendments described herein.

Section 4.03 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 and the Resolutions or of the Series C Commercial Paper Notes issued thereunder.

Section 4.04 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 hereto, 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 hereto.

Section 4.05 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 their individual capacity, and neither the members of the City nor any official executing the Amendments shall be liable personally on the Commercial Paper Credit Agreement, the Series C Commercial Paper Notes or the Resolutions 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 4.06 Effective Date. This Resolution shall be fully effective immediately upon adoption.

[Signature Page Follows]

PASSED AND ADOPTED IN PUBLIC SESSION OF THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA, THIS 4th DAY OF NOVEMBER, 2021.

CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA

ATTESTED:

By: _____
Mayor

By: _____
City Clerk

APPROVED AS TO FORM AND LEGALITY:

By: _____
City Attorney

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EXHIBIT A TO RESOLUTION
FORM OF SECOND AMENDMENT TO CREDIT AGREEMENT
AND
AMENDED AND RESTATED FEE AGREEMENT

SECOND AMENDMENT TO CREDIT AGREEMENT

This Second Amendment to Credit Agreement (this "Amendment") is dated and effective as of November 30, 2021, is between City of Gainesville, Florida and Bank of America, N.A. and it amends the Credit Agreement (as heretofore amended, the "Original Agreement"), dated November 30, 2015, between the parties hereto. Terms used herein in capitalized form that are not otherwise defined herein have the same meanings as ascribed thereto in the Original Agreement.

W I T N E S S E T H:

WHEREAS, the City and the Bank have agreed to extend the scheduled expiration date of the Agreement to November 30, 2024; and

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

Section 1. AUTHORITY

- (a) This Amendment is entered into pursuant to Section 9.04 of the Agreement.
- (b) This Amendment amends the Agreement.

Section 2. AMENDMENTS

The Agreement is amended as follows:

- (a) The definition of "Termination Date set forth in Section 1.01 of the Agreement is amended and restated to provide:

"Termination Date" means the earlier of (i) November 30, 2024, or such later date to which the Revolving Credit Period shall have been extended pursuant to Section 3.01(c), or if any such date is not a Business Day, the next preceding Business Day, or (ii) the date on which all of the following shall have occurred: (A) a Tender Event shall have occurred and be continuing (and shall not have otherwise been waived by the Bank), (B) the Commitment of the Bank shall have terminated in accordance with Section 3.08(b), and (C) the Bank Bond shall be immediately due and payable pursuant to Section 7.02 hereof.

- (b) Section 9.12 is added to the Agreement providing:

"Section 9.12. U.S. QFC Resolution Stay Regulation. To the extent that this Agreement provides support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in

respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that this Agreement and any Supported QFC may in fact be stated to be governed by the laws of the State of Florida and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Documents were governed by the laws of the United States or a state of the United States.

(b) As used in this Section 9.12, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar

transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement."

(c) The notice addresses of the Bank set forth in Section 9.01 of the Agreement are changed to:

If to the Bank, to:

Regarding general credit matters:

Bank of America, N.A.
620 S. Tryon St
Bank of America Tower
Charlotte, NC 28202
Attn: Mason Hurley, Senior Vice President
Telephone: 980.387.2370
Email:mason.hurley@bofa.com

Regarding requests to fund Revolving Credit Loans or a Term Loan shall be sent by email and facsimile:

Bank of America
Amy Roberts
866.399.1509 RightFax
Email: Amy1.1.roberts@bofa.com

Mason Hurley
Fax: 1.980.683.4783
Email: mason.hurley@bofa.com

Eileen Ivens
Fax: 866-361-9956
Email: Eileen.a.iven@bofa.com

Section 4. MISCELLANEOUS

(a) Except as specifically amended herein, the Agreement shall continue in full force and effect in accordance with its terms. Reference to this specific Amendment need not be made

in any note, document, agreement, letter, certificate, the Agreement or any communication issued or made subsequent to, or with respect to, the Agreement, it being hereby agreed that any reference in the Agreement to the "Agreement" shall be sufficient to refer to the Agreement, as hereby amended.

(b) In case any one or more of the provisions contained herein should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby.

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

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

CITY OF GAINESVILLE, FLORIDA

By _____
Name: Claudia Rasnick
Title: Utility Chief Financial Officer

Approved as to form and legality:

By: _____
Name: Nicolle M. Shalley
Title: City Attorney

BANK OF AMERICA, N.A.

By _____
Name: Mason Hurley
Title: Senior Vice President

AMENDED AND RESTATED FEE AGREEMENT

This Amended and Restated Fee Agreement (this "Fee Agreement") is dated November 30, 2021, is between the City of Gainesville, Florida (the "City"), a municipal corporation of the State of Florida, and Bank of America, N.A. (the "Bank"), a national banking association, and it amends and restates in its entirety the Fee Agreement dated November 30, 2015 between the City and the Bank.

Reference is made to the Credit Agreement, November 30, 2015 (as amended and supplemented from time to time, the "Agreement"), between the City and the Bank. Any capitalized term used herein that is defined in the Agreement (including by reference to another document) shall have the same meaning when used herein.

In consideration of the Credit Agreement, the City agrees to make the following payments to the Bank at the following times:

(1) A fee (the "Facility Fee") for each day determined by multiplying the difference of Commitment minus the outstanding principal balance of all Revolving Credit Loans, as of the close of business of the Bank on such day, by a rate per annum equal to the Facility Fee Rate (as defined below), payable quarterly in arrears on the first Business Day of each January, April, July and October from the date hereof to and including the Termination Date (with the first such payment being due and payable on January 1, 2016) and on the Termination Date.

As used herein, "Facility Fee Rate" means, for any day, the rate per annum set forth in the table below opposite the lowest long-term rating assigned to any of the Bonds without regard to any liquidity or credit enhancement (a "Rating") by any Rating Agency as of such day:

(A) During the period from and including November 30, 2015 to but not including November 30, 2021:

Facility Fee (bppa)	Moody's Rating	S&P Rating	Fitch Rating
40	Aa2 or above	AA or above	AA- or above
45	Aa3	AA-	A+
50	A1	A+	A
55	A2	A	A-
60	A3	A-	BBB+

(B) During the period from and including November 30, 2021 and thereafter:

Facility Fee (bppa)	Moody's Rating	S&P Rating	Fitch Rating
43	A2 or above	A or above	A or above
53	A3	A-	A-
73	Baa1	BBB+	BBB+
98	Baa2	BBB	BBB

Notwithstanding the foregoing, if on any day any Rating has been withdrawn or suspended for any reason or a Tender Event exists, the otherwise applicable Facility Fee Rate shall be increased by 1.50% per annum.

References to the Ratings above are references to the Rating categories of the Rating Agencies as presently determined by the respective Rating Agencies and, in the event of adoption of any new or changed rating system by any Rating Agency, the Ratings from the applicable Rating Agency shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as then currently in effect.

The Bank's determination of the Facility Fee pursuant to this Fee Agreement shall be conclusive absent manifest error.

(2) In the event the Agreement is terminated or the Commitment is permanently reduced prior to November 30, 2022, then an amount equal to the Facility Fee (calculated assuming no change in the Facility Fee Rate subsequent to the date of such termination or reduction) that would have been paid on the portion of the Commitment that is being terminated or reduced from the November 30, 2021 to November 30, 2022, less any actual amount of the Facility Fee the City paid to the Bank with respect to such portion that accrued during such period, such fee to be payable within ten Business Days after demand therefor. However, no such fee will be required to be paid by the City in connection with a (i) termination of all or any portion of the Commitment if on the day of such termination the short-term rating assigned to the Bank by any two Rating Agencies is below P-1/A-1/F1 or the equivalent or (ii) a termination of the Agreement when no Commercial Paper Notes supported by a facility similar to that provided pursuant to the Agreement will be outstanding immediately following such termination.

(3) A draw fee in an amount equal to \$250 for each Loan, which amount shall be payable on the date of such Loan.

(4) In connection with any amendment, supplement, modification, waiver or consent relating to the Agreement requested by the City, \$2,500, plus the reasonable fees and expenses of the Bank's counsel.

(5) On the Closing Date, the fee and expenses of Mark E. Raymond, counsel to the Bank, in the amount of \$10,000.00.

All fees required to be paid under the Agreement and this Fee Agreement shall, upon payment, be nonrefundable and shall be calculated on the basis of a 360-day year for the actual number of days elapsed.

The parties agree that any reference in the Agreement or in any other Related Document to the "Agreement" shall mean and refer to the Agreement and this Fee Agreement.

This Fee Agreement may be executed in any number of counterparts, each of which shall be an

original, and all of which, when taken together, shall constitute one agreement.

This Fee Agreement may not be amended or waived except by an instrument in writing signed by the Bank and the City.

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CITY OF GAINESVILLE, FLORIDA

By: _____

Name: Claudia Rasnick

Title: Utility Chief Financial Officer

BANK OF AMERICA, N.A.

By: _____

Name: Mason Hurley

Title: Senior Vice President