

---

---

**CITY OF GAINESVILLE, FLORIDA**

**Not to Exceed  
\$275,000,000  
Utilities System Revenue Bond,  
2022 Series B**

---

**RESOLUTION NO. 211096**

**THIRTY-SIXTH SUPPLEMENTAL UTILITIES SYSTEM  
REVENUE BOND RESOLUTION**

---

**Adopted April 21, 2022**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS .....	1
SECTION 1.01. AUTHORITY FOR THIS RESOLUTION.....	1
SECTION 1.02. DEFINITIONS.....	1
SECTION 1.03. FINDINGS AND DETERMINATIONS .....	3
SECTION 1.04. CONTRACT .....	5
ARTICLE II AUTHORIZATION OF REFUNDING.....	5
SECTION 2.01. PURPOSE .....	5
ARTICLE III AUTHORIZATION OF 2022 SERIES B BOND .....	5
SECTION 3.01. AUTHORIZATION OF 2022 SERIES B BOND; DELEGATION.....	5
SECTION 3.02. GENERAL TERMS OF 2022 SERIES B BOND .....	6
SECTION 3.03. MANDATORY AND OPTIONAL REDEMPTION OF 2022 SERIES B BOND; PURCHASE IN LIEU OF REDEMPTION .....	7
SECTION 3.04 AUTHORIZATION TO TERMINATE SWAPS .....	8
SECTION 3.05. INTEREST RATE CONVENTIONS.....	8
SECTION 3.06. EXECUTION OF 2022 SERIES B BOND AND RELATED DOCUMENTS.....	9
SECTION 3.07. FORM OF 2022 SERIES B BOND; TRUSTEE'S CERTIFICATE OF AUTHENTICATION .....	9
ARTICLE IV APPLICATION OF PROCEEDS.....	16
SECTION 4.01. APPLICATION OF PROCEEDS OF 2022 SERIES B BOND .....	16
ARTICLE V ADDITIONAL COVENANTS.....	16
ARTICLE VI APPROVAL OF DOCUMENTS .....	17
SECTION 6.01. AUTHORIZATION AND APPROVAL OF NEGOTIATED SALE OF THE 2022 SERIES B BOND AND EXECUTION OF THE CONTINUING COVENANT AGREEMENT; DELEGATION OF AUTHORITY TO DETERMINE CERTAIN MATTERS IN CONNECTION THEREWITH.....	17
SECTION 6.02. EXECUTION AND DELIVERY OF APPLICABLE DOCUMENTS	17
SECTION 6.03. FURTHER ACTIONS .....	18
ARTICLE VII TAX MATTERS .....	18
SECTION 7.01. TAX COVENANT .....	18
ARTICLE VIII ADDITIONAL REMEDIES.....	19
SECTION 8.01. REMEDIES.....	19
ARTICLE IX MISCELLANEOUS .....	19
SECTION 9.01. FURTHER ASSURANCES .....	19
SECTION 9.02. SEVERABILITY OF INVALID PROVISIONS.....	19
 EXHIBIT A - CONTINUING COVENANT AGREEMENT	

**THIRTY-SIXTH SUPPLEMENTAL UTILITIES SYSTEM  
REVENUE BOND RESOLUTION**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA FOR THE PURPOSE OF AUTHORIZING THE ISSUANCE, SALE, EXECUTION AND DELIVERY OF THE CITY OF GAINESVILLE, FLORIDA UTILITIES SYSTEM REVENUE BOND, 2022 SERIES B, IN ORDER TO CURRENTLY REFUND THE CITY'S VARIABLE RATE UTILITIES SYSTEM REVENUE BONDS, 2007 SERIES A AND ITS VARIABLE RATE UTILITIES SYSTEM REVENUE BONDS, 2008 SERIES B; PROVIDING FOR CERTAIN TERMS OF THE 2022 SERIES B BOND; AUTHORIZING THE 2022 SERIES B BOND IN A PRINCIPAL AMOUNT NOT TO EXCEED \$275,000,000; APPROVING THE NEGOTIATED SALE OF THE 2022 SERIES B BOND AND APPROVING THE FORM, AND AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING COVENANT AGREEMENT WITH RESPECT THERETO, AND DELEGATING THE AUTHORITY TO DETERMINE CERTAIN MATTERS IN CONNECTION THEREWITH; AUTHORIZING THE AUTHENTICATION AND DELIVERY OF THE 2022 SERIES B BOND; AUTHORIZING THE TERMINATION OF CERTAIN INTEREST RATE SWAPS AND DELEGATING THE AUTHORITY TO DETERMINE CERTAIN MATTERS IN CONNECTION THEREWITH; AUTHORIZING CERTAIN CITY OFFICIALS TO TAKE ALL OTHER ACTIONS DEEMED NECESSARY OR ADVISABLE IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF THE 2022 SERIES B BOND; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

**BE IT RESOLVED** by the City Commission of the City of Gainesville, Florida (the "City") as follows:

**ARTICLE I  
STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS**

**SECTION 1.01. AUTHORITY FOR THIS RESOLUTION.** This Resolution (this "Resolution") is enacted pursuant to the Act, including Article VIII, Section 2 of the Constitution of the State of Florida, Section 159.11, Florida Statutes and Chapter 166, Florida Statutes. This Resolution is supplemental to 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 "Master Resolution"). The Master Resolution as so amended, restated and supplemented, including without limitation as supplemented by the Resolution, is hereinafter referred to as the "Bond Resolution."

**SECTION 1.02. DEFINITIONS.** Except as provided by this Resolution, all terms which are defined in Section 101 of the Master Resolution shall have the same

meanings, respectively, in this Resolution as such terms are given in said Section 101 of the Master Resolution and in this Resolution.

"Authorized Denominations" means \$250,000 or any integral multiple of \$5,000 in excess thereof.

"Authorized Officer" or "Authorized Officers" means the "Authorized Officers of the City," as defined in the Master Resolution.

"Business Day" means a day on which banking business is transacted in New York City and the city or cities in which the Trustee and Paying Agent have their respective designated corporate trust offices, on which the New York Stock Exchange is open.

"CCA Event of Default" is defined in the Continuing Covenant Agreement.

"City" means the City of Gainesville, Florida.

"City Attorney" means the City Attorney or such other assistant City Attorney as designated by the City Attorney.

"Clerk" shall mean the Clerk of the City or any Deputy Clerk.

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

"Continuing Covenant Agreement" means the Continuing Covenant Agreement, between the City and the Initial Purchaser, as amended and supplemented from time to time, in substantially the form attached hereto as "Exhibit A."

"Default Rate" means the lower of 12% or the maximum rate permitted by law.

"Delivery Date" means the date of delivery of the 2022 Series B Bond to the Initial Purchaser upon payment therefor.

"Determination of Taxability" has the meaning given in the 2022 Series B Bond.

"Favorable Opinion" means a written opinion of Bond Counsel, in form and substance reasonably satisfactory to the Trustee and the Lender, and except as may be otherwise specifically set forth herein, of either, as determined appropriate by Bond Counsel (a) to the effect that the interest on the 2022 Series B Bond is excludable from the gross income of the holders thereof for purposes of federal income taxation or (b) to the effect that the action proposed to be taken is authorized or permitted by the laws of the State and by the terms of the Bond Resolution and will not adversely affect the validity of the 2022 Series B Bond under the laws of the State or the excludability from gross income for federal income tax purposes of the interest on the 2022 Series B Bond (subject to the inclusion of any exception provided under the Code).

"General Manager" means the General Manager for Utilities, as designated by the City from time to time.

"Initial Purchaser" means Bank of America, N.A. or an affiliate thereof.

"Interest Payment Date" means the first day of April and October, commencing October 1, 2022 or such other date as set forth in the 2022 Series B Bond.

"Lender" means the Initial Purchaser and its successors and assigns, as beneficial owner of the 2022 Series B Bond.

"Mayor" means the Mayor or Mayor-Commissioner Pro Tempore.

"Officer's Certificate" means a certificate of an Authorized Officer of the City.

"Prepayment Fee" has the meaning given in the 2022 Series B Bond.

"Rebate Amount" means the excess of the future value, as of a computation date, of all receipts on nonpurpose investments (as defined in Section 1.148-3 of the Income Tax Regulations) over the future value, as of that date, of all payments on nonpurpose investments, but shall not include any amount exempted by Section 148(f) of the Code from payment to the United States.

"Refunded Bonds" means collectively, the 2007 Series A Bonds and the 2008 Series B Bonds.

"2007 Series A Bonds" means the City's Variable Rate Utilities System Revenue Bonds, 2007 Series A.

"2008 Series B Bonds" means the City's Variable Rate Utilities System Revenue Bonds, 2008 Series B.

"2022 Series B Bond" shall mean the City's Utilities System Revenue Bond, 2022 Series B.

"Taxable Rate" has the meaning given in the 2022 Series B Bond.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

**SECTION 1.03. FINDINGS AND DETERMINATIONS.** The Governing Body of the City hereby finds, ascertains, determines and declares that:

(1) Pursuant to the Bond Resolution, the City may issue Bonds from time to time for the purpose, among others, of refunding any Bonds.

(2) The City heretofore has issued certain Bonds for the purpose of financing and refinancing a portion of the Cost of Acquisition and Construction of the System.

(3) The refunding of the Refunded Bonds will be advantageous to the City, by changing from a variable rate to a fixed rate of interest and avoiding future renewal risk with respect to the Credit Enhancement (as defined in the Master Resolution) of such Refunded Bonds. The City deems it necessary and in its best interests to refund the Refunded Bonds with the proceeds of the 2022 Series B Bond.

(4) The Initial Purchaser has agreed to purchase the 2022 Series B Bond by negotiated sale subject to such representations, warranties and covenants contained the Continuing Covenant Agreement in substantially the form attached hereto as Exhibit "A".

(5) The complexity of the structuring of the 2022 Series B Bond, the current conditions in the market for obligations such as the 2022 Series B Bond, the termination of the interest rate hedge agreements associated with the Refunded Bonds, and the advantages of a more flexible financial plan make it necessary and in the best interests of the City that the 2022 Series B Bond be sold on a negotiated basis to the Initial Purchaser.

(6) The City desires to delegate the award and sale of the 2022 Series B Bond and certain other matters hereunder to the General Manager or the Chief Financial Officer or such other Authorized Officer within the parameters set forth in this Resolution.

(7) The Initial Purchaser has provided, or will provide prior to the issuance of the 2022 Series B Bond, the City with a disclosure statement containing the information required by Section 218.385(1)(b)(2), Florida Statutes, and a "truth-in-bonding" statement meeting the requirements of Section 218.385(3), Florida Statutes, and no additional disclosure is required.

(8) In connection with the 2007 Series A Bonds to be refunded, the City previously entered into a Master Agreement and related documents with Goldman Sachs Mitsui Marine Derivative Products, L.P. (the "Goldman Counterparty"), each dated on or about September 14, 2005, as amended and supplemented, and thereafter entered into a trade confirmation in an original notional amount of \$139,505,000.00 (the transaction is referred to herein as the "Goldman Swap") pursuant to which the Goldman Counterparty pays a variable rate of interest and the Goldman Counterparty receives from the City a fixed rate of interest.

(9) In connection with the 2008 Series B Bonds to be refunded, the City previously entered into a Master Agreement and related documents with Bear Stearns Financial Products, Inc., as succeeded by JPMorgan Chase Bank, N.A. (the "2008 Counterparty"), each dated on or about September 21, 2005, and thereafter entered into two trade confirmations in the original notional amounts of \$58,500,000 and \$31,500,000 (these transaction are collectively referred to herein as the "Bear Swaps" and together with the Goldman Swap, the "Swaps") pursuant to which the 2008 Counterparty pays a variable rate of interest and the 2008 Counterparty receives from the City a fixed rate of interest.

(10) The City has determined that it may be advantageous to amend or terminate the Swaps, subject to the parameters set forth herein.

(11) The City desires to delegate to the General Manager 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 amendment or termination of the Swaps, and to pay any cash settlement amounts and associated costs from the proceeds of the 2022 Series B Bond and other legally available funds of the City.

**SECTION 1.04. CONTRACT.** In consideration of the acceptance of the 2022 Series B Bond authorized to be issued hereunder by the Bondholders who shall own the same from time to time, the Bond Resolution and the Continuing Covenant Agreement shall be deemed to be and shall constitute a contract between the City and the Bondholders, and the covenants and agreements therein and herein set forth to be performed by the City shall be for the equal benefit, protection and security of the Bondholders of such 2022 Series B Bond, which shall be of equal rank and without preference, priority, or distinction of any of the Bonds.

## **ARTICLE II AUTHORIZATION OF REFUNDING**

**SECTION 2.01. PURPOSE.** The 2022 Series B Bond is being issued for the purposes of (1) refunding the Refunded Bonds, (2) paying a portion of the cash settlement amounts and associated costs relating to the termination of the Swaps, and (3) paying costs of issuance related to the 2022 Series B Bond.

The providing of a notice of redemption relating to the redemption of the Refunded Bonds, which redemption shall occur on or about the Delivery Date, is hereby authorized in accordance with the terms of the Bond Resolution, such notice to be given at such time as will comply with the terms of the Refunded Bonds and the Bond Resolution. Each Authorized Officer is hereby authorized to take the necessary actions and to execute the necessary documents to provide for the giving of such notice in accordance with the terms of the Bond Resolution.

## **ARTICLE III AUTHORIZATION OF 2022 SERIES B BOND**

**SECTION 3.01. AUTHORIZATION OF 2022 SERIES B BOND; DELEGATION.** Pursuant to the provisions of this Resolution, a Series of Bonds is hereby authorized in a principal amount, not to exceed \$275,000,000. Such Bond shall be designated as, and shall be distinguished from the Bonds of all other Series by the title, "Utilities System Revenue Bond, 2022 Series B". The actual principal amount of the 2022 Series B Bond to be issued shall be determined by the General Manager for Utilities of the City, or his designee, on or prior to the Delivery Date as the amount necessary to accomplish the purposes for which the 2022 Series B Bond are being issued as set forth in Section 2.01 hereof. The 2022 Series B Bond shall be and constitute a "Bond" and a "Refunding Bond," as such terms are defined in Section 101 of the Master Resolution.

The General Manager or the Chief Financial Officer, or such other Authorized Officer, in reliance upon advice of the financial advisor to the System, is hereby directed and authorized to award the sale of the 2022 Series B Bond to the Initial Purchaser, and to approve the terms of the 2022 Series B Bond, including, without limitation, the date

thereof, the aggregate principal amount thereof and all such other terms to be set forth in the 2022 Series B Bond and the Continuing Covenant Agreement; provided, however, the 2022 Series B Bond and the Continuing Covenant Agreement shall not be executed by the General Manager or Chief Financial Officer or such other Authorized Officer unless the following conditions have been satisfied:

- (a) the principal amount of the 2022 Series B Bond shall not exceed \$275,000,000;
- (b) the interest rate of the 2022 Series B Bond shall not exceed 3.00% per annum (subject to adjustment as provided herein and therein); and
- (c) the final maturity of the 2022 Series B Bond shall not be later than October 1, 2038.

The execution by the City of the 2022 Series B Bond shall constitute conclusive evidence of approval of such terms.

### **SECTION 3.02. GENERAL TERMS OF 2022 SERIES B BOND.**

(1) The 2022 Series B Bond shall be issued in fully registered form in the Authorized Denominations and shall be dated the date of its authentication. Unless an Authorized Officer of the City shall otherwise direct, the 2022 Series B Bond will be numbered "RB-1".

The 2022 Series B Bond shall bear interest at the interest rate, established on or about the date of issuance of the 2022 Series B Bond (subject to additional adjustment as provided herein and in the form of the 2022 Series B Bond), payable on each Interest Payment Date.

If the date for payment of the principal or interest on the 2022 Series B Bond shall be a day other than a Business Day, then the date for such payment shall be the next succeeding Business Day, and payment on such day shall have the same force and effect as if made on the nominal date of payment, provided that interest shall continue to accrue on principal until the payment is received by the Bondholder and such additional interest shall be included in the interest due on such succeeding Business Day.

Principal, Prepayment Fee, if any, and interest on the 2022 Series B Bond shall be paid (i) by wire transfer in immediately available funds at such wire transfer address as the Lender shall specify by written notice to the Paying Agent not less than 15 days prior to the payment date, or (ii) if such written notice shall not be provided in accordance with clause (i), by check payable to the order of the persons entitled thereto and mailed by first class mail, postage prepaid, to the addresses of such persons as they shall appear on the books of the City kept at the office of the Bond Registrar, or (iii) in such other manner as agreed to in writing by the Bondholder and the Trustee, with the consent of an Authorized Officer of the City.

(2) Notwithstanding anything in the Master Resolution to the contrary, principal and interest on the 2022 Series B Bond shall be paid in the manner set forth

herein and in the 2022 Series B Bond. Upon each principal payment, other than final maturity, the principal amount of the 2022 Series B Bond shall be paid in the same manner as interest payments and shall be deemed to be correspondingly reduced without the necessity of delivery of a new 2022 Series B Bond; provided, however, upon payment at final maturity, the Bondholder shall provide a copy marked as cancelled and shall not be required to deliver the original 2022 Series B Bond as a condition to payment, but the Bondholder shall promptly following payment thereof, deliver the 2022 Series B Bond to the City marked "paid in full."

(3) The registration of the 2022 Series B Bond may be transferred only as provided in Article III of the Master Resolution. The 2022 Series B Bond may only be sold, assigned or otherwise transferred to an affiliate of the Lender, a trust or other custodial arrangement established by the Lender or a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended.

(4) The Bond Registrar will transfer the ownership of the 2022 Series B Bond, upon written request of the Lender to the Trustee specifying the name, address and taxpayer identification number of the transferee(s). The Person in whose name the 2022 Series B Bond shall be registered shall be deemed and regarded the absolute owner thereof for all purposes, and payment of principal and interest on such 2022 Series B Bond shall be made only to or upon the written order of such Person. All such payments shall be valid and effectual to satisfy and discharge the liability upon such 2022 Series B Bond to the extent of the sum or sums so paid.

### **SECTION 3.03. MANDATORY AND OPTIONAL REDEMPTION OF 2022 SERIES B BOND; PURCHASE IN LIEU OF REDEMPTION.**

(1) The 2022 Series B Bond shall be subject to redemption prior to maturity as provided in Article IV of the Master Resolution by operation of the Debt Service Fund from mandatory Sinking Fund Installments as set forth in the 2022 Series B Bond.

(2) The 2022 Series B Bond may be subject to optional redemption, in whole or in part on any date, at a Redemption Price equal to the principal amount being redeemed, plus Prepayment Fee (as defined in the 2022 Series B Bond), plus accrued interest thereon, if any, to the redemption date thereof, as set forth in the 2022 Series B Bond.

(3) Notwithstanding anything to the contrary contained herein or in the Master Resolution, in the event that the 2022 Series B Bond is to be redeemed in part, the portion of such 2022 Series B Bond not so redeemed shall be in an Authorized Denomination and such redemption shall be applied in inverse order of maturity (treating Sinking Fund Installments as maturities).

(4) Notwithstanding any provision contained in the Bond Resolution to the contrary, the City shall have the option to cause the 2022 Series B Bond to be purchased in lieu of redemption on the applicable redemption date at a price equal to the then applicable Redemption Price, plus accrued interest thereon to, but not including, the date

of such purchase, with the Prepayment Fee, if any. Such option may be exercised by delivery to the Paying Agent (if the Trustee is not the Paying Agent for such 2022 Series B Bond) on or prior to the Business Day preceding the redemption date of a written notice of the City specifying that the 2022 Series B Bond shall not be redeemed, but instead shall be subject to purchase pursuant to this paragraph with the moneys provided or to be provided by or on behalf of the City. Upon delivery of such notice, the 2022 Series B Bond shall not be redeemed but shall instead be subject to mandatory tender at the Redemption Price on the date that would have been the redemption date. 2022 Series B Bond purchased by the City shall not be considered to be Outstanding, under the Bond Resolution and shall not be afforded the rights afforded to other Bonds Outstanding under the Bond Resolution (including voting rights) for so long as such 2022 Series B Bond is held by or for the benefit of the City.

(5) Notwithstanding Section 405 of the Bond Resolution, notice of redemption of the 2022 Series B Bond, may be given not more than sixty (60) days or less than five (5) days prior to the redemption date of the 2022 Series B Bond, and such notice shall be given by electronic mail (email), telefacsimile or physical delivery. Notwithstanding any other provision hereof, notice of optional redemption may be conditioned upon the occurrence or non-occurrence of such event or events as shall be specified in such notice of optional redemption and may also be subject to rescission by the City if expressly set forth in such notice.

**SECTION 3.04 AUTHORIZATION TO TERMINATE SWAPS.** The General Manager, Chief Financial Officer or any other Authorized Officer, upon the advice of the financial advisor to the System (or an affiliate company of the financial advisor to the System), are each hereby authorized to enter into documents to terminate the Swaps entered into with the Goldman Counterparty and the 2008 Counterparty in connection with the Refunded Bonds, and to execute and deliver such agreements, documents and instruments on behalf of the City as may be necessary to evidence such amendments or terminations. Each Authorized Officer and the City Attorney is hereby authorized and empowered to execute and deliver or cause to be executed and delivered such other documents and opinions and to do all such acts and things as may be necessary or desirable in connection with the termination of the Swaps, for the full punctual and complete performance of all the terms, covenants and agreements contained herein and in the applicable Swap documents. The Clerk is hereby authorized to attest such signatures to the extent required by such applicable Swap documents, subject to the approval of the City Attorney as to form and legality. The terminations referred to herein shall relate only to the Swaps and shall not affect any other transactions of the City under any other agreements. The Swaps shall be terminated in connection with the refunding of the Refunding Bonds, if, based on the advice of financial advisor to the System, such actions are beneficial to the City.

**SECTION 3.05. INTEREST RATE CONVENTIONS.**

(1) Interest on the 2022 Series B Bond will be computed on the basis of a 360-day year consisting of twelve 30-day months.

(2) Upon the occurrence of a Determination of Taxability and so long as the Default Rate shall not be in effect, the interest rate on the 2022 Series B Bond will be adjusted, retroactive to the date interest was first included in the gross income of the Holder of the 2022 Series B Bond for Federal income tax purposes (net of any interest paid on the 2022 Series B Bond during such period), to the Taxable Rate in accordance with the 2022 Series B Bond.

**SECTION 3.06. EXECUTION OF 2022 SERIES B BOND AND RELATED DOCUMENTS.** The Mayor of the City is hereby authorized to execute the 2022 Series B Bond on behalf of the City, subject to the approval of the City Attorney as to form and legality; *provided, however,* that the 2022 Series B Bond shall be executed and delivered pursuant to the Master Resolution and applicable law. The Clerk of the Commission of the City is hereby authorized to cause the seal of the City to be affixed to the 2022 Series B Bond. Such officers are each hereby authorized to deliver such 2022 Series B Bond on behalf of the City.

U.S. Bank Trust Company, National Association, as Trustee under the Bond Resolution, is hereby requested and authorized to authenticate the 2022 Series B Bond in the principal amount determined as provided in Section 3.01 hereof, and to deliver such 2022 Series B Bond to the Initial Purchaser, upon payment for the account of the City of the principal amount thereof. U.S. Bank National Association and its successors thereto is hereby appointed as Paying Agent for the 2022 Series B Bond in accordance with the Paying Agent/ Bond Registrar Agreement dated as of November 2, 2020 between the City and U.S. Bank National Association.

The signatures of the Mayor or the Mayor Pro Tem and City Clerk on the 2022 Series B Bond may be a manual or facsimile signature. In case one or more of the officers who have signed or sealed the 2022 Series B Bond shall cease to be such officer of the City before the 2022 Series B Bond so signed and sealed shall have been actually delivered, such 2022 Series B Bond may nevertheless be delivered as herein provided and may be issued as if the person who signed or sealed such 2022 Series B Bond had not ceased to hold such office. The 2022 Series B Bond may be signed and sealed on behalf of the City by such person as at the actual time of the execution of such 2022 Series B Bond shall hold the proper office, although at the date of such 2022 Series B Bond such person may not have held such office or may not have been so authorized.

**SECTION 3.07. FORM OF 2022 SERIES B BOND; TRUSTEE'S CERTIFICATE OF AUTHENTICATION.** Subject to the provisions of the Bond Resolution, the form of the 2022 Series B Bond and the Trustee's certificate of authentication shall be of substantially the following form with such omissions, insertions, and variations as may be necessary and desirable, and as may be authorized or permitted by the Bond Resolution and approved by the Mayor and the Trustee:

THIS BOND IS SUBJECT TO TRANSFER RESTRICTIONS, MORE FULLY DESCRIBED IN THE SUPPLEMENTAL RESOLUTION REFERRED TO HEREIN, AND MAY NOT BE TRANSFERRED EXCEPT TO AN AFFILIATE OF THE BONDHOLDER, TO A TRUST OR CUSTODIAL ARRANGEMENT ESTABLISHED BY THE BONDHOLDER OR A QUALIFIED INSTITUTIONAL BUYER WITHIN

THE MEANING OF RULE 144A PROMULGATED UNDER THE SECURITIES ACT OF 1933.

REGISTERED  
NO. RB-1

REGISTERED  
\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
CITY OF GAINESVILLE  
UTILITIES SYSTEM REVENUE BOND,  
2022 SERIES B

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>ORIGINAL ISSUE DATE</u>
_____ % (subject to adjustment as provided herein)	October 1, 2038	_____, 2022

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

THE CITY OF GAINESVILLE, FLORIDA (herein called the "City"), a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, acknowledges itself indebted to, and for value received, hereby promises to pay to the Registered Owner (named above) or registered assigns, on the Maturity Date (stated above), but solely from the funds pledged therefor, upon presentation and surrender of this bond (except as herein provided) at the office of U.S. Bank [Trust Company,] National Association (such bank and any successor thereto being referred to herein as the "Paying Agent"), the Principal Amount (stated above) in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and to pay, but solely from the funds pledged therefor, interest on such Principal Amount in like coin or currency from the Original Issue Date (stated above), or, if one or more payments of interest has or have theretofore been made, from the most recent interest payment date to which interest has been paid, payable on each April 1 and October 1 commencing October 1, 2022 (each an "Interest Payment Date"), at a rate per annum equal initially to the Interest Rate as adjusted from time to time and such other rates of interest all as determined pursuant to the Supplemental Resolution hereinafter referred to, until the City's obligation with respect to the payment of such Principal Amount shall be discharged.

Principal, Prepayment Fee, if any, and interest on this Bond shall be paid (i) by wire transfer in immediately available funds at such wire transfer address as the Registered Owner shall specify by written notice to the Paying Agent not less than 15 days prior to the payment date, or (ii) if such written notice shall not be provided in accordance with clause (i), by check payable to the order of the persons entitled thereto and mailed by first class mail, postage prepaid, to the addresses of such persons as they

shall appear on the books of the City kept at the office of the Bond Registrar, or (iii) in such other manner as agreed to in writing by the Bondholder and the Trustee, with the consent of an Authorized Officer of the City.

This bond is designated by the City as its "Utilities System Revenue Bond, 2022 Series B" (herein sometimes called the "2022 Series B Bond"), in the principal amount of \$ \_\_\_\_\_ issued pursuant to Chapter 90-394, Laws of Florida, 1990, as amended, and other applicable provisions of law (herein called the "Act") and under and pursuant to Resolution No. 170395 incorporating by reference the Second Amended and Restated Utilities System Revenue Bond Resolution adopted by the City on September 21, 2017 (the "Bond Resolution"), as supplemented by the Thirty-Sixth Supplemental Bond Resolution adopted by the City on \_\_\_\_\_, 2022 (the "Supplemental Resolution" and together with the Bond Resolution, the "Resolution"). As provided in the Resolution, bonds, notes or other evidences of indebtedness of the City may be issued from time to time pursuant to supplemental resolutions in one or more series, in various principal amounts, may mature at different times, may bear interest at different rates and may otherwise vary as in the Resolution provided. The aggregate principal amount of bonds, notes or other evidences of indebtedness which may be issued under the Resolution is not limited except as provided in the Resolution, and all bonds, notes or other evidences of indebtedness issued and to be issued under the Resolution are and will be equally secured by the Trust Estate (as hereinafter defined) and covenants made therein, except as otherwise expressly provided or permitted in the Resolution. All such bonds, notes or other evidences of indebtedness issued under and pursuant to the Resolution, as the same may be amended and supplemented from time to time, are hereinafter called the "Bonds".

As provided in the Resolution, the Bonds are direct and special obligations of the City payable solely from and secured as to payment of the principal or redemption price thereof, and interest thereon, in accordance with their terms and the provisions of the Resolution solely by (i) the proceeds of the sale of the Bonds, (ii) the Revenues (as defined in the Resolution) and (iii) all Funds established by the Resolution (other than the Debt Service Reserve Account in the Debt Service Fund and any fund which may be established pursuant to paragraph 2 of Section 502 of the Bond Resolution), including the investments and income, if any, thereof (collectively, the "Trust Estate"), subject only to the provisions of the Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in the Resolution. Copies of the Resolution are on file at the office of the City and at the Corporate Trust Office of U.S. Bank Trust Company, National Association, as Trustee under the Resolution, or its successor as Trustee (herein called the "Trustee") and reference is made to the Resolution and any and all supplements thereto and modifications and amendments thereof and to the Act for a description of the security interest, pledge and assignment and covenants securing the Bonds, the nature, extent and manner of enforcement of such pledge, the rights and remedies of the holders of the Bonds with respect thereto, the terms and conditions upon which the Bonds are issued and may be issued thereunder, and for the other terms and provisions thereof.

Upon the occurrence of a Determination of Taxability, and so long as the Default Rate shall not be in effect, the interest rate otherwise borne by this Bond shall be increased by 127% (the "Taxable Rate"), as of and from the Taxable Date with respect to

this Bond; and (i) the City shall on the next Interest Payment Date (or if this Bond shall have matured, within 30 days after demand by the Registered Owner) pay to the Registered Owner from the sources provided in the Bond Resolution an amount equal to the sum of (1) the difference between (A) the total interest that would have accrued on this Bond at the Taxable Rate from the Taxable Date to such next Interest Payment Date (or maturity date), and (B) the actual interest paid by the City on this Bond from the Taxable Date to such next Interest Payment Date (or maturity date), and (2) any interest and penalties required to be paid as a result of any additional federal income taxes imposed upon such Registered Owner arising as a result of such Determination of Taxability; and (ii) from and after such next interest payment date, this Bond shall continue to bear interest at the Taxable Rate for the period such determination continues to be applicable with respect to this Bond. The provisions set forth in this paragraph shall survive payment of this Bond until such time as the federal statute of limitations under which the interest on this Bond could be declared taxable has expired.

"Determination of Taxability" means a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that as a result of an action or inaction of the City interest paid or payable on this Bond is includable in the gross income of the Registered Owner for Federal income tax purposes; provided, no Determination of Taxability shall be deemed to occur unless the City has been given written notice of such occurrence and, to the extent permitted by law, an opportunity to participate in and seek, at the City's own expense, a final administrative determination by the Internal Revenue Service or determination by a court of competent jurisdiction (from which no further right of appeal exists) as to the occurrence of such Determination of Taxability.

"Taxable Date" means the date on which interest on this Bond is first includable in gross income of a Bondholder (including, without limitation, any previous Bondholder) thereof as a result of a Determination of Taxability.

Upon the occurrence and continuance of (i) an Event of Default under the Resolution or (ii) a CCA Event of Default, the interest rate on this Bond shall become the lesser of 12% or the maximum rate permitted by law (the "Default Rate"); provided, however, such Default Rate shall not apply as a result of a default solely due to a breach of the covenants contained in Article VII of the Supplemental Resolution.

The interest rate borne by this Bond will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

This bond is transferable, as provided in the Resolution, only upon the books of the City kept for that purpose at the above-mentioned office of the Trustee, as Bond Registrar, by the registered owner hereof in person, or by such owner's duly authorized attorney, upon surrender of this bond together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or such owner's duly authorized attorney, and thereupon a new fully registered bond or bonds, without coupons, and in the same aggregate principal amount, shall be issued to the transferee in exchange therefor as provided in the Resolution, and upon payment of the charges therein prescribed. The City, the Trustee, the Bond Registrar and the Paying Agent may deem

and treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

The 2022 Series B Bond is payable upon redemption at the above-mentioned office of the Paying Agent. Notice of redemption, setting forth the place of payment, shall be given in accordance with the Supplemental Resolution. If notice of redemption or tender shall have been given as aforesaid and shall not have been rescinded or ceased to be in effect, the 2022 Series B Bond or portions thereof specified in said notice shall become due and payable on the redemption date or tender date, as applicable therein fixed, and if, on the redemption date or tender date, as applicable, moneys for the redemption of all the 2022 Series B Bond and portions thereof to be redeemed or tendered, as applicable, together with interest to the redemption date or tender date, as applicable, shall be available for such payment on said date, then from and after the redemption date interest on such 2022 Series B Bond or portions thereof so called for redemption or tender shall cease to accrue and be payable.

The 2022 Series B Bond is issuable in the form of a fully registered bond in the denominations of \$250,000 or any multiple of \$5,000 in excess thereof.

The 2022 Series B Bond is subject to optional redemption prior to maturity at the election of the City only in accordance with the Supplemental Resolution and only at the amount of principal of the 2022 Series B Bond being prepaid, plus interest accrued on such amount being prepaid to the date of prepayment plus a Prepayment Fee, as described below. If less than all of the 2022 Series B Bond is to be redeemed, the portions of such 2022 Series B Bond (or Sinking Fund Installment) shall be applied in inverse order of maturity (treating Sinking Fund Installments as maturities).

The Prepayment Fee will be equal to the present value (discounted by the Reinvestment Rate) of the difference, if positive, between:

(a) the sum of the interest payments that would have accrued on each prepaid installment of principal of the 2022 Series B Bond at a fixed interest rate for such installment equal to [\_\_\_\_\_]%, as if the prepayment had not been made, less

(b) the sum of the interest payments that would have accrued on each prepaid installment of principal at a fixed interest rate for such installment equal to the Reinvestment Rate, as if the prepayment had not been made.

The following definitions will apply to the calculation of the Prepayment Fee:

"Reinvestment Rate" means with respect to each prepaid installment of principal, the Swap Rate on the date the Prepayment Fee is calculated by the Bondholder for a term corresponding to the period of time remaining until such principal installment was scheduled to be paid, interpolated on a linear basis, if necessary, and

"Swap Rate" means, as of any date, the offered U.S. Dollar interest rate swap rate for a fixed rate payer determined by the Bondholder on such date by reference to the

Bloomberg service or such other similar data source then used by the Bondholder for determining such rate.

The 2022 Series B Bond is subject to mandatory Sinking Fund Installments in part, by lot, on October 1, 20\_\_ and on each October 1 thereafter at a price of par, plus accrued interest to the date of redemption as follows:

Date (October 1)	Principal <u>Amount</u>
---------------------	----------------------------

---

\* Final Maturity

If the date for payment of the principal of, premium, if any, or interest on this Bond shall be a day other than a Business Day, then the date for such payment shall be the next succeeding Business Day, and payment on such date shall have the same force and effect as if made on the nominal date of payment, provided that interest shall continue to accrue on principal until the payment is received by the Bondholder and such additional interest shall be included in the interest due on such succeeding Business Day.

The City and the Registered Owner, by acceptance of this Bond, hereby knowingly, voluntarily, intentionally, and irrevocably waive, to the fullest extent permitted by applicable law, the right either of them may have to a trial by jury in respect to any litigation, whether in contract or tort, at law or in equity, based hereon or arising out of, under or in connection with this Bond and any other document or instrument contemplated to be executed in conjunction with this Bond, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto. This provision is a material inducement for the City and the Registered Owner entering into or accepting this Bond.

This Bond and the Bond Resolution as supplemented and amended by the Supplemental Resolution shall be governed by applicable federal law and the internal laws of the State of Florida. The City agrees that certain material events and occurrences relating to this Bond bear a reasonable relationship to the laws of Florida and the validity, terms, performance and enforcement of this Bond shall be governed by the internal laws of Florida which are applicable to agreements which are negotiated, executed, delivered and performed solely in Florida. Unless applicable law provides otherwise, in the event of any legal proceeding arising out of or related to this Bond, the City consents to the jurisdiction and venue of any court located or having jurisdiction over Alachua County, Florida.

This Bond is and has all the qualities and incidents of a negotiable instrument under the laws of the State of Florida.

This Bond has been designated by the City as a Bond and a Refunding Bond as provided by the Bond Resolution.

This Bond does not constitute a general indebtedness or a pledge of the full faith and credit of the City within the meaning of any constitutional or statutory provision or limitation of indebtedness. It is expressly agreed by the holders of this bond that (a) no holder shall ever have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the City for the payment of the principal of or interest on this bond or the making of any payments provided for in the Resolution, and (b) this Bond and the obligation evidenced thereby shall not constitute a lien upon any property of or in the City, but shall constitute a lien only on the Trust Estate in the manner provided in the Resolution.

It is hereby certified and recited that all conditions, acts and things required by law and the Resolution to exist, to have happened and to have been performed precedent to and in the issuance of this bond, exist, have happened and have been performed and that the issue of Bonds of which this is one, together with all other indebtedness of the City, complies in all respects with the applicable laws of the State of Florida including, particularly, the Act.

This Bond shall not be entitled to any benefit under the Resolution or be valid or become obligatory for any purpose until this bond shall have been authenticated by the execution by the Trustee of the Trustee's Certificate of Authentication hereon.

IN WITNESS WHEREOF, THE CITY OF GAINESVILLE, FLORIDA has caused this bond to be signed in its name and on its behalf by the manual or facsimile signature of its Mayor, and its corporate seal (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested by the manual or facsimile signature of its Clerk of the Commission.

THE CITY OF GAINESVILLE, FLORIDA

\_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_, 2022

Attested:

\_\_\_\_\_  
City Clerk

Approved as to Form and Legality:

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

[FORM OF CERTIFICATE OF AUTHENTICATION ON 2022 SERIES B BOND]

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Resolution.

U.S. BANK TRUST COMPANY,  
NATIONAL ASSOCIATION,  
Trustee

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

**ARTICLE IV  
APPLICATION OF PROCEEDS**

**SECTION 4.01. APPLICATION OF PROCEEDS OF 2022 SERIES B BOND.** In accordance with subsection (7) of paragraph 1 of Section 202 and paragraph 2 of Section 203 of the Master Resolution, the proceeds of the 2022 Series B Bond, to the extent permitted under the Code and not otherwise provided by the City by certificate of the General Manager or Chief Financial Officer or such other Authorized Officer, delivered at or prior to the Delivery Date, together with certain legally available funds of the City, if any, shall be applied in the following manner:

(A) An amount of proceeds of the 2022 Series B Bond, together with other legally available funds of the City, if any, shall be applied to pay the principal of and accrued interest on the Refunded Bonds upon their redemption and/ or to reimburse the applicable Credit Enhancer for amounts advanced for the redemption of the Refunded Bonds.

(B) An amount of proceeds of the 2022 Series B Bond, together with other legally available funds of the City, if any, shall be applied to pay the cash settlement amount and associated costs of the Swaps upon the termination thereof.

(C) The remaining proceeds shall be applied by the City to pay costs of issuance of the 2022 Series B Bond and the termination of the Swaps.

No proceeds of the 2022 Series B Bond shall be deposited into the Rate Stabilization Fund or any subaccount in the Debt Service Reserve Account. The 2022 Series B Bond will not be secured by the Debt Service Reserve Account or any subaccount created therein.

**ARTICLE V  
ADDITIONAL COVENANTS**

**SECTION 5.01. ADDITIONAL COVENANTS OF THE CITY.** In addition to the covenants and agreements of the City set forth in the Bond Resolution, the City

covenants and agrees to comply with all terms, conditions and covenants contained in the Continuing Covenants Agreement, which are incorporated by reference herein.

## **ARTICLE VI APPROVAL OF DOCUMENTS**

**SECTION 6.01. AUTHORIZATION AND APPROVAL OF NEGOTIATED SALE OF THE 2022 SERIES B BOND AND EXECUTION OF THE CONTINUING COVENANT AGREEMENT; DELEGATION OF AUTHORITY TO DETERMINE CERTAIN MATTERS IN CONNECTION THEREWITH.** The form of the Continuing Covenant Agreement substantially in the form attached hereto as Exhibit "A" is hereby approved, subject to such changes, insertions and omissions and such filling of blanks therein as may be approved and made in such Continuing Covenant Agreement by the General Manager, the Chief Financial Officer or any other Authorized Officer, executing the same, in a manner consistent with the provisions of this Resolution and subject to the terms hereof, such execution to be conclusive evidence of such approval. Upon compliance with the provisions in Section 3.01 herein and receipt of a disclosure statement and truth-in-bonding statement from the representative of the Initial Purchaser meeting the requirements of Section 218.385, Florida Statutes, and subject to the other provisions of this Resolution, the Authorized Officer signing the same, with the advice of the financial advisor to the System, is hereby authorized and directed to accept the offer of the Initial Purchaser to purchase the 2022 Series B Bond, upon the terms and conditions set forth in the Continuing Covenant Agreement. Subject to the provisions set forth herein, the General Manager, the Chief Financial Officer or such other Authorized Officer, is hereby authorized to execute the Continuing Covenant Agreement for and on behalf of the City pursuant to the terms hereof and the Clerk is hereby authorized to attest such signatures to the extent required by the form of the Continuing Covenant Agreement, subject to the approval of the City Attorney as to form and legality.

**SECTION 6.02. EXECUTION AND DELIVERY OF APPLICABLE DOCUMENTS.** The Authorized Officers, collectively or individually, upon satisfaction of the conditions set forth herein, are hereby authorized to execute the Continuing Covenant Agreement, 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 Clerk of the Commission of the City is hereby authorized to cause the seal of the City to be affixed to each foregoing documents and to attest the same, to the extent required therein. Such officers are each hereby authorized to deliver such agreements on behalf of the City. The Authorized Officers, individually and collectively and the officers, attorneys and other agents or employees of the City are each hereby authorized to do all acts and things required of them by the Bond Resolution or the Continuing Covenant Agreement or desirable or consistent with the requirements of the Bond Resolution or the Continuing Covenant Agreement for the full punctual and complete performance of all the terms, covenants and agreements contained herein or in the 2022 Series B Bond, the Bond Resolution and the Continuing Covenant Agreement, and each Authorized Officer, employee, attorney and officer of the City is hereby authorized and directed to execute and deliver any and all papers and instruments, and to be and cause to be done any and all

acts and things necessary or proper for carrying out the transactions contemplated hereunder.

**SECTION 6.03. FURTHER ACTIONS.** Each Authorized Officer is hereby authorized and empowered to execute and deliver or cause to be executed and delivered such other documents and opinions and to do all such acts and things as may be necessary or desirable in connection with the adoption of this Resolution and the approval, execution and delivery of the Continuing Covenant Agreement and the carrying out of their terms and the terms of the Bond Resolution, the issuance, sale, execution and delivery of the 2022 Series B Bond, the redemption of the Refunded Bonds and the termination of the Swaps.

## **ARTICLE VII TAX MATTERS**

**SECTION 7.01. TAX COVENANT.** It is the intention of the City and all parties under its control that the interest on the 2022 Series B Bond issued hereunder be and remain excluded from gross income for federal income tax purposes and to this end the City hereby represents to and covenants with each of the holder of the 2022 Series B Bond issued hereunder that it will comply with the requirements applicable to it contained in Section 103 and Part IV of Subchapter B of Chapter 1 of Subtitle A of the Code to the extent necessary to preserve the exclusion of interest on the 2022 Series B Bond issued hereunder from gross income for federal income tax purposes. Specifically, without intending to limit in any way the generality of the foregoing, the City covenants and agrees:

(A) to the extent required by the Code, to make or cause to be made all necessary determinations and calculations of the Rebate Amount and required payments of the Rebate Amount;

(B) to set aside sufficient moneys from the Revenues to timely pay the Rebate Amount to the United States of America;

(C) to pay, at the times and to the extent required under the Code, the Rebate Amount to the United States of America from the funds described in (B) above;

(D) to maintain and retain all records pertaining to the Rebate Amount with respect to the 2022 Series B Bond issued hereunder and required payments of the Rebate Amount with respect to the 2022 Series B Bond for at least six years after the final maturity of the 2022 Series B Bond or such other period as shall be necessary to comply with the Code;

(E) to refrain from taking any action that would cause the 2022 Series B Bond issued hereunder to become arbitrage bonds under Section 148 of the Code; and

(F) to refrain from using proceeds of the 2022 Series B Bond issued hereunder in a manner that would cause the 2022 Series B Bond or any of them to be classified as private activity bonds under Sections 141(a) and/ or 141(d) of the Code.

The City understands that the foregoing covenants impose continuing obligations of the City that will exist as long as the requirements of Section 103 and Part IV of Subchapter B of Chapter 1 of Subtitle A of the Code are applicable to the 2022 Series B Bond.

Notwithstanding any other provision of the Bond Resolution, the obligation of the City to pay the Rebate Amount to the United States of America and to comply with the other requirements of this Section shall survive the defeasance or payment in full of the 2022 Series B Bond.

Notwithstanding any other provision of the Bond Resolution to the contrary, (a) upon the City's failure to observe or refusal to comply with the above covenants, the Holder of the 2022 Series B Bond or the Trustee acting on their behalf, shall be entitled to the rights and remedies provided to Bondholders under the Bond Resolution, other than the right (which is hereby abrogated solely in regard to the City's failure to observe or refusal to comply with the covenants of this Section) to declare the principal of all 2022 Series B Bond then outstanding, and the interest accrued thereon, to be due and payable, and (b) neither the Holders of the Bonds of any Series other than the 2022 Series B Bond, nor the Trustee acting on their behalf, shall be entitled to exercise any right or remedy provided to Bondholders under the Bond Resolution based upon the City's failure to observe, or refusal to comply with, the above covenants.

## **ARTICLE VIII ADDITIONAL REMEDIES**

**SECTION 8.01. REMEDIES.** Notwithstanding anything to the contrary in Section 801 of the Bond Resolution, a default of any of the covenants contained in Section 7.01 of this Resolution shall not be an "Event of Default" under the Bond Resolution, and the sole remedy of the Lender shall, upon a Determination of Taxability, be an adjustment of the interest rate on the 2022 Series B Bond to the Taxable Rate to the extent and in the manner described herein and in the 2022 Series B Bond.

## **ARTICLE IX MISCELLANEOUS**

**SECTION 9.01. FURTHER ASSURANCES.** The City agrees that it shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such documents and instruments and take such further actions as may be required to continue the perfection and priority of the lien and security interest of the Owners of Obligations in the Trust Estate to the extent provided herein.

**SECTION 9.02. SEVERABILITY OF INVALID PROVISIONS.** 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, and

shall in no way affect the validity of any other provisions of the Bond Resolution or this Resolution or of the Outstanding Obligations.

This Resolution approved and adopted April 21, 2022.

**CITY OF GAINESVILLE, FLORIDA**

---

Mayor

ATTESTED:

---

City Clerk

Approved as to Form and Legality:

---

City Attorney

#155877827\_v6

EXHIBIT "A"

CONTINUING COVENANT AGREEMENT

---

**CONTINUING COVENANT AGREEMENT**

between

**CITY OF GAINESVILLE, FLORIDA**

and

**BANK OF AMERICA, N.A.**

Relating to

**CITY OF GAINESVILLE, FLORIDA**

**Utilities System Revenue Bond,  
2022 Series B**

Dated \_\_\_\_\_, 2022

---

## Table of Contents

	Page
ARTICLE I DEFINITIONS .....	1
SECTION 1.01. DEFINITIONS .....	1
SECTION 1.02. INCORPORATION OF CERTAIN DEFINITIONS BY REFERENCE .....	6
SECTION 1.03. ACCOUNTING TERMS AND DETERMINATIONS.....	6
SECTION 1.04. COMPUTATION OF TIME PERIODS.....	6
SECTION 1.05. NEW YORK CITY TIME PRESUMPTION.....	6
SECTION 1.06. RELATION TO OTHER DOCUMENTS; INCORPORATION BY REFERENCE .....	6
SECTION 1.07. CONSTRUCTION .....	6
ARTICLE II PURCHASE OF BOND.....	7
SECTION 2.01. PURCHASE OF BOND .....	7
ARTICLE III THE CITY'S OBLIGATIONS.....	7
SECTION 3.01. REPAYMENT OBLIGATIONS .....	7
SECTION 3.02. DEFAULT INTEREST .....	7
SECTION 3.03. AMENDMENT FEE.....	7
SECTION 3.04. COMPUTATION OF INTEREST AND FEES .....	7
SECTION 3.05. METHOD AND APPLICATION OF PAYMENTS.....	7
SECTION 3.06. CUSIP, CREDIT RATING AND BOOK ENTRY BOND.....	7
ARTICLE IV [RESERVED].....	8
ARTICLE V REPRESENTATION AND WARRANTIES .....	8
SECTION 5.01. FINANCIAL CONDITION .....	8
SECTION 5.02. NO CHANGE .....	8
SECTION 5.03. ORGANIZATION; COMPLIANCE WITH LAW .....	8
SECTION 5.04. AUTHORIZATION; ENFORCEABLE OBLIGATIONS .....	8
SECTION 5.05. NO LEGAL BAR .....	9
SECTION 5.06. NO MATERIAL LITIGATION .....	9
SECTION 5.07. NO DEFAULT .....	9
SECTION 5.08. SECURITY .....	9
SECTION 5.09. TAX EXEMPT STATUS .....	9

Table of Contents  
(continued)

	Page
<b>SECTION 5.10. FEDERAL RESERVE REGULATIONS</b> .....	9
<b>SECTION 5.11. ERISA MATTERS</b> .....	9
<b>SECTION 5.12. NO SOVEREIGN IMMUNITY</b> .....	9
<b>SECTION 5.13. FULL DISCLOSURE</b> .....	10
<b>SECTION 5.14. INCORPORATION BY REFERENCE</b> .....	10
<b>SECTION 5.15. NO PROPOSED LEGAL CHANGES</b> .....	10
<b>SECTION 5.16. ENVIRONMENTAL LAWS</b> .....	10
<b>SECTION 5.17. SOLVENCY</b> .....	10
<b>SECTION 5.18. NOT AN INVESTMENT COMPANY</b> .....	10
<b>SECTION 5.19. BOND</b> .....	10
<b>ARTICLE VI AFFIRMATIVE COVENANTS</b> .....	11
<b>SECTION 6.01. PERFORMANCE OF COVENANTS IN RESOLUTION</b> .....	11
<b>SECTION 6.02. FINANCIAL AND OTHER INFORMATION</b> .....	11
<b>SECTION 6.03. INSPECTION OF PROPERTY; DISCUSSIONS</b> .....	11
<b>SECTION 6.04. NOTICES</b> .....	11
<b>SECTION 6.05. AMENDMENT OF RELATED DOCUMENTS</b> .....	12
<b>SECTION 6.06. POWER TO FIX AND COLLECT RATES, FEES AND CHARGES</b> .....	13
<b>SECTION 6.07. SOVEREIGN IMMUNITY</b> .....	13
<b>SECTION 6.08. MOST FAVORED COVENANT</b> .....	13
<b>SECTION 6.09. COMPLIANCE WITH LAWS</b> .....	13
<b>SECTION 6.10. FURTHER ASSURANCES</b> .....	13
<b>SECTION 6.11. MAINTENANCE OF RATINGS</b> .....	13
<b>SECTION 6.12. DISCLOSURE TO PARTICIPANTS</b> .....	13
<b>SECTION 6.13. PROCEEDS OF BOND</b> .....	14
<b>SECTION 6.14. FILING OF AGREEMENT</b> .....	14
<b>ARTICLE VII EVENTS OF DEFAULT</b> .....	14
<b>SECTION 7.01. EVENTS OF DEFAULT</b> .....	14
<b>SECTION 7.02. CONSEQUENCES OF AN EVENT OF DEFAULT</b> .....	16
<b>SECTION 7.03. DEFAULT RATE</b> .....	17
<b>SECTION 7.04. NO WAIVER; REMEDIES</b> .....	17

Table of Contents  
(continued)

	Page
ARTICLE VIII NATURE OF OBLIGATIONS; INDEMNIFICATION .....	17
<b>SECTION 8.01. LIABILITY OF THE PURCHASER.....</b>	<b>17</b>
<b>SECTION 8.02. EXPENSES; INDEMNIFICATION .....</b>	<b>18</b>
<b>SECTION 8.03. SURVIVAL OF REPRESENTATIONS AND WARRANTIES.....</b>	<b>18</b>
ARTICLE IX MISCELLANEOUS .....	19
<b>SECTION 9.01. RIGHT OF SETOFF .....</b>	<b>19</b>
<b>SECTION 9.02. AMENDMENTS AND WAIVERS .....</b>	<b>19</b>
<b>SECTION 9.03. COUNTERPARTS .....</b>	<b>19</b>
<b>SECTION 9.04. NOTICES.....</b>	<b>19</b>
<b>SECTION 9.05. SEVERABILITY .....</b>	<b>21</b>
<b>SECTION 9.06. GOVERNING LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL.....</b>	<b>21</b>
<b>SECTION 9.07. SUCCESSORS AND ASSIGNS.....</b>	<b>22</b>
<b>SECTION 9.08. COMPLETE AND CONTROLLING AGREEMENT .....</b>	<b>23</b>
<b>SECTION 9.09. NO ADVISORY OR FIDUCIARY RESPONSIBILITY .....</b>	<b>23</b>
<b>SECTION 9.10. PAYMENT SET ASIDE .....</b>	<b>24</b>
<b>SECTION 9.11. CONTRACTUAL INTERPRETATION.....</b>	<b>24</b>
<b>SECTION 9.12. ELECTRONIC SIGNATURES.....</b>	<b>24</b>
<b>SECTION 9.13. USA PATRIOT ACT NOTIFICATION.....</b>	<b>25</b>

## CONTINUING COVENANT AGREEMENT

**THIS CONTINUING COVENANT AGREEMENT** is dated \_\_\_\_\_, 2022, by and between **THE CITY OF GAINESVILLE, FLORIDA** and **BANK OF AMERICA, N.A.** All capitalized terms used herein and not otherwise defined shall have the meanings assigned in Section 1.01 or as otherwise provided in Section 1.02.

### WITNESSETH:

WHEREAS, the City intends to issue its Bond pursuant to the terms of the Resolutions; and

WHEREAS, the Purchaser has agreed to purchase the Bond, and as a condition to such purchase, the Purchaser has required the City to enter into this Agreement; and

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, including the covenants, terms and conditions hereinafter contained, and to induce the Purchaser to purchase the Bond, the Purchaser and the City agree as follows:

### ARTICLE I

#### DEFINITIONS

**Section 1.01. Definitions.** In addition to terms defined at other places in this Agreement, the following defined terms are used throughout this Agreement with the following meanings:

"*Affiliate*" means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, by contract or otherwise. Without limitation, any director, executive officer or beneficial owner of 5% or more of the equity of a Person shall for the purposes of this Agreement, be deemed to control the other Person.

"*Agreement*" means this Continuing Covenant Agreement.

"*Bank Transferee*" shall have the meaning assigned to such term in Section 9.07(c).

"*Bankruptcy Code*" means Title 11 of the United States Code, as amended from time to time, or any successor statute thereto.

"*Bond*" means the City's Utility System Revenue Bond, 2022 Series B.

"*Bond Proceeds*" means the principal of the Bond and any investment earnings thereon.

"*Bond Resolution*" means 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 by the Thirtieth Supplemental Utilities System Revenue Bond Resolution No. 180747 adopted by the City on February 21, 2019, as amended from time to time in accordance with the terms thereof and hereof.

"*Business Day*" shall have the meaning assigned to such term in the Supplemental Resolution.

"*City*" means the City of Gainesville, Florida, and its successors and assigns permitted hereunder.

"*Closing Date*" means \_\_\_\_\_, 2022.

"*Contractual Obligation*" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or undertaking to which such Person is a party or by which it or any of its property is bound.

"*Debt*" means, with respect to any Person, all at a particular time, (a) indebtedness for borrowed money or for the deferred purchase price of property or services in respect of which such Person is liable, contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which such Person otherwise assures a creditor against loss, (b) obligations under leases which shall have been or should be, in accordance with GAAP, recorded as capital leases in respect of which obligations such Person is liable, contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person assures a creditor against loss, (c) all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person or otherwise to assure a creditor against loss, (d) obligations secured by any Lien on property, whether or not the obligations have been assumed, and (e) all other items or obligations which would be included in determining total liabilities on the balance sheet of a Person in accordance with GAAP; provided, however, that "Debt" shall not include trade payables and similar obligations incurred in the ordinary course of business or any non-capitalized lease obligations regardless of its treatment for accounting purposes.

"*Default*" means the occurrence of any event which, with the giving of notice or the passage of time, or both, would (unless waived by the Purchaser or cured to the reasonable satisfaction of the Purchaser) constitute an Event of Default.

"*Default Rate*" shall have the meaning assigned in the Supplemental Resolution.

"*EMMA*" means the Municipal Securities Rulemaking Board's Electronic Municipal Access System or any service or services established by the Municipal Securities Rulemaking Board (or any of its successors) as a successor to the Electronic Municipal Access System.

"*Environmental Law(s)*" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, or rules, and all judgments, orders, decrees, permits, concessions, grants, franchises, licenses, permits, agreements or governmental restrictions relating to air, water or land pollution, wetlands, or the protection of the environment or the release of any materials into the environment, including air, water or land, and those related to Hazardous Materials, air emissions and discharges to waste or public systems.

"*Environmental Liability*" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the System directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

"*Event of Default*," in relation to this Agreement, shall have the meaning assigned to such term in Section 7.01, and in relation to any Related Document, shall have the meaning set forth therein.

"*Fiscal Year*" shall have the meaning assigned to such term in the Bond Resolution.

"*GAAP*" shall have the meaning assigned in Section 1.03.

"*Governmental Authority*" means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"*Hazardous Materials*" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"*Investment Grade*" means, with respect to a rating by Moody's, a rating of "Baa3" (or its equivalent) or better, with respect to a rating by S&P, a rating of "BBB-" (or its equivalent) or better, and, with respect to a rating by Fitch, a rating of "BBB-" (or its equivalent) or better.

"*Investor Letter*" shall have the meaning assigned to such term in Section 9.07(d).

"*Law*" means any treaty or any federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other Governmental Authority.

"*Lien*" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, the City shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"*Majority Bondholder*" means the Owners owning a majority of the aggregate principal amount of the Bond from time to time Outstanding. As of the Closing Date, the Purchaser shall be the Majority Bondholder.

"*Margin Stock*" shall have the meaning assigned to such term in Regulation U promulgated by the Board of Governors of the Federal Reserve System, as now and hereafter from time to time in effect.

"*Maximum Rate*" shall have the meaning assigned to such term in the Supplemental Resolution.

"*Non-Bank Transferee*" shall have the meaning assigned to such term in Section 9.07(d).

"*Obligor Rating*" means the long-term debt rating assigned by any Rating Agency to any Parity Debt that is not guaranteed by any other Person or subject to any third-party credit enhancement.

"*Other Agreement*" means any resolution, ordinance, continuing covenant agreement, or other agreement or instrument (including any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person undertakes to provide funds to purchase Parity Debt. For the avoidance of doubt, Other Agreement shall not include interest rate hedge agreements or standby bond purchase agreements, reimbursement agreements or other liquidity or credit facilities that provides liquidity or credit support to publicly traded variable rate Debt of the City.

"*Outstanding*" shall have the meaning assigned to such term in the Bond Resolution.

"*Owner*" means the registered owner of a Bond or, if the Bond is held in book entry form, the beneficial owner of such Bond.

"*Parity Debt*" means (i) all indebtedness of the City evidenced by bonds (excluding the Bond), debentures, notes, securities or other similar instruments now or hereafter outstanding, provided that such indebtedness is secured by a Lien on the Trust Estate that is on a parity with the Bond as to security and source of payment, including, without limitation, Bonds, Parity Commercial Paper Notes and Parity Medium-Term Notes; (ii) Parity Hedging Contract Obligations, but only with respect to Parity Hedging Contract Obligations that provide interest rate support and constitute regularly scheduled payments that relate to Parity Debt as described in clause (i) or clause (iii) of this definition of "Parity Debt"; and (iii) Parity Reimbursement Obligations.

"*Participant(s)*" means any bank(s) or other financial institution(s) which may purchase a participation interest from the Purchaser in this Agreement and certain of the Related Documents pursuant to a participation agreement between the Purchaser and the Participant(s).

"*Person*" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"*Property*" means, when used in connection with any Person, any and all rights, title and interests of such Person in and to any and all property (including cash) whether real, personal or mixed, or tangible or intangible, and wherever situated.

"*Purchase Price*" means, as of any date of determination, one hundred percent (100%) of the principal amount of the Bond which is Outstanding, plus accrued and unpaid interest thereon to the date of purchase.

"*Purchaser*" means, initially, Bank of America, N.A., and its successors and assigns, and upon the receipt from time to time by the Trustee and the City of a notice described in Section 9.07(b) means the Person designated in such notice as the Purchaser, as more fully provided in Section 9.07(b).

"*Qualified Institutional Buyer*" shall have the meaning assigned to such term in Rule 144A promulgated under the Securities Act.

"*Rating*" means the long-term credit rating assigned by one or more Rating Agencies to any unenhanced Parity Debt or any of such ratings individually.

"*Rating Agency*" means Moody's, S&P or Fitch, as applicable.

"*Related Documents*" means, collectively, the Resolutions, the Bond, this Agreement and any exhibits, schedules, instruments or agreements attached thereto.

"*Resolutions*" means, collectively, the Bond Resolution and the Supplemental Resolution.

"*Requirements of Law*" means as to any Person, the certificate of incorporation and by-laws of or other organizational or governing documents of such Person, and any law (including, in the case of the City, the Act), treaty, rule or regulation, or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"*Securities Act*" means the Securities Act of 1933, as amended from time to time, or any successor statute thereto.

"*State*" means the State of Florida.

"*Supplemental Resolution*" means the Thirty-Sixth Supplemental Utilities System Revenue Bond Resolution No. \_\_\_\_\_ adopted by the City on \_\_\_\_\_, 2022.

"*System*" shall have the meaning assigned to such term in the Bond Resolution.

"*Transferee*" means each Bank Transferee or Non-Bank Transferee pursuant to Section 9.07 for so long as such Bank Transferee or Non-Bank Transferee is an Owner.

"*Trust Estate*" shall have the meaning assigned to such term in the Bond Resolution.

"*Trustee*" means U.S. Bank National Association, or any successor trustee which may at any time be substituted in its place as provided in the Bond Resolution.

"*written*" or "*in writing*" means any form of written communication or a communication by means of a facsimile device or electronic mail.

**Section 1.02. Incorporation of Certain Definitions by Reference.** Each capitalized term used herein and not otherwise defined herein shall have the meaning provided therefor in the Resolution, as applicable, unless the context otherwise requires.

**Section 1.03. Accounting Terms and Determinations.** Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with generally accepted accounting principles as in effect from time to time ("GAAP").

**Section 1.04. Computation of Time Periods.** In this Agreement, in the computation of a period of time from a specified date to a later specified date, unless otherwise specified herein, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding" and the word "through" means "to and including."

**Section 1.05. New York City Time Presumption.** All references herein to times of the day shall be presumed to refer to New York City time unless otherwise specified.

**Section 1.06. Relation to Other Documents; Incorporation by Reference.**

(a) Nothing in this Agreement shall be deemed to amend, or relieve the City of any of its obligations under, any Related Document to which it is a party. Conversely, to the extent that the provisions of any Related Document allow the City to take or not take certain actions, the City nevertheless shall be fully bound by the provisions of this Agreement.

(b) All references to this Agreement or any other documents, including, without limitation, the Related Documents, shall be deemed to include all amendments, restatements, modifications and supplements thereto to the extent such amendment, restatement, modification or supplement is made in accordance with the provisions of such document and this Agreement.

**Section 1.07. Construction.** Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, to the singular include the plural and to the part include the whole. The word "including" shall be deemed to mean "including but not limited to," and "or" has the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The Section headings contained in this Agreement and the table of contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Article, section, subsection, exhibit, schedule and annex references are to this Agreement unless otherwise specified.

## ARTICLE II

### PURCHASE OF BOND

**Section 2.01. Purchase of Bond.** The conditions precedent to the obligation of the Purchaser to purchase the Bond are set forth in the Supplemental Resolution.

## ARTICLE III

### THE CITY'S OBLIGATIONS

**Section 3.01. Repayment Obligations.** The City hereby unconditionally, irrevocably and absolutely agrees to make prompt and full payment of all amounts due and owing to the Purchaser hereunder and under the Bond and the other Related Documents.

**Section 3.02. Default Interest.** All amounts payable by the City to the Purchaser under the Related Documents shall bear interest at the Default Rate from the earlier of the date amounts are due and not paid, but only for so long as such amounts due remain unpaid. Interest accruing hereunder at the Default Rate, other than interest on the Bond, shall be payable to the Purchaser on demand. The obligations of the City under this Section shall survive the termination of this Agreement and the payment in full of the Bond subject to the limitations of Section 8.03.

**Section 3.03. Amendment Fee.** In connection with each amendment of this Agreement or any Related Document, or consent or waiver by the Purchaser under this Agreement or any Related Document, in each case, the City shall pay, within thirty (30) days after demand, a fee in a minimum amount of \$2,500.

**Section 3.04. Computation of Interest and Fees.** Fees and other amounts payable hereunder shall be calculated on the basis of a year of 360 days and the actual number of days elapsed. Interest hereunder shall accrue during each period for which interest is computed from and including the first day thereof to but excluding the last day thereof.

**Section 3.05. Method and Application of Payments.** All payments by or on behalf of the City to the Purchaser hereunder shall be fully earned when due and nonrefundable when paid and made in lawful currency of the United States of America and in immediately available funds. Amounts payable to the Purchaser hereunder shall be paid by wire transfer in accordance with written instructions provided to the City by the Purchaser, or in such other manner as may be agreed upon by the City and the Purchaser. Any payment received by the Purchaser after 3:30 p.m. on the date payment is due shall be deemed to have been received by the Purchaser on the next Business Day. If any payment hereunder is due on a day that is not a Business Day, then such payment shall be due on the next succeeding Business Day, and, in the case of the computation of the interest or fees hereunder, such extension of time shall, in such case, be excluded in the computation of the payment due hereunder. Payments received by the Purchaser shall be applied, first, to any fees, costs, charges or expenses payable by the City under this Agreement; second, to past due interest; third, to current interest; and, fourth, to principal.

**Section 3.06. CUSIP, Credit Rating and Book Entry Bond.** The City hereby agrees not to apply for a CUSIP number for the Bond, obtain a credit rating for the Bond, or cause the Bond

to become a “Book Entry Bond” as defined in the Master Resolution without the prior written consent of the Purchaser.

#### ARTICLE IV

[RESERVED]

#### ARTICLE V

### REPRESENTATION AND WARRANTIES

The City represents and warrants as follows, as of the date of execution and delivery of this Agreement:

**Section 5.01. Financial Condition.** The balance sheet of Gainesville Regional Utilities at [September 30, 2021], and the related statements of revenues, expenses and changes in net assets and cash flows for the year then ended, reported on by the auditor of the City, heretofore delivered to the Purchaser, are complete and correct and present fairly the financial condition of Gainesville Regional Utilities as of such date, and the results of its operations and changes in financial position for the year then ended. All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by such accountants and as disclosed therein).

**Section 5.02. No Change.** Since [September 30, 2021], except as disclosed by the City in writing to the Purchaser, there has been no material change in the business, operations, properties or financial or other condition of the System which would adversely affect the ability of the City to perform its obligations under the Related Documents.

**Section 5.03. Organization; Compliance with Law.** The City (a) is a municipal corporation duly organized and validly existing under the laws of the State of Florida, (b) has all requisite power and authority and the legal right to own and operate its property and to conduct its business, including without limitation, the System, and (c) is in compliance with all Requirements of Law, except to the extent that the failure to comply therewith would not, in the aggregate, have a material adverse effect on the business, operations, properties or financial or other condition of the System, and would not materially adversely affect the ability of the City to perform its obligations under Related Documents.

**Section 5.04. Authorization; Enforceable Obligations.** The City has all requisite power and authority and the legal right to adopt the Resolutions and to make, deliver and perform this Agreement, the Bond and the other Related Documents, and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, the Bond and the other Related Documents. No consent or authorization of, filing with, or other act by or in respect of any Governmental Authority is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement, the Bond or the other Related Documents, except such consents, authorizations, filings or other acts as have been obtained, made or given. This Agreement, the Bond and the other Related Documents (other than the Resolutions) have been duly authorized, executed and delivered on behalf of the City. The Resolutions have been duly

adopted by the City and are in full force and effect. This Agreement, the Bond and the other Related Documents constitute legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms, subject to the effect of, and restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws affecting creditors' rights and judicial discretion and the valid exercise of the sovereign police powers of the State of Florida and of the constitutional power of the United States of America.

**Section 5.05. No Legal Bar.** The execution, delivery and performance of this Agreement, the Bond and the other Related Documents will not violate any Requirements of Law or any Contractual Obligation of the City.

**Section 5.06. No Material Litigation.** Except as disclosed in writing by the City to the Purchaser, no litigation or proceeding or, to the knowledge of the City, investigation of or before any arbitrator or Governmental Authority is pending (a) with respect to this Agreement, the Bond or any other Related Document or any of the transactions contemplated thereby or hereby, or (b) which would have a material adverse effect on the business, operations, properties or financial or other condition of the System or the ability of the City to perform its obligations under this Agreement, the Bond or any other Related Document or in respect of any other Debt incurred to finance or otherwise in respect of the System or secured by Revenues or other assets of the System.

**Section 5.07. No Default.** The City is not in default under or with respect to this Agreement, the Bond or the other Related Documents, or with respect to any Contractual Obligation in any respect which would be materially adverse to the business, operations, properties or financial or other condition of the System or which would materially and adversely affect the ability of the City to perform its obligations under this Agreement, the Bond or the other Related Documents or in respect of any other Debt incurred to finance or otherwise in respect of the System or secured by any Revenues or other assets of the System. No Event of Default has occurred and is continuing.

**Section 5.08. Security.** The Bond is secured ratably with all other Utilities System Revenue Bonds heretofore or hereafter issued by a Lien on and pledge of the Trust Estate.

**Section 5.09. Tax Exempt Status.** No part of the proceeds of the Bond or other funds of the City shall at any time be used in a manner that would cause the Bond to be treated as an "arbitrage bond" within the meaning of Section 148 (or any successor Section thereto) of the Code.

**Section 5.10. Federal Reserve Regulations.** No part of the proceeds of the Bond has been, or will be, used for the purpose, whether immediate, incidental or ultimate, to purchase or carry any Margin Stock or for any other purpose which would violate any of the regulations of the Board of Governors of the Federal Reserve System.

**Section 5.11. ERISA Matters.** The City does not maintain any employee benefit plan that is subject to Title I or Title IV of ERISA.

**Section 5.12. No Sovereign Immunity.** The defense of sovereign immunity is not available to the City in any proceedings by the Purchaser to enforce any of the obligations of the City under this Agreement, the Bond or any of the other Related Documents, except to the extent

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

**Section 5.13. Full Disclosure.** To the best of the City's knowledge, all information heretofore furnished (including pursuant to any representation or warranty) by the City to the Purchaser for purposes of or in connection with this Agreement was true and accurate in all material respects on the date as of which such information was stated or certified.

**Section 5.14. Incorporation by Reference.** The representations and warranties made by the City in any Related Document are hereby incorporated by reference and made for the benefit of the Purchaser.

**Section 5.15. No Proposed Legal Changes.** Except as provided for by Section 716 of the Bond Resolution and as otherwise disclosed in writing to the Purchaser, there is no amendment or proposed amendment certified for placement on a ballot or referendum or, to the knowledge of the City, to the Constitution of the State of Florida or to any law, ordinance, or regulation of the State of Florida applicable to the System, or any legislation that has passed either house of the legislature of the State of Florida, or any published judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a material adverse effect upon (a) the ability of the City to perform its obligations under this Agreement, the Bond or any other Related Document in any material respect or any other material contract related to the System to which any one or more of them is a party; (b) the legality, validity or enforceability of this Agreement, the Bond or any other Related Document; or (c) the priority of the Liens granted under the Resolutions or the rights and remedies of the Purchaser under this Agreement, the Bond or any other Related Document.

**Section 5.16. Environmental Laws.** The System and any of the property of the City that constitutes a part of the System is in material compliance with all applicable Environmental Laws and has not become subject to any Environmental Liability, nor does the City know of any basis for such Environmental Liability.

**Section 5.17. Solvency.** The City is generally paying its debts as they come due and, after giving effect to the obligations contemplated by this Agreement and the other Related Documents, the Net Revenues of the System for the current and each future Fiscal Year are expected to exceed the amount required to satisfy the debts of the City related to the System (including contingent, subordinated, unmatured and unliquidated liabilities) as they become due in each such Fiscal Year.

**Section 5.18. Not an Investment Company.** The City is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended

**Section 5.19. Bond.** The Bond has been or will be duly and validly issued under the Resolutions and is entitled to the benefits thereof.

## ARTICLE VI

### AFFIRMATIVE COVENANTS

The City covenants and agrees that it will comply with the following affirmative covenants until the date on which no amount is due or owing to the Purchaser under this Agreement, the Bond or any other Related Document, unless the Purchaser shall otherwise consent in writing:

**Section 6.01. Performance of Covenants in Resolution.** The City shall perform each of its covenants set forth in Article V and in Article VII of the Bond Resolution and in the Supplemental Resolution (as the same may be amended from time to time after the date of this Agreement) at the time such performance is required thereby (and giving effect to any applicable grace periods set forth therein).

**Section 6.02. Financial and Other Information.** The City shall furnish to the Purchaser:

(a) within two hundred seventy (270) days after the close of each Fiscal Year of the City, a balance sheet of Gainesville Regional Utilities as of the end of such year, and the related statements of revenues, expenses and changes in net assets and cash flows for the year then ended, accompanied by an unmodified audit report of an independent certified public accounting firm of recognized standing stating that they have been prepared in accordance with GAAP consistently applied;

(b) within sixty (60) days after its adoption, the current annual budget for the System including each amendment to the annual budget;

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

**Section 6.03. Inspection of Property; Discussions.** The City shall permit representatives of the Purchaser to visit and inspect any of the properties of the System and examine and make abstracts from any of its books and records (except to the extent such books and records are subject to legal privilege) at any reasonable time and as often as may reasonably be desired, and to discuss the business, operations, properties and financial and other condition of the System with officers and employees of the System and with its independent certified public accountants.

**Section 6.04. Notices.** The City shall promptly give notice to the Purchaser upon an officer of the City obtaining knowledge:

(a) of the occurrence of any Default or Event of Default and, if such Default or Event of Default is then continuing, a certificate of an Authorized Officer setting forth the details thereof and the actions which the City is taking or proposes to take with respect thereto;

(b) of any litigation or proceeding affecting the System in which the amount involved is \$20,000,000 or more and not covered by insurance or in which injunctive or similar relief is sought (for purposes of this clause (b), an obligation shall be considered "covered by insurance" to the extent the City has self-insured against such obligation or

risk and has maintained adequate reserves therefor under appropriate insurance industry standards);

(c) of any change in the Obligor Ratings;

(d) of the execution and delivery or adoption, as applicable, thereof, of any amendments of or supplements to any of the Related Documents other than the Resolution, together with copies thereof (but exclusive of those amendments or supplements for which the Purchaser's consent is otherwise required pursuant to the terms of this Agreement);

(e) of all legislation enacted by the legislature of the State of Florida of which an Authorized Officer of the City has knowledge, signed into law by the Governor and which, in the judgment of such Authorized Officer, could reasonably be expected to have a material adverse effect on the business, operations, properties or financial or other condition of the System or on the ability of the City to perform its obligations under this Agreement or any other Related Document;

(f) of any final official statement, offering circular, placement memorandum or similar or corresponding document, and any supplements thereto and updates and amendments thereof, that the City makes available in connection with the offering for sale or remarketing of any Parity Debt, to the extent not filed with the Municipal Securities Rulemaking Board (or any successor agency) through EMMA; and

(g) of such financial and other information as the Purchaser may from time to time reasonably request.

Each notice pursuant to Section 6.04(b) shall be accompanied by a statement of an Authorized Officer of the City setting forth details of the occurrence referred to therein and stating what actions, if any, the City proposes to take with respect thereto.

As and to the extent the information required by this Section 6.04 has been properly and timely filed with the Municipal Securities Rulemaking Board (or any successor agency) through EMMA, the City will be deemed to have complied with the provisions of this Section.

**Section 6.05. Amendment of Related Documents.** The City shall not modify, amend or supplement either Resolution without the prior written consent of the Purchaser; provided, however, that no such consent shall be required in connection with any amendment to the Bond Resolution, other than the Supplemental Resolution, permitted under the provisions of Section 1001 or 1002 of the Bond Resolution. The City shall not modify, amend or supplement or agree to modify, amend or supplement, any other Related Document in any respect which is adverse to the interests of the Purchaser or is inconsistent with this Agreement without the prior written consent of the Purchaser. The City shall promptly furnish to the Purchaser copies, certified by the Clerk as being in full force and effect, of any modification of, amendment of or supplement to either of the Resolutions as in effect on the Closing Date; provided, however, that the City shall not be required to furnish any such modification, amendment or supplement permitted under the provisions of Section 1001 or 1002 of the Bond Resolution.

**Section 6.06. Power to Fix and Collect Rates, Fees and Charges.** The City has, and except due to a change in law, will have as long as the Bond is outstanding or other amounts are owing to the Purchaser hereunder, the City, subject in all respects to Section 716 of the Bond Resolution, shall have good right and lawful power to establish and collect rates, fees and charges with respect to the use and the sale of the capacity, output or service of the System subject to the terms of contracts relating thereto and subject to the jurisdiction of any applicable regulatory authority.

**Section 6.07. Sovereign Immunity.** To the extent authorized by applicable law, the City agrees to waive sovereign immunity from suit and liability for the purposes of adjudicating a claim to enforce its duties and obligations under this Agreement, the Bond and Resolution or for damages for a breach of any of the foregoing, except to the extent that any such proceeding seeks enforcement based on tort or similar claim and in such case such defense is available only to the extent set forth under Florida Statutes, Section 768.28 or other similarly applicable provision of law.

**Section 6.08. Most Favored Covenant.** In the event that the City shall, directly or indirectly, enter into or otherwise consent to any contract, or any amendment, supplement or modification thereto, under which, directly or indirectly, any Person or Persons undertakes to make or provide credit or loans to the City or under which the City issues or incurs or could issue or incur Debt, in either such case, which is on a parity with the Bond, which contract (or amendment, supplement or modification) provides such Person or Persons with additional or more restrictive financial covenants than are provided to the Purchaser in this Agreement (any such contract, or amendment, supplement or modification thereto, a "Favored Covenant Agreement"), the City shall provide the Purchaser with a copy of each such Favored Covenant Agreement within five (5) Business Days of the effective date of any such Favored Covenant Agreement. Upon the request of the Purchaser, the City shall promptly enter into an amendment to this Agreement to incorporate herein and make a part hereof such additional or more restrictive financial covenants for so long as such provisions remain in effect in the related Favored Covenant Agreement.

**Section 6.09. Compliance with Laws.** The City will comply in all material respects, within the time period, if any, given for such compliance by the relevant Governmental Authority, with all applicable laws, ordinances, rules and requirements of Governmental Authorities (including, without limitation, Environmental Laws), except where the necessity of compliance therewith is contested in good faith by appropriate proceedings.

**Section 6.10. Further Assurances.** The City shall, upon the request of the Purchaser, from time to time, execute and deliver such further documents and take such further action as may be reasonably necessary to effect the provisions of this Agreement and the Related Documents.

**Section 6.11. Maintenance of Ratings.** The City shall at all times maintain Obligor Ratings from at least one Rating Agency.

**Section 6.12. Disclosure to Participants.** The City agrees to permit the Purchaser to disclose any information received by the Purchaser in connection herewith, including without limitation the financial information described in Section 6.02, to any assignees or Participants of the Purchaser without notice to or further consent from the City.

**Section 6.13. Proceeds of Bond.** The Bond Proceeds will be used solely for the purposes described in the Supplemental Resolution.

**Section 6.14. Filing of Agreement.** In the event the City delivers or permits, authorizes or consents to the delivery of this Agreement to any Person for delivery to the Municipal Securities Rulemaking Board, prior to such delivery the City agrees, to the extent permitted by law, that it shall redact all signatures, contact information, account information and other personal information contained herein.

## ARTICLE VII

### EVENTS OF DEFAULT

**Section 7.01. Events of Default.** The occurrence of any of the following events (including the expiration of any specified time) shall constitute an "Event of Default," unless waived by the Purchaser in writing:

(a) **Payments.** (i) The City shall fail to pay, or cause to be paid, when due (A) any payment of the principal of, Prepayment Fee as may be due, or interest on the Bond, or (ii) the City shall fail to pay, or cause to be paid, within ten (10) days after the same shall become due, any other amount owed by the City to the Purchaser pursuant to this Agreement or any of the Related Documents.

(b) **Covenants.** The City shall fail to perform or observe any covenant set forth in Sections 6.05, 6.06, 6.07 or 6.11 and such default shall remain unremedied for a period of ten (10) days after the Purchaser shall have given written notice thereof to the City.

(c) **Other Covenants.** The City shall fail to perform any term, covenant, condition or provision of this Agreement or any of the Related Documents (other than as specified in any other subsection of this Section), which failure continues unremedied for forty five (45) days after the Purchaser shall have given written notice thereof to the City.

(d) **Representations.** Any representation, warranty, certification or statement made by the City (or incorporated by reference) in this Agreement or any other Related Document or in any certificate, financial statement or other document delivered pursuant to this Agreement or any other Related Document shall prove to have been incorrect in any material respect when made (or deemed made).

(e) **Parity Debt Payment Default.** The City shall fail to make any payment in respect of principal or interest on any Parity Debt when due (i.e., whether upon said Parity Debt's scheduled maturity, required prepayment, upon demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Parity Debt, or pursuant to the provisions of any resolution, indenture or instrument pursuant to which Parity Debt has been issued, the maturity of such Parity Debt shall as a result of the occurrence of a default in payment under such resolution, indenture or instrument, be accelerated or required to be prepaid prior to the stated maturity thereof.

(f) **Other Obligations.** (A) An "event of default" as defined in Section 801 of the Bond Resolution shall occur and is not cured within the applicable grace period, (B) any "event of default" on the part of the City under any of the Related Documents (excluding the Bond Resolution and the Supplemental Resolution) shall occur and is not cured within any applicable cure period, (C) the City shall fail to pay any Debt of the City for borrowed money related to the System, or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), of at least \$20,000,000 in principal amount then outstanding and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt, or (D) the City shall fail to perform or observe any term, covenant or condition on its part to be performed or observed under any Contractual Obligation related to the System when required to be performed or observed, and such failure shall not be waived and shall continue after the applicable grace period, if any, specified in such Contractual Obligation, if the effect of such failure to perform or observe is to accelerate, or permit the acceleration of, with the giving of notice if required, the maturity of the related Debt; or any such Debt shall be declared to be due and payable or be required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof.

(g) **Validity.** (i) Any provision of the Act, this Agreement, the Resolution or the Bond relating to (A) the ability or the obligation of the City to pay, when due, the principal of or interest on the Bond or (B) the Trust Estate securing the Bond shall at any time, be declared to be null and void, invalid or unenforceable as the result of a final nonappealable judgment by any federal or state court or as a result of any legislative or administrative action by any Governmental Authority having jurisdiction over the City or (ii) (A) any Governmental Authority with jurisdiction to rule on the validity or enforceability of this Agreement, the Bond, the Act, any Parity Debt or the Resolutions shall find or rule, in a judicial or administrative proceeding, that any provision of this Agreement, the Bond, the Act, the Resolutions or any Parity Debt, as the case may be, relating to (1) the ability or the obligation of the City to pay, when due, the principal of or interest on the Bond or any Parity Debt or (2) the Trust Estate securing the Bond and Parity Debt is not valid or not binding on, or enforceable against, the City; or (B) an authorized representative for the City (1) makes a claim in a judicial or administrative proceeding that the City has no further liability or obligation hereunder, under the Bond, the Act, the Resolutions or any Parity Debt to pay, when due, the principal of or interest on the Bond or any Parity Debt or (2) contests in a judicial or administrative proceeding the validity or enforceability of any provision of this Agreement, the Bond, the Act, the Resolutions or any Parity Debt relating to or otherwise affecting (x) the City's ability or obligation to pay, when due, the principal of or interest on the Bond or any Parity Debt or (y) the Trust Estate securing the Bond and Parity Debt.

(h) **Judgments.** A final, unappealable judgment or judgments for a claim not limited by or precluded by sovereign immunity under Section 768.28, Florida Statutes or other similarly applicable law, rendered by a court of competent jurisdiction that is enforceable against the City for the payment of money in excess of \$20,000,000 in the aggregate shall be payable from the funds and other property comprising the Trust Estate securing the Bond and not be covered by insurance, the operation or result of which judgment or judgments shall remain unpaid, unstayed, undischarged, unbonded or

undismissed for a period of sixty (60) days; an obligation shall be considered "covered by insurance" to the extent the City has self-insured against such obligation or risk and has maintained adequate reserves therefor under appropriate insurance industry standards.

(i) **Insolvency.** (A) The City shall (1) commence any case, proceeding or other action (x) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition, declaration of a payment moratorium or other relief with respect to it or its debts or (y) seeking the appointment of a receiver, trustee, custodian or similar official for it or for all or any substantial part of its assets, or (2) make a general assignment for the benefit of its creditors; (B) there shall be commenced against the City any case, proceeding or other action of a nature referred to in clause (A) above which (x) results in an order for such relief or in the appointment of a receiver or similar official or (y) remains undismissed, undischarged or unbonded for a period of sixty (60) days; (C) there shall be commenced against the City any case, proceeding or other action seeking the issuance of a warrant of attachment, execution, restraint or similar process against all or any substantial part of the assets of the System or the Net Revenues of the System, which results in the entry of a final and non-appealable order or ruling for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; (D) the City shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (A), (B) or (C) above; or (E) the City shall (1) admit in writing its inability to pay its debts as such debts become due or (2) become insolvent within the meaning of the United States Bankruptcy Code.

(j) **Debt Moratorium or Restructuring.** (A) The City shall impose a debt moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction on the repayment when due and payable of the principal of or interest on the Bond or any Parity Debt, or (B) any Governmental Authority having appropriate jurisdiction over the City shall enact or adopt legislation which results in a debt moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction on the repayment when due and payable of the principal of or interest on the Bond or all Parity Debt.

(k) **Downgrade.** Any Obligor Rating is withdrawn or suspended by the applicable Rating Agency for credit related reasons or below Investment Grade.

**Section 7.02. Consequences of an Event of Default.** If an Event of Default specified in Section 7.01 shall occur, then in addition to any other rights or remedies available to the Trustee or the Purchaser under any of the Related Documents or under applicable Law, the Purchaser may exercise any one or more of the following rights and remedies:

(a) cure any Default, Event of Default or event of nonperformance under this Agreement or the Related Documents; provided, however, that the Purchaser shall have no obligation to effect such a cure; or

(b) exercise, or cause to be exercised, any and all remedies as it may have under this Agreement or the Related Documents (other than as provided in subsection (b) above) and as otherwise available at law and at equity.

**Section 7.03. Default Rate.** During the continuance of any Event of Default, amounts owing from the City to the Purchaser hereunder shall bear interest at the Default Rate.

**Section 7.04. No Waiver; Remedies.** No failure on the part of the Purchaser to exercise, and subject to the limitation of Section 8.03, no delay in exercising, any right, power or privilege under this Agreement shall operate as a waiver of such right, power or privilege; nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or which the Purchaser would otherwise have. The rights and remedies of the Purchaser are for the sole and exclusive benefit, use and protection of the Purchaser, and the Purchaser is entitled, but shall have no duty or obligation to the City, the Trustee or any other Person or otherwise, (i) to exercise or to refrain from exercising any right or remedy reserved to the Purchaser hereunder or under any Related Document, or (ii) to cause the Trustee or any other Person to exercise or to refrain from exercising any right or remedy available to it under any of the Related Documents.

## ARTICLE VIII

### NATURE OF OBLIGATIONS; INDEMNIFICATION

**Section 8.01. Liability of the Purchaser.** (a) Except as otherwise provided in this Section 8.01, any action taken or omitted by the Purchaser under or in connection with this Agreement or any related certificates or other documents, if taken or omitted in good faith and without gross negligence, shall be binding upon the City and shall not put the Purchaser under any resulting liability to the City.

(b) Except as otherwise provided in this Section 8.01, neither the Purchaser nor any of its officers or directors shall be liable or responsible for (i) the use which may be made of the Bond Proceeds or for any acts or omissions of the Trustee, (ii) the general and particular conditions stipulated in this Agreement, (iii) the validity or genuineness of any documents presented under this Agreement (or any endorsement thereon), even if such documents should in fact prove to be in any or all respects forged, fraudulent, invalid, unenforceable or insufficient or any statement therein being inaccurate in any respect whatsoever, (iv) payment by the Purchaser under this Agreement against presentation of documents which do not comply with the terms of this Agreement, including failure of any documents to bear any reference or adequate reference to this Agreement, (v) the existence, form, sufficiency and breach of contracts of any nature whatsoever, including the Related Documents and this Agreement, (vi) the solvency, standing and responsibility of any Person whomsoever, (vii) any delay by any Person other than the Purchaser in giving or failure to give any notice, demand or protest, (viii) failure of any Person (other than the Purchaser) to comply with the terms of this Agreement, (ix) errors, omissions, delays in or non-delivery of any message, however sent, or (x) any other circumstance or happening

whatsoever, whether or not similar to any of the foregoing, in making or failing to make payment under this Agreement. Notwithstanding the foregoing, the Purchaser shall be liable to the City for the City's direct damages which result from or arise out of the events described in the next sentence, including any liability of the City as a result of claims by third parties, but the liability of the Purchaser shall not include consequential damages. The events giving rise to liability of the Purchaser pursuant to the preceding sentence shall be limited to (A) the Purchaser's gross negligence or willful misconduct in determining whether documents presented under this Agreement comply with the terms hereof or (B) the Purchaser's gross negligence or willful misconduct in failing to pay under this Agreement amounts owed by the Purchaser when due. Without in any way limiting the Purchaser's liability as provided by the foregoing, the Purchaser may accept documents under this Agreement that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

**Section 8.02. Expenses; Indemnification.** (a) The City shall pay all out of pocket expenses of the Purchaser, including fees and disbursements of counsel or other reasonably required consultant for the Purchaser, in connection with the preparation of this Agreement and the Related Documents, any waiver or consent hereunder or any amendment hereof or any Default or Event of Default or alleged Default or Event of Default hereunder.

(b) To the fullest extent permitted by applicable law, the City agrees to indemnify the Purchaser and hold the Purchaser harmless from and against any and all liabilities, losses, damages, costs and expenses of any kind including, without limitation, the reasonable fees and disbursements of counsel, which may be incurred by the Purchaser in connection with any investigative, administrative or judicial proceeding (whether or not the Purchaser shall be designated a party thereto) relating to or arising out of this Agreement or any Related Document; provided, however, that the Purchaser shall not have the right to be indemnified hereunder for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment.

(c) In the event the Purchaser shall commence, appear in or defend any action or proceeding which reasonably might be expected to directly affect its rights, duties or liabilities under this Agreement or any Related Document, the City will pay the Purchaser, upon demand by the Purchaser (i) all of the Purchaser's reasonable out of pocket costs and expenses and (ii) the reasonable legal fees and disbursements incurred by the Purchaser in those actions and proceedings (including, without limitation, the allocated costs and expenses of in house counsel). In no event and under no circumstances shall the City be required (x) to reimburse the Purchaser for any costs, expenses, fees or disbursements incurred by any Participant in connection with any such proceeding or action or (y) to reimburse any Participant for any costs, expenses, fees or disbursements incurred by any person in connection with any such proceeding or action.

**Section 8.03. Survival of Representations and Warranties.** All agreements, covenants, representations and warranties contained in this Agreement and in any certificates delivered pursuant hereto shall survive the execution and delivery of this Agreement, and the agreements contained in Sections 8.02 shall survive payment of any amounts payable hereunder and thereunder and with respect to the Bond and the termination of this Agreement; provided, however,

any request for payments under Sections 8.02 must be requested from the City in writing within 90 days from the later of the termination of this Agreement or the payment or purchase of the Bond held by the Purchaser in full.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.01. Right of Setoff.** The Purchaser hereby waives any rights of set-off for any amounts owed hereunder with respect to any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Purchaser to or for the credit or the account of the City.

**Section 9.02. Amendments and Waivers.** No amendment or waiver of any provision of this Agreement or consent to any departure by the City from any such provision shall in any event be effective unless the same shall be in writing and signed by the Purchaser. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. In the event any agreement contained in this Agreement should be breached by the City and thereafter waived by the Purchaser, such waiver shall be limited to the particular breach so waived for the specific period set out in such waiver and such waiver shall not constitute a waiver of such breach for any other period and shall not waive any other or similar breach hereunder.

**Section 9.03. Counterparts.** This Agreement may be signed in any number of counterpart copies (and by different parties on different counterparts), each of which shall constitute an original but all such copies shall constitute one and the same instrument.

**Section 9.04. Notices.** All notices, requests, demands, directions and other communications (collectively "notices") under the provisions of this Agreement shall be in writing (including facsimile communication), unless otherwise expressly permitted hereunder, and shall be properly addressed and sent by registered or certified mail or by express courier for next Business Day delivery and shall be deemed received as follows: (a) if by registered or certified mail, five (5) days after mailing; (b) if by express courier, on the next Business Day; and (c) if by facsimile, when confirmation of transmission is obtained if prior to 5:00 p.m. local time on a Business Day, and otherwise, on the next Business Day; provided that service of a notice prescribed by any applicable Law shall be considered complete when the requirements of such applicable Law are met. Notices by electronic mail (e mail) shall not constitute notice under this Agreement and are only to be used in addition to notice given as prescribed under subsections (a), (b) or (c) of this Section. All notices shall be sent to the applicable party at the following address or in accordance with the last unrevoked written direction from such party to the other party hereto and the Trustee:

if to the City, addressed to it at:

City of Gainesville, Florida  
301 S.E. Fourth Avenue  
Gainesville, FL 32601  
Attention: General Manager for Utilities  
Telephone: (352) 393-1007  
Facsimile: (352) 334-2277

or if to the Purchaser, addressed to it at:

Bank of America, N.A.  
601 Creighton Road  
Pensacola, FL 32504  
Attention: Joe R. Miller  
Telephone: (850) 934-5946  
Facsimile: (850) 454-1065  
E-mail: j.r.miller@bofa.com

with a copy to:

Bank of America, N.A.  
Suite 10110  
9128 Strada Place  
Naples, FL 34108  
Attention: Amy L. Roberts  
Telephone: (239) 598-8807  
E-mail: amy1.l.roberts@bofa.com

or if to the Trustee, addressed to it at:

U.S. Bank National Association  
225 Water Street, Suite 700  
EX-FL-WWSJ  
Jacksonville, Florida 32202  
Attention: Paul Henderson, Asst. Vice President  
Telephone: (404) 965-7218  
Email: paul.henderson@usbank.com

The Purchaser may in its sole discretion rely on any notice (including telephone communication or e mail communication) purportedly made by or on behalf of the City or the Trustee, but it shall have no duty to accept any notice not given as prescribed in this Section and shall have no duty to verify the identity or authority of the Person giving such notice, unless such actions or omissions would amount to gross negligence or intentional misconduct.

A party may, by delivery of notice in the manner provided herein, revise such party's notice address.

**Section 9.05. Severability.** Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

**Section 9.06. Governing Law; Consent To Jurisdiction; Waiver Of Jury Trial.**

(a) ***Governing Law.*** THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND TOGETHER WITH ANY DISPUTES OR CONTROVERSIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE AND APPLICABLE FEDERAL LAW, WITHOUT REGARD TO CHOICE OF LAW RULES.

(b) ***Consent to Jurisdiction.*** EACH PARTY HERETO CONSENTS TO AND SUBMITS TO IN PERSONAM JURISDICTION AND VENUE IN ALACHUA COUNTY, FLORIDA AND IN THE FEDERAL DISTRICT COURTS WHICH ARE LOCATED IN ALACHUA COUNTY, FLORIDA. EACH PARTY ASSERTS THAT IT HAS PURPOSEFULLY AVAILED ITSELF OF THE BENEFITS OF THE LAWS OF THE STATE AND WAIVES ANY OBJECTION TO IN PERSONAM JURISDICTION ON THE GROUNDS OF MINIMUM CONTACTS, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY PLEA OF FORUM NON CONVENIENS. THIS CONSENT TO AND SUBMISSION TO JURISDICTION IS WITH REGARD TO ANY ACTION RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE PARTY'S ACTIONS TOOK PLACE IN THE STATE OR ELSEWHERE IN THE UNITED STATES OF AMERICA, THIS SUBMISSION TO JURISDICTION IS NONEXCLUSIVE, AND DOES NOT PRECLUDE EITHER PARTY FROM OBTAINING JURISDICTION OVER THE OTHER IN ANY COURT OTHERWISE HAVING JURISDICTION.

(c) ***Waiver of Jury Trial.*** EACH PARTY HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT AND THE RELATED DOCUMENTS. IT IS HEREBY ACKNOWLEDGED THAT THE WAIVER OF A JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE PURCHASER TO PURCHASE THE BOND AND THAT THE EXECUTION AND DELIVERY OF THIS AGREEMENT BY THE CITY AND THE PURCHASER IS MADE IN RELIANCE UPON SUCH WAIVER. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT SUCH WAIVER HAS BEEN KNOWINGLY AND VOLUNTARILY MADE FOLLOWING CONSULTATION WITH ITS RESPECTIVE LEGAL COUNSEL.

(d) The covenants and waivers made pursuant to this Section shall be applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement.

Nothing in this Section shall affect the right of the Purchaser to serve legal process in any other manner permitted by Law.

## **Section 9.07. Successors and Assigns.**

(a) **Generally.** This Agreement is a continuing obligation and shall be binding upon the City, its successors, transferees and assigns and shall inure to the benefit of the Purchaser and each Transferee and their respective permitted successors, transferees and assigns. The City may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Purchaser. The Purchaser and each Transferee may, in its sole discretion and in accordance with Applicable Law, from time to time assign, sell or transfer in whole or in part, this Agreement, its interest in the Bond and the other Related Documents in accordance with the provisions of subsections (c) or (d) below. The Purchaser and each Transferee may at any time and from time to time pledge or assign a certain security interest in accordance with the provisions of subsection (e) below and enter into participation agreements in accordance with the provisions of subsection (f) below.

(b) **Designation of Purchaser.** Bank of America, N.A. shall be the Purchaser hereunder until such time as the Majority Bondholder designates an alternate Person to serve as the Purchaser hereunder by delivery of written notice to the City and the Trustee and such Person accepts and agrees to act as the Purchaser hereunder and under the Related Documents. The Majority Bondholder may so designate an alternate Person to act as the Purchaser from time to time. Upon acceptance and notification thereof to the City and the Trustee, the successor to the Purchaser for such purposes shall thereupon succeed to and become vested with all of the rights, powers, privileges and responsibilities of the Purchaser or any other Person being replaced as the Purchaser shall be discharged from its duties and obligations as the Purchaser hereunder.

(c) **Sales and Transfers to a Bank Transferee.** Without limitation of the foregoing generality, the Purchaser may at any time sell or otherwise transfer to one or more transferees all or a portion of the Bond to a Person that is (i) an Affiliate of the Purchaser or (ii) a trust or other custodial arrangement established by the Purchaser or an Affiliate of the Purchaser, the owners of any beneficial interest in which are limited to Qualified Institutional Buyers (each, a "Bank Transferee"). From and after the date of such sale or transfer, Bank of America, N.A. (and its successors) shall continue to have all of the rights of the Purchaser hereunder and under the Related Documents as if no such transfer or sale had occurred; provided, however, that (A) no such sale or transfer referred to in clause (i) or (ii) of this subsection shall in any way affect the obligations of the Purchaser hereunder, (B) the City and the Trustee shall be required to deal only with the Purchaser with respect to any matters under this Agreement and (C) in the case of a sale or transfer referred to in clause (i) or (ii) of this subsection, only the Purchaser shall be entitled to enforce the provisions of this Agreement against the City.

(d) **Sales and Transfers to a Non-Bank Transferee.**

(i) Without limitation of the foregoing generality, the Purchaser or any Owner may at any time sell or otherwise transfer to one or more transferees which are not Bank Transferees but each of which constitutes a Qualified Institutional Buyer (each a "Non-Bank Transferee") all or a portion of the Bond if (A) written

notice of such sale or transfer, including that such sale or transfer is to a Non-Bank Transferee, together with addresses and related information with respect to the Non-Bank Transferee, shall have been given to the City, the Trustee and the Purchaser (if the Purchaser is not the Owner) by such selling Owner and Non-Bank Transferee, and (B) the Non-Bank Transferee shall have delivered to the City, the Trustee and the selling Owner, an investment letter in substantially the form attached hereto as Exhibit A (the "Investor Letter").

(ii) From and after the date the City, the Trustee and the selling Owner have received written notice and an executed Investor Letter, (A) the Non-Bank Transferee thereunder shall be a party hereto and shall have the rights and obligations of an Owner hereunder and under the Related Documents, and any reference to the assigning Owner hereunder and under the Related Documents shall thereafter refer to such transferring Owner and to the Non-Bank Transferee to the extent of their respective interests, and (B) if the transferring Owner no longer owns the Bond, then it shall relinquish its rights and be released from its obligations hereunder and under the Related Documents.

(e) ***Certain Pledges.*** The Purchaser may at any time pledge or grant a security interest in all or any portion of its rights under this Agreement, the Bond and the other Related Documents to secure obligations of the Purchaser, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release the Purchaser from any of its obligations hereunder or substitute any such pledgee or assignee for the Purchaser as a party hereto.

(f) ***Participations.*** The Purchaser shall have the right to grant participations in all or a portion of the Purchaser's interest in this Agreement, the Bond and the other Related Documents to one or more other banking institutions, and such participants shall, except as set forth in the clause (ii) of this subsection, be entitled to the benefits of the this Agreement and the Related Documents to the same extent as if they were a direct party to this Agreement; provided, however, that (i) no such participation by any such Participant shall in any way affect the obligations of the Purchaser hereunder and (ii) the Trustee and the City shall be required to deal only with the Purchaser with respect to any matters under this Agreement and the Related Documents and no such Participant shall be entitled to enforce against the City any provision hereunder.

**Section 9.08. Complete and Controlling Agreement.** This Agreement and the Related Documents completely set forth the agreements between the Purchaser and the City and fully supersede all prior agreements, both written and oral, between the Purchaser and the City relating to all matters set forth herein and in the Related Documents.

**Section 9.09. No Advisory or Fiduciary Responsibility.** In connection with all aspects of the transactions contemplated by this Agreement and the Related Documents (including in connection with any amendment, waiver or other modification of this Agreement or of any Related Document), the City acknowledges that: (a)(i) any arranging, structuring and other services regarding this Agreement and the Related Documents provided by the Purchaser are arm's length commercial transactions between the City on the one hand, and the Purchaser on the other hand,

(ii) the City has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the City is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement and the Related Documents; (b)(i) the Purchaser is and has been acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent or fiduciary for the City or any other Person and (ii) the Purchaser does not have any obligation to the City with respect to the transactions contemplated by this Agreement and the Related Documents, except those obligations expressly set forth herein; and (c) the Purchaser may be engaged in a broad range of transactions that involve interests that differ from those of the City, and the Purchaser does not have any obligation to disclose any of such interests to the City.

**Section 9.10. Payment Set Aside.** To the extent that the Purchaser or any Owner receives any payment from or on behalf of the City which payment amount or any part thereof is subsequently invalidated, declared to constitute a fraudulent conveyance or preferential transfer, set aside, or required to be repaid (including pursuant to any settlement entered into by the Purchaser or any Owner in its discretion) to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause (collectively, "Set Aside"); then, to the extent of any such Set Aside, the obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment amount had not been received by the Purchaser or such Owner.

**Section 9.11. Contractual Interpretation.** The parties acknowledge that they have read and fully understand the terms of this Agreement, have consulted with such attorneys, accountants, advisors, or other professionals as they have deemed appropriate prior to executing this Agreement with adequate opportunity and time for review thereof, and are fully aware of its contents and of its legal effect. Accordingly, neither this Agreement nor any ambiguity herein shall be construed against any party on the grounds that such party drafted this Agreement and instead, this Agreement shall be interpreted as though drafted equally by all parties.

**Section 9.12. Electronic Signatures.** The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts", if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

**Section 9.13. USA Patriot Act Notification.** The Purchaser is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act") and hereby notifies the City that pursuant to the requirements of the Act, it is required to obtain, verify, and record information that identifies the City, which information includes the name and address of the City and other information that will allow the Purchaser to identify the City in accordance with the Act.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Continuing Covenant 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: \_\_\_\_\_  
Claudia Rasnick  
Utility Chief Financial Officer

APPROVED AS TO FORM AND  
LEGALITY

By: \_\_\_\_\_  
Daniel M. Nee  
Interim City Attorney

BANK OF AMERICA, N.A.

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

*[Signature Page to Continuing Covenant Agreement]*

**EXHIBIT A**  
**FORM OF INVESTOR LETTER**