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**RESOLUTION NO. 211098**

**CITY OF GAINESVILLE, FLORIDA**

**Variable Rate Subordinated Utilities System Revenue Bond,  
2022 Series A**

**and**

**Variable Rate Subordinated Utilities System Revenue Bond,  
2022 Series B (Federally Taxable)**

**Adopted \_\_\_\_\_, 2022**

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**RESOLUTION NO. 211098**

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 VARIABLE RATE SUBORDINATED UTILITIES SYSTEM REVENUE BOND, 2022 SERIES A AND CITY OF GAINESVILLE, FLORIDA VARIABLE RATE SUBORDINATED UTILITIES SYSTEM REVENUE BOND, 2022 SERIES B (FEDERALLY TAXABLE) IN ORDER TO PROVIDE MONEYS FOR VARIOUS CAPITAL PROJECTS OF THE CITY'S COMBINED UTILITIES SYSTEM AND DELEGATING THE AUTHORITY TO DETERMINE CERTAIN MATTERS IN CONNECTION THEREWITH; AUTHORIZING THE ISSUANCE OF SUCH BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$150,000,000 OUTSTANDING AT ANY TIME; APPROVING THE NEGOTIATED SALE OF SUCH BONDS AND APPROVING THE FORM, AND AUTHORIZING THE EXECUTION AND DELIVERY, OF A CREDIT AGREEMENT WITH RESPECT THERETO, AND APPROVING THE FORM, AND AUTHORIZING THE EXECUTION AND DELIVERY, OF A PAYING AGENT/BOND REGISTRAR AGREEMENT WITH RESPECT THERETO, AND DELEGATING THE AUTHORITY TO DETERMINE CERTAIN MATTERS IN CONNECTION THEREWITH; AUTHORIZING THE AUTHENTICATION AND DELIVERY OF SUCH BONDS; AUTHORIZING CERTAIN CITY OFFICIALS TO TAKE ALL OTHER ACTIONS DEEMED NECESSARY OR ADVISABLE IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF SUCH BONDS; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

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

**WHEREAS**, the City on May 17, 2018, adopted its Resolution No. 171090 incorporating by reference the Second Amended and Restated Subordinated Utilities System Revenue Bond Resolution, as amended and supplementing the Senior Bond Resolution (the "Subordinated Bond Resolution" and together with the Senior Bond Resolution, the "Bond Resolution") authorizing the issuance of Subordinated Indebtedness junior and subordinated in all respects to the security interest in and pledge and assignment of the Trust Estate created by the Senior Bond Resolution as security for the Bonds;

**WHEREAS**, the City has authorized under the Subordinated Bond Resolution two commercial paper programs secured by credit facilities in the aggregate principal amount of \$150,000,000 from two commercial banks (the "Commercial Paper Program");

**WHEREAS**, the City desires to authorize a revolving line of credit as Subordinated Indebtedness pursuant to the Subordinated Bond Resolution to finance from time to time the Cost of Acquisition and Construction of the System, such projects as shall be authorized by a hereinafter defined Authorized Officer and in connection therewith will terminate the credit facilities securing the Commercial Paper Program;

**WHEREAS**, amounts advanced under the revolving line of credit will be evidenced by the City's Variable Rate Subordinated Utilities System Revenue Bond, 2022 Series A when the interest on the amount outstanding thereunder is excludable from the gross income of the holder thereof for federal tax purposes and the Variable Rate Subordinated Utilities System Revenue Bond, 2022 Series B (Federally Taxable) when the interest on the amount outstanding thereunder is not to be excludable from the gross income of the holder thereof for federal tax purposes.

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

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

**SECTION 1.01. AUTHORITY FOR THIS RESOLUTION.** This Resolution (this "Resolution") is adopted 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.

**SECTION 1.02. DEFINITIONS.** Except as provided by this Resolution, all terms that are defined in Section 1.02 of the Subordinated Bond Resolution shall have the same meanings, respectively, in this Resolution as such terms are given in said Section 1.02 of the Subordinated Bond Resolution and in this Resolution. All capitalized terms not otherwise defined herein or in the Subordinated Bond Resolution shall have such meanings as given in the Credit Agreement.

"Advance" means the borrowing of money under either the 2022 Series A Bond or the 2022 Series B Bond. The amount of each Advance represents the principal amount of the related loan to the City, which loan constitutes an increment of the aggregate principal amount of the respective series of 2022 Bonds being issued by the City and purchased by the Purchaser pursuant to Section 3.04.

"Advance Requisition" means a written request for an Advance executed by an Authorized Officer of the City in substantially the form attached to the Credit Agreement.

"Alternate Rate" means, with respect to (a) each Advance on the 2022 Series A Bond, from the date of such determination by the Purchaser, shall be established at a rate equal to the sum of (i) the Prime Rate times the Applicable Factor, (ii) the Tax-Exempt Applicable Spread, and (iii) the Rating Adjustment and (b) each Advance on the 2022

Series B Bond, from the date of such determination by the Purchaser, shall be established at a rate equal to the sum of (i) the Prime Rate, (ii) the Taxable Applicable Spread, and (iii) the Rating Adjustment; and provided, that subject to the Credit Agreement, at no time shall the Alternate Rate exceed the Maximum Lawful Rate; provided, however, that immediately and upon the occurrence of a Tender Event (and without any notice given with respect thereto) and during the continuation of such Tender Event, "Alternate Rate" shall mean the Default Rate.

"Applicable Factor" means 80%.

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

"Available Amount" means, for any day, the Commitment Amount less the aggregate amount of Advances outstanding at such time.

"Authorized Denomination" means, with respect to each series of 2022 Bonds, (x) a single denomination up to the Commitment Amount or (y) after the occurrence and during the continuance of any Tender Event in which the Bank has given notice of its intent to tender the 2022 Bonds on the Tender Event Mandatory Purchase Date or while a Term Loan is Outstanding, means denominations of \$1,000,000 and increments of \$5,000 in excess thereof or such lesser amount as shall be Outstanding.

"Base Rate" means the higher of (i) the Prime Rate, as in effect from time to time, plus one percent (1.00%) per annum, (ii) the Federal Funds Rate, as in effect from time to time, plus two percent (2.00%) per annum and (iii) with respect to the (a) 2022 Series A Bond, seven and one-half percent (7.50%) per annum, and (b) 2022 Series B Bond, ten percent (10.00%) per annum. Each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate or Federal Funds Rate, as the case may be.

"Bond Rating" means, the underlying, publicly announced long-term credit rating assigned by a Rating Agency to any Bonds issued and Outstanding under the Senior Bond Resolution, without reliance on any credit enhancement.

"2022 Bonds" means collectively, the 2022 Series A Bond and the 2022 Series B Bond.

"BSBY" means the U.S. Dollar wholesale funding rate known as the Bloomberg Short-Term Bank Yield Index and administered by Bloomberg Index Services Limited (or any successor administrator).

"BSBY Rate" means, for any Interest Accrual Period, the annual rate equal to the greater of (a) zero percent (0%) and (b) the BSBY rate quoted by the Purchaser from the applicable Reuters screen (or if not available on the Reuters screen, from such other commercially available source providing such quotations as may be selected by the Purchaser from time to time) for such Interest Accrual Period, which shall be the one-month BSBY rate in effect on the Interest Rate Determination Date for such Interest Accrual Period; provided that if the BSBY rate is not published on Interest Rate

Determination Date due to a holiday or other circumstance that the Purchaser deems in its sole discretion to be temporary, the applicable BSBY rate shall be the BSBY rate last published prior to such Interest Rate Determination Date. The Purchaser does not warrant or accept any responsibility for the administration or submission of, or any other matter related to, BSBY or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation whether any such alternative, successor or replacement rate will have the same value as, or be economically equivalent to, BSBY. The Purchaser's internal records of the applicable interest rates shall be determinative in the absence of manifest error.

"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.

"Commitment Amount" shall mean \$150,000,000 and as such amount may hereafter be amended by agreement of the City and the Purchaser and satisfaction of the conditions set forth herein.

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

"Default Rate" means the lesser of (i) the sum of the Base Rate plus 3.00% per annum and (ii) the Maximum Rate.

"Delivery Date" means the date of delivery of the 2022 Bonds to the Purchaser upon satisfaction of the conditions precedent set forth herein and in the Credit Agreement.

"Determination of Taxability" means and shall be deemed to have occurred on the first to occur of the following:

(i) on the date when the City files any statement, supplemental statement or other tax schedule, return or document which discloses that interest paid or payable on the 2022 Series A Bond is includable, in whole or in part, in the gross income of a Bondholder or any former Bondholder for federal income tax purposes;

(ii) on the date when the City shall be advised in writing by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time, including an employee subordinate to one of these officers who has been authorized to provide such advice) that, based upon filings of the City, or upon any review or audit

of the City or upon any other ground whatsoever, interest paid or payable on the 2022 Series A Bond is includable, in whole or in part, in the gross income of a Bondholder or any former Bondholder for federal income tax purposes; or

(iii) on the date when the City shall receive notice from the Bondholder or any former Bondholder that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Bondholder or such former Bondholder all or a portion of the interest paid or payable on the 2022 Series A Bond; *provided, however*, no Determination of Taxability shall occur under subparagraph (ii) or (iii) hereunder unless the City has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; provided further, however, that upon demand from the Bondholder or former Bondholder, the City shall promptly reimburse such Bondholder or former Bondholder such amount as set forth in the Credit Agreement.

"Event of Taxability" means the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid or payable on the 2022 Series A Bond to become includable, in whole or in part, in the gross income of such Bondholder or such former Bondholder for federal income tax purposes with respect to the 2022 Series A Bond and such taxability is due to the action or inaction of the City.

"Favorable Opinion" means a written opinion of Bond Counsel (a) to the effect that the interest on the 2022 Series A 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 will not adversely affect the excludability from gross income for federal income tax purposes of the interest on the 2022 Series A Bond (subject to the inclusion of any exception provided under the Code).

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that: (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one hundredth of one percent) charged to the Purchaser on such day on such transactions as determined by the Purchaser. Notwithstanding anything herein to the contrary, if the Federal Funds Rate as determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%).

"Fitch" means Fitch, Inc. d/b/a Fitch Ratings and its successors and assigns, and if such corporation (i) shall be dissolved or liquidated or (ii) shall no longer perform the

functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized statistical rating organization (other than Moody's or S&P) designated by the City if such an organization shall exist.

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

"Interest Accrual Period" means, initially, the period from and including the date of an Advance to but not including the first calendar day of the immediately succeeding month and, thereafter, the period from including the first day of each calendar month to and including the last day of such calendar month; provided any Interest Accrual Period that would otherwise extend past the Termination Date of the 2022 Bonds shall end on the Termination Date of the 2022 Bonds.

"Interest Payment Date" means the first Business Day of each month, commencing on such date as set forth in the 2022 Bonds, a Mandatory Purchase Date and the Maturity Date.

"Interest Rate" means, with respect to the 2022 Series A Bond, the 2022A Interest Rate, and with respect to the 2022 Series B Bond, the 2022B Interest Rate.

"Interest Rate Determination Date" means the second New York Banking Day preceding each Rate Reset Date; provided, however, if no amounts are outstanding under the 2022 Bonds on the date of any Advance, the Interest Rate Determination Date shall mean the second New York Banking Day preceding the funding date of such Advance.

"2022A Interest Rate" means (x) during the Revolving Credit Period a per annum rate of interest equal to the sum of (i) the BSBY Rate times the Applicable Factor, (ii) the Tax-Exempt Applicable Spread, and (iii) the Rating Adjustment, and (y) with respect to the Term Loan the Term Loan Rate, and in each case subject to adjustment as provided in Section 3.05 hereof.

"2022B Interest Rate" means (x) during the Revolving Credit Period a per annum rate of interest equal to the sum of (i) the BSBY Rate, (ii) the Taxable Applicable Spread, and (iii) the Rating Adjustment, and (y) with respect to the Term Loan the Term Loan Rate, and in each case subject to adjustment as provided in Section 3.05 hereof.

"Maturity Date" shall have the meaning set forth in the Credit Agreement.

"Mandatory Purchase Date" shall have the meaning set forth in the Credit Agreement.

"Maximum Federal Corporate Tax Rate" means, for any day, the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect as of such day (or, if as a result of a change in the Code, the rate of income taxation imposed on corporations generally shall not be applicable to the Purchaser, the maximum statutory rate of federal income taxation which could apply to the Purchaser as of such day).



"Maximum Rate" means an interest rate per annum equal to the lesser of the maximum rate permitted by law and 15%.

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

"Moody's" means Moody's Investors Service and its successors and assigns, and if such corporation (i) shall be dissolved or liquidated or (ii) shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized statistical rating organization (other than S&P or Fitch) designated by the City if such an organization shall exist.

"New York Banking Day" means any day on which commercial banks are open for business in New York, New York that is not (i) a Saturday or (ii) a Sunday.

"Paying Agent/Bond Registrar Agreement" means the Paying Agent/Bond Registrar Agreement, between the City and U.S. Bank Trust Company, National Association, as Paying Agent and Bond Registrar, in substantially the form attached hereto as "Exhibit B."

"Prime Rate" means on any day, the rate of interest per annum then most recently established by the Purchaser as its "prime rate." Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by the Purchaser to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that the Purchaser may make various business or other loans at rates of interest having no relationship to such rate. If the Purchaser ceases to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported. Notwithstanding anything herein to the contrary, if the Prime Rate determined as provided above would be less than zero percent (0.0%), then the Prime Rate shall be deemed to be zero percent (0.0%).

"2022 Project" means such Costs of Acquisition and Construction as shall be authorized by an Authorized Officer to be financed with proceeds of the 2022 Bonds.

"Project Account" means the Project Account created pursuant to Section 4.02 hereof.

"2022A Project Account" means the 2022A Project Account created in the Project Account pursuant to Section 4.02 hereof.

"2022B Project Account" means the 2022B Project Account created in the Project Account pursuant to Section 4.02 hereof.

"Purchaser" means the Holder, initially U.S. Bank National Association, together with its successors and assigns.

"Quarterly Payment Date" means the first Business Day of each January, April, July and October.

"Rate Reset Date" means the first calendar day of each calendar month.

"Rating Adjustment" shall be determined on the basis of the Bond Rating by any of S&P, Fitch or Moody's:

<u>Level</u>	<u>Bond Rating</u> <u>(Fitch/ S&amp;P/Moody's)</u>	<u>Rating</u> <u>Adjustment</u>
1	A+/A/Aa3 or better	0.00% (zero)
2	A-/A-/A3	0.20%
3	BBB+/BBB+/Baa1/	0.55%

If the Bond Ratings assigned by S&P, Fitch and Moody's, respectively, appear in more than one rating category (i.e., a split rating), the Rating Adjustment will be based on the category that includes the lowest Bond Rating (it being understood that Level 1 contains the highest Bond Rating and Level 3 contains the lowest Bond Rating). References to ratings above are references to rating categories as presently determined by S&P, Fitch and Moody's, respectively, and in the event of adoption of any new or changed rating system by any such rating agency, each of the ratings from the rating agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. Each change in the Rating Adjustment resulting from a change in the Bond Rating shall become effective on the date of announcement or publication by S&P, Fitch or Moody's of a change in such rating or, in the absence of such announcement or publication, on the effective date of such changed rating.

In the event that the Bond Rating assigned by any of S&P, Fitch or Moody's falls below "BBB+", "BBB+" or "Baa1", respectively, or has been suspended or withdrawn for credit related reasons, the Rating Adjustment then in effect will increase automatically, without notice, to a per annum rate equal to the sum of 2.00% and the Bond Rating for the lowest rating category in the table above and such increased Rating Adjustment shall be payable until no such Bond Rating remains below "BBB+", "BBB+" or "Baa1", respectively, or is no longer suspended or withdrawn.

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

"Rebate Amount" means the excess of the future value, as of a computation date, of all receipts on non-purpose 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 non-purpose investments, but shall not include any amount exempted by Section 148(f) of the Code from payment to the United States.

"Registered Owner" has the meaning given in the 2022 Series A Bond and the 2022 Series B Bond, respectively.

"Revolving Credit Period" shall have the meaning set forth in the Credit Agreement.

"S&P" means Standard & Poor's Ratings Services, a Standard and Poor's Financial Services LLC business, and its successors and assigns, and if such business (i) shall be dissolved or liquidated or (ii) shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized statistical rating organization (other than Moody's or Fitch) designated by City if such an organization shall exist.

"Subordinated Bond Resolution" means the Second Amended and Restated Subordinated Utilities System Revenue Bond Resolution incorporated by reference pursuant to a resolution adopted by the City on May 17, 2018.

"2022 Series A Bond" means the City's Variable Rate Subordinated Utilities System Revenue Bond, 2022 Series A.

"2022 Series B Bond" means the City's Variable Rate Subordinated Utilities System Revenue Bond, 2022 Series B (Federally Taxable).

"Tax-Exempt Applicable Spread" means 0.42% (forty-two basis points).

"Taxable Applicable Spread" means 0.52% (fifty-two basis points).

"Taxable Date" means the date on which interest on the 2022 Series A Bond is first includable in the gross income of the Bondholder (including, without limitation, any previous Bondholder) thereof as a result of an Event of Taxability as such date is established pursuant to a Determination of Taxability.

"Taxable Period" means the period for which interest on the 2022 Series A Bond is included in the gross income of the Purchaser or any other Bondholder if the 2022 Series A Bond had borne interest at the Taxable Rate, beginning on the Taxable Date.

"Taxable Rate" means, for each day, a rate of interest per annum equal to the product of (i) the interest rate on the 2022A Interest Rate for such day and (ii) the applicable Taxable Rate Factor.

"Taxable Rate Factor" means, for each day that the Taxable Rate is determined, the quotient of (i) one divided by (ii) one minus the Maximum Federal Corporate Tax Rate in effect as of such day, rounded upward to the second decimal place.

"Tender Event" shall have the meaning set forth in the Credit Agreement.

"Term Loan" means upon the satisfaction of the requirements set forth in Section 3.09 hereof, the amortization of the amounts Outstanding under the 2022 Bonds in accordance Section 3.08 hereof.

"Term Loan Rate" means the sum of the Base Rate and (x) for the period from and including the initial date of such Term Loan to and including the 90th calendar day following such initial date of such Term Loan, one percent (1.00%), and (y) the period from and including the 91st calendar day following the initial date of such Term Loan and thereafter until such Term Loan is due and payable, two percent (2.00%); provided

that if a Tender Default has occurred and is continuing, the Term Loan Rate shall equal the Default Rate.

"Termination Date" shall have such meaning set forth in the Credit Agreement.

"Unused Fee" means a per annum rate of interest equal to the sum of (i) 0.17% (seventeen basis points) per annum and (ii) the Rating Adjustment.

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 Subordinated Bond Resolution, the City may issue Subordinated Bonds from time to time for the purpose, among others, of paying all or a portion of the cost of the 2022 Project comprising various capital projects of the System, funding necessary reserves, if any, and paying costs of issuance related thereto.

(2) The City deems it necessary and in its best interest to issue and sell the 2022 Bonds at a variable rates of interest for the purpose of providing funds for the payment of all or a portion of the 2022 Project.

(3) The 2022 Bonds shall be issued only upon satisfying the applicable requirements of Section 2.02 of the Subordinated Bond Resolution and subject to the provisions of Section 2.03 of the Subordinated Bond Resolution.

(4) The Purchaser has expressed an interest in submitting an offer to purchase the 2022 Bonds by negotiated sale and subject to such other representations, warranties and covenants contained in the Credit Agreement substantially in the form attached hereto as Exhibit "A."

(5) The complexity of the structuring of the 2022 Bonds, current conditions in the market for obligations such as the 2022 Bonds, and the advantages of a more flexible financial plan make it necessary and in the best interests of the City that the 2022 Bonds be sold on a negotiated basis to the Purchaser.

(6) The City desires to delegate the award and sale of the 2022 Bonds 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 Purchaser has provided, or will provide prior to the issuance of the 2022 Bonds, 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.

**SECTION 1.04. CONTRACT.** In consideration of the acceptance of the 2022 Bonds authorized to be issued hereunder by the Holder who shall own the same from

time to time, the Bond Resolution and the Credit Agreement shall be deemed to be and shall constitute a contract between the City and such Holder, 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 Holder of the 2022 Bonds, which shall be of equal rank and without preference, priority, or distinction of any of the Subordinated Bonds.

## **ARTICLE II PURPOSE OF 2022 BONDS**

**SECTION 2.01. PURPOSE.** The 2022 Bonds are being issued for the purposes of (1) providing for the payment of a portion of the Cost of Acquisition and Construction of the 2022 Project, and (2) paying costs of issuance related to the 2022 Bonds, and costs associated with each draw.

## **ARTICLE III AUTHORIZATION OF 2022 BONDS**

**SECTION 3.01. AUTHORIZATION OF 2022 BONDS; DELEGATION.** Pursuant to the provisions of this Resolution, the 2022 Bonds are hereby authorized in an aggregate principal amount not to be outstanding at any time in excess of the Commitment Amount. The 2022 Series A Bond shall be designated as, and shall be distinguished from the Bonds of all other Series by the title, "Variable Rate Subordinated Utilities System Revenue Bond, 2022 Series A" and the 2022 Series B Bond shall be designated as, and shall be distinguished from the Bonds of all other Series by the title, "Variable Rate Subordinated Utilities System Revenue Bond, 2022 Series B (Federally Taxable)." The 2022 Bonds shall each be and constitute a "Medium-Term Note," a "Subordinated Bond" and a "Variable Rate Subordinated Bond" as such terms are defined in Section 1.02 of the Subordinated Bond Resolution. The 2022 Bonds shall each be and constitute a Partial Draw LOC as defined in the Subordinated Bond 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 Bonds to U.S. Bank National Association, as the initial Purchaser, and to approve the terms of the 2022 Series A Bond and the 2022 Series B Bond, including, without limitation, the date thereof.

### **SECTION 3.02. GENERAL TERMS OF 2022 BONDS.**

(1) The 2022 Series A Bond shall be issued in fully registered form in Authorized Denominations and maturing on the Maturity Date, and shall be dated the date of its authentication. Unless an Authorized Officer of the City shall otherwise direct, the 2022 Series A Bond will be numbered "RA-1." The 2022 Series B Bond shall be issued in fully registered form in Authorized Denominations and maturing on the date set forth therein, 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 outstanding aggregate principal amount of the 2022 Bonds representing Advances made from time to time by the Holder to the City pursuant to Section 3.04 shall bear interest at such respective Interest Rate as applicable and established in accordance with Section 3.05 hereof (subject to additional adjustment as provided herein and in the form of either the 2022 Series A Bond or the 2022 Series B Bond, as applicable), payable monthly in arrears on each Interest Payment Date. If the date for payment of the principal of or interest on the 2022 Bonds shall be a day other than a Business Day, then the date for such payment shall be the next succeeding Business Day, and interest shall continue to accrue until the date of payment.

The 2022 Bonds shall be and shall constitute Subordinated Indebtedness pursuant to the Senior Bond Resolution and shall be subordinate in all respects to the security interest in and pledge and assignment of the Trust Estate created by the Senior Bond Resolution as security for the Bonds.

U.S. Bank Trust Company, National Association in the City of New York, New York is hereby appointed Paying Agent for the 2022 Bonds. Subject to the immediately following sentence, the principal and Redemption Price of the 2022 Bonds also shall be payable at any other place which may be provided for such payment by the appointment of any other Paying Agent or Paying Agents as permitted by the Bond Resolution. Interest on and principal and Redemption Price of the 2022 Bonds shall be paid by the Paying Agent (without any presentment thereof, except upon the payment of the final installment of principal, and without any notation of such payment being made thereon) (i) by wire transfer in immediately available funds to the Purchaser at such wire transfer address as the Purchaser shall specify to the Paying Agent, if such owner shall provide written notice to the Paying Agent not less than five (5) Business Days prior to the Regular Record Date relating to such Interest Payment Date in which request for wire transfer payment is made and the wire transfer address is specified, 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 agreeable by the Holder and the Trustee, with the consent of an Authorized Officer of the City.

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

(3) The registration of the 2022 Bonds may be transferred only as provided in Article III of the Subordinated Bond Resolution; provided, that the 2022 Bonds shall be issued in physical, definitive certificated form and shall not become Book Entry Subordinated Bonds. The 2022 Bonds may be sold, assigned or otherwise transferred in Authorized Denominations to a purchaser(s) that is a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended and that has delivered an Acknowledgment and Consent substantially in the form attached to the 2022 Bonds. Any sale not in compliance with this Section shall be void.

(4) The Bond Registrar will transfer the ownership of the respective 2022 Bond upon written request of the Purchaser to the Trustee specifying the name, address and taxpayer identification number of the transferee(s). The Person in whose name such 2022 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 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 Bond to the extent of the sum or sums so paid. No CUSIP number shall be assigned to either the 2022 Series A Bond or the 2022 Series B Bond. The 2022 Bonds shall not be registered with The Depository Trust Company. The 2022 Bonds shall not be offered or placed by a broker-dealer or pursuant to any official statement, offering memorandum or any other disclosure documentations.

(5) The 2022 Bonds shall be subject to mandatory tender by the Purchaser on a Mandatory Purchase Date.

### **SECTION 3.03. OPTIONAL REDEMPTION OF 2022 BONDS.**

(1) Subject to the terms and conditions of the Credit Agreement, the 2022 Bonds shall be subject to optional redemption, in whole or in part on any date, at a Redemption Price equal to the principal amount being redeemed, with premium, if any, plus accrued interest thereon, if any, to the redemption date thereof.

(2) Notwithstanding Section 4.04 of the Subordinated Bond Resolution, notice of redemption of the 2022 Bonds shall be given not less than three (3) Business Days prior to the redemption date of the 2022 Bonds, and such notice shall be given by electronic mail (email), facsimile transmission 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. ADVANCES.**

(1) Amounts may be Advanced under either the 2022 Series A Bond or the 2022 Series B Bonds as so designated by the City and in minimum amounts of \$250,000 and any increment of \$5,000 in excess thereof, and amounts advanced and repaid may be advanced again; provided, however, that at no time shall the aggregate amount of Advances outstanding hereunder exceed the Commitment Amount. By not later than 2:30 P.M. (New York City time) on the second (2nd) Business Day following receipt of the Advance Requisition, the Purchaser shall wire transfer, in federal or other immediately available funds to the account or accounts specified in such Advance Requisition the amount of the Advance; provided, however, such Advance shall not exceed, together with all prior amounts advanced and outstanding, the Commitment Amount. Any request for an Advance received by the Holder after 10:30 a.m. Eastern time shall be deemed received on the next Business Day.

(2) Upon such Advance Requisition being given to the Purchaser, the City shall promptly send a copy of each Advance Requisition to the Trustee, and, when each Advance is funded, the Holder shall complete the Acknowledgement on each Advance Requisition and send a copy of such Acknowledgement to the City and the Trustee, at such address as provided in the Advance.

### **SECTION 3.05. DETERMINATION OF INTEREST RATE.**

(1) With respect to the 2022 Bonds, except for the initial Interest Rate applicable to each 2022 Bond upon issuance, which shall be determined by the Purchaser on or prior to the Delivery Date, the interest rate on the 2022 Bonds shall be determined by the Purchaser on each succeeding Interest Rate Determination Date at a rate equal to the applicable Interest Rate and such interest rate shall be effective on the immediately succeeding Rate Reset Date, but in no event shall the Interest Rate exceed the Maximum Rate. The Interest Rate borne by the 2022 Bonds will be calculated on the basis of a 360-day year for the actual number of days elapsed. The Purchaser shall notify the City and the Paying Agent of the interest rate borne by the 2022 Bonds by electronic mail at such address as provided by the City and the Paying Agent to the Purchaser in writing within ten (10) Business Days after the effective date of such rate (or such other manner and time as acceptable to the City and the Purchaser), and the Purchaser will also provide an invoice on a monthly basis of amounts due hereunder and under the 2022 Bonds prior to each Interest Payment Date; provided, further, that the failure by the Purchaser to provide notice shall not relieve the City of its obligation to make payment of amounts as and when due hereunder and under the 2022 Bonds.

(2) Upon the occurrence of an Event of Taxability, the Interest Rate on the 2022 Series A Bond, shall be changed to the Taxable Rate effective retroactively to the date on which such Event of Taxability occurred. Promptly upon the occurrence of an Event Taxability, the City agrees upon request to pay to the Holder certain additional amounts, as follows:

(a) an additional amount equal to the difference between (i) the amount of interest paid on the 2022 Series A Bond during the Taxable Period and (ii) the amount of interest that would have been paid on the 2022 Series A Bond during the Taxable Period had the 2022 Series A Bond borne interest at the Taxable Rate; plus

(b) an amount equal to any interest, penalties on overdue interest and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Holder as a result of the occurrence of an Event of Taxability.

The Holder shall, upon written request of the City, provide reasonable evidence to the City supporting such calculation.

(3) Upon a Tender Event, the Interest Rate on the 2022 Bonds shall immediately and automatically be changed to the Default Rate until such Tender Event is cured or waived by the Purchaser.



(4) Failure or delay on the part of the Holder to demand compensation pursuant to this Section shall not constitute a waiver of the Holder's right to demand such compensation.

(5) No provision of this Resolution or the 2022 Bonds shall require the payment or permit the collection of interest in excess of the Maximum Rate.

**SECTION 3.06. EXECUTION OF 2022 BONDS AND RELATED DOCUMENTS.** The Mayor of the City is hereby authorized to execute the 2022 Bonds on behalf of the City, subject to the approval of the City Attorney as to form and legality; *provided, however,* that the 2022 Bonds shall be executed and delivered pursuant to the Subordinated Bond 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 each of the 2022 Bonds. Such officers are each hereby authorized to deliver such 2022 Bonds on behalf of the City.

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

U.S. Bank Trust Company, National Association, as Trustee under the Bond Resolution, is hereby requested and authorized to authenticate the 2022 Bonds in the aggregate principal amount outstanding at any time not to exceed the Commitment Amount, and to deliver such 2022 Bonds to the Holder pursuant to the terms of the Subordinated Bond Resolution and the Credit Agreement.

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

In addition, each 2022 Bond shall contain or have endorsed thereon the following legend:

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

THIS SUBORDINATED 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 REGISTERED OWNER OR A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A PROMULGATED UNDER THE SECURITIES ACT OF 1933.

REGISTERED  
NO. R[A][B]-1

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
CITY OF GAINESVILLE  
VARIABLE RATE SUBORDINATED UTILITIES SYSTEM REVENUE BOND,  
2022 SERIES [A][B (FEDERALLY TAXABLE)]

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>ORIGINAL ISSUE DATE</u>
As described herein	_____, 20__	_____, 2022

REGISTERED OWNER: U.S. BANK NATIONAL ASSOCIATION

PRINCIPAL AMOUNT: NOT TO EXCEED ONE HUNDRED FIFTY MILLION  
DOLLARS (\$150,000,000)

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 as a Subordinated Bond, without presentation and surrender of this Subordinated Bond (except upon the payment of the final installment of principal, and without any notation of such payment being made thereon) 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"), in its capacity as paying agent, so much of the Principal Amount specified above, as has been drawn down by the City on the Maturity Date specified above and to pay interest on the Principal Amounts advanced hereunder from the date of such advances at the Interest Rate per annum described herein. Notwithstanding anything to the contrary in the foregoing, the City shall be liable for only so much of the Principal Amount as shall be equal to the total amount advanced to the City by the Registered Owner from time to time, less all payments made by or for the City and applied by the Registered Owner to principal. Advances under this Subordinated Bond shall be recorded and maintained by the Registered Owner in its internal records and such records shall be conclusive as to the principal and interest owed by the City unless there is a material error in such records. Payments hereunder shall be made in any immediately available 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. Interest on such Principal Amount balance is payable solely from the funds pledged therefor as a Subordinated Bond from the Original Issue Date (stated above), or, if one or more payments of interest has or have theretofore been made or duly provided for, from the most recent interest payment date to which interest has been paid or duly provided for, payable on the first Business Day of each calendar month

commencing the calendar month next succeeding the date of the initial Advance (each an "Interest Payment Date"), at a rate per annum equal to the Interest Rate (as defined in the Supplemental Resolution hereinafter referred to) 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. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Resolution hereinafter referred to, be paid to the person in whose name Bond is registered at the close of business on the Regular Record Date for such interest, which shall be the 15th day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date, such payment to be made by check or draft or wire transfer (or other electronic payment method) of the Trustee hereinafter referred to, as Paying Agent, mailed to such person at the address shown on the registration books of the City kept for that purpose at the principal offices of the Trustee, as Bond Registrar. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the person in whose name this Subordinated Bond is registered on the Regular Record Date, and shall be paid, in the manner described above, to the person in whose name this Subordinated Bond is registered at the close of business on a Special Record Date for the payment of such defaulted interest to be fixed by the Trustee, notice whereof shall be given to holders of bonds of the series of which this Subordinated Bond is one not less than 10 days prior to such Special Record Date.

This bond is a duly authorized Subordinated Bond of the City designated as its "Variable Rate Subordinated Utilities System Revenue Bond, 2022 Series [A][B (Federally Taxable)]" (herein sometimes called the "2022 Series [A][B] Bond"), 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 its Resolution No. 170395 incorporating by reference the Second Amended and Restated Utilities System Revenue Bond Resolution adopted by the City on September 21, 2017, as amended (the "Senior Bond Resolution"), and as supplemented by its Resolution No. 171090 incorporating by reference the Second Amended and Restated Subordinated Utilities System Revenue Bond Resolution adopted by the City on May 17, 2018, as amended (the "Subordinated Bond Resolution"), and as supplemented by Resolution No. \_\_\_\_ adopted by the City on \_\_\_\_\_, 2022 (the "Supplemental Resolution" and together with the Senior Bond Resolution and the Subordinated 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.

This Subordinated Bond is a direct and special obligation of the City payable from amounts in the Subordinated Indebtedness Fund; subject, however, to (i) the pledge and assignment of the Trust Estate (as defined in the Resolution) created by the Resolution as security for the Bonds and (ii) the pledge and assignment for the Subordinated Indebtedness Fund created by (a) the Subordinated Bond Resolution as security for the Subordinated Bonds and (b) any Supplemental Resolution (a defined in the Resolution) as security for any Parity Subordinated Indebtedness. This Subordinated Bond constitutes a Subordinated Bond for all purposes of the Subordinated Bond

Resolution. In accordance with the provisions of the Senior Bond Resolution and the Subordinated Bond Resolution, the City reserves the right to issue additional Subordinated Bonds and Parity Subordinated Indebtedness payable from and secured, on a parity with the 2022 Series [A][B] Bond, by a pledge of amounts in the Subordinated Indebtedness Fund. This Subordinated Bond shall be and shall constitute Subordinated Indebtedness pursuant to the Senior Bond Resolution and shall be subordinate in all respects to the security interest in and pledge and assignment of the Trust Estate created by the Senior Bond Resolution as security for the Bonds.

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 Subordinated Bonds, the nature, extent and manner of enforcement of such pledge, the rights and remedies of the holders of the Subordinated Bonds with respect thereto, the terms and conditions upon which the Subordinated Bonds are issued and may be issued thereunder, and for the other terms and provisions thereof.

Upon the occurrence of and during the continuance of a Tender Event the interest rate otherwise borne hereby shall be adjusted to the Default Rate from and after the effective date of such Tender Event until such time as such Tender Event is cured.

[Upon the occurrence of an Event of Taxability, the Interest Rate on the 2022 Series A Bond, shall be changed to the Taxable Rate effective retroactively to the date Determination of Taxability.]

The interest rate borne by this Subordinated Bond (i) may never exceed the Maximum Rate and (ii) will be calculated on the basis of a 360 day year for the actual number of days elapsed.

This Subordinated 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 Subordinated 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 Subordinated Bond or Bonds, without coupons, and in the same maximum 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 Subordinated 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. This Bond may only be transferred together with the 2022 Series [A][B] Bond.

This bond is subject to mandatory tender by the Registered Owner on the Mandatory Purchase Date (as defined in the Resolution).

The 2022 Series [A][B] Bond is subject to optional redemption prior to maturity at the election of the City in accordance with the Supplemental Resolution. The 2022 Series [A][B] Bond are 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, but the failure to give notice by mail, or any defect in such notice, to the Registered Owner of any 2022 Series [A][B] Bond will not affect the validity of the proceedings for the redemption of any other 2022 Series [A][B] Bond. If notice of redemption shall have been given as aforesaid and shall not have been rescinded or ceased to be in effect, the 2022 Series [A][B] Bond or portions thereof specified in said notice shall become due and payable on the redemption date therein fixed, and if, on the redemption date, moneys for the redemption of the 2022 Series [A][B] Bond and portions thereof to be redeemed, together with interest to the redemption date, shall be available for such payment on said date, then from and after the redemption date interest on such 2022 Series [A][B] Bond or portions thereof so called for redemption shall cease to accrue and be payable.

The 2022 Series [A][B] Bond is issuable in the form of a single fully registered bonds in the principal amount outstanding hereunder.

The City and the Registered Owner, by acceptance of this Subordinated 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 Subordinated Bond and any other document or instrument contemplated to be executed in conjunction with this Subordinated 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 Subordinated Bond.

This Subordinated 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 Subordinated Bond bear a reasonable relationship to the laws of Florida and the validity, terms, performance and enforcement of this Subordinated 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 Subordinated Bond, the City consents to the jurisdiction and venue of any court located or having jurisdiction over Alachua County, Florida.

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

In the event of any conflict between the terms of this Subordinated Bond and the terms of the Bond Resolution, the terms of the Bond Resolution shall control.

This Subordinated 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 Subordinated 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 Subordinated Bond or the making of any payments provided for in the Resolution, and (b) this Subordinated 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 and to the extent provided in the Resolution, subordinate in all respects to the security interest in and pledge and assignment of the Trust Estate created by the Senior Bond Resolution as security for the Bonds.

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 Subordinated Bond, exist, have happened and have been performed and that the issue of Subordinated 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 Subordinated Bond shall not be entitled to any benefit under the Resolution or be valid or become obligatory for any purpose until this Subordinated 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: \_\_\_\_\_

Attested:

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

Approved as to Form and Legality:

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

**Acknowledgment and Consent**

By acceptance of this Bond, the Registered Owner of this Bond (and successors and assigns) agrees that (a) the Bond incorporates, and is subject to the Resolution, (b) to the extent applicable, the Registered Owner agrees to make the Advances contemplated in, and in accordance with the terms of, the Supplemental Resolution, and (c) the Registered Owner shall be bound by the covenants set forth in the Credit Agreement dated \_\_\_\_\_, 2022 between the City of Gainesville, Florida and U.S. Bank National Association, and its successors and assigns.

U.S. BANK NATIONAL ASSOCIATION,  
as Registered Owner together with its  
successors and assigns

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

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

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This bond is the Subordinated Bond described in the within-mentioned Resolution.

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

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

**SECTION 3.08 TERM LOAN.** At the end of the Revolving Credit Period, amounts Advanced and outstanding under the 2022 Series A Bond and the 2022 Series B Bond may each be converted to Term Loan upon satisfaction of the terms and conditions set forth in the Credit Agreement (each of which shall not exceed the aggregate principal amount of the related outstanding Advances). Each Term Loan for the 2022 Series A Bond and the 2022 Series B Bond shall be repaid in twelve (12) equal quarterly principal installments, commencing on the first Quarterly Payment Date following the date of the making of such Term Loan, but in all events, any amounts outstanding under such Term Loan shall be due and payable in full on the earlier of (a) the Maturity Date or (b) a Mandatory Purchase Date. The Term Loan will accrue interest at the Term Loan Rate.

On the Termination Date, upon satisfaction by the City of the conditions set forth in the Credit Agreement, the amounts owing under the 2022 Bonds shall convert to a Term Loan (which shall not exceed the aggregate principal amount of the outstanding Advances).

**SECTION 3.09 OPTIONAL TERMINATION OR REDUCTION OF COMMITMENT AMOUNT.** The City may, upon five (5) Business Days' prior written notice to the Purchaser signed by an Authorized Officer of the City, (i) terminate the Commitment Amount and the Purchaser's obligations hereunder at any time, or (ii) reduce from time to time by an amount of \$1,000,000 or any larger integral multiple thereof, the amount of the Commitment Amount. Promptly upon delivery of any such notice by the City, the City shall notify the Paying Agent of such termination or reduction.

In the event that the Commitment Amount is terminated or otherwise permanently reduced by or on behalf of the City prior to the first anniversary date of the Delivery Date, the City agrees to pay to the Purchaser on such termination date or reduction date, as applicable, in addition to all other obligations of the City that may be due and payable at such time, a termination fee equal to the product of (i) the Unused Fee in effect on the date of such termination or reduction, (ii) (A) if the Commitment Amount is being terminated, the Commitment Amount in effect on the date of such termination and (B) if the Commitment Amount is being reduced, the amount of the reduction in the



Commitment Amount, and (iii) a fraction, the numerator of which is the number of days from and including the date of such termination or reduction to and including the first anniversary of the Delivery Date and the denominator of which is 360. Notwithstanding the foregoing, such termination fee shall not be payable by the City if the Purchaser shall assign, sell, transfer, pledge or participate its interest in the Commitment Amount or there shall have occurred an event under Section 3.11 or Section 3.12 herein. At any time after the first anniversary date of the Delivery Date the Commitment Amount may be terminated or otherwise permanently reduced, after payment of Unused Fees, the amount of Outstanding principal that would after the reduction exceed the Commitment Amount or all Outstanding principal if the Commitment Amount is terminated. Termination of the City's obligations hereunder shall be effective upon payment of the foregoing termination fee, if applicable, and the payment in full of all obligations of the City owing to the Purchaser hereunder and under the Credit Agreement. For purposes of the preceding sentence, amounts may be deposited with the Paying Agent in accordance with the Subordinated Bond Resolution.

**SECTION 3.10 AUTHORIZATION TO EXTEND THE TERM.** The General Manager, the Chief Financial Officer or such other Authorized Officer is hereby authorized, from time to time, (1) to extend the Termination Date in accordance with the terms of the Credit Agreement, upon such terms and conditions as shall be determined by such Authorized Officer, to be advantageous to the City and commercially reasonable (which terms and conditions may differ from the terms and conditions then in effect), such determination to be confirmed in writing by the firm serving at that time as the System's financial advisor to the extent provided below.

In connection with any such extension such Authorized Officer is hereby further authorized to execute and deliver, on behalf of the City, such documents and instruments (including, without limitation, an amendment to the Credit Agreement) as shall be determined by such Authorized Officer, to be (a) necessary or desirable and advantageous to the City and (b) in commercially reasonable form; provided, however, that if any such extension shall be on terms and conditions different from the terms and conditions as then in effect, then (a) such determination of such Authorized Officer, shall be confirmed in writing by the firm serving at that time as the System's financial advisor and (b) the form of each such document or instrument shall be approved by the City Attorney of the City or his designee as to form and legality prior to the execution thereof by such Authorized Officer.

**SECTION 3.11. INABILITY TO DETERMINE RATES.** If the Purchaser determines that for any reason in connection with any Advance or a continuation thereof that (a) the administrator of the BSBY Rate (or any substitute index which replaces the BSBY Rate (the BSBY Rate or such replacement, the "Benchmark")) has made a public statement that such Benchmark will no longer be provided, (b) the administrator of the Benchmark has announced that such Benchmark is no longer representative, (c) any similar circumstance exists such that such Benchmark has become permanently unavailable or ceased to exist or (d) the BSBY Rate for any requested Interest Accrual Period does not adequately and fairly reflect the cost to the Purchaser of funding such Advance, the Purchaser will promptly so notify the City; *provided, however,* that the Purchaser will advise the City of the occurrence of an event in clause

(d) immediately above only in the event that a similar determination has been made with respect to similarly situated borrowers of the Purchaser under similar circumstances. Upon notice to the City of such determination, the obligation of the Purchaser to make or maintain Advances whose interest is determined by reference to the BSBY Rate shall be suspended until the Purchaser revokes such notice. Upon receipt of such notice, (i) any pending Advances will when honored bear interest at the Alternate Rate, in the amount specified therein, and (ii) the interest on all outstanding Advances shall be automatically converted to the Alternate Rate on the last day of the applicable Interest Accrual Period therefor; provided, however, that with respect to an interest rate adjustment described in clause (d) of the first sentence above, such Alternate Rate for the 2022 Series A Bond shall not become effective until there shall be delivered to the City and the Purchaser a Favorable Opinion with respect to such change in the interest rate, provided, however, if no Favorable Opinion is delivered within 30 days of such notice the 2022 Series A Bond shall bear interest at the Alternate Rate. Upon any such conversion, the City shall also pay accrued interest on the amount so converted on the date of such conversion. The Purchaser's internal records of applicable interest rates shall be determinative in the absence of manifest error.

**SECTION 3.12. ILLEGALITY.** If the Purchaser determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Purchaser to make, maintain or fund any Advance whose interest is determined by reference to the BSBY Rate, or to determine or charge interest rates based upon the BSBY Rate, then, on notice thereof by the Purchaser to or the City, until the Purchaser notifies the City that the circumstances giving rise to such determination no longer exist any obligation of the Purchaser to make Advances shall be suspended and the interest on all outstanding Advances shall be automatically converted to the Alternate Rate.

#### **ARTICLE IV APPLICATION OF PROCEEDS**

**SECTION 4.01. APPLICATION OF PROCEEDS OF 2022 BONDS.** In accordance with paragraph 2 of Section 2.03 of the Subordinated Bond Resolution, the proceeds of the 2022 Bonds representing an Advance shall be applied pursuant to the instructions in the applicable Advance Requisition.

**SECTION 4.02. 2022 PROJECT ACCOUNT.** There is hereby created the "Subordinated Bonds Construction Project Account, Series 2022A/B Bonds" (the "Project Account") and two subaccounts therein to be held by the City pursuant to Section 5.03 of the Subordinated Bond Resolution to be designated the "2022A Project Account" (the "2022A Project Account") which proceeds from the 2022 Series A Bond may be deposited and the "2022B Project Account" (the "2022B Project Account" and together with the 2022A Project Account, the "2022 Project Accounts") which proceeds from the 2022 Series B Bonds may be deposited. The 2022 Project Accounts shall be kept separate and apart from all other funds and accounts of the City and the moneys on deposit therein shall be withdrawn, used and applied by the City solely for the payment of the Cost of Acquisition and Construction related to the 2022 Project and the costs of issuance of the 2022 Bonds.

Any funds on deposit in the 2022 Project Accounts that, in the opinion of the City, are not immediately necessary for expenditure, as herein provided, may be invested and reinvested in Investments Securities in accordance with Section 603 of the Senior Bond Resolution. All income derived from investment of funds in the 2022 Project Accounts shall be deposited therein and shall be used for the payment of the Cost of Acquisition and Construction related to the 2022 Project or the repayment of the applicable Series of 2022 Bonds.

Any liquidated damages or settlement payments received by the City as a result of the breach by any contractor, subcontractor or supplier working on or supplying goods related to the 2022 Project of any representation, warranty or performance guaranty shall be deposited therein and shall be used to pay costs associated with the 2022 Project.

Upon completion of the 2022 Project, notwithstanding anything in the Subordinated Bond Resolution to the contrary, any amounts then remaining in the 2022 Project Accounts and not reserved by the City for the payment of any remaining Cost of Acquisition and Construction related to the 2022 Project may be used to prepay the principal on the 2022 Bonds or accrued interest thereon in accordance with the Subordinated Bond Resolution, or may be used for any other lawful purpose, provided that with respect to amounts on deposit into the 2022A Project Account, the City receives an opinion of Bond Counsel that such use shall not, in and of itself, cause interest on the 2022 Series A Bond to be includable in gross income for federal income tax purposes.

## **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 Credit Agreement, which are incorporated by reference herein.

**SECTION 5.02. FEES.** The City shall pay to the Purchaser, for each day during the preceding fiscal quarter, a nonrefundable commitment fee in an amount equal to the product of the Unused Fee for each such day and the Available Amount for each such day, determined based on a 360 day year and actual days elapsed. The Unused Fee shall be due and payable quarterly in arrears on each Quarterly Payment Date, and on a Mandatory Purchase Date.

## **ARTICLE VI APPROVAL OF DOCUMENTS**

**SECTION 6.01. AUTHORIZATION AND APPROVAL OF NEGOTIATED SALE OF THE 2022 BONDS, EXECUTION OF THE CREDIT AGREEMENT AND PAYING AGENT/BOND REGISTRAR AGREEMENT; DELEGATION OF AUTHORITY TO DETERMINE CERTAIN MATTERS IN CONNECTION THEREWITH.** The form of the Credit Agreement and the Paying Agent/Bond Registrar Agreement substantially in the forms attached hereto as Exhibit "A" and Exhibit "B," respectively, are hereby approved, subject to such changes, insertions and

omissions and such filling of blanks therein as may be approved and made in such Credit Agreement and Paying Agent/Bond Registrar 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 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 Purchaser to purchase the 2022 Bonds, upon the terms, conditions and redemption provisions set forth herein. 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 Credit Agreement and the Paying Agent/Bond Registrar Agreement for and on behalf of the City and the Clerk is hereby authorized to attest such signatures to the extent required by the form of the Credit Agreement and the Paying Agent/Bond Registrar Agreement, subject to the approval of the City Attorney as to form and legality. The Paying Agent/Bond Registrar Agreement will apply to each Outstanding series of Subordinated Bonds.

**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, deliver and perform the Credit Agreement and the Paying Agent/Bond Registrar Agreement, each subject to completion thereof, and with such changes therein as the officer(s) executing the same may approve as necessary and desirable and in the best interests of the City, such approval to be evidenced by the execution and delivery thereof, subject to the approval of the City Attorney as to form and legality. The Clerk of the Commission of the City is hereby authorized to cause the seal of the City to be affixed to 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, the Paying Agent/Bond Registrar Agreement and the Credit Agreement or desirable or consistent with the requirements of the Bond Resolution, the Paying Agent/Bond Registrar Agreement and the Credit Agreement for the full punctual and complete performance of all the terms, covenants and agreements contained herein or in the 2022 Bonds, the Bond Resolution, the Paying Agent/Bond Registrar Agreement and the Credit 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, including providing notices and terminating any agreement entered into in connection with the Commercial Paper Program.

**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, delivery and performance of the Credit Agreement and the Paying Agent/Bond Registrar Agreement and the carrying out of its terms and the terms of the Bond Resolution and the issuance, sale, execution and delivery of the 2022 Bonds.

## **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 A Bond and any draw thereof issued hereunder be and remain excluded through its final maturity, redemption or draw from gross income for federal income tax purposes and to this end the City hereby represents to and covenants with each of the holders of the 2022 Series A 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 A Bond and any draw thereof 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:

(1) 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;

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

(3) 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 (2) above;

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

(5) to refrain from taking any action that would cause the 2022 Series A Bond and any draw thereof issued hereunder to become an arbitrage bond under Section 148 of the Code; and

(6) to refrain from using proceeds of the 2022 Series A Bond and any draw thereof issued hereunder in a manner that would cause the 2022 Series A Bond or any draw thereof to be classified as a private activity bond 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 A Bond and any draw thereof.

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 A Bond and any draw thereof.

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 A Bond, or the Trustee acting on their behalf, shall be entitled to the rights and remedies provided to Holders of Subordinated Bonds 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 A Bond then outstanding, and the interest accrued thereon, to be due and payable (whether by tender or otherwise), and (b) neither the Holders of the Subordinated Bonds of any Series other than the 2022 Series A Bond, nor the Trustee acting on their behalf, shall be entitled to exercise any right or remedy provided to Holders of Subordinated Bonds 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.**

(1) Upon a Tender Event, the Purchaser may tender the 2022 Bonds for mandatory purchase in full by the City on the Mandatory Purchase Date.

(2) Upon the occurrence of a Tender Event, no further Advance Requisitions need be honored by the Purchaser. Upon the occurrence of a Suspension Event the Purchaser's obligation to make Advances hereunder shall be suspended until such time as such event is cured in accordance with the Credit Agreement.

## **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 Holders of Subordinated Bonds in the Trust Estate to the extent provided herein and in the Bond Resolution.

**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 Subordinated Bonds.

PASSED AND DULY ADOPTED this 21st day of April, 2022.

**CITY OF GAINESVILLE, FLORIDA**

\_\_\_\_\_  
Mayor

ATTESTED:

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

Approved as to Form and Legality:

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

#155843019\_v10 136433.00036

EXHIBIT "A"

CREDIT AGREEMENT



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**CREDIT AGREEMENT**

between

**CITY OF GAINESVILLE, FLORIDA**

**and**

**U.S. BANK NATIONAL ASSOCIATION**

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

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Exhibit A Form of Notice of Revolving Credit Borrowing

## CREDIT AGREEMENT

This CREDIT AGREEMENT is dated \_\_\_\_\_, 2022, and is between the CITY OF GAINESVILLE, FLORIDA (the "City") and U.S. BANK NATIONAL ASSOCIATION (together its successors and assigns, the "Bank" or the "Purchaser").

WHEREAS, the City is a municipal corporation duly organized and existing under the laws of the State of Florida;

WHEREAS, the City is authorized pursuant to the laws of the State of Florida to own, manage and operate the System (as defined in the Bond Resolution (as defined below));

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

WHEREAS, the City on May 17, 2018, adopted its Resolution No. 171090 incorporating by reference the Second Amended and Restated Subordinated Utilities System Revenue Bond Resolution, as amended and supplementing the Senior Bond Resolution (the "Master Subordinated Bond Resolution" and together with the Senior Bond Resolution, the "Bond Resolution") authorizing the issuance of Subordinated Indebtedness junior and subordinated in all respects to the security interest in and pledge and assignment of the Trust Estate created by the Senior Bond Resolution as security for the Bonds;

WHEREAS, the City on April 21, 2022 adopted Resolution No. \_\_\_\_ (the "Supplemental Subordinated Bond Resolution" and together with the Master Subordinated Bond Resolution the "Subordinated Bond Resolution") supplementing the Subordinated Bond Resolution and authorized the execution and delivery of a revolving line of credit and the obligations thereunder being issued as Subordinated Indebtedness pursuant to the Subordinated Bond Resolution to finance from time to time the Cost of Acquisition and Construction of the System, such projects as shall be authorized by an Authorized Officer of the City;

WHEREAS, the amounts advanced under the revolving line of credit will be evidenced and secured by the City's Variable Rate Subordinated Utilities System Revenue Bond, 2022 Series A when the interest on the amounts advanced thereunder is excludable from the gross income of the holder thereof for Federal income tax purposes and the Variable Rate Subordinated Utilities System Revenue Bond, 2022 Series B (Federally Taxable) when the interest on the amounts advanced thereunder is not excludable from the gross income of the holder thereof for federal income tax purposes.

WHEREAS, the Bank has agreed to make advances to the City, solely on the terms and conditions set forth in the Supplemental Subordinated Bond Resolution and herein;

NOW THEREFORE, the parties hereto agree as follows:

**ARTICLE I  
DEFINITIONS**

**SECTION 1.01 Definitions.**

(a) Capitalized terms used herein but not otherwise defined in subsection (b) below or elsewhere herein shall have the meanings given to them in the Subordinated Bond Resolution.

(b) The following terms, as used herein, have 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 Credit Agreement, dated \_\_\_\_\_, 2022, between the City and the Bank, as the same may be amended or modified from time to time.

"Alternate Rate" shall have the meaning ascribed thereto in the Bond Resolution.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the City from time to time concerning or relating to bribery or corruption.

"Authorized Officer of the City" shall have the meaning ascribed thereto in the Senior Bond Resolution.

"Bondholder" means the Purchaser and each Purchaser Transferee or Non Purchaser Transferee pursuant to Section 9.05 hereof so long as such Purchaser Transferee or Non Purchaser Transferee is an owner of Bonds.

"Bonds" shall have the meaning ascribed thereto in the Bond Resolution.

"Business Day" means any day, other than a Saturday or Sunday, on which the office of the City, the office of the Trustee and the office of the Bank specified in or pursuant to Section 9.01 hereof are open for business during their respective normal business hours.

"Commitment Amount" has the meaning in the Supplemental Subordinated Bond Resolution.

"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.

"Determination of Taxability" shall have the meaning ascribed thereto in the Bond Resolution.

"Dodd-Frank Act" means the Dodd Frank Wall Street Reform and Consumer Protection Act and all regulations, guidelines and directions in connection therewith, as the same may be amended from time to time.

"EMMA" means the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System or any successor thereto.

"Effective Date" means the Delivery Date.

"Environmental Laws" 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 Laws, (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.

"Event of Taxability" shall have the meaning ascribed thereto in the Bond Resolution.

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

"Event of Default" has the meaning given in the Subordinated Bond Resolution.

"Excluded Taxes" means, with respect to a Bondholder, Taxes imposed on or measured by its overall net income (however denominated), and franchise Taxes and branch profit Taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which it is incorporated or is organized or in which its principal executive office is located.

"Financing Documents" means this Agreement, the 2022 Bonds, the Bond Resolution and the Supplemental Subordinated Bond Resolution and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing.

"GAAP" has the meaning set forth in Section 1.02.

"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.

"Indebtedness" means, as to any Person, 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, Indebtedness shall not include any non-capitalized lease obligations regardless of its treatment for accounting purposes.

"Indemnified Taxes" means Taxes imposed on or with respect to any payment made by or on account of any obligation of the City under any Financing Document, other than Excluded Taxes and Other Taxes.

"Laws" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lending Office" means the office of the Bank to which notices of borrowings of Loans hereunder shall be given and to which payments of amounts due hereunder and under the 2022 Bonds shall be made, which office (and any changes thereto) shall be communicated promptly by the Bank to the City at its address specified in or pursuant to Section 9.01.

"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.

"Loan" means the Revolving Credit Loan and the Term Loan.

"Maturity Date" means \_\_\_\_\_, 2028, or such later date which this Agreement may be extended or renewed in the sole discretion of the Bank by written notice from the Bank to the

City in connection with the extension of the Revolving Credit Period pursuant to Section 3.01(c) hereof.

"Mandatory Purchase Date" means the earlier of (i) the date that is the third anniversary preceding the Maturity Date; provided, however, it shall not be a Mandatory Purchase Date if the conditions set forth in Section 4.03 hereof have been met for the conversion to a Term Loan, or (ii) the Tender Event Mandatory Purchase Date or (iii) while a Term Loan is Outstanding, the date on which any Bonds or Subordinated Bonds are issued.

"Material Adverse Effect" means: (a) a material adverse change in, or a material adverse effect upon, the financial condition of the City; (b) a material impairment of the ability of the City to perform its obligations under any Financing Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the City of any Financing Document to which it is a party or the rights, security, interests or remedies of the Bank hereunder or under any other Financing Document.

"Tender Event Mandatory Purchase Date" shall have the meaning set forth in Section 7.01 herein.

"Notice of Revolving Credit Borrowing" has the meaning set forth in Section 3.02(a).

"Obligations" means all amounts payable by the City, and all other obligations to be performed by the City, pursuant to this Agreement and the other Financing Documents (including, without limitation, all obligations of the City to pay principal of and interest on the 2022 Bonds when due and any amounts to reimburse the Purchaser for any advances or expenditures by it under any of such documents).

"Participant" has the meaning set forth in Section 9.05(b).

"Patriot Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107-56 (signed into law October 26, 2001).

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

"Potential Tender Event" means (i) any condition or event which constitutes a Tender Event or (ii) which with the giving of notice or lapse of time or both would, unless cured or waived, become a Tender Event.

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Requirement of Law" means as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, 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.

"Resolutions" means the Bond Resolution and the Subordinated Bond Resolution.

"Revolving Credit Loan" means all amounts advanced and outstanding during the Revolving Credit Period.

"Revolving Credit Period" means the period from and including the Effective Date to and including the Termination Date.

"Sanctioned Country" means, at any time, any country or territory which is itself the subject or target of any comprehensive Sanctions.

"Sanctioned Person" means, at any time, (a) any Person or group listed in any Sanctions related list of designated Persons maintained by OFAC or the U.S. Department of State, the United Nations Security Council, the European Union or any EU member state, (b) any Person or group operating, organized or resident in a Sanctioned Country, (c) any agency, political subdivision or instrumentality of the government of a Sanctioned Country, or (d) any Person 50% or more owned, directly or indirectly, by any of the above.

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom.

"Supplemental Subordinated Bond Resolution" means Resolution No. \_\_\_\_\_ adopted by the City on \_\_\_\_\_, 2022 authorizing the issuance of the 2022 Bonds, as amended and supplemented from time to time in accordance with the terms thereof and hereof, supplementing the Subordinated Bond Resolution.

"Subordinated Indebtedness" is defined in the Subordinated Bond Resolution.

"Subordinated Indebtedness Fund" means the fund by that name established pursuant to the Bond Resolution.

"Suspension Event" has the meaning set forth in Section 7.01.

"Taxable Date" shall have the meaning ascribed thereto in the Bond Resolution.

"Tender Event" has the meaning set forth in Section 7.01.

"Term Loan" means the Loan made after the end of the Revolving Credit Period and subject to repayment as set forth in the Supplemental Subordinated Bond Resolution.

"Termination Date" means the earlier of (i) the three year anniversary of the Delivery Date or such later date to which the Revolving Credit Period shall have been extended pursuant to Section 3.01(c), or if any such date is not a Business Day, the next preceding Business

Day, or (ii) the date on which a Tender Event shall have occurred (and shall not have otherwise been waived by the Bank).

"Trustee" has the meaning ascribed thereto in the Bond Resolution.

**SECTION 1.02 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 1.03 Interpretation.** All words used herein shall be construed to be of such gender or number as the circumstances require. Reference to any document means such document as amended or supplemented from time to time as permitted pursuant to its terms and (if applicable) the terms hereof. Reference herein to any Article or Section shall be deemed to be a reference to the corresponding Article or Section of this Agreement unless otherwise specified.

## **ARTICLE II [RESERVED]**

## **ARTICLE III THE CREDITS**

### **SECTION 3.01 Commitment Amount to Lend.**

(a) Revolving Credit Loans. During the Revolving Credit Period, the Bank agrees, on the terms and conditions set forth in this Agreement and the Supplemental Subordinated Bond Resolution, to make Advances to the City pursuant to this Section from time to time in amounts such that the aggregate principal amount of Advances by the Bank at any one time outstanding shall not exceed the Commitment Amount. Amounts may be Advanced under either the 2022 Series A Bond or the 2022 Series B Bond as so designated by the City. The City may borrow, repay and re-borrow at any time during the Revolving Credit Period under this subsection (a).

(b) Term Loan. The Bank agrees, on the terms and conditions set forth in this Agreement and the Supplemental Subordinated Bond Resolution that the Revolving Credit Loan shall be converted to a Term Loan upon the satisfaction of the conditions set forth in Section 4.03 herein; *provided* that the principal amount of such Term Loan shall at no time exceed the Commitment Amount. The Term Loan may be repaid at any time in accordance with the Supplemental Subordinated Bond Resolution.

(c) Extension of Revolving Credit Period. No later than 180 days prior to Termination Date, the City may, by notice in writing to the Bank, request that the Bank extend the then current Termination Date and Maturity Date for a period of such length as the City shall determine, in its sole discretion. If the Bank, in its sole discretion, elects to extend the Termination Date and Maturity Date then in effect, it shall deliver to the City within sixty (60) days of receiving said request a written notice of extension (herein referred to as a "Notice of Extension") designating its acceptance of such date. Following the date of delivery of such Notice of Extension by the Bank and after compliance by the City with all terms and conditions thereof, all references

in the Supplemental Subordinated Bond Resolution and this Agreement to the Termination Date and Maturity Date shall be deemed to be references to the date designated as such in the most recent Notice of Extension delivered to the City. Any date to which the Termination Date and Maturity Date has been extended in accordance with this Section 3.01(c) may be extended in like manner. Upon any extension of the Termination Date and Maturity Date pursuant to this Agreement, the Bank and the City each reserves the right to renegotiate any provision hereof. If the Bank fails to provide the City with a Notice of Extension as provided hereinabove, the Bank shall be deemed not to have consented to the City's request and the Bank shall have no liability with respect to such failure or lack of consent.

Notwithstanding the foregoing, it is understood and agreed that the foregoing provisions are intended for the convenience of the parties only and shall in no respect prohibit the parties from agreeing to extend the Revolving Credit Period pursuant to written agreement between the City and the Bank under other circumstances or at other times.

### **SECTION 3.02 Method of Borrowing.**

(a) Advances shall made be in accordance with the Supplemental Subordinated Bond Resolution and an Advance Requisition delivered substantially in the form of Exhibit A hereto appropriately completed (a "Notice of Revolving Credit Borrowing"), specifying:

- (i) the date of such requested Advance, and
- (ii) the amount of the Advance to be made under each of the 2022 Series A Bonds and/ or the 2022 Series B Bonds;

(b) On the Termination Date, if there shall be a making of a Term Loan, the principal amount of the Term Loan shall be equal to the aggregate of the principal amounts of all Advances outstanding on the date of the making of the Term Loan, less any repayments thereof made or to be made by the City on the date of the making of the Term Loan.

### **SECTION 3.03 2022 Bonds.**

(a) The Loans shall be evidenced and secured by the 2022 Bonds payable to the order of the Bank.

(b) The Bank shall keep in accordance with its usual business practices, records of the date and amount of each Loan made by it and the date and amount of each payment of principal made by the City with respect thereto, which records, absent manifest error, shall be conclusive and binding upon the City. Prior to any transfer of the 2022 Bonds shall endorse on the schedule forming a part thereof appropriate notations to evidence the foregoing information with respect to the amounts then outstanding (which notations shall, at the request of the City, be submitted by the Bank to the City for its review prior to any such transfer of the 2022 Bonds); *provided* that the failure of the Bank to make any such recordation or endorsement or to submit any such notations to the City shall not affect the obligations of the City hereunder or under the 2022 Bonds. The Bank is hereby irrevocably authorized by the City so to endorse the 2022 Bonds and to attach to and make a part of the 2022 Bonds a continuation of any such schedule as and when required. The 2022 Bonds may only be transferred in accordance with the Subordinated Bond Resolution.

(c) The City's obligations to repay each Advance and Term Loan and to pay interest thereon as provided herein shall be evidenced and secured by the 2022 Bonds, and the City shall, without limitation or duplication, (i) make a principal payment on the 2022 Bonds on each date on which the City is required to make a principal payment on the Revolving Credit Loan and/or Term Loan, as applicable, in an amount equal to the principal payment due on such date and (ii) pay interest on the 2022 Bonds on each date on which the City is required to make an interest payment with respect to the Revolving Credit Loan and/or Term Loan, as applicable, in an amount equal to the interest payment due on such date. The payment of the principal of and interest on the 2022 Bonds shall constitute payment of the principal of and interest on the related Advance and/or Term Loan, as applicable, and the payment of the principal of and interest on the related Advance and/or Term Loan, as applicable, shall constitute the payment of and principal and interest on the 2022 Bonds and the failure to make any payment on any Advance and/or Term Loan, as applicable, when due shall be a failure to make a payment on the 2022 Bonds and the failure to make any payment on the 2022 Bonds when due shall be a failure to make a payment on the Advance and/or Term Loan, as applicable.

**SECTION 3.04 Mandatory Purchase Date.** The Loan shall be payable on each Mandatory Purchase Date.

**SECTION 3.05 Mandatory Termination of Commitment Amount.** The Commitment Amount and the Bank's obligation to make Loans hereunder shall terminate at 5:00 p.m. New York City time on the Termination Date, and any Advances then outstanding (together with accrued interest thereon) shall be due and payable on such date, subject to any right of the City to convert the Revolving Credit Loan to a Term Loan on such date in accordance herewith.

**SECTION 3.06 Event of Taxability.** (a) In the event an Event of Taxability, to the extent not payable the Bank or any other Bondholder under the terms of the Supplemental Subordinated Bond Resolution and the 2022 Bonds and not previously paid by the City, the City hereby agrees to pay to the Bank or any other Bondholder on demand therefor (i) an amount equal to the difference between (A) the amount of interest that would have been paid to the Bank or any other Bondholder on the 2022 Series A Bond during the period for which interest on the 2022 Series A Bond is included in the gross income of the Bank or any other Bondholder if the 2022 Series A Bond had borne interest at the Taxable Rate, beginning on the Taxable Date (the "Taxable Period"), and (B) the amount of interest on the 2022 Series A Bond actually paid to the Bank or any other Bondholder during the Taxable Period, and (ii) an amount equal to any interest, penalties or charges owed by the Bank or any other Bondholder as a result of interest on the 2022 Series A Bond becoming included in the gross income of the Bank or any other Bondholder, together with any and all attorneys' fees, court costs, or other out-of-pocket costs incurred by the Bank or any other Bondholder in connection therewith;

(b) Subject to the provisions of paragraph (c) below, the Bank or any other Bondholder shall afford the City the opportunity, at the City's sole cost and expense, to contest (i) the validity of any amendment to the Code which causes the interest on the 2022 Series A Bond to be included in the gross income of the Bank or any other Bondholder or (ii) any challenge to the validity of the exclusion from gross income for federal income tax purposes of interest on the 2022 Series A Bond, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals); provided that, in no event shall a Bondholder be required

to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the City or any other Person; and

(c) As a condition precedent to the exercise by the City of its right to contest set forth in paragraph (b) above, the City shall, on demand, immediately reimburse the Bank or any other Bondholder for any and all expenses (including attorneys' fees for services that may be required or desirable, as determined by the Bank or any other Bondholder in its sole discretion) that may be incurred by the Bank or any other Bondholder in connection with any such contest, and shall upon an Event of Default, on demand, immediately reimburse the Bank or any other Bondholder for any payments, including any taxes, interest, penalties or other charges payable by the Bank or any other Bondholder for failure to include such interest on the 2022 Series A Bond in its gross income. The Bondholder agrees to reimburse the City any amounts refunded by the Internal Revenue Service to the Bondholder in connection with a successful challenge by the City that was previously paid to the Bondholder by the City.

(d) *Survival.* Without prejudice to the survival of any other agreement of the City hereunder, the agreements and obligations of the City contained in this Section shall survive the termination of this Agreement and the payment in full of the 2022 Series A Bond and the obligations of the City thereunder and hereunder until such time as the federal statute of limitations under which the interest on the 2022 Series Bonds could be declared taxable under the Code shall have expired.

**SECTION 3.07 Payment Obligations.** The City shall pay within thirty (30) days after demand.

(i) if a Tender Event shall have occurred, all costs and expenses of the Bank in connection with the enforcement (whether by means of legal proceedings or otherwise) of any of its rights under this Agreement, the other Financing Documents and such other documents which may be delivered in connection therewith;

(ii) a fee for each amendment to this Agreement or any other Financing Document or any consent or waiver by the Bank with respect to any Financing Document, in each case, in a minimum amount of \$2,500 plus the reasonable fees and expenses of counsel to the Bank;

(iii) upon a Tender Event, the reasonable fees and out-of-pocket expenses for counsel or other reasonably required consultants to the Bank in connection with advising the Bank as to its rights and responsibilities under this Agreement and the other Financing Documents or in connection with responding to requests from the City for approvals, consents and waivers; and

(iv) any amounts advanced by or on behalf of the Bank to the extent required to cure any Default, Tender Event or event of nonperformance hereunder or any Financing Document, together with interest at the Default Rate.

**SECTION 3.08 Funding Indemnity.** In the event the Bank shall incur any loss, cost, or expense (including, without limitation, any loss, cost, or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by the Bank to purchase or hold the 2022 Bonds or the relending or reinvesting of such deposits or other funds or amounts paid or prepaid to the Bank) as a result of any redemption, acceleration, or

prepayment of the 2022 Bonds during the Revolving Credit Period on a date other than an Interest Payment Date for any reason, whether before or after default, and whether or not such payment is required by any provision of this Agreement, the Supplemental Subordinated Bond Resolution or any other Financing Document, then upon the demand of the Bank, the City shall pay to the Bank a prepayment or conversion premium, as applicable in such amount as will reimburse the Bank for such loss, cost, or expense. If the Bank requests such prepayment or conversion premium, as applicable, it shall provide to the City a certificate setting forth the computation of the loss, cost, or expense giving rise to the request for such redemption or conversion premium, as applicable in reasonable detail and such certificate shall be conclusive if reasonably determined. Notwithstanding the foregoing, there shall be no such charge for any loss, cost, or expense incurred by the Bank for up to six (6) prepayments by the City during the Revolving Credit Period that are not made on an Interest Payment Date; provided, that the City shall provide the Bank with at least three (3) Business Days prior notice of each such prepayment. Notwithstanding anything to the contrary herein, such indemnity shall only apply during the Revolving Credit Period and shall not apply to the conversion of the Revolving Credit Loan to a Term Loan.

#### **ARTICLE IV CONDITIONS**

**SECTION 4.01 Effectiveness.** This Agreement shall become effective on the date on which each of the following conditions shall have been satisfied:

- (a) receipt by the City and the Bank of counterparts hereof signed by each of the parties hereto;
- (b) receipt by the Bank of the duly executed 2022 Bonds dated on or before the Effective Date complying with the provisions of Section 3.03;
- (c) receipt by the Bank of a certified copy of each Resolution;
- (d) receipt by the Bank of a certificate of an Authorized Officer of the City certifying that each of the City's representations and warranties contained (or incorporated by reference) herein is true and correct on and as of the Effective Date;
- (e) receipt by the Bank of all opinions (including, without limitation, from counsel to the City, opinions as to the due authorization, execution, delivery and enforceability of this Agreement, an opinion of Bond Counsel in accordance with Section 2.02 clause (2) of the Subordinated Bond Resolution), certificates (including, without limitation, a closing certificate addressing representations and warranties, no Tender Event or Potential Tender Event, that except as disclosed in writing to the Bank, there has been no event or circumstance since September 30, 2021, that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, etc.) and other documents it may reasonably request relating to the existence of the City, the authority for and the validity of this Agreement, the 2022 Bonds and each other Financing Document, and any other matters relevant hereto or thereto, all in form and substance satisfactory to the Bank;

**SECTION 4.02 Revolving Credit Borrowings.** The obligation of the Bank to make an Advance is subject to the satisfaction of the following conditions:

(a) receipt by the Bank of a properly presented and conforming Notice of Revolving Credit Borrowing;

(b) the fact that, immediately after such Advance, the aggregate outstanding principal amount of the Advances will not exceed the amount of the Commitment Amount;

(c) no Potential Tender Event, Tender Event or Suspension Event shall have occurred and be continuing;

(d) each of the City's representations and warranties contained in Article V shall be true and correct on and as of the date of such Advance (except with respect to the representations and warranties contained in Section 5.01 and 5.02 hereof which shall be deemed to refer to the most recent financial statements of the City delivered to the Bank pursuant to Section 6.18 hereof);

(e) with respect to an Advance being made under the 2022 Series A Bond, at the request of Bond Counsel, there shall be delivered to the City from the Bank an "issue price" or similar certificate in such form as reasonably required by Bond Counsel to deliver its opinion specified in clause (e) of this Section; and

(f) with respect to an advance being made under the 2022 Series A Bond, there shall have been delivered to the Bank an opinion of Bond Counsel, to the effect that interest on such Advance is excludable to the holder thereof for federal income tax purposes.

Each Advance hereunder shall be deemed to be a representation and warranty by the City on the date of such Advance as to the facts specified in clauses (c) and (d) of this Section.

**SECTION 4.03 Term Borrowing.** The obligation of the Bank to convert the Revolving Credit Loans to a Term Loan is subject to the satisfaction of the following conditions:

(a) the fact that, immediately after such Term Loan, the aggregate outstanding principal amount of the Term Loan will not exceed the amount of the Commitment Amount;

(b) no Potential Tender Event, Tender Event or Suspension Event shall have occurred and be continuing; and

(c) each of the City's representations and warranties contained in Article V shall be true and correct on and as of the date of such Term Loan (except with respect to the representations and warranties contained in Section 5.01 and 5.02 hereof shall be deemed to refer to the most recent financial statements of the City delivered to the Bank pursuant to Section 6.18 hereof and Effective Date shall mean the date the representation is made).

Such Term Loan shall be deemed to be a representation and warranty by the City on the date of such Loan as to the facts specified in clauses (a), (b) and (c) of this Section.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES**

The City represents and warrants that as of the date hereof:

**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 Baker Tilly US, LLP, heretofore delivered to the Bank, 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.** Except as disclosed in writing to the Bank prior to the Effective Date, since September 30, 2021, there has been no material change in the business, operations, assets or financial or other condition of the System which would adversely affect the ability of the City to perform its obligations under this Agreement or the Financing 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 this Agreement or the Financing Documents.

**SECTION 5.04 Power; Authorization; Enforceable Obligations.** The City has all requisite power and authority and the legal right to adopt the Resolutions, to make, deliver and perform this Agreement, the 2022 Bonds and the other Financing Documents and to borrow pursuant to the Bond Resolution and to secure the payment of its obligations in respect of such borrowings by the pledge of the Subordinated Indebtedness Fund made in the Subordinated Bond Resolution, and has taken all necessary action to authorize the borrowings and such pledge on the terms and conditions of this Agreement, the 2022 Bonds and the Resolutions, and to authorize the execution, delivery and performance of this Agreement and the other Financing 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 2022 Bonds or the other Financing Documents, except such consents, authorizations, filings or other acts as have been obtained, made or given. This Agreement and the 2022 Bonds have been duly authorized, executed and delivered on behalf of the City, and each of this Agreement and the other Financing Documents constitute a legal, valid and binding obligation of the City enforceable against the City in accordance with its 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 the constitutional power of the United States of America. The Resolutions have been duly adopted and are in full force and effect.

**SECTION 5.05 No Legal Bar.** The execution, delivery and performance of this Agreement, the 2022 Bonds and the other Financing 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 to the Bank including by reference in the audited financial statements, 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 2022 Bonds or any other Financing 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 2022 Bonds or any other Financing Document or in respect of any other Indebtedness 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 2022 Bonds or the other Financing 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 2022 Bonds or the other Financing Documents or in respect of any other Indebtedness incurred to finance or otherwise in respect of the System or secured by any Revenues or other assets of the System. No Potential Tender Event has occurred and is continuing.

**SECTION 5.08 Security, Etc.** The obligations of the City in respect of the 2022 Bonds will be secured ratably with other Subordinated Bonds or Parity Subordinated Indebtedness heretofore and hereafter issued by a lien on and pledge of the Subordinated Indebtedness Fund, which lien and pledge is junior and subordinate in respect of any part thereof which is included in the Trust Estate, as such term is defined in the Bond Resolution, to the lien on and pledge of such Trust Estate created by the Bond Resolution in favor of the holders of the Bonds, but is superior to all other liens, pledges, charges, security interests and other encumbrances of whatever nature on the Subordinated Indebtedness Fund. The obligations of the City in respect of the 2022 Bonds will be "Subordinated Indebtedness" within the meaning of the Bond Resolution.

**SECTION 5.09 Federal Reserve Regulations.** No part of the proceeds of any Loan will be used for the purpose, whether immediate, incidental or ultimate, to purchase or carry any margin stock (within the meaning of Regulation U) or for any other purpose which would violate any of the regulations of the Board of Governors of the Federal Reserve System.

**SECTION 5.10 ERISA Matters.** The City does not maintain any employee benefit plan that is subject to Title I or Title IV of ERISA.

**SECTION 5.11 Sovereign Immunity.** The defense of sovereign immunity is not available to the City in any proceedings by the Bank to enforce any of the provisions of this

Agreement or the Financing 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 5.12 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 Bank for purposes of or in connection with this Agreement is, and all such information hereafter furnished by the City to the Bank will be, true and accurate in all material respects on the date as of which such information is stated or certified.

**SECTION 5.13 Incorporation by Reference.** The City is in compliance with all representations and warranties set forth herein and in the Financing Documents to which it is a party (unless made as of a previous date), which are hereby made to, and for the benefit of, the Bank and incorporated herein by this reference, as if set forth herein in full (together with the related definitions).

**SECTION 5.14 No Proposed Legal Changes.** Except as disclosed in writing to the Bank or as otherwise permitted by the Subordinated Bond Resolution or the Bond Resolution, 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 or any Financing 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 or any Financing Document; or (c) the priority of the Liens granted under the Resolutions or the rights and remedies of the Bank under this Agreement or any other Financing Document.

**SECTION 5.15 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 that would have Material Adverse Effect.

**SECTION 5.16 Rate Increases.** An increase by the City of rates, fees, rentals or other charges for use of the product, services and facilities of the System requires no action or approval by or in respect of any Governmental Authority other than the City Commission of the City and the Florida Public Service Commission.

**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, 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 Government Regulation.** The Bank hereby notifies the City that pursuant to the requirements of the Patriot Act the Bank is required to obtain, verify and record information that identifies the City which information includes the name and address of the City and other information that will allow the Bank to identify the City in accordance with the Patriot Act. The City shall, promptly following a request by the Bank, provide all documentation and other information that the Bank reasonably requests in order to comply with its ongoing obligations under applicable law or regulation, including, without limitation, "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, and shall comply with all applicable BSA laws and regulations, as amended. The City hereby represents and warrants and covenants and agrees to the best of its knowledge (a) that it is not and shall not be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by OFAC, the Department of the Treasury or included in Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (as amended from time to time, the "Executive Order"), that prohibits or limits the Bank from making any advance or extension of credit to the City or from otherwise conducting business with the City and (b) to the extent it has knowledge take such reasonable actions to ensure that Advances shall not be used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto.

**SECTION 5.20 Anti-Corruption Laws; Sanctions.** The City and, to the knowledge of the City, the members of the Commission and its officers, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of the City or, to the knowledge of the City, any of their respective members of the Commission or officers is a Sanctioned Person. Neither the Advances, the use of the proceeds of the 2022 Bonds or the other transactions contemplated hereby will, to its knowledge, violate Anti-Corruption Laws or applicable Sanctions (including, without limitation, the Patriot Act).

**SECTION 5.21 Usury.** None of the Financing Documents or the 2022 Bonds provide for any payments that would violate any applicable law regarding permissible maximum rates of interest.

## **ARTICLE VI COVENANTS**

The City agrees that, so long as the Bank has any Commitment Amount hereunder or any amount payable hereunder or under the 2022 Bonds remains unpaid, the City:

**SECTION 6.01 Resolutions.** Shall perform each of its covenants set forth in the Subordinated Bond Resolution and the Bond 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 Inspection of Property; Discussions.** Shall permit representatives of the Bank 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 6.03 Notices.** Shall promptly give notice to the Bank upon knowledge of an officer of the City:

(a) of the occurrence of any Potential Tender Event of which the City has knowledge and any Tender Event;

(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 that if granted would have a Material Adverse Effect on the System (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 Bond Ratings assigned by Moody's (if the Bonds are then rated by Moody's), S&P (if the Bonds are then rated by S&P) or Fitch (if the Bonds are then rated by Fitch) to the Bonds (without taking into consideration any credit enhancements, liquidity or credit support);

(d) of the execution and delivery or adoption, as applicable, thereof, of any amendments to any of this Agreement or the Supplemental Subordinated Bond Resolution.

(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 the Financing Documents.

(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 Bonds, 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 paragraph (a) of this subsection 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, if any, action the City proposes to take with respect thereto.

**SECTION 6.04 Resolutions, Etc.** Shall not amend the Subordinated Bond Resolution without the prior written consent of the Bank or modify, amend or supplement or agree

to modify, amend or supplement, any other Financing Document in any respect which is adverse to the interests of the Bank or is inconsistent with this Agreement, without the prior written consent of the Bank; *provided, however*, that except as hereinafter provided, (a) in the case of the Subordinated Bond Resolution, no such consent shall be required in connection with any amendment thereto permitted under the provisions of Section 10.01 or 10.02 clause (1) or (2) thereof and (b) in the case of the Bond Resolution, no such consent shall be required in connection with any amendment thereto permitted under the provisions of Section 1001 or 1002 thereof. The City shall promptly (and in any event within thirty (30) days) furnish to the Bank copies, certified by the Clerk of the Commission of the City as being in full force and effect, of any modification of, amendment of or supplement to any of the Resolutions as in effect on the date of the delivery of the certified Resolutions referred to in subsection 4.01(c); *provided, however*, that (a) in the case of the Subordinated Bond Resolution, the City shall not be required to furnish any such modification, amendment or supplement permitted under the provisions of Section 10.01 or 10.02 clause (1) or (2) thereof, other than such a modification, amendment or supplement that amends or modifies the provisions of the Second Supplemental Subordinated Bond Resolution and (b) in the case of the Bond Resolution, the City shall not be required to furnish any such modification, amendment or supplement permitted under the provisions of Section 1001 or 1002 thereof. No such amendments permitted hereunder shall impair the rights of the Bank under the Subordinated Bond Resolution or the Bond Resolution or the ability of the City to perform its obligations hereunder or under the 2022 Bonds; *provided, however*, that the foregoing shall not impair the rights of the City to issue additional indebtedness and obligations in accordance with the terms of the Subordinated Bond Resolution or the Bond Resolution.

No amendment to the sections of the Bond Resolution incorporated by reference into the Subordinated Bond Resolution by virtue of Section 7.07 of the Subordinated Bond Resolution shall be effective for purposes of the Subordinated Bond Resolution unless approved in the same manner as required for an amendment to the Subordinated Bond Resolution (as if such incorporated provisions were set out in full in the Subordinated Bond Resolution).

**SECTION 6.05 Further Assurance.** Shall, at any and at all times, as far as it may be authorized by law, comply with any reasonable request of the Bank to pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, pledging, assigning and confirming all and singular the rights, moneys, securities and funds pledged or assigned in the Subordinated Bond Resolution or intended so to be, or which the City may become bound to pledge or assign.

**SECTION 6.06 Power to Fix and Collect Rates, Fees and Charges.** (a) Shall, as long as any 2022 Bonds are outstanding or other amounts are owing to the Bank hereunder, maintain 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, including, without limitation, the Bond Resolution, and subject to the jurisdiction of any applicable regulatory authority.

(b) The City shall at all times establish and collect rates, fees and charges for the use or the sale of the output, capacity or service of the System, which, together with other available Revenues, are reasonably expected to yield Net Revenues which shall be at least equal to the sum of (a) the Aggregate Debt

Service on the Outstanding Bonds for the forthcoming 12 month period, (b) the Aggregate Subordinated Debt Service on the Outstanding Subordinated Bonds for the forthcoming 12 month period and (c) the Parity Subordinated Indebtedness Debt Service on the outstanding Parity Subordinated Indebtedness for the forthcoming 12 month period, and, in any event, as shall be required, together with other available funds, to pay or discharge all other indebtedness, charges and liens whatsoever payable out of Revenues under the Resolution and to comply with all covenants on the part of the City contained in the Bond Resolution; provided, however, that (i) any Principal Installment which is a Refundable Principal Installment may be excluded from Aggregate Debt Service for purposes of the foregoing but only to the extent that the City intends to pay such Principal Installment from sources other than Revenues, (ii) any Subordinated Principal Installment which is a Refundable Subordinated Principal Installment may be excluded from Aggregate Subordinated Debt Service for purposes of the foregoing but only to the extent that the City intends to pay such Subordinated Principal Installment from sources other than Revenues and (iii) the principal of any Refundable Parity Subordinated Indebtedness may be excluded from Parity Subordinated Indebtedness Debt Service for purposes of the foregoing but only to the extent that the City intends to pay such principal from sources other than Revenues. Promptly upon any material change in the circumstances which were contemplated at the time such rates, fees and charges were most recently reviewed; but not less frequently than once in each Fiscal Year, the City shall review the rates, fees and charges so established and shall promptly revise such rates, fees and charges as necessary to comply with the foregoing requirements, provided that such rates, fees and charges shall in any event produce moneys sufficient to enable the City to comply with all its covenants under the Resolution. All terms used in the paragraph (b) shall have the meanings set forth in the Subordinated Bond Resolution.

(c) No free service or service otherwise than in accordance with the established rates, fees and charges shall be furnished by the System or as otherwise required by law, which rates, fees and charges shall not permit the granting of preferential rates, fees or charges among the users of the same class of customers; provided, however, the City may dispose without charge reclaimed water for irrigation or any other purpose if it is deemed by the City to be an efficient use of such reclaimed water. If and to whatever extent the City receives the services and facilities of the System, it shall pay for such services and facilities according to the City's established rate schedule, and the amounts so paid shall be included in the amount of Revenues. All terms used in this paragraph (c) shall have the meanings set forth in the Subordinated Bond Resolution.

**SECTION 6.07 Sovereign Immunity.** To the extent permitted 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 and any 2022 Bonds or for damages for a breach of any of the foregoing, except to the extent that any such proceeding seeks enforcement based on tort or similar claim and in such case such defense is available only to the extent set forth under Florida Statutes, Section 768.28 or other similarly applicable provision of law.

**SECTION 6.08 Incorporation by Reference.** Shall comply with all its covenants and agreements set forth in the other Financing Documents, which covenants and agreements are hereby incorporated herein by reference and, notwithstanding anything to the contrary set forth herein or in such other Financing Documents, shall be for the benefit of, and run directly to, the Bank, and the Bank shall be entitled to rely upon all such covenants and agreements as though all such covenants and agreements were set forth herein in full or otherwise addressed directly to the Bank. All such covenants and agreements shall be unaffected by any amendment, modification or waiver after the date hereof of any such other Financing Document, unless amended, modified or waived in accordance with Section 6.04 hereof.

**SECTION 6.09 Maximum Lawful Rate.**

(a) If the amount of interest payable on any Interest Payment Date in respect of the preceding Interest Accrual Period would exceed the Maximum Lawful Rate permitted by law (the "Maximum Lawful Rate"), the amount of interest payable to the Bank on such date in respect of such period shall be computed at the Maximum Lawful Rate. Any interest that would have been due and payable for any period but for the operation of this paragraph shall accrue and be payable as provided in the immediately succeeding paragraph and shall, less interest actually paid to each Bondholder for such period, constitute the "Excess Interest Amount."

(b) If there is any accrued and unpaid Excess Interest Amount as of any date, (A) the amount of interest payable to the Bank on any Interest Payment Date shall be computed at the Maximum Lawful Rate pursuant to the immediately preceding paragraph (a) and (B) in respect of any subsequent Interest Accrual Period the amount of interest otherwise payable to the Bank would be less than the amount of interest payable to the Bank computed at the Maximum Lawful Rate, then the amount of interest payable to the Bank in respect of such subsequent Interest Accrual Period shall continue to be computed at the Maximum Lawful Rate until the total amount of interest paid to the Bank shall equal the total amount of interest which would have been payable to the Bank if the total amount of interest had been computed without giving effect to the Maximum Lawful Rate. If and to the extent permitted by applicable law, on the first to occur of the Termination Date and the Maturity Date, the City shall pay to the Bank a fee equal to the amount of the Excess Interest Amount as a result of the provisions herein.

**SECTION 6.10 Compliance with Laws.** Shall comply in all material respects, within the time period, if any, given for such compliance by the relevant Governmental Authority, with all applicable laws, rules, regulations and requirements of Governmental Authorities (including, without limitation, Environmental Laws, Anti-Corruption Laws and Sanctions), except where the necessity of compliance therewith is contested in good faith by appropriate proceedings.

**SECTION 6.11 Maintenance of Ratings.** Shall at all times maintain long-term credit ratings on the Bonds, without regard to credit or liquidity enhancements, from not less than two Rating Agencies.

**SECTION 6.12 Restrictions on Use of Proceeds.** The proceeds of Advances will be applied by or on behalf of the City only for the purposes permitted by the Supplemental Subordinated Bond Resolution. If the proceeds of any Advances are not applied for the purposes permitted by the Supplemental Subordinated Bond Resolution, the City covenants and agrees that, notwithstanding any provisions of the Resolutions to the contrary, said proceeds will be returned

to the Bank promptly. The City shall not use or allow to be used, and the members of the Commission and its officers and employees shall not use or allow to be used, the proceeds of any of the Advances or the 2022 Bonds (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or (ii) in any manner that would result in the violation of any applicable Sanctions.

**SECTION 6.13 2022 Bond Restrictions.** The City shall not permit the 2022 Bonds to be (i) assigned a specific rating by any Rating Agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) issued pursuant to any type of official statement, private placement memorandum or other offering document, (iv) assigned a CUSIP number by FactSet Research Systems Inc. (or any other Person who assigns CUSIP numbers) or (v) placed or offered by a broker-dealer in the capacity of an underwriter or a placement agent.

**SECTION 6.14 Maintenance of Existence.** The City (a) shall maintain its existence pursuant to the laws of the State and shall maintain the System's existence pursuant to the laws of the State and (b) except as permitted under the Bond Resolution shall not (i) liquidate or dissolve, or sell or lease or otherwise transfer or dispose of all or substantially all of the System, its property, assets or business, or combine, merge or consolidate with or into any other entity or (ii) directly or indirectly, incur, create or permit to exist any Lien on all or any part of the security provided by the Bond Resolution. other than Liens created under and in accordance with the terms of the Bond Resolution and this Agreement.

**SECTION 6.15 Financial Data.** The City will keep proper books of record and account in which full, true and correct entries in accordance with GAAP. All financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements, except as otherwise specifically prescribed herein.

**SECTION 6.16 Additional Debt.** The City shall not issue additional Debt secured by a lien on all or any portion of the Trust Estate except in accordance with the terms and conditions of the Bond Resolution.

**SECTION 6.17 Swap Restrictions.** Without the prior written consent of the Bank, the City will not enter into any Qualified Hedging Contract unless any Hedge Charges are Subordinated Hedging Contract Obligations or such Hedge Charges are subordinate to the payment of the principal and interest payments on the 2022 Bonds.

**SECTION 6.18 Financial Reporting.** The City shall furnish to the Bank:

(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 at the end of such year, and the related statements of revenues, expenses and changes in net assets and cash flows for the year then ended, accompanied by an unmodified audit report of an independent certified public accounting firm of recognized standing stating that they have been prepared in accordance with GAAP consistently applied;



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

(c) promptly following its approval by the City Commission of the City, each annual budget for the System and, promptly following the adoption thereof, each amendment to the annual budget that could reasonably be determined to have a material adverse effect on the ability of the City to perform its obligations under this Agreement or any Financing Document in any material respect; and

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

## **ARTICLE VII TENDER EVENTS**

**SECTION 7.01 Tender Events.** If one or more of the following events ("Tender Events") shall have occurred and be continuing:

(a) the City shall fail to pay when due any principal of, or interest on, any Loan or the 2022 Bonds when due;

(b) the City shall fail to observe or perform any covenant or agreement contained in this Agreement (other than as described in another clause of this Section 7.01) or in any Financing Document for 45 days after written notice thereof has been given to the City by the Bank; *provided, however,* that there shall be no 45-day cure period for a failure to observe or perform any covenant or agreement set forth in or contemplated by Section 6.01, 6.04, 6.06, 6.07, 6.08, or 6.11;

(c) any representation, warranty, certification or statement made by the City (or incorporated by reference) in this Agreement or any Financing Document or in any certificate, financial statement or other document delivered pursuant to this Agreement or any Financing Document shall prove to have been incorrect in any material respect when made (or deemed made);

(d) (i) the City shall fail to pay any principal of, or interest on, or premium on, any of the Bonds, the 2022 Bonds or any of the City's Subordinated Indebtedness (including bank-held bonds) when due or within any applicable grace period; provided that for purposes of this subsection (d), the foregoing shall exclude the failure by the City to pay any principal of, or interest on, Subordinated Indebtedness which is supported in whole by a third-party liquidity provider pursuant to a liquidity agreement; or (ii) (A) the City shall fail to pay any Indebtedness 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 Indebtedness, or (B) 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 pursuant to which Indebtedness shall be outstanding in a principal amount of at least \$20,000,000, 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, or require or permit to be required the prepayment (whether by mandatory redemption or mandatory tender) of the related Indebtedness such that such Indebtedness becomes immediately due and payable prior to, with the giving of notice if required, the maturity of the related Indebtedness; or any such Indebtedness 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;

(e) the City shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any action to authorize any of the foregoing;

(f) an involuntary case or other proceeding shall be commenced against the City seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed in a period of ninety (90) days; or an order for relief shall be entered against the City under the Federal bankruptcy laws or applicable state law as now or hereafter in effect;

(g) a moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction shall have been declared or announced (whether or not in writing) by the State of Florida, the Federal Government or any other Governmental Authority with jurisdiction with respect to any of the Bonds or any of the Subordinated Indebtedness, or a moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction shall have been declared or announced (whether or not in writing) by the City with respect to any of the Bonds or any of the Subordinated Indebtedness;

(h) A final, unappealable judgment or judgments against the City for a claim not subject to sovereign immunity under Section 768.28, Florida Statutes or other similarly applicable law, 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 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 days; or (y) a claims bill against the City which is approved by the Florida legislature and signed into law by the Governor for the payment of money for a claim in excess of \$20,000,000 in the aggregate shall be payable from the funds and other property comprising the Trust Estate securing the Bonds (including any Bank Bonds) 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; provided that an obligation shall be considered "covered by insurance" to the extent that the City has self-insured against such obligation or risk and has maintained adequate reserves therefor under appropriate insurance or accounting industry standards within the Rate Stabilization Fund, Utilities Plant Improvement Fund, and/or Debt Service Fund of the City;

(i) (A) any material provision of this Agreement or any Financing Document (including without limiting the generality of the foregoing, Section 5.01(1) of the Subordinated Bond Resolution) affecting the ability or the obligation of the City to pay when due, the payments due on the Subordinated Bonds (including the 2022 Bonds) shall at any time cease to be valid and binding on the City as a result of a final, non-appealable judgment of a court of competent jurisdiction or by any Governmental Authority having jurisdiction, or (B) the City shall have taken or permitted to be taken any official action, or shall have duly enacted any ordinance, which would invalidate, render null and void or make unenforceable any provision of this Agreement, the Bond Resolution or the 2022 Bonds;

(j) any of the Rating Agencies then rating any Bonds shall have downgraded the long-term unenhanced credit ratings on such Bonds to below "Baa1" or "BBB+", as the case may be, or shall have suspended or withdrawn the long-term unenhanced credit ratings on such Bonds for credit-related reasons; or

(k) An Event of Default under the Senior Bond Resolution or an Event of Default under the Master Subordinated Bond Resolution.

then, and in every such event, the Bank shall have all other remedies provided at law or in equity including, without limitation, specific performance; and, in addition, the Bank, in its sole discretion, may do one or more of the following (i), upon seven (7) days' advance written notice to the City and the Paying Agent, tender the 2022 Bonds to the City for payment in full and the City shall thereupon be obligated to pay immediately the outstanding principal amount of the 2022 Bonds (together with accrued interest thereon) and all other amounts owed by the City hereunder (such tender date being referred to herein as a "Tender Event Mandatory Purchase Date"), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the City, (ii) exercise any right or remedy available to it under any other provision of this Agreement, including, without limitation, not being obligated to honor requests for Advances; and (iii) exercise any other rights or remedies available under any Financing Document. Notwithstanding the exercise of any other remedies provided for herein, upon the occurrence and during the

continuance of any Tender Event, the 2022 Bonds and any amounts due hereunder shall bear interest at the Default Rate.

Notwithstanding the foregoing, the failure to pay any amounts owing hereunder other than principal and interest on a Loan shall not be a Tender Event and if such amounts shall remain unpaid after seven (7) days from the date due any amounts due hereunder shall bear interest at the Default Rate until such amounts owing are paid in full and the Bank in its sole discretion is not obligated to honor requests for Advances until such amounts shall be paid in full.

Upon the occurrence and during the continuance of a Potential Tender Event described in clause (f) above (a "Suspension Event"), the Bank's obligation to make Loans hereunder shall be immediately and automatically suspended, without notice, and the Bank shall be under no further obligation hereunder to make Loans hereunder until the bankruptcy, insolvency or similar proceeding referred to therein is terminated prior to the court entering an order granting the relief sought in such proceeding. In the event such proceeding is terminated, then the obligation of the Bank to make Loans hereunder shall be automatically reinstated and the terms of this Agreement shall continue in full force and effect (unless the obligation of the Bank to make Loans hereunder shall otherwise have terminated as provided in this Section 7.01) as if there had been no such suspension. If at any time prior to the Maturity Date, (x) the Potential Tender Event which gave rise to such suspension is cured or has ceased to be continuing and (y) the obligation of the Bank to make Loans under this Agreement has not otherwise terminated, then, the obligation of the Bank to make Loans under this Agreement shall be automatically reinstated. If the Potential Tender Event which gave rise to the suspension of the obligation of the Bank to make Loans under this Agreement has not been cured or has not ceased to be continuing prior to Maturity Date and the obligation of the Bank to make Loans under this Agreement has not otherwise terminated, then the obligation of the Bank to make Loans hereunder shall be automatically terminated on the Maturity Date. Promptly upon the occurrence of such termination the Bank shall give written notice of the same to the City.

The rights, remedies, powers and privileges provided herein and in the Financing Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law or in equity or otherwise. No notice to or demand on the City in any case shall entitle the City to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the Bank to any other or further action in any circumstances without notice or demand. The Bank may, but shall not be obligated to, remedy any default by the City hereunder or with respect to any other person, firm or corporation in a reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the City.

Notwithstanding anything to the contrary herein or in the Bond Resolution, a default of any of the covenants contained in Section 7.01 of the Supplemental Subordinated Bond Resolution or similar covenants in the Bond Resolution shall not be an "Tender Event", and the sole remedy of the Bank shall, upon an Event of Taxability, be an adjustment of the interest rate on the 2022 Series A Bond to the Taxable Rate to the extent and in the manner described herein and in the Supplemental Subordinated Bond Resolution.

**ARTICLE VIII  
CHANGE IN CIRCUMSTANCES**

**SECTION 8.01 Increased Cost and Reduced Return.** If (a) the introduction of or any change in or in the interpretation of any law or regulation, (b) the compliance with any guideline or request from any central bank or other governmental authority or (c) the introduction of any applicable law, rule, regulation or guideline regarding capital adequacy, or any change therein or any change in the interpretation or administration thereof by any central bank or governmental authority charged with the interpretation or administration thereof or compliance by the Bank (or any corporation controlling any thereof), with any request, guideline or directive regarding capital adequacy of any such central bank or other authority, shall either (i) impose, modify or deem applicable any reserve, special deposit, insurance, liquidity ratio or similar requirement against letters of credit issued by the Bank, commitments of the Bank to make loans similar to the commitments made by the Bank under this Agreement, (ii) change the basis of taxation of payments due the Bank under this Agreement or the 2022 Bonds (other than a change in taxation of the overall net income of the Bank) or (iii) impose on the Bank any other condition relating, directly or indirectly, to this Agreement, and the result of any event referred to in (i), (ii) or (iii) above shall be to increase the cost to the Bank of maintaining the Commitment Amount under this Agreement or, in the case of any capital adequacy requirement, to reduce the rate of return on the Bank's capital or cause the Bank to increase the amount of capital or liquidity required or expected to be maintained by the Bank as a consequence of its obligations under or in connection with this Agreement to a level below that which the Bank could have achieved but for the imposition of such requirement (taking into account the Bank's capital adequacy policies) or reduce any amount receivable by the Bank hereunder or in connection herewith (which increase in cost, reduction in rate of return or reduction in amount receivable shall be the result of the Bank's reasonable allocation of the aggregate of such increases or reductions resulting from such event), then the City shall, upon written notice from the Bank (which notice shall set forth the matters described below), pay to the Bank, for the account of the Bank, as the case may be, from time to time as specified by the Bank, such additional amounts as shall be demanded by the Bank as sufficient to compensate the Bank, as the case may be, for such increased cost. Any notice relating to increased costs given the City by the Bank pursuant to this Section 8.01 shall state whether the Bank has become subject to such increase in costs, reduction in rate of return or reduction in amount receivable, and such notice shall specify in reasonable detail (x) the circumstances giving rise to such increase, (y) the date of the event giving rise to such increase and (z) the amount of the increase, which amount the Bank shall certify has been computed in accordance with all applicable rules and regulations.

Notwithstanding the foregoing, for purposes of this Agreement (a) all rules, guidelines or directives in connection with the Dodd-Frank Act shall be deemed to be a change in law, regardless of the date enacted, adopted or issued, and (b) all rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) shall be deemed a change in law regardless of the date enacted, adopted or issued.

Notwithstanding anything to contrary herein, no demand for payment of increased costs may be made by the Bank as a result of a change in the maximum marginal federal corporate tax rate.

As used in this Section, the term "Bank" shall include each Participant and the Bank's (or such Participant's) parent or holding company; provided, however, that no Participant or the Bank's (or such Participant's) parent or holding company shall be entitled to recover amounts under this Section greater than those that the Bank would be entitled to recover provided, that increased costs incurred by the Bank's (or such Participant's) parent or holding company shall be without duplication of any increased costs incurred by the Bank (or such Participant).

#### **SECTION 8.02 Taxes.**

(a) To the extent permitted by law, any and all payments by the City hereunder or under the 2022 Bonds shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding taxes imposed on the overall net income of the Bank or any Participant (and franchise taxes imposed in lieu of net income taxes) by the jurisdiction of the Bank's or Participant's applicable lending office or any political subdivision thereof (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the City shall be required by law to withhold or deduct any Taxes from or in respect of any sum payable hereunder or under the 2022 Bonds, then, to the extent permitted by law, (i) the sum payable shall be increased as may be necessary so that after making all required withholdings or deductions (including those applicable to additional sums payable under this Section 8.02) the Bank or Participant receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (ii) the City shall make such withholdings or deductions and (iii) the City shall pay the full amount withheld or deducted to the relevant taxation authority or other authority in accordance with applicable law. Notwithstanding anything to the contrary contained herein, the City shall not be required to pay any additional amount in respect of withholding of United States Federal income taxes pursuant to this Section to the extent such withholding is required because the Bank or Participant has failed to submit any form or certificate that it is entitled to submit under applicable law to qualify for an exemption from such withholding.

(b) In addition, to the extent permitted by law, the City agrees to pay any present or future stamp or documentary taxes, charges or similar levies that arise under the laws of the United States of America and the State of Florida from any payment made or received hereunder or received under the 2022 Bonds or from the execution or delivery or otherwise with respect to this Agreement or the 2022 Bonds (hereinafter referred to as "Other Taxes").

(c) The City shall indemnify the Bondholder, within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes and Other Taxes (including Indemnified Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this Section 8.02) payable or paid by such Bondholder or required to be withheld or deducted from a payment to such Bondholder and any reasonable expenses arising therefrom or with respect thereto. A certificate as to the amount of such payment or liability delivered to the City by the Bondholder shall be conclusive absent manifest error. Each Bondholder agrees to reimburse the City any amounts refunded by such Governmental Authority to the Bondholder in connection with a successful challenge by the City that was previously paid to the Bondholder by the City.

(d) Payments by the City pursuant to this Section 8.02 shall be made within thirty (30) days from the date the Bank or the Participant, as applicable, makes written demand

therefor which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof, which shall be conclusive absent manifest error.

(e) Within thirty (30) days after the date of any payment of Taxes by the City, the City shall furnish to the Bank, at its address specified in or pursuant to Section 9.01 hereof, the original or a certified copy of a receipt evidencing payment thereof. The City shall compensate the Bank or Participant for all losses and expenses sustained by the Bank or Participant as a result of any failure by the City to so furnish such copy of such receipt.

(f) Notwithstanding anything to the contrary in this Section 8.02, no amount or amounts payable to any Participant as a result of the provisions set forth in this Section 8.02 may exceed an amount or amounts that would have been payable to the Bank pursuant to such provisions had the Bank retained for its own account that portion of the Commitment Amount held by such Participant.

## **ARTICLE IX MISCELLANEOUS**

**SECTION 9.01 Notices.** Except as otherwise provided herein, all notices, requests and other communications hereunder shall be in electronic, telephonic or written form (including facsimile) and shall be given to the party to whom addressed, at its address or telephone or facsimile number or e-mail address set forth below, or such other address or telephone or facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to the other parties listed below. Each such notice, request or communication shall be effective (i) if given by telephone, when given to the number indicated below to a Person which the transmitting party reasonably believes to be an authorized representative of the party to whom the notice is directed, (ii) if given by facsimile, when such communication is transmitted to the address specified below and the appropriate answerback is received, (iii) if given by email, when sent, (iv) if given by mail, three (3) days after such communication is deposited in the United States mail with first class postage prepaid, addressed as aforesaid or (v) if given by any other means, when delivered at the address specified below; *provided* that notices to the Bank under Article III shall not be effective until received:

If to the City, to:

City of Gainesville, Florida  
301 S.E. Fourth Avenue  
Gainesville, Florida 32601  
Attention: Utility Chief Financial Officer  
Telephone: (352) 393-1313  
Email: RasnickCE@gru.com

If to the Bank, to:

U.S. Bank National Association  
New York Av of the Americas  
1095 Avenue of the Americas, 13th Floor  
EX-NY-BP13  
New York, NY 10036  
Attention: Helen Martin  
Telephone: (917) 326-3115  
Email: [helen.martin@usbank.com](mailto:helen.martin@usbank.com)  
Attention: Bhala Mehendale  
Telephone: (917) 326-3970  
Email: [bhala.mehendale@usbank.com](mailto:bhala.mehendale@usbank.com)

All notices given by telephone, facsimile or other electronic means (other than email) shall be confirmed in writing as promptly as practicable.

**SECTION 9.02 No Waivers.** No failure or delay by the Bank in exercising any right, power or privilege hereunder or under the 2022 Bonds shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

**SECTION 9.03 Expenses; Documentary Taxes; Indemnification.**

(a) The City shall pay (i) all out-of-pocket expenses of the Bank, including fees and disbursements of counsel for the Bank (including allocated costs of in-house counsel), in connection with the preparation of this Agreement and the Financing Documents, any waiver or consent hereunder or any amendment hereof or any Potential Tender Event or alleged Potential Tender Event hereunder and (ii) if a Potential Tender Event or Tender Event occurs, all reasonable out-of-pocket expenses incurred by the Bank, including fees and disbursements of counsel (including allocated costs of in-house counsel), in connection with such Potential Tender Event or Tender Event and collection, bankruptcy, insolvency and other enforcement proceedings resulting therefrom. If and to the extent permitted by applicable law, the City shall indemnify the Bank against any transfer taxes, documentary taxes, assessments or charges made by any Governmental Authority by reason of the execution and delivery of this Agreement or the 2022 Bonds.

(b) If and to the extent permitted by applicable law, the City agrees to indemnify the Bank and hold the Bank 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 (including allocated costs of in-house counsel), which may be incurred by the Bank in connection with any investigative, administrative or judicial proceeding (whether or not the Bank shall be designated a party thereto) relating to or arising out of this Agreement or any Financing Document or any actual or proposed use of proceeds of Loans hereunder; *provided* that the Bank 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.



(c) Notwithstanding any other provision of this Agreement to the contrary, all obligations of the City to the Bank under this Agreement are special, limited obligations of the City payable solely from funds available for such purposes under the Subordinated Bond Resolution.

**SECTION 9.04 Amendments and Waivers.** Any provision of this Agreement or the 2022 Bonds may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by an Authorized Officer of the City and the Bank. Each party to this Agreement agrees that it will not rely on any course of dealing, course of performance or oral or written statement by any representative of any other party that does not comply with this Section to effect an amendment, modification, supplement, extension, termination or waiver to depart from the provisions of this Agreement or any Financing Document or any consent thereto.

**SECTION 9.05 Assignments, Participations, Etc.**

(a) This Agreement shall be binding upon and inure to the benefit of the City, the Bank, and their respective permitted successors and assigns; *provided, however*, that (i) the City may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Bank and any assignment without such consent shall be void, and (ii) the Bank shall not transfer or assign any or all of its obligations hereunder (A) without at least 30 days prior written notice to the City and (B) the Bank shall agree to pay all legal expenses and costs of the City related to such transfer or assignment. A Bondholder may, in its sole discretion and in accordance with applicable Law and the Bond Resolution, from time to time assign, sell or transfer in this Agreement, its interest in the 2022 Bonds and the Financing Documents in accordance with the provisions of paragraph (d) or (e) of this Section and the Bond Resolution. A Bondholder may at any time and from time to time enter into participation agreements in accordance with the provisions of paragraph (b) of this Section. A Bondholder may at any time pledge or assign a security interest subject to the restrictions of paragraph (c) of this Section.

(b) Notwithstanding the foregoing provisions, the Bank may at any time sell to one or more banks or other entities (a "Participant") participating interests in any Loans, the Commitment Amount or any other interest of the Bank hereunder; *provided* that (i) the Bank's obligations under this Agreement shall remain unchanged, (ii) the Bank shall remain solely responsible for the performance of such obligations, (iii) the City shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement, and (iv) the Bank shall not transfer or grant any participating interest under which the Participant shall have rights to approve any amendment to, or any consent or waiver with respect to this Agreement. In the case of any such participation, the Participant shall not have any rights under this Agreement, or any of the Financing Documents, and all amounts payable by the City hereunder shall be determined as if the Bank had not sold such participation.

(c) The Bank and each Bondholder may at any time pledge or grant a security interest in all or any portion of its rights under the 2022 Bonds, this Agreement and the other Financing Documents to secure obligations of the Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank, the United States Treasury or Federal Home Loan Bank; *provided* that no such pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such pledgee or assignee for the Bank as a party hereto.

(d) *Sales and Transfers by Bondholder to a Purchaser Transferee.* Without limitation of the foregoing generality, a Bondholder may at any time sell or otherwise transfer in whole the 2022 Bonds 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 (each, a "Purchaser Transferee"). From and after the date of such sale or transfer, U.S. Bank National Association (and its successors) shall continue to have all of the rights of the Purchaser hereunder and under the other Financing Documents as if no such transfer or sale had occurred; provided, however, that (A) no such sale or transfer referred to in clause (e)(i) or (e)(ii) hereof shall in any way affect the obligations of the Purchaser hereunder, (B) the City 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 (e)(i) or (e)(ii) hereof, only the Purchaser shall be entitled to enforce the provisions of this Agreement against the City.

(e) *Sales and Transfers by Bondholder to a Non-Purchaser Transferee.* A Bondholder may at any time sell or otherwise transfer in Authorized Denominations the 2022 Bonds to one or more transferees satisfying the requirements under the Subordinated Bond Resolution which are not Purchaser Transferees (each a "Non-Purchaser Transferee") if written notice of such sale or transfer, including that such sale or transfer is to a Non-Purchaser Transferee, together with addresses and related information with respect to the Non-Purchaser Transferee, shall have been given to the City and the Purchaser (if different than the Bondholder) by such selling Bondholder and Non-Purchaser Transferee.

From and after the date the City, the Trustee and the selling Bondholder have received written notice and an executed a letter signed by authorized officer of the purchaser certifying their qualification as a purchaser pursuant to the requirements under the Subordinated Bond Resolution and delivering the Acknowledgment and Consent attached to the 2022 Bonds, (A) the Non-Purchaser Transferee thereunder shall be a party hereto and shall have the rights and obligations of a Bondholder hereunder and under the other Financing Documents, and any reference to the assigning Bondholder hereunder and under the other Financing Documents shall thereafter refer to such transferring Bondholder and to the Non-Purchaser Transferee to the extent of their respective interests, and (B) if the transferring Bondholder no longer owns any 2022 Bonds, then it shall relinquish its rights and be released from its obligations hereunder and under the Financing Documents.

Notwithstanding anything to the contrary herein, except upon the occurrence and during the continuance of any Tender Event in which the Bank has given notice of its intent to tender the 2022 Bonds on the Tender Event Mandatory Purchase Date or while a Term Loan is Outstanding, the 2022 Bonds may only be sold in whole and the 2022 Series A Bond and the 2022 Series B Bond, must be sold together so there will be a single holder.

**SECTION 9.06 Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA.

**SECTION 9.07 Counterparts; Integration.** This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement constitutes the entire agreement and understanding among the parties hereto and, except with respect to the other

documents and agreements referred to herein, supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof. The parties agree that any 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 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.

**SECTION 9.08 Waiver of Jury Trial.** THE CITY AND THE BANK EACH HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**SECTION 9.09 Jurisdiction; Venue.** With respect to any suit, action or proceeding relating to, or arising from, this Agreement, each party hereto irrevocably submits to the jurisdiction of the courts of the State of Florida and the federal courts located in the State of Florida and agrees that any such suit, action or proceeding shall be had and maintained in the Eighth Judicial Circuit Court and applicable appellate courts.

**SECTION 9.10 Survival.** 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 8.01, 8.02 and 9.03 hereof shall survive payment of any amounts payable hereunder and thereunder; provided, however, any request for payments under Section 8.01 must be requested from the City in writing within 180 days from the later of the termination of this Agreement or the payment in full of any and all 2022 Bonds (unless the event or circumstance giving rise to such payments under Section 8.01 is retroactive, in which case such 180 day period shall be extended to include the period of retroactive effect thereof); provided further, that any request for payments under Section 8.02 must be requested from the City in writing within one (1) year from the later of the termination of this Agreement or the payment in full of any and all 2022 Bonds; provided further that the City shall not be obligated to pay to the Bank any amounts pursuant to Section 9.03 which relate to claims, actions or legal proceedings which are made or commenced more than one (1) year after the later of the termination of this Agreement or the payment in full of any and all 2022 Bonds.

**SECTION 9.11 Arm's Length Transaction.** The City acknowledges and agrees that (a) the transactions contemplated by this Agreement are an arm's-length commercial transaction between the City and the Bank, (b) in connection with such transactions, the Bank is acting solely as a principal and not as an agent or a fiduciary of the City, (c) with respect to making advances hereunder or the process leading thereto (whether or not the Bank or any Affiliate of the Bank has advised or is currently advising the City on other matters), the Bank has not assumed

(individually or collectively) a fiduciary responsibility in favor of the City or any other obligation of the City except the obligations expressly set forth in this Agreement and (d) the City has consulted with its own legal and financial advisors to the extent it deemed appropriate in connection with the transactions contemplated by this Agreement.

**SECTION 9.12 Severability.** The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

**SECTION 9.13 No Third-Party Rights.** Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the parties hereto and the Bondholder any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

**SECTION 9.14 Headings.** Article and Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**SECTION 9.15 Continuing Obligations.** This Agreement is a continuing obligation of the City and shall, until the date on which all amounts due and owing to the Bank hereunder and under the 2022 Bonds shall have been paid in full, (a) be binding upon the City, its successors and assigns and (b) inure to the benefit of and be enforceable by the Bank and its successors, transferees and assigns.

**SECTION 9.16 No Advisory or Fiduciary Responsibility.** In connection with all aspects of the transactions contemplated by this Agreement and the Financing Documents (including in connection with any amendment, waiver or other modification of this Agreement or of the Fee Letter or of any Financing Document), the City acknowledges and agrees that: (a)(i) any arranging, structuring and other services regarding this Agreement and the Financing Documents provided by the Bank or any Affiliate of the Bank are arm's length commercial transactions between the City on the one hand, and the Bank and any Affiliate of the Bank on the other hand, (ii) the Bank is not recommending that the City take an action with respect to the transaction described in this Agreement and the other Financing Documents, and before taking any action with respect to such transaction 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 Financing Documents; (b)(i) the Bank and each Affiliate of the Bank 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, (ii) neither the Bank nor any Affiliate of the Bank has any obligation to the City with respect to the transactions contemplated by this Agreement and the Financing Documents, except those obligations expressly set forth in this Agreement and (iii) the Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Department with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank or any of its affiliates has provided other services or is currently providing other services to the City on

other matters); and (c) the Bank and each Affiliate of the Bank may be engaged in a broad range of transactions that involve interests that differ from those of the City, and neither the Bank nor any Affiliate of the Bank has any obligation to disclose any of such interests to the City.

**SECTION 9.17 Filings on EMMA.** In the event the City files with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its successor ("EMMA"), this Agreement, or any description of the material terms hereof, as required pursuant to a continuing disclosure agreement or Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "Rule") (each such posting, an "EMMA Posting"), the City shall (i) provide the Bank with a copy of each EMMA Posting prior to submitting or posting on EMMA and (ii) shall not file or permit the filing of any EMMA Posting that includes Confidential Information. The City acknowledges and agrees that although the Bank may request review, edits or redactions of such materials prior to filing, the Bank is not responsible for the City's or any other entity's (including, but not limited to, any broker-dealer's) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with any continuing disclosure agreement or any applicable securities or other laws, including, but not limited to, those relating to the Rule. For purposes of this section, "Confidential Information" means any address and account information, e-mail addresses, telephone numbers, facsimile numbers, names and signatures of officers, employees and signatories.

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

CITY OF GAINESVILLE, FLORIDA

By: \_\_\_\_\_  
Name: Claudia Rasnick  
Title: Utility Chief Financial Officer

Approved as to form and legality:

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

U.S. BANK NATIONAL ASSOCIATION

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

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FORM OF NOTICE OF REVOLVING CREDIT BORROWING

[Date]

To: \_\_\_\_\_ (the "Bank")

From: City of Gainesville, Florida (the "City")

Re: Credit Agreement, dated \_\_\_\_\_, 2022,  
between the City and the Bank (the "Credit Agreement")

We hereby give notice, on behalf of the City, pursuant to Section 3.02(a) of the Credit Agreement, of the following proposed Revolving Credit Loan:

Amount of Advance Requested for 2022 Series A Bonds:

\_\_\_\_\_

Amount of Advance Requested for 2022 Series B Bonds:

\_\_\_\_\_

Aggregate Principal Amount of Loan Outstanding Including Requested Advance: \_\_\_\_\_

1. All terms used herein in capitalized form shall have the meanings ascribed thereto in Resolution No. 171090 incorporating by reference the Second Amended and Restated Subordinated Utilities System Revenue Bond Resolution adopted by the City Commission of the City of Gainesville, Florida (the "City"), on May 17, 2018 (the "Subordinated Bond Resolution"), as supplemented by Resolution No. \_\_\_\_\_ adopted by the City on \_\_\_\_\_, 2022 (the "Supplemental Resolution" and together with the Subordinated Bond Resolution, the "Resolution") authorizing the issuance of the Variable Rate Subordinated Utilities System Revenue Bond, 2022 Series A (the "2022 Series A Bond") and the Variable Rate Subordinated Utilities System Revenue Bond, 2022 Series B (Federally Taxable) (the "2022 Series B Bond" and together with the 2022 Series A Bond, the "2022 Bonds").

2. The City hereby certifies that no Tender Event has occurred and is continuing and there exists no event or condition which, with the giving of notice or the passage of time would constitute a Tender Event.

3. After giving effect to the Advance hereby requested, the aggregate amount of Advances requested and outstanding under the Resolution will not exceed the Commitment Amount as of the proposed date of the Advance hereby requested.

**4. [The facts, estimates, circumstances and representations set forth or made (as the case may be) in the Certificate as to Tax, Arbitrage and Other Matters as to the 2022 Series A Bond delivered in connection with the initial issuance of the 2022 Series A Bond, as**



supplemented by an amendatory certificate delivered to Bond Counsel on the date hereof, continue to exist and are hereby reaffirmed on the date hereof.]

5. [The undersigned represents that the City will file or previously has filed with the Secretary of the Treasury, the information report required by Section 149(e) of the Code with respect to the 2022 Series A Bond:

(a) by the fifteenth day of the second calendar month after the close of the calendar quarter in which the 2022 Series A Bond was originally issued, and

(b) at such additional times required by the Code within such time period prescribed by the Code.]

6. The City has notified Bond Counsel of the proposed Advance requested above.

7. [The City has previously delivered to the Bank, addressed to the Bank and the City and upon which opinion Bank may rely, an opinion of Bond Counsel as to those matters required under Section 3.04 of the Supplemental Resolution and the City confirms that it has not received notification from Bond Counsel of a withdrawal of such opinion (unless a replacement opinion has been obtained).]

8. All other conditions precedent to the Advance as set forth in the Supplemental Resolution have been satisfied.

9. You are directed to pay the amount of the Loan on \_\_\_\_\_ in accordance with the wire transfer instructions on file.

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY OF GAINESVILLE, FLORIDA**

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

**ACKNOWLEDGEMENT OF FUNDING**

The above requested Advance was funded on \_\_\_\_\_. Bank agrees to file a copy of this Advance request with the City and the Trustee.

**2022 BOND REGISTERED OWNER / BANK**

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

EXHIBIT "B"

PAYING AGENT/BOND REGISTRAR AGREEMENT

## PAYING AGENT/BOND REGISTRAR AGREEMENT

THIS PAYING AGENT/BOND REGISTRAR AGREEMENT (this "Agreement"), is entered into as of \_\_\_\_\_, 2022 (the "Effective Date") by and between the City of Gainesville, Florida (the "Issuer"), and U.S. Bank Trust Company, National Association ("Bank"), as Paying Agent and Bond Registrar.

### RECITALS

WHEREAS the Issuer has duly authorized and provided for the issuance of multiple series of Subordinated Utilities System Revenue Bonds (the "Bonds") to be issued pursuant to the hereinafter described Resolution to be issued as fully registered bonds without coupons;

WHEREAS the Issuer will ensure that all things necessary to make the Bonds the valid obligations of the Issuer, in accordance with their terms, will be done upon the issuance and delivery thereof;

WHEREAS the Issuer and the Bank wish to provide the terms under which Bank will act as Paying Agent to pay the principal, redemption premium (if any) and interest on the Bonds, in accordance with the terms thereof, and under which the Bank will act as Registrar for the Bonds;

WHEREAS the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent and Bond Registrar for the Bonds;

WHEREAS the Issuer has duly authorized the execution and delivery of this Agreement; and all things necessary to make this Agreement a valid agreement have been done.

NOW, THEREFORE, it is mutually agreed as follows:

### ARTICLE ONE DEFINITIONS

Section 1.01. Definitions. For all purposes of this Agreement except as otherwise expressly provided or unless the context otherwise requires:

"Bank" means U.S. Bank Trust Company, National Association, a national banking association organized and existing under the laws of the United States of America.

"Bond Register" means the book or books of registration kept by the Bank in which are maintained the names and addresses and principal amounts registered to each Registered Owner.

"Fiscal Year" means the fiscal year of the Issuer ending on September 30 of each year.

"Issuer" means the City of Gainesville, Florida.

"Paying Agent" means the Bank when it is performing the function of paying agent for the Bonds.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government or any entity whatsoever.

"Registered Owner" means a Person in whose name a Bond is registered in the Bond Register.

"Registrar" means the Bank when it is performing the function of registrar for the Bonds.

"Stated Maturity" when used with respect to any Bond means the date specified in the Bond as the date on which the principal of such Bond is due and payable.

Terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the hereinafter described Resolution.

ARTICLE TWO  
APPOINTMENT OF BANK AS  
PAYING AGENT AND BOND REGISTRAR

Section 2.01. Appointment and Acceptance. The Issuer hereby appoints the Bank to act as Paying Agent with respect to the Bonds, to pay to the Registered Owners in accordance with the terms and provisions of this Agreement the principal of, redemption premium (if any), and interest on all or any of the Bonds.

The Issuer hereby appoints the Bank as Registrar with respect to the Bonds. As Bond Registrar, the Bank shall keep and maintain for and on behalf of the Issuer, books and records as to the ownership of the Bonds and with respect to the transfer and exchange thereof as provided.

The Bank hereby accepts its appointment, and agrees to act as Paying Agent and Bond Registrar.

Section 2.02. Compensation. As compensation for the Bank's services as Paying Agent and Bond Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in a separate agreement between the Issuer and the Bank.

In addition, the Issuer agrees to reimburse the Bank, upon its request, for all reasonable out-of-pocket expenses, disbursements, and advances, including without limitation the reasonable fees, expenses, and disbursements of its agents and attorneys, incurred or made by the Bank in connection with entering into and performing under this Agreement or in connection with investigating and defending itself against any claim or liability hereunder.

ARTICLE THREE  
PAYING AGENT

Section 3.01. Duties of Paying Agent. As Paying Agent, the Bank, provided sufficient collected funds have been deposited for such purpose by or on behalf of the Issuer in the accounts (collectively, the "Accounts") created under Resolution No. 171090, incorporating by reference the Second Amended and Restated Subordinated Utilities System Revenue Bond

Resolution adopted by the Issuer on May 17, 2018, as amended and supplemented (the "Resolution"), shall pay on behalf of the Issuer the principal of, redemption premium, if any, and interest on each Bond in accordance with the provisions of the Bond and the Resolution. The Bank has no obligation to draw upon any account or pursuant to any letter of credit, insurance policy or other agreement or take any other action to assist the Issuer to comply with its obligations except to the extent expressly set forth in this Agreement and in the Resolution.

Section 3.02. Payment Dates. The Issuer hereby instructs the Bank to pay the principal of, redemption premium (if any) and interest on the Bonds on the dates specified in the Bond, from the Accounts to the extent such amounts are on deposit in the Accounts, or available under the applicable liquidity or credit facilities.

The Bank shall not be required to pay interest on any funds of the Issuer for any period during which such funds are held by the Bank awaiting the presentation of the Bonds for payment.

Section 3.03 Receipt of Funds. Except as otherwise provided by the Resolution, the Issuer hereby agrees to deposit in the Accounts sufficient funds to make principal, redemption premium, if any, and interest payments as follows: (1) payment by check must be received by the Paying Agent at least 5 business days prior to payment date and (2) payment by wire must be received by Paying Agent no later than 11:30 a.m. New York time on the payment date.

#### ARTICLE FOUR REGISTRAR

Section 4.01. Initial Delivery of Bonds. The Bonds have been or will be initially registered and delivered to the purchaser designated by the Issuer as one Bond for each maturity of each series. If such purchaser delivers a written request to the Bank not later than five Business Days prior to the date of initial delivery, the Bank will, on the date of initial delivery, deliver Bonds of authorized denominations, registered in accordance with the instructions in such written request.

Section 4.02. Duties of Registrar. The Bank shall provide for the proper registration of transfer, exchange and replacement of the Bonds. Every Bond surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an eligible guarantor institution, in form acceptable to the Bank, duly executed by the Registered Owner thereof or such Registered Owner's agent. The Registrar may request any supporting documentation it deems necessary or appropriate to effect a re-registration.

Section 4.03. Unauthenticated Bonds. The Issuer shall provide to the Bank on a continuing basis, an adequate inventory of unauthenticated Bonds to facilitate transfers. The Bank agrees that it will maintain such unauthenticated Bonds in safekeeping.

Section 4.04. [Reserved].

Section 4.05. Cancelled Bonds. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Bank, shall be promptly cancelled by it

and, if surrendered to the Issuer, shall be delivered to the Bank and, if not already cancelled, shall be promptly cancelled by the Bank. The Issuer may at any time deliver to the Bank for cancellation any Bonds previously authenticated and delivered which the Issuer may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Bank. All cancelled Bonds held by the Bank for its retention period then in effect and shall thereafter be destroyed and evidence of such destruction furnished to the Issuer upon its written request.

Section 4.06. Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Bank shall deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any such Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Bank in connection therewith; and, in the case of a Bond destroyed, stolen or lost, upon filing by the owner with the Bank of evidence satisfactory to the Bank that such Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Bank of an appropriate bond of indemnity in form, substance and amount as may be required by law and as is otherwise satisfactory to the Bank. All Bonds so surrendered to the Bank shall be canceled by it and evidence of such cancellation shall be given to the Issuer. If the mutilated, destroyed, stolen or lost Bond has already matured or been called for redemption in accordance with its terms it shall not be necessary to issue a new Bond prior to payment, provided that, except as otherwise provided by the Resolution, the owner shall first provide the Bank with a bond of indemnity as set forth above.

## ARTICLE FIVE THE BANK

Section 5.01. Duties of Bank. The Bank undertakes to perform the duties set forth herein, each of which is ministerial and non-fiduciary in nature. No implied duties or obligations shall be read into this Agreement against the Bank. The Bank hereby agrees to use the funds deposited with it for payment of the principal of and interest on the Bonds to pay the same as it shall become due and further agrees to establish and maintain such accounts and funds as may be required for the Bank to function as Paying Agent.

### Section 5.02. Reliance on Documents, Etc.

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions expressed therein, on certificates or opinions furnished to the Bank by the Issuer.

(b) The Bank shall not be liable for any error of judgment made in good faith. The Bank shall not be liable for other than its gross negligence or willful misconduct in connection with any act or omission hereunder.

(c) No provision of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(d) The Bank may rely, or be protected in acting or refraining from acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Bank need not examine the ownership of any Bond, but shall be protected in acting upon receipt of Bonds containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Registered Owner or agent of the Registered Owner.

(e) The Bank may consult with counsel, and the written advice or opinion of counsel shall be full authorization and protection with respect to any action taken, suffered or omitted by it hereunder in good faith reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys and shall not be liable for the actions of such agent or attorney if appointed by it with due care.

Section 5.03. Recitals of Issuer. The recitals contained in the Bonds shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

Section 5.04. May Own Bonds; Other Transactions. The Bank, in its individual or any other capacity, may become the owner or pledgee of Bonds with the same rights it would have if it were not the Paying Agent and Bond Registrar for the Bonds. The Bank may engage in or be interested in any financial or other transaction with the Issuer, any Bond owner or any other Person.

Section 5.05. Money Held by Bank. Money held by the Bank hereunder need not be segregated from other funds. The Bank shall have no duties with respect to investment of funds deposited with it and shall be under no obligation to pay interest on any money received by it hereunder. Any money deposited with or otherwise held by the Bank for the payment of the principal, redemption premium (if any) or interest on any Bond and remaining unclaimed, by the Registered Owner (or by the Issuer (which claim by the Issuer shall be made in writing) after maturity and prior to escheatment) will be escheated pursuant to the applicable state law. If funds are returned to the Issuer, the Issuer and the Bank agree that the Registered Owner of such Bond shall thereafter look only to the Issuer for payment thereof, and that all liability of the Bank with respect to such moneys shall thereupon cease.

Section 5.06. Interpleader. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in a court of competent jurisdiction. The Issuer and the Bank further agree that the Bank has the right to file an action in interpleader in any court of competent jurisdiction to determine the rights of any person claiming any interest herein.

## ARTICLE SIX MISCELLANEOUS PROVISIONS

Section 6.01. Amendment. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 6.02. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party, provided that if the Bank consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business (including the escrow contemplated by this Agreement) to another entity, the successor or transferee entity without any further act will be the successor paying agent and registrar.

Section 6.03. Notices. Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed, emailed or delivered to the Issuer or the Bank, respectively, at the address shown below, or such other address as may have been given by one party to the other by fifteen (15) days written notice:

If to the Issuer: City of Gainesville, Florida  
301 S.E. Fourth Avenue  
Gainesville, Florida 32601  
Attention: Claudia Rasnick, Utility Chief Financial Officer  
Telephone: (352) 393-1313  
Email: [RasnickCE@gru.com](mailto:RasnickCE@gru.com)

If to the Bank: U.S. Bank Trust Company, National Association  
225 Water Street, Suite 700  
Jacksonville, Florida 32202  
Attention: Vicki B. Bellamy, Vice President  
Telephone: (904) 358-5382  
Email: [vicki.bellamy@usbank.com](mailto:vicki.bellamy@usbank.com)

Section 6.04. Electronic Transmission; Electronic Signatures. The Bank shall not have any duty to confirm that the person sending any notice, instruction, document or other communication (a "Notice") by electronic transmission (including by e-mail, facsimile transmission, web portal or other electronic methods) is, in fact, a person authorized to do so. Electronic signatures believed by the Bank to comply with the ESIGN Act of 2000 or other applicable law (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other digital signature provider acceptable to the Bank) shall be deemed original signatures for all purposes. Issuer assumes all risks arising out of the use of electronic signatures and electronic methods to send Notices to the Bank, including without limitation the risk of the Bank acting on an unauthorized Notice, and the risk of interception or misuse by third parties.

Section 6.05. Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 6.06. Successors and Assigns. All covenants and agreements herein by the Issuer and the Bank shall bind their successors and assigns, whether so expressed or not.

Section 6.07. Severability. If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.



Section 6.08. Benefits of Agreement. This Agreement is intended to be for the benefit of or to be enforceable by only the Issuer and the Bank, and no third party shall be entitled to claim that it is a third party beneficiary hereof.

Section 6.09. Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent and Bond Registrar.

Section 6.10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.11. Term and Termination. This Agreement shall be effective from and after its date and until the Bank resigns or is terminated by the Issuer; provided, however, that no such termination shall be effective until a successor has been appointed and has accepted the duties of the Bank hereunder.

The Bank may resign at any time by giving written notice thereof to the Issuer. If the Bank shall resign, or become incapable of acting, the Issuer shall promptly appoint a successor Paying Agent and Bond Registrar. If an instrument of acceptance by a successor Paying Agent and Bond Registrar shall not have been delivered to the Bank within thirty 30 days after the Bank gives notice of resignation, the Bank may petition any court of competent jurisdiction at the expense of the Issuer for the appointment of a successor Paying Agent and Bond Registrar. In the event of resignation of the Bank as Paying Agent and Bond Registrar, upon the written request of the Issuer and upon payment of all amounts owing to the Bank hereunder the Bank shall deliver to the Issuer or its designee all funds in the Accounts and unauthenticated Bonds, if any, and a copy of the Bond Register. The provisions of Section 2.02 to the extent of any unpaid amounts due and owing hereunder shall survive and remain in full force and effect following the termination of this Agreement.

Section 6.12. Governing Law. This Agreement shall be construed in accordance with and shall be governed by the laws of the State of Florida.

Section 6.13. Conflicts. To the extent of any conflicts between this Agreement and the Resolution and the terms and conditions of the Resolution shall control.

Section 6.14. Documents to be delivered to Bank. At the time of the Bank's appointment as Paying Agent and Bond Registrar, the Issuer shall deliver to the Bank the following documents: (a) a specimen Bond; (b) a copy of the opinion of bond counsel provided to the Issuer in connection with the issuance of the Bonds; and (c) such other information that the Bank may request.

Section 6.14. Patriot Act Compliance. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. The Bank may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

IN WITNESS WHEREOF, the Issuer and the Bank have, effective as of the Effective Date, caused this Agreement to be executed in their respective names by their duly authorized representatives, in two counterparts, each of which shall be deemed an original.

CITY OF GAINESVILLE, FLORIDA, as Issuer

By: \_\_\_\_\_  
Claudia Rasnick  
Utility Chief Financial Officer

APPROVED AS TO FORM  
AND LEGALITY:

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

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Paying Agent and Bond  
Registrar

By: \_\_\_\_\_  
Authorized Representative

#156475641\_v5 136433.00036

*[Signature Page to Paying Agent/Bond Registrar Agreement]*