

LEGISLATIVE FILE #170794

**THIRD AMENDMENT
TO STANDBY BOND PURCHASE AGREEMENT
RELATING TO
VARIABLE RATE UTILITIES SYSTEM REVENUE BONDS, 2007 SERIES A**

This **THIRD AMENDMENT TO STANDBY BOND PURCHASE AGREEMENT RELATING TO VARIABLE RATE UTILITIES SYSTEM REVENUE BONDS, 2007 SERIES A**, dated as of February __, 2018 (this “Third Amendment”) is entered into by and between **THE CITY OF GAINESVILLE, FLORIDA** (the “City”) and **STATE STREET BANK AND TRUST COMPANY** (the “Bank”).

W I T N E S S E T H:

WHEREAS, the City and the Bank have entered into that certain Standby Bond Purchase Agreement (as amended prior to the date hereof, the “Agreement”), dated as of March 1, 2007, pursuant to which the City would enhance the liquidity of its Bonds (as defined in the Agreement), by providing for the purchase of the Bonds by the Bank under certain specific circumstances as described in the Agreement;

WHEREAS, the City wishes to enter into this Third Amendment with the Bank for the purpose of extending the Stated Termination Date of the Agreement; and

WHEREAS, the Bank is willing to enter into this Third Amendment with the City, subject to the following terms and conditions;

NOW THEREFORE, in consideration of the foregoing and other valuable consideration, the parties hereto agree as follows:

Section 1. AUTHORITY AND DEFINITIONS

- (a) This Third Amendment is entered into pursuant to Section 7.1 of the Agreement.
- (b) Capitalized terms used herein but not herein defined, shall have the meanings ascribed to them in the Agreement.

Section 2. EXTENSION OF STATED TERMINATION DATE

Each of the City and the Bank agree and acknowledge that the Stated Termination Date of the Agreement has been extended to April 1, 2018.

Section 4. CONDITIONS TO EFFECTIVENESS OF THIRD AMENDMENT

This Third Amendment shall be effective on February __, 2018 (the “Amendment Effective Date”), provided that all of the following conditions have been fulfilled:

- (a) Delivery by the parties hereto of an executed counterpart of this Third Amendment.
- (b) All other legal matters pertaining to the execution and delivery of this Third Amendment shall be satisfactory to the Bank and its counsel.

Section 5. REPRESENTATIONS AND WARRANTIES

In order to induce the Bank to execute and deliver this Third Amendment, the City hereby makes each of the representations and warranties contained in Article IV of the Agreement as of the date hereof, *provided* that the representations and warranties contained in Sections 4.1, 4.2, 4.12 and 4.15 of the Agreement shall not be remade by the City as of the Amendment Effective Date and all references to the Agreement therein shall be deemed to also refer to the Agreement, as amended by this Third Amendment.

In addition to the foregoing, the City represents and warrants as follows:

- (a) The execution, delivery and performance by the City of this Third Amendment and the Agreement, as amended hereby, are within its powers, have been duly authorized by all necessary action and do not contravene any law or any contractual restriction binding on or affecting the City.
- (b) Other than the approval of the City Commission of the City (which has been received as of the Amendment Effective Date), no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the City of this Third Amendment or the Agreement, as amended hereby.
- (c) No Event of Default or Default exists or will be continuing.
- (d) The Agreement, as amended hereby, and this Third Amendment constitute legal, valid and binding obligations of the City, enforceable against the City, in accordance with their respective terms.

Section 6. COVENANTS

The City hereby reaffirms its agreement to observe and perform each covenant and obligation of the City contained in the Agreement.

Section 7. MISCELLANEOUS

- (a) Except as specifically amended herein, the Agreement shall continue in full force and effect in accordance with its terms. Reference to this specific Amendment need not be made in any note, document, agreement, letter, certificate, the Agreement or any communication issued or made subsequent to, or with respect to, the Agreement, it being hereby agreed that any reference in the Agreement to the “Agreement” shall be sufficient to refer to the Agreement, as hereby amended.
- (b) In case any one or more of the provisions contained herein should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby.
- (c) **THIS THIRD AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, EXCEPT THAT THE CAPACITY, POWER OR AUTHORITY OF THE CITY TO ENTER INTO AND PERFORM THIS THIRD AMENDMENT AND ANY ISSUE RELATING TO THE INTERPRETATION OF EITHER OF THE RESOLUTIONS OR THE BONDS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA.**
- (d) 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 THIRD AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- (e) With respect to any suit, action or proceeding relating to, or arising from, this Third Amendment, each party hereto irrevocably submits to the jurisdiction of the federal courts located in the State of New York and agrees that any such suit, action or proceeding shall be had and maintained in such federal courts.
- (f) The City shall pay on demand the fees and expenses of, or incurred by counsel to, the Bank in the amount of \$_____ in connection with the negotiation, preparation, execution and delivery of this Third Amendment.
- (g) This Third Amendment may be signed in any number of counterpart copies, but all such copies shall constitute one and the same voluntary, legal and binding instrument.

[signature page immediately follows]

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

CITY OF GAINESVILLE, FLORIDA, as the
City

By: _____
Name: Edward J. Bielarski, Jr.
Title: General Manager for Utilities

Approved as to form
and legality:

Name: Nicole M. Shalley, Esq.
Title: City Attorney

**STATE STREET BANK AND TRUST
COMPANY**, as the Bank

By: _____
Name: Amy Baribeault
Title: Managing Director