

RESOLUTION NO. 170462

PASSED 10/13/2017

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

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

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

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

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

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

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

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

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

WHEREAS, the City desires to delegate to the General Manager for Utilities and Chief Financial Officer, or either of them, subject to the delegation parameters and limitations set forth

herein, the authority to complete the negotiation of the Swap Documents, the Confirmation and the Swap, and to pay any associated costs from legally available funds of the City, including proceeds of the 2017 Variable Rate Bonds and/or other Bonds issued simultaneously therewith to finance the Project;

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

**ARTICLE I
DEFINITIONS AND STATUTORY AUTHORITY**

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

Section 1.02 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The City is mindful that LIBOR, as a reference index published by International Continental Exchange Benchmark Administration Ltd. (“ICE”) as a sponsor, may be discontinued by the UK Financial Conduct Authority as early as 2021. Thus, the City hereby delegates to the General Manager and the Chief Financial Officer, in consultation with the

Financial Advisor and Swap Advisor, the authority to negotiate and determine (i) an appropriate substitution rate, whether now existing or subsequently developed, that is deemed approximately equivalent to LIBOR and (ii) an appropriate effective date of the substitution rate (which could become immediately effective, effective upon determination that LIBOR as a reference rate is no longer reliable, or upon the date LIBOR ceases to be published), each of which may be determined by a LIBOR fallback protocol as published by the International Swaps and Derivatives Association.

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

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

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

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

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

(v) The Swap may be secured by a Bilateral Credit Support Annex (New York Law), within the parameters described in the CSA Term Sheet attached as part of Exhibit A, subject to the modifications thereto as described in Sections 2.01 and 3.03 of this Resolution; and

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

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

ARTICLE III CERTAIN FINDINGS AND DETERMINATIONS; ADDITIONAL AUTHORIZATIONS

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

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

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

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

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

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

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

Resolution and shall be entitled to the rights and benefits of such obligations thereunder, and the obligations of the City to make any termination payments and any other Hedge Charges under the Swap are hereby designated as Subordinated Hedging Contract Obligations under the General Bond Resolution, entitled to the benefits thereof on a parity with other obligations issued or incurred by the City under the Subordinated Bond Resolution.

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

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

Section 3.05 No Third-Party Beneficiaries. Except as herein otherwise expressly provided, nothing in this Resolution expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the parties described herein, any right, remedy or claim, legal or equitable, under or by reason of this Resolution or any provision hereof, this Resolution and all its provisions being intended to be and being for the sole and exclusive benefit of the parties described herein.

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

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

[Signature Page Follows]

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

CITY COMMISSION OF THE CITY OF
GAINESVILLE, FLORIDA

ATTESTED:

By: _____
Mayor

By: _____
Clerk of the Commission

APPROVED AS TO FORM AND
LEGALITY:

By: _____
City Attorney

#52548052_v10

EXHIBIT A

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