

RESOLUTION NO. 200813

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA FOR THE PURPOSE OF AMENDING AND EXTENDING THE EXPIRATION DATE OF THE LIQUIDITY FACILITY WITH RESPECT TO THE CITY OF GAINESVILLE, FLORIDA UTILITIES SYSTEM REVENUE BONDS, 2007 SERIES A, APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FIFTH AMENDMENT TO STANDBY BOND PURCHASE AGREEMENT AND A SECOND AMENDMENT TO LETTER AGREEMENT AND AUTHORIZING CERTAIN CITY OFFICIALS TO TAKE ALL OTHER ACTIONS DEEMED NECESSARY OR ADVISABLE IN CONNECTION WITH THE EXECUTION, AMENDMENT AND DELIVERY OF SUCH DOCUMENTS; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to (a) Resolution No. 170395 incorporating by reference the Second Amended and Restated Utilities System Revenue Bond Resolution adopted by the City of Gainesville, Florida (the "City") on September 21, 2017, as amended and supplemented (the "Bond Resolution") and (b) a resolution of the City, supplemental to the Bond Resolution, entitled "Eighteenth Supplemental Utilities System Revenue Bond Resolution," adopted by the City on February 26, 2007 (the "Eighteenth Supplemental Resolution"), the City has heretofore authorized the issuance of its Variable Rate Utilities System Revenue Bonds, 2007 Series A (the "2007 Series A Bonds"); and

WHEREAS, the 2007 Series A Bonds were issued as variable rate demand obligations, initially in the Weekly Mode (such term, and all other capitalized terms used herein without definition, having the respective meanings assigned thereto in the Bond Resolution or, if not defined therein, in the Eighteenth Supplemental Resolution), and are subject to mandatory and optional tender for purchase at certain times and under certain circumstances; and

WHEREAS, in order to provide liquidity support for the 2007 Series A Bonds, the City entered into a Standby Bond Purchase Agreement dated as of March 1, 2007 (as amended from time to time, the "Existing Liquidity Facility") with State Street Bank and Trust Company (the "Bank"); and

WHEREAS, the Existing Liquidity Facility is scheduled to expire by its terms on April 1, 2021, which if not extended, will result in the outstanding 2007 Series A Bonds being subject to mandatory tender; and

WHEREAS, the Bank and the City wish to extend the scheduled expiration date of the Existing Liquidity Facility for an additional term of approximately four years; and

WHEREAS, in connection with the extension of the expiration date of the Existing Liquidity Facility, the City and the Bank have agreed to make certain amendments to the terms of the Existing Liquidity Facility; and

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Gainesville, Florida as follows:

ARTICLE I

AUTHORITY

SECTION 101. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of the Act.

ARTICLE II

APPROVAL OF DOCUMENTS

SECTION 201. Authorization and Approval of Amendment and Extension of Existing Liquidity Facility. The form of the Fifth Amendment to Standby Bond Purchase Agreement substantially in the form attached hereto as Exhibit A and the form of the Second Amendment to Letter Agreement substantially in the form attached hereto as Exhibit B (collectively, the "Amendment Documents") are hereby approved, subject to such changes, insertions and omissions and such filling of blanks therein as may be approved and made in such Amendment Documents by the General Manager for Utilities, his designee, the Utility Chief Financial Officer, or her designee and such other Authorized Officer of the City, or their respective designee (each an "Authorized Officer" and collectively, the "Authorized Officers") 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. Subject to the provisions set forth herein, each Authorized Officer is hereby authorized to execute the Amendment Documents for and on behalf of the City pursuant to the terms hereof and the Clerk is hereby authorized to attest such signature to the extent required by the forms of the Amendment Documents, subject to the approval of the City Attorney as to form and legality.

SECTION 202. Authorization to Extend the Term of a Particular Liquidity Facility or to Procure a Substitute Liquidity Facility in Substitution Therefor. The General Manager for Utilities of the City, or his or her designee, is hereby authorized, from time to time, (1) to extend the term of a particular Liquidity Facility for the 2007 Series A Bonds, or (2) to procure a Substitute Liquidity Facility for the 2007 Series A Bonds in substitution for the Liquidity Facility then in effect with respect thereto, in either such case, upon such terms and conditions as shall be determined by the General Manager for Utilities of the City, or such designee, to be advantageous to the City and commercially reasonable (which terms and conditions (including, without limitation, the amounts of the "facility fee" or "commitment fee" and other fees payable by the City thereunder and the specification of the interest rates payable on loans or advances thereunder) may differ from the terms and conditions then in effect pursuant to such Liquidity Facility 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 of the term of a particular Liquidity Facility, the General Manager for Utilities of the City, or his or her designee, is hereby further authorized to execute and deliver, on behalf of the City, such documents and instruments (including, without limitation, an amendment to such Liquidity Facility) as shall be determined by the General Manager for Utilities of the City, or such designee, to be (a) necessary or desirable and advantageous to the City and (b) in commercially reasonable form; provided, however, that if any such extension shall be on terms and conditions different from the terms and conditions of such Liquidity Facility as then in effect, then (i) such determination of the General Manager for

Utilities of the City, or such designee, shall be confirmed in writing by the firm serving at that time as the System's financial advisor and (ii) the form of each such document or instrument shall be approved by the City Attorney of the City or his or her designee as to form and legality prior to the execution thereof by the General Manager for Utilities of the City or such designee.

In connection with any such procurement of a Substitute Liquidity Facility for the 2007 Series A Bonds in substitution for the Liquidity Facility then in effect with respect thereto, the General Manager for Utilities of the City, or his or her designee, is hereby further authorized to execute and deliver, on behalf of the City, such documents and instruments (including, without limitation, a standby bond purchase agreement, credit agreement or other similar document) as shall be determined by the General Manager for Utilities of the City, or such designee, to be (a) necessary or desirable and advantageous to the City and (b) in commercially reasonable form, such determination to be confirmed in writing by the firm serving at that time as the System's financial advisor; provided, however, that the form of each such document or instrument shall be approved by the City Attorney of the City or his or her designee as to form and legality prior to the execution thereof by the General Manager for Utilities of the City, or such designee; and provided, further, that the procedures utilized in connection with any such procurement shall be consistent with any requirements of any law, rule, regulation, ordinance or resolution applicable thereto.

SECTION 203. Ratification of Prior Actions. All prior actions of the City and its Authorized Officers, including, but not limited to, the delivery of notices and certifications required in accordance with the Bond Resolution and the Eighteenth Supplemental Resolution taken in connection with the execution and delivery of the Amendment Documents and this Resolution are hereby ratified.

ARTICLE III

MISCELLANEOUS

SECTION 301. Further Actions. The Authorized Officers are each hereby authorized to do all acts and things required of them by this Resolution, the Bond Resolution and the Eighteenth Supplemental Resolution, or otherwise, as may be necessary or desirable to effectuate the amendment and extension of the Existing Liquidity Facility and the other amendments described herein. The Authorized Officers, collectively or individually, upon satisfaction of the conditions set forth herein, are hereby authorized to execute the Amendment Documents on behalf of the City, each subject to completion thereof, and with such changes therein as the officer(s) executing the same may approve as necessary and desirable and in the best interests of the City, such approval to be evidenced by the execution and delivery thereof, subject to the approval of the City Attorney as to form and legality. The Authorized Officers, or their respective designees, are each hereby authorized and directed to execute and deliver any and all papers, opinions and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated hereunder, including, to the extent necessary, without limitation, amendments to the fee letter.

Section 302. Payment of Costs of Amendment and Extension. The Authorized Officers are hereby authorized to pay the costs of the amendment and extension of the Existing Liquidity Facility and any other Liquidity Facility, including those referenced in the fee letters,

all other legal expenses, expenses for fiscal agents, financial advisors, accountants and other experts and such other expenses necessary or incidental and incurred by the City in connection with the extension of such Liquidity Facility and other amendments described herein.

Section 303. 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, the Bond Resolution and the Eighteenth Supplemental Resolution or of the 2007 Series A Bonds.

Section 304. Effective Date. This Resolution shall be effective immediately upon its adoption.

PASSED AND DULY ADOPTED IN PUBLIC SESSION OF THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA ON THE 18TH DAY OF FEBRUARY, 2021.

CITY OF GAINESVILLE, FLORIDA

Mayor

ATTESTED:

Clerk of the Commission

Approved as to Form and Legality:

City Attorney

#81566474_v3

Exhibit A

FORM OF FIFTH AMENDMENT TO STANDBY BOND PURCHASE AGREEMENT

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

This **FIFTH AMENDMENT TO STANDBY BOND PURCHASE AGREEMENT RELATING TO VARIABLE RATE UTILITIES SYSTEM REVENUE BONDS, 2007 SERIES A**, dated as of February ____, 2021 (this “Fifth 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 Fifth Amendment with the Bank for the purpose of amending certain provisions of the Agreement and extending the Stated Termination Date of the Agreement; and

WHEREAS, the Bank is willing to enter into this Fifth 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 Fifth 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. AMENDMENT

As of the Amendment Effective Date (as defined in Section 3 to this Fifth Amendment), the contact information for the Bank set forth in Section 7.4 of the Agreement shall be amended in its entirety, as follows:

If to the Bank, to:

(regarding credit matters):

State Street Bank and Trust Company
c/o State Street Public Lending Corporation
State Street Financial Center SFC/5
One Lincoln St.
Boston, Massachusetts 02111-2900
Attention: Robert Woods
Telephone: (617) 664-8512
Telecopier: (617) 946-0538

(regarding operational matters):

State Street Bank and Trust Company
State Street Financial Center SFC/5
One Lincoln Street
Boston, Massachusetts 02111-2900
Attention: Thomas Marra
Telephone: (617) 664-5862
Telecopier: (617) 350-4020
Email: MuniFinanceAdministration@
statestreet.com

Section 3. 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 June 30, 2025.

Section 4. CONDITIONS TO EFFECTIVENESS OF FIFTH AMENDMENT

This Fifth Amendment shall be effective on February ____, 2021 (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 Fifth Amendment.
- (b) Delivery by the parties hereto of an executed counterpart of the Second Amendment to Letter Agreement dated as of the date hereof.
- (c) All other legal matters pertaining to the execution and delivery of this Fifth 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 Fifth 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, notice in writing is made pursuant to the Reoffering Memorandum of the City dated May 8, 2020 of the matters regarding the City and the System set forth therein, including, without limitation under the captions “THE SYSTEM” AND “LITIGATION,” and all references to the Agreement therein shall be deemed to also refer to the Agreement, as amended by this Fifth Amendment.

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

- (a) The execution, delivery and performance by the City of this Fifth 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 Fifth 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 Fifth Amendment constitute legal, valid and binding obligations of the City, enforceable against the City, in accordance with their respective terms.
- (e) The balance sheet of Gainesville Regional Utilities at September 30, 2019, 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 Virchow Krause, 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).
- (f) Except as disclosed in writing to the Bank, since September 30, 2020 (as shown in the unaudited financial statements of Gainesville Regional Utilities for the fiscal year ended September 30, 2020), 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, the Letter Agreement, the Bonds or the Bank Bonds.

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 Fifth 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 FIFTH 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 FIFTH 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 FIFTH AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**
- (e) With respect to any suit, action or proceeding relating to, or arising from, this Fifth 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 \$7,500 plus disbursements in connection with the negotiation, preparation, execution and delivery of this Fifth Amendment.
- (g) This Fifth Amendment may be signed in any number of counterpart copies, but all such copies shall constitute one and the same voluntary, legal and binding instrument.

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

CITY OF GAINESVILLE, FLORIDA, as the
City

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

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:
Title:

Exhibit B

FORM OF SECOND AMENDMENT TO LETTER AGREEMENT

**SECOND AMENDMENT TO
LETTER AGREEMENT**

This SECOND AMENDMENT TO LETTER AGREEMENT, dated as of February ___, 2021 (this “Amendment”), is entered into 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 entered into that certain Letter Agreement dated February 11, 2014 (as amended prior to the date hereof, the “Letter Agreement”), setting forth certain fees to be paid by the City to the Bank in connection with that certain Standby Bond Purchase Agreement, dated as of March 1, 2007 (as amended from time to time, the “Agreement”), which Agreement provides liquidity support for the City’s Variable Rate Utilities System Revenue Bonds, 2007 Series A (the “Bonds”);

WHEREAS, the City and the Bank have agreed to make certain modifications and amendments to the Letter Agreement; and

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

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

Section 1. AUTHORITY AND DEFINITIONS

- (a) This Amendment is entered into pursuant the last paragraph of the Letter Agreement.
- (b) This Amendment amends the Letter Agreement.
- (c) Capitalized terms used herein but not herein defined, shall have the meanings ascribed to them in the Letter Agreement.

Section 2. AMENDMENTS

The Letter Agreement shall be amended as of the Amendment Effective Date (as defined in Section 3 to this Amendment) as follows:

- (a) Paragraph 2 of the Letter Agreement shall be amended in its entirety, as follows:

2. A. From and including April 1, 2018 through and including February ___, 2021, the City hereby agrees to pay to the Bank a nonrefundable commitment fee (the “Commitment Fee”) with respect to the Available Commitment of the Bank under the Agreement at the rate per annum set forth

below (the “Commitment Fee Rate”) to but excluding the Termination Date on the average daily amount of the Available Commitment (without regard as to whether any Bank Bonds are outstanding) during each period in respect of which payment is made. The applicable Commitment Fee Rate for any period shall be determined on the basis of the publicly announced long-term credit rating assigned to the Bonds or any Utilities System Revenue Bonds by any of S&P, Fitch or Moody’s (the “Credit Ratings”), without giving effect to any bond insurance policy or other credit enhancement securing the Bonds or such Utilities System Revenue Bonds:

<u>Credit Rating (S&P/Fitch/Moody’s)</u>	<u>Commitment Fee Rate</u>
AA-/AA-/Aa3 or better	0.46%
A+/A+/A1	0.51%
A/A/A2	0.61%
A-/A-/A3	0.76%
BBB+/BBB+/Baa1	0.91%
BBB/BBB/Baa2	1.06%

If the long-term ratings assigned by S&P, Fitch and Moody's, respectively, appear in more than one rating category (i.e., a split rating), the Commitment Fee Rate will be based on the category that includes the lowest 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 Commitment Fee Rate resulting from a change in the Credit 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 Credit Rating assigned by any of S&P, Fitch or Moody’s falls below “BBB” or “Baa2”, respectively, or has been suspended, withdrawn or otherwise is unavailable for any reason, the Commitment Fee then in effect will increase automatically, without notice, to 1.00% per annum and such increased Commitment Fee Rate shall be payable until no such Credit Rating remains below “BBB” or “Baa2”, respectively, or is so suspended, withdrawn or unavailable, or the Agreement otherwise terminates. Upon the occurrence and during the continuance of an Event of Default under the Agreement, the Commitment Fee Rate then in effect will increase by an additional 1.00% per annum automatically and without notice to the City, commencing on the date such Event of Default occurs and such increased Commitment Fee Rate shall be payable until such Event of Default is cured (but solely to the extent curable under the Agreement) or is otherwise waived in writing by the Bank, or the Agreement otherwise terminates.

Such Commitment Fee shall be payable in immediately available funds quarterly in arrears, at or prior to 1:00 P.M. (New York City time), on each Quarterly Payment Date prior to the Termination Date (each such payment to be computed on the basis of a year of 365 days and the actual number of days elapsed), in respect of the Available Commitment from time to time in effect, and on the Termination Date. If the Available Commitment is terminated in its entirety, all accrued Commitment Fees shall be payable on the effective date of such termination.

B. From and including February ___, 2021 and thereafter, the City hereby agrees to pay to the Bank a nonrefundable commitment fee (the “Commitment Fee”) with respect to the Available Commitment of the Bank under the Agreement at the rate per annum set forth below (the “Commitment Fee Rate”) to but excluding the Termination Date on the average daily amount of the Available Commitment (without regard as to whether any Bank Bonds are outstanding) during each period in respect of which payment is made. The applicable Commitment Fee Rate for any period shall be determined on the basis of the publicly announced long-term credit rating assigned to the Bonds or any Utilities System Revenue Bonds by any of S&P, Fitch or Moody’s (the “Credit Ratings”), without giving effect to any bond insurance policy or other credit enhancement securing the Bonds or such Utilities System Revenue Bonds:

<u>Credit Rating</u> (S&P/Fitch/Moody’s)	<u>Commitment Fee Rate</u>
AA-/AA-/Aa3 or better	0.54%
A+/A+/A1	0.59%
A/A/A2	0.69%
A-/A-/A3	0.89%
BBB+/BBB+/Baa1	1.14%
BBB/BBB/Baa2	1.64%

If the long-term ratings assigned by S&P, Fitch and Moody's, respectively, appear in more than one rating category (i.e., a split rating), the Commitment Fee Rate will be based on the category that includes the lowest 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 Commitment Fee Rate resulting from a change in the Credit 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 Credit Rating assigned by any of S&P, Fitch or Moody’s falls below “BBB” or “Baa2”, respectively, or has been suspended, withdrawn or otherwise is unavailable for any reason, the

Commitment Fee then in effect will increase automatically, without notice, to 1.00% per annum and such increased Commitment Fee Rate shall be payable until no such Credit Rating remains below “BBB” or “Baa2”, respectively, or is so suspended, withdrawn or unavailable, or the Agreement otherwise terminates. Upon the occurrence and during the continuance of an Event of Default under the Agreement, the Commitment Fee Rate then in effect will increase by an additional 1.00% per annum automatically and without notice to the City, commencing on the date such Event of Default occurs and such increased Commitment Fee Rate shall be payable until such Event of Default is cured (but solely to the extent curable under the Agreement) or is otherwise waived in writing by the Bank, or the Agreement otherwise terminates.

Such Commitment Fee shall be payable in immediately available funds quarterly in arrears, at or prior to 1:00 P.M. (New York City time), on each Quarterly Payment Date prior to the Termination Date (each such payment to be computed on the basis of a year of 365 days and the actual number of days elapsed), in respect of the Available Commitment from time to time in effect, and on the Termination Date. If the Available Commitment is terminated in its entirety, all accrued Commitment Fees shall be payable on the effective date of such termination.

(b) Paragraph 5 of the Letter Agreement shall be amended in its entirety, as follows:

5. In the event that the Available Commitment under the Agreement is terminated or otherwise permanently reduced by or on behalf of the City prior to June 30, 2023, the City agrees to pay to the Bank 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 Commitment Fee which would have been payable to the Bank from (and including) such termination date or reduction date through June 30, 2023, calculated at the time of such termination on the basis of the then applicable Available Commitment (or, if as a result of a reduction of less than 100% of the Bank's Available Commitment, the reduced amount of such Available Commitment) and the then applicable Commitment Fee Rate. Notwithstanding the foregoing, such termination fee shall not be payable by the City to the Bank in the event that the termination of the Agreement in whole results from either of (i) (a) Moody's lowering or withdrawing the short-term rating on the Bank below “P-1”, or (b) S&P lowering or withdrawing the short-term rating on the Bank below “A-1”, or (ii) the Bank assesses increased costs against the City pursuant to Section 2.2(h) of the Agreement and the substitute bank (or banks) with respect to the Bonds agrees not to assess such fee increase relating to such additional costs or does not otherwise include such costs in its calculation of fees or other amounts charged to the City, all as demonstrated in writing to the reasonable satisfaction of the Bank. Termination of the Agreement shall be effective upon payment of the foregoing termination or reduction fee, if applicable, and the payment in full of all obligations of the City owing to the Bank (including, without limitation, such

increased costs in accordance with Section 2.2(h) of the Agreement) under the Agreement.

Section 3. CONDITIONS TO EFFECTIVENESS OF AMENDMENT

This Amendment shall be effective on February __, 2021 (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 Amendment.
- (b) Delivery by the parties thereto of an executed counterpart of the Fifth Amendment to Standby Bond Purchase Agreement dated February __, 2021 between the Bank and the City.
- (c) All other legal matters pertaining to the execution and delivery of this Amendment shall be satisfactory to the Bank and its counsel.

Section 4. REPRESENTATIONS AND WARRANTIES

The City represents and warrants as follows:

- (a) The execution, delivery and performance by the City of this Amendment and the Letter 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 Amendment or the Letter Agreement, as amended hereby.
- (c) This Amendment and the Letter Agreement, as amended hereby, constitute legal, valid and binding obligations of the City, enforceable against the City, in accordance with their respective terms.

Section 5. COVENANTS

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

Section 6. MISCELLANEOUS

- (a) Except as specifically amended herein, the Letter 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 Letter Agreement or any communication issued or made subsequent to, or with respect to, the Letter

Agreement, it being hereby agreed that any reference in the Letter Agreement to the "Letter Agreement" shall be sufficient to refer to the Letter Agreement, as hereby amended.

- (b) In case any one or more of the provisions contained herein should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby.
- (c) **THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK; *PROVIDED* THAT THE OBLIGATIONS OF THE CITY HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA.**
- (d) This Amendment may be signed in any number of counterpart copies, but all such copies shall constitute one and the same voluntary, legal and binding instrument.

[signature page immediately follows]

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

CITY OF GAINESVILLE, FLORIDA, as the
City

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

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: _____
Title: _____