

Draft of January 31, 2000

## MEMBERSHIP AGREEMENT

This Membership Agreement is dated \_\_\_\_\_, 2000 between The Energy Authority, Inc., a Georgia nonprofit corporation ("TEA") and the City of Gainesville, Florida, a Florida municipal corporation, doing business as Gainesville Regional Utilities ("GRU").

WHEREAS, GRU desires to become a member of TEA, and

WHEREAS, TEA, as evidenced by the unanimous vote of its Board of Directors, desires GRU to become a member of TEA;

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, the parties hereto agree as follows:

**Section 1. Membership.** Upon the satisfaction of the requirements of the Restated and Amended Operating Agreement dated as of May 1, 1999 among the then existing members of TEA and TEA (the "Operating Agreement") and the satisfaction of the closing conditions stated in Section 6 hereof, GRU shall become an MPPS member of TEA as described in the bylaws of TEA and as further provided in the Operating Agreement.

**Section 2. Amounts Due to be Paid.**

a. As required by the Operating Agreement, GRU shall make an initial contribution of \$166,667 to its capital account at TEA.

b. GRU shall also make an additional contribution to be credited to GRU capital account. The additional contribution shall be equal to one-third (1/3) of the account balance of the then existing members as of the date of membership (the date hereof). Such amount is referred to herein as the "Additional Capital Contribution." TEA will provide for a capital account distribution to the then existing members to proportionally equalize these accounts on such date with the Additional Capital Contribution from GRU. The amount of the Additional Capital Contribution shall not exceed \$833,333. Because the amount of the Additional Capital Contribution cannot be determined on the date hereof, GRU shall deposit \$833,333 with TEA on the date hereof. This deposit shall be invested by TEA. Within five weeks of the date hereof the Additional Capital Contribution will be determined by written notice from TEA to GRU. Upon the determination of the Additional Capital Contribution, TEA shall retain such amount and treat it as a contribution to GRU's capital account with TEA and shall return the balance, if any, of the amount by which the Additional Capital Contribution is less than \$833,333 to GRU by wire transfer of immediately available funds plus any interest earned on such amount to be returned.

c. GRU shall pay a membership fee of \$867,360.

d. GRU shall advance \$461,538.46 of cash collateral to TEA as required by the Amended and Restated Advance Agreement dated as of June 1, 1999 among TEA and its members (the "Advance Agreement").

**Section 3. Distribution of Membership Fees.**

a. Should GRU exercise its right to withdraw from its membership in TEA within a two-year period after becoming a member, any membership fees paid to GRU by TEA as a result of other entities' becoming members of TEA shall be repaid by GRU to TEA within 60 days after GRU's withdrawal from membership, without interest. Such repayment due from GRU may be effected by TEA's offsetting any amount due to be paid by TEA to GRU as a return of GRU's capital account balance. None of GRU's \$867,360 membership fee shall be returned to GRU if GRU exercises its right to withdraw from membership in TEA except as provided in paragraph b. below.

b. Should (i) GRU's membership in TEA be terminated pursuant to the provisions of TEA's bylaws within a two-year period after GRU becomes a member or (ii) GRU withdraw from membership in TEA after the director which it appoints to TEA's board has voted against approving the acquisition by TEA of any business or a business division from any person whether by asset purchase, stock purchase, merger or other business combination and GRU shall have declared in writing that it elects not to participate as a member of TEA in any of the benefits or burdens of such acquisition, and either of the circumstances described in clauses (i) or (ii) above occur within a two-year period after GRU becomes a member, TEA shall return to GRU within 60 days after GRU's membership shall be terminated a portion of the \$867,360 membership fee equal to the product of \$867,360 times a fraction, the numerator of which is 24 minus the number of months GRU has been a member of TEA (such number of months being expressed in whole numbers and fractions of a month), and the denominator of which is 24. No interest shall be paid to GRU on any part of such membership fee which is repaid to it. Any payment due from TEA may be effected by offsetting any amount then due to be paid by GRU to TEA, whether or not pursuant to this Agreement.

**Section 4. Additional Members.** Should another entity become a member of TEA within the period ending on the three-month anniversary of the date hereof, GRU shall not share in the distribution of the membership fee paid by such new member.

**Section 5. Operations and Settlement Procedures.** As a member of TEA, GRU agrees to comply with and be subject to (a) the procedures from time to time utilized by TEA to assure the timely flow of relevant information between TEA and its members, such procedures being referred to as operations procedures, and (b) the policies and procedures from time to time utilized by TEA governing its members' and TEA's electric generating capacity and energy purchases and sales and associated transmission, the cash settlement of transactions thereunder and the responsibilities of TEA and its members associated with such transactions, such policies and procedures being referred to as the settlement procedures.

**Section 6. Additional Closing Conditions.** Contemporaneously with the execution and delivery hereof, the following instruments will be delivered or conditions satisfied:

- a. Schedule 5 to the Operating Agreement, completed and executed by GRU, together with supplements to Schedules 1 through 4 of the Operating Agreement completed by GRU.
- b. Annex 3 of Restated and Amended Advance Agreement executed by GRU.
- c. Execution by GRU of the trade guaranty and bank guaranty.
- d. A certificate from GRU as contemplated by Section 3.1 of the Operating Agreement to the effect that (i) it has received all necessary approvals from Regulatory Authorities (as defined in the Operating Agreement) for it to participate in TEA as contemplated by the Operating Agreement; (ii) GRU's governing body has approved or authorized the transaction contemplated by this Membership Agreement or that such approval or authorization is not necessary; and (iii) GRU has made available on a continuing basis an open-access transmission policy which complies with FERC Order No. 888 to the extent necessary to obtain reciprocity from transmission providers.
- e. Payment by GRU to TEA in immediately available funds of the amounts set out in Section 2 hereof.
- f. Delivery by each of the Members (as defined in the Operating Agreement) to GRU of a written opinion of counsel with respect to the matters described in Section 10.1 of the Operating Agreement.
- g. Delivery by TEA to GRU of a written opinion of TEA's counsel with respect to the matters set forth in Section 10.2 of the Operating Agreement.
- h. Delivery by GRU of an opinion of its counsel addressed to TEA and the Members with respect to the matters set forth in Section 10.1 of the Operating Agreement, as such matters pertain to GRU.
- i. Receipt by TEA of an opinion of counsel from GRU that the formation and operation of TEA will not jeopardize the tax-exempt status of GRU or the obligations of GRU under any tax-exempt obligations.

#### Section 7. Miscellaneous.

- a. This Membership Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its principles of conflicts of laws.
- b. The headings contained in this Membership Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Membership Agreement.

c. Except as expressly provided herein, nothing in this Membership Agreement shall entitle any person other than TEA and GRU and their respective successors and assigns to any claim, cause of action, remedy or right of any kind.

d. This Membership Agreement may be executed in any number of counterparts, one of which needs to be executed by each party hereto, and this Membership Agreement shall be binding upon the parties hereto with the same force and effect as if both parties had signed the same document, and each such signed counterpart shall constitute an original of this Membership Agreement.

e. This Membership Agreement may not be amended or modified except by written Agreement signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Membership Agreement effective the dated first above written.

THE ENERGY AUTHORITY, INC.

By: \_\_\_\_\_  
Robert T. Dyer,  
President and Chief Executive Officer

CITY OF GAINESVILLE, FLORIDA

By: \_\_\_\_\_  
Michael L. Kurtz  
General Manager for Utilities

Approved as to Form and Legality:

By: \_\_\_\_\_  
Raymond O. Manasco, Jr.  
Utilities Attorney