

RESOLUTION NO.: 090642

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA, INITIATING CONFLICT RESOLUTION PROCEDURES PER SECTION 164.101, FLORIDA STATUTES, THE FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT, PERTAINING TO A CONFLICT BETWEEN THE CITY OF GAINESVILLE AND THE ALACHUA COUNTY SCHOOL BOARD, FLORIDA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the purpose of the Florida Government Conflict Resolution Act is to promote, protect, and improve the health, safety, and welfare and to enhance intergovernmental coordination efforts by the creation of a governmental conflict resolution procedure that can provide an equitable, expeditious, effective, and inexpensive method for resolution of conflicts between and among local and regional governmental entities, such as the City of Gainesville and the School Board of Alachua County; and

WHEREAS, in 1986 the Florida Legislature mandated that local governments develop stormwater management systems to control stormwater discharge to prevent damage from flooding and minimize degradation of water resources caused by the discharge of stormwater; and

WHEREAS, in 1988 the City of Gainesville created a stormwater utility pursuant to statutory provisions that specifically authorize the establishment of a stormwater utility and resultant utility fees “based upon the equitable cost approach” sufficient to carry out the program mandated by the Legislature, (§§ 403.0893(1), 403.0891(6) Fla. Stat.); and

WHEREAS, the Florida Supreme Court in City of Gainesville vs. State of Florida, 863 So. 2d 138 (Fla. 2003), found that the City of Gainesville’s stormwater utility fee was a valid user fee that can lawfully be charged to the State and its political subdivisions, as beneficiaries of the system; and

1 **WHEREAS**, the School Board of Alachua County has voluntarily used the City's
2 stormwater system and benefitted from the City's stormwater system since the inception
3 of the City's stormwater utility up to and including the present day; and

4 **WHEREAS**, the School Board of Alachua County has been paying monthly
5 stormwater utility bills for stormwater services that the Board has received from the City
6 of Gainesville since the inception of the City's stormwater utility; and

7 **WHEREAS**, on Tuesday, December 15, 2009, the School Board of Alachua
8 County voted to discontinue payment of stormwater fees to the City of Gainesville for
9 stormwater utility bills received after that date; and

10 **WHEREAS**, despite the decision to discontinue payment of stormwater fees to
11 the City for stormwater utility services, the School Board of Alachua County has made
12 no plan for discontinuing use of the City's stormwater utility system; and

13 **WHEREAS**, on Wednesday, December 9, 2009, the City of Gainesville submitted
14 a written request to the School Board for public records concerning the stormwater utility
15 fee, and the School Board responded by letter dated Monday, December 14, 2009,
16 refusing to provide some of the public records claiming the exemption of anticipated
17 "imminent litigation or adversarial administrative proceedings" that in the School Board's
18 positional response commenced on May 28, 2009;

19 **WHEREAS**, there was no anticipated "imminent litigation or adversarial
20 administrative proceedings", as that term is used in the Government-in-the-Sunshine
21 Law, between the parties as a result of a meeting between the staff of the respective
22 parties that occurred on May 28, 2009, and no such anticipated "imminent litigation or
23 adversarial administrative proceedings" could be lawfully claimed to exempt public
24 records generated by the School Board's attorneys dated June 8, 2009, September 9,
25 2009, and November 5, 2009;

1 **WHEREAS**, the Florida Governmental Conflict Resolution Act authorizes the City
2 of Gainesville to initiate the conflict resolution provisions of the Act prior to initiating court
3 proceedings against the School Board of Alachua County; and

4 **WHEREAS**, the Florida Governmental Resolution Act sets forth the procedures
5 for notice and conflict dispute resolution of intergovernmental disputes; and

6 **WHEREAS**, the Florida Governmental Resolution Act authorizes the City
7 Commission of the City of Gainesville to initiate the conflict resolution procedures
8 through the passage of a resolution by its members.

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

11 Section 1: Findings: The City Commission adopts the foregoing findings as
12 provided in the foregoing whereas clauses.

13 Section 2: Intention: It is the intention of the City Commission of the City of
14 Gainesville to initiate the conflict resolution procedures of the Florida Governmental
15 Resolution Act as set forth in Chapter 164, Florida Statutes, prior to initiating court
16 proceedings to compel the School Board of Alachua County to discontinue using the
17 City's stormwater utility services or in the alternative, to pay for stormwater utility
18 services used by the School Board, and to obtain production of the public records in the
19 custody of the School Board as referred hereinabove.

20 Section 3: Issues in the Conflict: The issues in the conflict are: 1) the
21 Alachua County School Board's refusal to pay the City of Gainesville's stormwater utility
22 fee despite the School Board's recognition that the utility fee has been found to be a
23 valid fee which may be charged to the State and its political subdivisions; and 2) the
24 School Board's refusal to provide all public records relating to the issue.

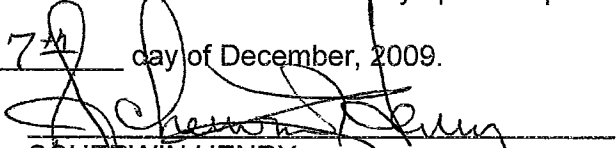
25 Section 4: The Governmental Entities in Conflict: The governmental entity
26 with which the City Commission of the City of Gainesville, Florida has a conflict is the
27 School Board of Alachua County, Florida.

1 Section 5: Justification for Initiating the Conflict: The conflict resolution
2 procedures is justified because the City of Gainesville in good faith believes that the
3 Alachua County School Board's refusal to pay the City's legally validated and imposed
4 stormwater utility fee while continuing to use the City's stormwater management system
5 for the use and benefit of the property of the School Board is unlawful, and that the
6 records requested are public records subject to production and copying under the laws
7 of the State of Florida.

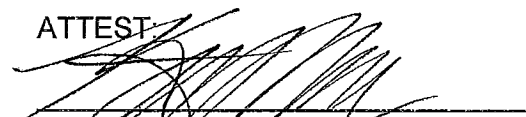
8 Section 6: Conflict Assessment Meeting: The City Manager is hereby
9 authorized and directed to provide a certified copy of this resolution and the letter
10 required by Section 164.1052(1) to the Superintendent of the School Board of Alachua
11 County by certified mail, return receipt requested, to schedule a conflict assessment
12 meeting, and to take all other appropriate action pursuant to Section 164.1053.

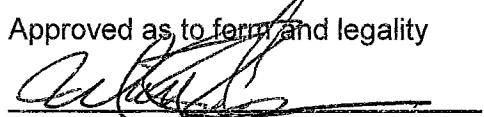
13 Section 7: This Resolution shall take effect immediately upon adoption.

14 **PASSED AND ADOPTED** this 17th day of December, 2009.



SCHERWIN HENRY
PROTEMPORE

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20 ATTEST
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22 _____
23 KURT M. LANNON
24 CLERK OF THE COMMISSION
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Approved as to form and legality


MARION J. RADSON
CITY ATTORNEY

DEC 17 2009