

# MEMORANDUM

Office of the City Attorney

050306

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TO: Mayor and City Commissioners

DATE: August 22, 2005

FROM: City Attorney

CONSENT

SUBJECT: CEM Enterprises, Inc. v. City of Gainesville; Alachua County Circuit Court;  
Case No.: 01-05-CA-3143

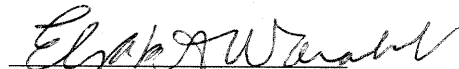
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Recommendation: The City Commission authorize the City Attorney and special counsel to represent the City in the case styled CEM Enterprises, Inc. vs. City of Gainesville; Alachua County Circuit Court; Case No.: 01-05-CA-3143.


On or about August 10, 2005, the City was served with a complaint by CEM Enterprises, Inc. CEM Enterprises alleges the City breached its contract with CEM arising out of a public works project at the Sweetwater Branch Creek.

Fiscal Impact: Funds are available in the Public Works Budget.

Prepared by:

  
Elizabeth A. Waratuke,  
Litigation Attorney

Submitted by:

  
Marion J. Radson,  
City Attorney

EAW/cgow

A 2/2/11

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA**

CEM ENTERPRISES, INC. a Florida  
Corporation,  
Plaintiff,

v.

Case No. 2005-CA-314B  
Florida Bar No. 114431  
OIV J

CITY OF GAINESVILLE, a Florida  
Municipality,

Defendant.

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, CEM Enterprises, Inc. ("CEM") files this Complaint against the City of Gainesville (the "City") and alleges:

1. This is an action for damages in excess of \$15,000.00, exclusive of interest, costs and attorneys' fees, arising out of work performed relating to a written contract with the City.
2. CEM is a corporation organized under the laws of the State of Florida duly authorized to do business in the State of Florida.
3. The City is a municipal corporation located in Alachua County.
4. Venue is proper in this judicial circuit pursuant to Chapter 47, Florida Statutes, because the cause of action accrued in Alachua County and the City resides in Alachua County.
5. All conditions precedent to bringing this action have occurred, have been performed by CEM or have been waived by the City.
6. Following a public letting, the City determined CEM to be the lowest responsive bidder for the stabilization of the Sweetwater Branch Creek in Alachua County (the "Project"). The

City and CEM subsequently executed a contract for the Project (the "Contract"). A copy of the Contract is attached as Exhibit "A."

7. Prior to submitting its bid to the City, CEM obtained from the City the plans, specifications and bid proposals for the Project (the "Contract Documents"). The Contract Documents were published by the City as the basis upon which prospective bidders were to calculate their bids. CEM did, in fact, rely upon the Contract Documents in preparing its bid.

8. At the pre-bid meeting for the Project, CEM performed a reasonable inspection of the Project site and determined the anticipated water flow at the Project site. CEM based its bid on the reasonable conditions of the site, and, specifically, reasonably anticipated water flow based upon those reflected at the pre-bid meeting and based upon the Contract Documents.

9. Relying on the accuracy and completeness of the Contract Documents, CEM scheduled and estimated the work in such a way that optimum resources would be employed and a maximum level of productivity would be attained to complete the work within budget and in the time allowed by the Contract.

10. In discharging its duties under the Contract, the City was required to cooperate with CEM, reasonably administer the Project, and not interfere with CEM's performance, all so as to permit timely completion of the Project without causing CEM to incur additional costs beyond those reasonably anticipated in its bid.

11. The City failed to reasonably administer the Project. Instead, it interfered with CEM's performance, delaying and preventing the completion of the Project and causing CEM to incur additional costs beyond those reasonably anticipated in its bid. The City breached the Contract by, without limitation:

- a. failing to provide material and accurate information concerning the actual conditions of the Project site, including the water flow at the Project site;
- b. requiring CEM to perform the work in unreasonable and unanticipated adverse conditions, including adverse weather conditions and increased water flow;
- c. unreasonably denying CEM's request for additional compensation as a result of the additional costs incurred by CEM to complete the work and the delays CEM incurred on the Project site;
- d. unreasonably delaying and stopping CEM's work;
- e. failing to timely and properly pay for work performed pursuant to the Contract;
- f. requiring CEM to continue with the work under the Contract despite the impossibility or commercial impracticability of such work; and
- g. refusing to approve CEM's means and methods proposals or to offer alternate proposals.

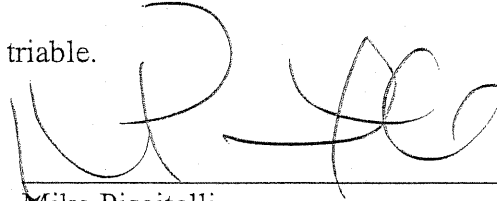
12. As a direct and proximate result of the City's breach of the Contract, the work of CEM was interfered with and disrupted, and CEM incurred damages.

13. CEM's damages include, but are not limited to, additional and increased labor and equipment costs; loss of productivity and efficiency; extended job and home office overhead; and, loss of profits.

WHEREFORE, CEM demands judgment against the City for compensatory damages, costs of this action, pre-judgment interest, and such further relief as the Court deems proper.

**Demand for Jury Trial**

CEM requests trial by jury of all matters so triable.

A handwritten signature in black ink, appearing to read "Mike Piscitelli", written over a horizontal line.

Mike Piscitelli

Florida Bar No. 364967

Alejandro Espino

Florida Bar No. 114431

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