

Legislative #

150937

**WAIVER AND INDEMNIFICATION AGREEMENT BETWEEN
ALACHUA COUNTY AND THE CITY OF GAINESVILLE**

This Waiver and Indemnification Agreement (the "Agreement") is entered into by and between ALACHUA COUNTY, a charter county and political subdivision of the State of Florida (the "County"), and the CITY OF GAINESVILLE, a municipal corporation (the "City").

WITNESSETH

WHEREAS, on April 25, 2016, the County filed litigation (Case No. 2016-CA-1445 in the Circuit Court of the Eighth Judicial Circuit in and for Alachua County) against the City seeking recovery of certain real property (described in that certain Deed recorded in Official Record Book 1457, Page 108, of the Public Records of Alachua County, Florida) (the "Property") that the County asserts has reverted to County ownership by virtue of a reverter clause contained in the Deed; and

WHEREAS, subsequent correspondence between the County Commission and the City Commission evidences the intent of the parties to first have informal discussions to resolve the dispute concerning the Property, and if not resolved to then begin the formal Chapter 164 dispute resolution process and if that does not resolve the dispute, then the County may resume the litigation; and

WHEREAS, the County's correspondence stated that the County was willing to abate the litigation if the City provided an assurance concerning the Chapter 164 process and provided an indemnification as to premise liability; and

WHEREAS, the County requested the assurance on the advice of its legal counsel that postponing the Chapter 164 process to a date uncertain to first allow for informal discussions appears to constitute a violation (or failure to follow) the requirements of Section 164.1061, Florida Statutes, which states: "Any of the time requirements set forth in this act may be extended to a date certain by mutual agreement, in writing, of the primary conflicting governmental entities"; and

WHEREAS, the County requested the indemnification for premise liability on the advice of its legal counsel that the reverter event has occurred, the Property is now owned by the County and the County, therefore, has liability for the Property; and

WHEREAS, on May 19, 2016, the Court, upon joint motion filed by the City and County legal counsel, issued an Order abating the litigation until the parties have exhausted the dispute resolution procedures of Chapter 164, Florida Statutes; and

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

- (1) **Waiver:** Both parties acknowledge that they mutually agreed to delay the Chapter 164 process to a date uncertain in order to allow time for information gathering and informal

discussions at both the staff and Commission levels. Each party agrees that it is hereby waiving any right that either party has to assert that this mutually agreed upon delay is a violation of Chapter 164.

(2) **Indemnification:** The City, as the party that continues to have exclusive possession and control of the Property, agrees to defend, indemnify and hold harmless the County for liability claims arising on the Property that are brought by third parties who name the County as an owner of the Property. This indemnification shall not be construed to be an indemnification for the acts or omissions of County Commissioners, County employees, independent contractors or third party agents of the County arising on the Property. This indemnification shall not be construed as a waiver of the City's sovereign immunity or the County's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the City or County could be liable under the common law interpreting the limited waiver of sovereign immunity. The County shall notify the City as soon as reasonably practicable upon being named in a claim covered by this paragraph. Notwithstanding any other provisions of this paragraph, the value of this agreement to defend, indemnify and hold harmless is limited to the maximum sum of \$300,000 as the result of all claims and judgments arising out of the same incident or occurrence, not to exceed the sum of \$200,000 for any claim or judgment or portions thereof.

(3) **Effective Date.** This Agreement shall be effective as of May 19, 2016 and shall terminate (without further action necessary by either party) when either party resumes litigation of Case No. 2016-CA-1445.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates beneath each signature.

ALACHUA COUNTY:

BOARD OF COUNTY COMMISSIONERS OF
ALACHUA COUNTY, FLORIDA

ATTEST:

By: _____
Robert Hutchinson, Chair
Board of County Commissioners
Date: _____

J.K. Irby, Clerk

APPROVED AS TO FORM

(SEAL)

Alachua County Attorney

CITY OF GAINESVILLE:

CITY OF GAINESVILLE, FLORIDA

By: _____

Lauren Poe, Mayor
City of Gainesville

Date: _____

ATTEST:

Kurt Lannon, Clerk of the Commission

(SEAL)

APPROVED AS TO FORM AND LEGALITY

City of Gainesville Attorney