

FIRE HYDRANT AND PUBLIC STREET LIGHTING SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 21st day of February A.D., 1990, by and between the City of Gainesville, a municipal corporation, hereinafter referred to as "City," and Alachua County, a political subdivision of the State of Florida, hereinafter referred to as "County"

W I T N E S S E T H:

WHEREAS, from December 19, 1972, to December 19, 1979, the City of Gainesville, Florida (the "City") and Alachua County, a political subdivision of the State of Florida (the "County") operated the utility system of the City pursuant to interlocal agreement as the Gainesville-Alachua County Regional Electric, Water and Sewer Utilities Board (the "Board"), and

WHEREAS, on December 19, 1979, the parties entered into an interlocal agreement to dissolve the Board (the "Agreement"), and

WHEREAS, the December 19, 1979, Agreement provided for assessment of fire hydrant and street light services to the County and payment of an amount equal to the charges assessed against the County for such services to be paid monthly to the County in exchange for benefits derived by the City due to the location of City utility property within Alachua County, and

WHEREAS, the December 19, 1979, Agreement expired on September 30, 1987, following a one year extension beyond the initial expiration date of September 30, 1986, and

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WHEREAS, the City continued to charge the County for such services during the period from October 1, 1987, through September 30, 1988, and the County paid for such services, and

WHEREAS, the City and the County entered into a one year agreement for the period beginning October 1, 1988, and ending September 30, 1989, whereby the City agreed to absorb all charges and costs associated with the provision of such services for the time period October 1, 1988, through and including March 31, 1989, and the County agreed to pay all charges and costs associated with the provision of such services for the time period April 1, 1989, through and including September 30, 1989, and

WHEREAS, the City and the County now desire to enter into an agreement to provide for payment for such services for the fiscal year beginning October 1, 1989, and future years;

NOW, THEREFORE, in consideration of the above and the mutual benefits to flow to each other, the parties agree as follows:

Section 1. This agreement shall be effective for fire hydrant and street lighting services rendered on and after October 1, 1989, and shall continue until terminated by mutual agreement of the parties.

Section 2. The City shall install, operate and maintain fire hydrants and public street lights in the unincorporated portion of the utilities service area under the same terms and conditions as would be otherwise provided to the City upon authorization by the County; provided, however, that the City's obligation to install fire hydrants or street lights in the unincorporated area shall be subject to the following:

a) The City shall not be obligated to install more fire hydrants in new developments in any fiscal year than are necessary to meet the following criteria: fire hydrants shall be installed so that no portion of any single-family or two-family dwelling shall be more than five hundred (500) feet from a fire hydrant, and no portion of any other building shall be more than three hundred and fifty (350) feet from a fire hydrant.

b) The City shall not be obligated to install more than thirty five (35) hydrants in existing developments or other existing areas in any fiscal year.

c) The City shall not be obligated to install any fire hydrants in any area where the water infrastructure is incapable of supporting such service.

d) The City shall not be obligated to install more street lights, or street lights of a different type or standard, in any new development than would be installed if such development were within the boundaries of the City.

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e) The City shall not be obligated to install more street lights in a Florida Department of Transportation ("D.O.T.") road improvement project than would be installed if such project within the boundaries of the City. The City shall not be obligated to enter into agreements with the D.O.T. for operation and maintenance of the street lights installed in such project. Execution of such agreements shall remain the responsibility of the County.

f) The City shall not be obligated to install more than fifty (50) street lights in existing residential developments or other existing public rights-of-way in any fiscal year.

g) The limitations imposed in subparagraph f) above shall not apply to the following:

- (1) Street lighting installations completed after October 1, 1987, pursuant to rental agreements with the City which, but for a moratorium on public street lighting installations imposed by the County Engineer by letter dated October 2, 1987, would have been installed as public lighting projects in the unincorporated area shall be considered County public lighting installations beginning the first day of the month following execution of this agreement. Any reimbursement to leasees under said rental agreements of rental charges paid prior to the first day of the month following execution of this agreement shall be the sole responsibility of the County; and,

- (2) All other developments in the unincorporated area completed after October 1, 1987, where street lights were not installed in public rights-of-way within the utilities service area and in which, but for a moratorium imposed by the County Engineer by letter dated October 2, 1987, would have been installed as public lighting projects shall be installed in the future in accordance with a mutually acceptable schedule to be developed by City and County staff; and,
- (3) Street lighting installations located on public rights of way in the unincorporated areas of the County previously transferred or to be transferred to the City in accordance with the terms and conditions of the territorial agreement dated July 21, 1986, between the City of Gainesville and Clay Electric Cooperative shall be considered public street lighting from the date of original acquisition by the City from Clay Electric Cooperative; and,
- (4) County and Florida Department of Transportation ("DOT") road reconstruction projects completed after October 1, 1987, which, but for a moratorium imposed by the County Engineer by letter dated October 2, 1987, would have been installed as road improvement projects in the unincorporated area. These projects shall be installed in the future in accordance with a mutually acceptable schedule to be developed by City and County staff.

Provided however, that payment of any capital expense which would have been eligible for DOT funding or which will be eligible for DOT funding in the future shall be the responsibility of the County.

It is agreed that public fire hydrants and street lights which have been installed as of the date of this agreement or will be installed in accordance with Section 2, Subparagraph g) have been authorized by the County.

If this agreement is terminated by the parties, the County shall have the right to purchase the street lighting facilities (poles and lighting apparatus) installed in the unincorporated area of Alachua County from the City at replacement cost less depreciation, provided such facilities are not in use as part of the City's electric distribution facilities. In the event the County shall purchase such facilities and to the extent that such facilities are in the service area of the City's electric utility, the City shall provide electric service to such facilities at reasonable rates and charges for such service.

h) Nothing in this agreement shall be construed to modify, change, or amend the City's present Utility Systems electric, gas, water or wastewater ordinances, policies, practices or procedures (hereinafter "regulations"). The City reserves the right to modify, change, or amend its Utility Systems regulations

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including but not limited to regulations relating to the installation costs and expenses of street lights, as long as the regulations apply equally to the customers within and without the City.

Section 3. Each month the Utilities Systems shall charge the County for fire hydrant and street lighting services provided within the unincorporated area of Alachua County for fire hydrants and street lights installed after authorization by the County. Such charge shall be in accordance with the prevailing rates, fees and charges in the Gainesville Code of Ordinances applicable to such services. The charges for such services shall not be higher than those assessed against the City for the same types of services. Except as otherwise provided herein, the County shall pay the utilities systems for all amounts charged for such services within 45 days from the date each bill is issued.

Section 4. Subsequent to the payment of each charge for services as provided for in Section 3, the City shall reimburse the County from its general fund an amount equal to the charges paid to the City by the County for fire hydrant and street lighting services; except, however, that during the first fiscal year of this agreement (1989/1990), the City shall have no obligation to reimburse the County for charges paid by the County for fire hydrant and street lighting services. Notwithstanding any other provision of this agreement the County shall have until January 1, 1991, to fully pay all charges accruing during fiscal year 1989/1990.

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Section 5. The foregoing Section 4 notwithstanding, it is agreed, however, that if the County shall exercise any right, which the County may have, to levy or impose any permit, license, franchise fee or other charge for use of County rights-of-way by the electric, gas, water and wastewater systems of the City, or any of them, by ordinance, contract or other means, on the City during the term of this agreement, there shall be a credit against the total permit, license or franchise fee to be paid by the City in an amount equal to the reimbursement amount paid by the City pursuant to this agreement.

Section 6. The provisions of Section 5 notwithstanding, it is also agreed that the amount of reimbursement for street lighting services by the City required to be paid in any fiscal year shall not exceed the amount of revenue derived from the surcharge on electric services assessed by the City against electric customers located within the unincorporated area of Alachua County which may lawfully be transferred to the City's general fund, and that the amount of reimbursement for fire hydrant services by the City required to be paid in any fiscal year shall not exceed the amount of revenue derived from the surcharge on water services assessed by the City against water customers located within the unincorporated area of Alachua County which may lawfully be transferred to the City's general fund.

Section 7. To enable the City to properly take future taxes or fees into consideration when setting utility rates and charges and adopting its budget for the next fiscal year, the County hereby

agrees that it shall notify the City on or before April 1, 1990, and March 1 of any fiscal year thereafter of its intention to levy or impose, by ordinance, contract or other means, during the next fiscal year either a utility or public service tax on the provision of electric, gas, water or wastewater services, or any permit, license, franchise fee or other charge for use of County streets and rights-of-way by the electric, gas, water and wastewater systems of the City, or any of them. It is understood and agreed, however, that nothing contained in this agreement shall be interpreted: a) so as to constitute any concession or agreement on the part of the City that the County has any legal right to levy or impose, by ordinance, contract or other means, either a franchise fee or utility tax; or b) to preclude the County from lawfully levying or imposing a valid franchise fee or utility tax.

Section 8. Except for the notice requirement set forth in Section 7, nothing contained in this agreement shall be interpreted to restrict any right which the County may have to levy or impose any permit, license, franchise fee or other charge for use of County streets and rights-of-way by the electric, gas, water and wastewater systems of the City by ordinance, contract or other means, on the City during the term of this agreement. However, the County agrees to permit the City to use County rights-of-way for City utility purposes for the period this agreement is in effect subject to any permit, license, franchise fee or other charge for the use of County streets and rights-of-way.

Section 9. It is agreed that the reimbursement provided for in Section 4, shall be paid to the County as a payment in exchange for benefits derived by the City due to the location of City utility property within Alachua County for the entire period this agreement is in force and effect.

Section 10. All of the Sections of this agreement are interdependent and unseverable, and if any section, or part hereof, shall be deemed illegal, void or unenforceable by a court of competent jurisdiction, the parties agree that charges and reimbursements provided for herein shall not be subject to refund and that neither party shall take any action to assert any right to such refund. It is further agreed that if any section, or part hereof, shall be deemed illegal, void or unenforceable by a court of competent jurisdiction, both parties shall be relieved from any further obligation hereunder and this agreement shall be void and of no further force or effect.

Section 11. This agreement represents the entire agreement between the parties relating to the provision of fire hydrant and street lighting services. This agreement supercedes all other agreements between the parties relating to such matters whether oral or written.

Section 12. No section, or part thereof, of this agreement may be altered, amended, or modified except in writing, executed by both parties.

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Section 13. The rights of the parties under this Agreement shall be subject at all times to the rights relating to the disposition of utilities system revenues of holders of notes of the City outstanding on the date of this agreement and to the rights relating to the disposition of utilities system revenues of holders of indebtedness of the City incurred under the current utilities system Bond Resolution or any bond resolution or indenture subsequently entered into governing the obligations of the City in respect to the indebtedness of the City's utilities systems.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed for the uses and purposes herein expressed the day and year first above written.

ATTEST:

A. Curtis Powers
A. Curtis Powers, Clerk

ALACHUA, COUNTY, FLORIDA

Kate Barnes
Kate Barnes, Chairman
Board of County Commissioners

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APPROVED AS TO FORM

James D. Smith
Alachua County Attorney

ATTEST:

Mary Ann B. Frazer
Mary Ann B. Frazer
Clerk of the Commission

CITY OF GAINESVILLE, FLORIDA

Cynthia Moore Chestnut
Cynthia Moore Chestnut
Mayor-Commissioner

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Approved as to form and correctness
By Marlon J. Radson
Marlon J. Radson, City Attorney
City of Gainesville, Florida
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