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MEMORANDUM

Office of the City Attorney

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CITY ATTORNEY

TO: Mayor and City Commission

DATE: July 26, 1999

FROM: Marion J. Radson, City Attorney

SUBJECT: **The Privilege Fee Case**

Recommendation: The City Commission: 1) receive a report from the City Attorney; and 2) waive the City's claim for costs against Alachua County

On May 13, 1999 the Florida Supreme Court rendered its decision striking down Alachua County's privilege fee. The Court upheld Judge Frederick Smith's decision and the position of the City that the fee is, in fact, an unlawful tax. The privilege fee is not the functional equivalent of a franchise fee, a rental fee or user fee as argued by Alachua County's special counsel, Robert Nabors. The Court's opinion disallows the use of the privilege fee as a means of raising new or additional revenues for local governments in Florida.

The impact of this decision is significant locally and statewide. In Alachua County alone, GRU estimated that the privilege fee would collect \$4.1 Million Dollars annually from their customers within the City limits and \$2.5 Million Dollars from their customers within the unincorporated area. The Bradford Board of County Commissioners implemented the privilege fee in September 1997 and collected over \$600,000 to date. A full refund of the privilege fee is sought by Clay Electric Cooperative, Inc. on behalf of their customers. Now the Bradford Board of County Commissioners is proposing a 3% franchise fee which is the mechanism traditionally used by local governments to negotiate fees in exchange for certain benefits.

On May 21, 1999 the City Attorney attended the Alachua County Board of County Commissioners meeting. The City Attorney offered to recommend to the City Commission a waiver of the City's pending Motion to Tax Costs pending against Alachua County in the amount \$9,985.50¹ on the condition that the County not appeal the Supreme Court's decision. FP&L offered to do the same in regard to their costs. Our recommendation is based on the amount of time and additional costs that would be expended by the City in responding to this Motion. At this meeting the Board decided not to file a Motion to Rehear the Supreme Court's decision.

On May 21, 1999 the City of Altamonte Springs, an amicus curiae, filed a motion to rehear and clarify the Supreme Court's decision. The City of Gainesville, Howard J. Scharps, FP&L, FPC and Florida Electric Cooperatives Association, Inc. opposed this Motion on the grounds that the Motion was frivolous and a flagrant violation of the Rules of Appellate Procedure. The Florida Supreme Court on July 19 agreed with the City of Gainesville and struck

¹ Amount includes all out-of-pocket costs expended by the City in the trial court.

Altamonte Spring's Motion for Rehearing.² **The decision of the Florida Supreme Court is now final.**

Once again I want to thank the City Commission, Charter Officers and the employees who supported and assisted us in presenting this case to the Courts. Special appreciation and acknowledgment is owed to Elizabeth Waratuke, Litigation Attorney, Janice Stevens, Paralegal, and the other members of the City Attorney's Office who devoted many hours on this case.

MJR/afm

² The City may seek fees and costs against the City of Altamonte Springs for filing its Motion for Rehearing, Clarification or Certification.