

1 desirability of the agreement at issue; and

2 **WHEREAS**, in advising various departments and bodies regarding
3 indemnification or risk assumption matters, the City Attorney’s Office recommends that
4 contracts are clear that the City does not purport to indemnify another entity, nor does the
5 City waive its sovereign immunity under law; and

6 **WHEREAS**, from time to time, a contracting entity may ask the City to
7 indemnify the entity for the City’s negligence; and

8 **WHEREAS**, American Home Assurance Company v. National Railroad
9 Passenger Corporation, 908 So.2d 459 (Fla. 2005) (*holding that a municipality could*
10 *contractually be held liable under an indemnification provision despite sovereign*
11 *immunity defenses raised*), and Florida Department of Natural Resources v. Garcia, 753
12 So.2d 72 (Fla. 2000) (*holding that the City of Miami could indemnify the State of Florida*
13 *despite a statutory provision that prohibits one governmental entity from indemnifying a*
14 *second governmental entity for the second entity’s negligence*) are two cases that raise
15 potential problems relating to indemnification; and

16 **WHEREAS**, from the standpoint of liability, it is not advisable to indemnify
17 another party; and

18 **WHEREAS**, as a practical matter, it is sometimes necessary, in order to achieve
19 policy goals that are in the best interests of the City to take on the risk of such an
20 indemnity provision; and

21 **WHEREAS**, the City Commission hereby finds that there is a need for the City to
22 implement a uniform policy and methodology for the review of matters relating to
23 contractual risk assumption or indemnification by the City;

1 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY**

2 **COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:**

3 **Section 1.** The City of Gainesville policy is that the City does not indemnify
4 other parties. That policy may only be waived based on certain factors, such as (1) the
5 availability of the goods or services from other sources; (2) the City's need/desire for the
6 goods or services; (3) the probability of a loss occurring.

7 **Section 2.** City policy not to indemnify others should not be waived lightly and,
8 when done, shall conform to the following requirements:

9 A. The other entity must have refused, in writing, to remove all
10 indemnification requirements requested of the City directly and refused to allow a
11 statement that each party be responsible for its own negligence to take the place of the
12 indemnification provision.

13 B. No indemnification by the City for the acts of any entity other than the
14 City, its Governing Body, or its employees shall be approved. Particularly, no contract
15 shall be entered into that requires the indemnification for acts or omissions of third
16 parties, or third party agents of the City.

17 C. City indemnification of a party shall specifically be limited to the lesser of
18 the contact amount, or the limits of sovereign immunity under §768.28, Fla. Stat.
19 (\$100,000/\$200,000.) Recovery shall be limited contractually to the actual damages
20 incurred as a result of City's sole negligence. No recovery of attorney's fees and costs
21 shall be permitted.

22 D. City indemnification shall specifically be limited to traditional liabilities
23 for which the City could be held liable under common law interpreting the limited waiver

1 of sovereign immunity (i.e., no waiver of sovereign immunity for planning functions or
2 otherwise). Language shall also be included that states that any claim must comply with
3 the procedures found in §768.28, Fla. Stat., for such tort claims.

4 E. City indemnification requires specific individual review through the
5 contract review process, which must include, at a minimum, written approval by the City
6 Attorney's Office, the Risk Manager and the respective Charter Officer's Office.

7 **Section 3.** To the extent possible, and after consideration as outlined above, the
8 following language is to be used in substantially this form for the City to indemnify
9 another party:

10 The City hereby agrees to indemnify the [other party] for claims
11 brought against the [other party] only to the extent that they are found to
12 result from the sole negligence of the City, its governing body, or its
13 employees. This indemnification shall not be construed to be an
14 indemnification for the acts, or omissions of third parties, independent
15 contractors or third party agents of the City. This indemnification shall
16 not be construed as a waiver of the City's sovereign immunity, and shall
17 be interpreted as limited to only such traditional liabilities for which the
18 City could be liable under the common law interpreting the limited waiver
19 of sovereign immunity. An action may not be instituted on a claim against
20 the City unless the claimant presents the claim in writing to the Risk
21 Manager within 3 years after such claim accrues or the Risk Manager
22 denies the claim in writing. For purposes of this paragraph, the
23 requirements of notice to the Risk Manager and denial of the claim are
24 conditions precedent to maintaining an action but shall not be deemed to
25 be elements of the cause of action and shall not affect the date on which
26 the cause of action accrues. Notwithstanding any other provisions of this
27 paragraph, the value of this indemnification is limited to the maximum
28 sum of \$200,000 as the result of all claims and judgments arising out of
29 the same incident or occurrence, not to exceed the sum of \$100,000 for
30 any claim or judgment or portions thereof. In addition, this
31 indemnification shall be construed to limit recovery by the indemnified
32 party against the City to only those damages caused by the City's sole
33 negligence, and shall specifically exclude any attorney's fees or costs
34 associated therewith.

1 **Section 4.** Notwithstanding any contractual authority delegation to the contrary,
2 any indemnification provisions entered into by the City other than those listed in Section
3 3, may only be entered into at the specific written direction of the respective Charter
4 Officer or designee, and only after review and approval by the Risk Manager and the City
5 Attorneys' Office. Any indemnity provision entered into pursuant to this Section 4 shall
6 be reported to the City Auditor no less than quarterly.

7 **Section 5.** This resolution shall take effect immediately upon adoption.

8 **PASSED AND ADOPTED** this 24th day of July, 2006.


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PEGEEN HANRAHAN
MAYOR

ATTEST:

Approved as to form and legality


KURT M. LANNON
CLERK OF THE COMMISSION


MARION J. RADSON
CITY ATTORNEY

JUL 25 2006