



MEMORANDUM

Office of the City Attorney

TO: Mayor and City Commission

DATE: October 22, 2001

FROM: City Attorney

RESOLUTION

SUBJECT: Stormwater Management System Revenue Bonds

Recommendation: The City Commission adopt the resolution that authorizes the issuance of the Bonds and authorizes the City Attorney's Office to file a validation lawsuit in the Circuit Court.

The Resolution authorizes the issuance of Bonds, in a principal amount not in excess of \$5,000,000, payable from the gross revenues of the City from its stormwater management system on a parity with the portion of such revenues pledged to a revolving loan from the State Department of Environmental Protection. Proceeds of such Bonds are to be expended on the cost of extensions, improvements and repairs to the stormwater system. The Bonds also allow flexibility in funding larger capital construction projects under the stormwater utility, such as the Sweetwater and Depot Avenue Stormwater Park projects. Due to the large costs associated with major stormwater management projects it takes multiple years to accumulate adequate funds to finance these types of projects.

The Bonds shall not be general indebtedness or pledge of the credit of the City and are not payable from or secured by any taxes. The Resolution includes a pledge of the Gross Revenues for the payment of the Bonds and standard covenants for the benefit of bondholders.

The City's stormwater management system is a utility with a schedule of utility fees. As fees, the charges apply to all users of the system, including the City and other government entities. For many years, the Department of Transportation located at 2006 N.E. Waldo Road has refused to pay the City's stormwater fee, claiming the charge was a tax or a special assessment for which it was not liable to pay. In 1998, the City filed an action for declaratory relief, asking the Court to declare that the City's stormwater charge was a valid fee and not a tax or special assessment. On appeal, the appellate court reversed the lower court, finding that if the City's charge operated as alleged in the complaint, it was a valid fee as opposed to a special assessment. The Court remanded the case to the trial court to make this determination.

In consultation with City management, it is our opinion that these legal issues can be best determined in a Bond validation lawsuit. A validation of the stormwater fees will give the City the ability to issue Bonds on the fees to fund projects, which could include the Depot Stormwater Park and the Sweetwater, Tumbling Creek and Hogtown Creek projects. The Bond validation will also determine as a final matter whether the City's charges are valid fees, as a direct appeal to the Florida Supreme Court is a matter of right.

The Resolution authorizes the City Attorney to file validation proceedings with respect to the Bonds in the Alachua County Circuit Court.

Prepared by:


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Approved and
Submitted by:


Marion J. Radson,
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