

LEGISLATIVE #

130547A

**CONTRACT BETWEEN THE CITY OF GAINESVILLE
AND NAVIGANT CONSULTING, INC.**

Professional Investigative Review Services – Request for Proposal No. CAUD140037-DH

THIS CONTRACT (the “**Contract**” or “**Agreement**”) entered into this ____ day of _____, 2014 by and between the **CITY OF GAINESVILLE (the “City”)**, a Florida municipal corporation, and **NAVIGANT CONSULTING, INC (“Consultant”)**, a Delaware corporation authorized to do business in the State of Florida. **City** and **Consultant** are collectively referred to as (the “**Parties**”)

WHEREAS, City’s Auditor serves as both an internal auditor and City’s inspector general; and

WHEREAS, City requires an independent investigative review of City-owned Gainesville Regional Utilities; and

WHEREAS, the investigative review is within the purview of the City’s Auditor as City’s inspector general; and

WHEREAS, the City Auditor and City Commission determined that because of workload constraints and because the scope of the review required additional expertise, City should seek an external consultant to serve as an independent inspector general for the limited purpose of conducting the investigative review as described in this Contract; and

WHEREAS, City issued a Request for Proposal (RFP) No. CAUD140037-DH on April 10, 2014, and an Addendum dated April 30, 2014. City received three responses on May 8, 2014. City staff, consisting of City Auditor, and the Equal Opportunity Director evaluated the proposals, conducted oral interviews, and ranked the three proposals, placing Navigant Consulting, Inc. at the top of the list. The rankings were presented to the City Commission who authorized the City Auditor to negotiate a contract with Navigant Consulting, Inc.; and

WHEREAS, City and Consultant desire to enter into this Contract for the purpose of conducting the investigative review as set forth in this Contract.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants contained herein, the Parties agree as follows:

1. Scope of Services

1.1 Primary Objectives

Consultant shall conduct an independent investigative review of the Gainesville Regional Utilities (GRU). At the completion of the investigative review, Consultant shall issue a final written report focused on the primary objectives as follows:

- Recommendations of institutional controls that can be implemented that would help avoid the management discrepancies of the past and help strengthen the working relationship between GRU management and the City Commission
- Opportunities for financial and operational benefit to GRU related, but not limited to, the Gainesville Renewable Energy Center (GREC) power purchase agreement.

Consultant will give an oral presentation of the conclusions and recommendations in the final report to the City Commission.

1.2 Contract Documents

In performing the investigative review, Consultant is directed to the following documents, which are attached hereto and by this reference, are incorporated herein:

- RFP No. CAUD140037-DH issued April 10, 2014 (Attachment “A”).
- Addendum 1 dated April 30, 2014, inclusive of Attachments 1 and 2 to the Memorandum (Attachment “B”).
- Navigant’s Response dated May 7, 2014 (Attachment “C”).
- Navigant’s Cost Proposal dated May 7, 2014 (Attachment “D”).
- Navigant’s Power Point Presentation for Oral Interview dated June 10, 2014 (Attachment “E”).

Based on the above primary objectives and documents, Consultant’s services shall include a review of the decision making processes and relevant transactions occurring from the time the City Commission authorized staff to issue an RFP to solicit biomass-fuel electrical generation in October 2007 until November 15, 2013 when the GRU General Manager left the employ of GRU. Services will include reviewing the flow of financial information provided to the City Commission, especially as it relates to the “Equitable Adjustment Agreement for Change of Law.”

During the course of the investigative review, the scope of work may be further expanded or altered upon terms mutually agreeable to City and Consultant.

1.3 Minimum Requirements

The investigative review to be conducted by Consultant shall include but not be limited to:

- A review of relevant agreements, documents, financial records, memos, emails and any other materials associated with the GREC power purchase agreement (PPA) and any subsequent amendments or agreements.
- A review of activities and decisions involving the GREC PPA and subsequent amendments or agreements, including the “Equitable Adjustment Agreement for Change of Law,” with a focus on policy, legal and administrative standards and compliance.
- A determination as to whether any financial recoveries may be available for GRU.
- Preparation of data in a manner consistent with legal practices necessary for pursuit of legal action, if appropriate, against any parties to the GREC PPA and subsequent agreements or individuals and entities involved with the negotiation, execution and implementation of the GREC PPA and subsequent agreements.
- A review of GRU’s policies, procedures and practices with respect to expenditure contracting and other compliance issues that may include recommendations to

strengthen the working relationship between GRU management and the City Commission and to improve financial oversight going forward.

1.4 Expert Witness Testimony

City has not yet determined whether it will be necessary to call any member of Consultant's firm as an expert witness as a result of the investigative review. To the extent that City requests Consultant to reach conclusions or form opinions, Consultant is obligated to give City, Consultant's best independent judgment without regard to the impact that such conclusions or opinions may have upon the investigative review. Consultant has not made and will not make any guarantees regarding the nature or admissibility of its opinions or the outcome of any legal proceeding.

1.5 Not a Financial Audit

City has not retained Consultant to perform a financial audit. Consultant will not be auditing any financial statements or performing any attest procedures nor will consultant be providing legal advice in the course of the providing the services hereunder. Consultant is not a Certified Public Accounting firm and Consultant's services are not designed, nor should they be relied upon, to disclose errors, irregularities, illegal acts or disclosure deficiencies in City's financial statements.

2. Standards for Investigative Review

While maintaining its independence from City, Consultant will follow, as applicable, the policies and procedures applicable to City's Auditor as it relates to investigative reviews, specifically Section III, Paragraph I and Section IV, Paragraphs B, C and D of the City Auditor's Policies and Procedures Manual, dated December 15, 2011. The Policies and Procedures Manual of the City Auditor can be found at www.cityofgainesville.org/CityAuditor.

3. Independence

At all times during Consultant's investigation, Consultant will remain independent of the parties in this matter including current and former employees of City, GRU, and GREC and any other persons with interest, involvement or who have raised questions or concerns over the subject of the investigative review to be provided pursuant to this Contract.

Consultant represents and warrants that prior to accepting the engagement, Consultant performed a check based on the names of the parties contained in the RFP to this matter and Consultant identified no circumstances or prior material relationships with City, GRU or GREC, or current or former management, boards or Gainesville City Commissioners, that would constitute a conflict of interest or that could impair Consultant's ability to provide independent, objective assistance.

Throughout the course of the investigation, Consultant will implement and maintain an ethical screen between Consultant's project team for this matter and any other of Consultant's personnel that may have performed services for City, GRU, GREC, or any other related entity in the past.

4. Independent Contractor

Consultant shall be considered an independent contractor and as such shall not be entitled to any right or benefit to which City employees are or may be entitled by reason of employment. Consultant shall be solely responsible for the means, method, techniques, sequences, and procedures utilized by Consultant in the full performance of this Contract.

5. Public Records

5.1 Consultant Acting On Behalf Of City In Conducting The Investigative Review

While Consultant and City acknowledge that Consultant is an independent contractor for purposes of making independent judgments regarding the investigative review, City acknowledges that Florida's public records laws may be sufficiently broad to include Consultant as a contractor operating on behalf of City (as provided in Section 119.0701, Florida Statutes) in the performance of the investigative review. Because Consultant may meet the definition of a "contractor" as defined in Section 119.0701(1)(a), Florida Statutes, City requires that, in accordance with Section 119.0701, Florida Statutes, Consultant comply with Florida's public records laws. Accordingly, Consultant shall:

- a. Keep and maintain public records, as defined in Section 119.011(12), Florida Statutes, that ordinarily and necessarily would be required by City in order to perform the services;
- b. Provide the public with access to public records on the same terms and conditions that City would provide the records and at a cost that does not exceed the cost provided by applicable law;
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- d. Meet all requirements for retaining public records and transfer to City, at no cost, all public records in possession of Consultant upon termination of this Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to City in a format that is compatible with the information technology systems of City.

Pursuant to Subsection 119.0701(3), Florida Statutes, if Consultant does not comply with a public records request, City shall enforce the contract provisions in accordance with the contract.

5.2 Records Confidential And Exempt During Investigation

City has contracted with Consultant to perform the investigative review as an independent inspector general performing certain functions otherwise performed by the City Auditor. Consultant understands that City has deemed that pursuant to Section 119.0713(2)(a), Florida Statutes, during the investigation information received, produced, or derived from the investigation is confidential and exempt from Section 119.07(1), Florida Statutes and s. 24(a), Art. I of the State Constitution. Consultant will comply with City's request to

maintain the confidentiality and exemption of the information received, produced or derived from the investigation until the report is complete.

Consultant understands that City has determined that the final report is not a public record until the investigation is complete and the final report is issued to the City Commission. Consultant will comply with City's request to treat the report as a public record only after the investigation is complete and the final report is issued to the City Commission.

5.3 Handling Public Record Requests

In the event Consultant receives a public record request regarding the investigation, Consultant shall promptly respond that pursuant to Section 119.0713, F.S., the requested information is confidential and exempt until the investigation is complete and the investigative report is final. Consultant shall provide City with a copy of the public records request and Consultant's response.

During the investigation, Consultant will retain all public records. Upon completion of the investigation and concurrent with issuance of the final report or in the event the investigation is no longer active and this Contract is terminated, Consultant shall transfer all public records to City and shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure.

If Consultant believes any public records turned over to City are confidential and exempt as trade secret pursuant to Section 815.045, Florida Statutes or intellectual property pursuant to Section 815.04, Florida Statutes, Consultant must identify the records as such.

5.4 Duty to defend

Consultant shall immediately notify City of any litigation brought challenging City's assertion of exemption and confidentiality of investigative review records held by Consultant.

City will defend and hold Consultant harmless from any public records litigation challenging City's assertion that pursuant to Section 119.0713, Florida Statutes, information received, produced, or derived from the investigation by Consultant is confidential and exempt during the investigation and that the report is not a public record until the investigation is complete.

Consultant will defend and hold City harmless from any public records litigation challenging Consultant's assertion that any public record turned over to City at the conclusion of the investigation is confidential and exempt as trade secret pursuant to Section 815.045, Florida Statutes or intellectual property pursuant to Section 815.04, Florida Statutes.

6. Compensation

6.1 Compensation Rate

Consultant's engagement team will be led by Todd K. Lester, who will be assisted by others as appropriate. In the event Mr. Lester becomes unavailable for any reason,

Consultant will endeavor to propose an alternate individual of like experience and expertise, subject to approval by City. Consultant will make every reasonable effort to perform the investigative review in a cost-effective manner. The hourly rates outlined below will be in effect for the term of this agreement.

<i>Title</i>	<i>Hourly rate:</i>
Managing Director	\$455
Director	\$366
Associate Director	\$319
Managing Consultant	\$264
Senior Consultant	\$230
Consultant	\$174
Admin Support	\$140

Consultant's hourly rates are based on the experience and skills of the personnel involved and are adjusted periodically, typically on January 1st of each year, provided however, Consultant will perform the investigative review during the term of this agreement for the rates listed above. Consultant does not predict or warrant the outcome of any particular matter or issue, and Consultant's fees are not dependent on such outcomes.

Independent contractors or subcontractors may be utilized from time to time, at the applicable rates set forth above. Consultant shall obtain approval from City prior to the retention of any independent contractors or subcontractors.

Consultant and other professional services will be billed monthly based on hours incurred at the rates set forth above. Related normal and customary expenses (such as copies and federal express charges) will be billed monthly at cost with no mark-up. Consultant will not charge fees for travel time, unless work is actually performed during the travel time. City will reimburse for gas mileage rates not to exceed the rate approved by the Internal Revenue Service for income tax purposes. Travel expenses (such as airline, hotel, and meals) must otherwise conform to generally accepted City policies.

6.2 Invoices

Invoices received from Consultant pursuant to this Agreement will be reviewed by the City Auditor, to confirm that services have been rendered in conformity with the Contract. Consultant shall provide such additional information as is reasonably requested by the City Auditor for such review.

6.3 Payment

Payment will be due to Consultant thirty (30) days after receipt of the invoice, provided that Consultant shall not submit more than one invoice per thirty-day period. City will pay Consultant by City issued procurement card (currently VISA) or electronically as an electronic funds transfer.

6.4 Not to Exceed Amount

The total amount billed under this agreement shall not exceed One Hundred Eighty Thousand and No/100 Dollars (\$180,000) for services performed plus estimated Expenses

of \$9,000 without prior written approval by the City Auditor or City Commission as outlined below.

6.5 Additional Fees

In the event that unforeseen conditions are encountered which might necessitate additional hours or costs, Consultant agrees to advise the City Auditor in writing of the circumstances and to request an increase in the maximum fee before additional time expended and fees incurred.

Any such requests for additional fees shall contain a detailed explanation of the unforeseen conditions and why the additional fees are necessary. If the additional fees do not exceed \$18,000 (10% of the original estimate), the City Auditor will then determine whether or not to incur the additional expense. If at any time, the total of all additional fees exceed \$18,000 (10% of the original estimate), the City Commission will determine whether or not to incur the additional expense.

7. Term

This Contract shall be effective upon execution by both parties and shall terminate upon completion of the investigative review and other agreed upon tasks by Consultant and City's receipt and acceptance of all deliverables set forth in this Contract.

8. Termination

If Consultant is in default of the Contract, then City, after serving at least ten (10) days written notice to Consultant of its intent to terminate and after such default shall continue unremedied for a period of ten (10) days, may terminate this Contract without prejudice to any other rights or remedies it may have under this Contract or available at law.

9. Insurance

Contractor shall provide proof of insurance in the amounts and types listed in the Request for Proposal No. CAUD140037-DH.

10. Indemnification; Limitation of Liability

10.1. Indemnification

Consultant agrees to indemnify and save harmless City, its officers, and employees, from any third party liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the: (i) negligence, (ii) negligence resulting in death or personal injury, or (iii) gross negligence, recklessness (disregard and grossly deviate from the standard of conduct expected by a reasonable professional), or intentional wrongful conduct of Consultant or persons employed or utilized by Consultant in the performance of this Contract.

10.2. Limitation of Liability

Notwithstanding the terms of any other provision, except for Consultant's indemnification obligations under Sections 5, 10.1(ii) and 10.1(iii), the total liability of Consultant for all claims of any kind arising out of this Contract, whether in contract, tort or otherwise, shall be limited to an amount not to exceed \$300,000. Neither Consultant nor City shall in any event be liable for any indirect, consequential or punitive damages, even if City or Consultant have been advised of the possibility of such damages.

11. Sovereign Immunity

Nothing in this Contract shall be interpreted as a waiver of City's sovereign immunity as granted under Section 768.28, Florida Statutes.

12. Notices

Any notice of cancellation or breach of this Contract from either Party to the other Party shall be in writing and sent by certified mail, return receipt requested, and shall be deemed to have been received when either deposited in a United States Postal Service mailbox or personally delivered with signed proof of delivery. City's representative and Consultant's representative are:

City:
Brent Godshalk, City Auditor
PO Box 490-17
Gainesville, FL 32627-0490

Consultant:
Todd K. Lester
Navigant Consulting, Inc.
98 San Jacinto Blvd., Suite 900
Austin, TX 78701

13. Assignment

This Contract shall not be assigned by Consultant or any successor thereto without the prior written consent of City, which may be granted or denied in the sole discretion of City

14. Jurisdiction and Venue

This Contract shall be construed by and governed by the laws of the State of Florida. Venue for any dispute arising from this Contract shall be in Alachua County, Florida.

15. No Third Party Beneficiaries

This Contract does not create any relationship with, or any rights in favor of, any third party.

16. Attorneys' Fees and Costs

In the event of a dispute arising under this Contract, whether or not a lawsuit or other proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including attorneys' fees and costs incurred in litigating

entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. The reasonable costs to which the prevailing party is entitled shall include costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs, including, but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

17. Entire Agreement

This Contract, together with the attachments listed in paragraph 1, constitutes the entire agreement between City and Consultant. Any modifications, amendments or alterations shall be in writing and executed by both parties prior to becoming effective.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the day first above written in two (2) counterparts, each of which shall without proof or accounting for the other counterparts be deemed an original.

NAVIGANT CONSULTING, INC.

CITY OF GAINESVILLE

By: _____
Todd K. Lester.
Managing Director

By: _____
Brent Godshalk
City Auditor

Approved as to Form and Legality:

By: _____
Lisa C. Bennett
Assistant City Attorney II