

submitted for 12/19/05 meeting by City Attorney

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by Arthur J. Gallagher & Co. (Florida) ("Gallagher") on one side and City of Gainesville, a municipal corporation ("Gainesville"), on the other, this 19th day of December, 2005.

RECITALS

1. Gallagher has acted as the insurance broker for Gainesville providing services and assistance in the management of Gainesville's various insurance and self-insurance programs for many years, under policies insuring the City of Gainesville, Gainesville Regional Utilities, Ironwood Public Golf Course and Gainesville-Alachua County Regional Airport Authority.
2. Gallagher and Gainesville have entered into a number of contracts regarding their relationship including but not limited to contracts in 1988, 1991, 1999 and 2005 (collectively "agreements").
3. During a review and reconciliation by Gallagher of its business relationship with Gainesville, Gallagher determined there was a discrepancy and overcharge to Gainesville in the amount of \$1,310,985.11. Gallagher tendered a check in the amount of \$1,310,985.11 to Gainesville on or about June 22, 2005.
4. On August 22, 2005, the City of Gainesville and Gallagher entered into an Agreement for Deposit of Amount Tendered Pending Conclusion of Negotiations.
5. Gainesville has audited the books and records of Gallagher and determined that certain adjustments need to be made and additional amounts are due.
6. Gallagher and Gainesville also agree that interest is due on the amounts previously paid and the recent adjustments.

7. Gallagher and Gainesville without admitting or conceding any liability or fault, now desire to settle and resolve claims and liabilities regarding the retention of excess commissions over and above that which was allowed under the agreements.

AGREEMENT

NOW THEREFORE, in consideration of the promises and covenants herein set forth, and for other good and valuable consideration, it is agreed as follows:

1. Agreement. The Parties agree as follows:
 - a. Gallagher will pay Gainesville the additional sum of \$514,272.00, such amount to be delivered to Gainesville on or before 5:00 p.m. at the Gainesville City Hall, office of the City Manager, no later than December 22, 2005.
2. Release By Gainesville: Gainesville, on its own behalf and on behalf of its parents, subsidiaries, elected officials, citizens, predecessors, successors, affiliates, officers, directors, agents, servants, representatives, employees, partners, assigns, insurers and reinsurers, attorneys, and heirs, hereby releases, discharges and agrees to hold harmless Gallagher, and its parents, subsidiaries, members, shareholders, predecessors, successors, affiliates, officers, directors, agents, servants, representatives, employees, partners, assigns, insurers and reinsurers, attorneys, and heirs, and all other persons, firms or corporations with whom Gallagher has been, or is now, affiliated, of and from all past, present or future claims, debts, demands, actions, causes of action, damages, costs, expenses and losses of every kind and character whether based in tort, contract or under some other theory of recovery arising from the beginning of time to the present based upon the retention of excess commissions over and above that which was allowed under the agreements and the Agreement for Deposit of Amount Tendered Pending Conclusion of Negotiations, except for the General Releases pursuant to the Assurance of Voluntary

Compliance entered into by Arthur J. Gallagher & Co. and the Attorney General of Illinois, which are not the subject of this Agreement.

3. Agreement for Deposit of Amount Tendered Pending Conclusion of Negotiations. Gainesville agrees that the amount of \$1,310,985.11 tendered by Gallagher to the City together with the additional sum provided in Paragraph 1.a. above is the correct amount of compensation due to Gainesville. The Parties agree that no further claim shall be made under the Agreement for Deposit of Amount Tendered Pending Conclusion of Negotiations.

4. Terms Not Merely Recitals. It is expressly understood and agreed by the Parties, that the terms and agreements contained in this Agreement are contractual in nature and not merely recitals.

5. No Admission of Liability. The Parties are entering into this Agreement for the purpose of resolving by compromise claims that are disputed. No party admits any liability to any other party relative to any claims asserted in this matter.

6. No Additional Representations. The Parties hereby represent and warrant that they have entered into this Agreement of their own free will, in accordance with their own judgment, and upon the advice of their own legal counsel, and state that they have not been induced to enter into this Agreement by any statement, act, or representation of any kind of character on the part of anyone except as expressly stated herein.

7. Governing Law. This Agreement shall be governed by the laws of the State of Florida. This Agreement embodies the entire agreement and understanding between the parties, with respect to the stated subject matter, and supersedes any and all prior agreements and understandings relating to these matters. This Agreement shall be binding upon and inure to the benefit of the parties, and their respective officers, directors, stockholders,

employees, agents, administrators, legal representatives, heirs, executors, successors, and assigns.

8. Counterparts. This Agreement may be executed via facsimile and/or in multiple counterparts each of which so executed shall be deemed to be an original, binding upon the party executing the same, and such counterparts shall together constitute but one and the same Agreement.

9. Construction. This Agreement is the result of substantial negotiations between the parties. Accordingly, the fact that counsel for one party may have drafted this Agreement is immaterial, and this Agreement shall not be strictly construed against any party.

10. Full Authority. Each individual executing this Agreement on behalf of an entity or entities, represents and warrants that he or she has been specifically authorized to do so by the entity or entities.

IN WITNESS THEREOF, the Parties executed this Settlement Agreement and Release effective as of the 19th day of December, 2005.

CITY OF GAINESVILLE

By: _____
Its: _____
Date: _____

ARTHUR J. GALLAGHER & CO. (FLORIDA)

By: _____
Its: _____
Date: _____