

## RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA, (THE "CITY"), APPROVING MEMBERSHIP OF THE CITY OF GAINESVILLE, DOING BUSINESS AS GAINESVILLE REGIONAL UTILITIES ("GRU") IN FLORIDA GAS UTILITY, APPROVING THE SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT, APPROVING THE FORM OF ASSUMPTION AGREEMENT; APPROVING THE FORM OF GAS SUPPLY AGREEMENT NO. 2 FOR THE PURCHASE AND SALE OF GAS AND OTHER SERVICES TO BE EXECUTED BY GRU AND AUTHORIZING FLORIDA GAS UTILITY TO NEGOTIATE THE TERMS OF RELATED FINANCIAL PRODUCTS AND FINANCIAL INSTRUMENTS ON BEHALF OF GRU AS PROVIDED IN SUCH AGREEMENT, AND SUBSEQUENTLY, AT THE DIRECTION OF GRU'S AUTHORIZED REPRESENTATIVE AS PROVIDED FOR HEREIN; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH INSTRUMENTS; AUTHORIZING FLORIDA GAS UTILITY TO PLEDGE GRU'S PAYMENT OBLIGATIONS THEREUNDER TO SECURE THE PAYMENT OF COSTS AS PROVIDED IN THE GAS SUPPLY AGREEMENT, OR OTHER OBLIGATIONS REQUIRED UNDER SUCH AGREEMENT, AND BONDS OR OTHER OBLIGATIONS ISSUED BY FLORIDA GAS UTILITY; PROVIDING FOR THE MAKING OF PAYMENTS PURSUANT TO SAID GAS SUPPLY AGREEMENT, AND MAKING CERTAIN COVENANTS IN CONJUNCTION WITH SAID PAYMENTS; PROVIDING FOR THE MAKING OF PAYMENTS PURSUANT TO SAID FINANCIAL INSTRUMENTS AND MAKING CERTAIN COVENANTS IN CONJUNCTION WITH SAID PAYMENTS; PROVIDING FOR THE APPOINTMENT OF THE PROJECT PARTICIPANT REPRESENTATIVE; PROVIDING CERTAIN OTHER AUTHORIZATIONS; PROVIDING AN EFFECTIVE DATE; AND PROVIDING CERTAIN OTHER DETAILS WITH RESPECT THERETO.

WHEREAS, the City of Gainesville, Florida (the "City"), doing business as Gainesville Regional Utilities ("GRU"), wishes to become a Member of Florida Gas Utility ("FGU"), and wishes to purchase a supply of natural gas from FGU and wishes to authorize certain financial products and services relating to the pricing and/or financing thereof, all as contemplated in the Gas Supply Agreement No. 2; and

WHEREAS, the GRU, has been accepted by Florida Gas Utility ("FGU") for membership, which will become effective upon the execution and filing of the Assumption Agreement and execution of the Gas Supply Agreement; and

WHEREAS, to become a member of FGU it is necessary for the City d/b/a GRU to accept the terms and conditions of the Second Amended and Restated Interlocal Agreement (the "Interlocal Agreement") attached hereto as Exhibit "A" and to approve the Assumption Agreement and Gas Supply Agreement in the form attached hereto as Exhibits "B" and "C," respectively, and authorize their execution and delivery; and

WHEREAS, the Interlocal Agreement obligates each Member to select a Director and Alternate Director to represent such Member with respect to all actions to be taken pursuant to the Interlocal Agreement and in accordance with the Interlocal Act, F.S. 163.01; and

WHEREAS, the City desires to approve the forms of the Assumption Agreement and Gas Supply Agreement, each required for membership in FGU; and

WHEREAS, in order to provide the benefits of the gas supply and other services to the City d/b/a GRU and other Project Participants of FGU and in order to assure the flexibility in pricing and other services provided by the Gas Supply Agreement, it is necessary for the GRU to authorize and approve the forms of the Assumption Agreement and Gas Supply Agreement with such changes, insertions, omissions and filling in of blanks as may be approved by the officers of the GRU approving and/or executing such Agreements, which duty and responsibility is delegated hereby to such officers; and

WHEREAS, in order to take advantage of certain Financial Products as provided in Financial Instruments and the issuance of Bonds as described in the Gas Supply Agreement (together with the Gas Supply Agreement of other Project Participants of the Project, sometimes collectively called the "Agreements"), it is necessary for the GRU to authorize the Project Participant Representative to give the Directives provided for in the Gas Supply Agreement as may be required, binding the GRU for the obligations set forth therein; and

WHEREAS, it is necessary for the governing body of each Project Participant, including GRU upon becoming a Member of FGU and a Project Participant (and sometimes hereinafter referred to as "Project Participant") to (a) approve the form of the Gas Supply Agreement and authorize its execution and delivery by its authorized representatives, and (b) designate the percentage of Gas available under the long term supply agreement that it is committed to receive annually during the term (referred to in the Gas Supply Agreement as its "Gas Entitlement Share"), (i) which, as provided therein, will require the purchase of the Gas so nominated by each Project Participant on a take and pay basis

requiring Project Participant to purchase its Gas Entitlement Share to the extent Gas is tendered for delivery at FGU's receipt point, and as otherwise provided in the Gas Supply Agreement; (ii) which will require that in the event of a default in the purchase of Gas or other failure to pay by another Project Participant, Project Participant will be required to pay a pro rata share of Costs of such defaulting Project Participant until the delivery of Gas is discontinued pursuant to Section 15 of the Gas Supply Agreement and certain other Costs not related to the Cost of Gas and Debt Service on the Bonds; and (iii) which will authorize the participation in derivatives under the Gas Supply Agreement or other documentation as a part of the project; and

WHEREAS, the City desires to take certain other actions and make certain authorizations and delegations of authority with respect to the Gas Supply Agreement and otherwise as provided herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA, , that:

Section 1. Authority. This Resolution is adopted pursuant to the Constitution and laws of the State of Florida, including, particularly, Section 163.01, Florida Statutes, and Chapter 166, Florida Statutes, and the Charter of the City, Chapter 90-394, Laws of Florida, 1990, as amended.

Section 2. Definitions. Unless the context otherwise requires, all terms used herein in capitalized form shall have the same meanings ascribed to such terms in the Gas Supply Agreement.

Section 3. Findings. It is hereby ascertained, determined and declared that the City d/b/a GRU is authorized under the authority cited above to approve the forms of the Assumption Agreement and the Gas Supply Agreement in the manner herein provided and approve GRU for membership in FGU.

Section 4. Acceptance of Interlocal Agreement and Approval of Assumption Agreement. The terms and conditions of the Interlocal Agreement, attached hereto as Exhibit "A" are accepted and approved. The form of the Assumption Agreement, attached hereto as Exhibit "B" is hereby approved, with such changes, insertions, omissions and filling in of blanks therein as may be approved and made to such form of Assumption Agreement by the officers designated below executing the same in the manner consistent with the provisions of this Resolution. Such execution and delivery of the final form of the Assumption Agreement shall be conclusive evidence of the approval of the Assumption Agreement by the officers executing the same and the City d/b/a GRU shall be bound by the Assumption Agreement as executed and delivered. Such officers are hereby authorized to deliver the Assumption Agreement, as so modified and amended, as executed, to FGU for its consideration, execution and filing as required by the Interlocal Act and upon such execution and delivery and the

execution and delivery of the Gas Supply Agreement, the City d/b/a GRU, will become a Member of FGU.

Section 5. Approval of Form of Gas Supply Agreement and Other Agreements Authorized Thereby. The Gas Supply Agreement in substantially the form attached hereto as Exhibit C, is hereby approved, with such changes, insertions, omissions and filling in of blanks therein as may be approved and made to such form of the Gas Supply Agreement by the officers designated below executing the same in the manner consistent with the provisions of this Resolution. The duty and responsibility for negotiating and approving modifications or amendments to the Gas Supply Agreement and negotiating and approving of any Financial Instruments described therein (to the extent required thereby) and in this Resolution are hereby delegated to the Project Participant Representative(s) designated in paragraph 8 below. Such execution and delivery of the final form of such Agreement shall be conclusive evidence of the approval of such Agreement by the officers executing the same and the City d/b/a GRU shall be bound by such Agreement as executed and delivered. Such officers are hereby authorized to deliver such Agreement, as so negotiated, modified and amended, as executed, to FGU for its consideration and execution.

Section 6. Particular Covenants.

A. The payments required to be made by the City d/b/a GRU pursuant to the Gas Supply Agreement shall constitute an obligation of the City, payable as an operating expense of GRU's System ("System"), to the extent legally permissible, solely from the revenues and other available funds of GRU's System, and such payments shall be made as provided in the Gas Supply Agreement and subject to the provisions thereof, to the extent such payments would constitute operating expenses under the City's indentures, bond resolutions or other bond documents entered into in connection with the financing of GRU's System. The City covenants that it will take no action to cause such payments to be treated otherwise than as a cost of operation and maintenance, under any bond ordinances, resolutions or otherwise to which it shall become a party or be obligated after the date of the Agreement, except for those for which it shall be obligated prior to the date of the Agreement.

B. If such payments are not treated as operating expenses, such payments shall be made by the City pursuant to the provisions of Section 4(g) of the Gas Supply Agreement and shall constitute an obligation payable solely from the revenues of GRU's System, which revenues are pledged therefor, subject and subordinate to certain payments as provided in said Section 4(g).

C. The provisions of the Financial Instruments creating Financial Products as described in the Gas Supply Agreement obligating the City and GRU for certain payments thereunder and to perform certain covenants will constitute obligations of the City enforceable against the City in accordance with the

respective terms thereof. It is intended that payments required under such Financial Instruments will constitute operating expenses of the System to the extent legally permissible, and within the meaning of the City's indentures, bond resolutions or other bond documents. If such payments do not constitute operating expenses as provided above, such payments payable under such Financial Instruments shall constitute obligations payable solely from revenues of the GRU's System, which revenues are hereby pledged therefor, subject and subordinate to certain payments as provided in Section 4(g) of the Gas Supply Agreement.

D. The City shall not be required to make such payments from taxes or revenues other than the revenues of the System. The obligations of the City to make payments under the Gas Supply Agreement shall not constitute a debt of the City within the meaning of any constitutional or statutory provision or limitation or a general obligation of or pledge of the full faith and credit of the City. The City shall never be required under the Gas Supply Agreement to levy ad valorem taxes on any real property to make said payments, and the obligations of the City thereunder shall not constitute a lien upon any tangible property owned by or located within the boundaries or the service area of the City or the System, but shall be payable solely from the aforementioned revenues. No obligee under the Gas Supply Agreement shall ever have the power to require or compel the levy of ad valorem taxes upon any property of the City or within its boundaries or System service area to make any of the payments required to be made under the Agreements.

Section 7. System Revenues. The estimated revenues to be derived by GRU from its System will be sufficient to make the payments required to be made by it pursuant to the Gas Supply Agreement, to pay all operating expenses of GRU's System, and to make all payments of principal of and interest on GRU's outstanding obligations for bonded or other indebtedness.

Section 8. Rate Covenant. Under the terms of the Gas Supply Agreement, the City agrees that it will establish, impose, maintain, enforce and collect rates, fees and charges for all services and facilities of the System sufficient to produce revenues at the times and in the amounts required to pay all costs of the supply of Gas and other energy or other output and other services for the System, including the payments to be made under the Gas Supply Agreement, as well as all other costs of operation, administration, maintenance and debt service of the System and all other amounts payable from or constituting a lien or charge on the revenues of the System.

The City and/or GRU will provide to FGU, or its designee, annually, promptly upon its preparation, but no later than one hundred eighty (180) days after the end of its Fiscal Year, a copy of its annual audit and such other financial and other records, and within such time as may be required by the Gas Supply Agreement.

Section 9. Director and Alternate Director. The City hereby appoints the serving Assistant General Manager - Energy Supply as Director and the serving Utility Chief Financial Officer, as alternate Director to serve on the Board of Directors of FGU in accordance with the terms and conditions of the Interlocal Agreement.

Section 10. Appointment of Project Participant Representative. As required by Section 28 of the Gas Supply Agreement, the individual who shall serve from time to time as Assistant General Manager - Energy Supply of GRU, or in his absence, the individual who shall serve from time to time as the Fuels Manager of GRU shall serve as the Project Participant Representative authorized to take such actions as are provided in Section 4 of this Resolution and in Section 28 of the Gas Supply Agreement; including the giving of instructions and Directives to FGU for the negotiation and execution of Financial Instruments that will be legally binding upon the City and GRU, and otherwise to fulfill all duties of such representative under Section 28 of the Gas Supply Agreement. The Project Participant Representative shall have full authority to represent and bind the City and GRU for all purposes authorized by the Gas Supply Agreement, including those matters related to Financial Instruments and Financial Products as contemplated therein, including Section 28(b) thereof, until such Project Participant Representative shall be changed by the City or GRU and written notice of such change shall be given to FGU. FGU may rely upon any instructions, as well as a Directive executed by the Project Participant Representative and such action of such Project Participant Representative shall be deemed duly authorized, executed and delivered by the Project Participant Representative on behalf of GRU and shall be the legally binding obligation of the City and GRU.

Section 11. Assignment. As provided in the Gas Supply Agreement, the City hereby authorizes the full or partial assignment of the Gas Supply Agreement or the payments to be made thereunder by FGU to any bond trustee, or otherwise as may be necessary for the payment of the obligations for the purchase of gas or other obligations under the Gas Supply Agreement, Financial Instruments, Bond Resolutions or other obligations issued by FGU for the payment thereof.

Section 12. Authorizations Concerning Agreements.

A. The General Manager for Utilities, his or her designee, and the Clerk be and are hereby authorized to execute and deliver the Assumption Agreement and the Gas Supply Agreement for and on behalf of the City d/b/a GRU pursuant to the terms hereof, in substantially the forms attached hereto as Exhibits B and C, respectively, and the Financial Instruments, in such forms as shall be negotiated in the manner provided herein, in each case, with such changes, insertions and omissions and filling in of blanks therein as such officers may approve, such approval to be conclusively evidenced by the execution thereof. The General

Manager, or Interim General Manager, by his or her signature alone, is authorized to execute the Gas Supply Agreement and the Assumption Agreement and any other document and instrument necessary to accomplish the matters herein provided.

B. Such officers authorized hereby are also directed to complete or approve Appendix 1 to the Gas Supply Agreement, to complete Appendix 2 to the Gas Supply Agreement, to insert the Point(s) of Delivery, to complete Exhibit B to the Gas Supply Agreement to describe the System and gas burning or distribution facilities, and to complete Exhibit C to the Gas Supply Agreement to list and describe GRU's outstanding obligations.

C. Such other officers and employees of the City as may be designated by the officers charged with the execution of the Gas Supply Agreement, including the Project Participant Representative and representatives on the Board of Directors or Executive Committee of FGU, are each designated as agents in connection with the issuance and delivery of the Gas Supply Agreement and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents and contracts on behalf of the City that are necessary or desirable in connection with the execution and delivery thereof, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

Section 13. Making Certain Commitments Regarding the Securities Exchange Act of 1934. The City shall provide to FGU, or its designees, on a timely basis and in such form as shall be reasonably requested by either, any and all documents, releases, financial statements and other information necessary to enable FGU to comply with any disclosure or other reporting requirement, including but not limited to Rule 15c2-12 of the Securities and Exchange Commission promulgated under the Securities Exchange Act of 1934 (the "Rule"), now or hereafter imposed by the United States of America, the State of Florida, or any political subdivision or agency of either having jurisdiction over the issuance of any debt obligations for the acquisition of gas, by law, judicial decision, regulation, rule or policy. Such information shall be provided from time to time promptly following the occurrence of a "material event" as described in the Rule, and as otherwise may be requested by FGU, or its designees, but in any case, no less frequently than shall enable FGU, or the underwriters or broker/dealers of the obligations of FGU, or the City, to comply with any such law, judicial decision, regulation, rule or policy.

In addition to the foregoing, the City will provide to FGU, or its designee, annually, promptly upon its preparation, but no later than one hundred eighty (180) days after the end of its Fiscal Year, a copy of its annual audit and such other financial and other records as may be required by the issuer of any credit facility or bond insurance policy or other security instrument securing all or any part of FGU's bonds or other indebtedness.

The City shall further enter into a continuing disclosure agreement or other undertaking as may be reasonably required by the original purchaser of the Bonds in order to comply with the Rule.

The foregoing shall be provided in the manner set forth in the Gas Supply Agreement.

Section 14. Resolution to Constitute Contract. This Resolution shall be deemed to be and shall constitute a contract between the City and FGU and the Project Participants of FGU. The covenants and agreements herein set forth to be performed by the City shall be for the benefit, protection and security of FGU and the other Project Participants and those third parties in the manner and to the extent provided in the Agreements.

Section 15. Severability. If any one or more provisions of this Resolution should be determined by a court of competent jurisdiction to be contrary to law, such provisions shall be deemed to be severable from the remaining provisions hereof and shall in no way effect the validity or enforceability of such remaining provisions.

Section 16. Repeal of Inconsistent Resolutions. All resolutions or parts of resolutions in conflict herewith are hereby repealed.



Section 17. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2006.

CITY OF GAINESVILLE, FLORIDA

By: \_\_\_\_\_

Mayor

(SEAL)

Approved as to form and legality:

By: \_\_\_\_\_

Title: Attorney  
City of Gainesville, Florida

ATTEST:

\_\_\_\_\_  
Clerk

# 3733687\_v1

**EXHIBIT B**

**ASSUMPTION AGREEMENT**

**EXHIBIT C**

**GAS SUPPLY AGREEMENT NO. 2**