



MEMORANDUM

Office of the City Attorney

090747
Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commissioners **DATE:** February 8, 2010

FROM: City Attorney

SUBJECT: Joint Public meeting between the City of Gainesville and the School Board of Alachua County to resolve a conflict pertaining to the School Board's non-payment of the City's Stormwater Utility fee.

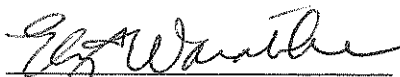
Recommendation: The City Commission and School Board: 1) Consider the statement of issues in conflict; 2) Hear presentations; 3) Seek an agreement; 4) If necessary, schedule additional meetings to continue to seek resolution of the conflict; and 5) If no agreement is reached, agree to select a mediator and schedule mediation.


Under Florida law, a procedure exists whereby government entities seek to resolve their conflicts before resorting to litigation. The City Commission initiated this procedure in regard to a conflict with the Alachua County School Board with the adoption of a Resolution on December 17, 2009.

The underlying facts of the conflict are undisputed. The City provides Stormwater Utility services. The City charges a Stormwater Utility fee for the Stormwater Utility services. The City's Stormwater Utility fee has been upheld as a valid user fee by the Florida Supreme Court, and the Court determined that such a fee is properly charged to governmental users of the Stormwater Utility. The School Board has used the City's Stormwater Utility services since the inception of the City's Stormwater Utility in 1988, and has paid the Stormwater Utility fee since 1988. The School Board continues to use the City's Stormwater Utility by taking the Stormwater Utility services. On December 15, 2009, the School Board unilaterally decided to stop paying the Utility fee for the services it is taking.

On January 19 and 28, 2010, City and School Board staff and attorneys met to discuss the issue and attempt to reach a resolution of the conflict. The parties were unsuccessful in reaching a resolution. The next step in the procedure is for the public bodies of the government entities in conflict to meet. At this meeting, the government bodies shall:

- (1) Consider the Statement of Issues prepared in the conflict assessment phase;
- (2) Seek an agreement;
- (3) Schedule additional meetings as necessary to continue to seek resolution of the conflict;
- (4) If no agreement is reached, agree to select a mediator and schedule mediation.


Elizabeth A. Waratuke
Litigation Attorney


Marion J. Radson
City Attorney

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CITY STATEMENT OF ISSUE IN THE CONFLICT

- School Board of Alachua County's (SBAC) failure to pay the City's stormwater fee or,

in the alternative

- SBAC's failure to make alternative arrangements for disposal of its stormwater.

SCHOOL BOARD STATEMENT OF ISSUE IN THE CONFLICT

- Whether the School Board of Alachua County has a legal obligation to pay storm water fees to the City of Gainesville, given the holding of Gainesville III.

090642

CITY OF GAINESVILLE
Office of the City Attorney

Memorandum

Phone: 334-5011/Fax 334-2229

TO: Mayor and City Commissioners

DATE: December 17, 2009

FROM: City Attorney

RESOLUTION

SUBJECT: A Resolution of the City Commission of the City of Gainesville, Florida, initiating conflict resolution procedures per Section 164.101, Florida Statutes, the Florida Governmental Conflict Resolution Act, pertaining to a conflict between the City of Gainesville and the Alachua County School Board, Florida; and providing an immediate effective date.

Recommendation: The City Commission adopt the proposed resolution.

On December 15, 2009, the Alachua County School Board voted to stop paying the City's stormwater fee effective immediately. The School Board's apparent reason is that they are immune from paying the stormwater utility fee if there is no written contract providing for payment of the fee. The Board did not make any arrangements for otherwise disposing of the stormwater it discharges into the City's utility system from all of its real properties within the City of Gainesville.

Under Florida law, a procedure exists whereby government entities may seek to resolve their conflicts before resorting to litigation. The conflict resolution procedures are initiated by the passage of a resolution. Before the City files for injunctive and other relief to compel the School Board to stop using the City's utility services or to pay the utility fee associated with the services, the City Attorney's Office recommends such conflict procedures be initiated. To aid the Commission in understanding the issues involved, the background and litigation over the City's utility fee is set forth below.

Background of the City's Utility Fee

In 1986, the Florida Legislature, finding that pollution to the waters of the State was a "menace to public health and welfare" and aware of the importance of the management and treatment of stormwater runoff in preserving and protecting the water resources, mandated that local governments establish stormwater management programs. Recognizing that the local governments would need a means to fund the programs, the Legislature authorized local governments to establish stormwater utilities and attendant fees, envisioning that stormwater utilities would be "operated as a typical utility which bills sources regularly, similar to water and wastewater services".

Pursuant to the state mandate, in 1988 the City, through its public works department, established a stormwater utility and charged fees based on the property occupant's use of the City's stormwater system. For example, if all the stormwater is

discharged into the City's system, the full fee is charged. Conversely, if all of the stormwater generated by the impervious area on the property is retained on site, (i.e. there is no use of the City's system), no fee is charged. If 50% of the stormwater attributable to the impervious area is retained on site, 50% of the fee would be charged.

Litigation over the Utility Fee

Over the course of years, the City was involved in litigation with the Department of Transportation (DOT) who refused to pay the City's stormwater fee. DOT argued that the City's fee was not a fee but a special assessment or a tax. DOT recognized that if the City established a fee, the DOT would be obligated to pay. Seeking legal counsel on this issue, DOT asked the Attorney General of the State of Florida for an opinion. After analyzing the City's fee, then Attorney General Robert Butterworth wrote

"it is my opinion that the fee imposed by the City of Gainesville for utilization of the stormwater management utility is a service fee or user fee, which the City may lawfully impose on property of the State of Florida, Department of Transportation". AGO 97-70.

Despite the opinion of the Attorney General, the Department refused to pay the fee. Litigation ensued that eventually reached the First District Court of Appeal in March 2001, where DOT again argued the City's stormwater fee was a tax or special assessment instead of a fee. The First District held that the City's stormwater fee, if operated as provided in the ordinance, was a "utility service fee" and that "sovereign immunity does not insulate DOT from having to pay the City valid utility charges". The First District remanded the case to the trial court to determine whether the City fee operated as set forth in its stormwater ordinance. The City voluntarily dismissed the case when it returned to the trial court and filed an action in Gainesville that would allow the Florida Supreme Court to eventually decide the issue.

In September 2003, the Florida Supreme Court addressed the issue of whether the City's stormwater fee was a valid utility fee or a special assessment as argued by DOT. The Court noted that distinction was important as DOT could not be charged if it was a special assessment, but "[i]f the stormwater fee is a user fee, the fee is valid and the State and DOT, as beneficiaries of the system, can be charged". In a unanimous opinion, the Florida Supreme Court found that "the stormwater fees constitute valid user fees" and under its analysis, could be charged to governments.

School Board's Actions

Today the School Board is taking the position that even though the City's fees are valid and that it can be charged the fee, it does not have to pay the fee because the City has no means of collecting the fee against the Board if the Board refuses to pay it. The Board is basing its authority for this action on a trial court's decision in Pinellas County finding that the School Board did not have to pay that City's stormwater utility fee because of sovereign immunity. The appellate court affirmed the trial court's decision without the benefit of a written opinion. That trial court based its decision on a third appellate court opinion between the City of Gainesville and DOT for payment of stormwater fees. In that third case, the City sued the DOT for past monies it owed (the

DOT during the time of the Florida Supreme Court opinion moved all of its facilities out of the City and therefore stopped incurring stormwater fees) alleging a waiver of sovereign immunity under Chapter 180, Fla. Stat. The First District found that Chapter 180 only waived sovereign immunity to collect a limited number of utilities fees, not including stormwater utility fees. In other words, the City could not compel payment of the stormwater fee against a government under Chapter 180 without a written contract. The First District did not reverse its previous ruling or the ruling of the Florida Supreme Court that the City's stormwater fee is a user fee, and that beneficiaries of the stormwater utility can be charged the stormwater fee. Neither the Pinellas County trial court opinion nor the First District appellate court opinion are authority that the School Board has the legal right to use the City's stormwater utility services while refusing to pay the utility fee.

There are other legal remedies available to the City, however, that were not the subject of the litigation or addressed by the Court in its written opinion. It is noteworthy that during oral argument before the First District on collecting the fee from DOT, one of the Judges suggested that the City "could go to court and sue the Florida Department of Transportation, and require them to keep their runoff on their own property and not use your utility...". In short, the City could ask the Court to direct a State agency to not take what it has no intention to pay for.

Last week the City Manager, the Public Works Director, and the City Attorney met with Superintendent Dan Boyd and School Board attorneys Thomas Wittmer and Susan Seigle. At this meeting the School Board representatives acknowledged their use of the City's stormwater utility and the past payment of the fee. The Public Works Director stated that the City and School Board had been working together during the past year to evaluate improvements made that lessen the School Board's impact on the City's system, thus lessening its fee.

At the conclusion of the meeting, the Superintendent agreed to consider the City's position that the stormwater fee is a valid user fee that is properly charged against a user of the system, including a government like the School Board. The City is complying with a state mandated obligation to manage and treat stormwater runoff. All beneficiaries of the stormwater utility system are legally obligated to pay for the use of the system, like any other user of any other utility.

Without further notice or discussion with the City, the School Board on December 15, 2009, approved the recommendation by the Superintendent to discontinue payment to the City effective December 15, 2009. To maintain the integrity of the system and protect all ratepayers, the City should take all reasonable steps to prevent the School Board from using the City's stormwater utility services, or any other utility services, without paying the utility fee, or to compel payment of the fee.

Conflict Resolution Process

The conflict resolution process is initiated by the passage of a resolution by the City stating its intent to initiate the process and attempt to resolve the issues in conflict. Within 5 days of the passage, a letter and certified copy of the resolution will be sent by certified mail to the Superintendent of the School Board proposing a date and location

for a public meeting between the City Manager and the Superintendent. If no resolution is reached, a joint public meeting will be held by the City with the School Board within 50 days of the receipt of the letter initiating the conflict resolution process. If no resolution is reached at this meeting, the governmental entities participate in a mediation prior to engaging in litigation. All reasonable attempts should be made to avoid costly litigation between the local governments.

By: Elizabeth A. Waratuke
Elizabeth A. Waratuke
Litigation Attorney

By: Marion J. Radson
Marion J. Radson
City Attorney

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RESOLUTION NO.: 090642

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA, INITIATING CONFLICT RESOLUTION PROCEDURES PER SECTION 164.101, FLORIDA STATUTES, THE FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT, PERTAINING TO A CONFLICT BETWEEN THE CITY OF GAINESVILLE AND THE ALACHUA COUNTY SCHOOL BOARD, FLORIDA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the purpose of the Florida Government Conflict Resolution Act is to promote, protect, and improve the health, safety, and welfare and to enhance intergovernmental coordination efforts by the creation of a governmental conflict resolution procedure that can provide an equitable, expeditious, effective, and inexpensive method for resolution of conflicts between and among local and regional governmental entities, such as the City of Gainesville and the School Board of Alachua County; and

WHEREAS, in 1986 the Florida Legislature mandated that local governments develop stormwater management systems to control stormwater discharge to prevent damage from flooding and minimize degradation of water resources caused by the discharge of stormwater; and

WHEREAS, in 1988 the City of Gainesville created a stormwater utility pursuant to statutory provisions that specifically authorize the establishment of a stormwater utility and resultant utility fees "based upon the equitable cost approach" sufficient to carry out the program mandated by the Legislature, (§§ 403.0893(1), 403.0891(6) Fla. Stat.); and

WHEREAS, the Florida Supreme Court in City of Gainesville vs. State of Florida, 863 So. 2d 138 (Fla. 2003), found that the City of Gainesville's stormwater utility fee was a valid user fee that can lawfully be charged to the State and its political subdivisions, as beneficiaries of the system; and

1 **WHEREAS**, the School Board of Alachua County has voluntarily used the City's
2 stormwater system and benefitted from the City's stormwater system since the inception
3 of the City's stormwater utility up to and including the present day; and

4 **WHEREAS**, the School Board of Alachua County has been paying monthly
5 stormwater utility bills for stormwater services that the Board has received from the City
6 of Gainesville since the inception of the City's stormwater utility; and

7 **WHEREAS**, on Tuesday, December 15, 2009, the School Board of Alachua
8 County voted to discontinue payment of stormwater fees to the City of Gainesville for
9 stormwater utility bills received after that date; and

10 **WHEREAS**, despite the decision to discontinue payment of stormwater fees to
11 the City for stormwater utility services, the School Board of Alachua County has made
12 no plan for discontinuing use of the City's stormwater utility system; and

13 **WHEREAS**, on Wednesday, December 9, 2009, the City of Gainesville submitted
14 a written request to the School Board for public records concerning the stormwater utility
15 fee, and the School Board responded by letter dated Monday, December 14, 2009,
16 refusing to provide some of the public records claiming the exemption of anticipated
17 "imminent litigation or adversarial administrative proceedings" that in the School Board's
18 positional response commenced on May 28, 2009;

19 **WHEREAS**, there was no anticipated "imminent litigation or adversarial
20 administrative proceedings", as that term is used in the Government-in-the-Sunshine
21 Law, between the parties as a result of a meeting between the staff of the respective
22 parties that occurred on May 28, 2009, and no such anticipated "imminent litigation or
23 adversarial administrative proceedings" could be lawfully claimed to exempt public
24 records generated by the School Board's attorneys dated June 8, 2009, September 9,
25 2009, and November 5, 2009;

1 **WHEREAS**, the Florida Governmental Conflict Resolution Act authorizes the City
2 of Gainesville to initiate the conflict resolution provisions of the Act prior to initiating court
3 proceedings against the School Board of Alachua County; and

4 **WHEREAS**, the Florida Governmental Resolution Act sets forth the procedures
5 for notice and conflict dispute resolution of intergovernmental disputes; and

6 **WHEREAS**, the Florida Governmental Resolution Act authorizes the City
7 Commission of the City of Gainesville to initiate the conflict resolution procedures
8 through the passage of a resolution by its members.

9 **NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE**
10 **GAINESVILLE, FLORIDA, AS FOLLOWS:**

11 Section 1: Findings: The City Commission adopts the foregoing findings as
12 provided in the foregoing whereas clauses

13 Section 2: Intention: It is the intention of the City Commission of the City of
14 Gainesville to initiate the conflict resolution procedures of the Florida Governmental
15 Resolution Act as set forth in Chapter 164, Florida Statutes, prior to initiating court
16 proceedings to compel the School Board of Alachua County to discontinue using the
17 City's stormwater utility services or in the alternative, to pay for stormwater utility
18 services used by the School Board, and to obtain production of the public records in the
19 custody of the School Board as referred hereinabove.

20 Section 3: Issues in the Conflict: The issues in the conflict are: 1) the
21 Alachua County School Board's refusal to pay the City of Gainesville's stormwater utility
22 fee despite the School Board's recognition that the utility fee has been found to be a
23 valid fee which may be charged to the State and its political subdivisions; and 2) the
24 School Board's refusal to provide all public records relating to the issue.

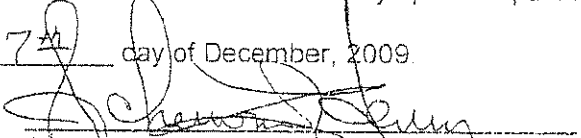
25 Section 4: The Governmental Entities in Conflict: The governmental entity
26 with which the City Commission of the City of Gainesville, Florida has a conflict is the
27 School Board of Alachua County, Florida.

1 Section 5: Justification for Initiating the Conflict: The conflict resolution
2 procedures is justified because the City of Gainesville in good faith believes that the
3 Alachua County School Board's refusal to pay the City's legally validated and imposed
4 stormwater utility fee while continuing to use the City's stormwater management system
5 for the use and benefit of the property of the School Board is unlawful, and that the
6 records requested are public records subject to production and copying under the laws
7 of the State of Florida.

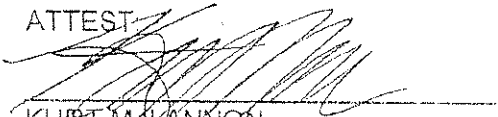
8 Section 6: Conflict Assessment Meeting: The City Manager is hereby
9 authorized and directed to provide a certified copy of this resolution and the letter
10 required by Section 164.1052(1) to the Superintendent of the School Board of Alachua
11 County by certified mail, return receipt requested, to schedule a conflict assessment
12 meeting, and to take all other appropriate action pursuant to Section 164.1053.


13 Section 7: This Resolution shall take effect immediately upon adoption.

14 PASSED AND ADOPTED this 17th day of December, 2009.



SCHERWIN HENRY
PROTEMPORE

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20 ATTEST
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22 _____
23 KURT M. LANNON
24 CLERK OF THE COMMISSION
25

Approved as to form and legality


MARION J. RADSON
CITY ATTORNEY
DEC 17 2009

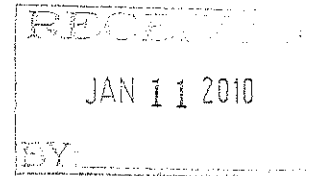
DELL GRAHAM

JOHN D. JOPLING* CARL B. SCHWART† ELLEN R. GERSHOW‡ DALE J. PALESCHIC JENNIFER C. LESTER* DAVID M. DELANEY SUSAN M. SEIGL
MICHELLE THOMAS† ELIZABETH M. COLLINS KEVIN A. MCNEIL ELIZABETH S. MCKILLEN ANDREW A. MOREY

January 11, 2010

Via Hand Delivery

Marion J. Radson, Esq.
City Attorney, City of Gainesville
200 E. University Avenue
Room 425
Gainesville, FL 32601



Re: Stormwater Utility Fees

Dear Mr. Radson:

As per your recent public records, request, enclosed please find the three memoranda that you requested we produce with respect to the legal advice we have given our clients on the issue of whether the School Board of Alachua County has any continuing obligation to pay storm water fees.

Please be advised that we do not believe we have a legal obligation to disclose these three memoranda at this point because you, on behalf of the City of Gainesville, have informed us that you intend to sue if payment of stormwater fees is discontinued. We believe your threat of litigation over the issue protects disclosure of the documents until such time as any subsequent litigation is concluded. However, in a continued effort to resolve the dispute amicably, we are waiving the privilege to the limited extent of these three memoranda. This waiver is limited to the three enclosed documents only.

Please provide this letter, plus the three memoranda, to all seven of your clients for their review prior to any subsequent meetings of either the City Commission or of the parties pursuant to Chapter 164, Florida Statutes. We believe it is important for your clients to understand the full history of the dispute.

In May, 2009, Tom Wittmer and I scheduled a meeting with you regarding the issue of stormwater fees. Your litigation attorney, Elizabeth Waratuke, was also present at the meeting. Mr. Wittmer and I explained that we had a request from one of our board members to explore the issue of whether the School Board had an obligation to pay, in light of a recent trial court opinion in Pinellas County holding that the School Board of Pinellas County did not have the obligation to pay stormwater fees to the City of Clearwater, and in fact, was entitled to a refund of past fees

*Florida Board Certified Civil Trial Lawyer † Florida Board Certified in Wills, Trusts & Estates ‡ National Board Certified Civil Trial Advocate
** Florida Board Certified in Health Law

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Marion Radson, Esq.
January 11, 2010
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improperly paid. That matter was currently on appeal to the Second District Court of Appeals, so at that time, arguably the issue of a school board's obligation to pay was not settled.

We informed you that we recognized that both of our clients were public entities, with the obligation to guard against inappropriate expenditures of public funds. We told you that we wanted to determine if there was a way to resolve the dispute amicably. Your immediate response was that if the School Board discontinued payment, there would be "Gainesville IV," which is a reference to the fact that there was protracted litigation between the City of Gainesville and the Florida Department of Transportation, resulting in three appellate opinions, known as Gainesville I, II and III. Your statement cannot be viewed as anything but a threat of litigation, and you did not offer any other recourse for resolution of the dispute.

During the meeting, we asked you to distinguish the current dispute from the dispute between the City of Gainesville and the State Department of Transportation. You were not able to articulate a legally sufficient distinction between the two situations.

Our client did not immediately vote to discontinue payment. However, the appellate opinion in the Pinellas County case was rendered in October, 2009. In that opinion, the appellate court affirmed the trial court's decision that the School Board of Pinellas County was not obligated to pay stormwater fees to the City of Clearwater, and affirmed an award of over \$200,000 to the School Board for past fees paid in error. The Second District Court of Appeals cited Gainesville III as the basis for its affirmance.

Based on this decision, we recommended that our client discontinue paying stormwater fees immediately. The item was placed on the agenda for the December 15, 2009 meeting, and public notice was appropriately given. As a courtesy to the City, the Superintendent informed the City Manager that the item was on the December 15 agenda. The City Manager demanded that representatives of the School Board meet with representatives of the City prior to the time the vote was taken.

A meeting was held on December 9, 2009 at your offices. Tom Wittmer, Dr. Boyd, and I were present on behalf of the School Board. You and Ms. Waratuke attended, along with Russ Blackburn and a representative of GRU. Dr. Boyd informed you that his recommendation was that the School Board discontinue paying stormwater fees, and that he was not recommending that the School Board sue to collect past payments made in error.

At the meeting, both you and Ms. Waratuke argued the law, and informed us you believed our legal position was without merit. We disagreed with you, because we believe the Gainesville III case, as cited by the Second District Court of Appeals, was justification for our recommendation. You did not offer any conciliation at that time, and although you did mention that GRU was working with the School Board facilities department on the issue of fees, you

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Marion Radson, Esq.
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never advised that it was with an eye towards reducing any fees to be paid by the School Board. Indeed, our facilities team has been under the impression that the City was reassessing the stormwater issues with an eye towards raising the fees rather than lowering them.

There did not appear to be any middle ground offered, either at the December meeting or the earlier meeting in May. There was also no legally sufficient reason provided to distinguish our situation from the dispute between the City and the DOT. Accordingly, the School Board voted unanimously on December 15, 2009 to discontinue payment of stormwater fees.

We have had the opportunity to review the presentation made by your office at the December 17, 2009 meeting of the City Commission, and do not agree with your interpretation of the holdings of the three appellate opinions involving the dispute between the City of Gainesville and the Department of Transportation. In City of Gainesville v. State Department of Transportation, 778 So.2d 519 (Fla. 1st DCA 2001) ("Gainesville I"), the case was remanded because the City had not pled the existence of a written contract permitting it to sue the Department of Transportation for payment of stormwater fees:

[T]he City has argued no basis for abrogating the ordinary rule immunizing the state from contract suits where the state has signed nothing. At this stage of the proceedings, however, it is not clear whether or not DOT signed an application for utility services or otherwise entered into a written agreement with the City. The City has made no allegation in this regard.

The City did not amend at that time, but rather, pursued its argument in a bond validation proceeding. This resulted in the Gainesville II case, City of Gainesville v. State Department of Transportation, 863 So.2d 138 (Fla. 2003), in which the Florida Supreme Court ruled that the stormwater fees were user fees, and that such fees could be charged to state agencies. The Florida Supreme Court specifically declined to determine whether sovereign immunity barred the City from collecting fees, as such a determination was not germane to bond validation proceedings. The Court did note, however, that the DOT was "free to assert those arguments in another forum."

The DOT did assert those arguments in another forum when the City of Gainesville again sued the DOT to collect stormwater utility fees. You argued, on behalf of the City, that DOT was a person within the meaning of Chapter 180, Florida Statutes, and since sovereign immunity was waived with respect to Chapter 180, the waiver should be construed to extend to Chapter 403, Florida Statutes. You took the position that the City did not need a contract to collect the fees.

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Marion Radson, Esq.
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The trial court disagreed with your contention because Chapter 180 of the Florida Statutes was not the statute governing stormwater utilities. Rather, stormwater runoff utilities are governed by Chapter 403 of the Florida Statutes, and the legislature, for whatever reason, did not include a waiver of sovereign immunity in Chapter 403. Because waivers of sovereign immunity cannot be implied, the waiver of Chapter 180 was not applicable to Chapter 403. By not including a waiver of sovereign immunity in Chapter 403, it must be presumed that the legislature did not intend that public entities would be subject to payment of stormwater utility fees, unless there was a contract in which the public entity agreed to pay.

The ruling was upheld by the First District Court of Appeals in City of Gainesville v. State Dep't of Transp., 920 So.2d 53 (Fla. 1st DCA 2005, rev. den., 935 So.2d 1219 (Fla. 2006))("Gainesville III"):

[A]lthough the stormwater fee may be a valid utility fee, consistent with our previous opinion, before the City can sue to collect the fee, it must have a written contract. See City of Gainesville v. Fla. Dep't of Transp., 778 So.2d 519 (Fla. 1st DCA 2001). Since the City acknowledges it does not have a written contract, the trial court properly dismissed the City's complaint with prejudice.

There is no written contract between the City of Gainesville and the School Board of Alachua County regarding the payment of stormwater utility fees. If the City does sue the School Board, we believe that the complaint will be dismissed with prejudice.

Pursuant to Chapter 119, Florida Statutes, we request to inspect the following documents:

- (1) Any and all correspondence, including electronic mail transmissions, regarding stormwater utility fees, between employees of the City of Gainesville and any person or entity, including but not limited to the City Commission, from May, 2009 to the present.
- (2) The memorandum referenced by Elizabeth Waratuke in her presentation to the City Commission on December 17, 2009, from the office of the City attorney to the members of the City Commission.
- (3) The stormwater utility fees calculations that form the basis for fees charged to the School Board of Alachua County in effect at any time (on a school-by-school basis) for the following schools:
 - (a) Duval
 - (b) J.J. Finley
 - (c) Stephen Foster

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Marion Radson, Esq.

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- (d) Glen Springs
 - (e) Littlewood
 - (f) W.A. Metcalfe
 - (g) C.W. Norton
 - (h) M.K. Rawlings
 - (i) Wm. S. Talbot
 - (j) Myra Terwilliger
 - (k) Joseph Williams
 - (l) Howard W. Bishop Middle School
 - (m) Abraham Lincoln Middle School
 - (n) Westwood Middle School
 - (o) Gainesville High School
 - (p) Lofton High School
 - (q) Horizon Center
 - (r) Sidney Lanier
-
- (4) All documents establishing the costs of maintaining, improving, and operating the stormwater system of the City of Gainesville for the last three calendar years.
 - (5) All documents establishing the revenues received from stormwater fees by the City of Gainesville for the last three calendar years.
 - (6) All documents establishing the assessed value of all real property owned by the City of Gainesville (excluding any property owned by Gainesville Regional Utilities) for the past three calendar years.
 - (7) All documents establishing the assessed value of all real property owned by Gainesville Regional Utilities for the past three calendar years.
 - (8) All documents establishing the assessed value of any tangible personal property owned by the City of Gainesville (excluding any property owned by Gainesville Regional Utilities) for the past three calendar years.
 - (9) All documents establishing the assess value of any tangible personal property owned by Gainesville Regional Utilities for the past three calendar years.
 - (10) All documents reflecting funds transferred from Gainesville Regional Utilities to the City of Gainesville for the past three calendar years.
 - (11) All documents establishing modifications to rates charged for stormwater utilities for the past three calendar years.

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Marion Radson, Esq.
January 11, 2010
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- (12) All documents regarding any person or entity within the City of Gainesville for which the City of Gainesville has waived collecting stormwater utility fees since Article V of the Municipal Code of the City of Gainesville were adopted.

Please do not have the documents copied at this time. Rather, please let us know when and where the documents will be available for inspection, after which time we will determine whether we want anything copied.

Thank you for your prompt attention to these matters. If you have any questions, please do not hesitate to call.

Very truly yours,


Susan M. Seigle

cc: Virginia S. Childs
Barbara Sharpe
F. Wesley Eubank
Tina Pinkoson
Eileen F. Roy
Dr. Dan Boyd
Tom Wittmer
* (all via e-mail)

NOTE: This memorandum is prepared in anticipation of imminent civil litigation or adversarial administrative proceedings, and is exempt from public release under s.119.071(1)(d), F.S. until conclusion of the litigation or adversarial administrative proceedings. At this time, this memo is for the School Board Members and Superintendent only, and should not be disseminated to any other persons, nor should its contents be discussed at any public meetings, unless Board action is required.

MEMORANDUM

TO: School Board Members
Superintendent

FROM: Susan M. Seigle, Board Attorney
Thomas L. Wittmer, Staff Attorney

SUBJECT: Stormwater Fees

DATE: June 8, 2009

As you requested, we have examined the issue of stormwater fees currently being charged by the City of Gainesville, at a rate of about \$12,000 per month. The School Board has been paying these fees for over two decades. The question raised is whether the School Board is required to pay the fees, which appear on the monthly utility bills from Gainesville Regional Utilities, for all our school sites within the City. We have reviewed the legal opinions and other documents in recent litigation between the City of Gainesville and the Florida Department of Transportation (2001-05) and between the City of Clearwater and the Pinellas County School Board (2005-09), and we have spoken with attorneys for the City of Gainesville and the Pinellas County School Board. Analysis of this legal issue involves an inquiry into both the validity of stormwater utility charges as user fees or special assessments, and also the question of sovereign immunity.

The First District Court of Appeal has held that the imposition of fees for the use of municipal utilities is not an exercise of the taxing power nor a levy of a special assessment, and that Gainesville's stormwater management fees are user fees, *City of Gainesville v. Department of Transportation*, 778 So.2d 519 (1st DCA 2001) ("*Gainesville I*"). The Board is normally obligated to pay user fees, but would be exempt from the payment of special assessments, section 1013.371, Florida Statutes.

The only appellate decision in Florida that addresses the issue of stormwater user fees and sovereign immunity is *City of Gainesville vs. Department of Transportation*, 920 So.2d 53 (1st DCA 2005) ("*Gainesville III*"), in which the court held that Florida Statutes do not include a waiver of sovereign immunity for stormwater utility charges made under Chapter 403, Florida Statutes. In that case, the City's action to collect the past due fees failed because it did not have a written contract with the DOT. The City sought an appeal to the Florida Supreme Court, but review was denied, 921 So.2d 661 (Fla. 2006). The same issue is currently before the Second District Court of Appeal in *City of Clearwater v. School Board of Pinellas County*, No. 2D08-5187, and oral arguments are set for August 4.

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Although the *Gainesville III* decision has statewide application, it has not received a lot of attention. Our information is that most school districts and state agencies are not yet refusing to pay local stormwater fees, either from ignorance of the decision or by their informal agreement. However, we are not aware of any contract between this Board and the City of Gainesville for the payment of stormwater utility fees. For this reason, in accord with *Gainesville III* case, it is our opinion that the City would not be able to enforce the payment of these fees by the Board.

If Board discontinues payment of these fees, that action would likely invite litigation. When we met with attorneys for the City and discussed this issue with them, we were told that the City would probably sue the Board to recover unpaid fees. In any such action, we would recommend that the Board file a counterclaim against the City to recover past fees paid.

Alternatively, the Board could stop paying the current fees, and file suit against the City to recover fees paid in prior years. However, most likely the Board would only be able to recover for the past four (4) years, because of the statute of limitations. If the School Board were to recover for the past four years, the amount recovered would be in excess of \$400,000.

We believe from a purely legal standpoint that the Board would be on firm ground in discontinuing payment of stormwater fees. However, as a practical matter, the Board is using the stormwater system in place within the City, and it may be advisable from a political standpoint to pay the Board's fair share for its usage (which may be different from what is currently being paid). Additionally, although we are not aware of any current groundswell to get the legislature to insert a waiver of sovereign immunity into Chapter 403, it may be coming in the future, and the Board would then have no basis to refuse to pay stormwater fees. The Board may wish to resolve the issue through negotiations with the City to reach some mutually agreed-upon amount for the stormwater management fees, at a reduced rate.

Please contact either of us if you have any questions.

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MEMORANDUM

TO: School Board Members
W. Daniel Boyd, Jr.
Thomas L. Wittmer, Esq.

FROM: Susan M. Seigle, Board Attorney

SUBJECT: Stormwater Fees

DATE: September 8, 2009

This is to provide an update with respect to an earlier memorandum on the issue of stormwater fees. As of this writing, the School Board is still paying fees at the same rate as when the June 8, 2009 memorandum was written, and neither I nor Tom Wittmer has had any further contact with representatives of the City of Gainesville ("the City") with respect to the issue of payment.

I have met with Ed Gable to discuss the issue of stormwater fees, and he advises that he has been contacted by officials of GRU to discuss stormwater drainage fees issues. Mr. Gable believes that at this time, the City may well be seeking to increase the amount of fees to be assessed against all users, including the School Board. Indeed, it is unlikely that GRU would be trying to contact the School Board if they were going to lower the rates.

I recently attended a two-day meeting of the Florida Association of School Board Attorneys in St. Petersburg. On the second day, the group always has a discussion session where the individual members ask the group for input on issues of particular importance in the member's district. I asked for input on what the other districts were doing about the issue of storm water fees, and got a number of comments which I would like to share with you. The School Board of St. Lucie County has entered into an inter-local agreement with the municipalities, and is paying fees pursuant to the agreement. Manatee County does not pay, and Broward County has recently stopped paying fees to the City of Hollywood. Lee County does pay, as it considers the fee a user fee which it is obligated to pay. I do not agree with the Lee County position on this issue.

Interestingly enough, Polk County hired an engineer who was able to show that the various school sites were net receivers of storm water run-off rather than net-users, and based on that showing, has negotiated an agreement for significantly lower fees. I think this may well be

sufficient to stop paying all together, because the Board would not be "using" the City's storm water system. Pinellas County stopped paying the City of Clearwater, and sued to collect past payments. The trial court granted a summary judgment in favor of the Pinellas School Board, and the issue is currently on appeal to the Second District court of Appeals.

As you may recall from the earlier memorandum, it is my legal opinion that the School Board is not liable for payment of any fees for stormwater drainage by virtue of sovereign immunity, absent a contractual relationship whereby the School Board agreed to pay. If the School Board ceased to pay the fees, the case law is clear that the City cannot sue to collect. However, in our memo, Mr. Wittmer and I pointed out that from a political standpoint, it may be advisable to pay a fair share for usage of the system, perhaps at a reduced rate.

However, if the City is going to raise stormwater rates, I would recommend that we consider retaining an engineer to evaluate the school sites within the City to determine if the School Board is a net receiver rather than a net user. I would retain the same company that evaluated Polk County's schools. If it is found that we are a net receiver, we would have an additional basis for not paying because we do not have "developed property ... that contributes storm water runoff to the city's storm water management systems" as required by Section 27-236 of the Code of Ordinances of the City of Gainesville. In fact, the University of Florida does not pay fees for the main campus, because Lake Alice makes UF a net receiver rather than a net user. If we can make a similar showing, there is local precedent for our discontinuing payment regardless of the issue of sovereign immunity. Then, if the decision was made to at least make some payment, it could be negotiated at a significantly reduced rate.

If you have any questions, please feel free to call me at the office: 372-4381.

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MEMORANDUM

TO: W. Daniel Boyd, Jr.
School Board Members

FROM: Susan M. Seigle, Board Attorney
Thomas Wittmer, Staff Attorney

SUBJECT: Stormwater Fees

DATE: November 5, 2009

On April 14, 2009, Tom Wittmer received a request from Wesley Eubank regarding the issue of payment of storm water fees to the City of Gainesville. Mr. Eubank requested that we contact the School Board of Pinellas County which had recently been successful in getting a judicial determination that it was not responsible for paying such fees by virtue of the doctrine of sovereign immunity. The judgment obtained by the School Board of Pinellas County was appealed to the Second District Court of Appeals, which very recently upheld the judgment of the trial court. The appellate court based its ruling on a case from Gainesville entitled *City of Gainesville vs. Department of Transportation*, 920 So.2d 53 (1st DCA 2005).

Our efforts and legal analysis have been provided to you in two separate memoranda, and we will not reiterate our analysis in this memorandum. Now there has been a ruling by an appellate court in Florida that a municipality cannot sue to collect fees from a school board if the school board stops paying. It is our opinion that the School Board of Alachua County should discontinue paying storm water fees immediately. This would result in a savings of well over \$140,000 annually. If the City threatens to sue, we can enter into negotiations at that time.

This is to request that the issue of discontinuation of payment of storm water fees to the City of Gainesville be placed on the next available agenda as an action item for determination by the Board.



City of Gainesville
Gainesville Regional Utilities
 301 S.E. 4 Avenue
 Gainesville, Florida 32601
 www.gru.com

ACCOUNT NUMBER
 CUSTOMER NAME
 SERVICE ADDRESS

2000-1677-3287 ROUTE MULTIPBEL DATE 01/07/2010
 ALACHUA COUNTY SCHOOL BOARD ACTY
 5701 NW 43RD ST
 GAINESVILLE FL 32653

UTILITY SERVICE	METER NUMBER	METER READING DATES		METER MULTIPLIER	DAYS	AVERAGE DAILY CONSUMPTION		
		FROM	TO			SERVICE THIS MONTH	LAST MONTH	12 MOS AGO
IC 06/09								
DEMAND	E016999642	12/4/2009	1/6/2010	1.00000	34	262.00	280.00	282.00
ELECTRIC	E016999642	12/4/2009	1/6/2010	40.00000	34	2,578.82	2,909.33	2,450.59
GAS	G64207	12/1/2009	12/31/2009	1.01700	31	46.19	25.97	44.37

ITEM DESCRIPTION	METER READINGS			CONSUMPTION	UNIT RATE	AMOUNT BILLED	AMOUNT DUE	
	PREVIOUS	CURRENT	TYPE					
ELECTRIC USE	78980	81172	ACTUAL	87,680 KWH	0.0420	3,682.56		
ELECTRIC DEMAND				262 KW	9.2500	2,423.50		
ELECTRIC CUSTOMER CHARGE					PER MONTH	45.00		
BUSINESS PARTNERS DISCOUNT					0.1000	615.11		
ELECTRIC FUEL ADJUSTMENT				87,680 KWH	0.0560	4,910.08		
FLORIDA GROSS RECEIPTS TAX						267.85	\$ 10,713.88	
NATURAL GAS CUSTOMER CHG					PER MONTH	30.00		
NATURAL GAS USE	41728	43098	ACTUAL	1,432 THERMS	0.3080	441.05		
MANUFACTURED GAS PLANT REC				1,432 THERMS	0.0370	52.98		
PURCHASED GAS ADJUSTMENT				1,432 THERMS	0.5300	758.96		
FLORIDA GROSS RECEIPTS TAX						50.98	\$ 1,333.97	
400W HPS FLOOD LIGHT				6 LAMP(S)	12.7500	76.50		
ELECTRIC FUEL ADJUSTMENT				1,081 KWH	0.0560	60.54		
250W HPS FLOOD LIGHT				1 LAMP(S)	11.5000	11.50		
30FT CONCRETE POLE				5 POLE(S)	6.5000	32.50		
35FT CONCRETE POLE				1 POLE(S)	6.7500	6.75		
FLORIDA GROSS RECEIPTS TAX						3.81	\$ 191.60	
STORMWATER FEE				78 ERU	7.9000	616.20	\$ 616.20	
JAN 2010 CHARGES PLEASE PAY BY 7 P.M. ON 01/27/2010 TO AVOID LATE FEE							\$ 12,855.65	
PREVIOUS BALANCE		12,423.60						
PAYMENT(S)		12,423.60		THANK YOU FOR YOUR PROMPT PAYMENT				
PAST DUE BALANCE FORWARD		0.00					\$ 0.00	
*STATE AND LOCAL CHARGES (SEE REVERSE SIDE OF BILL FOR EXPLANATION)							TOTAL AMOUNT DUE	\$ 12,855.65

Please tear off this portion and return it with your payment in the enclosed envelope

Your wastewater bill is based on the amount you consume during December through February. It's called your "winter maximum." Lower your bill year round by conserving water during this time. Visit gru.com for more ways to save.

Please write account number on check and make payable to **Gainesville Regional Utilities**. Thank you for your payment.

ACCOUNT # **2000-1677-3287**
 ACTY

Payment Amount

TOTAL AMOUNT DUE
\$ 12,855.65

C/O SHIRLEY BUTLER
 TALBOT ELEMENTARY SCHOOL
 ALACHUA COUNTY SCHOOL BOARD
 620 E UNIVERSITY AVE
 GAINESVILLE FL 32601-5498

GAINESVILLE REGIONAL UTILITIES

PLEASE PAY BY 7 P.M. ON 01/27/2010
 TO AVOID LATE FEE

200016773287 00 000000000 001285565

A GUIDE TO YOUR UTILITY BILL

CUSTOMER INQUIRIES

Customer Service	(352) 334-3434
Nationwide toll-free number	1-800-618-3436
Stormwater service	(352) 334-5070
Refuse/Solid Waste service	(352) 334-2330

EMERGENCY SERVICE & REPAIRS

Electric Emergencies or Outages	(352) 334-2871
Gas Leak Emergencies	(352) 334-2550
Water and Wastewater Emergencies	(352) 334-2711

SERVICE AGREEMENT. Use or consumption of services rendered by this City shall constitute an agreement by the consumer with the City to abide by the rules of the City with regard to its utility service, including, but not limited to prevailing ordinances and policies of this City and its departments.

PAYMENT INFORMATION. Visit www.gru.com for complete list & details.

Online At www.gru.com

Neighborhood Stop 'N Pay - walk-in payment locations

Mail: Make checks payable to Gainesville Regional Utilities. Mail stub and check to P.O. Box 147051, Gainesville, FL 32614-7051

In Person: at the GRU Administration Building located at 301 S.E. 4th Avenue. Monday through Friday, except city holidays:
Lobby: 8 AM - 5 PM, except Wednesdays 9 AM - 5 PM
Drive-Thru: 7:30 AM - 6 PM
Night depository & Drop-n-Go box - after 3:30pm posted next business day

Speedpay by phone: Credit card payments call 1-866-269-2881

ELECTRIC AND GAS SURCHARGE. A 10% surcharge levied on electric and gas charges to customers receiving such service outside City limits. The surcharge is equal to the utility tax levied on electric and gas charges to customers receiving such service inside City limits. [Sec. 27-27(c), Gainesville Code of Ordinances]

ERU. Equivalent residential unit (2,300 sq. ft.), the basic measurement used by the City of Gainesville to bill stormwater fees.

FLORIDA GROSS RECEIPTS TAX. A 2.5% tax on the gross receipts of electric and gas utilities in the State of Florida and recovered from all customers, regardless of tax exempt status. Gross receipts tax revenues are used for Public Education Capital Outlay funding [Chapter 12B-6, Florida Administrative Code].

FRANCHISE FEE. A fee levied by cities on electric and gas charges for services provided by GRU in their respective jurisdictions.

FUEL AND PURCHASED GAS ADJUSTMENT. The increase in the cost of fuel to GRU since October 1, 1973. Electric, natural gas, and liquid propane gas fuel adjustment charges are exempt from utility taxes [Sec. 166-231, Florida Statutes].

KGAL. 1,000 gallons, the basic measurement for water and wastewater billing.

KW. 1,000 watts, the basic measurement for electrical power. Metered kilowatt demand is integrated over a 30 minute period.

KWH. 1,000 watt-hours, the basic measurement for electric energy consumption. One kWh will light a 100-watt light bulb for ten hours

LATE FEE. A 1.5% late fee will be charged on any unpaid current balance at the close of business on your due date. Past due balances do not apply and may be subject to disconnection terms. [Sec. 27-14(e), Gainesville Code of Ordinances]

LOCAL COMMUNICATIONS TAX. A local communications services tax levied by cities and counties on communications services charges for service provided by GRU in their respective jurisdictions. [Sec. 202.19, Florida Statutes]

MB. One million bytes, or more precisely 1,048,576 bytes of computer storage.

REFUSE/SOLID WASTE FEE. A fee levied by the City of Gainesville for garbage, yard waste, and recycling service. [Sec. 27-76, Gainesville Code of Ordinances]

RETURNED PAYMENTS. A fee of \$20 or 5% of the amount of the transaction, whichever is greater, will be charged for any returned payment. Accounts may be placed on a cash only payment basis for two (2) or more returned checks in a 12-month period. [Sec. 27-14.3, Gainesville Code of Ordinances]

STATE COMMUNICATIONS TAX. A state communications services tax levied by the State of Florida on communications services charges. [Sec. 202.12, Florida Statutes]

STATE SALES TAX. A tax levied by the State of Florida on nonresidential electric and gas charges. [Sec. 212.05, Florida Statutes]

STORMWATER FEE. A fee levied by the City of Gainesville to fund the Stormwater Management Utility Program. [Sec. 27-236, Gainesville Code of Ordinances]

THERM. 100,000 British thermal units (Btu's), the basic measurement of heat content for gas.

UTILITY TAX. A 10% tax levied by cities and counties on electric, gas, and water charges. [Sec. 166.231, Florida Statutes]

WASTEWATER BILLING. Nonresidential customers are billed for 95% of water consumption. Residential customers are billed on the January and February bills for 100% of water consumption; for all other months, billing is based on the lesser of actual water consumption or the winter maximum. Irrigation meters are not billed wastewater charges.

WATER/WASTEWATER SURCHARGE. A 25% surcharge levied on water and wastewater charges to customers receiving such service outside City limits. [Sec. 27-128(b) and 27-169(b), Gainesville Code of Ordinances]

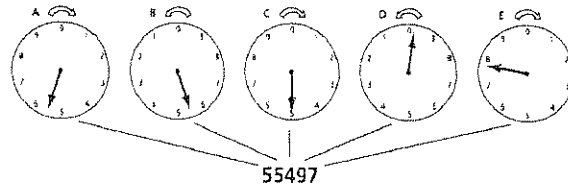
WINTER MAXIMUM. The maximum of a customer's average daily water consumption for the immediately preceding January or February billing periods times 30.4 days. The system average is used for a customer who has not yet established a winter maximum.

HOW TO READ YOUR METER

Read the dials from left to right, recording the number each pointer has just passed. Each dial turns the opposite direction from the one next to it. When the pointer lies between numbers, record the lower number except when the pointer is between 9 and 0 record 9 because 0 means 10 in this position.

On the meter dials shown to the right:

- Dial A: The pointer is between 5 and 6 record as 5
- Dial B: The pointer is between 5 and 6 record as 5
- Dial C: The pointer appears to be on 5, but Dial D to the right has not reached zero (finished a complete revolution) record as 4
- Dial D: The pointer is between 9 and 0 record as 9
- Dial E: The pointer is between 7 and 8 record as 7



NOTE. If a pointer appears to be directly on a number, as in dial C above, the pointer position on the next dial to the right will determine the correct reading. In the reading shown, Dial C is recorded as a 4.

Information Changes

Please "X" the box for changes and fill in your new information below.

Street: _____

City, State: _____

Zip: _____ Phone number: _____

Email: _____

E-mail addresses are public records under Florida Law and are not exempt from public-records requirements. If you do not want your e-mail address to be subject to being released pursuant to a public-records request do not send electronic mail to this entity. Instead, contact this office by telephone or in writing, via the United States Postal Service.

Project Share Contribution

Please "X" the box to donate to GRU's tax deductible Project Share program and select or specify a monthly donation amount below

Set monthly contribution: ___\$5 ___\$10 ___\$15 ___\$20 Other: \$_____

City of Gainesville Support for Alachua County Public Schools

Department	Services Provided	Fiscal Impact	Staff Contact
CRA	<p>Proposed decorative aluminum fencing at Williams Elementary and Lincoln Middle Schools</p> <p>Note: The City through WSPP is planning to contribute approximately \$59,000</p>	\$65,000	Matt Dube
CRA	Proposed decorative fencing at the school bus yard; SE Hawthorne Road	\$50,000	Matt Dube
CRA	Improvements at A Quinn Jones Center (Perimeter fencing and ball court cover)	\$120,000	Matt Dube
CRA	Entry plaza re-design at GHS (Raising 'Canes Program) – in-kind assistance from CRA staff. The project was constructed.	In-kind value \$1000	Matt Dube
GFR	<p>Annual Fire Inspections- GFR</p> <p>Completes state mandated annual inspections for all 34 schools located within the City Limits. Total School hours: Approximate 280 inspector hrs per school year.</p> <p>Total additional alarm inspections, portable inspects, hood inspects detector inspects at no additional charge (58) inspector hours per school year.</p>		Bill Northcutt

Department	Services Provided	Fiscal Impact	Staff Contact
GFR	<p>Follow up for alarm issues (60) additional inspector hours per school year.</p> <p>Explorer Post 972 and the Lofien Fire and Emergency magnet programs- GFR has partnered with the Lofien Center and made it possible for all FEMP students to become members of the explorer post. GFR provides administrative, technical and leadership support of the program including participation of GFR crews, training personnel, and honor guard instruction for the members. This program runs the whole school year and the Post meets every club day with some Saturday activities. GFR expends about 96 instructor hours per school year on the program. There are 52 present members in the Explorer post.</p>		
GFR – Risk Reduction Education Program	<p>Each year, Gainesville Fire Rescue participates in programs with four of our local public elementary schools and one charter school.</p>		Bill Northcutt
GFR – Risk Reduction	<p>In the fall, we do an engine</p>		Bill Northcutt

Department	Services Provided	Fiscal Impact	Staff Contact
Education Program	<p>company visit to Terwilliger Elementary School during their career day. We do three 30- 45 minute presentations to two classes each. Our firefighters dress in their bunker gear to show the children what they wear during emergency situations. They children get to ask questions about what it is like to be a firefighter. Then everyone gets to set in the fire engine and do a walk around of the truck to what tools and equipment they care. We are teaching a total of approximately 180 children in one and a half hours.</p>		
GFR – Risk Reduction Education Program	<p>We visit JJ Finley’s kindergarten classes in the fall for two days. The first day one of our firefighters visits with their firefighting gear and does a presentation. One the second day, the children get to see a fire engine, sit inside, and see all of the tools. We are teaching a total of approximately 100-120 children for one hour each day.</p>		Bill Northcutt
GFR – Risk Reduction Education Program	<p>We also visit Stephen Foster during their Fall Festival each</p>		Bill Northcutt

Department	Services Provided	Fiscal Impact	Staff Contact
	<p>year. During this time the children get to come and go from the fire engine. They get to talk with the firefighters, climb in the fire engine, and see all of the tools and equipment the crews carry. This is considered more of a "show and tell" due to the following traffic. We are usually there approximately two hours and visit with 100- 200 citizens (children and adults).</p>		
<p>GFR -- Risk Reduction Education Program</p>	<p>In the spring we visit Metcalf for the Our Own Games Field Day. During this time the children get to come and go from the fire engine. They get to talk with the firefighters, climb in the fire engine, and see all of the tools and equipment the crews carry. This is considered more of a "show and tell" due to the following traffic. Some times our firefighters also assist with running a game or two. We are usually reaching 60- 70 children during one hour.</p>		<p>Bill Northcutt</p>
<p>GFR -- Risk Reduction Education Program</p>	<p>At different times throughout the year, we also visit the One Room School House. During</p>		<p>Bill Northcutt</p>

Department	Services Provided	Fiscal Impact	Staff Contact
	<p>these times we do a Firefighter is Our Friend presentation with the preschoolers and lower elementary. With the upper elementary we will begin doing a Fire Science presentation discussing what smoke is, how it works, and how to put out fires.</p>		
<p>GFR – Risk Reduction Education Program</p>	<p>Twenty Five 5th Grade Students and their parents visit Fire Station 3 each year during the City Government Day. During this twenty minute presentation, the children and their parents get to see the fire station, learn about the fire department and firefighter careers, sit in the fire engine, and spray the fire hose.</p>		<p>Bill Northcutt</p>
<p>GFR – Risk Reduction Education Program</p>	<p>This year was the first year that we participated in an end of the (calendar) year party with Sydney Linear. We visited with approximately 25 students at the O'Connell Center. They got to meet the firefighters, see their gear and tools, and sit in the fire engine.</p>		<p>Bill Northcutt</p>
<p>GFR – Risk Reduction Education Program</p>	<p>We also assisted with bike rodeos held at MetCalf. We did this in conjunction with</p>		<p>Bill Northcutt</p>

Department	Services Provided	Fiscal Impact	Staff Contact
GFR – Risk Reduction Education Program	<p>Alachua County Fire Rescue, Safe Kids of North Central Florida, and Dekova Batey with the cities bike and pedestrian program. I assisted for three days from 8:00am till 1:30pm. All of the schools children in PE and their special needs children participated. The children rode the bike rodeo course and learned how to properly fit a bike helmet</p> <p>This past spring, we also visited 64 three and four year olds at Fern Side Learning Center. We visited them for one hour with the fire engine, showing the firefighter's gear, tools, and the engine itself.</p>		Bill Northcutt
GFR – Risk Reduction Education Program	<p>Prior to cutting the second Risk Reduction Specialist Position in FY2009, Gainesville Fire Rescue provided hands on fire extinguisher training for all sixth grade students at Westwood Middle School. We also provided the same training for many of the head start parents and teachers.</p>		Bill Northcutt
GPD	School Resource Officers	<p>Cost to the City \$356,957 (SBAC pays \$182,725)</p>	Tony Jones
GPD	Police Explorers	<p>\$88,521</p>	Tony Jones

Department	Services Provided	Fiscal Impact	Staff Contact
GPD	Reichert House	\$330,597	Tony Jones
GPD	School Crossing Guards	\$191,654	Tony Jones
PRCA	Cultural Affairs Division provides discounts to school groups that pre-register for a field trip to the Hoggetowne Medieval Faire on School Day annually.	\$2,166	Linda Piper
PRCA	Cultural Affairs Division provides the opportunity for area school children to participate in the Hoggetowne Medieval Faire Student Art & Essay Contest	\$1,350	Linda Piper
PRCA	Alachua County School exhibitions are held annually at the Thomas Center Galleries	\$2,590	Erin Friedberg
PRCA	Cultural Affairs Division provides the Historic Thomas Center Tours program for third grade students from Alachua County schools.		Erin Friedberg
PRCA	Leased use of Citizens Field (long-term lease)		Connie Whitney
PRCA	Nature Operations Division provides tours of nature parks. Staff will typically discuss the natural environment as well as land management actions that NOD conducts on the park being toured	\$528	Stefanie Nagid
PRCA	During the Great Air potato	\$176.00	Stefanie Nagid

Department	Services Provided	Fiscal Impact	Staff Contact
PRCA	<p>Roundup coordinated by Nature Operations Division, volunteers are assigned to pick up air potatoes/trash at 3 public schools</p> <p>Nature operations staff provides a career day talk at a public school every year</p>	\$88.00	Stefanie Nagid
PRCA	<p>A Quinn Jones Elementary School receives the following services from Parks Division:</p> <ul style="list-style-type: none"> Maintain Basketball Courts Playground Inspections Maintain Softball field General Landscape and Grounds Maintenance in Playground, basketball court and ball field areas Empty trash cans on basketball courts and softball field 	\$6907.08	John Weber
PRCA	<p>Lincoln Middle School receives the following services from Parks Division:</p> <ul style="list-style-type: none"> Maintain Restrooms Playground Inspections Maintain softball field # 1 including lights Maintain Parking area Line fields for soccer program (2 seasons per year) Mow multi-purpose areas, park area and ball field 	\$18,732.15	John Weber

Department	Services Provided	Fiscal Impact	Staff Contact
PRCA	<p>General grounds maintenance of Park and multi-purpose areas</p> <p>Westwood Elementary School receives the following services from Parks Division:</p> <ul style="list-style-type: none"> Maintain Softball fields General grounds maintenance around fields Litter pick up around fields 	\$550.00	John Weber
PRCA	<p>Nature Operations has developed low cost, experiential onsite and outreach programs that meet Sunshine State Standards (scholarships for programs are offered through Friends of Nature Parks), as well as opportunities to increase environmental and cultural history literacy</p>	\$2,995.00	Sally Wazny
PRCA	<p>Nature Operations provides free pre- and post-program activities accompany many programs that schools participate in</p>		Sally Wazny
PRCA	<p>Nature Operations provides a wide variety of free public programs (such as "Feed a Frog Friday," and "Barnyard Buddies") that are available for after school programs to take advantage of; Eastside attends regularly</p>	\$1,993.00	Sally Wazny

Department	Services Provided	Fiscal Impact	Staff Contact
PRCA	Nature operations Division provides volunteer opportunities for youth needing to earn their volunteer credits, including special events (such as the Great Air Potato Roundup) and special programs (e.g. Junior Naturalist Program)	\$10,000	Sally Wazny
PRCA	Nature operations offers reduced rate admission for schools to Farm and Forest Festival, and coordinates "School Days" annually at the Thursday and Friday preceding the Festival open to the public on Saturday	\$6,800	Sally Wazny
PRCA	Nature Operations Division provides free interpretive services for groups visiting Morningside Nature Center when a program is not booked		Sally Wazny
PRCA	Nature Operations Division provides opportunities for schools to qualify for grant monies available from the "No Child Left Behind" Act		Sally Wazny
PRCA	Nature Operations Division provides informational booths and participate at various events (e.g. school career fairs, science nights, etc)	\$210	Sally Wazny
PRCA	Nature Operations Division	\$7,735	Sally Wazny

Department	Services Provided	Fiscal Impact	Staff Contact
PRCA	offers camp (spring and summer) programming that includes character development (juvenile prevention and intervention) that benefits families, schools and the community	\$2,800	Steve Butler
PRCA	Recreation Division works with Eastside High School to provide 9th grade and JV basketball teams practice at the MLK Center	\$1,400	Steve Butler
PRCA	Recreation Division works with Eastside High School to provide soccer teams practice at Cone Park	\$1,400	Steve Butler
PRCA	Recreation Division works with Gainesville High School to provide soccer teams practice at Citizens Park	\$1,400	Steve Butler
PRCA	Recreation Division works with Lincoln Middle School to provide baseball/softball teams practice at Lincoln Park	\$1,400	Steve Butler
PRCA	Recreation Division works with Howard Bishop Middle School to provide baseball/softball teams practice at Greentree/Westside Park	\$1,400	Steve Butler
PRCA	Recreation Division works with Westwood Middle School to provide baseball/softball teams	\$1,400	Steve Butler

Department	Services Provided	Fiscal Impact	Staff Contact
PRCA	<p>practice at Westside Park</p> <p>Horizon Center uses the Boltin or MLK Center for their graduation; at times the Recreation Division has displaced its own programs to accommodate this event</p>	\$223.75	Karen Cayson
PRCA	<p>PK Yonge and Eastside High Schools use the Tennis Courts at T.B... McPherson for practice, scrimmages and matches that are scheduled through tennis pro Mike Oransky</p>	\$7,000	Karen Cayson
PRCA	<p>Recreation Division works with Littlewood Elementary, allowing use of the playground at Westside for several hours every day; in addition, Littlewood Elementary uses the park for special field trips/lunches for their students</p>	\$1,500	Karen Cayson
PRCA	<p>Hawthorne (we believe high school age kids) come to Eastside 2 to 4 times a year and have a picnic and play around in the park at Eastside.</p>	\$1,500	Karen Cayson
PRCA	<p>Recreation Division works with the School Board and Early Learning Coalition for use of Westside for meetings several times each year</p>	\$192.25	Karen Cayson

Department	Services Provided	Fiscal Impact	Staff Contact
PRCA	Westside Tennis Courts are used by Gainesville High School and Buchholz High School for practices, scrimmages and matches. These events are scheduled through tennis pro Mike Oransky	\$7,000	Karen Cayson
PRCA	Recreation Division works with numerous schools regarding use of Westside for cross country practices and meets	\$200	Karen Cayson
PRCA	Several High Schools use Westside parking lot as a meeting area for parents and kids when they are getting ready to travel. Two examples are a High School scholars group took a trip last year, the bus was late and parents started dropping their kids off at the center. Another example is a High School Soccer team meets in the parking lot and loads a bus for away matches.	\$600	Karen Cayson
PRCA	Recreation Division works with Westside Teen Zone program for their use of parks and/or facilities for programming.	\$1,000	Karen Cayson
PRCA	Recreation Division works with the School Board to provide the Teen Zone programs at	\$30,000	Karen Cayson

Department	Services Provided	Fiscal Impact	Staff Contact
PRCA	Westwood Middle School, Ft. Clarke Middle School and Kanapaha Middle School	\$800	Karen Cayson
PRCA	Reading program at Duval Elementary: staff occasionally takes a group of seniors to the Duval Elementary school and has the seniors work with kids on there reading skills.	\$1,000	Karen Cayson
PRCA	Recreation Division provides use of T.B. McPherson Recreation Center and Mickie Pool for a day-long celebration	\$16,376.50	Jeff Moffitt
PRCA	School use of aquatic facilities (PK Yonge, Buchholz, Eastside, Gainesville high schools; Lincoln and Westwood Middle Schools; misc other pool uses)	\$2,500	Bill Iwinski
PRCA	Ironwood Golf Course provides use of golf course for Eastside Girls Golf Team, Buchholz Boy's Golf Team, and hosts the Boys and Girl's County and District Championship's every other year. Ironwood Golf Course provides In-Service Training for P.E. Teachers who wish to start a golf program in their schools. This is the PGA "First Swing Program".	\$500	Bill Iwinski

Department	Services Provided	Fiscal Impact	Staff Contact
PRCA	Ironwood Golf Course host's Golf Team Matches for both Boy and Girls Teams from all of the local High Schools as well as schools from outside of Gainesville who are in their district.	\$3,000	Bill Iwinski
Communications	The Communications Office coordinates with ACPS to host a half-day program to inform and educate approximately 25 5 th grade students, who have been designated "citizens of the month" at their respective elementary schools, about the role of city government in providing essential services to the public		Bob Woods
Planning Division	Over the years we have provided left over foam boards and colored copying paper, and collected magazines for use at Duval Elementary. I have personally provided books and other materials (Jenny clocks) to support their educational programs as a city employee. I would say that it would only amount to about \$100 a year in support.		Ralph Hilliard
HR	We support Junior Achievement - TEAM is involved with this and includes some HR employees.		Sandy Barnard
HR	"Raisin Cakes"		Sandy Barnard
HR/GRU	GRU supports Williams Elementary		Sandy Barnard

Department	Services Provided	Fiscal Impact	Staff Contact
RTS	<p>Neighborhood and school career day events are held throughout the year in neighborhoods and schools in and around Gainesville. RTS participates in these events to distribute information about our services and employment opportunities.</p>		Jesus Gomez
RTS	<p>February, 2009 (Indirect contribution). RTS contributed to goodie bags compiled for crossing guards as a part of School Crossing Guard Appreciation Day.</p>		Jesus Gomez
RTS	<p>February 11, 2009. RTS provided Gainesville High School (GHS) After School Tutoring Program with 100 RTS All Day courtesy bus passes. The monetary value was \$300 (\$3 x 100). RTS contributes the passes in support of the City's partnership with GHS through Raising Canes.</p>		Jesus Gomez
RTS	<p>August 4, 2009 (Indirect contribution). RTS attended and set up a table at the 26th Annual National Night Out against crime in different neighborhoods. RTS provided both promotional and educational materials, including new Fall 2009 schedules, brochures, fans, and children's workbooks and crayons.</p>		Jesus Gomez
RTS	<p>August 15, 2009. RTS provided educational materials and conducted an educational</p>		Jesus Gomez

Department	Services Provided	Fiscal Impact	Staff Contact
RTS	<p>presentation for children at the annual Kid Start Fair. Kid Start Fair is an annual event where vendors provide school supplies, other promotional items and fun events for children entering kindergarten. RTS participates in this event by providing the children with transit-oriented educational activity packets and promotional items.</p> <p>September 21, 2009. RTS provided Gainesville High School (GHS) After School Tutoring Program with 100 RTS All Day courtesy bus passes. The monetary value was \$300 (\$3 x 100). The bus passes are distributed to those students who sign in with an adult tutor and remain with the tutor during the tutoring session and have no other means of transportation home. RTS contributes the passes in support of the City's partnership with GHS through Raising Canes.</p>		Jesus Gomez
RTS	<p>September 29, 2009. RTS provided a bus and driver to the UF Village Drive location of Baby Gator Child Development and Research Center for a bus tour and a lecture for the children about bus safety.</p> <p>October 2009. RTS provided a bus and driver to the UF Newell</p>		Jesus Gomez
RTS			Jesus Gomez

Department	Services Provided	Fiscal Impact	Staff Contact
RTS	<p>Drive location of Baby Gator Child Development and Research Center for a bus tour and a lecture for the children about bus safety.</p> <p>October 20, 2009. RTS participated in the City of Gainesville's City Government Week by providing informational materials and promotional handouts at the Public Works portion of the tour.</p>		Jesus Gomez
RTS	<p>December 16, 2009. Terwilliger Elementary School's annual Career Day. An RTS transit operator had a bus on display, presented job career information and provided educational materials for students.</p>		Jesus Gomez
Public Works	<p>"Exploring the World of Public Works" Curriculum – City staff delivers chapters of the public works curriculum four times each year for a total of approximately four hours. Materials are provided at the city's expense, about \$120 each year.</p>		Teresa Scott
Public Works	<p>Career Day Presentations – These presentations illustrate to middle school students how academic subjects relate to specific occupations in the public works field. Six presentations of approximately 30 minutes each are delivered annually.</p>		Teresa Scott
Public Works	<p>Activity Book Distribution – The</p>		Teresa Scott

Department	Services Provided	Fiscal Impact	Staff Contact
	<p>American Public Works Association offers activity booklets about public works responsibilities each year, at no cost, to APWA members. The city distributes approximately 2,000 of the booklets to middle school teachers to use in class.</p>		
Public Works	<p>Science Fair Judging – Six hours of judging of middle school science fair projects is provided at two middle schools for a total of twelve hours of judging annually. The judging process involves interviewing each of the participants and scoring the projects for awards.</p>		Teresa Scott
Public Works	<p>Mentoring - As part of the mentoring program with Gainesville High School, staff provides test monitoring for four hours each year.</p>		Teresa Scott
Public Works	<p>City Government Day – A forty-five minute presentation on public works programs is made to 25 fifth graders and their parents each year as part of this city-wide program.</p>		Teresa Scott
Public Works	<p>Bike Helmet Fittings – Staff provides support for at least one bike helmet fittings for an entire grade each year as part of our partnership with Shands Safe Kids. Approximately three hours is spent at the school instructing</p>		Teresa Scott

Department	Services Provided	Fiscal Impact	Staff Contact
<p>Public Works – Bicycle Pedestrian Program</p> <p>Gainesville Clean Water Partnership support for Alachua County Public Schools</p> <p>The Partnership sponsors several programs for Alachua County schools through our Watershed Action Volunteers (WAV), Adopt-A-River (AAR) and Florida Friendly Landscaping (FFL) programs.</p>	<p>students on the benefits of properly wearing a helmet. (Dekova may list more of these.)</p> <p>Through our WAV Program, the Partnership hosts:</p> <ul style="list-style-type: none"> ❖ A minimum of twenty public education programs for students or youth each year. Education presentations include discussion of nonpoint source pollution prevention and satisfy public outreach requirements of the NPDES permit program. Public education presentations include the use and/or distribution of stormwater education program materials and interactive demonstration models. ❖ At least 1 parent/child science night held at one school in the Gainesville area each year. They also hold one in the unincorporated area. This is a very fun event that includes a whole evening full of hands-on activities involving students and their parents in physical science/ water-based activities. 		<p>Dekova Batey</p>

Department	Services Provided	Fiscal Impact	Staff Contact
	<ul style="list-style-type: none"> ❖ Several storm drain marking events conducted during the year. Volunteers from AC schools install the storm drain markers. The purpose of the program is to increase public awareness that many individuals contribute nonpoint source pollution to local creeks, rivers, and springs. 		
<p>Public Works – Bicycle Pedestrian Program</p> <p>Gainesville Clean Water Partnership support for Alachua County Public Schools</p> <p>The Partnership sponsors several programs for Alachua County schools through our Watershed Action Volunteers (WAV), Adopt-A-River (AAR) and Florida Friendly Landscaping (FFL) programs.</p>	<p>Through our AAR Program, the Partnership hosts:</p> <ul style="list-style-type: none"> ❖ Creek or other waterbody clean up events in conjunction with AC schools as requested. ❖ Assistance and advice to schools interested in planting and maintaining water quality ponds, rain gardens, or buffer strips. 		
<p>Public Works – Bicycle Pedestrian Program</p> <p>Gainesville Clean Water Partnership support for Alachua County Public Schools</p> <p>The Partnership sponsors several programs for Alachua County schools through our Watershed Action Volunteers (WAV),</p>	<p>Through our FFL Program, the Partnership hosts:</p> <ul style="list-style-type: none"> ❖ 3-4 schools Florida Friendly Landscaping consultations a year. FFL staff consults with teachers and school administrators on several water quality and water conservation projects for 		

Department	Services Provided	Fiscal Impact	Staff Contact
Adopt-A-River (AAR) and Florida Friendly Landscaping (FFL) programs.	<p>school grounds such as: rain barrels, rain gardens, butterfly gardens, native plant use, irrigation retrofits, etc. This year this program consulted with PK Young, Littlewood, and Newberry.</p> <ul style="list-style-type: none"> ❖ This year, our FFL program offered additional special advice to PK Young about new building placement and landscaping to maximize erosion and sedimentation control, water quality and ecological integrity of the creek and its vegetative buffer. 		
Public Works – Bicycle Pedestrian Program	<p>Additional Partnership activities in AC Schools :</p> <ul style="list-style-type: none"> ❖ Elvis the Otter Movie Distribution – The Partnership developed a film featuring a favored local character, Elvis the Otter. Elvis is also the mascot of the partnership as he encourages Gainesvillans to “Keep trash out of his living room!” The Partnership provided, at no cost, copies of this film to all 		

Department	Services Provided	Fiscal Impact	Staff Contact
	<p>the elementary schools in Alachua County and sent notices to all teachers and media specialists advertising that this great local educational tool that meets sunshine state standards is at their fingertips.</p> <ul style="list-style-type: none"> ❖ The Partnership has also participated in grant applications for rain garden projects in AC schools. 		
Grants & Legislative Affairs	<p>We have continue to partner with the ACPS on the 21st Century Grant program. We just completed a 5-year cycle and are entering into the first year of a new 5-year grant. Reichert House is the main partner this cycle and the previous cycle included Parks and Rec also. I believe this mostly involves in-kind support in the form of staff. We have also been notified about a federal appropriation that you are already aware of.</p> <p>Steve Phillips and Chief Jones probably have additional information about supplemental and after school program funding and support provided through the</p>		Chris Cooper

Department	Services Provided city.	Fiscal Impact	Staff Contact

GRU Funding Support to School Board of Alachua County

Business Partners

Total Cumulative Savings from BP (as of end CY 2009)
(BP contract began in 1997 and expires in 2012) \$ 2,375,000*

In 1997 the discount was:

- 7 % for demand and non demand
- 10 % for large power

In 2002 the discount was:

- 7 % for non demand
- 10 % for demand
- 13 % for large power

Energy Efficiency Rebates

\$227,214

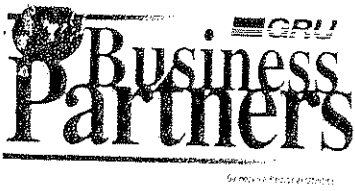
Miscellaneous

Fund Raising Golf Tournament for Williams Adopt-a-School	\$99,623
Metcalf Science Lab (GRU and partners)	\$8,000
Solar PV at two middle schools	\$38,299
School Mini-grants	\$43,107
Energy Efficiency Education Programs in Schools	\$36,500
E-grant funding (telecommunications)	\$1,201,274

Total GRU Contributions/ Savings

\$4,029,017

* Conservative estimate



Business Partners Rate Discount Agreement

(Effective June 1st, 2002)

The undersigned, on this the 21st day of May, 2002, being the duly authorized representative(s) of Alachua County School Board,

(CUSTOMER), located at Various Locations,

Gainesville, Florida (SITE(s)), does hereby contract with the City of Gainesville, d/b/a Gainesville Regional Utilities (GRU), as the exclusive provider of electric energy and capacity, and transmission and distribution services, as applicable, to the named SITE, subject to the Terms and Conditions delineated in Attachment 1 to this Agreement, for a term of not less than ten (10) years from the EFFECTIVE DATE of this Agreement in exchange for the applicable discount as noted in Section 3.1 below to GRU's Electric Tariff Rates.

WITNESS:

BY Carolyn Matheny
Signature
Carolyn Matheny
Printed Name

CUSTOMER:

BY William H. Cake
Signature
William H. Cake, Chairman
Printed Name/Title

BY Mary L. Chambers
Signature
Mary L. Chambers, Superintendent
Printed Name/Title

WITNESS:

BY ICMA Kennedy
Signature
ICMA KENNEDY
Printed Name

GAINESVILLE REGIONAL UTILITIES:

BY Bill Shepherd
Signature
Bill Shepherd, CEM Senior Account Executive
Printed Name/Title

For Office Use Only - CBIS Account Number(s)			
See Attachment #1			

KS 6/12/02

Terms and Conditions

SECTION 1.1 - GRU and CUSTOMER shall also be referred to herein as PARTIES collectively and as PARTY individually.

SECTION 1.2 - The term of this Agreement shall commence for bills rendered after the date this Agreement is executed by the PARTIES (EFFECTIVE DATE) and shall continue in effect for a term of ten (10) years or until CUSTOMER ceases to conduct business within GRU's electric service area, whichever is shorter.

SECTION 2.1 - For as long as business is conducted by CUSTOMER within GRU's electric service area, CUSTOMER agrees that GRU shall be its exclusive supplier of electric energy and capacity and, if applicable, transmission and distribution services throughout the term of this Agreement. Except for the use of standby generators for incidental purposes, in no event shall the CUSTOMER utilize self-generated electricity or electricity supplied from any source other than GRU for the duration of this Agreement without GRU's written consent.

SECTION 2.2 - CUSTOMER shall make, or have previously made, application to GRU for electric service in the appropriate retail class under GRU's Rate Schedule. No service will be provided under this Agreement until all pertinent Contract(s) for Service have been approved by GRU.

SECTION 2.3 - Except as modified by this Agreement, all terms and conditions under the prevailing Rate Schedule shall apply to service supplied to the CUSTOMER under the CUSTOMER's Contract for Service. The rights and obligations under this Agreement are supplemental to the rights and obligations of the PARTIES under the CUSTOMER's Contract for Service and the applicable provisions of the Code of Ordinances of the Code of Gainesville.

SECTION 3.1

For service hereunder, the following Rate Percentage Discount(s) shall be applied inclusive of any other applicable discounts:

- (a) for General Service Non-Demand 7% applied to the Customer Charge and the Energy (kWh) Charge;
- (b) for General Service Demand 10% applied to the Customer Charge, Demand (kW) Charge and the Energy (kWh) Charge;
- (c) for Large Power 13% applied to the Customer Charge, Demand (kW) Charge and the Energy (kWh) Charge.

Terms and Conditions

SECTION 3.2 - Should GRU subsequently offer a contract, for which the CUSTOMER is otherwise eligible, with Terms and Conditions that are more favorable than that offered herein, GRU will release CUSTOMER from this Agreement, provided that CUSTOMER executes a new contract having such more favorable Terms and Conditions.

SECTION 4.1 - This Agreement may not be modified or amended, except in writing, signed by or on behalf of both PARTIES.

SECTION 4.2 - All written notices under this Agreement shall be deemed properly sent if delivered in person or sent by facsimile, electronic mail or hand-delivered mail to the persons specified below:

If to GRU: Gainesville Regional Utilities E-mail address: customer@gru.com
 P. O. Box 147117
 Gainesville, FL 32614-7117
 Attn: Customer Service – Business Partners Rate Discount Agreements

If to CUSTOMER:

SECTION 4.3 - This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any litigation arising under this Agreement shall be in the federal or state courts in Gainesville, Florida.

SECTION 4.4 - This Agreement shall be valid, effective, and binding on the PARTIES upon the EFFECTIVE DATE of the Agreement. In the event that there is an order issued by any other governmental agency having jurisdiction disapproving this Agreement, neither PARTY shall have an action against the other arising under this Agreement and the same shall be null and void.

SECTION 4.5 - Any amendment to this Agreement shall be effective upon the date of execution of such amendment by the PARTIES and subject to the regulatory authority of the Gainesville City Commission and the authority of any other governmental agency having jurisdiction. The PARTIES shall be bound by any duly executed Amendment to this Agreement unless such amendment is disapproved by any other governmental agency having jurisdiction.

SECTION 4.6 - The rights and obligations of the CUSTOMER under this Agreement shall not be assignable without the prior written consent of GRU, which consent shall not be unreasonably withheld.

Terms and Conditions

SECTION 4.7 - Each PARTY represents to the other that it has the necessary corporate, legal and regulatory authority to enter into this Agreement and to perform each and every duty and obligation imposed herein, and that this Agreement, when executed by each PARTY, represents a valid, binding and enforceable legal obligation of each PARTY, subject only to the application of bankruptcy, moratorium, or similar laws affecting creditors rights. Each individual affixing a signature to this Agreement represents and warrants that he or she has been duly authorized to execute this Agreement on behalf of the PARTY he or she represents, and that by signing the Agreement, a valid, binding and enforceable legal obligation of said PARTY has been created.

SECTION 4.8 - If at any time during the term of this Agreement either PARTY violates any Terms and Conditions of this Agreement, the PARTY in violation shall have ninety (90) days in which to cure such violation(s) following the receipt of written notice from the other PARTY. In the event cure is not effected by the end of the ninety (90) day period, the Agreement may be terminated for cause. The CUSTOMER may exercise a right of early termination of this Agreement other than for cause, pursuant to all the provisions of this Section, by providing ninety (90) days prior written notice to GRU of such intent to terminate early. GRU's right to early termination of this Agreement shall only extend to termination for cause. In the event of an early termination of this Agreement by either PARTY, other than termination for cause by the CUSTOMER, the CUSTOMER will be required to pay to GRU an "Early Termination Fee" in the amount of two hundred fifty dollars (\$250.00) and reimburse GRU for the full value, including applicable taxes and charges imposed by State and local authorities, of any Rate Percentage Discounts granted during the previous thirty-six (36) months or the term of this Agreement, whichever is shorter. Prevailing Rate Schedules for service supplied to CUSTOMER will become effective immediately upon termination for any reason.