

Agenda Item Summary

**1. ACTION REQUESTED/PURPOSE:** Consider adoption of a Resolution expressing the County's intent to re-join the Florida Governmental Utility Authority ("FGUA").

**2. WHAT ACTION ACCOMPLISHES:** Provides formal notice to the FGUA that the County intends to re-join the organization for the purpose of participating in the management and operations of the former Florida Water Utilities in Lehigh.

**3. MANAGEMENT RECOMMENDATION:**

**4. Departmental Category:** *A12A*

**5. Meeting Date:** *08-23-2005*

**6. Agenda:**

**7. Requirement/Purpose: (specify)**

**8. Request Initiated:**

<input type="checkbox"/> Consent	<input type="checkbox"/> Statute
<input checked="" type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code
<input type="checkbox"/> Public	<input checked="" type="checkbox"/> Other
<input type="checkbox"/> Walk-On	<input type="checkbox"/> Interlocal Agmt.

Commissioner \_\_\_\_\_  
 Department County Attorney  
 Division \_\_\_\_\_  
 By: David M. Owen  
County Attorney

**9. Background:**

- In 1999, Lee County joined the FGUA as a charter member by Interlocal Agreement for the purpose of participating in the acquisition of the Florida Cities Utility Company which had facilities in seven counties.
- In 2000, Lee County withdrew from the FGUA by Resolution, which was accepted and acknowledged by the FGUA.
- In 2003, Lee County provided a Resolution of Consent to the FGUA for their purchase of the Florida Water Corp. utility facilities located in Lee County (Lehigh).
- Because the FGUA owns a utility within Lee County, the County has a right to re-join the FGUA so that County representatives may participate in the management and operations of the Utility.
- Per the Board of County Commissioners' direction of August 2, 2005, a proposed Resolution of Intent is being provided for Board consideration and if approved, transmittal to the FGUA for its acceptance.
- Other relevant materials are included as additional background information.

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
<i>J. Saunders</i> 8-11-05			<i>AA</i> 8/11/05	<i>[Signature]</i> 8/11/05	Analyst <i>[Signature]</i> 8/11/05	Risk <i>[Signature]</i> 8/11/05	Grants <i>[Signature]</i> 8/11/05	Mgr. <i>[Signature]</i> 8/11/05	<i>J. Saunders</i> 8-11-05

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: <i>[Signature]</i> 8/11/05
<i>[Signature]</i> 12pm
COUNTY ADMIN FORWARDED TO: <i>[Signature]</i> 8/11/05
<i>[Signature]</i>

LEE COUNTY RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF LEE COUNTY  
EXPRESSING LEE COUNTY'S INTENT  
TO VOLUNTARILY REINSTATE ITS  
MEMBERSHIP IN THE FLORIDA  
GOVERNMENTAL UTILITY  
AUTHORITY ("FGUA").**

WHEREAS, on January 26, 1999, Lee County adopted Resolution No. 99-01-31 approving the execution of an Interlocal Agreement creating the Florida Governmental Utility Authority ("FGUA"); and,

WHEREAS, on January 26, 1999, the Lee County Board of County Commissioners approved and caused to be executed by the Chairman of the Board of County Commissioners, the Interlocal Agreement creating the FGUA ("Interlocal Agreement"); and,

WHEREAS, on November 21, 2000, Lee County voluntarily withdrew from the FGUA through Resolution No. 00-11-16; and,

WHEREAS, pursuant to the terms of the Interlocal Agreement, in particular Article III therein, Lee County now desires to reinstate its membership in the FGUA; and,

WHEREAS, the reinstatement of Lee County's membership in the FGUA at this time is deemed desirable, appropriate, serves a public purpose, is in the public's interest and to the public's benefit.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, that:

1. The above preamble is hereby adopted by the Board of County Commissioners as if set out at length in this part.

2. Article III of the Interlocal Agreement creating the FGUA provides for membership in the FGUA through the adoption of a County Resolution of Intent and subsequent submittal to the FGUA for its acceptance.
3. The Board of County Commissioners hereby determines and finds that the reinstatement of Lee County's membership in the FGUA at this time is desirable, appropriate, serves a public purpose, is in the public's interest and is to the public's benefit.
4. By the adoption of this Resolution, the Lee County Board of County Commissioners hereby respectfully provides its Notice of Intent to Reinstate its Membership to the Board of the FGUA, and that upon acceptance of same by the FGUA Board, Lee County may re-join the FGUA pursuant to the terms and conditions of the Interlocal Agreement.
5. This Resolution will become effective immediately upon its adoption by the Board of County Commissioners by affirmative vote at a regular meeting.

The foregoing Resolution was offered by Commissioner \_\_\_\_\_ who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and, being put to a vote, the vote was as follows:

BOB JANES \_\_\_\_\_  
DOUGLAS ST. CERNY \_\_\_\_\_  
RAY JUDAH \_\_\_\_\_  
TAMMY HALL \_\_\_\_\_  
JOHN ALBION \_\_\_\_\_

DULY PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2005.

ATTEST: CHARLIE GREEN  
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of County Attorney

I.A. (199)  
EXCERPT

**ARTICLE III**

**MEMBERSHIP AND REPRESENTATION**

**SECTION 3.01. MEMBERSHIP.** (A) Membership in the Authority shall consist of those Public Agencies selected pursuant to this Article III.

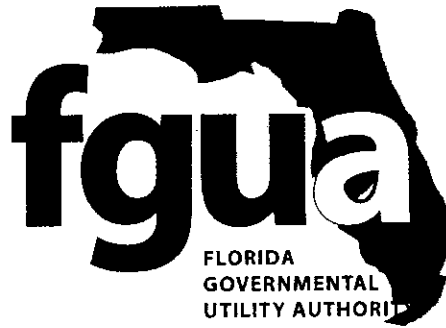
(B) The Authority Members shall on the date hereof consist of: Lee County, Florida, Nassau County, Florida, Polk County, Florida and Sarasota County, Florida.

(C) To the extent permitted by the Interlocal Act, the Authority may admit any Public Agency to membership upon application of such Public Agency and the affirmative vote of the majority plus one of all Directors at a duly called meeting of the Authority. This Interlocal Agreement need not be amended in order to admit any Public Agency as an Authority Member. Approval of the governing bodies of the Authority Members shall not be required to admit a new Authority Member.

(D) As a precondition to membership in the Authority, each Authority Member shall constitute a Florida municipality, county or such other Public Agency which is permitted by the Interlocal Act to be a member of the Authority. Such new Authority Member shall execute, deliver and record a duly authorized counterpart to this Interlocal Agreement. Authority Members may be admitted regardless of whether any Authority Facilities are located within the jurisdiction of such Authority Member.

**SECTION 3.02. REPRESENTATION.** (A) Each Authority Member shall appoint one Director to act on its behalf on the Board. Each Director shall be an individual who shall be appointed specifically by name or by position. In addition, each Authority Member may appoint an alternate Director to serve in the absence or unavailability of the Director.

(B) In the event the Director of an Authority Member shall resign or be removed, such Authority Member shall appoint a new Director within thirty (30) calendar days. In the event such Authority Member does not appoint a new Director within thirty (30) calendar days of resignation or removal and such Authority Member has appointed an alternate Director, such alternate Director shall serve in the capacity as Director. In the event such Authority Member does not appoint a new Director within thirty (30) calendar days of resignation or removal and such Authority Member has not appointed an alternate Director, the Board may appoint such Director who shall serve until such time as such affected Authority Member shall appoint a new Director; provided any new Director appointed by



May 24, 2005

Mr. David Owen  
County Attorney  
Lee County, Florida

owend@leegov.com

LEA ANN THOMAS, CHAIR  
Polk County

RICHARD W. WESCH  
Citrus County

ROBERT NANNI  
Osceola County

Dear Mr. Owen,

Attached please find a PDF document containing history, background and public education information regarding the Florida Governmental Utility Authority (FGUA). I hope this information answers any questions you have about the FGUA. You may also access the FGUA website at [www.fgua.com](http://www.fgua.com) for more information, although we are in the process of updating that site.

Please let me know if you have any questions. Robert Sheets and I are available at 850-681-3717.

Thank you.

Sincerely,

Tisha Crews Keller  
Communication Director, FGUA

**FGUA OPERATIONS OFFICE**

Government Services Group, Inc.  
Protegrity Plaza, Suite 203  
280 Wekiva Springs Road  
Longwood FL 32779

877/552-3482 Toll Free  
407/629-6900 Tel  
407/629-6963 Fax

# Florida Governmental Utility Authority

## BACKGROUND AND EDUCATION INFORMATION

### **HISTORY OF THE FGUA**

THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY WAS CREATED IN APRIL, 1999 BY INTERLOCAL AGREEMENT ENTERED INTO BY BREVARD, POLK, LEE, AND SARASOTA COUNTIES.

The Florida Governmental Utility Authority was created by the four initial counties to acquire five separate utility systems owned by Florida Cities Water Company in five different counties and the utility system owned by Poinciana Utilities, Inc., located in Polk and Osceola Counties. Both Florida Cities Water Company and Poinciana Utilities, Inc., were wholly owned subsidiaries of Avatar Utilities, Inc., a wholly owned subsidiary of Avatar Holdings, Inc. ("Avatar").

Avatar would not sell one of its separate utility systems without selling all utility systems which constituted its Florida utility assets. Thus, the collective structure of the Florida Governmental Utility Authority was the only cooperative mechanism available to the individual counties to achieve a public acquisition of these separate Avatar utility systems.

The initial member counties creating the Florida Governmental Utility Authority had differing motivations for their participation. For example, Lee County desired to immediately absorb the separate Avatar utility systems located within its jurisdiction into the Consolidated Lee County Water and Sewer Utility System. In contrast, Sarasota County desired to incorporate the separate Avatar utility system located within its jurisdiction into its consolidated utility system in the future once certain capital improvements were completed and the utility rates stabilized. As a further example, while Collier and Osceola Counties were each host to a separate Avatar utility system, both counties elected not to become a member of the Florida Governmental Utility Authority. Finally, Hillsborough elected to delay becoming a member until certain issues as to future water production facility ownership were reconciled with its obligation to the regional water authority for its region.

The home rule solution of the Florida Governmental Utility Authority allowed these seven counties to agree on a single authority charter that accommodated these different motivations and placed each separate Avatar utility system into a public ownership that was tailored to the individual local government preference.

## PURCHASE PRICE DETERMINATION

The methodology applied to determine an acceptable purchase price for each separate Avatar utility system was a cash flow analysis under governmental ownership based upon these guiding acquisition principles:

- The purchase price paid for a utility system's assets shall not cause a rate increase for any of the ratepayers as a result of the acquisition.
- The ratepayer of one utility system shall not subsidize the improvements or renewal and replacements required on the date of acquisition of any other system.
- The ratepayer of one system shall not subsidize the future improvements and expansions required by any other system. The cost of acquisition and the initial financing shall be allocated among each system based upon its relative size.
- The debt service to be paid shall be level over the term of the required bonds and shall not increase in the future as a result of the purchase price paid. (The amount paid to Avatar was the total of the purchase price individually determined for the six separate Avatar utility systems.)

The collective negotiation of these six separate Avatar systems by adherence to these guiding acquisition principles resulted in a lower and more favorable individual system purchase than could have been obtained through separate negotiations by each county. Adherence to the governmental cash flow methodology and these guiding principles of acquisition was ensured by the development of five-year cash flow projections under existing rates tested by conservative financial and engineering due diligence examinations.

## FINANCING PRINCIPLES APPLIED

The funds required to pay the purchase price for each separate Avatar utility system were generated by five separate bond issues issued by the Florida Governmental Utility Authority. Each bond issue was payable solely from the utility system revenues generated by the separate Avatar utility system acquired by the bond proceeds. No utility system revenues from a separate county utility system were pledged for the payment of the bonds issued to finance the acquisitions of another system.

Additionally, each host county was granted the right under the Interlocal Agreement creating the Authority and in the bond documents to acquire the utility system located within its jurisdiction by assuming the outstanding debt attributable to the bonds issued to acquire and improve such separate system.



Thus, each host county can acquire the utility system located within its jurisdiction without incurring any additional financing costs when, if ever, it desires to bring such utility system under direct county ownership. Additionally, such right to assume the outstanding debt attributable to such utility system ensures the integrity of the purchase price negotiations and a future acquisition decision will not escalate the financing costs or interest rate assumptions incorporated in the five-year cash flows relied upon in the purchase price determination.

## **THE GUA CONCEPT**

The creation of a Governmental Utility Authority or GUA is an innovative home rule mechanism available to a county or municipality to join together with other counties or municipalities to acquire, finance, own and operate a water or wastewater utility. Recent changes in Florida law have empowered counties and municipalities to create a separate legal entity Governmental Utility Authority or GUA to own, operate, and separately finance the purchase and operation of utility systems. See 163.01(7)(g)1, Fla. Stat. (Appendix A). Such changes allow counties and municipalities by interlocal agreement to create the charter to, own and jointly control a separate utility authority.

Although a GUA is not legally a special district, it is akin to an independent multi-county special district in that it is a separate legal entity with the limited public purpose to own and operate a public utility system. As with an independent special district, the GUA is governed by a board, composed of representatives appointed by the participating local governments or any other method of appointment agreed to in the interlocal agreement. Accordingly, the participating local governments exercise de facto control over the GUA pursuant to the terms of the interlocal agreement; however, the participating local governments do not incur any liability for GUA debt or operations.

Once created, Florida law provides that a Governmental Utility Authority can be contractually granted pursuant to an interlocal agreement all powers possessed by the member local governments except the power to tax or the power of eminent domain. For example, a Governmental Utility Authority can be granted by the member governments the power to set utility rates, levy special assessments and issue debt to finance and manage utility systems. Additionally, the member governments can also retain certain privileges in the interlocal agreement. For example, member governments can be granted the option of acquiring previously private utility systems from the GUA which option they can “warehouse” for an indefinite period of time. As a further example, the GUA charter can require local government approval of all capital improvements and consistency with local government comprehensive plans. Thus, the GUA ultimately becomes a multi-jurisdictional utility operation and management vehicle for the participating local governments.

## POTENTIAL MOTIVATIONS FOR THE FORMATION OF A GUA

### **Transition Mechanism to Public Ownership**

A GUA may provide a transition mechanism to place a private utility under public ownership until such time as the local government wishes to assume direct ownership.

The local government may not be prepared to immediately assume direct ownership of the private utility for a variety of public policy reasons. For example, the rates of the private utility may be substantially higher or lower than the comparable rates of the host local government. As another example, substantial improvements may be required for the private utility prior to consolidation with the utility system owned by the host local government. As a further example, the host local government may not have the management or operational staff capacity to assume the additional operation and management responsibilities presented by immediate ownership.

While the water and wastewater utility is warehoused with the GUA, the member local governments have direct control over utility operations, rates and capital improvements by appointing its governing board and through oversight assurances incorporated into the GUA charter. The member local governments may also be granted a future option to acquire the previously private utility facilities within their jurisdiction at a fixed purchase price that will not escalate because of customer growth.

### **Vehicle to Acquire Private Utilities**

A GUA may enable several local governments to acquire a private utility that each local government could not or does not wish to acquire on its own.

The reasons that any individual local government may be unable or unwilling to separately acquire a public utility on its own will vary. For example, the private utility may be located in several local government jurisdictions and thus a direct purchase by one local government may not be practicable. Additionally, the owner of the private utility may own separate systems located within several local government jurisdictions and refuse to sell one without selling all. The GUA concept enables several local governments to band together to finance the acquisition, own and operate a private utility system.

**Sale of Local Government Utility to a GUA** A GUA also represents an available home rule solution to a local government that desires to sell its utility system at a purchase price supported by existing rates. The cash received, after payment of outstanding debt, can be applied by the local government: to stabilize utility rates or avoid an anticipated rate increase; to complete required capital improvements without the necessity of a utility rate increase; to credit the cash equity received to a reduction of future

utility customer charges; or to fund other essential services or improvements within the jurisdiction of the local government.

In a sale of a public utility to the GUA, the motivations of each member local government may differ. However, the collective mechanism of the GUA represents a home rule alternative to address the differing local government motivations.

Under the circumstances of a sale of a public utility owned by a local government to the GUA, federal tax regulations relating to the issuance of tax exempt debt requires that any future option to acquire by the local government that was the previous owner be for fair market value negotiated as an arms length transaction.

### **Vehicle for a Regional Consolidation of Public Utility System**

A GUA also represents a home rule vehicle for one or more local governments to combine public utility ownership and achieve operational and capacity efficiencies resulting from regional utility consolidation or to cooperate in the unified implementation of water supply, wastewater disposal or reuse distribution projects.

### **Economic Advantage of a GUA**

- The GUA provides a cooperative vehicle to acquire both small and large, private utilities, and offers the economic “bargaining power” and clout of a large-scale purchaser.
- The GUA provides a public ownership alternative in the event a local government desires to transfer ownership of its existing utility facilities for any reason including consolidation or rate stabilization or as a means to raise funds for required capital improvements.
- The GUA concept establishes a local system acquisition price structure for a private utility at the outset, thus avoiding unexpected future price increases when the local government’s acquisition decision is advantageous.
- The cooperative GUA acquisition strategy does not encumber the financial resources of local government.
- Unless and until any option to acquire is exercised, the assets and debt associated with the utility remain solely the responsibility of the GUA, not local government.
- Future system improvements can be financed on a tax-exempt basis, thus minimizing the impact upon system users.

- As an independent special purpose local government, the GUA can be vested with the power to impose special assessments by its charter, thus eliminating the financial restraint that plagues privately operated systems.
- The GUA maintains and capitalizes upon economies of scale resulting from centralized management, operations, and planning.

#### **Legal Advantages of a GUA**

- The GUA concept eliminates the constant threat of litigation between private utility operators and the local government.
- A shared legal agenda by all government members of the GUA diminishes costly redundancy in litigation and counsel.
- Elimination of Florida Public Service Commission regulation substantially reduces the expensive requirement of legal counsel and other consultants for regulatory proceedings.

#### **Management Advantages of a GUA**

- Reliability, efficiency and responsiveness in accounting, billing and customer service are promoted by centralized GUA management.
- Efficient, centralized construction management and planning offers broad-based water and wastewater expertise in required renovation, expansion and new construction projects.
- Centralized GUA management reduces confusion and a costly “learning curve” by using professional private management and operations contractors.
- Utility-related labor issues and personnel costs for local governments are eliminated because GUA supplies all personnel through contract with expert private providers.

## **FGUA PUBLIC EDUCATION INFORMATION (excerpted from marketing documents)**

### **THE FGUA: YOUR WATER SOURCE**

As a customer of the Florida Governmental Utility Authority (FGUA), you are the center of our business. A brief history of the utility system and how it works may help you understand just what that water service bill really means to your daily life.

The four main systems of the FGUA are Golden Gate, Poinciana, Lehigh Acres, and the Citrus Utility System. Depending on where you live, your water and wastewater come from one of these four systems.

The FGUA owns and maintains a total of 17 water treatment plants, 63 water wells, and over 650 miles of water mains. The Authority was formed in 1999 through an Interlocal Agreement between Brevard, Lee, Polk, and Sarasota counties. These four local governments wanted to make the best use of their common responsibilities and power to acquire, own, improve, operate, and maintain water and wastewater facilities. By forming the FGUA, these counties used resource sharing to provide drinking and wastewater service to their citizens at a lower cost and with more local management.

Since 1999, the counties making up the FGUA have changed. Today Citrus, Polk, Lee, Collier, and Osceola counties are the FGUA, joining resources to serve over 42,000 customers annually. The customer base and service area of the FGUA continues to grow. For example, the FGUA recently began operation of the Bellalago Water Treatment Plant (WTP) #6 in the Poinciana System and a high-tech reverse-osmosis treatment plant in the Golden Gate System will break ground in the first half of 2005. This growth translates into over \$300 million in assets overall—including over \$80 million in improvements to facilities since the FGUA's inception. The FGUA plans to make over \$121 million in additional improvements over the next five years.

A three-member Board of Directors governs the FGUA, with representatives from Polk, Citrus, and Osceola counties. These Board Members meet monthly to represent the member systems and establish policy on issues such as expansion, rates, environmental resource management, and long-range planning. Each Board Member is a county employee appointed by their local government. Their expertise in water and sewer utility management makes the Board a very important part of the FGUA structure. In addition, the Board works hard to make sure the FGUA serves your best interests.

The FGUA's mission focuses on providing critical water and sewer utility services to its customers. To combine the benefits of public ownership with private-sector efficiency, a contractor provides the day-to-day operations of FGUA facilities and management. Out-sourcing these responsibilities saves the FGUA—and, ultimately, the customers—valuable money since personnel, administrative, and other business costs are a fraction of the traditional costs. The system manager, who acts much like a local

administrator, provides overall management—including system management, financial services, and construction planning and supervision. Plant operation and customer service and billing are also provided via contract.

One of the main goals of the FGUA is water conservation—through consumer education and responsible system supervision. We work hard to implement all new technologies that help us use water more efficiently, investing in new technologies and proven water conservation methods such as reclaimed water, reverse osmosis techniques, and redundancy “looping” that shares resources between facilities. For example, the Solivita golf course in the Poinciana System uses 100% reclaimed water that is cleaned using advance wastewater treatment (AWT) to make it safe for public use.

The FGUA also produces water conservation materials for customers and offers facility tours. We recently released a school-based Lesson Plan Guide for teachers so children of all ages can begin to practice good environmental habits.

## THE FGUA BOARD: PUTTING YOU FIRST

The FGUA Board Members work hard to take care of your water needs. The Board is made up of local government representatives from participating counties, for a total of three regular members and three alternates.

The FGUA's monthly Board meetings rotate between system locations throughout the year. Board members review and approve all FGUA business matters, from contract work plan authorizations to rate changes and long-term plans. The System Manager and System Engineer attend each Board meeting, along with representatives from the FGUA's legal counsel, consulting engineers, and rate consultants. Each meeting includes a public comment period for FGUA customers to ask questions and comment on issues that are important to them.

All meetings are open to the public, and we encourage you to attend the meeting closest to you. The preliminary 2005 meeting schedule is set, but dates and locations may change. Please be sure to check our web site at [www.fgua.com](http://www.fgua.com) or give us a call at 877-FGUA (3482) before making travel plans. If you are interested in seeing a particular item on the Board's agenda, please contact Linda Schnauffer, Business Manager at (407) 629-6900.



## FLORIDA GOVERNMENTAL UTILITY AUTHORITY ADMINISTRATION

### **Board Members**

Lea Ann Thomas, Chairperson (863-534-6444)

Assistant County Administrator, Polk County

Richard W. Wesch (352-341-6561)

County Administrator, Citrus County

Robert Nanni (407-343-2388)

Administrator, Public Works Division, Osceola County

### **Alternates**

Polk: Greg Boettcher (863-298-4239)

Citrus: Ken Saunders (352-527-5211)

Osceola: Kathy Wall (407-343-6400)

### **System Management**

Robert E. Sheets, System Manager

CEO, Government Services Group, Inc.

FGUA Corporate Office (850-681-3717)

Charles L. Sweat, Director of Operations

Vice President, Government Services Group, Inc.

FGUA Operations Office (877-552-3482)

### **Contact**

FGUA Operations Office

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407-629-6900 T

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[www.fgua.com](http://www.fgua.com)

### **System Office & Customer Service Centers**

Golden Gate: 239-455-1853

Poinciana: 407-933-5302

Citrus Utility System: 352-746-2460

Lehigh Acres: 239-368-1615