Board of County Commissioners
Agenda Request 40

Date of Meeting: December 12, 2006
Date Submitted: December 6, 2006

To: Honorable Chairman and Members of the Board
From: Parwez Alam, County Administrator
Alan Rosenzweig, Assistant County Administrator
Tony Park, Public Works Director
Subject: Conduct the First and Only Public Hearing Regarding the County's Intent to Use the Uniform Method of Collection for the Purpose of Collecting a Readiness to Serve Charge in Killearn Lakes Plantation Units 1 and 2 and Approval of Resolution

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Statement of Issue:
Conduct the first and only public hearing regarding the County's intent to use the Uniform Method of Collection of the purpose of collecting a readiness to serve charge in Killearn Lakes Plantation Units 1 and 2 and adopt the associated Resolution (Attachment #1).

Background:
As reflected in Attachment #2, the City intends to exercise its right under Section 4, paragraph 7 of the May 2005 Killearn Lakes Interlocal Agreement between the City and the County to levy a Readiness to Serve Charge to all properties in Killearn Lakes Plantation Subdivision, Units 1 and 2 (Attachment #3).

Analysis:
According to the City, the Readiness to Serve charge is a minimum charge that applies to all properties contained within the service area. The assessment is intended to recover the City's costs associated with providing treatment capacity for all properties to which City sewer is available, costs of operating and maintaining the City's collection system, and other costs incurred in ensuring that the City's sewer system is ready to serve when customers choose to connect.

The method to collect this charge will be the Uniform Method of Collection; meaning, the charge will be included as part of the annual tax bill. In accordance with Florida Law, the County must adopt the attached resolution and notify the Property Appraiser and Tax Collector by January 10, 2007 in order to utilize the uniform method. An additional public hearing regarding the setting of the rate will be conducted next summer. A notice will be sent to all effected owners prior to the hearing.

Based on current estimates provided by the City, the charge will be approximately $196 annually per property.

The Board, at its regularly scheduled meeting of November 14, 2006, voted to schedule a public hearing and directed the public hearing be scheduled for December 12, 2006. Notice of the public hearing has been timely advertised on four consecutive weeks prior to the public hearing being conducted.

Options:
1. Conduct the first and only public hearing regarding the County's intent to use the Uniform Method of Collection to the purpose of collecting a readiness to serve charge in Killearn Lakes Plantation Units 1 and 2 and adopt the associated Resolution.
2. Conduct the first and only public hearing regarding the County's intent to use the Uniform Method of Collection to

e purpose of collecting a readiness to serve charge in Killearn Lakes Plantation Units 1 and 2 and do not adopt the associated Resolution.
Board direction.

ecommendation:
ption #1

ttachments:

1. Resolution authorizing the uniform method of collection
2. October 31, 2006 Letter from the City of Tallahassee
3. Interlocal Agreement with the City of Tallahassee

RESOLUTION 06-_____

RESOLUTION OF INTENT TO UTILIZE THE UNIFORM METHOD OF COLLECTING SPECIAL ASSESSMENTS

WHEREAS, Leon County has completed construction of a sanitary sewer collection system in Killearn Lakes Plantation Subdivision, Units I and II; and

WHEREAS, the City of Tallahassee upon acceptance of the sanitary sewer collection system in Killearn Lakes Plantation Subdivision, Units I and II, shall maintain and operate the sanitary sewer collection system in perpetuity; and

WHEREAS, in May of 2005, the City of Tallahassee and Leon County entered into an Interlocal Agreement, which among other things, provided that the City could levy a Readiness to Serve Charge to all property located in Killearn Lakes Plantation Subdivision, Units I and II; and

WHEREAS, the City and the County believe that the sanitary sewer collection system will be ready for acceptance by the City, and sanitary sewer service will become available to properties located in Killearn Lakes Plantation Subdivision, Units I and II, prior to January 1, 2007; and

WHEREAS, Section 4, paragraph 7 of the Interlocal Agreement by and between Leon County and the City of Tallahassee, dated May 10, 2005, offers the City the right to require that the County levy a Readiness to Serve Charge to all properties in Killearn Lakes Plantation Subdivision, Units I and II; and

WHEREAS, the City has exercised its rights under Section 4, paragraph 7 of the Interlocal Agreement dated May 10, 2005, commencing January 1, 2007; and

WHEREAS, the Board of County Commissioners has determined that the properties which are specially benefited by such improvements will be equitably assessed the costs of providing such services and improvements; and

WHEREAS, the proposed assessment is intended to recover the City's costs associated with providing treatment capacity for all properties to which the City sewer is available, costs of operating and maintaining the City's collection system, and other costs incurred in ensuring that the City's sewer system is ready to serve such customers when they choose to connect; and

WHEREAS, Leon County has published its intent to utilize the Uniform Method for Levying, Collecting and Enforcing such assessments and future Assessments, pursuant to Section 197.3632, Florida Statutes, weekly in a paper of general circulation within Leon County for four consecutive weeks preceding the hearing; and

WHEREAS, Leon County wishes to utilize the Uniform Method for the Levy, Collection and Enforcement of non-ad valorem assessments for properties located in Killearn Lakes Plantation Subdivision, Units I and II, established pursuant to special law, general law, or municipal or county ordinance; and

WHEREAS, Leon County wishes to utilize the Uniform Method for the Levy, Collection, and Enforcement of non-ad valorem assessments for properties located in Killearn Lakes Plantation Subdivision, Units I and II to be imposed pursuant to special law, general law, or municipal or county ordinance in the future.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Leon County, Florida, assembled in regular session this 12th day of December, 2006, pursuant to Chapter 197, Florida Statutes, and hereby states its intention to utilize the Uniform Method of levying and collecting all such assessments and hereby finds it in the best interest of Leon County, to levy, collect, and enforce all non-ad Valorem assessments imposed upon properties

located in Killearn Lakes Plantation Subdivision, Units I and II, in the future pursuant to Chapter 197, Florida Statutes. Further, the Board of County Commissioners finds that those properties located within Killearn Lakes Plantation Subdivision, Units I and II, shall be subject to the levy, collection, enforcement of non-ad Valorem assessments, to recover the City of Tallahassee's costs associated in providing treatment capacity for all property to which city sewer is available, costs of operating and maintaining the City sewage collection system, and other costs incurred in ensuring the City's sewer system is ready to serve such customers property within Killearn Lakes Plantation Subdivision, Units I and II, when said customers choose to connect to the City sewer system.

Proposed, presented and passed by the Board of County Commissioners of Leon County, Florida, this 12th day of December, 2006.

LEON COUNTY, FLORIDA

BY:_____
C. E. DePuy, Jr., CHAIRMAN
BOARD OF COUNTY COMMISSIONERS

ATTESTED BY:

BOB INZER, CLERK OF THE COURT
LEON COUNTY, FLORIDA

BY:_____

APPROVED AS TO FORM:

COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA

BY:_____
HERBERT W.A. THIELE, ESQ.
COUNTY ATTORNEY

NOTICE

Notice is hereby given, pursuant to Section 197.3632(3), Florida Statutes, that the Board of County Commissioners of Leon County, Florida, intends to utilize the Uniform Method of levy, collection, and enforcement of non-ad valorem assessments for the purpose of collecting a Readiness to Serve Charge assessment for all real property located in the Killearn Lakes Plantation Subdivision, Units 1 & 2. The assessment is intended to recover the City of Tallahassee's costs associated with providing treatment capacity for all property in Killearn Lakes Plantation Subdivision, Units 1 and 2, to which City sewer is available, costs of operating and maintaining the City's collection system, and other costs incurred in ensuring that the City's sewer system is ready to serve when customers choose to connect.

Notice is also hereby given that the Board of County Commissioners of Leon County, Florida, will conduct a public hearing on December 12, 2006, at 6:00 p.m., or as soon thereafter as such matter may be heard, at the County Commission Chambers, 5th Floor, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida, to consider utilizing the Uniform Method of levy, collection and enforcement of non-ad valorem assessments for the purpose of collecting a Readiness to Serve Charge assessment for all real property located in the Killearn Lakes Plantation Subdivision, Units 1 & 2, as described above.

All interested parties are invited to present their comments at the public hearing at the time and place set out above.

Anyone wishing to appeal the action of the Board with regard to this matter will need a record of the proceedings and should ensure that a verbatim record is made. Such record should include the testimony and evidence upon which the appeal is based, pursuant to Section 286.0105, Florida Statutes.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing a special accommodation to participate in this proceeding should contact Christine Coble or Facilities Management, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida 32301, by written request at least 48 hours prior to the proceeding. Telephone: 606-5300 or 606-5000; 1-800-955-8771 (TDD), or 1-800-955-8770 (Voice), or 711 via Florida Relay service.

Advertise: November 14, 21, 28, 2006
December 5, 2006

OFFICE OF THE CITY ATTORNEY

Hand Delivery

October 31, 2006

Patrick T. Kinni, Esquire
Senior Assistant County Attorney
301 S. Monroe Street, Suite 202
Tallahassee, FL 32301

Re: Interlocal Agreement for Sewer Service - Killearn Lakes Plantation Units 1& 2

Dear Mr. Kinni:

We understand that the County is nearing completion of the sanitary sewer collection system in Killearn Lakes Plantation Subdivision, Units 1 and 2. Based on the current status of construction, City staff believes the system will be ready for acceptance by the City, and sanitary sewer service will become available to properties located in that area, prior to January 1, 2007.

It is the City's intent to exercise its right, pursuant to Section 4, paragraph 7 of the Interlocal Agreement dated May 10, 2005, to levy a Readiness to Serve Charge to all properties in Killearn Lakes Plantation Subdivision, Units 1 and 2, beginning January 1, 2007. Consistent with the Readiness to Serve Charge applied with respect to properties within other City service areas, the assessment is intended to recover the City's costs associated with providing treatment capacity for all properties to which City sewer is available, costs of operating and maintaining the City's collection system, and other costs incurred in ensuring that the City's sewer system is ready to serve such customers when they choose to connect.

If you have any questions, please feel free to contact me at 891-8554.

Sincerely,

Patrick E. Hurley
Assistant City Attorney

RECEIVED
06 OCT 31 PM 2:09
LEON COUNTY
ATTORNEY'S OFFICE

cc: Jim English, City Attorney
Anita Favors Thompson, City Manager
Ricardo Fernandez, Assistant City Manager, Utility Services
Jim Oskowis, General Manager, Water Utility
Reese Goad, Utility Accounting Administrator

00 S. Adams St. Box A-5
Tallahassee, FL 32301-1731
850/891-8554 - 850/891-8573 fax
TDD: 711- talgov.com

John R. Marks, III
Mayor
Anita R. Favors Thompson
City Manager
Andrew D. Gillum
Commissioner
Gary Herndon
City Treasurer-Clerk
Allan J. Katz
Commissioner
James R. English
City Attorney
Debbie Lightsey
Commissioner
Sam M. McCall
City Auditor
Mark Mustian
Commissioner

Interlocal Agreement for the Provision of Sewer Service to Killearn Lakes Plantation Subdivision Units 1 and 2

THIS AGREEMENT, made and entered into this 10th day of May, 2005, by and between the CITY OF TALLAHASSEE, a Florida municipal corporation (hereinafter referred to as "City"), and LEON COUNTY, a political subdivision of the State of Florida (hereinafter referred to as "County").

WITNESSETH

WHEREAS, the County has determined that it will be the sole local governmental entity to authorize the planning, construction and operation of water systems and sewage disposal systems within the unincorporated area of the County and will provide such services when it deems it appropriate; and

WHEREAS, the County has recognized a long-standing problem in Killearn Lakes Plantation Subdivision Units 1 and 2 that septic sewage treatment systems do not function properly due to soil and groundwater conditions and has implemented and funded a construction project to construct a sewage collection system to serve that area; and

WHEREAS, the County has determined that it is in the best interests of the citizens of Killearn Lakes Plantation Subdivision Units 1 and 2 that sewer service be provided to the residences in that area, by the City of Tallahassee; and

WHEREAS, the County has specifically determined that it is in the best interests of the citizens of Killearn Lakes Plantation Subdivision Units 1 and 2 if City is granted an exclusive sewer franchise to serve Killearn Lakes Plantation Subdivision Units 1 and 2, with conditions thereon; and

NOW, THEREFORE, in consideration of the following mutual promises and covenants, and other good and valuable consideration the sufficiency of which is being acknowledged, the City and County hereby agree as follows:

Section 1. Effective Date. This Agreement shall commence upon full execution hereof.

Section 2. Grant of Franchise. The County does hereby grant unto the City, and the City hereby accepts, an exclusive franchise to provide sewer service to all properties located in Killearn Lakes Plantation Subdivision Units 1 and 2, not previously franchised or served by existing sanitary sewer providers, this franchise being specifically subject to the terms and conditions contained in this Agreement.

Section 3. Responsibilities of County.

1. The County shall construct a Sewage Collection System to serve Killearn Lakes Plantation Units 1 and 2. The Sewage Collection System shall be based on "low pressure sewer" design which will convey sewage first to conventional central pumping stations and then to a

connection point on the existing City System to be mutually agreed upon by the City and County.

2. Upon completion of the Sewage Collection System the County shall convey ownership of the completed system to City for perpetual operation and maintenance. The City shall accept ownership of the Sewage Collection System and such acceptance shall not be unreasonably withheld.

3. Should the City exercise its rights under Section 4, paragraph 7 herein, then the County agrees to levy, impose and collect pursuant to Section 125.01, F.S., in accordance with Section 197.3632, F.S., a special assessment for single family lots located in Killearn Lakes Plantation Units 1 and 2, for the purpose of providing a mechanism for the collection of annual fees for sewer service, which are limited to a Customer Charge or a Readiness To Serve Charge.

Section 4. Responsibilities of City.

1. The City shall utilize the completed Sewage Collection System and any other City resources necessary to provide sewer service to all properties within the Franchise area. City shall not be responsible for any of the provisions of this Agreement until such time as City has accepted ownership of the completed Sewage Collection System. The City will not unreasonably withhold acceptance of ownership of the completed Sewage Collection System.

2. The City shall participate in the review of the design and construction of the system to insure compliance with City standards. Such review shall be timely in recognition of the County commitment to have service available as soon as possible.

3. The City agrees to provide financing to individual homeowners for costs the homeowner is required to pay for the connection to the City Sewer System under terms and conditions consistent with City policy at a rate no higher than being charged any other City customer.

4. All City policies, standards, procedures, regulations, rates, fees, and charges for sewer services shall be the same, inside and outside City's corporate limits, with the exception of the Rebate Policy and as more specifically set forth herein. The City shall have the exclusive right to manage and operate its Sewer System in the unincorporated area except as limited by this Agreement.

5. Nothing in this Agreement shall prevent the City from using its general revenues to provide any of its services or financial assistance to any citizen or property owner inside Killearn Lakes Plantation Units 1 and 2.

6. The City may assess a surcharge of up to 50% on sewer services in accordance with Florida Statutes commencing no sooner than October 1, 2005. Upon termination of the Parks and Recreation Agreement entered into by and between the parties on May 10, 2005 the provisions of this Section 4. paragraph 6. shall expire.

7. The City may levy a Customer Charge or a Readiness to Serve Charge for all properties in Killearn Lakes Plantation Subdivision Units 1 and 2 from the time that the City accepts ownership of the Sewage Collection System and when service first becomes available to properties located within the franchise area.

8. The City shall provide to the County, at its sole expense, and within that time designated by the County, all information and services necessary and consistent with the provisions of Section 197.3632, F.S., in any year in which the special assessment will be levied, imposed or collected pursuant to Section 3, paragraph 3 herein.

9. Nothing herein shall be interpreted to require the City to assume responsibility for individual grinder pumps.

Section 5. Terms of Service.

1. Pursuant to Florida Statutes, any resident with a failed septic system shall be required to connect to the Sewer System.

2. The County shall not issue any permits for new construction unless the structure is connected to the City Sewer System.

3. Any resident desiring to connect to the Sewer System can do so at any time that service is available and that no resident will be required to connect unless as required above.

4. The City will waive the tap-fee for all residents that connect to the Sewer System during the first two years that the system is in operation. Tap fees in effect at the time will be charged for all residents connecting after that time period has elapsed.

5. The City systems charges shall be paid by all residents that connect to the system.

Section 6. Dispute Resolution.

1. The Parties shall attempt to resolve any disputes that arise under this Agreement in good faith and in accordance with this Section. The provisions of the "Florida Governmental Conflict Resolution Act" shall not apply to disputes under this Agreement, as an alternative dispute resolution process, is hereby encompassed within Section 6. The aggrieved Party shall give written notice to the other Party, setting forth the nature of the dispute, date of occurrence (if known), and proposed resolution, hereinafter referred to as the "Dispute Notice".

2. The appropriate City and County department heads shall meet at the earliest opportunity, but in any event within 10 days from the date the Dispute Notice is received, to discuss and resolve the dispute. If the dispute is resolved to the mutual satisfaction of both, the department heads shall report their decision, in writing, to the City Manager and the County Administrator.

3. If the department heads are unable to reconcile the dispute, they shall report their impasse to the City Manager and the County Administrator who shall then convene a meeting at their earliest opportunity, but in any event within 20 days following receipt of the Dispute Notice, to attempt to reconcile the dispute.

4. If a dispute is not resolved by the foregoing steps within thirty (30) days after receipt of the Dispute Notice, unless such time is extended by mutual agreement of the Parties, then either Party may require the dispute to be submitted to mediation by delivering written notice thereof (the "Mediation Notice") to the other Party. The mediator shall meet the qualifications set forth in Rule 10.100(c), Florida Rules for Mediators, and shall be selected by the Parties within 10 days following receipt of the Mediation Notice. If agreement on a mediator cannot be reached in that 10-day period, then either Party can request that a mediator be selected by an independent conflict resolution organization, and such selection shall be binding on the Parties. The costs of the mediator shall be borne equally by the Parties.

5. If an amicable resolution of a dispute has not been reached within 60 calendar days following selection of the mediator, or by such later date as may be mutually agreed upon by the Parties, then such dispute may be referred to binding arbitration by either Party. Such arbitration shall be conducted in accordance with the Florida Arbitration Code (Chapter 682, Florida Statutes).

6. Such arbitration shall be initiated by delivery, from one Party (the "Claimant") to the other (the "Respondent"), of a written demand therefor containing a statement of the nature of the dispute and the amount, if any, involved. The Respondent, within ten (10) days following its receipt of such demand, shall deliver an answering statement to the Claimant. After the delivery of such statements, either Party may make new or different claims by providing the other with written notice thereof specifying the nature of such claims and the amount, if any, involved.

7. Within ten (10) days following the delivery of such demand, each Party shall select an arbitrator and shall deliver written notice of that selection to the other. If either Party fails to select an arbitrator within such time, the other Party may make application to the court for such appointment in accordance with the Florida Arbitration Code. Within ten (10) days following delivery of the last of such written notices, the two arbitrators so selected shall confer and shall select a third arbitrator. Each of the arbitrators so appointed shall have experience in local government and/or utility related issues.

8. The arbitration hearing shall be commenced in Leon County, Florida within sixty (60) days following selection of the third arbitrator. Except as may be specifically provided herein, the arbitration shall be conducted in accordance with Rules R-23 – R-48, of the Commercial Arbitration Rules of the American Arbitration Association.

Section 7. Indemnification. To the extent permitted by law and subject to the limitations, conditions, and requirements of Section 768.28, Florida Statutes, which the Parties do not waive, each Party agrees to indemnify, defend and hold harmless the other Party, their officials, officers, and employees, from and against all suits, liabilities, damages, costs and expenses, resulting from

or arising out of any acts or omissions by the indemnifying Party, or its officials, officers, or employees, relating in any way to this Agreement. Further, the City agrees to indemnify, defend and hold harmless the County, its officials, officers, and employees, from and against all suits, liabilities, damages, costs and expenses, resulting from or arising out of any and all challenges to any special assessment imposed pursuant to Section 3, paragraph 3 herein.

Section 8. General Provisions.

1. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action to enforce any of the provisions of this Agreement must be maintained in Tallahassee, Leon County, Florida.

2. Waiver. Failure to insist upon strict compliance with any term, covenant or condition of this Agreement shall not be deemed a waiver of it. No waiver or relinquishment of a right or power under this Agreement shall be deemed a waiver of that right or power at any other time.

3. Modification. This Agreement shall not be extended, changed or modified, except in writing duly executed by the Parties hereto.

4. Binding Effect. This Agreement shall be binding upon the successors and, subject to below, assigns of the Parties hereto.

5. Assignment. Because of the unique nature of the relationship between the Parties and the terms of this Agreement, neither Party hereto shall have the right to assign this Agreement or any of its rights or responsibilities hereunder to any third Party without the express written consent of the other Party to this Agreement, which consent shall not unreasonably be withheld.

6. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the matters contained herein, and all prior agreements or arrangements between them with respect to such matters are superceded by this Agreement.

7. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

8. Ambiguity. This Agreement has been negotiated by the Parties with the advise of counsel and, in the event of an ambiguity herein, such ambiguity shall not be construed against any Party as the author hereof.

9. Public Bodies. It is expressly understood between the Parties that the City is a duly incorporated municipal corporation of the State of Florida and that the County is a political subdivision of the State of Florida. Nothing contained herein shall be construed as a waiver or relinquishment by either of the Parties to claim such exemptions, privileges or immunities as may be provided to that Party by law.

10. Force Majeure. A Party shall be excused from performance of an obligation under this Agreement to the extent, and only to the extent, that such performance is affected by a "Force Majeure Event" which term shall mean any cause beyond the reasonable control of the Party affected, except where such Party could have reasonably foreseen and reasonably avoided the occurrence, which materially and adversely affects the performance by such Party of its obligation under this Agreement. Such events shall include, but not be limited to, an act of God, disturbance, hostility, war, or revolution; strike or lockout; epidemic; accident; fire; storm, flood, or other unusually severe weather or act of nature; or any requirements of law.

11. Cost(s) and Attorney Fees. In the event of litigation between the Parties to construe or enforce the terms of this Agreement or otherwise arising out of this Agreement, the prevailing Party in such litigation shall be entitled to recover from the other Party its reasonable costs and attorneys fees incurred in maintaining or defending subject litigation. The term litigation shall include appellate proceedings.

12. Severability. It is intended that each Section of this Agreement shall be viewed as separate and divisible, and in the event that any Section, or Party thereof, shall be held to be invalid, the remaining Sections and parts shall continue to be in full force and effect.

13. Subject to Appropriation. All payment obligations of the Parties as set forth herein shall be subject to appropriation of funding therefore by the applicable legislative bodies; however, failure to appropriate funding adequate to meet such payment obligations shall be deemed a default under this Agreement.

14. Exceptions to Agreement. All provisions of Chapter 18, of the Leon County Code of Laws, not in conflict with the provisions herein, shall remain in full force and effect. The Water and Sewer Agreement entered into by and between Leon County and the City shall not apply and shall have no effect upon the terms and conditions of this Agreement, nor the Franchise granted herein.

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representative, have executed this Interlocal Agreement for the Provision of Sewer Service to Killearn Lakes Plantation Subdivision Units 1 and 2 as of the date written above.

LEON COUNTY, FLORIDA

By: _____

CLIFF THAELL, Chairman
of the Board of County Commissioners

CITY OF TALLAHASSEE, FLORIDA

By: _____

JOHN R. MARKS, III, Mayor
of the City of Tallahassee

25

ATTESTED TO:

By:

ROBERT B. INZER, Clerk
Leon County, Florida

ATTESTED TO:

By:

GARY HERNDON
City Treasurer-Clerk

APPROVED AS TO FORM:
By:

HERBERT W.A. THIELE, Esq.
COUNTY ATTORNEY

APPROVED AS TO FORM:
By:

JAMES R. ENGLISH, Esq.
CITY ATTORNEY

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