

106-1373

County Contract No. 2828

**LEON COUNTY
 CONTRACT ROUTING SLIP**

Original
 Renewal
 Amendment

Division Contact: Patrick T. Kinni, Esq. Phone # 606-2500

Department/Division: County Attorney

Contractor: City of Tallahassee

Address 300 S. Adams Street

City, State, Zip Tallahassee, FL 32301

Contract Period: From upon acceptance by the court

Renewal Periods: Number _____ Term _____

Contract Total \$ Amount: _____

<u>Contract Type:</u>	<u>Procurement Method:</u>	<u>Forms Required:</u>
<input type="checkbox"/> Conservation Easement	<input type="checkbox"/> Bid*	<input type="checkbox"/> Public Entity Crimes Statement
<input type="checkbox"/> Construction	<input type="checkbox"/> RFP*	<input type="checkbox"/> Performance Bond
<input type="checkbox"/> Continuing Supply	<input type="checkbox"/> Sole Source	<input type="checkbox"/> Materials & Payment Bond
<input type="checkbox"/> Deed	<input type="checkbox"/> Gov't Entity	<input type="checkbox"/> Warranty Bond
<input type="checkbox"/> Interlocal Agreement	<input type="checkbox"/> Other (Explain Below)	<input type="checkbox"/> Certification Regarding Debarment
<input type="checkbox"/> Grant		
<input type="checkbox"/> Lease	<u>Insurance Certificates:</u>	
<input type="checkbox"/> Other Services	<input type="checkbox"/> General Liability	*Bid/RFP # _____
<input type="checkbox"/> Performance Agreement	<input type="checkbox"/> Professional Liability	Agenda Date <u>9/12/06</u>
<input type="checkbox"/> Professional Services	<input type="checkbox"/> Workers' Compensation	
<input type="checkbox"/> Purchase	<input type="checkbox"/> Errors & Omissions	
<input type="checkbox"/> Other (Explain below)	<input type="checkbox"/> Automobile Coverage	

Comments: please return 3 copies to County Atty

Routing:

<u>Required</u>	<u>Initials</u>	<u>Date</u>	
_____	_____	_____	Originating Division <u>County Attorney</u>
_____	_____	_____	Purchasing
_____	_____	_____	Minority/Women Business Enterprise
_____	_____	_____	Risk Management
_____	_____	_____	Grants Coordinator
x	<i>[Signature]</i>	<u>12/15/06</u>	County Attorney's Office
_____	_____	_____	County Administrator's Office
x	<i>[Signature]</i>	_____	Chairman, BCC
x	<i>[Signature]</i>	<u>12/15/06</u>	Clerk's Office (Finance)

Return completed documents to: County Attorney

SETTLEMENT AGREEMENT

This Settlement Agreement made, executed and entered into this 14 day of DEC, 2006, by and between Leon County, Florida, a political subdivision of the State of Florida (hereinafter referred to as "County") and the City of Tallahassee, a Florida municipal corporation (hereinafter referred to as the "City").

WITNESSETH:

WHEREAS, the dispute giving rise to this Settlement Agreement involves the certain annexation and contraction of parcels of property (hereinafter "Annexation") located in an area of Leon County known as "Welaunee Plantation" and, more specifically known as, "Welaunee Phase III"; and

WHEREAS, Policy 2.1.4 of the Intergovernmental Coordination Element of the 2010 Tallahassee-Leon County Comprehensive Plan requires that certain procedures be followed when the County objects to any annexation proposed by the City; and

WHEREAS, after having reviewed the proposed Annexation, the County objected to the Annexation for reasons including, but not limited to, not being in compliance with the requirements of Chapter 171, Florida Statutes; and

WHEREAS, on December 6, 2005, the City of Tallahassee adopted Ordinance Nos. 05-0-73, Welaunee Contraction Ordinance and 05-0-84AA, Voluntary Annexation of Welaunee Phase III Ordinance, annexing the subject parcels of property comprising of an approximate 542 acres of the Welaunee Plantation, allegedly without having first complied with the procedural requirements of Policy 2.1.4 of the Intergovernmental Coordination Element of the Comprehensive Plan; and

WHEREAS, on December 30, 2005, Leon County filed an Initial Complaint for Declaratory Judgment and Injunctive Relief pursuant to Chapters 86 and 163, Florida Statutes, to challenge the subject Annexation; and

WHEREAS, Chapter 164, Florida Statutes, requires that disagreements between governmental entities be subject to the Florida Conflict Resolution Act; and

WHEREAS, the County and the City engaged in dispute resolution pursuant to and in accordance with Chapter 164, Florida Statutes, and desiring to resolve the differences between the City and the County in regards to the subject Annexation, have agreed to resolve the controversy in the following manner.

NOW THEREFORE, in consideration of the preceding recitals and covenants and promises set forth herein, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties do hereby agree as follows:

Section I. Effective Date

This Agreement shall be effective upon the date of acceptance by the Court. The Court shall retain jurisdiction in this matter to enforce the provisions of this Settlement Agreement, if and where necessary.

Section II. City of Tallahassee Resolution No. 06-R-44

The Parties have entered into an Agreement as evidenced by the City of Tallahassee's Resolution No. 06-R-44, attached hereto and incorporated herein as if fully set forth as Exhibit 1.

Section III. Voluntary Dismissal

Upon the Court's acceptance of this Agreement, the County shall dismiss the subject lawsuit styled *Leon County, Florida v. City of Tallahassee*, Case No. 05-CA-3164, with prejudice, each party agreeing to bear its own costs and attorney's fees, if any.

Section IV. Enforcement

If either Party fails to comply with any of the terms and conditions set forth in this Agreement or defaults in any of its obligations hereunder and shall fail, within ninety (90) calendar days after written notice from the other Party, to correct such defaults or non-compliance, the non-defaulting Party may, at its option, forthwith bring an enforcement proceeding against the other Party after Section V provisions have been complied with. The prevailing Party in any such enforcement proceeding shall be entitled to a reasonable attorney's fee and costs.

Section V. Dispute Resolution

a. 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 V. 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".

b. 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.

c. 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 communicate at their earliest opportunity regarding the dispute, but in any event within 20 days following receipt of the Dispute Notice, to attempt to reconcile the dispute.

d. 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.

e. 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).

f. 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.

g. 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 stormwater issues.

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 VI. 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 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.

Section VII. General Provisions

a. 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:

b. 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.

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

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

e. 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.

f. 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.

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

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

i. 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.

j. 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.

k. 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.

l. 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.

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representative, have executed this Settlement Agreement as of the date first written above.

LEON COUNTY, FLORIDA
By: [Signature]
C. E. DePuy, Jr., Chairman
of the Board of County Commissioners

CITY OF TALLAHASSEE,
By: [Signature]
JOHN R. MARKS, III, Mayor
of the City of Tallahassee

ATTESTED TO:
By: [Signature]
ROBERT B. INZER, Clerk
Leon County, Florida



ATTESTED TO:
By: [Signature]
GARY HERNDON
City Treasurer-Clerk

APPROVED AS TO FORM:
By: [Signature]
HERBERT W.A. THIELE, Esq.
COUNTY ATTORNEY

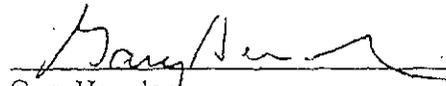
APPROVED AS TO FORM:
By: [Signature]
JAMES R. ENGLISH, Esq.
CITY ATTORNEY



STATE OF FLORIDA,
COUNTY OF LEON,

I, GARY HERNDON, City Treasurer-Clerk of the City of Tallahassee, Florida, hereby certify that the enclosed document constitutes a true and correct copy of City Resolution No. 06-R-44 adopted by the City Commission on November 21, 2006 as the same appears on file among the records of my Office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Tallahassee, Florida, this 13th day of December, 2006, A.D.


Gary Herndon
City Treasurer-Clerk



CITY HALL
300 South Adams Street
Tallahassee, FL 32303-1731
850-891-0000
TDD: 711 • talgov.com

JOHN R. MARKS, III
Mayor

ANITA F. THOMPSON
City Manager

MARK MUSTIAN
Mayor Pro Tem

JAMES R. ENGLISH
City Attorney

ANDREW D. GILLUM
Commissioner

GARY HERNDON
City Treasurer-Clerk

ALLAN J. KATZ
Commissioner

SAM M. McCALL
City Auditor

DEBBIE LIGHTSEY
Commissioner

RESOLUTION NO. 06-R-44

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF TALLAHASSEE, FLORIDA, PROVIDING A PROCESS FOR REVIEW BY LEON COUNTY OF DEVELOPMENT ON WELAUNEE PROPERTY ANNEXED INTO THE CITY ON DECEMBER 6, 2005

WHEREAS, on December 6, 2005, the City Commission of the City of Tallahassee met in regular session and held public hearings on Ordinance No. 05-O-73, a contraction ordinance, and Ordinance No. 05-O-84, an ordinance approving the voluntary annexation of approximately 542 acres, a portion of a larger parcel previously known as the Welaunee plantation; and

WHEREAS, prior to December 6, 2005, the Leon County Board of County Commissioners made it known that it objected to the annexation; and

WHEREAS, following the approval of Ordinance No. 05-O-84 and Ordinance No. 05-O-73 by the City, the Leon County Board of County Commissioners filed a complaint against the City in the Second Judicial Circuit in Leon County, Florida, against the City of Tallahassee, challenging the Welaunee annexation, styled as Leon County, Florida, vs. City of Tallahassee, Case No. 2005-CA-3164; and

WHEREAS, Leon County instituted proceedings under Chapter 164, Florida Statutes (2005), related to resolution of Governmental Disputes; and

WHEREAS, as a result of those proceedings, the parties have come to an agreement; and

WHEREAS, the City wishes to outline the agreement in this Resolution; and

WHEREAS, upon approval of this resolution, a copy will be provided to the Leon County Board of County Commissioners with a request that the pending lawsuit, Case No. 2005-CA-3164, be dismissed forthwith, with prejudice, and that this Resolution be included in an order dismissing the lawsuit.

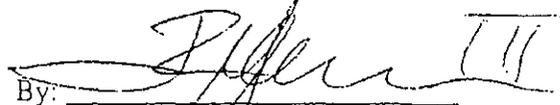
NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Tallahassee assembled in regular session this 21st day of November, 2006, as follows:

1. Prior to final development approval for any development activity on the property annexed into the City under Ordinance No. 05-O-84 (Welaunee Toe Annexed Property), approved December 6, 2005, the City shall provide the development application to Leon County staff for review and comment.
2. No more than 20 days after the development application is provided to Leon County staff, County staff may provide comments and recommendations to the City staff on the proposed development activity on the Welaunee Toe Annexed Property, unless the County requests additional time for said review. Such comments and recommendations provided to the City by the County shall be made part of any final

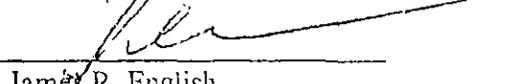
development order granting the Application, should the City and applicant agree to same. In the event that the City and applicant do not agree with any or all of the comments and recommendations of the County, a final development order shall not be granted by the City until after:

- a. The City Manager, County Administrator and applicant (or their designated representatives) have met to discuss the comments and recommendations in an effort to resolve the concerns raised by the County. This meeting shall occur with fifteen (15) days of the City's receipt of the County's initial comments unless the City, County and applicant agree to extend the period; should a resolution be found, the City may proceed to process and, as appropriate, issue a final development order; however
 - b. Should a resolution not be reached at the conclusion of the aforementioned meeting, the matter shall be agendaed for discussion at the next Mayor/Chair meeting in which meeting the applicant or its designated representative shall be allowed to participate. This meeting shall be scheduled as soon as practicable but in no event later than thirty (30) days after the meeting of the City Manager, County Manager and applicant. In the event that a satisfactory resolution to the issue is not resolved at the Mayor/Chair meeting, the City may proceed to process and, as appropriate, issue a final development order.
3. Prior to approval by the City of the Stormwater Facilities Master Plan (SFMP) for the Welaunee Toe, required by Policy 13.1.5[L], Tallassee-Leon County Comprehensive Plan, Leon County shall have a reasonable amount of time to review and comment on the SFMP.

PASSED AND ADOPTED BY THE City Commission of the City of Tallahassee this 21st day of November, 2006.

CITY OF TALLAHASSEE

By: _____
John R. Marks, III
Mayor

ATTEST:
By: 
Gary Herndon
City Treasurer-Clerk

APPROVED AS TO FORM:
By: 
James R. English
City Attorney