

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Agreement"), made and entered into this ____ day of _____ 2012, by and between **LEON COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida ("County") whose address is 301 S. Monroe St., Tallahassee, FL 32301, and the **CITY OF TALLAHASSEE**, a Florida municipal corporation ("City") whose address is 300 S. Adams St., Tallahassee, FL 32301. The effective date ("Effective Date") of this Agreement shall be the date upon which the last party executes this Agreement.

RECITALS

WHEREAS, the County owns that certain property located at 1515 Old Bainbridge Road, Tallahassee, Leon County, Florida (Parcel ID: 2126200140000) (the "Health Center Parcel") upon which are located the Roberts and Stevens Medical Center of the Leon County Health Department ("Health Center") and tobacco classroom addition ("Classroom"); and

WHEREAS, adjoining the Health Center Parcel is that certain property owned by the New Mt. Zion A.M.E. Church (Parcel ID: 212595 A0010) upon which is located its church facility (the "Mt. Zion Church Parcel"); and

WHEREAS, by virtue of the easement deed dated January 3, 1993 and recorded in the Official Records of Leon County, Florida (the "Official Records") at Book 1619, Page 638, the County was granted a right-of-way and perpetual easement over a portion of the Mt. Zion Church Parcel, as it existed at that time, for the purposes of drainage, including construction and maintenance of drainage facilities, and parking and ingress and egress activity (the "Church Parcel Easement"); and

WHEREAS, the County subsequently constructed a stormwater management facility within the easterly portion of the Church Parcel Easement (the "SWMF") and thereafter maintained the SWMF at its sole cost and expense pursuant to the County's maintenance obligation contained in the terms of the Church Parcel Easement; and

WHEREAS, in October 2010, as part of its April 2003 Frenchtown Watershed Stormwater Master Plan - Alternative 6C (the "Stormwater Master Plan"), the City acquired the easterly portion of the Mt. Zion Church Parcel by Warranty Deed recorded in Official Records Book 4174, Page 1442 (Parcel ID: 2126208100000) (the "SWMF Parcel"), subject to the Church Parcel Easement as it applies to the SWMF Parcel, including the SWMF constructed and maintained by the County; and

WHEREAS, the City desires to expand and improve the SWMF by acquiring 1.85 acres of the easterly portion of the Health Center Parcel (the “Expanded SWMF”), as more particularly described and depicted in Exhibit “A” attached hereto and made a part hereof (the “Transfer Parcel”); and

WHEREAS, the County has agreed to convey the Transfer Parcel to the City at no cost to the City in exchange for the City’s agreement to (i) assume the County’s obligation to maintain the SWMF as set forth in the Church Parcel Easement, (ii) provide stormwater capacity to the County in the Expanded SWMF as set forth herein, (iii) release and revoke the conservation easement that encumbers the portion of the Health Center Parcel lying within the Transfer Parcel, (iv) declare and deem the remaining portion of the Health Center Parcel to be a conforming property under the City’s land development regulations; provided, however, that any future development thereon, other than as provided in paragraph 3.d.ii below, must conform to the land development regulations in effect at the time of such future development, and (v) establish a construction buffer to protect an existing timber retaining wall.

NOW, THEREFORE, in consideration of the following mutual promises, covenants, and representations set forth herein, the sufficiency of which is being acknowledged, the County and the City hereby agree as follows:

1. The Recitals herein above are true and correct and by this reference are hereby incorporated into this Agreement.
2. The County agrees to convey the Transfer Parcel to the City in consideration for the City’s agreement to accept and abide by the terms and obligations set forth in this Agreement and to grant to the County the rights set forth herein. As such, the City and the County acknowledge and agree that there shall be no monetary consideration exchanged for the County’s conveyance of the Transfer Parcel to the City or the City’s acceptance of maintenance responsibilities for the SWMF.
3. In consideration for the County’s conveyance of the Transfer Parcel to the City, the City agrees to abide by the following terms and conditions with regard to the possession and use of the Health Center Parcel by the County and its successors and assigns:
 - a. The City agrees, at its sole cost and expense, to assume any and all responsibility for the obligations of the County under the Church Parcel Easement to the extent that it relates to the area acquired from the New Mount Zion A.M.E Church by that certain Warranty Deed recorded in Official Records Book 4174, Page 1442 (Parcel ID: 2126208100000), including but not limited to, maintaining the SWMF;

- b. At this time the Health Center Parcel and the Mt. Zion Church Parcel are in compliance with the Environmental Management Permit issued in 1993 for the parcel(s). Upon taking ownership of the Transfer Parcel, the City shall reserve stormwater capacity in the Expanded SWMF for the County to sufficiently accommodate the stormwater requirements of the 1993 Environmental Management Permit arising from the infrastructure, buildings, and other improvements existing on the Health Center Parcel on the Effective Date of this Agreement; and with regard to such reservation the City and the County further acknowledge and agree that:
 - i. the volume of such reserved stormwater capacity shall be no less than 28,750 cubic feet for the Health Center and 159 cubic feet the Classroom;
 - ii. the reservation of such stormwater capacity shall be reflected in the Facility Operating Permit Capacity Accounting Record; and
 - iii. upon the commencement of the City's operation of the Expanded SWMF, the County may, at the County's sole cost and expense, construct a properly sized storm drain system to the Expanded SWMF as approved by the City, and then the County may fill and grade the area currently dedicated for stormwater management purposes for the Classroom. The Classroom stormwater area may thereafter be utilized for any use or improvement consistent with the City's land development regulations;
- c. The City shall execute and deliver at Closing a Release, Revocation, and Quitclaim of Conservation Easement which shall effectively release and revoke the conservation easement recorded at Official Records Book 1645, Page 159 which currently encumbers the Health Center Parcel to the benefit of the City (the "Conservation Easement");
- d. The City acknowledges that the existing building and vehicular use areas lying within the remaining portion of the Health Center Parcel may, as a result of the City's acquisition of the Transfer Parcel, become nonconforming or further nonconforming with some development standards in the City's Land Development Code, including those contained in any permits previously approved by the City for the construction of improvements on the Health Center Parcel. Nonetheless, in acknowledgement of, and consideration for, the County's cooperation with the City in addressing stormwater problems in the general vicinity

of the Health Center Parcel, upon conveyance of the Transfer Parcel to the City, the Health Center Parcel, including the Classroom, the following provisions shall apply with regard to the existing building and vehicular areas located thereon:

- i. any such existing building and vehicular use areas which, because of the acquisition of the Transfer Parcel, do not comply with any development standard of the City's Land Development Code, including those contained in any permits previously approved by the City for the construction of improvements on the Health Center Parcel, shall not be required to be reconstructed to meet such development standards and the remaining portion of the Health Center Parcel shall be deemed thereafter to be a conforming property;
 - ii. any such existing building and vehicular use areas which are destroyed after the conveyance of the Transfer Parcel to the City, other than by voluntary demolition, to an extent of less than 60 percent of the value at the time of destruction, may be restored but only to the pre-destruction size and location; and, in the case of voluntary demolition, no rights of restoration are conferred except in compliance with the land development regulations in effect at the time of such restoration;
 - iii. for purposes of this declaration that the remaining portion of the Health Center Parcel is deemed to be a conforming property, the City hereby acknowledges that such declaration will not constitute a danger to the health, safety, or welfare of the general public; and
 - iv. except as provided in paragraph ii above, any future development on the Health Center Parcel must conform to the City's Land Development Code in effect at the time of such future redevelopment.
- e. The City acknowledges that, among the existing improvements on the remaining portion of the Health Center Parcel, is a timber retaining wall approximately parallel to the rear elevation of the Health Center and five (5) feet (more or less) west of the Transfer Parcel (the "Timber Retaining Wall"). In order to maintain the integrity of the Timber Retaining Wall, the City agrees to establish a construction buffer that shall encumber the westerly ten (10) feet of the northerly 180 feet of the

Transfer Parcel. The City agrees that no construction activity associated with the Expanded SWMF will be conducted within this buffer area.

4. This Agreement is contingent upon the following approvals prior to the date of closing for the conveyance of the Transfer Parcel, the rejection of which shall entitle the City or the County to terminate this Agreement:
 - a. approval(s) as required by City Commission Policy #136 (Real Estate Policy) and approval by the City Commission of the City of Tallahassee; and
 - b. approval by the Board of County Commissioners as required by Section 125.38, Florida Statutes.
5. The City agrees to accept title to the Transfer Parcel subject to the following:
 - a. Rights of way, easements and licenses of record, if any;
 - b. Zoning and other governmental restrictions, regulations and prohibitions, including all land use and development ordinances and regulations presently existing or hereinafter enacted.
6. At the City's option and its sole cost and expense, the City may acquire title insurance, environmental site assessment, and survey and shall pay the cost of fees for recording the deed. Property taxes, if any, shall be paid as provided herein. Each party agrees to pay their respective legal fees incurred in the implementation of this transfer.
7. The City shall have a Right-of-Entry to the Transfer Parcel commencing on the Effective Date for the purpose of conducting tests and inspections related to the conveyance of the Transfer Parcel. The City shall have until the date of closing to perform such tests and inspections as the City deems necessary to determine that the Transfer Parcel is suitable for the City's intended use including, but not limited to, surveys and soil borings. Such inspections and tests shall be made at the City's sole cost and expense. In the event the City determines that the Transfer Parcel is not suitable for the City's intended use, City may terminate this Agreement without recourse.
8. Closing shall occur on or before ninety (90) days after the Effective Date of this Agreement at a mutually agreed upon place unless otherwise extended in writing by the parties. The City shall be entitled to possession of the Transfer Parcel immediately upon closing. The City agrees to accept such possession of the Transfer Parcel in its as-is condition.

9. The County shall pay all real estate taxes and assessments, if any, which are or which may become a lien against the Transfer Parcel prior to or at closing. The County shall deliver to the City the following documents at closing:
 - a. County Deed conveying all of County's right, title and interest in and to the Transfer Parcel to City.
 - b. Owner's affidavit attesting to the absence of mechanic's or material men's liens, proceedings involving the County which might affect title to the Transfer Parcel, or parties in possession other than the County and such lessees or licensees as may be in possession.
 - c. Foreign Investment and Real Property Tax Act (FIRPTA) affidavit and such other instruments and documents as the City's counsel may reasonably request for the purpose of confirming proper and lawful execution and delivery of closing documents and conveyance of the Transfer Parcel to the City in accordance with the Agreement, and any of the requirements of any title insurer.
10. The City may, within thirty (30) days prior to closing, obtain from a Florida licensed title insurer, a title insurance commitment to be followed by a title insurance policy upon recording of the deed. Said commitment shall be to insure the title to the Transfer Parcel, subject only to liens, encumbrances, reservations, exceptions or qualifications set forth in this Agreement. If a defect in title appears in the title commitment, the City shall notify the County within ten (10) days of receipt of the commitment of the title defect and the County shall have ninety (90) days from receipt of notice of the title defect within which to clear same at the County's expense. If any such title defect cannot be cured within the ninety (90) days, the City shall have the option of accepting the title as is and proceeding to closing or terminating this Agreement without recourse.
11. The City may, within thirty (30) days from the Effective Date and at its sole cost and expense, obtain a current boundary survey of the Transfer Parcel prepared by a professional land surveyor licensed by the State of Florida, which meets the standards and requirements of the City ("Survey"). Said Survey shall locate all permanent improvements, fences, utilities, physical features or any other items which may affect the value or condition of the property. If the Survey shows any encroachment on the Transfer Parcel or improvements intended to be located on the Transfer Parcel encroach on the land of others, the same shall be treated as a title defect.

12. The County assumes all risk of loss or damage to the Transfer Parcel prior to the date of closing and warrants that the Transfer Parcel shall be transferred and conveyed to the City in the same or essentially the same condition as of the Effective Date of this Agreement, ordinary wear and tear excepted.
13. Any notice, request, instruction or demand to be given hereunder shall be hand delivered to the other party hereto, sent by a recognized, national overnight express mail courier (such as Federal Express or Airborne) or mailed by certified mail, return receipt requested, with postage prepaid, at the respective addresses listed below. The addresses may be changed by the applicable party to this Agreement as to such party by providing the other party with notice of such address change in the same manner as provided above, and which change shall be effective five (5) days following receipt of such written notice by the other party. In the event that notice, request or demand is made as provided in this paragraph, then in the event such notice is returned to the sender by the U.S. Postal System because of insufficient address or otherwise, such writing shall be deemed received by the other party to which it was addressed on the date that such notice was placed in the U.S. Postal System.

As to County:

Leon County Department of Public Works
ATTN: Director, Public Works
2280 Miccosukee Rd.
Tallahassee, FL 32308

As to City:

City of Tallahassee
ATTN: Judith A. Donahoe
300 North Adams Street, Box A-15
Tallahassee, Florida 32301

With Copy To:

Leon County Attorney's Office
ATTN: County Attorney
Leon County Courthouse
301 S. Monroe St., Suite 202
Tallahassee, FL 32301

With Copy To:

City Attorney
City Attorney's Office
300 So. Adams St.
3rd Floor
Tallahassee, FL 32301

15. This Agreement may be executed in any number of counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Receipt of a facsimile signature telecopy (followed promptly by an original executed counterpart) shall be deemed receipt of an original.

16. In connection with any litigation including appeals arising out of this Agreement, the prevailing party, without waiving its right to sovereign immunity, if any, and to the extent allowed by Fla. Stat. §768.28 (2011), as may be amended, shall be entitled to recover all reasonable costs incurred.

17. This Agreement sets forth all the promises, covenants, agreements, conditions and understandings between the parties hereto and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, expressed or implied, oral or written, except as herein contained.

18. This may be modified only by an agreement in writing approved in the same manner as this Agreement and signed by the parties to this Agreement.

19. The terms and conditions of this Agreement shall survive the transfer of the Property from the County to the City.

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

LEON COUNTY, FLORIDA

CITY OF TALLAHASSEE, a
Florida municipal corporation

By: _____
AKIN AKINYEMI, CHAIRMAN
Board of County Commissioners

By: _____
JOHN R. MARKS, III
Mayor

ATTESTED TO:

ATTESTED TO:

By: _____
ROBERT B. INZER
Clerk, Leon County, Florida

By: _____
JAMES O COOKE, IV,
City Treasurer-Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
HERBERT W. A. THIELE, Esq.
County Attorney

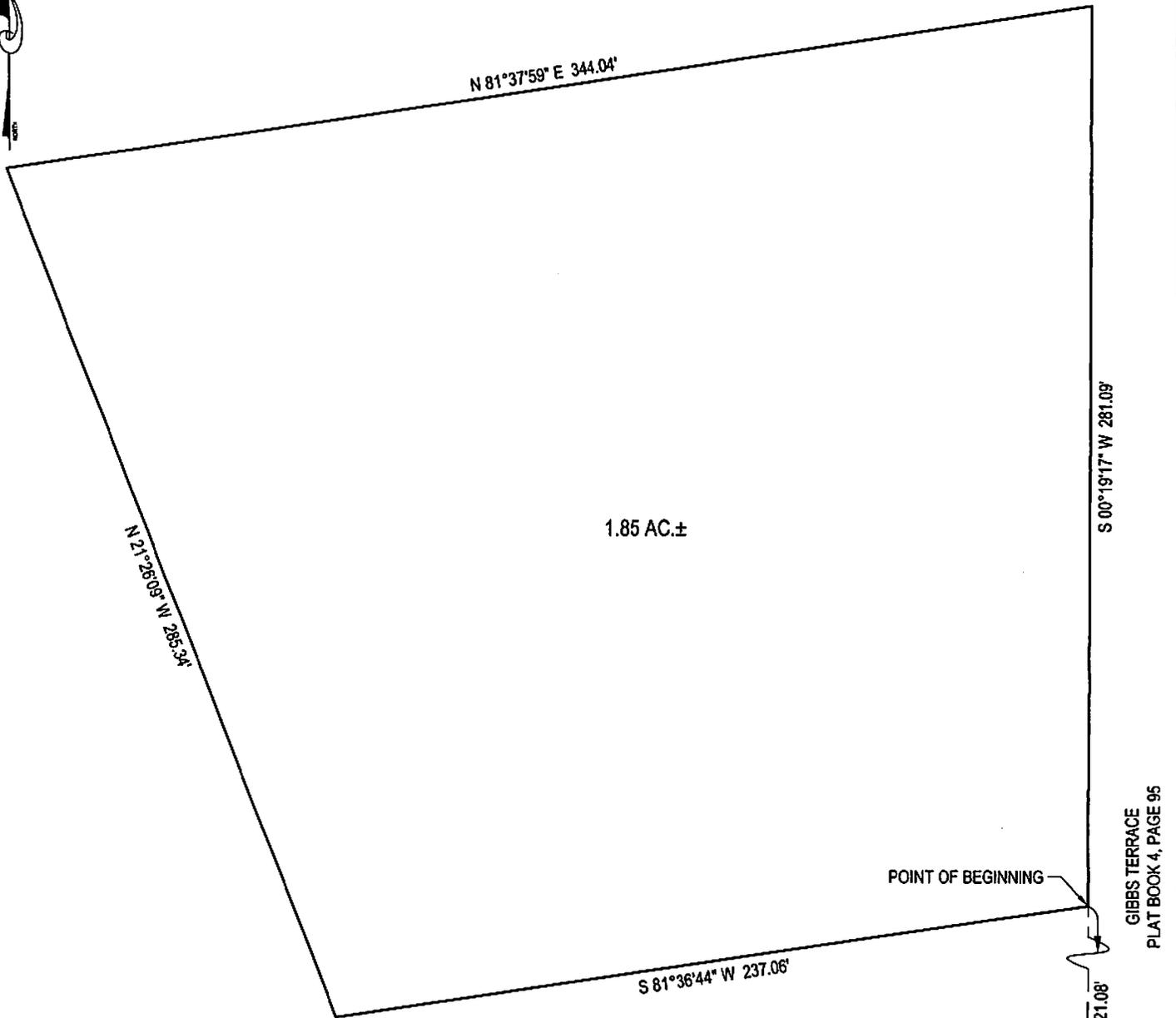
By: _____
JAMES R. ENGLISH
City Attorney

GRAPHIC SCALE



1 inch = 50 ft.

Exhibit "A"



LEGAL DESCRIPTION:

A portion of Section 26, Township 1 North, Range 1 East, Leon County, Florida, being more particularly described as follows:

COMMENCE at the Southeast corner of said Section 26; thence N 00° 17' 54" W along the East line of said Section 26, 660.96 feet to the Southwest corner of the Gibbs Terrace Subdivision, a map or plat as recorded in Plat Book 4, page 95 of the public records of Leon County, Florida; thence N 00° 19' 17" E along said East Section line and the West line of said Gibbs Terrace Subdivision, 321.08 feet to the POINT OF BEGINNING. From said POINT OF BEGINNING run thence S 81° 36' 44" W, 237.06 feet; thence N 21° 26' 09" W, 285.34 feet; thence N 81° 37' 59" E, 344.04 feet to said West line of Gibbs Terrace Subdivision; thence S 00° 19' 17" W along said West line, 281.09 feet to the POINT OF BEGINNING.

Containing 1.85 acres, more or less.

STANDARD ABBREVIATIONS:

- AC. ACRES
- CH= CHORD BEARING AND DISTANCE
- Δ= DELTA OR CENTRAL ANGLE
- L= ARC LENGTH
- R= RADIUS
- R/W RIGHT-OF-WAY

EAST LINE OF SECTION 26,
TOWNSHIP 1 NORTH, RANGE
1 EAST, LEON COUNTY, FLORIDA

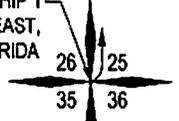
GENERAL NOTES:

1. NO IMPROVEMENTS LOCATED OTHER THAN SHOWN HEREON.
2. BEARINGS ARE BASED ON STATE PLANE COORDINATES, FLORIDA NORTH ZONE, NAD 83 DATUM.
3. THIS IS NOT A BOUNDARY SURVEY.
4. ADDITIONS OR DELETIONS TO SURVEY MAP OR REPORT BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.

DAVID W. HUTCHESON, P.E.M.
FLORIDA REGISTRATION NO. 5051

11/20/2009
DATE

POINT OF COMMENCEMENT
SOUTHEAST CORNER OF
SECTION 26, TOWNSHIP 1
NORTH, RANGE 1 EAST,
LEON COUNTY, FLORIDA



NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

**GREENWOOD SWMF
CITY OF TALLAHASSEE
SKETCH OF DESCRIPTION**

DATE:	11.19.09
FIELD DATE:	
SCALE:	1" = 50'
JOB NO.:	4521
DRAWN BY:	AJT
CHECKED BY:	DWH
NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER	

**CAPITAL ENGINEERING
& SURVEYING, INC.**

318 North Monroe Street
Tallahassee, Florida 32301
850-422-0020

David W. Hutcheson, P.E. 38670 P.S.M. 5051
E.B. 27272 I.B. 7559

SHEET NO.

1 of 1

