

**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 Killlearn 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 Killlearn Lakes Plantation Subdivision Units 1 and 2 as of the date written above.

LEON COUNTY, FLORIDA

By: 

CLIFF THAE LL, Chairman
of the Board of County Commissioners

CITY OF TALLAHASSEE,
FLORIDA

By: 

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

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

**LEON COUNTY
CONTRACT ROUTING SLIP**

Original
 Renewal
 Amendment

County Contract No. 2851

Division Contact: Jony Park Phone #: 488-8803

Division: Public Works

Location: 2280 Miccosukee Rd

Contractor: City of Tallahassee

Address: 3005 Adams St.

City, State, Zip: Tallahassee, Fla 32301

Contract Period: From 5/10/05 To until terminated

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 checked="" type="checkbox"/> Interlocal Agreement	<input type="checkbox"/> Other (Explain Below)	<input type="checkbox"/> Certification Regarding Department
<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>5/10/05</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	

CLERK OF CIRCUIT COURT
 DEPARTMENT
 MAY 25 PM 4:24

Comments: _____

Routing:

Required	Initials	Date	
<input checked="" type="checkbox"/>			Originating Division <u>County Atty, Gc.</u>
<input type="checkbox"/>			Purchasing
<input type="checkbox"/>			Minority/Women Business Enterprise
<input type="checkbox"/>			Risk Management
<input type="checkbox"/>			Grants Coordinator
<input type="checkbox"/>			County Attorney's Office
<input type="checkbox"/>			County Administrator's Office
<input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>5/26/05</u>	Chairman, BCC
<input checked="" type="checkbox"/>			Clerk's Office (Finance)

Return completed documents to: _____