

IN THE CIRCUIT COURT IN AND FOR SANTA ROSA COUNTY, FLORIDA  
CIVIL DIVISION

THE HONORABLE ERNIE LEE MAGAHA,  
As Clerk of the Circuit Court and Comptroller  
Of Escambia County, Florida,

Plaintiff,

vs.

CASE NO.: 2006-773-CA

D.M. "MIKE" WHITEHEAD, JAMES W. "BILL"  
DICKSON, MARIE YOUNG, TOM BANJANIN,  
KEVIN WHITE, each as Members of the Board of  
County Commissioners of ESCAMBIA COUNTY,  
FLORIDA, (and not individually), and ESCAMBIA  
COUNTY, FLORIDA

Defendants.

---

**ORDER APPROVING  
MEDIATION SETTLEMENT AGREEMENT**

THIS MATTER came before the Court for hearing to consider those matters contained in the Mediation Settlement Agreement entered into by the parties on October 30, 2006, and approved by the Board of County Commissioners on November 6, 2006. The Court having heard argument of counsel, considered previous orders herein, considered Affidavits submitted as evidence at this hearing, and being otherwise fully advised in the premises finds as follows:

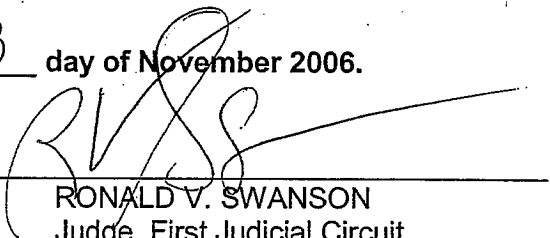
1. On November 6, 2006 the Board of County Commissioners voted to repeal Resolution R2006-166. The terms of the Mediation Settlement Agreement are hereby approved.
2. The Court has considered the affidavit of George Touart, County Administrator, and of Robert Jacobson, Director of Information Resources, and finds that there is sufficient evidence presented to this Court to determine that the bill presented by Solbourne, Inc. is a lawful

FILED  
SANTA ROSA COUNTY  
CLERK'S OFFICE  
2006 NOV 13 1 P 2:4

expenditure of Escambia County and the plaintiff is hereby authorized to make payment of the same in accordance with Florida law.

3. All orders previously entered by this Court both granting temporary injunctions as to the implementation of Resolution R2006-166 and the order entered by this Court on October 9, 2006, which limits the plaintiff's right to use the Sungard Pentamation E-FinancePlus software for the finance functions of his office are hereby withdrawn and said temporary injunctions are dissolved.
4. In accordance with the mediation Settlement Agreement, all other counts and claims between the parties are hereby dismissed without prejudice.

DONE AND ORDERED this 13 day of November 2006.

  
RONALD V. SWANSON  
Judge, First Judicial Circuit

Copies to:

**J. Nixon Daniel, III & John F. Windham**  
Beggs & Lane  
501 Commendencia Street (32502  
P. O. Box 12950  
Pensacola, FL 32591-2950

**Lisa Norris Bernau**  
Office of the Clerk of Circuit Court and Comptroller  
120 Governmental Center  
P. O. Box 333  
Pensacola, FL 32591-0333

**Janet Lander**  
Escambia County Attorney  
221 Palafox Place, Suite 430  
Pensacola, FL 32502

**H. Hamilton Rice, Jr., Esq. & Maggie D. Mooney, Esq.**  
Lewis, Longman & Walker, P.A.  
1001 3<sup>rd</sup> Avenue West, Suite 670  
Bradenton, FL 34205

IN THE CIRCUIT COURT IN AND FOR SANTA ROSA COUNTY, FLORIDA  
CIVIL DIVISION

THE HONORABLE ERNIE LEE MAGAHA,  
As Clerk of the Circuit Court and Comptroller  
of Escambia County, Florida,

Plaintiff,

v.

CASE NO. : 2006-773-CA

D. M. "MIKE" WHITEHEAD, JAMES W. "BILL"  
DICKSON, MARIE YOUNG, TOM BANJANIN,  
KEVIN WHITE, each as Members of the Board of  
County Commissioners of ESCAMBIA COUNTY,  
FLORIDA, (and not individually), and ESCAMBIA  
COUNTY, FLORIDA,

Defendants.

FILED  
SANTA ROSA COUNTY  
CLERK'S OFFICE  
2006 NOV 13 P 2:44

---

**MEDIATION SETTLEMENT AGREEMENT**

COME NOW the parties and stipulate and agree as follows:

1. The Board of County Commissioners of Escambia County will repeal Resolution R2006-166 at the first available meeting of the Board after entry of an order approving this settlement agreement.

2. Mr. Magaha will process the payment of the bill of Solbourne Computer, Inc. in the amount of \$467,060 plus applicable interest subject to the following:

- (a) An acknowledgement by the Board of County Commissioners that it received the letter from Mr. Magaha dated July 20, 2006;
- (b) An acknowledgement by the Board of County Commissioners that it received Mr. Magaha's recommendation to abort the Solbourne contracts;

(c) An acknowledgement by the Board of County Commissioners that it received the concerns expressed by Mr. Magaha in his letter of July 20, 2006;

(d) An acknowledgement by the Board of County Commissioners that it received Mr. Magaha's recommendation to seek a refund of payments made to Solbourne for the Oracle software; and.

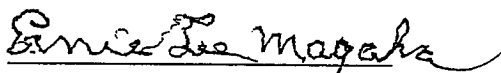
(e) Notwithstanding the above, the Board of County Commissioners brought suit for payment of the Solbourne invoice without considering the letter and recommendations of Mr. Magaha.

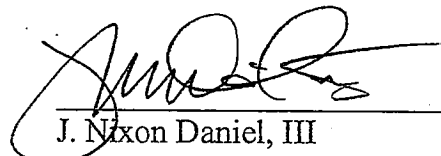
3. The parties acknowledge that any outstanding public records requests are hereby withdrawn.

4. This agreement is subject to approval by the Board of County Commissioners.


5. An order approving this settlement and agreement, specifically finding that the payment of the Solbourne bill is a lawful expenditure and dismissing all other counts of the lawsuit without prejudice, shall be entered by the Court after proper hearing.


Dated this 30<sup>th</sup> day of October, 2006.

  
Ernie Lee Magaha

  
J. Nixon Daniel, III  
Attorney for Ernie Lee Magaha

BOARD OF COUNTY COMMISSIONERS OF  
ESCAMBIA COUNTY

By:   
Its County Administrator

  
Janet Lander  
Attorney for the Board of County  
Commissioners

11/16/2006

RESOLUTION R2006-220

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA, APPROVING THE MEDIATION SETTLEMENT AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on August 17, 2006, the Board of County Commissioners felt that it was necessary to enact Resolution R2006-166; and

**WHEREAS**, following the adoption of this Resolution by the Board of County Commissioners, the Clerk filed an action in Circuit Court seeking declaratory and injunctive relief against the implementation of Resolution R2006-166, which was followed by the Board's filing of a counterclaim seeking declaratory injunctive and other relief including a count seeking payment to Solbourne; and

**WHEREAS**, the Clerk and the Board of County Commissioners were ordered by Judge Swanson to mediate their dispute; and

**WHEREAS**, the matter was mediated by the parties (or party representatives) on October 30, 2006; and

**WHEREAS**, the parties have agreed to settle their disputes by repealing Resolution R2006-166, by paying Solbourne's invoice plus interest, and by making certain acknowledgments; and

**WHEREAS**, upon consideration by the Board of County Commissioners of the fact that the Clerk's recently purchased computer system may be interfaced with the Board of County Commissioners' system; and

**WHEREAS**, it therefore appears that it is no longer necessary for the Board of County Commissioners to create said Finance Department; and

**WHEREAS**, both parties intend to implement their new software with the interfaces necessary to allow for transmission and receipt of data between these two entities; and

**WHEREAS**, the Clerk has agreed to process Solbourne's bill if the Board of County Commissioners acknowledges that it received a letter from Mr. Magaha dated July 20, 2006; that it received Mr. Magaha's recommendation to abort Solbourne's contract; that it received the concerns expressed by Mr. Magaha in his letter of July 20, 2006; that it received Mr. Magaha's recommendation to seek a refund of payments made to Solbourne for the Oracle Software and nonetheless brought suit for the payment without considering the letter and recommendations of the Clerk; and

FILED  
SANTA ROSA COUNTY  
CLERK'S OFFICE  
NOV 31 2006

Attached 11/16/2006



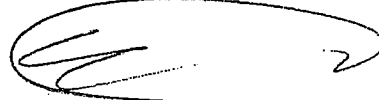
WHEREAS, the Mediation Settlement Agreement is contingent upon approval by the Board of County Commissioners and a court order which finds the bill to be a lawful expenditure.

**NOW THEREFORE, BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA AS FOLLOWS:**

- Section 1. That the above recitations are true and are incorporated as if fully set forth herein.
- Section 2. That Resolution R2006-166 is hereby repealed.
- Section 3. That the Board of County Commissioners hereby acknowledges receipt of the Clerk's July 20, 2006 letter regarding his concerns with Solbourne and Oracle.
- Section 4. That the Board of County Commissioners wishes to continue its contract for implementation of the Oracle Software with Solbourne and approves payment of the referenced invoice subject to a finding by Judge Swanson that this is a lawful expenditure.
- Section 5. That the Board of County Commissioners hereby approves the Mediation Settlement Agreement which is attached to this Resolution as Exhibit "1".
- Section 6. That the County Attorney is hereby authorized to take all steps necessary and execute all documents required to carry out the Settlement Agreement.
- Section 7. That this Resolution shall take effect immediately upon its adoption by the Board of County Commissioners.

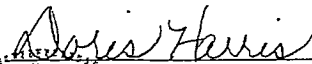
**DONE AND ADOPTED** this 6th day of November 2006.

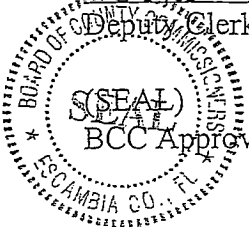
BOARD OF COUNTY COMMISSIONERS  
ESCAMBIA COUNTY, FLORIDA



D. J. "Mike" Whitehead, Chairman

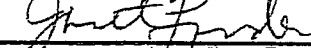
ATTEST: Ernie Lee Magaha  
Clerk of the Circuit Court

  
Doris Harris  
Deputy Clerk



BCC Approved: November 6, 2006

This document approved as to form and legal sufficiency

By:   
Title: County Attorney  
Date: 11/06/06

IN THE CIRCUIT COURT IN AND FOR SANTA ROSA COUNTY, FLORIDA  
CIVIL DIVISION

THE HONORABLE ERNIE LEE MAGAHA,  
As Clerk of the Circuit Court and Comptroller  
of Escambia County, Florida,

Plaintiff,

v.

CASE NO. : 2006-773-CA

D. M. "MIKE" WHITEHEAD, JAMES W. "BILL"  
DICKSON, MARIE YOUNG, TOM BANJANIN,  
KEVIN WHITE, each as Members of the Board of  
County Commissioners of ESCAMBIA COUNTY,  
FLORIDA, (and not individually), and ESCAMBIA  
COUNTY, FLORIDA,

Defendants.

---

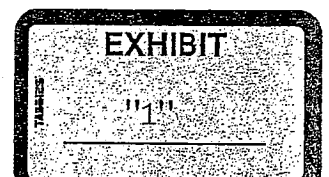
**MEDIATION SETTLEMENT AGREEMENT**

COME NOW the parties and stipulate and agree as follows:

1. The Board of County Commissioners of Escambia County will repeal Resolution R2006-166 at the first available meeting of the Board after entry of an order approving this settlement agreement.

2. Mr. Magaha will process the payment of the bill of Solbourne Computer, Inc. in the amount of \$467,060 plus applicable interest subject to the following:

- (a) An acknowledgement by the Board of County Commissioners that it received the letter from Mr. Magaha dated July 20, 2006;
- (b) An acknowledgement by the Board of County Commissioners that it received Mr. Magaha's recommendation to abort the Solbourne contracts;



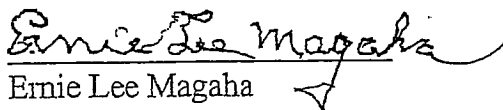
- (c) An acknowledgement by the Board of County Commissioners that it received the concerns expressed by Mr. Magaha in his letter of July 20, 2006;
- (d) An acknowledgement by the Board of County Commissioners that it received Mr. Magaha's recommendation to seek a refund of payments made to Solbourne for the Oracle software; and
- (e) Notwithstanding the above, the Board of County Commissioners brought suit for payment of the Solbourne invoice without considering the letter and recommendations of Mr. Magaha.

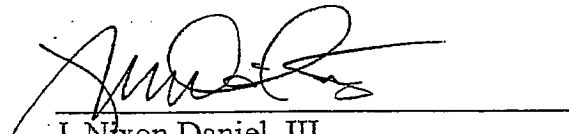
3. The parties acknowledge that any outstanding public records requests are hereby withdrawn.

4. This agreement is subject to approval by the Board of County Commissioners.

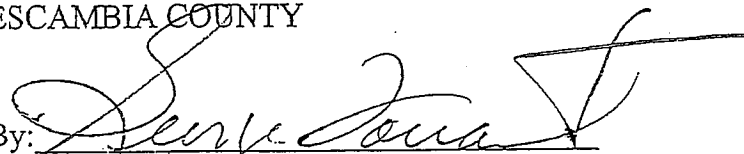
5. An order approving this settlement and agreement, specifically finding that the payment of the Solbourne bill is a lawful expenditure and dismissing all other counts of the lawsuit without prejudice, shall be entered by the Court after proper hearing.

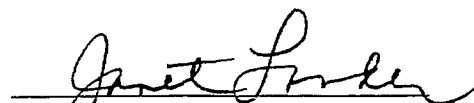
Dated this 30<sup>th</sup> day of October, 2006.

  
Ernie Lee Magaha

  
J. Nixon Daniel, III  
Attorney for Ernie Lee Magaha

BOARD OF COUNTY COMMISSIONERS OF  
ESCAMBLIA COUNTY

By:   
Its County Administrator

  
Janet Lander  
Attorney for the Board of County  
Commissioners



STATE OF FLORIDA

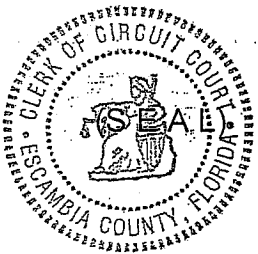
COUNTY OF ESCAMBIA

I, ERNIE LEE MAGAHA, CLERK OF THE CIRCUIT COURT & COMPTROLLER, and ex-officio Clerk to the Board of County Commissioners in and for the County and State aforesaid, do hereby certify that the above and foregoing is a true and correct copy of Resolution R2006-220, as the same was duly adopted and passed at a Meeting of the Board on the 6th day of November, 2006, and as the same appears on record in my office.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 6th day of November, 2006.

ERNIE LEE MAGAHA, CLERK OF THE CIRCUIT COURT & COMPTROLLER, AND EX-OFFICIO CLERK TO THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA

By: *Doris Harris*  
Deputy Clerk



IN THE CIRCUIT COURT IN AND FOR SANTA ROSA COUNTY, FLORIDA  
CIVIL DIVISION

THE HONORABLE ERNIE LEE MAGAHA,  
As Clerk of the Circuit Court and Comptroller  
of Escambia County, Florida,

Plaintiff,

v.

CASE NO.: 2006-773-CA

D. M. "MIKE" WHITEHEAD, JAMES W. "BILL"  
DICKSON, MARIE YOUNG, TOM BANJANIN,  
KEVIN WHITE, each as Members of the Board of  
County Commissioners of ESCAMBIA COUNTY,  
FLORIDA, (and not individually), and ESCAMBIA  
COUNTY, FLORIDA

Defendants.

---

FILED  
SANTA ROSA COUNTY  
CLERK'S OFFICE  
2006 NOV 13 P 2:44

**AFFIDAVIT**

BEFORE ME the undersigned authority, personally came and appeared ROBERT  
JACOBSON who, after being first duly sworn, deposes and says:

1. I am ROBERT JACOBSON, Director of Information Resources for  
Escambia County, Florida.

2. In my capacity as Director of Information Resources, I served on a  
committee which included representatives from Escambia County, the Clerk's office and the



Sheriff's office to develop joint requirements for the issuance of a request for proposal for a new financial and human resources computer system.

3. Based on a 4 to 2 vote that the project be awarded to Solbourne, Inc., Escambia County approved the award to Solbourne on August 18, 2005. In accordance with the contract entered into between Escambia County and Solbourne, Inc., the work to be performed by Solbourne, Inc. was divided into various phases. The first phase has been completed and payment made, less retainage. The second phase has been completed and the bill for that completion, less 10% retainage has not yet been paid based upon the Clerk's belief that there was inadequate consideration given in return for the expectation of payment.

4. I am personally familiar with the deliverables required through the second phase of the services provided by Solbourne, Inc., and it is my opinion that sufficient consideration has been provided by Solbourne, Inc. such that the invoice for the second phase should be paid.

5. I have reviewed and am familiar with the concerns expressed by the Clerk of the Court in its letter to the Board of County Commissioners dated July 20, 2006. I have considered the concerns expressed therein and in my opinion those concerns do not undermine either the need or the efficacy of the Oracle software nor do they reduce the consideration given by Solbourne, Inc. as reflected in its invoice for the services rendered during the second phase.

6. It is my opinion that for both the first two phases of the contract for Solbourne, Inc. complete and sufficient consideration has been received thus far in accordance with the contract between Solbourne, Inc. and Escambia County, Florida, and the bill submitted by Solbourne, Inc. should be paid. A copy of that bill is attached.

FURTHER AFFIANT SAYETH NOT.

Robert Jacobson  
ROBERT JACOBSON

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of November, 2006, by ROBERT JACOBSON, who did take an oath and who:

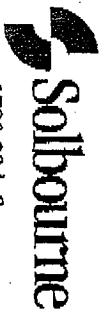
- is/are personally known to me.
- produced current Florida driver's license as identification.
- produced \_\_\_\_\_ as identification.

(Seal)

Brenda J. Spencer  
NAME: \_\_\_\_\_  
NOTARY PUBLIC - State of Florida  
at Large  
My Commission No.: 3/30/2010  
Commission Expires: DD 522701



BRENDA J. SPENCER  
MY COMMISSION # DD 522701  
EXPIRES: March 30, 2010  
Bonded Thru Budget Notary Services



1790 38th Street  
 Boulder, CO 80301  
 Phone 303-417-2800  
 Fax 303-417-2820

FILED IN MICHIGAN  
 CIRCUIT COURT  
 COUNTY OF SOLBOURNE  
 STAMPAHIA COURT

2006 JUL 24 P 3:18  
 PERMIT TO

FILED & RECORDED  
 ACCOUNTS PAYABLE

Solbourne 1790 38th St., Suite 300  
 Boulder CO 80301

**BILL TO:**

Accounts Payable  
 BSCAMBIA COUNTY  
 223 Palafox Pl  
 Suite 300  
 Pensacola FL 32501

**SHIP TO:**

BSCAMBIA COUNTY  
 223 Palafox Pl  
 Suite 300  
 Pensacola FL 32501

Invoice	
Number: 18804	Page: 1 of 1
Date: 21-JUL-06	Purchase Order Number: 078-06-018-00
Unit Reference	Sales Order Number
Customer Number: 1485	Location Number: 3627

ITEM NO.	DESCRIPTION	QUANTITY	UNIT PRICE	EXTENDED AMOUNT
1	Completed Familiarization Phase - less 10% retainage	1	467,060.00	467,060.00
SPECIAL INSTRUCTIONS				
Escambia County PO Number 260626				
ACCOUNTS PAYABLE FILED & RECORDED 21 JUL 24 2006				
SHEETOTAL 467,060.00 TAX 0.00 SHIPPING/HANDLING 0.00 <b>TOTAL 467,060.00</b> Currency: USD				

IN THE CIRCUIT COURT IN AND FOR SANTA ROSA COUNTY, FLORIDA  
CIVIL DIVISION

THE HONORABLE ERNIE LEE MAGAHA,  
As Clerk of the Circuit Court and Comptroller  
of Escambia County, Florida,

Plaintiff,

v.

CASE NO.: 2006-773-CA

D. M. "MIKE" WHITEHEAD, JAMES W. "BILL"  
DICKSON, MARIE YOUNG, TOM BANJANIN,  
KEVIN WHITE, each as Members of the Board of  
County Commissioners of ESCAMBIA COUNTY,  
FLORIDA, (and not individually), and ESCAMBIA  
COUNTY, FLORIDA

Defendants.

---

**AFFIDAVIT**

FILED  
SANTA ROSA COUNTY  
CLERK'S OFFICE  
2006 NOV 13 10 2:44

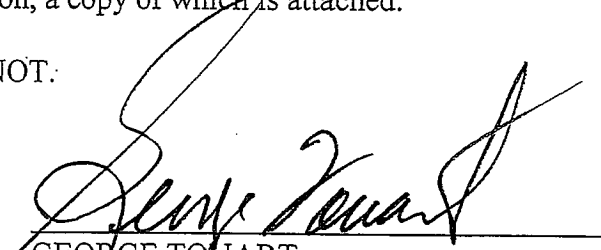
BEFORE ME the undersigned authority, personally came and appeared GEORGE  
TOUART who, after being first duly sworn, deposes and says:

1. I am GEORGE TOUART, County Administrator for Escambia County, Florida.
2. In my capacity as County Administrator I am responsible for all of the personnel and systems employed or utilized by Escambia County, Florida.
3. Although I did not get involved in the specific details, I am generally familiar with the various plans and recommendations regarding use by Escambia County of the Oracle E-Business Suite Financial System software and of the services rendered by Solbourne during the second phase of their services to Escambia County.



4. In reviewing this matter and discussing it with personnel who report directly or indirectly to me, I am convinced that we have been provided with full and adequate consideration for payment of the invoice in question, a copy of which is attached.

FURTHER AFFIANT SAYETH NOT:

  
\_\_\_\_\_  
GEORGE TOUART

STATE OF FLORIDA


COUNTY OF ESCAMBIA

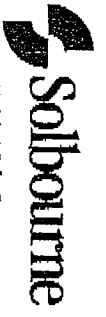
The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of November, 2006, by GEORGE TOUART, who did take an oath and who:

✓ is/are personally known to me.  
\_\_\_\_\_ produced current Florida driver's license as identification.  
\_\_\_\_\_ produced \_\_\_\_\_ as identification.

(Seal)

**RHELA RANSOM DAVIS**  
Notary Public-State of FL  
Comm. Exp. Dec. 25, 2007  
Comm. No. DD 258155

  
NAME: \_\_\_\_\_  
NOTARY PUBLIC - State of Florida  
at Large  
My Commission No.: DD 258155  
Commission Expires: Dec. 25, 2007



1790 38th Street  
 Boulder, CO 80301  
 Phone 303-417-2800  
 Fax 303-417-2820

FILED  
 CIRCUIT COURT  
 COUNTY OF BOULDER  
 CLAMBAIA DIVISION

2006 JUL 24 P 3:18  
 REMIT TO

FILED & RECORDED  
 ACCOUNTS PAYABLE

**BILL TO •**  
 Accounts Payable  
 BSCAMBIA COUNTY  
 223 Palafox PI  
 Suite 300  
 Pensacola FL 32501

**SHIP TO •**  
 ESCAMBIA COUNTY  
 223 Palafox PI  
 Suite 300  
 Pensacola FL 32501

Solbourne 1790 38th St., Suite 300  
 Boulder CO 80301

INVOICE	
NUMBER 18804	PAGE 1 OF 1
DATE 21-JUL-06	DATE 07-06-06
PURCHASE ORDER NUMBER	SALES ORDER NUMBER
CUSTOMER NUMBER 1485	LOCATION NUMBER 3627

TERMS	DATE DATE	SALES PERSON	CUSTOMER CONTACT	SHIP DATE	SHIP VIA	SHIPING REFERENCE
IMMEDIATE	21-JUL-06		Account's Data			
ITEM NO.	INVOICE		ORDERED	QUANTITY	BACK ORD.	SHIPPED
1	Completed Familiarization Phase - less 10% retainage		1	1		
			UNIT PRICE			EXTENDED AMOUNT
			467,060.00			467,060.00
SPECIAL INSTRUCTIONS			FILED & RECORDED ACCOUNTS PAYABLE AUG 12 9 00 AM '06			
Escambia County PO Number 260626			QUANTITY 467,060.00 TAX 0.00 SHIPPING/HANDLING 0.00 <b>TOTAL</b> 467,060.00 Currency: USD			



IN THE CIRCUIT COURT IN AND FOR SANTA ROSA COUNTY, FLORIDA  
CIVIL DIVISION

THE HONORABLE ERNIE LEE MAGAHA,  
As Clerk of the Circuit Court and Comptroller  
of Escambia County, Florida

Plaintiff,

CASE NO. 2006-CA-000773

vs.

D. M. "MIKE" WHITEHEAD, JAMES W. "BILL"  
DICKSON, MARIE YOUNG, TOM BANJANIN,  
KEVIN WHITE, each as Members of the Board  
of County Commissioners of ESCAMBIA  
COUNTY, FLORIDA (and not individually), and  
ESCAMBIA COUNTY, FLORIDA,

Defendants.

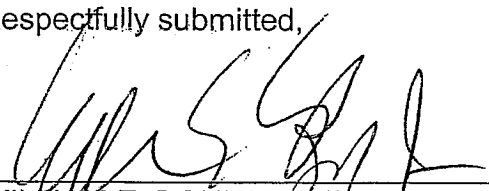
FILED  
SANTA ROSA COUNTY  
CLERK'S OFFICE  
2006 NOV 13 1 P 2:44

MEDIATOR'S REPORT

The undersigned Mediator does hereby report to the Court that this matter was mediated on October 30, 2006. The result of the mediation effort was a settlement of the case.

DATED this 8 day of November, 2006.

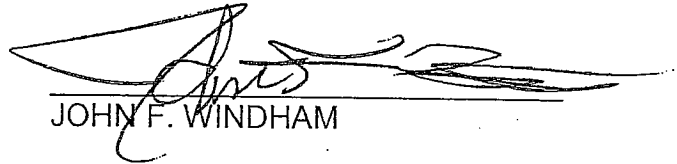
Respectfully submitted,

  
WILLIAM E. BOND, JR. (#228461)  
Clark, Partington, Hart, Larry,  
Bond & Stackhouse  
Suite 800, 125 West Romana Street  
P. O. Box 13010  
Pensacola, Florida 32591-3010  
(850) 434-9200  
MEDIATOR



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to **J. Nixon Daniel, III, Esq.** and **John F. Windham, Esq.**, Beggs & Lane, LLP, 501 Commendencia Street, Pensacola, Florida 32502; **H. Hamilton Rice, Esq.** and **Maggie D. Mooney, Esq.**, Lewis, Longman & Walker, P.A., 1001 3<sup>rd</sup> Avenue West, Suite 670, Bradenton, Florida 34205; and, **Janet Lander, Esq.**, 21 Palafox Place, Suite 430, Pensacola, Florida 32502, by United States mail, postage prepaid, this 13 day of November, 2006.  hand delivery or

  
JOHN F. WINDHAM

A0183338.DOC