

AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN PASCO COUNTY AND EPPERSON RANCH, LLC, DEVELOPER OF RECORD, FOR DEVELOPMENT OF REGIONAL IMPACT NO. 258, EPPERSON RANCH

THIS **AMENDED AND RESTATED** DEVELOPMENT AGREEMENT (DA) is made and entered into by and between Pasco County, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter called "COUNTY," and Epperson Ranch, LLC, the Developer of Record for Epperson Ranch Development of Regional Impact (DRI) No. 258, hereinafter called "DEVELOPER."

W I T N E S S E I T H:

WHEREAS, the COUNTY is authorized by the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes ~~(F.S.)~~, to enter into a DA with any person having a legal or equitable interest in real property located within its jurisdiction; and

WHEREAS, on November 5, 2008, the COUNTY approved a development order (Original DO) with conditions for Epperson Ranch DRI No. 258 in response to an Application for Development Approval (ADA) for Epperson Ranch DRI No. 258 on a parcel of real property in Pasco County, Florida, legally described in Exhibit C of the Epperson Ranch DRI/DO, hereinafter called "Project," and attached hereto as Exhibit A; and

WHEREAS, on November 25, 2008, the Board of County Commissioners adopted amendments to the County's Concurrency Management Regulations to extend without additional concurrency review or analysis, the concurrency expiration date of all projects in Pasco County by one (1) year, (the One-Year Extension); and

WHEREAS, on June 23, 2009, the Board of County Commissioners adopted a Resolution pursuant to the County's Concurrency Management Regulations to extend, without additional concurrency review or analysis, the concurrency expiration date of all projects in Pasco County by an additional two (2) years (the Two-Year Extension); and

WHEREAS, Exhibit G of the DO, attached hereto as Exhibit B, describes those roadways and intersections significantly impacted by the Project based upon results of the transportation analysis conducted in conjunction with the ADA; and

WHEREAS, Rule 9J-2.045, Florida Administrative Code (F.A.C.), allows the DEVELOPER and the COUNTY to mutually elect one of several transportation mitigation alternatives in order for the DEVELOPER to mitigate the transportation impacts for the Project; and

WHEREAS, to satisfy certain requirements of the Original DO, the DEVELOPER and the COUNTY entered into that certain development agreement approved by the Board of County Commissioners on

November 8, 2008 and recorded in the Public Records of Pasco County, Florida, on November 25, 2008, at Official Record Book 7972, Pages 295-363 (Original DA); and

WHEREAS, in connection with a Notice of Proposed Change (NOPC) for the Project, the COUNTY and the DEVELOPER desire to amend and fully restate the Original DO for the Project (DO) and to amend and restate the Original DA (DA); and

WHEREAS, all date extensions granted by this DA are inclusive of, and not in addition to, any extensions for which the Project may be eligible pursuant to Resolution 09-269 and Chapter 2009-96, Laws of Florida; and

WHEREAS, the DO establishes the amount of Seventy-Five Million Two Hundred Thirty-Seven Thousand Three Hundred Eighty-One and 00/100 Dollars (\$75,237,381.00) ~~Fifty-One Million Four Hundred Ninety-Seven Thousand One Hundred Eighty-Nine and 00/100 Dollars (\$51,497,189.00)~~, in February 2007~~October 2006~~ dollars, as the DEVELOPER'S proportionate-share contribution for the transportation impacts of the build-out of Phases I and II of the Project⁴; and requires the DEVELOPER to construct a pipeline project, the Curley Road Pipeline Project, various intersection improvements, and Site-Related Improvements as described and defined in this DA (Required Roadway Improvements); and

WHEREAS, the DO requires the DEVELOPER to enter into a DA with the COUNTY for the right-of-way acquisition, design, and construction of the Required Roadway Improvements.

WHEREAS, as of the effective date of this DA, this DA shall supersede and replace, in its entirety, the Original DA for the Project, and thereafter shall govern the rights and the obligations of all parties hereto with respect to the subject matter hereof; and

WHEREAS, the Board of County Commissioners after public notice and hearing in accordance with applicable law, has approved this DA concurrent with the adoption of the Epperson Ranch DRI NOPC, and the revised DO for the Project, all of which are related hereto;

NOW, THEREFORE, in consideration of the mutual covenants and provisions herein contained and other good and valuable consideration, receipt, and sufficiency of which is hereby acknowledged, the COUNTY and the DEVELOPER hereby agree as follows:

1. WHEREAS CLAUSES

The WHEREAS clauses set forth above are incorporated herein by reference and made a part of this DA.

2. PURPOSE

It is the purpose and intent of this DA to further set forth terms and conditions of the development approval of the Project, as defined pursuant to the DO, as the same relate to the design, permitting, and construction of the Required Roadway Improvements. This DA is intended to define the terms

~~4 This proportionate share amount assumes a Town Center proportionate share credit. See Section 4.a. of the DA.~~

and conditions of the COUNTY'S and the DEVELOPER'S participation in the Required Roadway Improvements as further defined herein. All terms and conditions of this DA shall be interpreted in a manner consistent with, and in furtherance of, the purpose as set forth herein.

3. GENERAL REQUIREMENTS

a. Legal Description: The land subject to this DA is identified in Exhibit A. The holders of legal title are Epperson Ranch, LLC; George B. Epperson and Bobbie Epperson; Alpha E. Abbitt, Alpha E. Abbitt Family Trust; James Main Abbitt Jr.; Alice Adeline Abbitt; and EPCO Ranch, Inc., a Florida corporation. Pursuant to Section 163.3239, [F.S. Florida Statutes](#), the burdens of this DA shall be binding upon and the benefits of the DA shall inure to all such legal and equitable owners and their successors in interest.

b. Duration and Effective Date: This DA shall be for the duration of ~~eleventen~~ (11) years, subject to any conditions precedent or termination provisions herein or mutual agreement, from the effective date of this DA. [The eleven \(11\) year duration date includes the Two-Year Extension.](#) The effective date of this DA shall be ~~the date of approval of this DA by the COUNTY~~[established in accordance with Section 163.3239, Florida Statutes.](#)

c. Development Uses of Land: The Project is currently zoned an A-C Agricultural District. An application to amend the zoning to an MPUD Master Planned Unit Development District is currently under review with the Growth Management Department. The MPUD Master Planned Unit Development Master Plan Rezoning Petition and the DO set forth the permitted uses for the Project.

d. Public Facilities: Adequate transportation facilities for the Project will be provided through the Required Roadway Improvements and other transportation facilities required by the COUNTY Land Development Code (LDC) and Comprehensive Plan. Adequate potable water and wastewater services for the Project are available through the COUNTY'S existing water and sewer lines subject to a Utilities Services Agreement with the COUNTY, the MPUD Master Planned Unit Development Conditions of Approval, and the DO. Adequate disposal services for the Project are available through existing licensed collectors and the COUNTY'S Solid Waste Disposal and Resource Recovery System subject to applicable provisions of the Code of Ordinances and the Comprehensive Plan. All drainage improvements necessary to serve the Project will be provided by the DEVELOPER in accordance with the terms and conditions of the DO, the MPUD Master Planned Unit Development, this DA, the COUNTY'S approved construction plans, and satisfaction of all County, State, and Federal regulations.

e. Reservations or Dedications for Public Purpose: All reservations and dedications for public purposes (right[s]-of-way) shall be provided in accordance with any MPUD Master Planned Unit Development Conditions of Approval; the DO; this DA; the COUNTY'S Comprehensive Plan, Transportation Corridor Goals, Objectives, Policies, Maps, and Tables; and the COUNTY'S Right-of-Way Preservation Ordinance.

f. Local Development Permits Needed: Prior to the construction of the Required Roadway Improvements, the DEVELOPER shall obtain any necessary development approvals in accordance with the LDC. This provision does not exempt the DEVELOPER from obtaining all other permits required by agencies with jurisdiction over the Project.

g. Findings: The COUNTY has found that Phases I and II of the Project as permitted and proposed are consistent with the portions of the Comprehensive Plan applicable to the Project development approvals obtained as of the date of this DA, subject to the provisions of the DO and this DA.

h. Requirements Necessary for the Public Health, Safety, and Welfare: The conditions, terms, restrictions, and other requirements determined to be necessary by the COUNTY for the public health, safety, or welfare of its citizens have been identified and included within the DO conditions and this DA. In addition, the DEVELOPER shall be subject to the MPUD Master Planned Unit Development Conditions of Approval, once approved, and the other applicable provisions of the LDC, Code of Ordinances, and Comprehensive Plan necessary for the public health, safety, and welfare.

i. Compliance with Legal Requirements and Permitting: The failure of this DA to address a particular permit, condition, term, or restriction shall not relieve the DEVELOPER of the necessity of complying with the laws governing the said permitting requirement, condition, term, or restriction.

j. Zoning and Comprehensive Plan Issues: The current Pasco County Comprehensive Plan Future Land Use (FLU) Map classifications for the Project are ~~TC (Town Center), AG (Agricultural), RES-1 (Residential - 1 du/ga), and RES-3 (Residential - 3 du/ga).~~ Simultaneously with the adoption of the DO and this DA, the COUNTY shall be adopting a Comprehensive Plan Amendment amending the FLU Map classifications for the Project from TC (Town Center), AG (Agricultural), RES-1 (Residential - 1 du/ga), and RES-3 (Residential - 3 du/ga) to CON (Conservation Lands), RES-3 (Residential - 3 du/ga), and TC (Town Center). The zoning classification for the Project is an A-C Agricultural District. An application to amend the zoning from an A-C Agricultural District to an MPUD Master Planned Unit Development was approved by the Board of County Commissioners on July 14, 2009. ~~is under review by the Growth Management Department.~~

4. FINANCE AND CONSTRUCTION OF ROADWAY IMPROVEMENTS

a. Proportionate-Share Amount: The DEVELOPER agrees to construct the Required Roadway Improvements as defined herein, within public right-of-way to be provided by the COUNTY or dedication by the DEVELOPER, as mitigation for the Epperson Ranch, Phases I and II, transportation impacts. Pursuant to Section 163.3180(12), F.S. Florida Statutes, and Rule 9J-2.045, F.A.C., the DEVELOPER'S proportionate-share contribution for those improvement projects listed in Exhibit G of the Project's DO, attached hereto as Exhibit B, is Seventy-Five Million Two Hundred Thirty-Seven Thousand Three Hundred Eighty-One and 00/100 Dollars (\$75,237,381.00) (Proportionate Share) in February 2007 dollars.

Pursuant to Section 402.7 of the COUNTY'S Concurrency Management Ordinance, the COUNTY and the DEVELOPER agree that the Project shall be granted a Proportionate-Share credit for the Town Center entitlements (50,000 square feet of office, 209,000 square feet of commercial, 100 motel rooms, 200 multifamily dwelling units, and 256 single-family attached dwelling units as depicted on Map H of the DO) in the amount of Twenty-Three Million Seven Hundred Forty Thousand One Hundred Ninety-Two and 00/100 Dollars (\$23,740,192.00) (Town Center Credit). The Town Center Credit assumes that the Town Center entitlements comply with the LDC criteria for TND (Traditional Neighborhood Design) Town Center [and assumes compliance of the residential entitlements within the Project with Section 7 of this DA](#). The portion of the Town Center entitlements that comply with such criteria is responsible only for the payment of transportation impact fees (TIF) to address their Proportionate-Share obligation and shall not be subject to any of the Required Roadway Improvements obligations set forth in this DA except for site-related improvements in the Town Center. The COUNTY shall address the Proportionate-Share obligation for compliant Town Center entitlements through the application of the TIF or other revenue sources toward one or more of the following segments: the I-75/Overpass Road interchange, I-75, S.R. 54/C.R. 581 intersection, S.R. 54, Curley Road, or other parallel facility or mobility improvements as determined by the COUNTY. Any portion of the Town Center entitlements as listed above which are developed, but not in accordance with the criteria in Section 402.7 of the COUNTY'S Concurrency Management Ordinance, shall require payment of a pro rata share of (or identification of a mitigation pipeline for) the Town Center Credit to the COUNTY. Such payment shall be adjusted by the most recent construction and right-of-way indices as adopted by the COUNTY TIF Ordinance as amended. Such payments shall be utilized for facility or mobility improvements in the COUNTY that benefit one or more of the following road segments: the I-75/Overpass Road interchange, I-75, S.R. 54/C.R. 581 intersection, S.R. 54, or Curley Road. Such improvements shall be included in the schedule of capital improvements in the Comprehensive Plan if they are not already in the schedule.

b. Identification of Required Roadway Improvements: The DEVELOPER has elected to design; permit; and, in limited instances, provide right-of-way for the Required Roadway Improvements in Subsections (1) and (2), below, to fully mitigate the transportation impacts of Phases I and II of the Project. ~~Construction shall be in accordance with the design drawings prepared by Kisinger Campo and Associates and as may be amended in the future for dated June 2008 for Curley Road Project No. C-0752-00-1-1.~~ [MDG2] Construction of the Required Roadway Improvements (which includes the Site-Related Improvements and the Curley Road Pipeline Project, Phases 1 and 2, as further described below), by the DEVELOPER, or other party acceptable to the COUNTY, once performed and subject to compliance with the Town Center requirements set forth ~~above~~ herein and the DO, shall satisfy the DEVELOPER's required proportionate-share contribution and shall vest the DEVELOPER for transportation concurrency for ~~the 4,260th equivalent single-family detached dwelling unit or~~ 3,419 equivalent in-p.m. peak-hour trips through

December 31, 20~~2017~~, subject to any extensions granted pursuant to the COUNTY'S Concurrency Management Ordinance. [The December 31, 2020 build-out date includes the One-Year Extension and the Two-Year Extension.](#)

(1) Identification of Pipeline Project: The DEVELOPER has elected to construct a pipeline project to mitigate the Proportionate-Share transportation impacts of Phases I and II of the Project subject to the Town Center Credit requirements set forth above. The Curley Road Pipeline Project is the construction, realignment, and expansion as further described below of Curley Road from Old S.R. 54 (Station 204+68.000) to 0.3 mile north of Overpass Road as depicted on Exhibit C (Curley Road Pipeline Project), unless an alternative terminus is approved by the COUNTY pursuant to Subsection (b) below. The cost of the Curley Road Pipeline Project is estimated to be Fifty-One Million Four Hundred Ninety-Seven Thousand One Hundred Eighty-Nine and 00/100 Dollars (\$51,497,189.00) in October 2006 dollars. The project shall also include all shoulders, striping, signalization, medians, sidewalks, stormwater-drainage facilities, floodplain mitigation, wetland mitigation, guardrails, and other roadway appurtenances, all as determined by the COUNTY and permitting agencies to be necessary during the design and permitting of the project (Roadway Appurtenances). The COUNTY ~~shall has~~ permitted, designed, and acquired right-of-way for a portion of the Curley Road Pipeline Project. For the purposes of this DA, commencement shall be defined by submission of the bid package in accordance with Section 6.a of this DA, and the terms "complete" or "completed" shall mean the required roadway improvement has been accepted by the County for maintenance and is open to the traveling public, and the required maintenance guarantee has been provided by the DEVELOPER.

(a) Curley Road Pipeline Project, Phase 1: This phase of the Curley Road Pipeline Project is the construction of a four (4) lane, divided, urban roadway, expandable to six (6) lanes, from Old S.R. 54 (Station 204+68.00 on Exhibit C) to Station 301+37.32 (north of Wells Road) as depicted on Exhibit C, and includes the construction of 0.2769 mile of Jacana Drive as a two (2) lane, undivided, urban offset and 0.1485 mile of Wells Road as a two (2) lane, undivided, urban offset. The DEVELOPER and the COUNTY agree that construction of this segment shall be completed in accordance with the COUNTY'S design plans and permits. The project shall include intersection improvements at Old S.R. 54, Zephyrhills West Bypass, Jacana Drive, Wells Road, and any other intersection improvements on the COUNTY'S design plans. If the DEVELOPER chooses to make any changes in design and permitting, such changes shall be subject to the approval of the COUNTY Engineering Services Department, shall be at the DEVELOPER'S expense, and shall not be eligible for TIF or Proportionate-Share credits. The DEVELOPER understands and agrees that, in the event the Curley Road Pipeline Project, Phase 1, is constructed prior to completion of the Zephyrhills West Bypass Project, the COUNTY may require additional intersection improvements not shown on the COUNTY'S design plans at Old S.R. 54 to accommodate Epperson Ranch

DRI Project traffic; any such additional improvements shall not be eligible for TIF or Proportionate Share credits. Construction of the Curley Road Pipeline Project, Phase 1, shall commence prior to approval of the first record plat for the 800th equivalent single-family detached dwelling unit (or construction plan approval where no plat is required) or prior to January 1, 201~~42~~, whichever occurs first. ~~Commencement shall be defined by submission of the bid package in accordance with Section 6.a of this DA.~~ The project shall be completed and accepted by the COUNTY for maintenance prior to July 1, 201~~53~~, or prior to eighteen (18) months from the approval of the first record plat for the 800th equivalent single-family detached dwelling unit (or construction plan approval where no plat is required), whichever occurs first. If the Curley Road Pipeline Project, Phase 1, is constructed separately from Phase 2 in Subsection (b) below, then Phase 1 shall include the taper from four (4) to two (2) lanes from Stations 340+20.00 to 358+47.95 as depicted on Exhibit C. The DEVELOPER shall post a Performance Guarantee for the Curley Road Pipeline Project, Phase 1, in accordance with Section 9 of this DA.

(b) Curley Road Pipeline Project, Phase 2: This phase of the Curley Road Pipeline Project is the construction of a four (4) lane, urban, divided roadway from Station 301+37.32 to 0.3 mile north of Overpass Road as depicted on Exhibit C, including tapering as applicable to transition from four (4) lanes to two (2) lanes as depicted on Exhibit C. The four (4) lane roadway shall be expandable to six (6) lanes, unless otherwise approved by the COUNTY at the time of Town Center Master Plan approval. The DEVELOPER agrees that the segment of Curley Road passing through the Town Center shall be constructed in compliance with the Town Center Master Plan. The project shall include any other intersection improvements determined by the COUNTY to be necessary during the design and permitting of the project. Construction of the Curley Road Pipeline Project, Phase 2, shall commence prior to June 30, 201~~64~~, or sooner to the extent required to complete the portion of Curley Road through the Town Center ~~by December 31, 201~~42~~^[c3]~~ or other date set forth in the Town Center Master Plan, whichever occurs later.

Commencement shall be defined by submission of the bid package in accordance with Section 6.a of this DA. The project shall be completed and accepted by the COUNTY for maintenance prior to December 31, ~~201~~5~~2017~~, or as necessary to serve the Town Center/adjacent development, whichever occurs first, provided, however, that the portion of Curley Road through the Town Center shall be completed by December 31, ~~201~~2~~2014~~^[c4] or other date set forth in the Town Center Master Plan, whichever occurs later.

In the event the COUNTY wishes to enter into a construction contract with another developer or others for all or any portion of Curley Road Pipeline Project, Phase 2, the COUNTY shall notify the DEVELOPER in writing prior to June 30, 201~~53~~, but not before the COUNTY has completed design and permitting. The DEVELOPER shall respond in writing to the COUNTY within ninety (90) days of such written notification, confirming that the DEVELOPER shall commence construction within six (6) months of such notification. In the event the DEVELOPER does not provide any written response to such notification within ninety (90) days or the

DEVELOPER does not commence construction within six (6) months from such notification date, the DEVELOPER shall be required to make a cash payment prior to December 31, 2017~~5~~, or within thirty (30) days of the COUNTY entering into the construction contract with another developer or others, whichever occurs later. The cash payment to the COUNTY shall be equivalent to the actual construction costs or the cost set forth in the COUNTY approved construction contract for that portion of the Curley Road Pipeline Project, Phase 2, constructed by another developer or others, whichever is greater, but in no circumstance shall such payment exceed the amount of Twenty Million Four Hundred Seventy Thousand Ninety and 00/100 Dollars (\$20,470,090.00) in October 2006 dollars, adjusted by the most recent construction and right-of-way indices as adopted by the County TIF Ordinance, as amended. The DEVELOPER shall post a Performance Guarantee for the construction or payment of the Curley Road Pipeline Project, Phase 2, in accordance with Section 9 of this DA.

(c) The Site-Related Curley Road Intersection Improvements: This portion of the Curley Road Pipeline Project consists of the site-related intersection improvements at Elam Road, Overpass Road, and all intersection improvements within the Town Center as depicted on Exhibit H of the DO and attached hereto as Exhibit E and any other site-related intersection improvements as required by the DO or the Town Center Master Plan (Site-Related Curley Road Intersection Improvements). These improvements shall be built at the DEVELOPER'S expense regardless of cost. The DEVELOPER understands and agrees that notwithstanding the potential regional benefits associated with the Site-Related Curley Road Intersection Improvements, such improvements are not eligible for TIF credits pursuant to the terms of the TIF Ordinance as amended; therefore, all design, permitting, right-of-way acquisitions/donations, and construction expenses or payment in lieu of such expenses, incurred by the DEVELOPER for the Site-Related Curley Road Intersection Improvements are not eligible for TIF credits, Proportionate-Share credit, or COUNTY reimbursement.

(2) Site-Related Improvements: The DEVELOPER shall, at its sole expense and regardless of cost, design, permit, construct, and acquire or donate right-of-way (where necessary) for the improvements set forth below, including all Roadway Appurtenances as determined by the COUNTY, and permitting agencies as applicable to be necessary during the design and permitting of the following site-related improvements (Site-Related Improvements). The Developer understands and agrees that all Site-Related Improvements described herein are not eligible for or entitled to TIF credits pursuant to the terms of the TIF Ordinance as amended; therefore, all design, permitting, right-of-way donations/acquisitions, and construction expenses incurred by the DEVELOPER are not eligible for TIF credits, Proportionate-Share credit, or COUNTY reimbursement. The DEVELOPER shall complete the construction of the Site-Related Improvements prior to the applicable deadline for each improvement as outlined below or shall provide the COUNTY with an Assurance of Completion of Improvement in accordance with the LDC prior to such deadline. If the Assurance

of Completion of Improvement is provided, construction must be completed prior to the issuance of the first Certificate of Occupancy within the plat or construction plan subject to the deadline. The Site-Related Improvements consist of the following:

(a) Overpass Road: The segment of Overpass Road commencing at Curley Road, extending westward to the western boundary of the Project as generally depicted on Map H, shall be designed and permitted in accordance with the Final Overpass Road Route Study dated March 2005 and constructed by the DEVELOPER as a two (2) lane, divided, urban section (offset), including all Roadway Appurtenances for a six (6) lane, divided, urban roadway, unless alternate design or construction standards are approved at the time of master plan approval for the Town Center. The project shall also include any site-related intersection improvements as required by the DO or the Town Center Master Plan. The alignment of Overpass Road shall be in accordance with the provisions of the Final Overpass Road Route Study dated March 2005. The Developer shall convey 166 feet of right-of-way for Overpass Road, from the western boundary to the eastern boundary of the Project. Overpass Road shall be completed and accepted by the COUNTY for maintenance prior to the first to occur of the following: 1) approval of the first record plat (or construction plan approval where no plat is required) for the 1,200th single-family detached dwelling unit or equivalent in p.m. peak-hour trips; 2) as necessary to serve the development; or 3) prior to December 31, 2014^[c5], or other date set forth in the Town Center Master Plan, whichever occurs later.

(b) Elam Road: The segment of Elam Road commencing at Curley Road and extending to the western boundary of the Project as depicted on Exhibit D shall be constructed/improved to COUNTY standards as a two (2) lane road. The DEVELOPER shall provide 142 feet of right-of-way for the portion of Elam Road bounded by the Project on both sides of Elam Road and seventy-one (71) feet of right-of-way for the portion of Elam Road bounded by the Project on one side of the road as depicted on Exhibit D. Elam Road shall be completed and accepted by the COUNTY for maintenance as necessary to serve adjacent or nearby development within the Project as determined by the COUNTY or the District School Board of Pasco County, whichever occurs first.

(c) Tyndall Road: The segment of Tyndall Road from Curley Road extending along the Project boundary shall be constructed/improved to COUNTY standards as a two (2) lane road. The DEVELOPER shall provide sufficient right-of-way to total 135 feet of right-of-way for Tyndall Road. Construction of Tyndall Road shall be completed and accepted by the COUNTY for maintenance as necessary to serve adjacent or nearby development within the Project as determined by the COUNTY.

(d) McKendree Road: As currently proposed in the PD&E for McKendree Road Extension, a portion of the alignment may fall within the project boundary for Epperson Ranch DRI. In the event the proposed alignment falls within the project boundary, the applicant shall accommodate such alignment including provision of right-of-way, drainage requirements, and any mitigation

requirements as determined by the County [MDG6] [c7]. Since McKendree Road was not included in the traffic study for the Project, nothing in this provision shall preclude the DEVELOPER from negotiating with the COUNTY for future TIF credits, subject to the requirements of the TIF Ordinance, or for a potential easement that is west of the ultimate PD&E alignment for McKendree Road.

~~(d)~~(e) All other site-related intersection improvements in Exhibit H of the DO and attached hereto as Exhibit E that are not listed in Subsection 4.b.(1)(c) above.

5. ROADWAY PROJECTS DESIGN, PERMITTING, AND RIGHT-OF-WAY ACQUISITION

a. Design, Permitting, and Right-of-Way Acquisition: The DEVELOPER shall design, permit, and provide or acquire right-of-way (where necessary) for the Required Roadway Improvements in accordance with the terms of this DA. The Required Roadway Improvements shall be designed consistent with the design criteria of the COUNTY. Notwithstanding the foregoing, the COUNTY shall design, permit, and acquire right-of-way for the Curley Road Pipeline Project.

b. Design and Construction Requirements: All design, permitting, and construction for the Required Roadway Improvements shall be in accordance with the standards promulgated by the COUNTY. Plan/profile sheets and cross section drawings shall indicate the location(s) of drainage inlets and roadway facilities. Except as otherwise provided in this DA, any Required Roadway Improvements related wetland and floodplain impacts and compensation shall be included in the design and indicated on the plans.

c. Roadway Drainage Facilities: Roadway drainage facilities, either on-site or off-site, if not commingled or combined with drainage facilities for the Project or any other facilities or developments along the route of the Required Roadway Improvements, shall be owned, operated, and maintained by the COUNTY, subsequent to the expiration of the one (1) year Maintenance Guarantee period as set forth herein. The DEVELOPER may, however, request of the COUNTY that the DEVELOPER, Community Development District (CDD), or other legal entity as may be approved by the COUNTY be allowed to maintain these facilities for the COUNTY roadways. If such request is granted, the DEVELOPER or CDD, as applicable, shall provide appropriate easements to the COUNTY so that the COUNTY has the ability to maintain the facilities in the event the DEVELOPER or CDD, as applicable, defaults on its obligations to maintain the facilities. If the Required Roadway Improvements drainage facilities are commingled or combined with drainage facilities of the Project or any other facilities or developments along the route of the Required Roadway Improvements, all such drainage facilities shall remain owned by the underlying land owner, including the DEVELOPER, where applicable, and operation and maintenance of the same shall be the responsibility of the respective underlying land owner (CDD or other similar legal entity as may be approved by the COUNTY). The underlying landowner (CDD or other similar legal entity as may be approved by the COUNTY) shall be responsible for the design, permitting, and construction of all such commingled or combined drainage facilities, unless otherwise approved by the COUNTY. Appropriate easements to the COUNTY shall

be provided on all lands owned by the DEVELOPER and shall be obtained from all other underlying land owners, by condemnation if necessary, of land containing drainage facilities serving the Required Roadway Improvements, including those facilities that are commingled or combined, so the COUNTY has the ability to maintain the facilities associated with the Required Roadway Improvements in the event the DEVELOPER or other respective underlying land owners default on its (their) obligation to maintain the facilities. Commingling or combining of drainage facilities for the Required Roadway Improvements shall not be allowed unless specifically approved in writing by the COUNTY.

d. Wetland and Floodplain Mitigation: In the event that the permitted wetland and/or floodplain mitigation area(s) for the impacts associated strictly with the Required Roadway Improvements are permitted and constructed separately and distinctly from impacts associated with the Project or any other facilities or developments, the COUNTY will accept ownership and maintenance responsibilities subsequent to successful completion of the maintenance and monitoring period and acceptance by the governing agency(ies). If the permitted wetland and floodplain mitigation areas related to the Required Roadway Improvements are commingled/combined with wetland and floodplain mitigation areas of the Project or any other facilities or developments, all the wetland and floodplain mitigation areas shall be permitted, owned, operated, and maintained by the underlying land owner, including the DEVELOPER or CDD, where applicable. Appropriate easements shall be provided to the COUNTY for the wetland and floodplain mitigation areas associated with the Required Roadway Improvements which are owned by the DEVELOPER and shall be obtained, by condemnation if necessary, from all other underlying landowners of land containing such mitigation areas serving the Required Roadway Improvements, including those areas that are commingled or combined, so the COUNTY has the ability to maintain the facilities in the event the DEVELOPER or other underlying land owner defaults on its (their) obligations to maintain the facilities. Commingling or combining of wetland and/or floodplain mitigation areas for the Curley Road Pipeline Project shall not be allowed unless specifically approved in writing by the COUNTY.

e. COUNTY Review and Approval of Design: The DEVELOPER shall complete and submit thirty (30), sixty (60), ninety (90), and 100 percent design plans to the COUNTY for review and approval, unless the COUNTY agrees in writing to or have adopted an alternative submittal schedule. The DEVELOPER shall obtain approval of the 100 percent design and right-of-way plans for the Required Roadway Improvements from the COUNTY prior to commencement of any bidding of the Required Roadway Improvements. Any reviews and approvals by the COUNTY shall be completed by the COUNTY within thirty (30) days of submission by the DEVELOPER of complete and correct documents to the COUNTY. The COUNTY shall make a completeness review and notify the DEVELOPER within five (5) business days of receipt of the submission by DEVELOPER if not complete and correct. The DEVELOPER shall provide at the time of 100 percent design and right-of-way plan submission for the Required Roadway Improvements (or

sooner if required by other sections of this DA) an estimate of the cost of constructing the Required Roadway Improvements, including inspection costs which shall be certified by an engineer duly registered in the State of Florida and approved by the COUNTY (hereinafter Cost Estimate). All plans, once accepted and approved for construction by the COUNTY shall become the property of the COUNTY.

f. Permitting Requirements: The DEVELOPER and/or its contractor shall obtain any and all required permits for the work it is to perform from the COUNTY and any and all applicable local and State regulatory agencies.

g. COUNTY Cooperation: The COUNTY shall, upon the DEVELOPER'S request, cooperate with the DEVELOPER in processing permit applications, and the DEVELOPER agrees to use its best efforts to expeditiously secure all permits that are necessary for the design and construction of the Required Roadway Improvements.

h. COUNTY Review: The DEVELOPER agrees and recognizes that the COUNTY shall not be held liable or responsible for any claims which may result from any actions or omissions of the DEVELOPER or engineers/contractors selected by the DEVELOPER, in which the COUNTY participated, either through review or concurrence of their actions. In reviewing, approving, or rejecting any submissions or acts of the DEVELOPER or engineers/contractors selected by the DEVELOPER, the COUNTY in no way assumes or shares any of the responsibility or liability of the DEVELOPER or its consultants, contractors, or registered professionals (architects and/or engineers) under this DA. All work covered under this DA shall be performed in accordance with good engineering practice, and all established design criteria and procedures shall be followed. The COUNTY will review the submittals, although detailed checking will not necessarily be done. The DEVELOPER remains solely responsible for the work and is not relieved of that responsibility by review comments.

i. Utilities Relocation: The DEVELOPER shall coordinate the relocation of any utilities infrastructure in conflict with the Required Roadway Improvements. Relocation of any utilities infrastructure which is in conflict with the Required Roadway Improvements shall be completed and paid for by the owner of the utilities infrastructure to the extent required by Sections 337.403-337.404, [F.S. Florida Statutes](#). The COUNTY agrees, upon request of DEVELOPER, to cooperate with the DEVELOPER in requiring the relocation of any such utilities infrastructure to the extent allowed by Sections 337.403-337.404, [F.S. Florida Statutes](#), in a timely manner. However, under no circumstances shall the COUNTY incur any expenses for the relocation of such utilities; and if the owner of such utilities fails to remove the utilities at the request of the COUNTY, and the DEVELOPER bears the expense of the utility relocation, such expense shall not be eligible for impact fee credits.

j. Right-of-Way Acquisition:

(1) Except for the Curley Road Pipeline Project, the DEVELOPER shall be responsible within the time frames set forth in this DA for right-of-way requirements (except where the COUNTY has already acquired the necessary right-of-way) necessary for the construction of the Required Roadway Improvements described above which may include, but not be limited to, lanes of travel, shoulders, striping, signalization, signage, medians, on-site stormwater-drainage facilities, off-site stormwater-drainage facilities, floodplain mitigation, wetland mitigation, guardrails, handrails, sidewalks, and any other necessary appurtenances. The DEVELOPER shall be responsible for selecting and retaining all consultants for acquisition of right-of-way for the Required Roadway Improvements which may include, but not be limited to, competent and qualified attorneys, engineers, surveyors, title companies, appraisers, land planners, certified public accountants, business damages experts, contractors, horticulturists, and any other consultants considered necessary by the mutually agreeable attorney, discussed below.

While it is not anticipated that additional right-of-way will be required for the Required Roadway Improvements, if necessary, efforts will be made by the COUNTY and DEVELOPER to enter into a Joint Participation Agreement, Letter of Understanding, or otherwise provide a means for the COUNTY to act as a condemning authority with regard to any additional right-of-way required for the Curley Road Pipeline Project. The DEVELOPER shall have the authority to attempt to privately acquire necessary right-of-way or to participate to the extent permitted by the COUNTY in regard to the actions required prior to condemnation. To the extent the COUNTY has condemning authority, COUNTY staff involvement for any Required Roadway Improvements eminent domain proceeding shall be limited to preparation of an engineering memorandum in support of a Resolution of Necessity, with the timely support and cooperation of the above consultants and professionals, and providing necessary representatives and witnesses in conjunction with any eminent domain proceedings. After receipt of a request by the DEVELOPER for the Resolution of Necessity, the COUNTY'S preparation and consideration of the Resolution of Necessity shall not be unreasonably withheld or delayed. The DEVELOPER, not later than the time when sixty (60) percent design plans are submitted, shall identify all real estate parcels required for the Required Roadway Improvements and identify the appropriate interests in real estate for right-of-way acquisition and furnish the same to the COUNTY. The COUNTY, not later than thirty (30) days after its receipt of the submittal, shall either approve or disapprove the submittal. If the COUNTY disapproves the submittal, it shall provide comments to the DEVELOPER explaining the reasons for the disapproval. Right-of-way maps shall be prepared in accordance with the requirements of the COUNTY'S and State of Florida's Minimum Technical Standards. Upon COUNTY approval of the submittal, the DEVELOPER shall select an attorney acceptable to the COUNTY to represent the COUNTY in the acquisition of right-of-way. Thereafter, the DEVELOPER, in conjunction with the mutually agreeable attorney, shall proceed to acquire for the COUNTY, and in the COUNTY'S name, the right-of-way pursuant to applicable law. The COUNTY, its elected officials, employees, and representatives shall not be liable under any circumstances to the

DEVELOPER, its employees, contractors, material suppliers, agents, representatives, or customers for any delay occasioned by the inability to obtain the right-of-way. The DEVELOPER shall submit quarterly Project status reports that document the actions and progress of right-of-way acquisitions to the COUNTY Engineer or his designee.

(4)(2) Required Roadway Improvements Construction. The DEVELOPER shall commence construction of the Required Roadway Improvements in accordance with this DA unless extended as provided herein. The DEVELOPER shall proceed and complete the construction of the Required Roadway Improvements in accordance with the final alignment, design, specification, and construction plans as approved by the COUNTY and other applicable Federal, State, and regional regulatory agencies. The DEVELOPER and COUNTY understand and agree that nothing contained herein shall prohibit or in any way restrict the DEVELOPER'S ability, at its sole discretion, to accelerate the schedule for construction of any portion of the Required Roadway Improvements.

k. Tender of Improvement Area: Upon the issuance to the DEVELOPER or its contractor of a COUNTY Construction Permit, the area covered by that Construction Permit shall be deemed to be tendered to the DEVELOPER or its contractor, as applicable, and such entity shall be in the custody and control of the Project areas. The DEVELOPER or its contractor shall be responsible for providing a safe work zone for the public.

l. COUNTY Observation: The COUNTY'S personnel and authorized representatives, as applicable, reserve the right to inspect, observe, and materials-test any and all work associated with the Required Roadway Improvements and shall at all times have access to the work being performed pursuant to this DA for the COUNTY'S observation. However, should the COUNTY observe any deficiencies inconsistent with the plans or construction not in accordance with the specifications, the COUNTY shall notify the DEVELOPER and its representative in writing; and the DEVELOPER shall, at its cost, correct the deficiencies as necessary. Nothing herein shall require the COUNTY to observe or inspect the work of the Required Roadway Improvements. The DEVELOPER shall be solely responsible for ensuring that the Required Roadway Improvements are constructed in accordance with the plans, specifications, and required standards. Observations by the COUNTY or their inspectors that do not discover that construction is not in accordance with the approved plans, specifications, and required standards shall not be deemed a waiver of the DEVELOPER'S requirements herein.

m. Right-of-Way: Prior to the COUNTY'S acceptance of any of the Required Roadway Improvements, as applicable, the DEVELOPER shall meet the applicable requirements of the COUNTY and cause all rights-of-way, including rights-of-way for drainage facilities and wetland and floodplain mitigation, as appropriate, to be conveyed to the COUNTY in fee simple, free of financial encumbrances or other encumbrances which restrict its use for road purposes. Unless required elsewhere herein, all

conveyances shall occur at record plat or construction plan approval where a record plat is not required or within ninety (90) days of the COUNTY'S request, whichever occurs first. All conveyances shall include access easements be in a form acceptable to the Real Estate Division and be free and clear of all liens and encumbrances, including exemption from all covenants and deed restrictions.

n. Construction Requirements: During the construction phase of the Required Roadway Improvements, the DEVELOPER and/or its construction contractor(s) shall:

(1) Provide its own on-site inspection and observation under the direction of a professional engineer registered in the State of Florida for the purpose of observing and inspecting the progress and quality of the work and to ensure that it is constructed according to the plans, contract documents, and specifications.

(2) Obtain all necessary Right-of-Way Use Permits.

(3) Be responsible for supervising and inspecting the construction of the Required Roadway Improvements and shall be responsible for ensuring the accuracy of all reference points, grade lines, right-of-way lines, and field measurements associated with such construction.

(4) Be responsible for full and complete performance of all construction activities required pursuant to this DA. The DEVELOPER shall be responsible for the care and protection of any materials provided or work performed for the Required Roadway Improvements until the improvements are completed and accepted by the COUNTY, which acceptance shall not be unreasonably withheld.

(5) Require testing by an independent laboratory, acceptable to the COUNTY in accordance with the COUNTY Engineering Services Department's testing specifications for construction of roads, stormwater drainage, and utilities as applicable. Any failed tests shall be reported to the COUNTY Engineer immediately, and all test reports shall be provided on a quarterly basis to the COUNTY Engineer.

(6) Provide a certification from a professional engineer registered in the State of Florida which shall certify that all designs, permits, and construction activities for the Required Roadway Improvements other road improvements are in substantial conformance with the standards established by the Florida Department of Transportation (FDOT) pursuant to Section 336.045, [F.S. Florida Statutes](#), and by the COUNTY. The said certification shall conform to the standards in the industry and be in a form acceptable to the COUNTY.

(7) Provide to the COUNTY copies of all design drawings, as-built drawings, and permits received for the Required Roadway Improvements, and such information shall become the property of the COUNTY upon submission. All plans submitted to the COUNTY shall include reproducible Mylars™ and electronic files compatible with *AutoCADD*.

6. PIPELINE PROJECTS CONSTRUCTION

The DEVELOPER shall commence construction of the Curley Road Pipeline Project in accordance with this DA, unless extended as provided herein. The DEVELOPER shall proceed and complete the construction of the Curley Road Pipeline Project in accordance with the final alignment, design, specification, and construction plans as approved by the COUNTY and other applicable Federal, State, and regional regulatory agencies. The DEVELOPER and COUNTY understand and agree that nothing contained herein shall prohibit or in any way restrict the DEVELOPER'S ability, at its sole discretion, to accelerate the schedule for construction of any portion of the Curley Road Pipeline Project.

a. Competitive Selection of Contractors: The DEVELOPER shall competitively award a contract for the construction of the Curley Road Pipeline Project to an appropriately licensed contractor. The term "competitively award" as used in this DA means to award the said contract based upon the County's "Guidelines for Developer Pipeline Projects in Pasco County," unless otherwise approved by the County Administrator. ~~submission of sealed bids in accordance with the procedures set forth herein.~~ The failure of the DEVELOPER to comply substantially and in good faith with any provision of this section may result in the rejection by the COUNTY of any request for TIF credits related to work that was not competitively bid in accordance with such guidelines, as determined by the County. ~~—Prior to initiating the competitive award process, the DEVELOPER shall provide to the COUNTY Purchasing Director the bid package, which shall include final and complete design plans, technical specifications, general and special conditions, contracts, required portions of this DA, and all such other Project documents and materials the inclusion of which in the bid package may be deemed necessary or advisable by the DEVELOPER or the COUNTY. The COUNTY shall have thirty (30) business days to review the documents and materials submitted by the DEVELOPER and provide the DEVELOPER with their comments. Consistent with the COUNTY'S comments, the DEVELOPER shall finalize the bid package, outlining the nature and scope of the Project; shall provide the COUNTY with a copy of the final bid package; and shall proceed to solicit competitive bids from qualified contractors following the process set forth below. The DEVELOPER shall advertise the bid one (1) day per week for two (2) consecutive weeks in the legal section of a newspaper of general circulation in the COUNTY. The DEVELOPER shall request a vendor database list from the COUNTY and shall send bid solicitations to each vendor on the appropriate list no later than when the first advertisement appears. The DEVELOPER shall immediately provide the COUNTY with any and all correspondence, addenda, and amendments to the bid package, but in no event later than the closing date for the submission of bids. The closing date for the submission of bids shall be no less than thirty (30) days after the first advertisement. The DEVELOPER is exclusively responsible for fulfilling requests for documentation and responding to questions of bidders. If the DEVELOPER elects to conduct any prebid meetings in connection with the Project, the details of this election shall be specified in the bid package, and the Purchasing Director or his designee shall be afforded an opportunity to attend any such prebid meetings with reasonable notice. All competitive bids shall be sealed~~

~~and delivered to the DEVELOPER on or before the time specified in the request or invitation issued by the DEVELOPER, and the said bids shall be opened by the DEVELOPER at the specified location in the bid documents in the presence of the Purchasing Director or his designee, who shall be afforded reasonable notice and an opportunity to review and comment on the bids. After the opening, the Purchasing Director or his designee staff shall immediately receive an unofficial bid tabulation from the DEVELOPER. Within twenty-four (24) hours of the bid opening, the COUNTY shall receive from the DEVELOPER full copies of all bids and an official bid tabulation.~~

~~b.a. The DEVELOPER shall evaluate the bids to ascertain the identity of the lowest responsive and responsible bidder. The DEVELOPER shall notify the COUNTY Purchasing Director in writing, of the identity of the lowest responsive, responsible bidder and shall provide the COUNTY with the proposed contract, which shall be consistent with the approved bid package and the lowest responsive, responsible bid. The DEVELOPER shall award the Curley Road Pipeline Project contracts to the lowest responsive, responsible bidder approved by the COUNTY. If the DEVELOPER determines that any or all bids should be rejected for any material reason, the above notification shall also identify each defective bid and the basis for the determination as to rejection as applicable, including a general determination that all bids should be rejected and the Curley Road Pipeline Project should be rebid. In the event that all bidders are rejected as nonresponsive and/or nonresponsible, the Curley Road Pipeline Project may be rebid following the procedures described herein. The COUNTY shall have thirty (30) business days to review, comment, and provide a statement of reasonable objections or no objection. If the COUNTY objects, the COUNTY reserves the right to require the DEVELOPER to award the Curley Road Pipeline Project contract to the next available lowest responsive, responsible bidder or require that all bids be rejected and a rebid performed. Upon the COUNTY'S statement of no objection, the DEVELOPER may proceed to award to that party the contract for the Curley Road Pipeline Project and shall execute a formal written agreement containing the specific terms and conditions of construction as set forth in the bid package and in the format previously accepted by the COUNTY, providing two (2) copies of the final executed agreement to the COUNTY Purchasing Director. The DEVELOPER shall promptly furnish to the COUNTY two (2) copies of any amendments, supplements to the agreement, or change orders thereafter executed. In addition to the foregoing, the DEVELOPER shall comply with any applicable State competitive-bidding requirements for the Curley Road Pipeline Project.~~

b. Tender of Improvement Area: Upon the issuance to the DEVELOPER or its contractor of a COUNTY Construction Permit, the area covered by that Construction Permit shall be deemed to be tendered to the DEVELOPER or its contractor, as applicable, and such entity shall be in the custody and control of the Project areas. The DEVELOPER or its contractor shall be responsible for providing a safe work zone for the public.

c. COUNTY Observation: The COUNTY'S personnel and authorized representatives reserve the right to inspect, observe, and materials-test any and all work associated with the Curley Road Pipeline Project and shall at all times have access to the work being performed pursuant to this DA for the COUNTY'S observation. However, should the COUNTY observe any deficiencies inconsistent with the plans or construction not in accordance with the specifications, the COUNTY shall notify the DEVELOPER and its representative in writing; and the DEVELOPER shall, at its cost, correct the deficiencies as necessary. Nothing herein shall require the COUNTY to observe or inspect the work on the Curley Road Pipeline Project. The DEVELOPER shall be solely responsible for ensuring that the Curley Road Pipeline Project is constructed in accordance with the plans, specifications, and required standards. Observations by the COUNTY that do not discover that construction is not in accordance with the approved plans, specifications, and required standards shall not be deemed a waiver of the DEVELOPER'S requirements herein.

d. Right-of-Way: Prior to the COUNTY'S acceptance of the Curley Road Pipeline Project, as applicable, the DEVELOPER shall meet the applicable requirements of the COUNTY and cause all rights-of-way under their ownership/control, including rights-of-way for drainage facilities and wetland and floodplain mitigation, as appropriate, to be conveyed to the COUNTY in fee simple, free of financial encumbrances or other encumbrances which restrict its use for road purposes.

e. Construction Requirements: During the construction phase of the Curley Road Pipeline Project, the DEVELOPER and/or its construction contractor(s) shall:

(1) Provide its own on-site inspection and observation by a professional engineer registered in the State of Florida for the purpose of observing and inspecting all construction to ensure it is built according to the plans and specifications.

(2) Obtain all necessary Right-of-Way Use Permits.

(3) Be responsible for supervising and inspecting the construction of the Curley Road Pipeline Project and shall be responsible for ensuring the accuracy of all reference points, grade lines, right-of-way lines, and field measurements associated with such construction.

(4) Be responsible for full and complete performance of all construction activities required pursuant to this DA. The DEVELOPER shall be responsible for the care and protection of any materials provided or work performed for the Curley Road Pipeline Project until the improvements are completed and accepted by the COUNTY, as applicable, which acceptance shall not be unreasonably withheld.

(5) Require testing by an independent laboratory, acceptable to the COUNTY in accordance the COUNTY Engineering Services Department's testing specifications for construction of roads, stormwater drainage, and utilities as applicable. Any failed tests shall be reported to the COUNTY Engineer immediately, and all test reports shall be provided on a quarterly basis to the COUNTY Engineer.

(6) Provide a certification from a professional engineer registered in the State of Florida which shall certify that all designs, permits, and construction activities for the Curley Road Pipeline Project and other road improvements are in substantial conformance with the standards established by the COUNTY. The said certification shall conform to the standards in the industry and be in a form acceptable to the COUNTY.

(7) Provide to the COUNTY copies of all design drawings, as-built drawings, and permits received for the Curley Road Pipeline Project, and such information shall become the property of the COUNTY upon submission. All plans submitted to the COUNTY shall include reproducible Mylars™ and electronic files compatible with *AutoCADD*.

7. TRANSPORTATION IMPACT FEES AND CREDITS

a. Transportation Impact Fees: The DEVELOPER and Project shall be assessed TIF in accordance with the COUNTY'S adopted TIF Ordinance as amended and this DA. The COUNTY agrees to budget impact fees paid within the Project in an impact fee account, attributable to the Curley Road Pipeline Project, for reimbursement or TIF credit to the DEVELOPER or to another entity or entities; e.g., the CDD or other third party entity on behalf of the DEVELOPER, to the extent that such entity finances or otherwise pays for or contributes to the Curley Road Pipeline Project as determined by the COUNTY (hereinafter referred to as the Credit-Receiving Entity). Once the DEVELOPER has posted the Performance Guarantees and commenced construction for the Curley Road Pipeline Project referenced in this DA, the COUNTY agrees to reimburse or provide impact fee credits to the Credit-Receiving Entity for those expenditures on the pipeline projects approved by the COUNTY to be impact-fee creditable in accordance with this DA and the TIF Ordinance. The DEVELOPER and Credit-Receiving Entity shall not be entitled to any interest on the account. Impact fees paid for the Project shall not be held for the Curley Road Pipeline Project beyond seven (7) years after payment and can thereafter be spent anywhere as desired by the COUNTY in accordance with the TIF Ordinance. In addition, the time limits on the encumbrance and expenditure of these funds, as provided in the TIF Ordinance, shall be waived by the DEVELOPER and by its successors and assigns. The DEVELOPER and Project shall pay TIF in accordance with the TIF Ordinance whenever it does not have COUNTY-approved impact fee credits or offsets sufficient to cover impact fees that are due. Notwithstanding anything in the DO or this DA to the contrary, in the event the COUNTY'S first 15-year Capital Improvement Plan (CIP) shows that the COUNTY has inadequate committed and planned revenue to construct the improvements needed to achieve and maintain the COUNTY'S adopted level of service standards on any of the roadways impacted by the Project (as set forth in Exhibit G of the DO and attached hereto as Exhibit B) during the term of the 15-year CIP, the DEVELOPER agrees to the following:

(1) The residential entitlements within the Project shall be subject to the "Option 1 Full Fee," as set forth in the TIF Schedule and indexed to the fiscal year of payment for any

residential TIFs due after the COUNTY'S adoption of the 15-year Capital Improvement Element (CIE) that relies on revenue from the Option 1 Full Fee within the Project; and

(2) The COUNTY may utilize the additional projected revenue from the Option 1 Full Fee within the Project as a committed or planned funding source for one or more of the inadequately-funded roadways impacted by the Project in the 15-year CIP or 15-year CIE.

The County shall consider other revenue sources in its formulation of the 15-year CIP.

b. Transportation Impact Fee Credits:

(1) Impact Fee Credit. The Credit-Receiving Entity shall be eligible for TIF credits for construction costs or payment in lieu of such costs for the Curley Road Pipeline Project, Phase 1, as detailed in this DA and the TIF Ordinance. The Credit-Receiving Entity shall be eligible for TIF credits for actual, reasonable construction costs or payment in lieu of such costs for the Curley Road Pipeline Project, Phase 2, as detailed in this DA and the TIF Ordinance. Reasonable construction costs shall be determined by the County Administrator or his designee (Administrator). In no event shall such TIF credit exceed the lesser of actual costs or the estimated costs assumed in Exhibit B of this DA (Exhibit G of the DO). Because completion of the proportionate-share pipeline project and payment of TIFs for the Project pursuant to the requirements of this DA also serve as a guarantee of transportation concurrency capacity through ~~2017~~ 2020 for the Project, any TIF credits are not transferable outside the boundaries of the Project. For Fiscal Year 2010, the COUNTY agrees to provide impact fee credits equivalent to 200 single-family detached units; 120 age-restricted, single-family detached units; and 75 townhouse units. For Fiscal Year 2011, the COUNTY agrees to provide impact fee credits equivalent to 200 single-family detached units; 120 age-restricted, single-family detached units; and 75 townhouse units. The amount of each credit will be determined at the time of application for the Building Permit based upon the impact fee schedule at that time. The issuance of credits shall be limited by the provisions in Section ~~8~~ 7.a, above, and must be in accordance with the TIF Ordinance. The DEVELOPER and/or the Credit-Receiving Entity shall, on or before June 1 of each year, provide to the Administrator an updated schedule of production for the remainder of the Project. The production schedule must show the number of anticipated units for all residential uses, the anticipated square footage for commercial and office, and the number of rooms for motel. In conjunction with the preparation of the COUNTY'S annual CIP Budget, the Administrator shall, on or before October 1, communicate to the DEVELOPER and/or the Credit-Receiving Entity the anticipated number of units that have been included in the CIP Budget for the next three fiscal years. Once the DEVELOPER and/or the Credit-Receiving Entity has received impact fee credits equal to the expenditures for the Curley Road Pipeline Project, the requirement of updating the production schedule shall be eliminated. In the event the DEVELOPER fails to provide an updated production schedule on or before June 1 of any year, the COUNTY shall not be obligated to

communicate, on or before October 1, the results of the CIP Budget to the DEVELOPER. To receive impact fee credit or reimbursement, all requests and invoices for the Curley Road Pipeline Project shall be submitted to the COUNTY within ninety (90) days of final acceptance by the COUNTY of the Curley Road Pipeline Project, or for amounts under dispute, no later than ninety (90) days after the conclusion of the dispute. All requests and invoices for credits or reimbursements shall be submitted to the COUNTY at a frequency no greater than monthly. Impact fee credits or reimbursements shall be issued to the Credit-Receiving Entity. Should there be any amounts denied for reimbursement or credit, the DEVELOPER may appeal such decision in a manner consistent with the TIF Ordinance.

(2) Notwithstanding the foregoing, the DEVELOPER and/or the Credit-Receiving Entity shall not be eligible for impact fee credits or reimbursement for:

(a) Site-Related Improvements, including any associated right-of-way donations and/or acquisitions as defined above in Section 4.b.(2).

(b) Site-related intersection improvements as depicted in Exhibit H of the DO and attached hereto as Exhibit E.

(c) Any internal roadway improvements or right-of-way dedications required by the DO, MPUD Master Planned Unit Development Conditions of Approval, and/or the LDC.

(d) Construction Engineering and Inspection (CEI) expenses in excess of ten (10) percent of the total Curley Road Pipeline Project cost.

(e) Curley Road Pipeline Project costs not specifically set forth in this DA; e.g., financing, insurance, and bonding expenses.

In addition, the DEVELOPER and Credit-Receiving Entity shall not be eligible for impact fees, Proportionate-Share credits, or reimbursement for impact fees paid prior to the execution of this DA, and the DEVELOPER and Credit-Receiving Entity shall not be eligible for impact fee credit for any costs for which the COUNTY has provided a reimbursement pursuant to this DA.

(3) Roadway Drainage Facilities: If pipeline project roadway-drainage facilities are commingled with off-site Project-related or other landowner-related drainage facilities, the portions of the right-of-way acquisition, design, permitting, and construction costs for Project-related or other landowner-related drainage facilities are not eligible for impact fee credits.

(4) Wetland and Floodplain Mitigation: If wetland and floodplain mitigation areas needed for the Curley Road Pipeline Project are commingled with off-site Project-related or other landowner-related wetland and floodplain mitigation areas, the portions of the right-of-way acquisition, design, permitting, and construction costs for Project-related or other landowner-related mitigation are not eligible for impact fee credits.

(5) Cash Payout Option: The COUNTY reserves the right to pay out annually the cash value of any unused, accrued, impact fee credits to the DEVELOPER and such cash value shall be removed from any credit balance.

c. Other Impact Fees: Nothing contained in this DA shall excuse the payment of any other nonTIF required to be paid in accordance with the laws and ordinances of the COUNTY as may be amended.

8. PERFORMANCE GUARANTEES BY DEVELOPER

a. General: A Letter of Credit (LOC) or other Performance Guarantee acceptable to and approved by the COUNTY (Performance Guarantee) to guarantee completion of the Curley Road Pipeline Project, Phase 1 (~~LOC-Performance Guarantee~~ No. 1), shall be posted in favor of and provided to the COUNTY prior to approval of the first record plat for the 800th equivalent single-family detached dwelling unit (or construction plan approval where no plat is required) or prior to January 1, 2014~~3~~, or ninety (90) days prior to construction commencement for such phase,^[c10] whichever occurs first. A second ~~LOC~~ Performance Guarantee acceptable to and approved by the COUNTY to guarantee completion of Curley Road Pipeline Project, Phase 2 (~~LOC-Performance Guarantee~~ No. 2), shall be posted in favor of and provided to the COUNTY prior to June 30, 2014~~6~~, or ninety (90) days prior to construction commencement for such phase, whichever occurs first,^[c11]. Failure to post, revise, update, and keep effective the required ~~LOCs~~ Performance Guarantees until the completion of the Project shall be considered a default of this DA and shall entitle the COUNTY to suspend any TIF credits or reimbursements due pursuant to Section 6 above and/or stop the issuance of Building Permits and other development approvals. The DEVELOPER shall post ~~LOC~~ Performance Guarantee No. 1, in the amount of ~~Thirty-Eight Million Seven Hundred Eighty-Three Thousand Eight Hundred Seventy-Three and 00/100 Dollars (\$38,783,873.00)~~ (125 percent of the cost of the Curley Road Pipeline Project, Phase 1, of Thirty-One Million Twenty-Seven Thousand Ninety-Nine and 00/100 Dollars [\$31,027,099.00]), in October 2006 dollars as adjusted to the date of posting,^[c12] plus the estimated cost of construction for the portion of the Curley Road Pipeline Project, Phase 2, within the Town Center, to guarantee construction of the Curley Road Pipeline Project, Phase 1, and the portion of the Curley Road Pipeline Project, Phase 2, within the Town Center. The DEVELOPER shall post ~~LOC-Performance~~ Guarantee No. 2 in the amount of ~~Twenty-Five Million Five Hundred Eighty-Seven Thousand Six Hundred Thirteen and 00/100 Dollars (\$25,587,613.00)~~ (125 percent of the cost of the Curley Road Pipeline Project, Phase 2, of Twenty Million Four Hundred Seventy Thousand Ninety and 00/100 Dollars [\$20,470,090.00]) in October 2006 dollars as adjusted to the date of posting,^[c13] less any amounts already guaranteed in ~~LOC-Performance Guarantee~~ No. 1 or any portion of the Curley Road Pipeline Project, Phase 2, already constructed to guarantee construction of or payment for the Curley Road Pipeline Project, Phase 2. ~~Within~~ No later than ninety (90^[MDG14]) days and no earlier than 180 days prior to the applicable

~~Performance Guarantee posting deadlines set forth above of 100 percent design approval for the Curley Road Pipeline Project, Phase 1, and Curley Road Pipeline Project, Phase 2~~, the DEVELOPER shall provide the COUNTY with an updated Cost Estimate for each Project as applicable. Upon approval of the updated Cost Estimate by the COUNTY, the DEVELOPER shall provide the COUNTY with a revised LOG Performance Guarantee for each Project as applicable in the minimum amount equal to 125 percent of the updated COUNTY-approved Cost Estimate. On the renewal date of each LOG Performance Guarantee as applicable, the LOG Performance Guarantee may be reduced provided an updated Cost Estimate for the remainder of the applicable Project is provided to and approved by the COUNTY and provided that the LOG Performance Guarantee is not reduced below 125 percent of the COUNTY-approved Cost Estimates for the remainder. The LOGs Performance Guarantees shall be returned to the DEVELOPER upon fulfillment of the obligation guaranteed by the LOG Performance Guarantee.

b. Conditions for Letters of Credit Performance Guarantees:

(1) The ~~LOGs and any other Assurance of Completion of Improvement~~Performance Guarantee in accordance with this DA or the LDC for the Project must be issued by a bank, savings association, or other financial institution (the LOG Performance Guarantee Issuer), unless otherwise approved by the Risk Manager and the County Attorney's office (CAO).

(2) The LOG Performance Guarantee Issuer shall be:

- (a) Organized and existing under the laws of Florida, or
- (b) Organized under the laws of the U.S. and have a principal place of business in Florida, and
- (c) Have a branch office which is authorized under the laws of Florida or the U.S. to receive deposits in Florida.

(3) The LOG Performance Guarantee must provide for draws to be made on it at an office within 100 miles from the COUNTY.

(4) The LOG Performance Guarantee must be signed by the President or Vice President of the LOG Performance Guarantee Issuer.

(5) The LOG Performance Guarantee Issuer must have and maintain:

- (a) An average financial-condition ranking of thirty-five (35) or more from two (2) nationally recognized, financial-rating services, compiled quarterly by the Florida Department of Financial Services, Division of Treasury, unless otherwise approved by the Risk Manager and the CAO.

(b) A minimum rating of at least AA/Aa/AA by S & P, Moody's, or Fitch.

(c) Downgrade Provision: In the event the LOG Performance Guarantee Issuer does not maintain the average financial condition in Paragraph 8.b.(5)(a) above or is

downgraded below the minimum in Paragraph 8.b.(5)(b) above, the ~~LOC-Performance Guarantee~~ Issuer must notify the COUNTY and the DEVELOPER within five (5) days, and the DEVELOPER must provide a substitute ~~LOC-Performance Guarantee~~, in substantially the same form and containing the same terms as the original ~~LOC-Performance Guarantee~~, from a bank or financial institution with the minimum ratings set forth above within fifteen (15) days of such downgrade event, or the COUNTY will draw on the original ~~LOC-Performance Guarantee~~.

c. Maintenance Guarantee: Upon completion of the Required Roadway Improvements and final acceptance by the COUNTY, in accordance with the COUNTY Engineering Inspections Division certification as required in this section, the DEVELOPER and its construction contractor shall be required to guarantee that the Required Roadway Improvements and all work performed is free from defects in workmanship or materials by completing an initial maintenance period and providing an ~~LOC-Performance Guarantee~~ valid for the entire three (3) year initial maintenance period plus six (6) months. The monetary amount which shall be made available to the COUNTY under the terms of the ~~LOC-Performance Guarantee~~ shall be equal to fifteen (15) percent of the cost of the Project. The amount shall be based on the engineer's own estimate amounts or an estimate established by multiplying the actual unit quantity by the unit costs contained in the Engineering Services Department's, *A Procedural Guide for the Preparation of Assurances of Completion and Maintenance* (as may be subsequently amended). The initial maintenance period shall be three (3) years commencing on the date of acknowledgement of completion and acceptance of an ~~LOC-Performance Guarantee~~ in accordance with this section. The DEVELOPER shall be responsible for maintaining the Project during the initial maintenance period, and, if any part of the Project should fail within this period due to such a defect, it shall be repaired, replaced, and/or restored to satisfactory condition and/or operation at no cost to the COUNTY. In the event the DEVELOPER does not maintain the Project during the initial maintenance period, the Administrator shall notify the DEVELOPER in writing via certified U.S. Mail, return receipt requested, of the areas that require maintenance. The DEVELOPER shall have sixty (60) days from receipt of the notice to perform the required maintenance to the satisfaction of the Administrator or be in default of the ~~LOC-Performance Guarantee~~, unless a longer time is agreed upon between the DEVELOPER and the Administrator. The DEVELOPER shall also be responsible for requesting, in writing, a final inspection from the COUNTY Engineering Inspections Division not before ninety (90) days prior to the termination of the initial maintenance period. Upon receipt of the request for final inspection, the Engineering Inspections Division shall notify the DEVELOPER via certified U.S. Mail, return receipt requested, postmarked within thirty (30) days of such request, providing a list of deficiencies of items to be remedied by the DEVELOPER before the expiration of the maintenance period. In the event the DEVELOPER does not remedy the deficiencies before the expiration of the maintenance period, the DEVELOPER shall be in default of the ~~LOC-Performance Guarantee~~. This remedy for correction is a contractual obligation that is a cumulative and not exclusive

remedy. Upon completion of construction of the improvements and final inspection by the COUNTY as being constructed in accordance with all appropriate contract documents and permit requirements, etc., and upon the expiration of the required three (3) year Maintenance Guarantee, the COUNTY shall be responsible for maintenance of the roadway and roadway-drainage facilities which are not commingled/combined. Upon the remedy of any defects to the satisfaction of the Administrator, or in the case of no defects, but in any case no sooner than the completion of the three (3) year maintenance period, the Administrator may recommend to the COUNTY the release of the Maintenance Guarantee.

9. INDEMNIFICATION AND INSURANCE

a. Indemnification: For and in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the DEVELOPER shall indemnify, defend, and hold harmless the COUNTY and all of its agents and employees from and against any and all claim, liability, loss, damage, cost, attorney's fee, charge, or expense of whatever kind or nature which the COUNTY may sustain, suffer, or incur, or be required to pay by reason of the loss of any monies paid to the DEVELOPER resulting out of fraud, defalcation, or dishonesty; or arising out of any act, action, neglect, or omission by the DEVELOPER during the performance of this DA, any work under this DA, or any part thereof, whether direct or indirect; or by reason or result of injury caused by the DEVELOPER'S negligent maintenance of the property over which the DEVELOPER has control; or by reason of a judgment over and above the limits provided by the insurance required under this DA; or by any defect in the condition or construction of the Required Roadway Improvements, except that the DEVELOPER will not be liable under this provision for damages arising out of the injury or damage to persons or property directly caused or resulting from the sole negligence of the COUNTY or any of their agents or employees, unless such COUNTY negligence arises from the COUNTY review referenced in Paragraphs 5.e and 5.h of this DA. The DEVELOPER'S obligation to indemnify, defend, and hold harmless as described hereinabove, shall arise within seven (7) days of receipt by the DEVELOPER of the COUNTY'S written notice of claim for indemnification to the DEVELOPER. The notice of claim for indemnification shall be served pursuant to the notice provisions contained in Paragraph 9.g. The DEVELOPER'S obligation to defend and indemnify within seven (7) days of receipt of such written notice shall not be excused because of the DEVELOPER'S inability to evaluate liability or because the DEVELOPER evaluates liability and determines the DEVELOPER is not liable or determines the COUNTY is solely negligent. Only a final, adjudicated judgment finding the COUNTY solely negligent shall excuse performance of this provision by the DEVELOPER. If a judgment finding the COUNTY solely negligent is appealed and the finding of sole negligence is reversed, the DEVELOPER shall be obligated to indemnify the COUNTY for the cost of the appeal(s). The DEVELOPER shall pay all costs and fees related to this obligation and its enforcement by the COUNTY. The DEVELOPER shall also include for the Required

Roadway Improvements this indemnity provision, replacing the word DEVELOPER with the name of the contractor(s).

b. Insurance:

(1) General. No work shall commence on the Required Roadway Improvements nor shall occupancy of any of the property within the Required Roadway Improvements limits take place until the required Certificates of Insurance and certified true and exact copies of all insurance policies are received by the COUNTY as set forth below:

(a) During the life of this DA, the DEVELOPER shall require any engineers and/or general contractors providing work for the improvements to pay for and maintain insurance of the types and in the amounts described herein. All such insurance shall be provided by responsible companies authorized to transact business in the State of Florida which have an "A" policyholder's rating and a financial rating of at least Class VIII in accordance with the most current *Best's Key Rating Guide* and which are satisfactory to the COUNTY.

(b) The DEVELOPER shall require the engineers and/or general contractor to provide to the DEVELOPER and to the COUNTY evidence of insurance coverage of the types and in the amounts required by submitting four (4) original, executed Certificates of Insurance on the form to be provided by the COUNTY to the DEVELOPER. Each certificate shall set forth the original, manual signatures of the authorized representative of the insurance company(ies), identified therein and shall have attached thereto, proof that the said representative is authorized to execute the same. In addition to the Certificates of Insurance required herein, the DEVELOPER shall require the engineers and/or contractors to also provide to the COUNTY certified true and exact copies of all insurance policies required hereunder at the time of submittal of the Certificates of Insurance. The required Certificates of Insurance not only shall name the types of policies provided, but also shall refer specifically to the agreement between the DEVELOPER and the contractor for the improvement.

(c) All policies of insurance required by this DA shall require that the insurer deliver to the COUNTY and the DEVELOPER thirty (30) days' written notice prior to any cancellation, intent not to renew, or reduction in coverage and ten (10) days' written notice of any nonpayment of premium. Such notice shall be delivered by certified U.S. Mail to the COUNTY and the DEVELOPER, addressed to the parties as described in Paragraph 9.g below. In the event of any reduction in the aggregate limit of any policy, the DEVELOPER shall require the engineers and/or contractor to immediately restore such limit to the amount required herein.

(d) The DEVELOPER shall require that all insurance coverage provided by the engineers and/or general contractor be primary to any insurance or self-insurance program of

the COUNTY and the DEVELOPER which is applicable to the work provided for in this DA. All such insurance shall also remain in effect until final payment and until after the one (1) year warranty period provided herein.

(e) Receipt by the COUNTY of any Certificate of Insurance or copy of any policy evidencing the insurance coverage and limits required by the contract documents does not constitute approval or agreement by the COUNTY that the insurance requirements have been satisfied or that the insurance policies or Certificates of Insurance are in compliance with the requirements under this DA.

(f) The insurance coverage and limits that the DEVELOPER shall require from the engineers and/or contractor under this DA are designed to meet the minimum requirements of the COUNTY. They are not designed as a recommended insurance program. The DEVELOPER shall notify the engineers and/or contractor that the engineers and/or contractor shall be responsible for the sufficiency of its own insurance program.

(g) If the insurance coverage initially provided by the engineers and/or contractor is to expire prior to completion of the work, the DEVELOPER shall require the engineers and/or contractor to provide renewal Certificates of Insurance on the COUNTY'S form thirty (30) days prior to expiration of current coverage.

(h) Should the engineers and/or contractor fail to maintain the insurance coverage required under this DA, the COUNTY may, at its option, either terminate this DA for default as provided hereinafter or require the DEVELOPER to procure any payment for such coverage at its own expense. A decision by the COUNTY to require the DEVELOPER to procure and pay for such insurance coverage shall not operate as a waiver of any of the COUNTY'S rights or the DEVELOPER'S obligations under this DA.

(i) All insurance policies that the DEVELOPER shall require the engineers and/or contractor to obtain pursuant to this DA, other than workers' compensation and employer's liability policy, shall specifically provide that the COUNTY, COUNTY Engineer, and each of their elected officers, employees, and agents shall be an "additional insured" under the policy and shall also incorporate a severability of interests provision. All insurance coverage required herein shall apply to all engineers' and/or contractors' activities and any subcontractor's activities for the improvements without regard for the location of such activity.

(2) Coverage. Amounts and types of insurance shall conform to the following minimum requirements and shall be listed on a current COUNTY Certificate of Insurance form, which shall be provided to the engineers and/or contractors by the DEVELOPER. The DEVELOPER may obtain a sample copy of this certificate from the COUNTY.

(a) Workers' Compensation and Employer's Liability Insurance: The DEVELOPER shall require that coverage be maintained by the engineers and/or contractor for all employees

engaged in the work in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:

(i) Workers' Compensation: Florida statutory requirements.

(ii) Employer's Liability: One Million and 00/100 Dollars (\$1,000,000.00) each accident.

(iii) The DEVELOPER shall require the engineers and/or contractor and contractor's insurance companies to waive their rights of subrogation against the COUNTY and their agents and employees.

(b) Commercial General Liability Insurance: The DEVELOPER shall require commercial, general liability insurance coverage be maintained by the engineer and/or contractor which shall include, but not be limited to, personal and advertising injury; contractual for the improvements, including any hold-harmless and/or indemnification agreement; independent contractors; broad form property and personal injury, and combined single limits:

(i) General Aggregate: Two Million and 00/100 Dollars (\$2,000,000.00).

(ii) Products, Completed Operations Aggregate: Two Million and 00/100 Dollars (\$2,000,000.00).

(iii) Bodily Injury Including Death (Each Person): One Million and 00/100 Dollars (\$1,000,000.00).

(iv) Bodily Injury, Including Death (Each Occurrence): Two Million and 00/100 Dollars (\$2,000,000.00).

(v) Property Damage (Each Occurrence): One Million and 00/100 Dollars (\$1,000,000.00).

(vi) Personal and Advertising Injury (Each Occurrence): Five Hundred Thousand and 00/100 Dollars (\$500,000.00).

(vii) Fire Damage (Any One [1] Fire): Five Hundred Thousand and 00/100 Dollars (\$500,000.00).

(c) Business Automobile Liability Insurance: The DEVELOPER shall require coverage to be maintained by the engineers and/or contractor as to the ownership, maintenance, and use of all owned, nonowned, leased, or hired vehicle and employees' nonownership with limits of not less than:

(i) Bodily Injury and Personal Injury Including Death: One Million and 00/100 Dollars (\$1,000,000.00) combined, single limit.

(ii) Property Damage: One Million and 00/100 Dollars (\$1,000,000.00) combined, single limit.

(d) Excess Liability Insurance: The DEVELOPER shall require coverage be maintained by the contractor for excess liability, which shall be over and above the commercial general liability insurance and business automobile liability insurance requirements, with limits of not less than:

(i) Each Occurrence: Three Million and 00/100 Dollars (\$3,000,000.00).

(ii) Aggregate: Three Million and 00/100 Dollars (\$3,000,000.00).

(e) Professional Error and Omissions Liability: The DEVELOPER shall require that the engineers maintain standard, professional-liability insurance in the minimum amount of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.

(f) Special Instructions: Occurrence from professional, liability insurance is highly preferred; however, in the event the consultant is only able to secure claims-made, professional-liability insurance, special conditions apply. Any Certificate of Insurance issued to the COUNTY must clearly indicate whether the coverage is on a claims-made basis. Should coverage be afforded on a claims-made basis, the DEVELOPER shall require the consultant to be obligated by virtue of this DA to maintain insurance in effect with no less limits of liability nor any more restrictive terms and/or conditions for a period of five (5) years from the date of this DA.

10. GENERAL PROVISIONS

a. Independent Capacity: The DEVELOPER and any consultants, contractors, or agents are and shall be, in the performance of all work, services, and activities under this DA, independent contractors and not employees, agents, or servants of the COUNTY or joint ventures with the COUNTY. The DEVELOPER does not have the power or authority to bind the COUNTY in any promise, agreement, or representation other than specifically provided for in this DA. The COUNTY shall not be liable to any person, firm, or corporation who contracts with or provides goods or services to the DEVELOPER in connection with the Required Roadway Improvements, or for debts or claims accruing to such parties against the DEVELOPER. There is no contractual relationship expressed or implied between the COUNTY and any other person, firm, or corporation supplying any work, labor, services, goods, or materials to the DEVELOPER as a result of the Required Roadway Improvements.

b. Default: If the DEVELOPER fails to meet any of the time frames set forth herein, unless extended pursuant to this DA, then it shall be considered a default of this DA entitling the COUNTY to make a claim and collect on the entire Performance Guarantees required by Section 6 (or the portion of the guarantees required to cure the default, if less than the entire guarantees, but without limiting or affecting the COUNTY'S rights to enforce the balance of the guarantees, if required). Upon the said default, the issuance of Building Permits, plats, and other development approvals shall cease until the signalization-payment obligation

has been fulfilled to the reasonable satisfaction of the COUNTY. The DEVELOPER agrees that it will acquire no vested rights in any development approval, plat, or permit issued while there exists an uncured event of default of this DA, and acknowledges and agrees that the COUNTY has the right to revoke any development approval, plat, or permit issued after an uncured event of default of this DA.

c. Time Extensions:

(1) In the event the COUNTY requires additional time beyond that allocated herein to act upon a submission by the DEVELOPER of complete and correct documents for review and/or approval, there shall be an automatic extension of the time periods set forth in this DA for the Required Roadway Improvements for the documented number of days which it takes the COUNTY beyond the days allowed for the COUNTY'S review and/or approval.

(2) In the event the DEVELOPER is unable to meet a deadline as set forth in this DA for the Required Roadway Improvements, the DEVELOPER may, prior to the deadline, submit a request to the Administrator for an amendment to this DA to extend the deadline, and the Administrator agrees to submit such requests to the COUNTY within thirty (30) days unless the DEVELOPER agrees to extend the said submitted time period beyond thirty (30) days.

(3) In the event the DEVELOPER is unable to meet a deadline as set forth in this DA for the Curley Road Pipeline Project because the COUNTY did not complete design and/or right-of-way acquisition, the deadlines shall be automatically extended by the amount of time it takes the COUNTY to complete such design and/or right-of-way acquisition as applicable.

d. Termination: The COUNTY may terminate this DA upon the DEVELOPER'S failure to comply with the terms and conditions of this DA. The COUNTY shall provide the DEVELOPER with a written Notice of Termination, stating the COUNTY'S intent to terminate and describing those terms and conditions with which the DEVELOPER has failed to comply. If the DEVELOPER has not remedied the failure or initiated good faith efforts to remedy the failure within thirty (30) days after receiving the Notice of Termination, or thereafter is not proceeding with due diligence to remedy the failure, the COUNTY may terminate this DA immediately without further notice, and the DEVELOPER shall not thereafter be entitled to any impact fee credits, reimbursement, or compensation as provided herein. This paragraph is not intended to replace any other legal or equitable remedies available to COUNTY under Florida law, but it is in addition thereto.

e. Contracts: All contracts entered into by the DEVELOPER for the Required Roadway Improvements shall be made in accordance with all applicable laws, rules, and regulations; shall be specified by written contract or agreement; and shall be subject to each paragraph set forth in this DA. The DEVELOPER shall monitor all contracts on a regular basis to ensure contract compliance. Results of monitoring efforts shall be summarized in written reports submitted to the COUNTY and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

(1) The DEVELOPER shall cause all provisions of this DA in its entirety to be included and made a part of any contract for the Required Roadway Improvements.

(2) The DEVELOPER agrees to include in all construction contracts a retainage clause providing that upon completion of all work the retainage will be reimbursed.

f. Law Compliance: The DEVELOPER and the COUNTY will comply with all applicable Federal, State, and local laws, rules, regulations, and guidelines related to performance under this DA. In particular, the DEVELOPER verifies and affirms that it is in compliance with the 8 USC, Section 1324, prohibiting the employment either directly or by contract, subcontract, or exchange of unauthorized aliens in the United States. The COUNTY will consider the employment of unauthorized aliens by the DEVELOPER or by any contractor or vendor of the DEVELOPER during the term of the DA a violation of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this DA by the COUNTY.

g. Certification: The DEVELOPER shall provide certification to the COUNTY, under the seal and signature of a registered, professional engineer that the Required Roadway Improvements have been constructed in accordance with the standards promulgated by the FDOT in Section 336.045, F-S-Florida Statutes; the COUNTY standards; the contract documents; and this DA.

h. Notice: Whenever one (1) party gives notice to the other party concerning any of the provisions of this DA, including notice of termination, such notice shall be given by certified mail, return-receipt requested. The said notice shall be deemed given when it is deposited in the U.S. Mail with sufficient postage prepaid (notwithstanding that the return-receipt is not subsequently received). Notices shall be addressed as follows: ~~Mr. J. Ben Harrill, Figurski & Harrill, The Oaks at Perrine Ranch, 2550 Permit Place, New Port Richey, Florida 34655~~ Keith Brickley, Esq., 500 E. Kennedy Boulevard, Suite 200, Tampa, FL 33602; with a copy to Pasco County, c/o Bipin Parikh, P.E., Assistant County Administrator (Development Services), West Pasco Government Center, 7530 Little Road, Suite 320, New Port Richey, Florida 34654; and with a copy to David A. Goldstein, Senior Assistant County Attorney, West Pasco Government Center, 7530 Little Road, Suite 340, New Port Richey, Florida 34654. These addresses may be changed by giving notice as provided for in this paragraph.

i. Entire Agreement: This DA embodies and constitutes the entire understanding and agreement between the parties with respect to the transactions contemplated herein, and this DA supersedes all prior and contemporaneous agreements, understandings, representations, communications, and statements, either oral or written; provided, however, that nothing shall relieve the DEVELOPER of any development approval requirements or conditions previously imposed or authorized to be imposed under the COUNTY'S LDC or Comprehensive Plan for future permits required by the DEVELOPER.

j. Modification and Amendment: Neither this DA, nor any portion hereof, may be waived, modified, amended, discharged, nor terminated, except as authorized by law pursuant to an

instrument in writing, signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought and then only to the extent set forth in such instrument. Changes to this DA which materially affect the requirements in Subsection n of the DO or which remove any condition required by Rule 9J-2.045, FAC, shall require an amendment to the DO through the NOPC process pursuant to Chapter 380, F.S. Florida Statutes. All other amendments to this DA shall not require an NOPC or DO amendment.

k. Waiver: The failure of any party to this DA to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this DA shall not be construed as a waiver of the violation or breach or of any future violation, breach, or wrongful conduct.

l. Contract Execution: This DA may be executed in several counterparts, each constituting a duplicate original, but all such counterparts shall constitute one (1) and the same agreement.

m. Gender: Whenever the contract hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and the neuter and vice versa.

n. Headings: All article and descriptive headings of paragraphs in this DA are inserted for convenience only and shall not affect the construction or interpretation hereof.

o. Severability: Each provision of this DA is material to the Board of County Commissioners' approval of this DA. Accordingly, the provisions are not severable. In the event any section, subsection, sentence, clause, or provision of this DA is declared illegal or invalid by a body with jurisdiction to make such determination, the remainder of the DA shall be suspended until such time that the Board of County Commissioners modifies the DA to address the illegal or invalid provision; provided, however, that such suspension shall not exceed nine (9) months in duration and such determination shall not affect the validity of DRI entitlements that have received preliminary plan, preliminary site plan, plat, construction plan, Building Permit, CO approval, or any DRI mitigation committed to or performed as of the date the determination is made. Notwithstanding the foregoing, the DA shall not be suspended if the DEVELOPER, and all affected successors or assigns, agree to abide by all provisions of the DA until an amendment to the DA has been approved to address the illegal or invalid provision. DEVELOPER-requested amendments to this DA shall not be considered challenges to this DA and decisions by the Board of County Commissioners regarding any DEVELOPER-requested amendments, or the like, shall not have the effect of suspending this DA under any circumstances. Notwithstanding the foregoing, if a third party challenges any section, subsection, sentence, clause or provision of the DA and the challenged portion of the DA is subsequently declared illegal or invalid, this DA shall not be suspended, and shall remain in full force and effect except for that portion declared illegal or invalid. If any section, subsection, sentence, clause, or provision of this resolution is declared illegal or invalid as a result of a third party challenge, the DEVELOPER shall cooperate with the COUNTY to amend this DA to address the portion which has been declared invalid or illegal.

p. Construction: The parties hereby agree that each has played an equal part in the negotiation and drafting of this DA and, in the event any ambiguity should be realized in the construction or interpretation of this DA, the result of such ambiguity shall be equally assumed and realized by each of the parties to this DA.

q. Cancellation: This DA may be canceled by mutual consent of the parties to the DA.

r. Third Party Beneficiaries: Except where this DA specifically provides for the rights and obligations of the FDOT, nothing in this DA shall be construed to benefit any person or entity not a party to this DA.

s. Strict Compliance with Laws: The DEVELOPER agrees that acts to be performed by it in connection with this DA shall be performed in strict conformity with all applicable Federal, State, and local laws, rules, regulations, standards, and guidelines.

t. Nondiscrimination: The DEVELOPER will not discriminate against any employee employed in the performance of this DA or against any applicant for employment because of race, creed, color, handicap, national origin, or sex. The DEVELOPER shall insert a similar provision in all contracts for the Required Roadway Improvements.

u. Signatories Authority: By the execution hereof, the parties covenant that the provisions of this DA have been duly approved and signatories hereto are duly authorized to execute this DA.

v. Right-of-Way Use Permit: The DEVELOPER shall obtain an appropriate Right-of-Way Use Permit from the COUNTY.

w. Controlling Law: This DA shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any litigation arising from this DA shall be in Pasco County, Florida.

x. Successors and Assigns: The terms of this DA shall run with the land and be binding upon the DEVELOPER and owners and their successors and assigns. The DEVELOPER and owners may assign this DA and all its rights and obligations hereunder to any person, firm, corporation, or other entity, with the consent of the parties to this DA, which consent should not be unreasonably withheld or delayed, and any such assignee shall be entitled to all the rights and powers of such participation hereunder. Upon any such assignment, such assignee shall succeed to all the rights and obligations of the assignor hereto, and shall, for purposes of specific rights and/or obligations assigned, or otherwise, all purposes hereof, be substituted for such participant.

y. Force Majeure: In the event the DEVELOPER'S or COUNTY'S performance of this DA is prevented or interrupted by consequent act of God, or of the public enemy, or national emergency, or a governmental restriction upon the use or availability of labor or materials, or civil insurrection, riot, racial or civil rights disorders or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation,

nuclear fallout, windstorm, hurricane, sinkholes, earthquake, or other casualty, disaster, or catastrophe, or judgment, or a restraining order or injunction of any court, the DEVELOPER or COUNTY shall not be liable for such nonperformance, and the time of performance shall be extended for the number of days that the force majeure event prevents or interrupts the DEVELOPER'S or COUNTY'S performance of this DA as reasonably determined by the other party. This paragraph shall not apply to force majeure events caused by the DEVELOPER or under the DEVELOPER'S control, or caused by the COUNTY or under the COUNTY'S control, as applicable. In the event that performance by the DEVELOPER or COUNTY of the commitments set forth in this DA shall be interrupted or delayed in connection with acquisition of necessary governmental permits or approvals for the construction of the Required Roadway Improvements and which interruption or delay is caused through no fault of the party with a delayed performance, then the party with a delayed performance shall submit documentation to the other party regarding such event for review and concurrence. If such documentation shows that such event(s) have taken place, then the party with a delayed performance shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof, provided, however, in no event shall any such extension exceed three (3) months. Any requested extensions beyond such three (3) month period may only be accomplished by an amendment to this DA.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this DA on the dates set forth below.

(SEAL)

BOARD OF COUNTY COMMISSIONERS
OF PASCO COUNTY, FLORIDA

ATTEST:

JED PITTMAN PAULA S. O'NEILL, CLERK & COMPTROLLER, CHAIRMAN

Date: _____

WITNESSES:

EPPERSON RANCH, LLC

BY: _____

Print

Its _____

Title

STATE OF FLORIDA
COUNTY PASCO

The foregoing instrument was acknowledged before me this _____
(date), by _____
(name of person acknowledging), who is personally known to me or who has produced _____

(type of identification) as identification.

Seal:

NOTARY

EXHIBITS

- A. Legal Description
- B. Proportionate-Share Table
- C. Curley Road Pipeline Project
- D. Elam Road
- E. Site-Related Intersection Improvements

EXHIBIT A

**DRI NO. 258 - EPPERSON RANCH
PASCO COUNTY DEVELOPMENT AGREEMENT**

LEGAL DESCRIPTION

EXHIBIT B

**DRI NO. 258 - EPPERSON RANCH
PASCO COUNTY DEVELOPMENT AGREEMENT**

PROPORTIONATE-SHARE TABLE

EXHIBIT C

**DRI NO. 258 - EPPERSON RANCH
PASCO COUNTY DEVELOPMENT AGREEMENT**

CURLEY ROAD PIPELINE PROJECT

EXHIBIT D

**DRI NO. 258 - EPPERSON RANCH
PASCO COUNTY DEVELOPMENT AGREEMENT**

ELAM ROAD

EXHIBIT E

**DRI NO. 258 - EPPERSON RANCH
PASCO COUNTY DEVELOPMENT AGREEMENT
SITE-RELATED INTERSECTION IMPROVEMENTS**