

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA**

PALM COAST HOLDINGS, INC.
and FLORIDA LANDMARK
COMMUNITIES, LLC

Plaintiffs,

CASE NO: 2025 CA 000670
DIVISION: 49

v.

CITY OF PALM COAST,
a Florida municipal corporation,

Defendant.

AMENDED COMPLAINT

Plaintiffs, PALM COAST HOLDINGS, INC. and FLORIDA LANDMARK COMMUNITIES, LLC, sue Defendant, CITY OF PALM COAST, a Florida municipal corporation, and state the following:

INTRODUCTION

1. In 2003, Florida Landmark Communities, Inc. (“Developer”)¹ underwent the rigorous process of obtaining a Development of Regional Impact (“DRI”) from the City of Palm Coast for a proposed 1,557-acre mixed use development, referred to herein as the Town Center DRI.

¹ Florida Landmark Communities, Inc. was named as the Developer in the 2003 DRI. In the subsequent Amended and Restated DRIs, both Florida Landmark Communities, Inc. and Palm Coast Holdings, Inc. are named as the Developer. Regardless, both Florida Landmark Communities, LLC and Palm Coast Holdings, Inc. are successors in interest to the original Developer named in the 2003 DRI.

2. Pursuant to the statutory framework set forth for DRI approvals, which necessitates complex negotiations and agreements, the Developer negotiated and funded its share of public infrastructure to realize the vested development entitlements set forth in the DRI Development Order. The necessary public services, such as potable water and wastewater associated with those entitlements were memorialized in 2003 and fully funded by the Developer by 2007.

3. In return for the guarantee of DRI development rights from the City, the Developer agreed to construct certain infrastructure improvements in the City, including roads and other transportation improvements, a water and wastewater collection and distribution system, underground electric service, a pedestrian/bicycle system, and other facilities, along with donations of real property to the City.

4. The Developer, along with the associated community development district, performed all obligations under their agreement with the City, expending \$35.5 million on the required improvements.

5. Plaintiffs are two successors in interest to the original Developer of the Town Center DRI and own the remaining undeveloped land holdings—and associated development entitlements—in the Town Center DRI.

6. In the summer of 2024, Plaintiffs attempted to sell some or all of those remaining land holdings and secured contracts to do so. However, the purchasers cancelled the sales agreements during the due diligence period upon learning that the City was refusing to guarantee the potable water availability and wastewater capacity associated with the remaining entitlements in the Town Center DRI.

7. Without the guarantee of potable water available and wastewater capacity for the remaining buildout of the lands in the Town Center DRI, it is undisputed that Plaintiffs are left with nearly worthless vacant land.

8. This lawsuit seeks to remedy the extraordinary injustice that Plaintiffs face regarding their inability to develop the lands that the City promised they would be allowed to develop.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the breach of contract claim pursuant to section 26.012, Florida Statutes. Plaintiffs seek damages exceeding \$75,000, exclusive of interest, costs, and attorney's fees.

10. This Court has jurisdiction over the promissory estoppel claims, which arise in equity, pursuant to Article V, § 20(c)(3) of the Florida Constitution and section 26.012(2)(c), Florida Statutes.

11. Venue is proper in this Court pursuant to section 47.011, Florida Statutes. Defendant is a municipal corporation existing within the boundaries of Flagler County, Florida; this cause of action accrued in whole or part in Flagler County, Florida; and the real property at issue in this action is situated in Flagler County, Florida.

PARTIES

12. Plaintiff PALM COAST HOLDINGS, INC. ("Palm Coast Holdings") is a Florida corporation. At all times material, Palm Coast Holdings is the owner of real property in the Town Center at Palm Coast Development of Regional Impact ("Town Center DRI") located in the City of Palm Coast, Flagler County, Florida. Palm Coast Holdings is a Developer of the Town Center DRI.

13. Plaintiff FLORIDA LANDMARK COMMUNITIES, LLC, (“Florida Landmark Communities”) is a Florida limited liability company and, by corporate conversion, the successor in interest to Florida Landmark Communities, Inc. At all times material, Florida Landmark Communities is the owner of real property in the Town Center DRI. Plaintiff is a Developer of the Town Center DRI.

14. Defendant CITY OF PALM COAST (“City”) is a municipal corporation authorized and existing under the laws of the state of Florida. The City negotiated, approved, and entered into the development orders with Florida Landmark Communities, as referenced herein.

BACKGROUND

Developments of Regional Impact & Comprehensive Planning

15. Section 380.06, Florida Statutes, sets forth the statutory framework for Developments of Regional Impact (“DRI”). A DRI is “any development that, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.” § 380.06(1), Fla. Stat. Similar to the regulatory freeze of a development agreement, an approved DRI Development Order (“DO”) vests a developer with certain development rights. Once a DRI is approved, the right to develop pursuant to the terms of the DRI vests. *See* § 163.3167(5), Fla. Stat.²

16. Pursuant to statute, a city must ensure availability of public services, such as potable water and wastewater, prior to approval of a DRI:

2. A local government shall not approve a development of regional impact that does not make adequate provision for the public facilities needed to accommodate the impacts of the proposed

²“(5) Nothing in this act shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to chapter 380 or who has been issued a final local development order and development has commenced and is continuing in good faith....”. § 163.3167(5), Fla. Stat. (2025).

development unless the local government includes in the development order a commitment by the local government to provide these facilities consistently with the development schedule approved in the development order; however, a local government's failure to meet the requirements of subparagraph 1. and this subparagraph shall not preclude the issuance of a development order where adequate provision is made by the developer for the public facilities needed to accommodate the impacts of the proposed development. Any funds or lands contributed by a developer must be expressly designated and used to accommodate impacts reasonably attributable to the proposed development.

§ 380.06(15)(e)2., Fla. Stat. (Local Government Development Order).

17. The Town Center DRI was originally approved under a statutory scheme that required state land planning agency approval, regional agency sufficiency review, and then the local government's approval of a DO before undertaking a DRI. § 380.06(5), (10), (11), (15), Fla. Stat (2003).³ The DRI review process typically was long and detailed. It was common for a DRI DO to reflect the agreements reached after complex negotiations between or among the agencies, local government, and the Developer over offsite public facilities improvements and land dedications by the Developer in exchange for use of public facilities (i.e., roads, water, sewer) and for development rights. This case is no exception.⁴

18. Breach of those negotiated agreements, such as Plaintiffs' DOs, is analyzed under contract law, as they take on the attributes of a bilateral contract, i.e., the City promises the Developer vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits.

³ Since 2011, significant statutory changes have placed oversight of DRIs squarely in the hands of local governments pursuant to their comprehensive plans, and the state land planning agency no longer approves DRIs.

⁴ See § 380.06(7)(a), Fla. Stat. (“ . . . For any proposed change to a previously approved development of regional impact . . . the review **must abide by any prior agreements or other actions vesting the laws and policies governing the development . . .**” (emphasis added)).

19. Approval of a DRI is frequently accompanied by related comprehensive plan amendments, for example, to adjust the Future Land Use Map for new land uses, amend the Capital Improvements Element to list facilities for which the Developer or local government is expected to fund, or map public and conservation lands dedicated by the Developer. At the conclusion of the process, the DRI DO must be consistent with the comprehensive plan, as amended.

20. The DRI regulatory framework imposes additional conditions on a developer and does not supplant obtaining amendments to the local government's comprehensive plan, where necessary. In adopting such amendments, the local government may not adopt a plan (or presumably an amendment thereto) that in effect amends a DRI DO. *Op. Att'y Gen. Fla. 1977-7.*

21. Pursuant to Chapter 163, Part II, Florida Statutes, the Community Planning Act ("Community Planning Act"), the City is statutorily required to adopt and implement a local comprehensive plan and to ensure that all development orders approved by the City are consistent with such plan.

22. A comprehensive plan must include certain "elements" for planning purposes, including, *inter alia*, a "capital improvements element designed to consider the need for and the location of public facilities in order to encourage the efficient use of such facilities" § 163.3177(1)(a), (3)(a), Fla. Stat.

23. All elements of a comprehensive plan, including the capital improvements element, must be "based upon relevant and appropriate data and an analysis by the local government." §163.3177(1)(f).

24. The capital improvements element must "cover at least a 5-year period" and "must be reviewed by the local government on an annual basis." § 163.3177(3)(a)1., (3)(b), Fla. Stat.

25. The capital improvements element must include, *inter alia*:

- “[P]rinciples for construction, extension, or increase in capacity of public facilities, as well as . . . principles for correcting existing public facility deficiencies.” § 163.3177(3)(a)1., Fla. Stat.
- “Estimated public facility costs, **including a delineation of when facilities will be needed**, the general location of the facilities, and projected revenue sources to fund the facilities.” § 163.3177(3)(a)2., Fla. Stat.
- “**Standards to ensure the availability of public facilities and the adequacy of those facilities to meet established acceptable levels of service.**” § 163.3177(3)(a)3., Fla. Stat.

(emphasis added).

26. The City is required to monitor adopted levels of service in its 5-year capital improvements schedule for public facilities, including potable water and wastewater, under a concept known as “concurrency.” § 163.3177(4)(b), Fla. Stat. Procedurally, after substantial completion of construction, the City issues a certificate of occupancy that permits physical occupation of structures, presumably connected to water and sewer. Recently, the City has declined to guarantee that finished development would receive certificates of occupancy due to water and sewer capacity shortages. The instant dispute has arisen because the City may not use the concurrency provisions of § 163.3177, Florida Statutes, to limit or modify completion of Plaintiffs’ Town Center DRI. § 163.3167(5), Fla. Stat. (2025).

Town Center DRI Development Order

27. On July 11, 2003, the City and Florida Landmark Communities, Inc. (the “Developer”) entered into the Town Center at Palm Coast Development of Regional Impact Development Order (“2003 DO”), recorded as Instrument No. 2003039803 in Book 0959, Pages

1509–1584 on July 23, 2003, in the Public Records of Flagler County, Florida.⁵ [Exhibit A, 2003 DO].

28. The 2003 DO proposed a 1,557-acre mixed use development, referred to herein as the Town Center DRI, to be located at the northwest corner of the intersection of State Road 100 (“SR-100”) and Interstate 95 (“I-95”). The Town Center DRI is bordered by I-95 to the east, SR-100 to the south, a major drainage canal to the north, and Belle Terre Parkway to the west.

29. The City approved the following development entitlements in the 2003 DO:

<u>Land Use</u>	<u>Gross Bldg./Units or Area</u>	<u>Acreage *</u>
Residential	2,500/DUs	190 Acres
Office	1,400,000/SF	110 Acres
Retail/Comm.	2,000,000/SF	250 Acres
Non-Retail/Comm.	1,400,000/SF	180 Acres
Institutional	625,000/SF	80 Acres
Movie Theater	2,400 seats	8 Acres
Lodging	480 rooms	15 Acres
Nursing Home	240 beds	10 Acres
Common Area	--	714 Acres

* The Town Center DRI is planned as a traditional neighborhood development. As a result, land uses will be integrated, rather than specifically assigned to designated areas. Consequently, acreage is approximate for each land use category.

[Exhibit A at 7].

⁵ The Developer also entered into ancillary agreements related to the Town Center DRI, including a Planned Unit Development Agreement and amendments thereto. Copies of these other agreements can be provided to the Court as relevant to the issues herein.

30. The 2003 DO was proposed to be developed in three phases, as shown on the following schedule:

Land Use	Phase 1		Phase 2		Phase 3		Total	
	Sq. ft.	Units	Sq. ft.	Units	Sq. ft.	Units	Sq. ft.	Units
Residential		1,110/DU		865/DU		525/DU		2,500/DU
Office	325,000		575,000		500,000		1,400,000	
Retail	750,000		750,000		500,000		2,000,000	
Non-Retail	320,000		680,000		400,000		1,400,000	
Institutional	185,000		165,000		275,000		625,000	
Movie Theater		2,400						2,400
Lodging		140/rms		140/rms		200/rms		480/rms
Nursing Home		120/beds				120/beds		240/beds

Notes: 1) The non-residential uses are stated in square feet of gross building area.
2) These land uses shall be integrated into the Town Center Mixed-Use Zoning as shown on the Master Plan.
3) Common Area includes all open space, areas for preservation and greenbelts that shall be available for the common use and enjoyment of all Town Center DRI property owners and visitors.

[Exhibit A at 9].

31. As relevant to the allegations herein, through the 2003 DO, the City vested the Developer with the rights for both potable water and wastewater for the entitlements in Phase 1 of the Town Center DRI. [Exhibit A at 29 (“Sufficient [potable water] capacity exists to accommodate Phase 1 development of the Town Center DRI . . .”), 32 (“Sufficient [wastewater] capacity exists to accommodate Phase 1 development . . .”)].

32. The original termination and expiration date of the 2003 DO was December 31, 2025. As noted below, the termination and expiration date has been extended to April 12, 2036.

33. A companion Plan Amendment (CPA 03-01) for the Town Center DRI was adopted by the City on July 1, 2003. In its review, the state land planning agency required the City to add

Policy 1.1.12 to its Comprehensive Plan to identify no later than January 1, 2005, water supply strategies consistent with a groundwater withdrawal study to be performed in 2003–04. The privately owned water supply company was expected to reach the limits of its pumping permit by 2004 and to exceed the supply for daily peak demand by 2005. The water management district at that time warned that potable water would not be available in sufficient supply after the year 2020.

34. On May 20, 2008, the City passed Resolution 2008-89, Three Year Extension to Town Center at Palm Coast Development of Regional Impact, recorded as Instrument No. 2008017111 in Book 1664, Pages 1882–1883 on June 4, 2008, in the Public Records of Flagler County, Florida. Resolution 2008-89 extended the termination and expiration date of the 2003 DO to December 31, 2028, pursuant to statute.

35. On December 16, 2011, the City sent to the Developer a Development Order Extension Notification, recorded as Instrument No. 2011035606 in Book 1847, Pages 1486–1487 on December 28, 2011, in the Public Records of Flagler County, Florida. This notification approved a four-year extension of the termination and expiration date of the 2003 DO to December 31, 2032, pursuant to statute.

36. Effective November 27, 2018, Palm Coast Holdings and Florida Landmark Communities, as majority owners of the Town Center DRI, executed an Amendment to Town Center at Palm Coast Development of Regional Impact Development Order, approved by the City, recorded as Instrument No. 2018044365 in Book 2321, Pages 549–555 on November 28, 2018, in the Public Records of Flagler County, Florida. This amendment approved a minor amendment to the 2003 DO related to transportation improvements.

37. Effective July 5, 2022, the City and the Developer entered into the Town Center at Palm Coast 2022 Amended and Restated Development of Regional Impact Order (“2022 Amended

DO”), recorded as Instrument No. 2022039793 in Book 2711, Pages 1810–1889 on August 3, 2022, in the Public Records of Flagler County, Florida. [Exhibit B, 2022 Amended DO].

38. The 2022 Amended DO set forth the entitlements as of the amendment date, including approved conversions to date:

Land Use	Gross Bldg./Units or Area	Acreage *
Residential	2,750/DUs	190 Acres
Office	1,400,000/SF	110 Acres
Retail/Comm.	2,000,000/SF	250 Acres
Non-Retail/Comm.	1,195,000/SF	180 Acres
Institutional	625,000/SF	80 Acres
Movie Theater	2,400 seats	8 Acres
Lodging	480 rooms	15 Acres
Nursing Home	485 beds	10 Acres
Common Area	--	714 Acres

* The Town Center DRI is planned as a traditional neighborhood development. As a result, land uses will be integrated, rather than specifically assigned to designated areas. Consequently, acreage is approximate for each land use category.

[Exhibit B at 7].

39. The 2022 Amended DO also set forth the number of entitlements sold (and assigned to specific parcels) and those remaining, as of the date of the amendment, and reserved to the Developer the remaining entitlements:

Land Use	Approved	Sold	Remaining* ¹
Residential	2,750 Units	2,599 Units	151 Units
Office	1,400,000 Sq. Ft.	487,780 Sq. Ft.	912,220 Sq. Ft.

Retail/Commercial	2,000,000 Sq. Ft.	858,786 Sq. Ft.	1,141,214 Sq. Ft.
Non-Retail Commercial	1,195,000 Sq. Ft.	136,589 Sq. Ft.	1,058,411 Sq. Ft.
Institutional	625,000 Sq. Ft.	240,000 Sq. Ft.	385,000 Sq. Ft.
Movie Theater	2,400 Seats	2,400 Seats	0 Seats
Lodging	480 rooms	125 rooms	355 rooms
Assisted Living	485 rooms	202 rooms	283 rooms

* All remaining entitlements are owned by Developer and have not been assigned to any specific property.

¹ A chart showing the assignment of the listed entitlements is attached as Exhibit "K".

[Exhibit B at 7–8].

40. The 2022 Amended DO tied the phasing of the remaining buildout of the Town Center DRI to traffic trip generation, as follows:

	Daily Trips	PM Peak Hour	Cumulative	
			Daily Trips	PM Peak Hour
Phase 1	56,565	5,226	56,565	5,256
Phase 2	56,742	5,218	113,307	10,444
Phase 3	42,953	4,048	156,260	14,492

[Exhibit B at 9].

41. As relevant to the allegations herein, through the 2022 Amended DO, the City “vested” the Developer for all of the public infrastructure services associated with the already

vested development entitlements in the Town Center DRI (in all phases) for, *inter alia*, potable water and wastewater:

(b) Because Developer completed the DRI's offsite mitigation obligations, the City hereby agrees that all owners within the current DRI Property are vested for water, sewer, traffic, park, and all other public services concurrency for the Present Entitlements identified . . . herein. . . .

[**Exhibit B** at 15 (emphasis added)]. The City's "vesting" in this context was acknowledgement that Plaintiffs had fully performed their obligations under the negotiated agreements contained within the DO—the Town Center DRI development was already vested by operation of state law.

42. The 2022 Amended DO extended the termination and expiration date of the 2003 DO to April 12, 2036. [**Exhibit B** at 13].

43. On January 16, 2024, the City passed Resolution 2024-04, Conversion to Residential Units within the Town Center at Palm Coast Development of Regional Impact Development Order. Resolution 2024-04 converted certain land uses within the Town Center DRI.

44. On February 6, 2024, the City and the Developer entered into the Town Center at Palm Coast Amended and Restated Development of Regional Impact Development Order ("2024 Amended DO"), recorded as Instrument No. 2024023350 in Book 2874, Pages 1215–1294 on June 5, 2024, in the Public Records of Flagler County, Florida. [**Exhibit C**, 2024 Amended DO]. The 2024 Amended DO supersedes the previous DOs and amendments to the 2003 DO and is the current governing document for the Town Center DRI. Collectively, the 2003 DO, the 2022 Amended DO, and the 2024 Amended DO will be referred to hereinafter as the "DOs."

45. The 2024 Amended DO sets forth the entitlements as of the amendment date, including approved conversions to date, which are unchanged from the 2022 Amended DO:

Land Use	Gross Bldg./Units or Area	Acreage *
Residential	3,575/DUs	190 Acres
Office	1,285,417/SF	110 Acres
Retail/Comm.	1,909,240/SF	250 Acres
Non-Retail/Comm.	1,195,000/SF	180 Acres
Institutional	625,000/SF	80 Acres
Movie Theater	2,400 seats	8 Acres
Lodging	480 rooms	15 Acres
Nursing Home	485 beds	10 Acres
Common Area	--	714 Acres

* The Town Center DRI is planned as a traditional neighborhood development. As a result, land uses will be integrated, rather than specifically assigned to designated areas. Consequently, acreage is approximate for each land use category.

[Exhibit C at 7].

46. The 2024 Amended DO also sets forth the number of entitlements sold (and assigned to specific parcels) and those remaining, as of the date of the amendment, and reserves to the Developer the remaining entitlements, which are unchanged from the 2022 Amended DO:

Land Use	Approved	Sold	Remaining*¹
Residential	3,575 Units	2,599 Units	775 Units
Office	1,285,417 Sq. Ft.	487,780 Sq. Ft.	797,637 Sq. Ft.

Retail/Commercial	1,909,240 Sq. Ft.	858,786 Sq. Ft.	1,141,214 Sq. Ft.
Non-Retail Commercial	1,195,000 Sq. Ft.	136,589 Sq. Ft.	1,058,411 Sq. Ft.
Institutional	625,000 Sq. Ft.	240,000 Sq. Ft.	385,000 Sq. Ft.
Movie Theater	2,400 Seats	2,400 Seats	0 Seats
Lodging	480 rooms	125 rooms	355 rooms
Assisted Living	485 rooms	202 rooms	283 rooms

* All remaining entitlements are owned by Developer and have not been assigned to any specific property.

¹ A chart showing the assignment of the listed entitlements is attached as Exhibit "K".

[Exhibit C at 7–8].

47. The 2024 Amended DO ties the phasing of the remaining buildout of the Town Center DRI to traffic trip generation, as follows, which is unchanged from the 2022 Amended DO:

	Daily Trips	PM Peak Hour	Cumulative	
			Daily Trips	PM Peak Hour
Phase 1	56,565	5,226	56,565	5,256
Phase 2	56,742	5,218	113,307	10,444
Phase 3	42,953	4,048	156,260	14,492

[Exhibit C at 9].

48. As relevant to the allegations herein, the 2024 Amended DO repeats the “vesting” language from the 2022 Amended DO:

Because Developer completed the DRI's offsite mitigation obligations, **the City hereby agrees that all owners within the current DRI Property are vested for water, sewer**, traffic, park, and all other public services concurrency for the Present Entitlements identified . . . herein. . . .

[**Exhibit C** at 15 (emphasis added)]. The City's "vesting" in this context was acknowledgement that Plaintiffs had fully performed their obligations under the negotiated agreements contained within the DO—the Town Center DRI development was already vested by operation of state law.

Current Status of Town Center DRI

49. The 2003 DO set forth a list of on- and off-site major infrastructure improvements and land donations to be completed by the Developer pursuant to the negotiated agreements to mitigate the impacts of its development of the Town Center DRI, including roads and other transportation improvements, a water and wastewater collection and distribution system, underground electric service, a pedestrian/bicycle system, other facilities, and donations of real property to the City. [**Exhibit A** at 76].

50. By 2007, the Developer and its related community development district expended more than \$35.5 million to construct the above-described facilities.

51. In return for the Developer's completion of its mitigation requirements set forth in the 2003 DO, the City "vested" the Developer (and entities who purchased property and associated entitlements from the Developer) for potable water, wastewater, and other public services for the full buildout of the Town Center DRI, as acknowledged in the 2022 Amended DO and reiterated in the 2024 Amended DO:

Because Developer completed the DRI's offsite mitigation obligations, **the City hereby agrees that all owners within the current DRI Property are vested for water, sewer**, traffic, park, and all other public services concurrency for the Present Entitlements identified . . . herein. . . .

[**Exhibit B** at 15 (emphasis added); **Exhibit C** at 15 (emphasis added)]. The City’s “vesting” in this context was acknowledgement that Plaintiffs had fully performed their obligations under the negotiated agreements contained within the DO—the Town Center DRI development was already vested by operation of state law.

52. In consideration of the entitlements set forth in the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO, the Developer conceded that the required mitigation projects are reasonably attributable to the development of the Town Center DRI:

The Developer acknowledges that the requirements and conditions of this Order as set forth herein result from the impacts of development of the DRI Property on public facilities and systems, are reasonably attributable to the development of the DRI Property
...

[**Exhibit C** at 20–21].

53. According to the traffic trip generation data in the Town Center DRI 2023 Biennial Traffic Report, dated April 2024, the Town Center DRI is currently within Phase 1, with a significant portion of the entitlements remaining to be built out. [**Exhibit D**, 2023 Biennial Traffic Report].

54. As of August 11, 2025, the following entitlements remain to be built out in the Town Center DRI:

Residential:	496 dwelling units
Office Buildings:	586,122 square feet
Retail:	1,205,045 square feet
Non-Commercial Retail:	977,003 square feet
Institutional:	290,000 square feet
Movie Theater:	0 seats
Lodging:	355 rooms
Nursing Home:	283 beds

[**Exhibit D**, Remaining Entitlements, at 1].

55. The potable water and wastewater generation capacity required for the remaining entitlements is as follows:

Land Use Type	Remaining Entitlements	Potable Water Demand Capacity (GPD)	Wastewater Generation Capacity (GPD)
Residential	496 dwelling units	148,800	97,613
Office Buildings	586,122 square feet	99,641	58,612
Retail	1,205,045 square feet	204,858	120,505
Non-Commercial Retail	977,003 square feet	48,850	48,850
Institutional	290,000 square feet	217,500	217,500
Movie Theater	0 seats	0	0
Lodging	355 rooms	44,375	35,500
Nursing Home	283 beds	425	354
Total		764,448	578,933

56. Plaintiffs own the remaining parcels within the boundaries of the Town Center DRI to be developed as part of the completion of the Town Center DRI development program:

Owner	Flagler County Property Appraiser Parcel ID	Property Address⁶	Approx. Acreage⁷
Palm Coast Holdings	04-12-31-1300-00010-0000	N/A	28.89
Palm Coast Holdings	05-12-31-0650-000A0-0018	1010 Town Center Blvd.	66.29
Palm Coast Holdings	06-12-31-5815-00000-0170	N/A	2.828
Palm Coast Holdings	06-12-31-5815-00000-0190	N/A	3.128
Palm Coast Holdings	06-12-31-5825-00000-0030	72 Lake Ave. 167 Park St.	2.007
Palm Coast Holdings	06-12-31-5825-00000-0040	143 Lake Ave.	8.851
Palm Coast Holdings	06-12-31-5825-00000-0050	235 Lake Ave. 287 City Pl.	4.186
Palm Coast Holdings	06-12-31-5825-00000-0080	35 City Pl. 1015 Central Ave.	1.289
Palm Coast Holdings	06-12-31-5825-00000-0140	1154 Central Ave.	3.92
Palm Coast Holdings	06-12-31-5825-00000-0160	1266 Central Ave.	2.68
Palm Coast Holdings	06-12-31-5825-00000-0170	1338 Central Ave.	6.326
Palm Coast Holdings	06-12-31-5825-00000-0180	1428 Central Ave.	5.657
Palm Coast Holdings	06-12-31-5825-00000-0240	1089 Central Ave. 36 City Pl.	3.305

⁶ Property address currently assigned by the Flagler County Property Appraiser.

⁷ Approximate acreage as reported by the Flagler County Property Appraiser.

Owner	Flagler County Property Appraiser Parcel ID	Property Address⁶	Approx. Acreage⁷
Florida Landmark Communities	<u>05-12-31-5855-00000-0010</u>	685 Town Center Blvd.	8.361
Florida Landmark Communities	<u>06-12-31-5825-00000-0130</u>	1096 Central Ave. 1096 Central Ave. Unit 110 1096 Central Ave. Unit 106 1096 Central Ave. Unit 107 1096 Central Ave. Unit 105 1096 Central Ave. Unit 104 1096 Central Ave. Unit 102 1096 Central Ave. Unit 109 1096 Central Ave. Unit 100 1096 Central Ave. Unit 101 1096 Central Ave. Unit 108 1096 Central Ave. Unit 103	2.969
Florida Landmark Communities	<u>06-12-31-5825-00010-0300</u>	145 City Pl. Unit 300A	0.386
Florida Landmark Communities	<u>07-12-31-5885-00000-0010</u>	201 Landing Blvd.	12.73
Florida Landmark Communities	<u>07-12-31-5885-00000-0020</u>	525 Landing Blvd. 640 Central Ave.	1.75
Florida Landmark Communities	<u>07-12-31-5885-00000-0030</u>	525 Landing Blvd. 640 Central Ave.	2.87
Florida Landmark Communities	<u>07-12-31-5885-00000-0040</u>	725 Central Ave.	15.91

City's Potable Water and Wastewater Capacity

57. Pursuant to statute, the City is charged with planning for and provision of sufficient public facilities—including potable water and wastewater utilities—for development approved within the City limits.

58. Plaintiffs are of information and belief that sometime after the City approved Plaintiffs' 2003 DO, the City fell short of its then-statutory duty to maintain a "financially feasible five-year schedule of capital improvements" to concurrently meet projected demand for services from this DRI's development. § 163.3177(3)(b)(1), Fla. Stat. (2007). Currently, the City is in

violation of its duty to have standards in its Capital Improvements Element to “**ensure the availability** of public facilities and the adequacy of those facilities to meet established levels of service.” § 163.3177(3)(a)3, Fla. Stat. (2025) (emphasis added).

59. Despite the City’s clear duty to properly plan for and provide sufficient potable water and wastewater capacity, and the Developer’s full compliance with the planning process by obtaining the 2003 DO (and amendments) and related comprehensive plan amendments, the City has essentially exhausted all of its potable water and wastewater capacity—without properly reserving the capacity promised to the Plaintiffs in the 2003 DO.

60. Through the comprehensive plan planning process, the City has known since at least 2010 (when it updated the City’s Comprehensive Plan 2035) that it only had potable water capacity sufficient to meet demand through 2023. This fact was never communicated to the Developer at any time during the process of amending the 2003 DO.

61. The City’s sewer treatment capacity is in a comparably deficient state, based on a record of state enforcement actions and recent discussions at City Commission meetings.

62. Repeated exceedance of the City’s state permit capping the volume of wastewater flowing into the treatment plant (Palm Coast WWTF #1) is the subject of a December 6, 2024, Consent Order (OGC File No. 24-2146) executed by the City with the Florida Department of Environmental Protection (“FDEP”). [**Exhibit E**, 2024 Consent Order]. The City’s sewage treatment plant also violated groundwater quality and effluent standards more than 50 times between November 2021 and February 2024. [**Exhibit E** at 2–5]. The City’s wastewater collection system spilled untreated sewage more than 70 times between September 30, 2022, and October 11, 2024. [**Exhibit E** at 5–10].

63. FDEP also took past enforcement action against the City for exceeding the permitted wastewater flow capacity 14 times in 2017–18 and for effluent quality violations. [Exhibit F, 2020 Consent Order].

64. The City has until December 28, 2028, to complete corrective actions under the 2024 Consent Order, including modifications to increase the flow capacity. [Exhibit E at 14].

65. The lack of capacity at the City’s wastewater treatment plants is now so dire that the City discussed during City Council meetings the potential of issuing a blanket stop development order within the City limits, which would prohibit all new development.

66. The problems with the lack of potable water availability and wastewater capacity is highlighted by the drastic downward trend in the City’s issuance of Certificates of Occupancy for new developments in recent years, another fact raised at a recent City Council meeting.

67. Plaintiffs have themselves experienced first-hand the impact of the lack of potable water availability and wastewater capacity. In 2024, Plaintiffs entered into two contracts for the sale of a large portion of their remaining real property holdings within the Town Center DRI. Both contracts were cancelled by the prospective purchasers during the due diligence phase upon learning that the City would not guarantee potable water availability and wastewater capacity for development within the Town Center DRI.

68. This action by the City of refusing to guarantee the availability of the contractually guaranteed potable water availability and wastewater capacity is nothing short of a repudiation of their contractual obligations under the DOs.

69. The City’s breach of the DOs, and the resulting cancellation of the sales contracts resulted in millions of dollars in damages to Plaintiffs, including but not limited to reliance damages and lost profits damages.

70. Given the above sequence of events, upon information and belief, the City will not issue Certificates of Occupancy for any development associated with Plaintiffs' remaining vested entitlements for the Town Center DRI.

71. As a result, Plaintiffs will continue to be damaged until the capacity issues are resolved and Plaintiffs are permitted to complete the development previously approved and vested in their Town Center DRI.

72. The City either knew or should have known of the capacity issues through the comprehensive plan planning process or at the very latest during review and approval of the Town Center DRI. § 380.06(15)(e)2, Fla. Stat.

73. Despite the City's failure to properly plan for provision of potable water and wastewater capacity for the existing lands within the City's borders, since 2010, the City has voluntarily annexed another seven square miles into the City, compounding the capacity issues.

74. The City has also diverted capacity to bulk water and wastewater services agreements that came after the Town Center DRI, some of which promise service to lands outside City limits. In one case, the City on January 4, 2022, entered into an interlocal subaward agreement with Flagler County to direct up to \$5.1 million in federal funding to extend sewer infrastructure to barrier islands developments including Hammock Community Center and Willow Woods Neighborhood. [**Exhibit G**, Interlocal Subaward Agreement]. On September 5, 2023, the City entered into an agreement with Flagler County to direct up to \$8 million in state funds to this sewer project serving the barrier islands. [**Exhibit H**, Interlocal Subaward Agreement].

75. On November 4, 2025—after the filing of the Complaint in this action—the City Council voted unanimously to annex another 38.311 acres of property into the City. The annexation ordinance states that the City “is in a position to provide municipal services” to the

newly annexed property, despite the City not being able to provide such services to *existing* properties within the City, including the Town Center DRI, which was partially vested in 2003 and fully vested in 2022.

76. These actions by the City of adding land as well as diverting potable water and wastewater capacity to lands outside the City limits—without first reserving capacity for the Town Center DRI—demonstrate bad faith on the part of the City.⁸

77. Plaintiffs expended millions of dollars on development of facilities infrastructure for the Town Center DRI upon the contractual guarantee by the City—as set forth in the 2003 DO and restated in the 2022 Amended DO and 2024 DO—that Plaintiffs would be able to actually develop the entitlements promised to them (and vested by operation of state law). As a result of the City’s failure to perform on its contractual guarantees (i.e., failure to reserve sufficient potable water and wastewater capacity for the Town Center DRI), Plaintiffs’ remaining parcels of real property within the Town Center DRI are now worth a small fraction of their full value.

COUNT I—BREACH OF CONTRACT

78. Plaintiffs re-allege paragraphs 1 through 77.

79. Count I is a claim for breach of contract, i.e., breach of the DOs, by Plaintiffs against the City.

80. The DOs are valid and enforceable contracts between the City and Plaintiffs (as successors in interest to the Developer).

⁸ Importantly, since the potable water availability and wastewater capacity issues have recently been at the forefront of City Council meetings, the City Council has had extensive discussions about ensuring capacity availability for another developer in the City, known as “ITT.” Despite the contractual guarantees of capacity availability for the Town Center DRI since 2003—and reiteration of that availability in 2022 and 2024—not once has the City Council ever raised the issue of ensuring capacity for the Town Center DRI.

81. In the 2003 DO, the City contractually guaranteed to the Developer of the Town Center DRI the right to complete the development associated with the following entitlements, including the availability of sufficient potable water and wastewater capacity:

Residential:	2,500 dwelling units
Office:	1,400,000 square feet
Retail/Commercial:	2,000,000 square feet
Non-Retail/Commercial:	1,400,000 square feet
Institutional:	625,000 square feet
Movie Theater:	2,400 seats
Lodging:	480 rooms
Nursing Home:	240 beds

[**Exhibit A** at 7; *see id.* at 29 (“vesting” Phase 1 of the Town Center DRI for potable water and wastewater)].

82. Following conversion of the entitlements, as set forth in the 2022 Amended DO and 2024 Amended DO, the City contractually guaranteed to the Developer of the Town Center DRI the right to complete the development associated with the following entitlements, including the availability of sufficient potable water and wastewater capacity:

Residential:	3,575 dwelling units
Office:	1,285,417 square feet
Retail/Commercial:	1,909,240 square feet
Non-Retail/Commercial:	1,195,000 square feet
Institutional:	625,000 square feet
Movie Theater:	2,400 seats
Lodging:	480 rooms
Nursing Home:	485 beds

[**Exhibit C** at 7; *see id.* at 15 (“vesting” all phases of the Town Center DRI for potable water and wastewater)].

83. Once a DRI has been approved, the right to develop pursuant to the terms of the DRI vests. Therefore, the entitlements guaranteed to the Developer in the 2003 DO vested when it was approved in 2003, so long as the Developer (and Plaintiffs as successors in interest to the

Developer) developed the Town Center DRI in accordance with the DOs. As set forth below, the Developer performed all of its obligations under the DOs, but the City has failed to do the same.

84. The Developer performed all of the essential requirements of the DOs, with the Developer and community development district expending more than \$35.5 million on the mitigation conditions in the DOs.

85. Indeed, the City acknowledged in the 2024 Amended DO that the Developer has fully performed on all of its contractual obligations to be vested for all entitlements for the full buildout of the Town Center DRI:

Because Developer completed the DRI's offsite mitigation obligations, **the City hereby agrees that all owners within the current DRI Property are vested for water, sewer,** traffic, park, and all other public services concurrency for the Present Entitlements identified . . . herein. . . .

[**Exhibit B** at 15 (emphasis added); **Exhibit C** at 15 (emphasis added); *see also* **Exhibit A** at 29 (vesting capacity for Phase 1)].

86. All conditions have been satisfied such that the City was—and is—required to fully perform under the DOs, including full provision of sufficient potable water availability and wastewater capacity for the remaining entitlements.

87. In accordance with the contractual guarantees made by the City in the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO, Plaintiffs, as successors in interest to the Developer and owners of real property within the Town Center DRI, have a right to fully build out the remaining entitlements in the Town Center DRI, including sufficient potable water and wastewater capacity to support such development:

Residential:	496 dwelling units
Office Buildings:	586,122 square feet
Retail:	1,205,045 square feet
Non-Commercial Retail:	977,003 square feet
Institutional:	290,000 square feet

Movie Theater:	0 seats
Lodging Rooms:	355 rooms
Nursing Home Beds:	283 beds

[**Exhibit D** at 1].

88. The City repudiation of its obligations under the DOs resulted in the cancellation of Plaintiffs' sales contracts for real property within the Town Center DRIs.

89. The City's repudiation involves a material and essential term of the DOs—provision of potable water and wastewater availability to fully build out the Developer's entitlements.

90. Plaintiffs have been damaged by the City's repudiation, causing general and special damages including but not limited to reliance damages; lost profits; a decline in the value of Plaintiffs' real property within the Town Center DRI; lost sales; loss of money, land, and construction-in-aid contributed in satisfaction of concurrency conditions under the DOs; increased costs; and, damages for construction interruption and delay.

91. Plaintiffs have retained undersigned counsel to represent them in this cause and have had to bring this action for damages and are entitled to an award of damages and taxable costs.

WHEREFORE, Plaintiffs respectfully requests judgment from this Court as follows:

a. An Order from this Court finding:

i. The 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO, is a valid and enforceable contract that fully vests Plaintiffs (as successors in interest to the Developer) for the entitlements set forth therein, including but not limited to potable water availability and wastewater capacity;

- ii. Plaintiffs performed all of their essential obligations under the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO, entitling them to the full benefit and performance of the contractual guarantees under the 2003 DO, as amended;
 - iii. The City repudiated and breached the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO, when it caused cancellation of Plaintiffs' 2024 sales contracts by refusing to provide the purchasers guaranteed potable water and wastewater capacity;
 - iv. Plaintiffs have been damaged by the City's breach of the 2003 DO, as amended;
- b. An award of general and special damages, including but not limited to reliance damages; lost profits; a decline in the value of Plaintiffs' real property within the Town Center DRI; lost sales; loss of money, land, and construction-in-aid contributed in satisfaction of concurrency conditions under the DOs; increased costs; and, damages for construction interruption and delay;
 - c. An award of prejudgment and post-judgment interest, plus costs; and
 - d. Any other relief that the Court determines to be just and proper.

COUNT II—PROMISSORY ESTOPPEL

- 92. Plaintiffs re-allege paragraphs 1 through 77.
- 93. Count II is pled in the alternative to Count I.
- 94. Count II is a claim for promissory estoppel by Plaintiffs against the City.

95. In the 2003 DO, the City promised to the Developer of the Town Center DRI the right to complete the development associated with the following entitlements, including the availability of sufficient potable water and wastewater capacity:

Residential:	2,500 dwelling units
Office:	1,400,000 square feet
Retail/Commercial:	2,000,000 square feet
Non-Retail/Commercial:	1,400,000 square feet
Institutional:	625,000 square feet
Movie Theater:	2,400 seats
Lodging:	480 rooms
Nursing Home:	240 beds

[**Exhibit A** at 7; *see id.* at 29 (“vesting” Phase 1 of the Town Center DRI for potable water and wastewater)].

96. Following conversion of the entitlements, as set forth in the 2022 Amended DO and 2024 Amended DO, the City promised to the Developer of the Town Center DRI the right to build out the development associated with the following entitlements, including the availability of sufficient potable water and wastewater capacity:

Residential:	3,575 dwelling units
Office:	1,285,417 square feet
Retail/Commercial:	1,909,240 square feet
Non-Retail/Commercial:	1,195,000 square feet
Institutional:	625,000 square feet
Movie Theater:	2,400 seats
Lodging:	480 rooms
Nursing Home:	485 beds

[**Exhibit C** at 7; *see id.* at 15 (“vesting” all phases of the Town Center DRI for potable water and wastewater)].

97. In accordance with the promises made by the City in the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO, Plaintiffs, as successors in interest to the Developer and owners of real property within the Town Center DRI, have a right to fully build

out the remaining entitlements in the Town Center DRI, including sufficient potable water and wastewater capacity to support such development:

Residential:	496 dwelling units
Office Buildings:	586,122 square feet
Retail:	1,205,045 square feet
Non-Commercial Retail:	977,003 square feet
Institutional:	290,000 square feet
Movie Theater:	0 seats
Lodging Rooms:	355 rooms
Nursing Home Beds:	283 beds

[**Exhibit D** at 1].

98. Plaintiffs detrimentally relied on the promises made by the City as to the development entitlements set forth in the 2003 DO, as amended and restated in the 2022 Amended DO and the 2024 Amended DO, including the availability of potable water and wastewater capacity to fully build out the development entitlements, by the Developer and community development district expending more than \$35.5 million on the mitigation conditions in the DOs.

99. The City reasonably should have expected the promises made by the City in the 2003 DO, as amended and restated in the 2022 Amended DO and the 2024 Amended DO, to induce reliance in the form of action or forbearance on the part of Plaintiffs because the City had both a statutory duty to comply with the terms of the 2003 DO, as amended and restated in the 2022 Amended DO and the 2024 Amended DO.

100. In this case, the City encouraged further reliance on its 2003 DO approval by agreeing in the 2022 Amended DO and 2024 Amended DO that Plaintiffs had met their conditional obligations to mitigate the impacts of the Town Center DRI on public infrastructure, including water, wastewater, roads, parks and open space. Plaintiffs had expended more than \$35.5 million to create and ensure access to public facilities for the completion of their approved Town Center

DRI only to be told in 2024 that no further permits/certificates of occupancy would be issued due to lack of water and sewer capacity.

101. Injustice can be avoided only by this Court's enforcement of the promises made by the City in the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO. The City must be required to provide the potable water and wastewater capacity for the entitlements guaranteed in the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO, or be required to pay damages to Plaintiffs for their reliance damages and lost profits.

WHEREFORE, Plaintiffs respectfully requests judgment from this Court as follows:

- a. An Order from this Court finding:
 - i. Plaintiffs detrimentally relied on the promises in the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO;
 - ii. The City reasonably should have expected the promises made by the City in the 2003 DO, as amended and restated in the 2022 Amended DO and the 2024 Amended DO, to induce reliance in the form of action or forbearance on the part of Plaintiffs;
 - iii. Injustice can be avoided only by this Court's enforcement of the promises made by the City in the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO;
 - iv. If the City is unable to immediately provide the necessary potable water availability and wastewater capacity for the remaining entitlements, Plaintiffs are entitled to damages;

- b. An award of general and special damages, including but not limited to reliance damages; lost profits; a decline in the value of Plaintiffs' real property within the Town Center DRI; lost sales; loss of money, land, and construction-in-aid contributed in satisfaction of concurrency conditions under the DOs; increased costs; and, damages for construction interruption and delay;
- c. An award of prejudgment and post-judgment interest, plus costs; and
- d. Any other relief that the Court determines to be just and proper.

COUNT III—INJUNCTION ON FUTURE ANNEXATIONS

102. Plaintiffs re-allege paragraphs 1 through 77.

103. Count III is a claim for an injunction on future annexations by Plaintiffs against the City.

104. Plaintiffs have a clear legal right to prevent the City from giving away to newly annexed lands additional potable water and wastewater capacity to which Plaintiffs have a vested right.

105. There is no adequate remedy at law to otherwise prevent the City from creating additional unnecessary burdens on the City's already overburdened potable water and wastewater infrastructure through further annexations when the City cannot even properly provide capacity for lands already located inside the City, including that capacity contractually guaranteed to Plaintiffs back in 2003.

106. Plaintiffs will suffer irreparable harm if the City is not enjoined from further annexations principally because endless annexations will prolong into the distant future the injustice suffered by Plaintiffs. In addition, the land owned by Plaintiffs is unique and irreplaceable. Plaintiffs have a right to develop that land according to the terms and conditions of

the DOs. Plaintiffs will undoubtedly be further delayed or prevented from such development if the City is permitted to continue annexing additional lands into the City. Any monetary remedy will be insufficient to fully cure this harm.

WHEREFORE, Plaintiffs request that this Court enter a prohibitory injunction against the City, preventing the City from annexing any further lands into the City until the resolution of this lawsuit, and any other relief that the Court determines to be just and proper.

Date: November 17, 2025

/s/ D. Kent Safriet

D. Kent Safriet (FBN 174939)

Patrice Boyes (FBN 892520)

Valerie L. Chartier-Hogancamp (FBN 1011269)

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*Counsel for Plaintiffs, Palm Coast Holdings, Inc.
and Florida Landmark Communities, LLC*

CERTIFICATE OF SERVICE

I certify that on November 17, 2025 I filed the foregoing through the Florida Courts E-Filing Portal system, which will serve a copy via electronic mail to all counsel of record in this matter.

/s/ D. KENT SAFRIET
Attorney

Exhibit A
2003 Development Order

Return to C. Hoene
→ City of Palm Coast
264 Palm Coast Pkwy
Palm Coast, FL 32137

Inst No: 2003039803 Date: 07/23/2003
GAIL WADSWORTH, FLAGLER Co. Time: 14:39
Book: 959 Page: 1509 Total Pgs: 76

OFF REC 0959 PAGE 1509

TOWN CENTER AT PALM COAST
DEVELOPMENT OF REGIONAL IMPACT DEVELOPMENT ORDER

THIS DEVELOPMENT ORDER effective this 11th
day of July, 2003 by and between
Florida Landmark Communities, Inc., a
Florida corporation (the "Developer") and
the City of Palm Coast, a municipal
corporation organized and existing under the
laws of the State of Florida (the "City").

WHEREAS: Developer filed an Application For Development
Approval ("ADA") dated April 9, 2002, as amended by ADA First
Sufficiency Response dated June 24, 2002, and ADA Second
Sufficiency Response dated August 28, 2002, for Town Center
at Palm Coast Development of Regional Impact ("Town Center
DRI") located on certain real property as more specifically
described on **Exhibit "A"** hereto (the "DRI Property");

WHEREAS, whenever an action or approval of the City is
referred to herein, except for actions relating to the City
Council, the action shall be taken by the City Manager, or
designee; and

WHEREAS, whenever an action, right or eligibility of the
Developer is referred to herein, the action may be taken by,
or the right or eligibility may belong to Town Center at Palm
Coast Community Development District ("CDD") but the
Developer shall have primary responsibility for all actions
that are the obligation of the Developer.

WHEREAS, the Town Center DRI is a proposed mixed-use
development on approximately 1,557 acres located in the City

1 TOWN CENTER AT PALM COAST
2 DEVELOPMENT OF REGIONAL IMPACT DEVELOPMENT ORDER

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6 Florida corporation (the "Developer") and
7 the City of Palm Coast, a municipal
8 corporation organized and existing under the
9 laws of the State of Florida (the "City").

10 WHEREAS: Developer filed an Application For Development
11 Approval ("ADA") dated April 9, 2002, as amended by ADA First
12 Sufficiency Response dated June 24, 2002, and ADA Second
13 Sufficiency Response dated August 28, 2002, for Town Center
14 at Palm Coast Development of Regional Impact ("Town Center
15 DRI") located on certain real property as more specifically
16 described on **Exhibit "A"** hereto (the "DRI Property");

17 WHEREAS, whenever an action or approval of the City is
18 referred to herein, except for actions relating to the City
19 Council, the action shall be taken by the City Manager, or
20 designee; and

21 WHEREAS, whenever an action, right or eligibility of the
22 Developer is referred to herein, the action may be taken by,
23 or the right or eligibility may belong to Town Center at Palm
24 Coast Community Development District ("CDD") but the
25 Developer shall have primary responsibility for all actions
26 that are the obligation of the Developer.

27 WHEREAS, the Town Center DRI is a proposed mixed-use
28 development on approximately 1,557 acres located in the City

1 at the northwest corner of the intersection of SR-100 and
2 I-95. The project is bordered by I-95 to the east, SR-100 to
3 the south, a major drainage canal to the north and Belle
4 Terre Parkway to the west; and

5 WHEREAS, the ADA was reviewed by the Northeast Florida
6 Regional Planning Council ("NEFRPC") as required by Section
7 380.06, *Florida Statutes*, and the NEFRPC recommended that the
8 ADA be approved, with conditions; and

9 WHEREAS, the Developer provided complete copies of the
10 ADA, as amended by the Sufficiency Responses to the Florida
11 Department Of Community Affairs ("DCA"), NEFRPC and the City;
12 and

13 WHEREAS, the Town Center DRI is consistent with the
14 City's Comprehensive Plan in effect at the time of the
15 approval of the Order; and

16 WHEREAS, pursuant to Section 306.06, *Florida Statutes*,
17 the City Council of the City ("City Council") heard at a
18 public hearing convened on December 3, 2002, and July 1, ,
19 2003, the ADA for the Town Center DRI and afforded the public
20 and all affected parties an opportunity to be heard and to
21 present evidence; and

22 WHEREAS, after such public hearing and in consideration
23 of the recommendations made and submitted to the City
24 Council, the City Council has made certain findings and
25 determinations; as more specifically setforth hereinafter.

1 NOW, THEREFORE, BE IT HEREBY ORDERED AND RESOLVED by the
2 City Council, that based upon the Findings of Fact and
3 Conclusions of Law, and the consent and agreement of the
4 Developer, and subject to the following terms and conditions,
5 the City Council hereby approves this Development Order,
6 pursuant to the provisions of Section 380.06, *Florida*
7 *Statutes*, and other applicable State laws, and the codes and
8 ordinances of the City:

9 **PART I**

10 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11 1. The above Recitals/Whereas clauses are hereby
12 adopted and incorporated into this Section of this Order.

13 2. The DRI Property is not in an area designated as an
14 area of Critical State Concern pursuant to the provisions of
15 Section 380.05, *Florida Statutes*.

16 3. The Town Center DRI is consistent with the State's
17 Comprehensive Plan and Rule 9J-5, *Florida Administrative*
18 *Code*.

19 4. The Town Center DRI is consistent with the Strategic
20 Regional Policy Plan adopted by the NEFRPC.

21 5. The Town Center DRI is consistent with the City's
22 Comprehensive Plan.

23 6. The Town Center DRI is consistent with the
24 Assessment Report and Recommendations of the NEFRPC issued
25 pursuant to Section 380.06, *Florida Statutes*.

7. The public hearing to consider this Order was properly noticed and held by the City Council pursuant to Section 380.06, *Florida Statutes*.

8. The Developer's authorized agent is William Livingston whose principal place of business is Florida Landmark Communities, Inc.; One Corporate Drive, Suite 3A, Palm Coast, Florida 32137; telephone number (386) 446-6226.

9. The development of the Town Center DRI pursuant to the ADA was determined to be consistent with the achievement of the objectives of the adopted State Comprehensive Plan, as codified at Chapter 187, *Florida Statutes*, and will not unreasonably interfere with the achievement of those objectives.

PART II

GENERAL CONDITIONS

1. **ADA.** The Town Center DRI shall be developed in accordance with the development plan, information, and commitments contained in the following: (i) ADA dated April 9, 2002; (ii) the First ADA Sufficiency Response dated June 24, 2002; (iii) the Second ADA Sufficiency Response dated August 28, 2002 and (iv) Town Center at Palm Coast Master Plan, Map H, attached as **Exhibit "B"** hereto (the "Master Plan"), all of which are incorporated herein by reference except to the extent of any conflict with the express terms of this Order.

1 2. **Notice of Order.** Notice of this Order and any
2 subsequent amendment hereto shall be recorded by Developer in
3 accordance with the provisions of Section 28.222 and
4 380.06(15)(f), *Florida Statutes*, with the Clerk of the
5 Circuit Court of Flagler County, Florida. Any subsequent
6 owner/developer or assignee from Developer shall be subject
7 to the provisions contained in this Order. Any contract or
8 agreement for sale by Developer of all or any portion of the
9 Town Center DRI shall contain a legend substantially in the
10 following form clearly printed or stamped thereon.

11 THE PROPERTY DESCRIBED HEREIN IS PART OF THE
12 TOWN CENTER AT PALM COAST DEVELOPMENT OF
13 REGIONAL IMPACT AND IS SUBJECT TO A
14 DEVELOPMENT ORDER, NOTICE OF WHICH IS
15 RECORDED IN THE PUBLIC RECORDS OF FLAGLER
16 COUNTY, FLORIDA, WHICH IMPOSES CONDITIONS,
17 RESTRICTIONS AND LIMITATIONS UPON THE USE AND
18 DEVELOPMENT OF THE SUBJECT PROPERTY WHICH ARE
19 BINDING UPON EACH SUCCESSOR AND ASSIGN OF
20 FLORIDA LANDMARK COMMUNITIES, INC. A COPY OF
21 THE DEVELOPMENT ORDER MAY BE REVIEWED AT THE
22 DEVELOPMENT SERVICES DEPARTMENT, CITY OF PALM
23 COAST OR AT THE OFFICES OF THE DEPARTMENT OF
24 COMMUNITY AFFAIRS, STATE OF FLORIDA,
25 TALLAHASSEE, FLORIDA.

3. **Land Use Totals.** The Town Center DRI may be developed up to, but not to exceed, the following:

<u>Land Use</u>	<u>Gross Bldg./Units or Area</u>	<u>Acreage *</u>
Residential	2,500/DUs	190 Acres
Office	1,400,000/SF	110 Acres
Retail/Comm.	2,000,000/SF	250 Acres
Non-Retail/Comm.	1,400,000/SF	180 Acres
Institutional	625,000/SF	80 Acres
Movie Theater	2,400 seats	8 Acres
Lodging	480 rooms	15 Acres
Nursing Home	240 beds	10 Acres
Common Area	--	714 Acres

* The Town Center DRI is planned as a traditional neighborhood development. As a result, land uses will be integrated, rather than specifically assigned to designated areas. Consequently, acreage is approximate for each land use category.

4. **Land Use Conversion Table.**

(a) Developer may increase certain land uses and simultaneously decrease other land uses without filing a Notice of Proposed Change provided that such changes are consistent with the conversion table attached as **Exhibit "C"** hereto (the "Conversion Table"), and provided that such changes do not have a substantial adverse effect or impact on public infrastructure facilities as determined by the City, and are reported in the Monitoring Reports, as provided for in Section 11 below.

Conversions (simultaneous increases and decreases) of total land uses, as shown in Section 3 above,

1 of no more than 10% of a land use (as measured by dwelling
2 units, square feet, seats, rooms, or beds) shall be an
3 entitlement of the Developer, but shall require City manager
4 approval as a tracking mechanism. Conversions of land uses
5 in excess of 10%, but in no event cumulatively more than 30%
6 of a land use may occur, subject to City Council approval,
7 to ensure that substantial and material adverse impacts on
8 public facilities do not occur as a result of the
9 conversion.

10 At the time of election of a land use
11 conversion under the Conversion Table, Developer shall
12 notify the City, DCA and the NEFRPC of the election and
13 shall provide the DCA, the City, and the NEFRPC with
14 cumulative land use totals and remaining allowable
15 quantities in the next Monitoring Report.

16 (b) If a conversion is accomplished consistent
17 with the criteria contained in the Conversion Table and no
18 change is made to the Master Plan, additional DRI approvals
19 will not be required for the subject land use conversion.

20 5. **Phasing, Buildout and Expiration.** The Town Center
21 DRI shall be developed in three phases as shown on the
22 following schedule:
23
24
25

Land Use	Phase 1		Phase 2		Phase 3		Total	
	Sq. ft.	Units	Sq. ft.	Units	Sq. ft.	Units	Sq. ft.	Units
Residential		1,110/DU		865/DU		525/DU		2,500/DU
Office	325,000		575,000		500,000		1,400,000	
Retail	750,000		750,000		500,000		2,000,000	
Non-Retail	320,000		680,000		400,000		1,400,000	
Institutional	185,000		165,000		275,000		625,000	
Movie Theater		2,400						2,400
Lodging		140/rms		140/rms		200/rms		480/rms
Nursing Home		120/beds				120/beds		240/beds

- Notes: 1) The non-residential uses are stated in square feet of gross building area.
- 2) These land uses shall be integrated into the Town Center Mixed-Use Zoning as shown on the Master Plan.
- 3) Common Area includes all open space, areas for preservation and greenbelts that shall be available for the common use and enjoyment of all Town Center DRI property owners and visitors.

During Phase 1, Developer shall construct or cause to be constructed the major infrastructure improvements for Town Center, consisting of the following:

(a) 4-lane modified urban section extension of Seminole Woods Parkway from SR-100 to its intersection with Main Street. For purposes hereof, a modified urban section shall consist of a road section with the bottom of the roadside swale at an elevation above the seasonal high ground water table, non-mountable curb along the median side, ribbon curb along the swale side and drainage inlets within the swale.

1 (b) 2-lane modified urban section further extension
2 of Seminole Woods Parkway from SR-100 to Old Kings Road.

3 (c) Construction of Main Street as a 2-lane modified
4 urban section, from the traffic circle on Seminole Woods
5 Parkway extension to the westerly traffic circle on Main
6 Street, with diagonal parking adjacent to building sites.

7 (d) Construction of Main Street as a 4-lane modified
8 urban section from the westerly traffic circle to a point
9 approximately 800 feet east of Belle Terre Parkway.

10 (e) Construction of Main Street as a 4-lane urban
11 section for a distance of approximately 800 feet eastward
12 from Belle Terre Parkway.

13 (f) Extension of Eastwood Drive to Main Street as a
14 3-lane urban section.

15 (g) Construction of Hospital Drive from Seminole
16 Woods Parkway extension to the hospital site as a 2-lane
17 urban section.

18 (h) Construction of the master drainage system for
19 Town Center, which will create an extensive interconnected
20 lake system.

21 (i) Installation of a water distribution system,
22 sewage collection system and underground electric and conduit
23 within all road rights-of-way or adjacent multi-use
24 easements.

25 (j) Installation of landscaping along roads and in
other public areas.

1 (k) Construction of the initial phase of the
2 pedestrian/bikeway system throughout Town Center, with a
3 connection to the right-of-way for the proposed Lehigh Trail.

4 (l) Site fill on selected development parcels.

5 (m) Environmental mitigation to offset impacts.

6 Prior to commencing Phase 2, as provided for in
7 Section 12, under Part III below, Royal Palm Parkway shall be
8 connected to Seminole Woods Parkway extension by a 2-lane
9 urban section roadway with two canal crossings. During
10 Phases 2 and 3, as development parcels are planned and
11 developed, all the internal streets and drainage systems
12 shall be constructed and utility services shall be extended
13 as appropriate. Subject to wetlands constraints, the
14 internal streets and interconnected driveways through parking
15 areas shall create a grid roadway system, substantially as
16 shown on **Exhibit "D"** hereto, to provide alternative means of
17 ingress/egress throughout Town Center DRI.

18 The rights-of-way for the roads (and segments)
19 provided for above in this Section shall be as follows:

20 (a) Seminole Woods Parkway extension - 100 feet.

21 (b) Main Street, between the traffic circles -
22 65 feet.

23 (c) Main Street, other than between the traffic
24 circles - 100 feet.

25 (d) Eastwood Drive to Main Street - 80 feet.

(e) Hospital Drive - 80 feet.

1 (f) Royal Palm Parkway - 124 feet, except where
2 constrained east of the intersection with Seminole Woods
3 Parkway extension.

4 Each phase shall last at least 5 years unless
5 extended pursuant to Section 380.06(19), *Florida Statutes*, or
6 unless Developer elects to accelerate the beginning date of a
7 subsequent phase, provided that all mitigation requirements
8 for the particular phase to be affected are met. The end
9 date of a phase shall not be affected by an acceleration of
10 the beginning date.

11 Unused development rights from a particular phase
12 shall carry over into the next phase until buildout.
13 Physical development shall commence no later than January 1,
14 2005.

15 Although the Town Center DRI is phased through 2020,
16 buildout may not occur by that date. As a result, the DRI
17 termination date and the expiration date of this Order are
18 both established as of December 31, 2025.

19 6. **Effective Date.** This Order shall take effect upon
20 transmittal to the DCA in accordance with Rule 9J-2.025(5)
21 *Florida Administrative Code* and Subsection 380.07(2), *Florida*
22 *Statutes*.

23 7. **Monitoring Official.** The City Manager or designee
24 shall be the local official responsible for monitoring the
25 Town Center DRI for compliance by Developer with this Order.

1 8. **Downzoning Protection.** The Town Center DRI, as
2 approved in this Order, shall not be subject to downzoning or
3 reduction of land uses before December 31, 2025, unless
4 Developer consents to such change, or the City demonstrates
5 that substantial changes in the conditions underlying the
6 approval of this Order have occurred or that this Order was
7 based on substantially inaccurate information provided by
8 Developer or that the changes are essential to public health,
9 safety and welfare.

10 9. **Election Regarding Environmental Rules.** Pursuant to
11 Section 380.06(5)(c), *Florida Statutes*, Developer has elected
12 to be bound by the rules adopted pursuant to Chapter 373 and
13 403, *Florida Statutes*, in effect as of the date of this
14 Order, including, but not limited to, the provisions of
15 Section 373.414(13), *Florida Statutes*. Such rules shall be
16 applicable to all applications for permits pursuant to those
17 chapters which are necessary for and consistent with the
18 development authorized in this Order, except that a later
19 adopted rule shall be applicable to an application if:

20 (a) the later adopted rule is determined by the
21 adopting agency to be essential to the public health, safety
22 and welfare, or

23 (b) the later adopted rule is being adopted
24 pursuant to Section 403.061(27), *Florida Statutes*; or
25

1 (c) the later adopted rule is being adopted
2 pursuant to a subsequently enacted statutorily mandated
3 program; or

4 (d) the later adopted rule is mandated in order for
5 the state to maintain delegation of a federal program; or

6 (e) the later adopted rule is required by state or
7 federal law.

8 Further, to qualify for the benefits of this
9 provision, the application must be filed within 5 years from
10 the issuance of this Order and the permit shall not be
11 effective for more than 8 years from the effective date of
12 this Order. Nothing in this Section shall be construed to
13 alter or change any permitting agency's authority to approve
14 permits or to determine applicable criteria for longer
15 periods of time.

16 **10. Level of Service Standards.** The Town Center DRI
17 shall be required to meet all level of service standards in
18 the City's Comprehensive Plan and all requirements of the
19 City's concurrency management system. However, pursuant to
20 Section 163.3180(12), *Florida Statutes*, if authorized by the
21 City's Comprehensive Plan, the Developer may satisfy the
22 transportation concurrency requirements by meeting the
23 transportation conditions contained in this Order. In
24 addition, the onsite roadway system within the Town Center
25 DRI shall be exempt from the City's Comprehensive Plan

1 concurrency requirements, with the exception of Seminole Woods
2 Parkway extension.

3 11. **Biennial Reporting.** A biennial monitoring report for
4 the Town Center DRI shall be prepared by Developer or its
5 successors or assigns and shall be submitted to NEFRPC, DCA
6 and the City no later than January 1, 2005 and then
7 biennially thereafter until buildout (individually a
8 "Monitoring Report" and collectively the "Monitoring
9 Reports"). The Monitoring Reports shall be submitted
10 consistent with the reporting requirements adopted in Section
11 380.06(18), *Florida Statutes*, as amended from time to time.
12 Each Monitoring Report shall include the following:

13 (a) A description of any changes made in the plan
14 of development, phasing, or in representations contained in
15 the ADA since the effective date of this Order, and any
16 actions taken by the City to address those changes. Copies of
17 any approvals taken to address changes, including copies of
18 any revised master plans not previously submitted, shall be
19 attached to each Monitoring Report.

20 (b) A summary comparison of development activity
21 proposed or conducted since the previous Monitoring Report
22 and activity projected for the period until submittal of the
23 next Monitoring Report. The summary shall include the
24 following: a description of site improvements, gross floor
25 area constructed by land use type, location, and phase, with
appropriate maps. A tabulation of the amount of acreage

1 developed in the reporting period shall be provided by land
2 use categories shown on the Master Plan.

3 (c) An identification of the name(s) of the
4 purchaser(s) of any undeveloped tract(s) of the DRI Property,
5 including the location(s) and size of the tract(s) purchased,
6 and the amount of development rights allocated to the
7 purchaser(s), with map(s) which show the parcel(s) or sub-
8 parcel(s) acquired.

9 (d) A cumulative summary of all development that
10 has taken place within the Town Center DRI by the land use
11 categories shown on the Master Plan, including gross floor
12 areas constructed by land use type and location, together
13 with a cumulative summary of location, size (acreage),
14 development rights purchased (land use type and square
15 footage or units), and the name of the purchaser of all
16 parcels purchased within the Town Center DRI.

17 (e) To the extent known to Developer, a description
18 of any lands purchased or optioned within one mile of the
19 boundaries of the Town Center DRI by a person who has
20 acquired a fee simple or lesser interest in the Town Center
21 DRI subsequent to the effective date of this Order (but
22 excluding persons who have only acquired a leasehold interest
23 in lands or improvements within the Town Center DRI),
24 identifying such land, its size, and its intended use on a
25 site plan and map (to the extent feasible).

1 (f) A listing of any substantial local, state, and
2 federal permits, which were obtained, applied for, or denied,
3 during this reporting period, specifying the agency, type of
4 permit, permit number, permit expiration date, parcel,
5 location, and activity for each permit.

6 (g) A description of any moratorium or consent
7 order imposed by a regulatory agency on development within
8 the Town Center DRI, specifying the type of moratorium or
9 consent order, duration, cause, and remedy as well as
10 additional information regarding any "out of compliance"
11 status issued by the applicable regulatory authority.

12 (h) An analysis, including a letter from the
13 utility service provider, demonstrating that there will be
14 sufficient capacity of potable water, wastewater, and solid
15 waste facilities serving the Town Center DRI for the
16 anticipated development for the ensuing reporting period.

17 (i) An assessment of Developer's or its successor's
18 and local government's compliance with conditions and
19 commitments contained in this Order.

20 (j) A description of any change to the previously
21 reported stormwater plans and design criteria or planting
22 monitoring, mitigation and maintenance programs.

23 (k) A description of any known incremental
24 applications for development approval or requests for a
25 substantial deviation that were filed in the reporting period
or to be filed during the next reporting period.

1 (l) A description of any change in local
2 governmental jurisdiction for any portion of the Town Center
3 DRI since the effective date of this Order.

4 (m) Copies of monitoring reports completed during
5 the previous reporting period on the created wetlands and
6 stormwater/wetlands system as required by the permitting
7 agencies.

8 (n) Traffic reports which shall also be submitted
9 to the Florida Department of Transportation ("FDOT") District
10 Urban Office in Orlando, Florida and FDOT District 5, as well
11 as the City, the NEFRPC and DCA. The first traffic report
12 shall be due concurrently with the first Monitoring Report
13 and then biennially thereafter with each subsequent
14 Monitoring Report until project buildout, unless otherwise
15 specified by the NEFRPC. The following information shall be
16 included:

17 (i) A description of current development by
18 land use, type, location, and the amount of square footage,
19 along with the proposed construction schedule for the ensuing
20 24 month period, and appropriate maps.

21 A table showing the buildings which have
22 been issued a Certificate of Occupancy within the reporting
23 period and the trip generation for daily and peak hour
24 traffic according to the use based on the latest available
25 version of the ITE manual. This table shall provide a sum of

1 the total daily and peak hour trips generated for all
2 development within the reporting period. A separate table
3 shall include the same information for all development which
4 has been issued a Certificate of Occupancy in the Town Center
5 in previous reporting periods, thus providing a cumulative
6 total for daily and peak hour trip generation for the entire
7 Town Center (the "ITE Trip Generation Rates").

8 (ii) Actual traffic counts, turning movements
9 and actual levels of service as determined and requested at a
10 pre-Monitoring Report meeting by the City for each Monitoring
11 Report. City, Flagler County ("County") and FDOT staff shall
12 be invited by the Developer to each pre-Monitoring Report
13 meeting. The methodology for any traffic analysis to
14 determine levels of service shall be approved by the City and
15 FDOT. Actual FDOT, City or County traffic counts shall be
16 used whenever possible. If actual FDOT, City or County
17 traffic counts are not available for a particular road or
18 intersection or if available traffic counts are older than
19 6 months, Developer shall retain, at its expense, a traffic
20 engineering firm to collect the necessary counts, provided at
21 the pre-Monitoring Report meeting, the City may elect to
22 accept traffic counts that are older than 6 months. FDOT
23 seasonal adjustment factors shall be used when adjusting or
24 projecting traffic counts. If the City determines that
25

1 reliable actual traffic counts are not available and cannot
2 be collected, the ITE Trip Generation Rates shall be used.

3 (iii) A description of any new and/or improved
4 roadways, traffic control devices or other transportation
5 facility improvements to be constructed or provided by
6 Developer or a governmental entity to accommodate the total
7 existing and anticipated traffic demands.

8 (iv) A determination of whether or not air
9 quality monitoring is warranted pursuant to the Florida
10 Department of Environmental Protection Guidelines for
11 Indirect Sources.

12 (o) A statement certifying that the NEFRPC, DCA,
13 the City, and all affected agencies have been sent copies of
14 the Monitoring Report in conformance with Subsections
15 380.06(15) and (18), *Florida Statutes*. Developer shall
16 ensure that appropriate agencies receive a copy of each
17 Monitoring Report.

18 **12. Application for Proposed Changes.** Developer shall
19 submit simultaneously to the City, the NEFRPC, and the DCA,
20 any applications for proposed changes to the Town Center DRI
21 and shall comply with the provisions of Section 380.06(19),
22 *Florida Statutes*, concerning non-substantial deviations.

23 **13. Limitations of Approval.** The approvals provided in
24 this Order shall not be construed to obviate the duty of
25

Developer to comply with all other applicable local or state permitting procedures.

14. **Impact Fee Credits.** Developer or its assignee shall receive impact fee credits for impact fees that are paid in connection with development within the Town Center DRI in accordance with the provisions of the applicable impact fee ordinance or separate agreement with the City and/or County.

15. **Notices.** Any and all notices required or allowed to be given in accordance with this Order shall be mailed or delivered as follows:

To Developer: Florida Landmark Communities, Inc.
One Corporate Drive, Suite 3A
Palm Coast, Florida 32137
Attn: President
Telephone: (386) 446-6226

With a copy to: RDL
P.O. Box 1077
660 6th Avenue
Windermere, Florida 34786
Attn: Bob Londeree
Telephone: (407) 876-4644

To the City: City of Palm Coast
P.O. Box 354610
Palm Coast, Florida 32135-4610
Attn: City Manager

1 Telephone: (386) 447-4255

2 **With a Copy to:** Stenstrom, McIntosh, Colbert, Whigham &
3 Simmons

4 200 West First Street, Suite 22,
5 Suntrust Bldg.

6 P.O. Box 4848

7 Sanford, Florida 32772-4848

8 Attn: William L. Colbert

9 Telephone: (407) 322-2171

10 16. **Severability.** In the event any stipulation, or any
11 portion of any Section of this Order shall be declared
12 invalid, illegal, or unconstitutional by a court of competent
13 jurisdiction, such adjudication shall in no manner affect the
14 approval granted herein, and other stipulations, or the other
15 provisions of the affected stipulation, which shall remain in
16 full force and effect as if the stipulation or portion or
17 Section thereof so declared invalid, illegal, or
18 unconstitutional, were not originally a part hereof,
19 provided, however, that if the result of the severance of the
20 stipulation or portion or Section results in harm to the
21 public health, safety or welfare; results in a public harm;
22 or substantially negates a public benefit or imposes a public
23 burden; then the provisions of this Order shall be deemed not
24 severable and this Order shall be reformulated and
25 reconstituted by the City to address said matters.

1 17. **Rendition of Order to DCA.** Within 20 days of the
2 approval and execution of this Order, the City shall render a
3 copy of this Order, with all attachments certified as
4 complete and accurate by certified mail, return receipt
5 requested, to the DCA, Bureau of Local Planning, the NEFRPC,
6 and the Developer.

7 18. **Other General Conditions.**

8 (a) Notwithstanding any provision contained in this
9 Order to the contrary, the City shall have no financial
10 responsibility to contribute to or participate in the
11 funding, design, engineering, permitting, and/or construction
12 of improvements to any Developer funded road projects or any
13 State roads, County roads, or roads constructed or to be
14 constructed within the DRI Property.

15 (b) Development of the DRI Property based upon this
16 Order shall comply with all applicable Federal, State and
17 local laws, codes, ordinances, rules and regulations which
18 are hereby incorporated herein by this reference.

19 (c) The Developer acknowledges that the
20 requirements and conditions of this Order as set forth herein
21 result from the impacts of development of the DRI Property on
22 public facilities and systems, are reasonably attributable to
23 the development of the DRI Property, are based upon
24 comparable requirements and commitments that the City or
25 other agencies of government would reasonably expect to

1 require a developer to expend or provide, and are consistent
2 with sound and generally accepted land use planning and
3 development practices and principles.

4 (d) This Order and its terms and conditions and all
5 of the promises, commitments, obligations, covenants,
6 liabilities, and responsibilities of the Developer touch and
7 concern the DRI Property and shall continue to run with,
8 follow and burden the DRI Property. To this end, the said
9 promises, commitments, obligations, covenants, liabilities,
10 and responsibilities shall inure to the benefit of the City
11 and shall operate as a perpetual burden and servitude upon
12 the DRI Property unless released by the City by means of an
13 appropriate recordable instrument approved and executed by
14 the City. The said promises, commitments, obligations,
15 covenants, liabilities, and responsibilities herein incurred
16 by the Developer shall be binding upon the Developer and the
17 Developer's heirs, transferees, assigns and successors in
18 interest (specifically including, but not by way of
19 limitation, building permit applicants and any person or
20 entity developing any part of the DRI Property) and shall
21 inure to the benefit of the City and its assigns and
22 successors in interest as to all parts and each part of the
23 DRI Property. The Developer shall pay any and all costs of
24 recording instruments in the public records of the County.

1 In addition to the foregoing general conditions, the
2 following specific conditions are included in this Order to
3 mitigate identified regional impacts.

4 **PART III**

5 **SPECIFIC CONDITIONS TO THIS DEVELOPMENT ORDER**

6 **1. Vegetation and Wildlife.** Within 1 calendar year from
7 the effective date of this Order the Developer shall make an
8 unencumbered contribution of Eight Thousand Six Hundred and
9 Sixty-Six and 00/100 Dollars (\$8,666.00) to the Florida Fish
10 and Wildlife Conservation Commission in favor of Land
11 Acquisition Trust Fund. No construction shall commence within
12 any gopher tortoise habitat on the DRI Property until the
13 Developer has obtained the necessary gopher tortoise permit
14 from the Florida Fish and Wildlife Conservation Commission
15 and complies with all permit conditions. In the absence of a
16 permit, development related activities on the DRI Property
17 shall not result in the harming, pursuit, or harassment of
18 wildlife species classified as endangered, threatened, or a
19 species of special concern by either the State or Federal
20 governments in contravention of applicable State and Federal
21 laws, rules or regulations. Should listed species be
22 determined to reside on, or otherwise be significantly
23 dependent upon the DRI Property, the Developer shall cease
24 all development activities which might negatively affect that
25 individual or population. The DRI Property shall be developed

1 in full compliance with all applicable laws, rules and
2 regulations. The Developer shall provide proper protection
3 to the satisfaction of all agencies with jurisdiction over
4 the matter.

5 **2. Wetlands.**

6 (a) A minimum of 500 acres of wetlands on the DRI
7 Property shall be conserved and/or enhanced. Enhancement
8 activities, including but not limited to, rehydration,
9 wetland and upland vegetative plantings and creation of open
10 water habitat, shall occur in accordance with the
11 requirements and conditions set forth in any and all
12 applicable permits. All conserved and/or enhanced wetlands
13 shall be placed under a permanent conservation easement in
14 accordance with the provisions of Section 704.06(1) and (11),
15 *Florida Statutes*, and no development activities shall be
16 allowed, as defined in Section 380.04, *Florida Statutes*,
17 unless such activity is specifically identified in the
18 conservation easement language which is approved by the City,
19 St. John River Water Management District ("SJRWMD") and the
20 U.S. Corps of Engineers ("USACE"). The conservation easement
21 shall be dedicated to SJRWMD and the City, free and clear of
22 any and all liens and encumbrances and not subordinate to any
23 encumbrances, including, but not limited to, the rights of
24 mortgagees and any lenders. The conservation easement shall
25 grant a third party interest to USACE, with full enforcement

1 rights, including all remedies available under law, and
2 providing, in the event USACE prevails in an enforcement
3 action, for an award of attorney's fees, litigation fees and
4 costs, at any level of enforcement, regardless of whether or
5 not litigation is necessitated.

6 (b) The Developer shall establish minimum upland
7 buffers of 15-feet with an average of 25-foot buffers around
8 all preserved and/or enhanced wetlands. Impervious
9 development, other than permitted road crossings and
10 incidental stormwater management structures shall be
11 prohibited within this buffer, provided, however, that the
12 construction of boardwalks, walkways, docks, and similar
13 compatible amenities may be permitted, subject to the
14 regulations of applicable regulatory agencies.

15 (c) Mitigation for wetland impacts shall be
16 determined by SJRWMD and/or USACE, as required.

17 (d) Piezometers and staff gauges shall be used to
18 monitor wetland hydrology. Details of the wetland monitoring
19 program shall be determined by SJRWMD/USACE and SJRWMD/USACE
20 shall monitor the results of the program to determine its
21 success and completion.

22 (e) The Developer shall install a minimum of 36-inch
23 culverts at all wetland road crossings to preserve wetland
24 functions and provide small wildlife crossings.

25 **3. Groundwater.**

1 (a) Use of Floridan Aquifer wells, that do not fall
2 within the SJRWMD's specific consumptive use permitting
3 requirements (less than 6 inches in diameter), are prohibited
4 on the DRI Property. This prohibition shall act as a deed
5 restriction relative to the DRI Property.

6 (b) Any abandoned wells discovered prior to or
7 during development shall be properly plugged and abandoned in
8 accordance with SJRWMD's rules and regulations. The Developer
9 shall be responsible for all Floridan Aquifer wells that are
10 discovered before and during the development of the Town
11 Center DRI. To the extent available, the following information
12 shall be provided to the City for each well:

- 13 (i) owner or tenant using the well;
- 14 (ii) location of the well;
- 15 (iii) well contractor who constructed the well;
- 16 (iv) date of well construction;
- 17 (v) use of the well;
- 18 (vi) status of the well (is it being used
19 currently or not?);
- 20 (vii) well-casing diameter and total depth of
21 the well; and
- 22 (viii) does the well free flow or does it
23 require pumping to remove the water from the ground?

24 4. **Surface Water.** A Limited Surface Water Quality
25 Monitoring Plan ("SWQMP") shall be developed for Town Center

1 DRI and shall be approved by the Northeastern District of the
2 Florida Department of Environmental Protection ("FDEP") and
3 shall include one site as approved by FDEP. The SWQMP shall
4 be implemented on site prior to initiating construction
5 activities to ensure adequate data collection for
6 establishment of background conditions. All background data
7 shall be submitted to the Northeastern District of the FDEP
8 prior to initiation of any construction activities. The
9 development of the plan and parameters to be sampled shall be
10 developed in accordance with FDEP criteria. Monitoring data
11 shall be summarized in each Monitoring Report.

12 5. **Floodplains.** No development shall occur within the
13 100-year floodplain as determined on the Flood Insurance Rate
14 Maps, other than canal crossings. All canal crossings shall be
15 elevated or flood-proofed to the height that is at a minimum
16 of two feet above the base flood elevation of the 100-year
17 floodplain NGVD-1929.

18 6. **Water Supply.**

19 (a) Development of the Town Center DRI shall occur
20 concurrent with a provision of adequate central potable water
21 service meeting the adopted level of service in the City's
22 Comprehensive Plan. Sufficient capacity exists to accommodate
23 Phase 1 development of the Town Center DRI; no building permit
24 shall be issued for any subsequent phase of the Town Center
25 DRI until sufficient capacity exists from the water utility to

1 provide potable water meeting the adopted level of service in
2 the City's Comprehensive Plan. As also provided for in
3 Subsection (h), Section 11, under PART II above, each
4 Monitoring Report shall include an analysis, conducted by an
5 appropriate professional, approved by the City, whose analysis
6 shall be conducted in accordance with sound and generally
7 accepted professional practices and principles, as approved by
8 the City. The analysis shall demonstrate that there will be
9 sufficient capacity of potable water serving Town Center DRI
10 for the anticipated development for the ensuing reporting
11 period.

12 (b) Use of Floridan Aquifer wells are hereby
13 prohibited by this covenant and deed restriction for the
14 purpose of irrigation, once-through-cooling, surface water
15 level maintenance and decorative uses.

16 (c) Irrigation shall use stormwater, and when
17 available to the site, reclaimed water shall serve as a backup
18 source. No potable water shall be used for irrigation, except
19 on a temporary basis until a stormwater or reclaimed water
20 source is available or if approved by the City.

21 (d) Water conservation strategies, including
22 Xeriscape landscape techniques and low-flow plumbing fixtures
23 shall be incorporated into the construction, operation and
24 maintenance phases of the Town Center DRI, and shall be
25 included in the covenants and deed restrictions as approved by

1 the City. The conservation strategies shall include, but are
2 not limited to, the following conditions:

3 (i) 50% of planted vegetation, by aerial
4 extent, shall consist of native, drought tolerant or Xeriscape
5 vegetation in all landscaped areas. Landscaped areas include
6 turf, planted vegetation and mulch, however, they do not
7 include hardscaped areas.

8 (ii) Developer shall include information on
9 Xeriscape and/or native vegetation and/or drought-tolerant
10 vegetation (SJRWMD Xeriscape Plant Guide), water conservation
11 guides and IFAS's Xeriscape plant guides and IFAS Cooperative
12 Extension Services' "Florida Yards and Neighborhoods"
13 materials) in design guidelines for all developers and
14 residents in Town Center DRI.

15 (iii) At least 70% slow-release granular or
16 organic fertilizers shall be utilized throughout all
17 landscaped common areas within the Town Center DRI.

18 (iv) Use of private irrigation wells and use of
19 potable water for irrigation are prohibited unless approved by
20 the City.

21 (v) Decorative and ornamental fountains shall
22 use reclaimed water, stormwater, or potable water, provided a
23 re-circulation treatment system is installed.

24 (vi) The Developer shall install efficient water
25 systems to minimize and conserve water consumption.

1 7. **Wastewater Management.** Development within Town Center
2 DRI shall occur concurrent with the provision of adequate
3 central sewer service meeting the adopted level of service of
4 the City's Comprehensive Plan.

5 (a) Sufficient capacity exists to accommodate
6 Phase 1 development; no building permits shall be issued for
7 any subsequent phase of Town Center DRI until sufficient
8 capacity exists from the sewer utility to provide wastewater
9 treatment service meeting the adopted level of service of the
10 City's Comprehensive Plan. As also provided for in Subsection
11 (h), Section 11 under PART II above, each Monitoring Report
12 shall include an analysis demonstrating that there will be
13 sufficient capacity of wastewater facilities serving Town
14 Center DRI for the anticipated development for the insuring
15 reporting period.

16 (b) Septic tanks are prohibited within the Town
17 Center DRI. Temporary surface tanks may be used to provide
18 sewage service to construction and marketing trailers until
19 central sewer lines are installed.

20 8. **Stormwater Management.**

21 (a) At a minimum, 20% of wet detention ponds shall
22 have a 30% littoral zone measured relative to pond surface at
23 normal water elevation.

24 (b) Developer shall use porous parking materials
25 such as grasspave, gravelpave, turfstone, pavers or other

1 innovative methods, including reduced parking and increased
2 landscaping, to decrease impervious surfaces on all remote,
3 intermittent, or overflow parking. Developer shall strive for
4 a 25% reduction in required impervious parking surfaces as a
5 significant effort to reduce development related runoff
6 associated with impervious parking surfaces.

7 (c) Outfall control structures shall regulate post-
8 development flows such that pre-development levels are not
9 exceeded.

10 (d) A stormwater pollution prevention plan ("SWPPP")
11 shall be attached to and incorporated into the construction
12 and permit documents for all projects constructed within the
13 Town Center DRI. The SWPPP shall be similar to the SWPPP
14 provided in **Exhibit "F"** hereto, but may be modified to
15 accommodate the specific construction project and site.
16 However, all SWPPP's shall include Paragraph 1,
17 Preconstruction Activities and Paragraph 3, Maintenance/
18 Inspection Procedures, as provided for in **Exhibit "F"** hereto.

19 In addition to the requirements on individual
20 property owners/contractors outlined in the SWPPP, the
21 Developer, Community Development District or property owners
22 association shall monitor compliance with the SWPPP goals.
23 The compliance monitoring shall consist of the following:

24 (i) An individual shall be identified, subject
25 to approval by the city, to monitor compliance with the SWPPP.

1 The SJRWMD and FDEP shall be notified as to the individual who
2 is responsible for monitoring the SWPPP within the Town Center
3 DRI. At a minimum, this responsible individual shall:

4 • Be trained in erosion control
5 implementation techniques.

6 • Setup and oversee implementation of
7 SWPPP programs throughout the build out of Town Center DRI.

8 • Ensure that if the regular site
9 inspector is unable to attend pre-construction conferences,
10 this information is communicated to the inspector, including
11 site specific Best Management Practices, permit requirements
12 and erosion control implementation training.

13 • Meet with trained site superintendent
14 monthly, upon commencement of site construction, to ensure
15 implementation of SWPPP and resolve problems. Frequency of
16 site visits may be decreased if there is no indication of
17 erosion control problems and previous visits show a history of
18 compliance with the SWPPP.

19 • Submit a brief narrative update to the
20 City, FDEP and SJRWMD quarterly on activities and progress or
21 be available to meet with FDEP for quarterly site visits,
22 unless FDEP deems the visit unnecessary. Upon proper
23 identification, City, SJRWMD and FDEP personnel shall be
24 granted access to the DRI Property.
25

1 (ii) Attendance at all pre-construction
2 conferences.

3 (iii) Conduct homeowner's stormwater training
4 programs.

5 (iv) Conduct contractor's stormwater training
6 programs.

7 (v) Conduct periodic inspections of
8 construction sites.

9 (vi) Notifications to SJRWMD, FDEP and the
10 City of observed potential permit violations within 24 hours
11 and serve as agency liaison.

12 (vii) Annual reporting summaries of items (i)
13 through (vi) above.

14 (e) The SWPPP shall be implemented upon initiation
15 of construction activities. 3 years after initiation of
16 construction, the FDEP, SJRWMD and the City shall have the
17 opportunity to review the program. If it is found to be
18 unsatisfactory, the agencies shall evaluate alternatives with
19 the Developer including mandating program modification
20 options.

21 (f) FDEP, SJRWMD and the City shall be allowed
22 access to the DRI Property to sample water quality.

23 (g) The following shall trigger the need for some
24 form of water quality monitoring program to be developed at
25

1 such time that FDEP or the City determines one of the
2 following conditions have been met:

3 (i) The conditions of the SWPPP monitoring
4 program are not met;

5 (ii) Piezometers and staff gauges show negative
6 changes in wetland hydrology that cannot be attributed to
7 natural causes;

8 (iii) The FDEP or the City receives
9 substantiated concerns about water quality problems caused by
10 the Developer;

11 (iv) Sampling results of FDEP or the City shows
12 a water quality violation per requirements established in
13 Chapter 62-302 Florida Administrative Code or other
14 established regulatory water quality standard; or

15 (v) If discharges cause hydrologic alterations,
16 such as stream canalization; other such alterations that would
17 warrant sampling or the FDEP or the City has reason to suspect
18 water quality violation associated with the development of
19 Town Center DRI.

20 9. **Solid Waste.**

21 (a) Development of Town Center DRI shall occur
22 concurrent the provisions of adequate solid waste service
23 meeting the adopted level of service in the City's
24 Comprehensive Plan.
25

(b) Development within the Town Center DRI or individual phases shall not occur until adequate permitted capacity is verified from the identified service provider or a substitute. As also provided for in Subsection (h), Section 11, under PART II above, each Monitoring Report shall include an analysis demonstrating that there will be sufficient capacity of solid waste facilities serving Town Center DRI for anticipated development for the ensuing reporting period.

(c) All users, generators and operators within the DRI Property shall be required to adhere to all Federal, State and local laws, codes, ordinances, rules and regulations with respect to the use, management and disposal of hazardous waste.

10. Donation of Utility Facilities.

All water and sewer lines and related facilities that are installed or constructed on the DRI Property (collectively the "Utility Facilities") shall be donated to the City, without charge, upon the City's request. In the event the Utility Facilities are dedicated or title thereto is otherwise transferred to the CDD, as planned by the Developer, the provisions hereof shall run with the title and the CDD shall be obligated to donate the Utility Facilities to the City, without charge, upon the City's request.

11. **Public Facility site and Town Core Public Land.**

(a) Developer shall convey to the City title to the site that is labeled Public Facility Site on the sketch that is attached as **Exhibit "E"** hereto (the "Public Facility Site"). The City shall take title to the Public Facility Site subject to a restriction limiting the uses thereof to the following: fire station; police station; emergency management services; parking for public vehicles and equipment; parks; recreational facilities; and any other public use approved by the Developer.

Developer shall include the Public Facility Site, as a separate platted lot, in the plat that will also include Seminole Woods Parkway extension, which Developer shall submit to the City within 12 months following the effective date of this Order (the "Parkway Plat"). Seller shall convey to the City title to the Public Facility Site within 90 days following the date the Parkway Plat is recorded.

(b) In addition to the Public Facility Site, at the option of the City, exercisable by the City at any time within 6 months following the effective date of this Order, the City may agree to convey to Developer title to the land that is labeled City's Exchange Land on the sketch that is attached as **Exhibit "E"** hereto (the "City's Exchange Land") in exchange for the 3 sites that are labeled on the sketch

1 that is attached as **Exhibit "E"** hereto, and referred to
2 herein, as "Site A," "Site B" and "Site C" (collectively the
3 "Town Core Public Land").

4 (c) If the City exercises the option provided for in
5 (b) above, the City shall obtain appraisals of the current
6 market value of the City's Exchange Land ("Appraised Value of
7 City's Land") and the Town Core Public Land ("Appraised Value
8 of Public Land"). The Appraised Value of the Public Land
9 shall be specifically allocated among Site "A", Site "B" and
10 Site "C". If the Appraised Value of the City's Land exceeds
11 the Appraised Value of the Public Land, upon closing of the
12 exchange, Developer shall pay the City the difference in
13 cash. If the Appraised Value of the Public Land exceeds the
14 Appraised Value of the City's Land, the difference shall be
15 regarded as a donation by the Developer to the City for
16 public purposes. Appraisals shall be accomplished by an
17 appraiser of the City's choice who is a member of the
18 Appraisal Institute (MAI) or the American Society of
19 Appraisers (ASA).
20

21 (d) The City shall take title to the Town Core
22 Public Land subject to the following:
23

24 • Site "A" - A restriction limiting the uses
25 to City governmental buildings ("Site "A" Primary Allowable
Use"), a library, a museum, parks and public places for

1 outdoor entertainment and festivals; and an assignable
2 drainage easement to and over the lake that will be excavated
3 within the permitted areas within Site "A" to be used
4 consistent with the overall permitted stormwater management
5 plan for the Town Center DRI; and a shared parking covenant
6 which provides that any parking area that is constructed on
7 Site "A" shall be available to the public, except a
8 reasonable number of parking spaces may be reserved for City
9 employees and visitors at City offices and all of the parking
10 may be reserved, as needed and as permitted by the City, for
11 events that takes place on Site "A".
12

13 • Site "B" - A restriction limiting the uses
14 to a youth center, recreational facilities, a library and
15 educational facilities (each a "Site "B" Allowable Use").

16 • Site "C" - A restriction limiting the use
17 to a cultural arts and/or performing arts center (Site "C"
18 Primary Use") that may include educational facilities,
19 galleries, a museum, a library and parks, with areas for
20 outdoor entertainment and festivals; and a shared parking
21 covenant which provides that any parking area that is
22 constructed on Site "C" shall be available to the public,
23 except up to 10% of the available parking spaces may be
24 reserved for employees who work at Site "C" and visitors to
25

1 Site "C" and all of the parking may reserved, as needed, for
2 events that take place on Site "C."

3 (e) In addition to the restrictions provided for
4 in (d) above, the City shall take title to the Town Core
5 Public Land subject to a reverter on the following terms:

6 • Title to Site "A" may, at Developer's
7 election, revert to Developer if construction of the Site A
8 Primary Allowable Use is not commenced thereon within 5 years
9 from the date the City takes title to Site "A".

10 • Title to Site "B" may, at Developer's
11 election, revert to Developer in the event construction of a
12 Site "B" Allowable Use is not commenced thereon within
13 6 years from the date the City takes title to Site "B".

14 • Title to Site "C" may, at Developer's
15 election, shall revert to Developer in the event that
16 construction of the Site "C" Primary Allowable Use is not
17 commenced thereon within 10 years from the date the City
18 takes title to Site "C".

19 • Title to Site "A", and/or Site "B" and/or
20 Site "C" shall revert to the Developer, as to the particular
21 site, in the event that construction, as provided herein, as
22 to the particular site, is commenced thereon within the time
23 limit required but a minimum of 5,000 square feet of floor
24 area in each of the 3 sites is not completed within 2 years
25

1 following commencement as a result of abandonment of the
2 construction project by the City or other public or quasi
3 public entity that is building the facility on the site.
4 Election by Developer to cause the reversion must occur
5 within 180 days of the date that said right to reversion
6 springs into effect.

7
8 In the event title to Site "A" and/or
9 Site "B" and/or Site "C" reverts to Developer, title thereto
10 shall not vest in Developer until Developer pays the City the
11 appraised value thereof, in the amount shown for the site in
12 the Appraised Value of Public Land for each particular site
13 that is the subject of the reversion. Payment must be made
14 within 90 days of the election of the reversion by the
15 Developer.

16 (f) The Developer shall take title to the City's
17 Exchange Land subject to a deed restriction limiting uses to
18 attached or detached residential dwelling units and any
19 medical and/or recreational facilities that are ancillary to
20 the primary residential use. The deed restriction shall be
21 an independent right of the City and is not a land
22 development regulation restriction.

23 (g) If the City exercises its option to acquire the
24 Town Core Public Land, within 6 months from the date of
25 exercise, the Developer shall include Site "A", Site "B" and

1 Site "C", as separate platted lots, in a plat which includes
2 the entire urban core area of the Town Center DRI (the "Urban
3 Core Plat"). Developer shall convey to the City title to the
4 Town Core Public Land and the City shall convey to the
5 Developer title to the City's Exchange Land within 90 days
6 following the date the Urban Core Plat is recorded (the
7 "Property Exchange").
8

9 (h) The City shall be responsible for any site
10 preparation costs, including fill costs, for the Public
11 Facility Site and the Developer shall be responsible for all
12 site preparation costs, including fill costs, for the City's
13 Exchange Land and the Town Core Public Land. If it has not
14 already done so, within 6 months following the Property
15 Exchange, the Developer shall construct streets and extend
16 utility services to Site "A", Site "B" and Site "C" and clear
17 and fill Site "A", Site "B" and Site "C" to or above the 25
18 year storm elevation so buildings can be constructed thereon
19 without further site preparation costs, other than fill for
20 building pads.
21

22 (i) All costs associated with the conveyance of the
23 Public Facility Site and the Town Core Public Land to the City
24 and conveyance of the City's Exchange Land to the Developer
25 shall be paid by the Developer. The Developer shall also
ensure that the Public Facility Site and the City's Exchange

Land are conveyed without lien, encumbrance, or special assessment, and that marketable title shall vest in the City.

(j) If the Developer acquires title to the City's Exchange Land and the City's Exchange Land is designated on the City's Comprehensive Land Use Plan as DRI or other classification that is consistent with Developer's plan to use the land for multi-family residential purposes, then, in that event, the DRI Property shall include the City's Exchange Land and the Master Plan shall be automatically modified to include the City's Exchange Land, provided the addition of the City's Exchange Land to the Town Center DRI shall not increase the permitted land use totals from that shown in Section 3, under Part II above.

12. **Transportation.**

(a) Notwithstanding the phasing schedule that is set forth in Section 5, under Part I above, for the purpose of phasing and transportation recommendations, Town Center DRI is divided into three phases, based upon actual trip counts, as shown on the following schedule:

	Build-Out	Daily Trips	PM Peak	Cumulative	
				Daily Trips	PM Peak
Phase 1	2010	56,565	5,226	56,565	5,226
Phase 2	2015	56,742	5,218	113,307	10,444
Phase 3	2020	42,953	4,048	156,260	14,492

1 (b) The Developer shall provide all right-of-way
2 necessary to construct the internal roadway network and shall
3 be responsible for constructing the internal roadway network.

4 (c) The Developer shall be responsible for the
5 construction of all turn lanes (as required) providing direct
6 access to Town Center DRI as well as the conveyance of
7 additional necessary right-of-way, including but not limited
8 to, right-of-way necessary to extend Royal Palm Parkway to Old
9 Kings Road as a 4-lane road, which shall be conveyed without
10 lien or encumbrance with marketable title vesting in the
11 appropriate jurisdiction.

12 (d) During development of Phase 1, the Developer
13 shall be responsible for the construction of Seminole Woods
14 Parkway extension from SR-100 to Old Kings Road and Eastwood
15 Boulevard from Belle Terre Parkway to Main Street, including
16 all intersection improvements, turn lanes, and signalization
17 when warranted. Trips generated from Town Center DRI shall
18 not exceed 550 actual PM peak hour trips before construction
19 of Seminole Woods Parkway extension is completed. All
20 additional necessary right-of-way as provided for in this
21 Order shall be conveyed by the Developer (or the CDD) to the
22 City without lien or encumbrance with marketable title vesting
23 in the grantee.

24 (e) Pursuant to Section 163.3180(12), Florida
25 Statutes, the Developer shall mitigate offsite transportation

impacts for Town Center DRI, equal to 14,492 actual PM peak hour trips, as measured and reported in the Monitoring Reports, as shown in the following schedule:

Phase	Developer's Prop. Share (See Exhibit "G" hereto)	Mitigation Payment/ Project	Mitigation Schedule	Mitigation Credit*	Excess Credit Applied to Next Phase*
Phase 1	\$3,388,578	(1) \$180,000 cash contribution to the City for Palm Coast Parkway corridor study.	Within 90 days following the effectiveness of this Order.	\$180,000	-
		(2) \$400,000 cash contribution to FDOT to redesign the new I-95 structure over SR-100.	Within 90 days following the effectiveness of this Order.	\$400,000	-
		(3) \$3,250,000 cash contribution to FDOT to construct the new I-95 structure over SR-100.	On or before June 1, 2005.	\$3,250,000	-
		(4) Construct 2-lane connection of Royal Palm Parkway to Seminole Woods Parkway extension (.75 miles)	Prior to 5,226 actual PM peak hour trips.	\$525,000	-
					\$ 966,422
Phase 2	\$3,523,607 - \$966,422 credit from Phase 1 = \$2,557,185	Add 2-lanes to Old Kings Road from Palm Coast Pkwy. to Lehigh Canal (intersection with Royal Palm Parkway, ext.), incl. 4-lane canal crossing with sidewalks on both sides.	Prior to 5,226 actual PM peak hour trips.	\$6,750,000	
					\$4,192,815
Phase 3	\$7,562,214 - \$4,192,815 credit from Phase 2 = \$3,369,399	Any one or combination of the Roadway/ Intersection improvements listed for Phase 3 on Exhibit "G" hereto, the cost of which, as shown on Exhibit "G",	Prior to 10,444 actual PM peak hour trips -OR-		

Phase	Developer's Prop. Share (See Exhibit "G" hereto)	Mitigation Payment/ Project	Mitigation Schedule	Mitigation Credit*	Excess Credit Applied to Next Phase*
		equals or exceeds Developer's Proportionate Share for Phase 3, less credit from Phase 2. -OR- Prior to 10,444 actual PM peak hours trips, Developer shall prepare a detailed monitoring and modeling report (the "M&M Report"). Based on the M&M Report, the City shall identify project(s) req. for mitigation.	As needed to mitigate transportation impacts from Town Center DRI, as determined from the M&M Report.	\$3,369,399	
Total Phases 1 - 3	\$14,474,399	-	-	\$14,474,399	-

* The dollar figures express herein are 2002 dollars. Phase III project costs or Phase III funds paid to the City shall be inflated consistent with the provisions of this agreement at a rate of 4% per annum.

Developer may construct all or a portion of the above projects through the CDD, and/or a special taxing district that may include land currently owned by Developer, other than the DRI Property.

The Town Center DRI shall not commence beyond Phase 2, equal to 10,444 actual PM peak hour trips, as measured and reported in the Monitoring Reports, until the Developer has completed the Phase 3 mitigation or prepared the M&M Report. If Developer elects to prepare the M&M Report, preparation of the M&M Report shall be preceded by a

1 transportation methodology meeting that includes the City,
2 FDOT, County, and NEFRPC (the "Agencies"). The transportation
3 methodology shall be approved by the Agencies. The M&M Report
4 shall then be prepared in a manner consistent with the
5 methodology. The actual levels of service shall be as measured
6 in the M&M Report. The M&M Report shall identify those land
7 uses scheduled for Phase 3 and estimate the trip generation,
8 distribution and assignment of trips for Phase 3. The M&M
9 Report that allows the Developer to proceed with Phase 3, or
10 beyond 10,444 actual PM peak hour trips, shall demonstrate
11 that roadways will operate at acceptable standards through
12 build-out of Town Center DRI or identify improvements
13 necessary for build-out. The M&M Report shall further identify
14 the point in Phase 3 at which time the identified improvements
15 are necessary.

17 All roadway construction costs in this Agreement
18 are stated in 2002 dollar costs and construction estimates are
19 calculated in 2002 costs. Therefore, the cost of Phase 3
20 projects, built by Developer or its successors and used to
21 offset mitigation amounts, shall be estimated in 2002 costs as
22 provided for in the DRI documents. In the event the Developer
23 chooses to pay the City for Phase 3 mitigation in lieu of
24 building roadways, the amount of the payment shall reflect
25

1 compound inflation at a rate of 4% per year from 2002 to the
2 year the payment is made to the City.

3 In addition to the above provisions, the
4 Developer's proportionate share of the cost of roadway
5 improvements needed for Town Center DRI, equal to 14,492
6 actual PM peak hour trips, as measured and reported in the
7 Monitoring Reports, shall be offset, in whole or in part,
8 through impact fee credits, as provided for in Section 14,
9 under Part II above. A summary of all Developer improvements
10 and donations is set forth on **Exhibit "H"** hereto.
11

12 (f) Prior to the traffic from the Town Center DRI
13 exceeding 10,444 PM peak hour trips, as reported in the
14 Monitoring Reports, the Developer shall install or cause to be
15 installed a box culvert within the Royal Palm Waterway that
16 will enable Royal Palm Parkway extension to be 4-laned to Old
17 Kings Road without requiring modifications to the I-95
18 overpass under which the Royal Palm Parkway extension will be
19 located.

20 **13. Air Quality.**

21 (a) The following fugitive dust control measures
22 shall be undertaken during all construction activities
23 throughout build out of Town Center DRI and may be monitored
24 by FDEP and the City:
25

(i) Contractors shall moisten soil or use resinous adhesives on barren areas, which shall include at a minimum, all roads, parking lots or material stockpiles;

(ii) Contractors shall use mulch, liquid resinous adhesives with hydro-seeding or sod on all landscaped areas;

(iii) Contractors shall remove soil and other dust-generating material deposited on paved streets by vehicular traffic, earth moving equipment or soil erosion;

(iv) Contractors shall utilize best operating practices in conjunction with any burning resulting from land clearing, which may include use of air curtain incinerators.

(b) Tree planting shall be placed along the internal road rights-of-way and all parking areas to increase turbulence and atmospheric disturbance minimizing ground level concentrations of vehicular emissions.

14. Hurricane Evacuation.

(a) Access roads and parking lots for all hotels shall be constructed above the base flood elevations.

(b) All residents of Town Center DRI shall be provided with information regarding the vulnerability of Town Center DRI to the impacts of hurricanes. This information shall take the form of educational materials designed to increase evacuation participation.

15. Affordable Housing.

1 (a) Prior to the initiation of Phases 2 and 3, the
2 Developer shall reassess affordable housing impacts based upon
3 the requirements of 9J-2.048, *Florida Administrative Code*.
4 Any required mitigation shall be implemented by means of an
5 amendment to this Order.

6 (b) An appropriate mix of residential development
7 has been proposed by the Developer. No building permits for a
8 subsequent phase shall be issued unless a minimum of 30% of
9 the residential units for the previous phase, as depicted in
10 the development program and phasing schedule setforth in
11 Section 5, under Part II above, have been constructed.

12 **16. Police and Fire Protection.**

13 (a) Prior to the construction of any structure
14 exceeding 35 feet in height, the Developer shall contribute
15 fire equipment capable of reaching to the height of the
16 structure to be constructed. Developer shall be eligible for
17 fire impact fee credits as provided for in the impact fee
18 ordinance in effect at the time the credit is requested or
19 otherwise agreed to by the City.

20 (b) Before commencement of each phase of Town Center
21 DRI, a summary of impact fees shall be reviewed against the
22 estimated cost for fire, EMS and police services needed. If
23 fees paid are not sufficient to address identified needs,
24 Developer shall pay for the fair share of the unmet costs. The
25 costs for fire shall be based upon the development square

1 footage within the service delivery area. The cost of police
2 shall be based upon population and square footage of
3 development within the service area and an officer ratio of
4 1 officer and support staff for each 1,300 residents.

5 **17. Recreation and Open Space**

6 (a) The Developer shall meet the adopted level of
7 service for recreation and open space as defined in the City's
8 Comprehensive Plan. The level of service standards shall be
9 met as follows: donating right-of-way for and constructing an
10 extensive bikepath system that will connect to the planned
11 rails-to-trails bikepath; setting aside large areas of open
12 space, including lake areas that will be available for active
13 and passive recreational opportunities; and providing areas
14 for public gatherings. In addition, developers of residential
15 parcels within Town Center will provide recreational
16 facilities for their residents and recreation impact fees will
17 be paid to the city as Town Center builds out.

18 (b) The Developer shall institute adequate
19 engineering and institutional controls to mitigate for any
20 development activities or public access areas that connect to
21 the Lehigh Trail to mitigate for existing environmental
22 contamination. The Developer shall coordinate such measures
23 with the Northeastern District FDEP Hazardous Waste Cleanup
24 Section.
25

1 18. Historical and Archaeological Sites. Should
2 historical or archaeological artifacts be discovered in the
3 course of development of Town Center DRI, the Department of
4 State, Bureau of Historic Preservation, Developer shall
5 immediately notify the Division of Historical Resources. No
6 disruption of the findings shall be permitted until the
7 investigation is complete and the Division of Historical
8 Resources has rendered a recommendation, which shall be
9 binding on the Developer.

10 WHEREFORE, the parties hereto have caused these presents
11 to be signed all as of the date and year first above written.

12 ATTEST:

CITY OF PALM COAST

13 
14

15 Richard M. Kelton,
16 City Manager

17 
18 Son Nettis, Vice Mayor Acting for
19 Jim V. Canfield, Mayor

STATE OF FLORIDA)
COUNTY OF FLAGLER)

The foregoing instrument was acknowledged before me
this 11th day of July, 2003, by James V. Canfield and
Richard M. Kelton, the Vice Mayor and City Manager respectively,
for and on behalf of the City of Palm Coast, Florida, who are
personally known to me and who did not take an oath.

WITNESS my hand and official seal this 11th day of July,
2003.



Clare M. Hoeni
Signature

Clare M. Hoeni
Printed Name

WITNESSES:

**FLORIDA LANDMARK
COMMUNITIES, INC.,** a Florida corporation

Eileen L. Linchan
Signature

Eileen L. Linchan

Printed Name

William I. Livingston
Signature

William I. Livingston
Printed Name

Office Mgr
Title

President
Title

STATE OF FLORIDA)
COUNTY OF FLAGLER)

The foregoing instrument was acknowledged before me this
8 day of July, 2003, by William I. Livingston the
President, for and on behalf of the FLORIDA LANDMARK

COMMUNITIES, INC., who is personally known to me and who did not take an oath.

WITNESS my hand and official seal this 8th day of July, 2003.

Eileen L. Linehan
Signature

(Seal)

Printed Name

ada\town center dev od-final
6/16/03

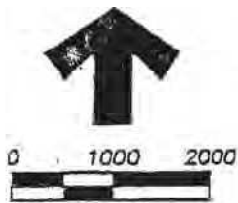


Eileen L. Linehan
My Commission CC825048
Expires June 10, 2004

Unofficial Copy

LIST OF EXHIBITS

- "A" - DRI Property
- "B" - Town Center at Palm Coast Master Plan, Map H
- "C" - Conversion Table
- "D" - Internal Street Layout
- "E" - City's Exchange Land
- "F" - SWPPP
- "G" - Proportionate Share Calculation
- "H" - Developer Improvements and Donations



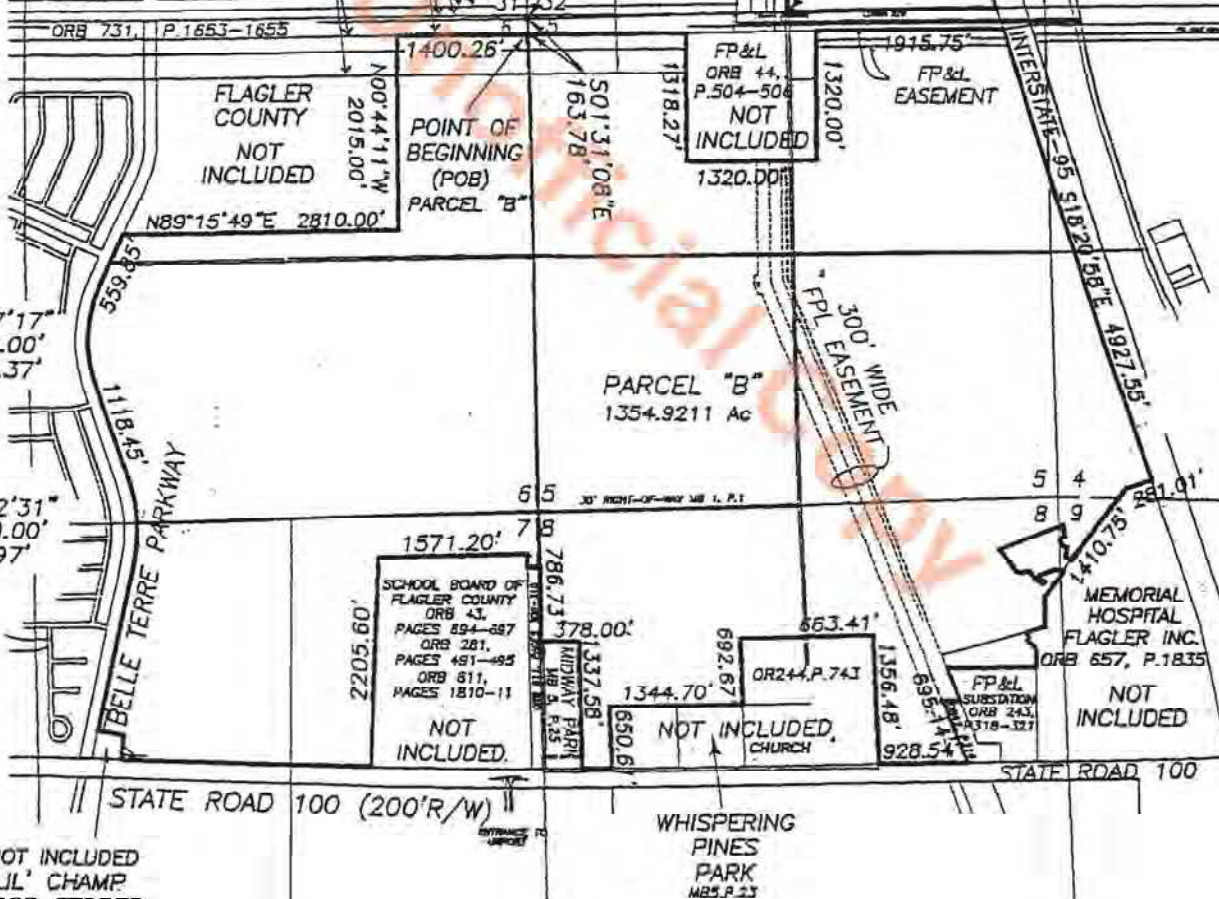
SCALE:
1" = 2000 FEET

RESERVED FOR RECORDING INFORMATION

DIVISION PLAT EASTHAMPTON
SECTION 34 PALM COAST,
MAP BOOK 11, PAGES 30-49.

POINT OF REFERENCE
PARCELS A & B
NORTHWEST CORNER
OF SECTION 5,
& SOUTHWEST CORNER
OF SECTION 32

ROYAL PALMS PARKWAY
ROYAL PALMS WATERWAY
LEHIGH GREENWAY RAIL TRAIL
FLORIDA POWER &
LIGHT Co. EASEMENT



D=42°27'17"
R=1400.00'
L=1037.37'

D=29°32'31"
R=1600.00'
L=824.97'

NOT INCLUDED
LIL' CHAMP
FOOD STORES
ORB 594, P.548 & 649



TOMOKA ENGINEERING

CIVIL ENGINEERING & LAND SURVEYING SINCE 1976
DAYTONA BEACH FLAGLER/PALM COAST
Main Office: 900 So. Ridgewood Ave., Daytona Beach, FL 32114
Phone: 386-257-1600 Fax: 386-257-1601
email: tomoka@tomoka-eng.com website: www.tomoka@tomoka-eng.com

SKETCH
AND
DESCRIPTION

PROJECT NO.	T1037FLCI
DRAWING REFERENCE No.	1037SL-ALL
DATE	FEB 25, 2002
SHEET NO.	1 OF 4

Exhibit A

SKETCH AND DESCRIPTION

OFF REC 0959 PAGE 1566

RESERVED FOR RECORDING INFORMATION

DESCRIPTION: PARCEL "A"

A PARCEL OF LAND LYING WITHIN GOVERNMENT SECTIONS 29 AND 32, TOWNSHIP 11 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A POINT OF REFERENCE BEING THE SOUTHWEST CORNER OF SECTION 32, TOWNSHIP 11 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, THENCE NORTH $88^{\circ}24'49''$ EAST A DISTANCE OF 2642.88 FEET TO THE SOUTH QUARTER CORNER OF SECTION 32 BEING THE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE NORTH $00^{\circ}40'50''$ WEST ALONG THE WEST LINE OF THE NORTHEAST QUARTER (1/4) A DISTANCE OF 221.03 FEET, THENCE DEPARTING SAID WEST LINE SOUTH $89^{\circ}15'49''$ WEST A DISTANCE OF 510.00 FEET TO A POINT ON THE EASTERLY BOUNDARY OF THE PLAT PINE GROVE SECTION-28, MAP BOOK 9, PAGES 51 THROUGH 66, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, THENCE NORTH $00^{\circ}40'55''$ WEST ALONG THE EASTERLY BOUNDARY OF AND DEPARTING SAID PLAT SECTION-28 A DISTANCE OF 4569.91 FEET, THENCE NORTH $21^{\circ}00'44''$ EAST A DISTANCE OF 1028.92 FEET TO A POINT ON THE WESTERLY LINE OF THE LIMITED ACCESS RIGHT-OF-WAY OF INTERSTATE 95, THENCE SOUTH $18^{\circ}20'58''$ EAST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 1809.43 FEET, THENCE NORTH $89^{\circ}52'23''$ EAST A DISTANCE OF 290.97 FEET, THENCE SOUTH $33^{\circ}20'58''$ EAST A DISTANCE OF 502.28 FEET, THENCE SOUTH $18^{\circ}20'58''$ EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE 95 A DISTANCE OF 3752.21 FEET TO A POINT ON THE SOUTH LINE OF SECTION 32, THENCE DEPARTING INTERSTATE-95 SOUTH $88^{\circ}46'16''$ WEST ALONG THE SOUTH LINE OF SECTION 32 A DISTANCE OF 2120.40 FEET TO THE POINT OF BEGINNING;
PARCEL "A" CONTAINING 202.3081 ACRES OF LAND MORE OR LESS.

SURVEYOR'S NOTES:

1. BEARINGS LOCALLY REFERENCED TO THE WEST LINE OF THE NORTHWEST QUARTER (1/4) OF GOVERNMENT SECTION 5, TOWNSHIP 12 SOUTH, RANGE 31 EAST, BEING SOUTH $01^{\circ}31'08''$ EAST.
2. THERE MAY BE ADDITIONAL EASEMENTS, RESTRICTIONS AND/OR OTHER MATTERS NOT SHOWN ON THIS DRAWING WHICH MAY BE FOUND IN THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA.
3. THIS IS NOT A BOUNDARY SURVEY.

ABBREVIATIONS

D=DELTA
R=RADIUS
L=LENGTH
CH=CHORD
CB=CHORD BEARING

MB=MAP BOOK
PG=PAGE
R/W=RIGHT OF WAY
CL=CENTER LINE

PC=POINT OF CURVE
PT=POINT OF TANGENCY
POB=POINT OF BEGINNING

PCP=PERMANENT CONTROL POINT
PRM=PERMANENT REFERENCE MONUMENT
ORB=OFFICIAL RECORD BOOK



LB #2232

TOMOKA ENGINEERING
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DAYTONA BEACH FLAGLER/PALM COAST
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email: tomoka@tomoka-eng.com website: www.tomoka@tomoka-eng.com

SKETCH
AND
DESCRIPTION

PROJECT NO.	T1037FLC1
DRAWING REFERENCE No.	1037SL-ALL
DATE	FEB 25, 2002
SHEET NO.	OF 4

Exhibit A

SKETCH AND DESCRIPTION

OFF REC 0959 PAGE 1567

RESERVED FOR RECORDING INFORMATION

DESCRIPTION: PARCEL "B"

A PARCEL OF LAND LYING WITHIN GOVERNMENT SECTIONS 4, 5, 6, 7, 8 AND 9, TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A POINT OF REFERENCE BEING THE NORTHWEST CORNER OF SAID GOVERNMENT SECTION 5, TOWNSHIP 12 SOUTH, RANGE 31 EAST, BEING COMMON AS THE SOUTHWEST CORNER OF SECTION 32, TOWNSHIP 11 SOUTH, RANGE 31 EAST, THENCE SOUTH 01°31'08" EAST ALONG THE WEST LINE OF SECTION 5 A DISTANCE OF 163.78 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE DEPARTING SAID WEST LINE NORTH 89°15'49" EAST A DISTANCE OF 1595.15 FEET, THENCE SOUTH 00°39'41" EAST A DISTANCE OF 1318.27 FEET, THENCE NORTH 89° 20'19" EAST A DISTANCE OF 1320.00 FEET, THENCE NORTH 00°39'41" WEST A DISTANCE OF 1320.00 FEET, THENCE NORTH 89°15'49" EAST A DISTANCE OF 1915.75 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF INTERSTATE-95, THENCE SOUTH 18°20'58" EAST ALONG SAID WEST RIGHT-OF-WAY LINE A DISTANCE OF 4927.55 FEET TO THE NORTHEAST CORNER OF MEMORIAL HOSPITAL FLAGLER INC. LANDS, RECORDED IN OFFICIAL RECORDS BOOK 657, PAGE 1835, THENCE DEPARTING INTERSTATE-95 SOUTH 71°39'02" WEST ALONG THE NORTHERLY BOUNDARY LINE OF SAID HOSPITAL LANDS A DISTANCE OF 281.01 FEET, THENCE SOUTH 36°24'53" WEST A DISTANCE OF 947.44 FEET, THENCE DEPARTING SAID BOUNDARY OF HOSPITAL NORTH 53°36'18" WEST A DISTANCE OF 61.27 FEET, THENCE NORTH 08°33'46" EAST A DISTANCE OF 99.48 FEET, THENCE NORTH 63°16'51" WEST A DISTANCE OF 51.99 FEET, THENCE NORTH 35°29'45" WEST A DISTANCE OF 69.86 FEET, THENCE NORTH 46°37'11" EAST A DISTANCE OF 34.40 FEET, THENCE NORTH 66°03'22" EAST A DISTANCE OF 38.81 FEET, THENCE NORTH 07°07'30" WEST A DISTANCE OF 71.05 FEET, THENCE NORTH 15°25'07" WEST A DISTANCE OF 57.60 FEET, THENCE SOUTH 68°48'21" WEST A DISTANCE OF 43.08 FEET TO A POINT ON THE WEST LINE OF SECTION 9, THENCE DEPARTING SAID WEST LINE CONTINUE SOUTH 68°48'21" WEST A DISTANCE OF 688.90 FEET, THENCE SOUTH 39°53'49" EAST A DISTANCE OF 291.02 FEET, THENCE SOUTH 76°28'18" EAST A DISTANCE OF 64.12 FEET, THENCE NORTH 67°07'05" EAST A DISTANCE OF 72.01 FEET, THENCE SOUTH 39°14'51" EAST A DISTANCE OF 153.68 FEET, THENCE SOUTH 62°37'27" EAST A DISTANCE OF 59.26 FEET, THENCE NORTH 46°11'10" EAST A DISTANCE OF 36.29 FEET, THENCE NORTH 51°11'25" WEST A DISTANCE OF 74.59 FEET, THENCE NORTH 31°41'14" EAST A DISTANCE OF 38.19 FEET, THENCE NORTH 89°00'23" EAST A DISTANCE OF 148.98 FEET, THENCE SOUTH 78°58'19" EAST A DISTANCE OF 101.53 FEET TO A POINT ON THE NORTHWEST BOUNDARY LINE OF SAID HOSPITAL LANDS RECORDED IN OFFICIAL RECORDS BOOK 657, PAGE 1835, THENCE SOUTH 36°24'53" WEST A DISTANCE OF 336.01 FEET, THENCE SOUTH A DISTANCE OF 320.20 FEET, THENCE SOUTH 74°31'57" WEST A DISTANCE OF 196.13 FEET, THENCE DEPARTING SAID NORTHWEST BOUNDARY LINE OF HOSPITAL SOUTH 02°47'32" EAST A DISTANCE OF 109.00 FEET, THENCE SOUTH 49°04'23" EAST A DISTANCE OF 109.00 FEET, THENCE SOUTH 00°50'55" EAST A DISTANCE OF 190.00 FEET, THENCE SOUTH 89°09'05" WEST A DISTANCE OF 924.56 FEET, THENCE SOUTH 21°34'23" EAST A DISTANCE OF 370.29 FEET, THENCE SOUTH 89° 07'49" WEST A DISTANCE OF 181.73 FEET, THENCE SOUTH 21°34'21" EAST A DISTANCE OF 695.14 FEET TO A



LB #2232

TOMOKA ENGINEERING

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SKETCH
AND
DESCRIPTION

PROJECT NO.	TK037FLC1
DRAWING REFERENCE No.	1037SL-ALL
DATE	FEB 25, 2002
SHEET NO.	3 OF 4

Exhibit A

SKETCH AND DESCRIPTION

OFF 0959 PAGE 1568

RESERVED FOR RECORDING INFORMATION

POINT ON THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD 100 (200'R/W), THENCE SOUTH 89° 09'05" WEST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 928.54 FEET, THENCE DEPARTING STATE ROAD 100 NORTH 02°23'06" WEST A DISTANCE OF 1356.48 FEET, THENCE SOUTH 88°41'00" WEST A DISTANCE OF 663.41 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST (NE) QUARTER (1/4) OF SECTION 8, THENCE SOUTH 88°49'35" WEST A DISTANCE OF 668.63 FEET, THENCE SOUTH 02°08'49" EAST A DISTANCE OF 692.67 FEET, THENCE SOUTH 88°59'33" WEST A DISTANCE OF 1344.70 FEET, THENCE SOUTH 01°32'05" EAST A DISTANCE OF 650.61 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD 100, THENCE SOUTH 89°09'05" WEST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 297.82 FEET, THENCE DEPARTING STATE ROAD 100 NORTH 01°13'40" WEST ALONG THE EASTERLY BOUNDARY LINE OF PLAT OF MIDWAY PARK, MAP BOOK 5, PAGE 25, A DISTANCE OF 1337.58 FEET, THENCE SOUTH 88°49'35" WEST ALONG THE NORTH LINE OF MIDWAY PARK A DISTANCE OF 378.00 FEET TO A POINT ON THE WEST LINE OF GOVERNMENT SECTION 8, THENCE NORTH 01°13'33" WEST ALONG SAID WEST LINE OF SECTION 8 A DISTANCE OF 786.73 FEET, THENCE DEPARTING SAID WEST LINE OF SECTION 8 SOUTH 88° 17'00" WEST A DISTANCE OF 125.00 FEET, THENCE NORTH 01°13'33" WEST A DISTANCE OF 140.00 FEET, THENCE SOUTH 88°17'00" WEST ALONG THE NORTH LINE OF FLAGLER COUNTY SCHOOL BOARD LANDS A DISTANCE OF 1571.20 FEET, THENCE SOUTH 01°55'36" WEST ALONG THE WEST LINE OF SAID SCHOOL BOARD LANDS A DISTANCE OF 2205.60 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD 100, THENCE NORTH 88°04'24" WEST A DISTANCE OF 2535.95 FEET TO THE SOUTHEAST CORNER OF LIL' CHAMP FOOD STORE LAND RECORDED IN OFFICIAL RECORDS BOOK 594, PAGES 648 AND 649, THENCE DEPARTING STATE ROAD 100 NORTH 01°55'36" EAST ALONG THE EAST BOUNDARY LINE OF SAID LIL' CHAMP LAND A DISTANCE OF 250.00 FEET, THENCE NORTH 78°46'38" WEST ALONG THE NORTH LINE OF SAID LIL' CHAMP LANDS A DISTANCE OF 250.00 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF BELLE TERRE PARKWAY, THENCE DEPARTING LIL' CHAMP LANDS NORTH 11°13'22" EAST ALONG SAID RIGHT-OF-WAY OF BELLE TERRE PARKWAY A DISTANCE OF 1828.63 FEET TO A POINT OF CURVATURE, CONCAVE WESTERLY, THENCE NORTHERLY A DISTANCE OF 824.97 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 29°32'31", A RADIUS OF 1600.00 FEET, A CHORD BEARING OF NORTH 03°32'53" WEST AND A CHORD DISTANCE OF 815.86 FEET TO A POINT OF TANGENCY, THENCE NORTH 18°19'09" WEST A DISTANCE OF 1118.45 FEET TO A POINT OF CURVATURE, CONCAVE EASTERLY, THENCE NORTHERLY A DISTANCE OF 1037.37 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 42°27'17", A RADIUS OF 1400.00 FEET, A CHORD BEARING OF NORTH 02°54'30" EAST AND A CHORD DISTANCE OF 1013.80 FEET TO A POINT OF TANGENCY, THENCE NORTH 24°08'08" EAST A DISTANCE OF 559.85 FEET, THENCE DEPARTING BELLE TERRE PARKWAY NORTH 89°15'49" EAST A DISTANCE OF 2810.00 FEET, THENCE NORTH 00°44'11" WEST A DISTANCE OF 2015.00 FEET, THENCE NORTH 89°15'49" EAST A DISTANCE OF 1400.26 FEET TO THE POINT OF BEGINNING. PARCEL "B" CONTAINING 1354.9211 ACRES MORE OR LESS.

PARCELS "A" TOGETHER WITH PARCEL "B" CONTAINING 1557.2292 ACRES OF LAND MORE OR LESS.



LB #2232

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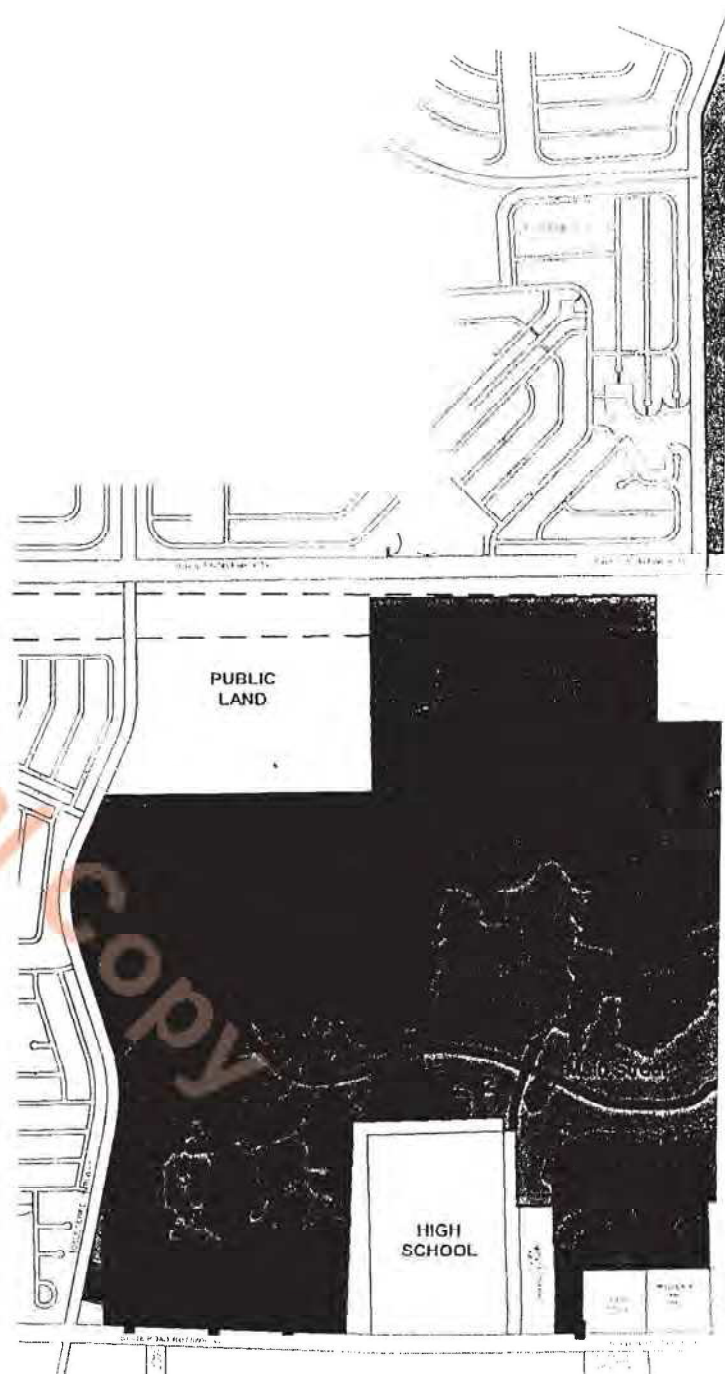
SKETCH
AND
DESCRIPTION

PROJECT NO.	T1037/FLCI
DRAWING REFERENCE No.	1037SL-ALL
DATE	FEB 25, 2002
SHEET NO.	OF 4

Exhibit A

LAND USE KEY

-  Town Core
-  Town Services
-  Town Business
-  Town Residential
-  Perimeter Commercial
-  Town Commons
-  Existing Lakes
-  Street R/W



Note :

- 1) See question 10, part 1A for the description of development that will occur within each land use.
- 2) Numbers on each development area indicate pod number.

ROBERT D. LONDEREE LANDSCAPE ARCHITECT

ROLL

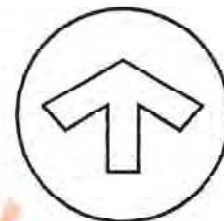
BOX 1077, WINDERMERE, FL. 34786, (407) 876-4644

PLANNING AND DESIGN

OFF REC 0959 PAGE 1570

Town Center at Palm Coast

Florida Landmark
Communities, Inc.



NORTH

1000' 0 1000' 2000'



SCALE - 1" = 2000'

MASTER
DEVELOPMENT
PLAN
MAP H

EXHIBIT "B"

Exhibit A

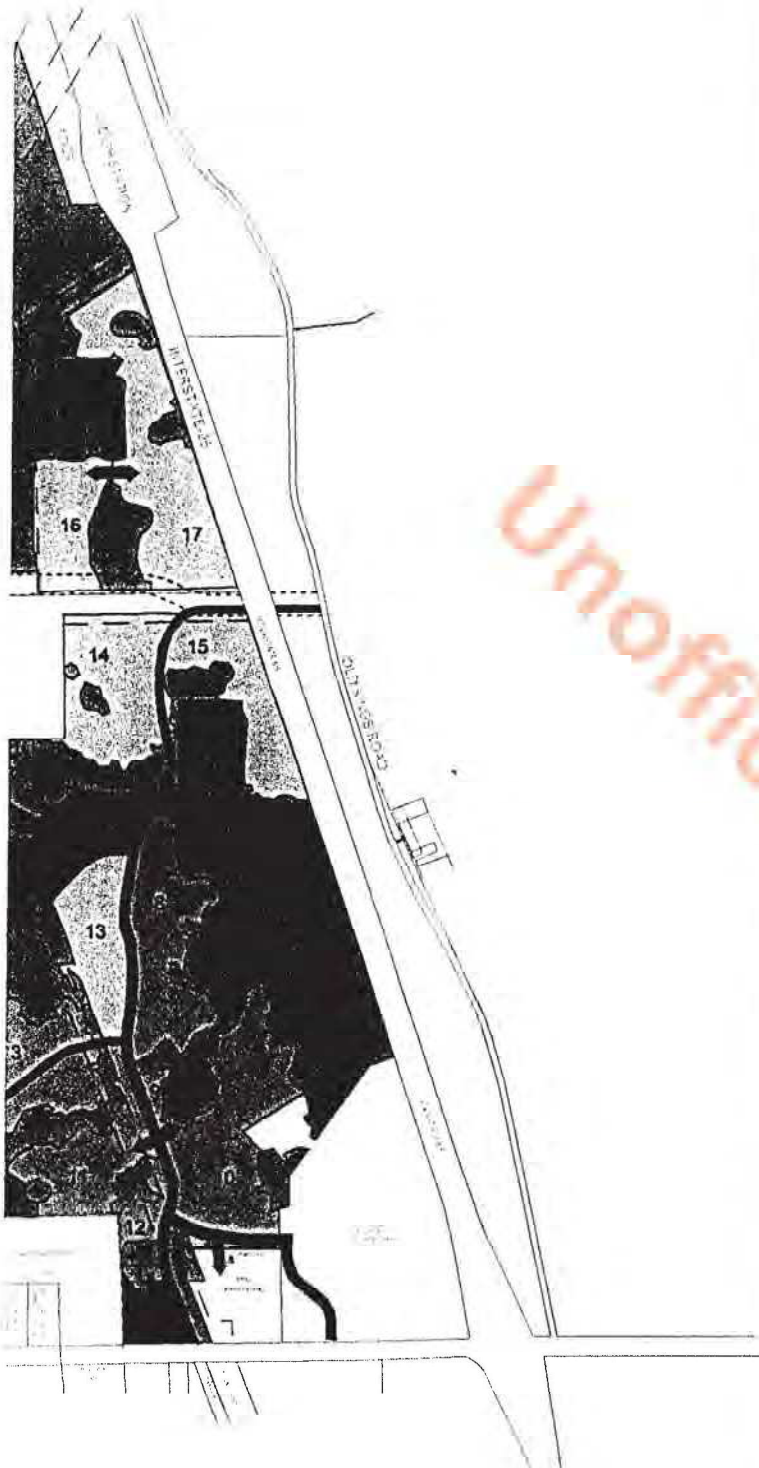


Exhibit "C"
Town Center at Palm Coast
Land Use Conversion Factors

Land Use	PM Rate	TO					
		Residential Per Unit	Office Per Ksf	Retail/Comm Per Ksf	Non-Retail Per Ksf	Institutional Per Ksf	Nursing Home Per Bed
PM Rate		0.62	1.49	3.76	0.51	3.65	0.47
Residential	0.62 Per Unit	1.00	0.42	0.16	1.22	0.17	1.32
Office	1.49 Per Ksf	2.40	1.00	0.40	2.92	0.41	3.17
Retail/Comm	3.76 Per Ksf	6.06	2.52	1.00	7.37	1.03	8.00
Non-Retail/Comm	0.51 Per Ksf	0.82	0.34	0.22	1.00	0.14	1.09
Institutional*	3.65 Per Ksf	5.89	2.45	0.97	7.16	1.00	7.77
Movie Theater	0.14 Per Seat	0.23	0.09	0.04	0.27	0.04	0.30
Lodging	0.47 Per Room	0.76	0.32	0.13	0.92	0.13	1.00
Nursing Home	0.20 Per Bed	0.32	0.13	0.05	0.39	0.05	0.43

Examples

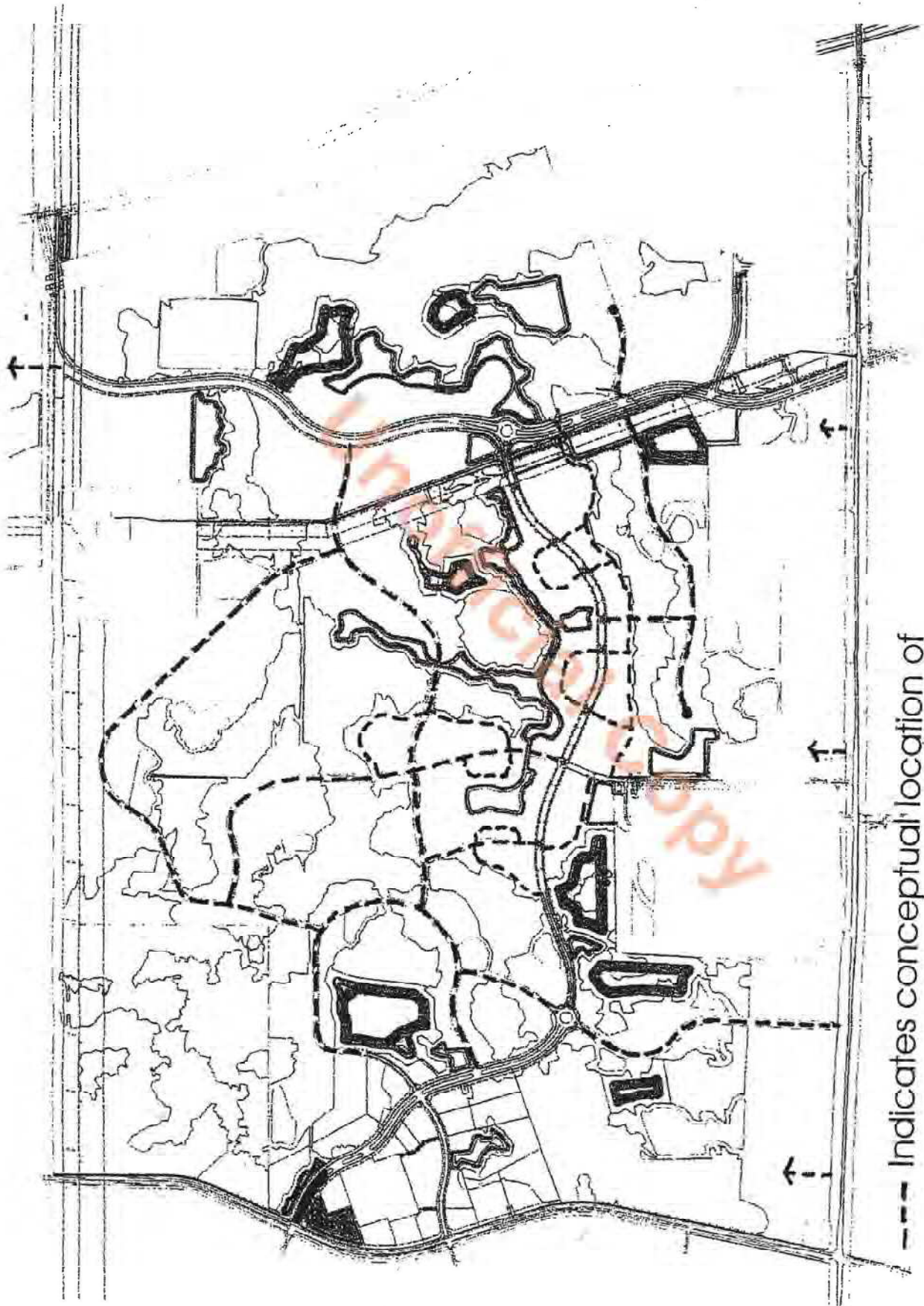
For every 1 residential unit you give up you may build 0.42 ksf of Office or 0.16 ksf of Retail/Comm. or 1.22 ksf of Non-Retail/Comm. or 0.17 ksf of Institutional or 4.43 movie theater seats or 1.32 lodging rooms or 3.10 beds of nursing homes

For every 1.00 KSF of Office you give up you may build 2.4 Residential units or 0.4ksf of Retail or 2.92 ksf of non-retail or 0.41ksf of institutional or 10.64 Movie Theater seats or 3.17 rooms of lodging or 7.45 Nursing Home beds.

For every 1 room of lodging you give up you may build 0.76 Residential Units or 0.32ksf of office space or 0.13 ksf of retail or 0.92 ksf of Non-Retail/Comm of .13 ksf of Institutional or 3.36 theater seats of 2.35 nursing home beds.

*Institutional is an average of Government Office at 5.88 and Church at 1.41

EXHIBIT "D"



--- Indicates conceptual location of
future streets or parking lot drives

Public Facilities Site

Site C

Site A

Site B

City's Exchange Land

Exhibit "E"

DATA SUMMARY

Parcel	Approximate Gross Acres	Approximate Upland Acres
Public Facilities Site	8.5	8.5
City's Exchange Land	44.6	27.0
Town Core Public Land		
Site A	15.0	15.0
Site B	3.5	3.5
Site C	8.5	8.5
Total	27.0	27.0

Exhibit A

STORMWATER POLLUTION PREVENTION PLAN

In order to ensure water quality is maintained and encroachment into environmentally sensitive areas are prohibited, the property Owner and Contractor shall make an effort to adhere to the following Operation Plan prior to and during construction.

STORMWATER POLLUTION PREVENTION PLAN APPROVAL

A Stormwater Pollution Prevention Plan (SWPPP) will be developed by the Engineer and included in the construction plans for each area of development. The Contractor is responsible to review the plan and make modifications that address construction activities. All modifications must be approved by the Owner and Engineer. The plan will correspond with the construction sequence and generally include the following:

1. The locations and types of control features shall be shown to prevent erosion or the transportation of eroded material off-site during each phase of construction. Supplementary sediment and erosion control devices may be required to accommodate the Contractor's phasing of construction activities. The Contractor will modify the SWPP to address the installation and maintenance of all sediment control devices during each phase of construction.
2. The Contractor will be solely responsible for the prevention, control, and abatement of erosion and water pollution and the transportation of eroded materials off site. The Contractor will also be responsible for maintaining any and all sediment control devices throughout the duration of construction as required by the Community Development District (CDD), Engineer, and the Florida Department of Environmental Protection.
3. All erosion control devices will be placed prior to beginning work of each construction phase. It is understood that "select clearing" is required for the placement of silt fence as detailed on the SWPPP. All erosion control devices will be maintained during construction and will be inspected weekly or after rainfall events of greater than 0.25 inches. Repairs will be performed as necessary and prior to suspension of work activities each weekend.
4. Sediment and erosion control barriers will be placed around all stormwater inlets and manholes during construction. Rock bags are to be placed at the downstream side of each curb inlet after the roadway base course is constructed to divert stormwater to the inlets.
5. Supplemental sediment and erosion control devices may be necessary during construction as determined by the Contractor or as directed by the Engineer or Community Development District (CDD).
6. Staging areas will be enclosed with silt fence, and drainage directed to stormwater ponds.

PRE-CONSTRUCTION ACTIVITIES

At least ten calendar days prior to the Pre-construction Conference, the Contractor will submit for approval by the Engineer a SWPPP prepared in accordance with the Florida Erosion and Sediment Control Inspector's Manual. The SWPPP will address the installation and maintenance of all temporary and

permanent sediment and erosion control devices to be used during each phase of construction, including tree removal, clearing and grubbing, hauling of excavated materials, and placement of backfill. The plan also will detail the erosion control measures to be employed at all stockpile and construction staging areas and will define the maximum limits of all active construction zones and the maximum amount of time each segment of the project will be unprotected against erosion.

Also, at least ten calendar days prior to the Pre-construction Conference, the Contractor will submit for approval by the Engineer an Excavation and Dewatering Plan (EDP). The plan will address excavation of the stormwater ponds and identify phasing of the excavation, including for each excavation phase, the limits of excavation, hauling of excavated materials, dewatering, control of on-site and off-site stormwater runoff, and measures to be employed for controlling erosion and for controlling the transportation of eroded materials off-site.

A Pre-construction Conference will be conducted prior to the start of any site construction. Attendees shall include the Contractor, CDD, Engineer and regulatory agency representatives. The purpose of this conference is to review the site specific details of the SWPPP and EDP, agree upon any modifications to these plans, and identify the individuals responsible for its implementation. In addition, specific conditions of regulatory permits will be reviewed and persons assigned to the monitoring for compliance with these conditions will be identified.

CONSTRUCTION ACTIVITIES

The Contractor shall at a minimum implement the requirements outlined below and those measures shown on the SWPPP. In addition, the Contractor shall implement additional measures required to maintain compliance with applicable permit conditions and state water quality standards. Depending on the nature of materials and methods of construction the contractor may be required to add flocculants to the detention system prior to discharge to Waters of the State.

Sequence of Major Erosion Control Activities:

The order of activities will be as follows:

1. Install stabilized construction entrance.
2. Select clear and install silt fences and hay bales as required.
3. Clear and grub for diversion swales/dikes and sediment basin.
4. Construct sedimentation basin.
5. Stock pile top soil if required.
6. Stabilize denuded areas and stockpiles as soon as practicable.
7. Complete grading and install/permanent seeding/sod and planting.
8. Remove accumulated sediment from basins.

9. Flocculate lake system, if required, to meet water quality standards.
10. When all construction activity is complete and the site is stabilized, remove any temporary diversion swales/dikes, silt fences, hay bales and reseed/sod as required.

Additional Controls

It is the Contractor's responsibility to implement the erosion and turbidity controls as shown on the SWPPP. It is also the Contractor's responsibility to ensure these controls are properly installed, maintained and functioning properly to prevent turbid or polluted water from leaving the project site. The Contractor will adjust the erosion and turbidity controls shown on the SWPPP and add additional control measures, as required, to ensure the site meets all federal, state and local erosion and turbidity control requirements. The following best management practices will be implemented by the Contractor as required by the SWPPP and as required to meet the sediment and turbidity requirements imposed on the project site by the regulatory agencies.

Erosion and sediment controls stabilization practices (See the site specific SWPPP for applicability.):

1. Straw bale barrier: Straw bale barriers will be used below disturbed areas subject to sheet and rill erosion with the following limitations:
 - a. Where the maximum slope behind the barrier is 3:1 (horizontal:vertical).
 - b. In minor swales or ditch lines where the maximum contributing drainage area is no greater than 2 acres.
 - c. Where effectiveness is required for less than 3 months.
 - d. Every effort should be made to limit the use of straw bale barriers constructed in live streams or in swales where there is the possibility of a washout. If necessary, measures shall be taken to properly anchor bales to insure against washout.
2. Filter Fabric Barrier: Filter fabric barriers shall be installed landward of upland buffers. Filter fabric barriers will be used below disturbed areas subject to sheet and rill erosion with the following limitations:
 - a. Where the maximum slope behind the barrier is 3:1.
 - b. In minor swales or ditch lines where the maximum contributing drainage area is no greater than 2 acres.
3. Sod with Filter Fabric: In areas with slopes steeper than 3:1, the slope shall be full sodded. Filter fabric barriers (silt fence) shall be installed at the toe of the slope.
4. Brush Barrier with Filter Fabric: Brush barrier will be used below disturbed areas subject to sheet and rill erosion where enough residue material is available on site.
5. Spreader Swale: A spreader swale will be used where sediment-free storm runoff is intercepted and diverted away from graded areas onto undisturbed stabilized areas. The water should not be allowed to reconcentrate after release.

6. **Stockpiling Material:** No excavated material shall be stockpiled in such a manner as to direct stormwater runoff off site into any adjacent water body.
7. **Limitation of Exposure of Erodible Earth:** The surface area of open, raw erodible soil exposed by clearing and grubbing operations or excavation and filling operations shall not exceed 17 acres without specific prior approval by the Engineer. This limitation applies separately to clearing and grubbing operations and excavation and filling operations. The Engineer may increase or decrease the amount of surface areas the Contractor may expose at any one time.
8. **Inlet Protection:** Inlets and catch basins which discharge directly off-site shall be protected from sediment-laden storm runoff.
9. **Temporary Seeding:** Cleared areas that are not designated for construction activity for more than 45 days shall be seeded or hydroseeded.
10. **Temporary Seeding and Mulching:** Slopes steeper than 6:1 shall receive approximately 2 inches loose measure of mulch material cut into the soil of the seeded area adequate to prevent movement of seed and mulch. Hydroseeding or hydromulching may be used in place of Seeding and Mulching.
11. **Temporary Grassing:** The Engineer may designate certain areas of grassing as temporary erosion control features. The Engineer may direct the Contractor to omit permanent type grass seed from grassing.
12. **Regrassing:** If, after 28 days from seeding, the temporary grassed areas have not attained a minimum of 75 percent good grass cover, the area will be reworked and additional seed applied sufficient to establish the desired vegetative cover.
13. **Maintenance:** All features of the project designed and constructed to prevent erosion and sediment shall be maintained during the life of the construction so as to function as they were originally designed and constructed.
14. **Permanent Seeding:** All areas which have been disturbed by construction will, as a minimum, be seeded. Slopes steeper than 4:1 shall be seeded and mulched or sodded. Hydroseeding may be used in place of Seeding and Mulching.
15. **Temporary Diversion Dike:** Temporary diversion dikes will be used to divert runoff through a sediment-trapping facility.
16. **Temporary Sediment Trap:** A sediment trap is usually installed in a drainage way at a storm drain inlet or at other points of discharge from a disturbed area.
17. **Sediment Basin:** Sediment Basin(s) will be constructed at the common drainage locations that serve an area with 10 or more disturbed acres at one time. Construct sedimentation basins in accordance with FDOT Roadway and Traffic Design Standards. All sediment collected in permanent or temporary sediment traps must be removed upon final stabilization.

Site Maintenance Activities

Waste Disposal

Waste Materials

All waste material shall be collected and stored in a securely lidded metal dumpster. The dumpster will meet all local and state solid waste management regulations. The dumpster will be emptied as needed and the trash will be hauled to a state approved landfill. All personnel will be instructed regarding the correct procedure for waste disposal. The site superintendent or the individual who manages the day-to-day site operations will be responsible for posting notices stating these practices at the construction site and for seeing that these procedures are followed.

All waste materials that are too large for the dumpster shall be stockpiled and hauled to a state approved landfill.

Hazard Waste

All hazardous waste materials will be disposed of in a manner specified by local or state regulation or by the manufacturer. Site personnel will be instructed in these practices and the site superintendent, the individual who manages the day-to-day site operations, will be responsible for seeing that these procedures are followed.

Sanitary Waste

All sanitary waste will be collected from the portable units as needed to prevent possible spillage. The waste will be collected and disposed of in accordance with state and local waste disposal regulations for sanitary sewer or septic systems.

Offsite Vehicle Tracking

A stabilized construction entrance will be provided to help reduce vehicle tracking of sediments. The paved street adjacent to the site entrance will be swept as needed or as directed by the Engineer to remove any excess mud, dirt or rock tracked from the site. Dump trucks hauling material from the construction site will be covered with a tarpaulin.

Spill Prevention Plan

Material Management Practices

The following are the material management practices that will be used to reduce the risk of spills or other accidental exposure of materials and substances to stormwater runoff.

Good Housekeeping

The following good housekeeping practices will be followed onsite during the construction project:

- * An effort will be made to store only enough product required to do the job.

- * All materials stored onsite will be stored in a neat, orderly manner in their appropriate containers and, if possible, under a roof or other enclosure.
- * Products will be kept in their original containers with the original manufacturer's label.
- * Substances will not be mixed with one another unless recommended by the manufacturer.
- * Whenever possible, all of a product will be used up before disposing of the container.
- * Manufacturer's recommendations for proper use and disposal will be followed.
- * The site superintendent will inspect daily to ensure materials onsite receive proper use and disposal.

Hazardous Products

These practices are used to reduce the risks associated with hazardous materials:

- * Products will be kept in original containers unless they are not resealable.
- * Original labels and material safety data will be retained; they contain important product information.
- * If surplus product must be disposed of, manufacturer's or local and state recommended methods for proper disposal will be followed.

Product Specific Practices

The following product specific practices will be followed onsite:

Petroleum Products

All onsite vehicles will be monitored for leaks and receive regular preventative maintenance to reduce the chance of leakage. Portable petroleum storage tanks shall not be placed within 200 feet of a wetland or water body including stormwater management ponds, unless secondary containment is provided. Petroleum products will be stored in tightly sealed containers which are clearly labeled. Any asphalt substances used onsite will be applied according to the manufacturer's recommendations.

Fertilizers

Fertilizers used will be applied only in the minimum amounts recommended by the manufacturer. Once applied, fertilizer will be worked into the soil to limit exposure to stormwater. Storage will be in a covered area. The contents of any partially used bags of fertilizer will be transferred to a sealable plastic bin to avoid spills.

Paints

All containers will be tightly sealed and stored when not required for use. Excess paint will not be discharged to the storm sewer system but will be properly disposed of according to manufacturer's instructions or state and local regulations.

The site superintendent responsible for the day-to-day site operations, will be the spill prevention and cleanup coordinator. He/she will designate at least one other site personnel who will receive spill prevention and cleanup training. These individuals will each become responsible for a particular phase of prevention and cleanup. The names of responsible spill personnel will be posted in the material storage area and if applicable, in the office trailer onsite.

MAINTENANCE / INSPECTION PROCEDURES

Erosion and Sediment Control Inspection and Maintenance Practices

The following are inspection and maintenance practices that will be used to maintain erosion and sediment controls:

- * All control measures will be inspected by the site superintendent, the person responsible for the day to day site operation or someone appointed by the site superintendent, at least once a week and following any storm event of 0.25 inches or greater.
- * All turbidity control measures will be maintained in good working order; if a repair is necessary, it will be initiated within 24 hours of report.
- * Built up sediment will be removed from silt fence when it has reached one-third the height of the fence.
- * Silt fence will be inspected for depth of sediment, tears, to see if the fabric is securely attached to the fence posts, and to see that the fence posts are firmly in the ground.
- * The sediment basins will be inspected for the depth of sediment. Sediment will be removed when it reaches 20 percent of the design capacity or at the end of the job.
- * Diversion dikes/swales shown on the plans will be inspected and any breaches promptly repaired.
- * Temporary and permanent seeding and planting will be inspected for bare spots, washouts, and healthy growth.
- * A maintenance inspection report will be completed weekly. A completed copy will be submitted to the Engineer and a completed copy will be kept on site during construction and available upon request by the Owner, Engineer or any federal, state or local agency approving sediment and erosion plans, or stormwater management plans. The reports shall be made and retained as part of the SWPPP for at least three years (by the Owner) from the date that the site is finally stabilized and the notice of termination is submitted.
- * The site superintendent will select up to three individuals who will be responsible for inspections, maintenance and repair activities, and filling out the inspection and maintenance report.

- * Personnel selected for inspection and maintenance responsibilities will receive training from the site superintendent. They will be trained in all inspection and maintenance practices necessary for keeping the erosion and sediment controls used onsite in good working order.

NON-STORMWATER DISCHARGES

It is expected that the following non-stormwater discharges will occur from the site during the construction period:

- * Water from water line flushing.
- * Pavement wash waters (where no spills or leaks of toxic or hazardous materials have occurred).
- * Uncontaminated groundwater (from dewatering excavation).

All non-stormwater discharges will be directed to the sediment basin prior to discharge.

Unofficial Copy

FDEP Development Order Recommendations DRI Stormwater Pollution Prevention Plan (SWPPP)

The following conditions for the Stormwater Pollution Prevention Plan (SWPPP) will be incorporated in the development order:

1. SWPPP Requirements

A SWPPP shall be incorporated into the construction and permit documents for projects constructed in the DRI which require a general or individual SJRWMD permit. The SWPPP shall be similar to the SWPPP shown in Exhibit __ but may be modified to accommodate the specific construction project and site. However, all SWPPP's must include paragraphs describing Pre-Construction activities and Maintenance/Inspection Procedures.

2. SWPPP Monitoring

In addition to the requirements on individual property owners/contractors outlined in the SWPPP, the Developer, Community Development District (CDD) shall monitor compliance with the SWPPP goals. The compliance monitoring shall consist of the following:

A. Notifying the SJRWMD and FDEP of the individual responsible for monitoring SWPPP within the DRI.

At a minimum the responsible individual will:

- 1) be trained in erosion control implementation techniques
- 2) set up and oversee implementation of SWPPP programs throughout the buildout of the project
- 3) ensure that if the regular site inspector is unable to attend the pre-construction conference this information is communicated to the site inspector including site specific BMPs, permit requirements and erosion control implementation training.
- 4) meet with trained site superintendent monthly, upon commencement of site construction, to ensure implementation of SWPPP and resolve any problems. Frequency of site visits may be decreased if there is no indication of erosion control problems and previous visits show a history of compliance with the SWPPP.
- 5) submit a brief narrative update to FDEP and SJRWMD quarterly on activities and progress OR be available to meet with FDEP onsite for quarterly site visits, unless FDEP deems the visit unnecessary. Upon proper identification, FDEP personnel shall be granted access to the property.

B. Attendance at all pre-construction conferences.

C. Conducting Homeowners Stormwater Training Programs

D. Conducting Contractor Stormwater Training Programs

E. Conducting periodic inspections of construction sites

F. Notifications to SJRWMD and FDEP of observed potential permit violations within 24 hours and serve as agency liaison.

G. Annual reporting summary of Items A thru F.

3. The SWPPP shall be implemented upon initiation of construction activities. Three (3) years after initiation of construction, the FDEP and SJRWMD will have the opportunity to review the program. If it is found to be unsatisfactory, the agencies will discuss alternatives, including program modification options, with the applicant.

TOWN CENTER AT PALM COAST DRI
PROPORTIONATE SHARE CALCULATION

PHASE 1

Roadway / Intersection	Length (mile)	Improvement	Construction Cost	Engineering Cost	Total Cost	Project Trips	Increase in the Capacity	Proportionate Share *	DRI Proportionate Share
Belle Terre Parkway/ White View Parkway	N/A	Signalize	\$61,800.00	\$5,180.00	\$67,980.00	95	237	0.40	\$27,249.37
Belle Terre Parkway/ Royal Palms Parkway	N/A	Signalize	\$61,800.00	\$5,180.00	\$67,980.00	19	79	0.24	\$16,349.62
SR 100 / Seminole Woods Parkway	N/A	Signalize	\$61,800.00	\$5,180.00	\$67,980.00	1490	3683	0.40	\$27,457.36
Subtotal for Signals									\$71,056.35
Old Kings Road	4.384	2 to 4 Lanes	\$6,137,600.00	\$613,760.00	\$6,751,360.00	251	930	0.27	\$1,822,141.25
Belle Terre Parkway	0.4	4 to 6 Lanes	\$56,000.00	\$5,600.00	\$61,600.00	196	880	0.22	\$137,200.00
Palin Coast Parkway	0.5	4 to 6 Lanes	\$94,400.00	\$9,440.00	\$1,038,400.00	112	880	0.13	\$132,160.00
Palin Coast Parkway	0.2	4 to 6 Lanes	\$377,600.00	\$37,760.00	\$415,360.00	140	880	0.16	\$66,080.00
SR 100	0.1	4 to 6 Lanes	\$188,800.00	\$18,880.00	\$207,680.00	359	880	0.64	\$131,924.00
Subtotal for Phase 1	0.6	4 to 6 Lanes	\$1,132,800.00	\$113,280.00	\$1,246,080.00	726	880	0.83	\$1,028,016.00
									\$3,388,577.59

PHASE 2

Roadway / Intersection	Length (mile)	Improvement	Construction Cost	Engineering Cost	Total Cost	Project Trips	Increase in the Capacity	Proportionate Share *	DRI Proportionate Share
Belle Terre Parkway	1.0	2 to 4 Lanes	\$1,400,000.00	\$140,000.00	\$1,540,000.00	56	930	0.06	\$92,731.18
Florida Park Drive**	1.5	4 to 6 Lanes	\$2,100,000.00	\$210,000.00	\$2,310,000.00	733	930	0.79	\$1,820,677.42
SR 100	0.7	4 to 6 Lanes	\$980,000.00	\$98,000.00	\$1,078,000.00	790	930	0.85	\$915,720.43
Subtotal for Phase 2	1.8	2 to 4 Lanes	\$4,480,000.00	\$448,000.00	\$4,928,000.00	56	740	0.08	\$367,102.70
	0.2	4 to 6 Lanes	\$377,600.00	\$37,760.00	\$415,360.00	733	930	0.79	\$327,375.14
									\$3,523,606.87

PHASE 3

Roadway / Intersection	Length (mile)	Improvement	Construction Cost	Engineering Cost	Total Cost	Project Trips	Increase in the Capacity	Proportionate Share *	DRI Proportionate Share
Old Kings Road	1.7	2 to 4 Lanes	\$2,380,000.00	\$238,000.00	\$2,618,000.00	158	0	0.27	\$706,860.00
Belle Terre Parkway	1.9	4 to 6 Lanes	\$2,660,000.00	\$266,000.00	\$2,926,000.00	632	930	0.68	\$1,988,421.51
Cypress Point Parkway	0.7	4 to 6 Lanes	\$980,000.00	\$98,000.00	\$1,078,000.00	158	930	0.17	\$183,144.09
Florida Park Drive	0.1	2 to 4 Lanes	\$140,000.00	\$14,000.00	\$154,000.00	79	740	0.11	\$16,440.54
SR 9	5.2	6 to 8 Lanes	\$7,280,000.00	\$728,000.00	\$8,008,000.00	395	1690	0.23	\$1,871,692.31
Palin Coast Parkway (WB)	0.2	2 to 3 Lanes	\$188,800.00	\$18,880.00	\$207,680.00	316	880	0.36	\$74,576.00
Palin Coast Parkway (EB)	0.2	2 to 3 Lanes	\$188,800.00	\$18,880.00	\$207,680.00	316	880	0.36	\$74,576.00
SR 100	0.4	4 to 6 Lanes	\$755,200.00	\$75,520.00	\$830,720.00	789	880	0.90	\$744,816.00
Subtotal for Phase 3	1.7	4 to 6 Lanes	\$3,209,600.00	\$320,960.00	\$3,530,560.00	474	880	0.54	\$1,901,688.00
									\$7,562,314.44
									\$14,474,399.09

Total for Phases 1-3

Revised 6/11/2003

* Formula based on FDOT's Site Impact Handbook [(DRI Trips/Service Vol. Increase)*Cost]

Florida Park Construction Estimates include ROW estimated at 75% of Construction Costs

**Old Kings Road is neither significant nor adverse. The "fair share" calculation is based on the project trips as a percentage of total roadway capacity

Notes: All dollar amounts shown on this table are stated in 2002 values.

Exhibit "G"

OFF 0959 PAGE 1583

DEVELOPER IMPROVEMENTS AND DONATIONS.

PROJECT PHASE	DESCRIPTION	EST. COST*
OFF SITE PROJECTS TO BE COMPLETED BY TOWN CENTER DEVELOPER (Eligible for Full or Partial Impact Fee Credits)		
1	FDOT Contribution SR-100 Overpass	\$3,650,000
1	Palm Coast Pkwy Corridor Study	\$180,000
1-2	Royal Palms Parkway Extension 2/4 Lane	
	At the Interchange Entire Length From Current Roadway to Seminole Woods Extension will be 2 lanes and from there to Old Kings Road will be 4 lane. Developer will provide ROW for all 2 lane sections within the DRI	\$5,550,000
2	Old Kings 4 Lane/Lehigh Canal Bridge	\$6,750,000
3	Projects to be determined	\$3,369,399
	Palm Coast Pkwy to Lehigh Canal Phase 3 Improvements (See Part III, Paragraph 12)	
	Total	\$19,499,399

INTERNAL ROAD IMPROVEMENTS (Not eligible for Impact Fee Credits)

1	Belle Terre Pkwy/White View Pkwy	Signalization at Intersection	\$67,980
1	Belle Terre Pkwy/Royal Palm Pkwy	Signalization at Intersection	\$67,980
1	SR-100/Seminole Woods Pkwy	Signalization at Intersection	\$67,980
1	Drainage Belle Terre Pkwy	From Royal Palms Parkway to SR-100	\$110,000
1	Main Street	From Seminole Woods Extension to Belle Terre Pkwy	\$5,145,000
1	East Wood Blvd	From Belle Terre to Main Street	\$610,000
1-2	Seminole Wood Extension	4 lane from US-100 to Old Kings Road	\$3,775,000
	Construction of the Lehigh Trail	From Seminole Woods Extension to Old Kings Road	\$75,000
1-3	Parking Driveways	Alternative driveways throughout Urban Core	\$525,000
1	Bypass Roadway for Down Town	Roadway connection from Main Street to Seminole Woods Pkwy	\$1,855,000
1-3	Other Major Roadway Links	Additional access road to Main Street	\$1,400,000
	Total		\$13,698,940

OTHER CONTRIBUTIONS OR DONATIONS (Not eligible for Impact Fee Credits)

1	Public Facility site (to the City) 8.5 acre	Fire/Police/EMS Site located on Royal Palm at Seminole Woods Extension	\$600,000
1	Utilities (to the City)	Master water & sewer Utility Distribution & Collection Systems	\$2,505,000
1-3	Bike trail with connection to Lehigh Bike Trail (public trail)		\$115,000
	Total		\$3,220,000
	Grand Total		\$36,418,339

Cost is estimated in 2002 dollars

m:\excel\exhibit h

12/19/2003

EXHIBIT "H"

Exhibit A

Exhibit B
2022 Amended Development Order

1 TOWN CENTER AT PALM COAST 2022 AMENDED AND RESTATED
2 DEVELOPMENT OF REGIONAL IMPACT DEVELOPMENT ORDER

3 THIS FIRST AMENDED AND RESTATED DEVELOPMENT
4 ORDER effective this 5th day of July,
5 2022 by and between Florida Landmark
6 Communities, Inc., a Florida corporation and
7 Palm Coast Holdings, Inc., a Florida
8 Corporation (the "Developer") and the City of
9 Palm Coast, a municipal corporation organized
10 and existing under the laws of the State of
11 Florida (the "City").

12 WHEREAS: Developer filed an Application For Development
13 Approval ("ADA") dated April 9, 2002, as amended by ADA First
14 Sufficiency Response dated June 24, 2002, and ADA Second
15 Sufficiency Response dated August 28, 2002, for Town Center at
16 Palm Coast Development of Regional Impact ("Town Center DRI")
17 located on certain real property as more specifically described
18 on **Exhibit "A"** hereto (the "DRI Property");

19 WHEREAS, whenever an action or approval of the City is
20 referred to herein, except for actions relating to the City
21 Council, the action shall be taken by the City Manager, or
22 designee; and

23 WHEREAS, whenever an action, right or eligibility of the
24 Developer is referred to herein, the action may be taken by,
25 or the right or eligibility may belong to Town Center at Palm
Coast Community Development District ("CDD") but the Developer
shall have primary responsibility for all actions that are the
obligation of the Developer.

1 WHEREAS, the Town Center DRI is a proposed mixed-use
2 development on approximately 1,557 acres located in the City
3 at the northwest corner of the intersection of SR-100 and I-95.
4 The project is bordered by I-95 to the east, SR-100 to the
5 south, a major drainage canal to the north and Belle Terre
6 Parkway to the west; and

7 WHEREAS, the ADA was reviewed by the Northeast Florida
8 Regional Planning Council ("NEFRPC") as required by Section
9 380.06, *Florida Statutes*, and the NEFRPC recommended that the
10 ADA be approved, with conditions; and

11 WHEREAS, the Developer provided complete copies of the ADA,
12 as amended by the Sufficiency Responses to the Florida
13 Department Of Community Affairs ("DCA"), NEFRPC and the City;
14 and

15 WHEREAS, this Development Agreement has been amended once
16 by the Amendment to Town Center At Palm Coast Development of
17 Regional Impact Development Order ("Amendment") as recorded in
18 the official records Book 2321, Page 0549 of the Public Records
19 of Flagler County, Florida; and

20 WHEREAS, the Town Center DRI is consistent with the City's
21 Comprehensive Plan; and

22 WHEREAS, pursuant to Section 306.06, *Florida Statutes*, the
23 City Council of the City ("City Council") heard at a public
24 hearing convened on December 3, 2002, and July 1, 2003, the ADA
25 for the Town Center DRI and afforded the public and all affected
parties an opportunity to be heard and to present evidence; and

1 WHEREAS, after such public hearing and in consideration of
2 the recommendations made and submitted to the City Council, the
3 City Council has made certain findings and determinations; as
4 more specifically set forth hereinafter.

5 WHEREAS, the resolution approving Town Center DRI DO was
6 recorded on July 23, 2003 in Official Records Book 0959, Page
7 1509 of the Public Records of Flagler County, Florida;

8 WHEREAS, thereafter, the City passed Resolution 2008-89
9 providing for a three (3) year extension to the DRI DO which
10 was recorded in Official Records Book 1664, Page 1882 of the
11 Public Records of Flagler County, Florida;

12 WHEREAS, the City then acknowledged House Bill 7207 which
13 gave a developer the option to extend its development order for
14 a four-year period, which was completed and memorialized in
15 Official Records Book 1847, Page 1486 of the Public Records of
16 Flagler County, Florida;

17 WHEREAS, the City then amended the DRI DO on November 27,
18 2018 as outlined in Official Records Book 2321, Page 0549 of
19 the Public Records of Flagler County, Florida; and

20 NOW, THEREFORE, BE IT HEREBY ORDERED AND RESOLVED by the
21 City Council, that based upon the Findings of Fact and
22 Conclusions of Law, and the consent and agreement of the
23 Developer, and subject to the following terms and conditions,
24 the City Council hereby approves this Development Order,
25 pursuant to the provisions of Section 380.06, *Florida Statutes*,

1 and other applicable State laws, and the codes and ordinances
2 of the City:

3 **PART I**

4 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5 1.. The above Recitals/Whereas clauses are hereby adopted
6 and incorporated into this Section of this Order.

7 2. The DRI Property is not in an area designated as an
8 area of Critical State Concern pursuant to the provisions of
9 Section 380.05, *Florida Statutes*.

10 3. The Town Center DRI is consistent with the State's
11 Comprehensive Plan.

12 4. The Town Center DRI is consistent with the Strategic
13 Regional Policy Plan adopted by the NEFRPC.

14 5. The Town Center DRI is consistent with the City's
15 Comprehensive Plan.

16 6. The Town Center DRI is consistent with the
17 Assessment Report and Recommendations of the NEFRPC issued
18 pursuant to Section 380.06, *Florida Statutes*.

19 7. The public hearing to consider this Order was properly
20 noticed and held by the City Council pursuant to Section
21 380.06, *Florida Statutes*.

22 8. The Developer's authorized agent is Jeff Douglas whose
23 principal place of business is Douglas Property & Development;
24 145 City Place, Suite 300, Palm Coast, Florida 32164; telephone
25 number (386) 446-6226.

2. **Notice of Order.** Notice of this Order and any subsequent amendment hereto shall be recorded by Developer in accordance with the provisions of Section 28.222 and 380.06, *Florida Statutes*, with the Clerk of the Circuit Court of Flagler County, Florida. Any subsequent owner/developer or assignee from Developer shall be subject to the provisions contained in this Order. Any contract or agreement for sale by Developer of all or any portion of the Town Center DRI shall contain a legend substantially in the following form clearly printed or stamped thereon.

5

LIMITATIONS UPON THE USE AND DEVELOPMENT OF THE
 SUBJECT PROPERTY WHICH ARE BINDING UPON EACH
 SUCCESSOR AND ASSIGN OF FLORIDA LANDMARK
 COMMUNITIES, INC. A COPY OF THE DEVELOPMENT
 ORDER MAY BE REVIEWED AT THE DEVELOPMENT
 SERVICES DEPARTMENT, CITY OF PALM COAST OR AT
 THE OFFICES OF THE DEPARTMENT OF COMMUNITY
 AFFAIRS, STATE OF FLORIDA, TALLAHASSEE,
 FLORIDA.

3. Land Use Totals.

(a) The Town Center DRI was originally approved for
 the following development criteria (the "Original
 Entitlements"):

<u>Land Use</u>	<u>Gross Bldg./Units or Area</u>	<u>Acreage *</u>
Residential	2,500/DUs	190 Acres
Office	1,400,000/SF	110 Acres
Retail/Comm.	2,000,000/SF	250 Acres
Non-Retail/Comm.	1,400,000/SF	180 Acres
Institutional	625,000/SF	80 Acres
Movie Theater	2,400 seats	8 Acres
Lodging	480 rooms	15 Acres
Nursing Home	240 beds	10 Acres
Common Area	--	714
Acres		

* The Town Center DRI is planned as a traditional neighborhood development. As a result, land uses will be integrated, rather than specifically assigned to designated areas. Consequently, acreage is approximate for each land use category.

(b) The Town Center DRI is presently approved for the following development criteria (the "Present Entitlements"):

Land Use	Gross Bldg./Units or Area	Acreage *
Residential	2,750/DUs	190 Acres
Office	1,400,000/SF	110 Acres
Retail/Comm.	2,000,000/SF	250 Acres
Non-Retail/Comm.	1,195,000/SF	180 Acres
Institutional	625,000/SF	80 Acres
Movie Theater	2,400 seats	8 Acres
Lodging	480 rooms	15 Acres
Nursing Home	485 beds	10 Acres
Common Area	--	714 Acres

* The Town Center DRI is planned as a traditional neighborhood development. As a result, land uses will be integrated, rather than specifically assigned to designated areas. Consequently, acreage is approximate for each land use category.

(c) Of the Present Entitlements identified above, the following are the currently remaining entitlements that have not been assigned to specific parcels of property within the current DRI Property:

Land Use	Approved	Sold	Remaining* ¹
Residential	2,750 Units	2,599 Units	151 Units
Office	1,400,000 Sq. Ft.	487,780 Sq. Ft.	912,220 Sq. Ft.

Retail/Commercial	2,000,000 Sq. Ft.	858,786 Sq. Ft.	1,141,214 Sq. Ft.
Non-Retail Commercial	1,195,000 Sq. Ft.	136,589 Sq. Ft.	1,058,411 Sq. Ft.
Institutional	625,000 Sq. Ft.	240,000 Sq. Ft.	385,000 Sq. Ft.
Movie Theater	2,400 Seats	2,400 Seats	0 Seats
Lodging	480 rooms	125 rooms	355 rooms
Assisted Living	485 rooms	202 rooms	283 rooms

* All remaining entitlements are owned by Developer and have not been assigned to any specific property.

¹ A chart showing the assignment of the listed entitlements is attached as Exhibit "K".

4. Land Use Conversion Table.

- Developer may increase and simultaneously decrease entitlements ("Land Use Conversions"), after filing a Notice of Proposed Change provided that (i) such changes are consistent with the conversion tabled attached as Exhibit "C" hereto (the "Conversion Table"), and this Section, and (ii) such changes do not have a substantial adverse effect or impact on public infrastructure facilities as determined by the City.

- Land Use Conversions (simultaneous increases or decreases) of the Present Entitlements, as shown in Section

3 above, shall be permitted, subject to the following conditions and limitations: Declarant is entitled to conversions of up to 20% of the Present Entitlements. Notice of any conversions are required to be submitted to the City Manager's designee so that the City can track conversions and ensure that the 20% threshold is not exceeded. The notice to the City shall also contain evidence showing that the conversion will not result in an adverse impact to the community as more fully outlined in Section II, Paragraph 10 (c).

- Conversions of Present Entitlements in excess of 20%, but in no event cumulatively more than 30%, may occur, subject to City Council approval, to ensure that substantial and material adverse impacts on public facilities and the community do not occur as a result of the conversion.

5. **Phasing, Buildout and Expiration.** The Town Center DRI shall be developed in three phases as shown on the following schedule:

	Daily Trips	PM Peak Hour	Cumulative	
			Daily Trips	PM Peak Hour
Phase 1	56,565	5,226	56,565	5,256
Phase 2	56,742	5,218	113,307	10,444
Phase 3	42,953	4,048	156,260	14,492

1 During Phase 1¹, Developer shall construct or cause
2 to be constructed the major infrastructure improvements for
3 Town Center, consisting of the following:

4 (a) 4-lane modified urban section extension of Town
5 Center Boulevard (from SR-100 to its intersection with Central
6 Avenue). For purposes hereof, a modified urban section shall
7 consist of a road section with the bottom of the roadside swale
8 at an elevation above the seasonal high ground water table,
9 non-mountable curb along the median side, ribbon curb along
10 the swale side and drainage inlets within the swale.

11 (b) 2-lane modified urban section further extension
12 of Town Center Boulevard to Old Kings Road.

13 (c) Construction of Central Avenue as a 2-lane
14 modified urban section, from the traffic circle on Town Center
15 Boulevard to the westerly traffic circle on Central Avenue,
16 with diagonal parking adjacent to building sites.

17 (d) Construction of Central Avenue as a 4-lane
18 modified urban section from the westerly traffic circle to a
19 point approximately 800 feet east of Belle Terre Parkway.

20 (e) Construction of Central Avenue as a 4-lane urban
21 section for a distance of approximately 800 feet eastward from
22 Belle Terre Parkway.

23
24
25 ¹ All construction identified in sub-paragraphs (a) through (m) required to
be completed during Phase 1 has been completed.

1 (f) Extension of Market Avenue to Central Avenue as
2 a 3-lane urban section.

3 (g) Construction of Hospital Drive from Town Center
4 Boulevard to the hospital site as a 2-lane urban section.

5 (h) Construction of the master drainage system for
6 Town Center, which will create an extensive interconnected lake
7 system.

8 (i) Installation of a water distribution system,
9 sewage collection system and underground electric and conduit
10 within all road rights-of-way or adjacent multi-use easements.

11 (j) Installation of landscaping along roads and in
12 other public areas.

13 (k) Construction of the initial phase of the
14 pedestrian/bikeway system throughout Town Center, with a
15 connection to the right-of-way for the proposed Lehigh Trail.

16 (l) Site fill on selected development parcels.

17 (m) Environmental mitigation to offset impacts.

18 Prior to commencing Phase 2, as provided for in
19 Section 12, under Part III below, Royal Palm Parkway shall be
20 connected to Town Center Boulevard by a 2-lane urban section
21 roadway with two canal crossings. During Phases 2 and 3, as
22 development parcels are planned and developed, all the internal
23 streets and drainage systems shall be constructed and utility
24 services shall be extended as appropriate. Subject to wetlands
25 constraints, the internal streets and interconnected driveways
through parking areas shall create a grid roadway system,

1 substantially as shown on Exhibit "D" hereto, to provide
2 alternative means of ingress/egress throughout Town Center DRI.

3 The rights-of-way for the roads (and segments)
4 provided for above in this Section shall be as follows:

5 (a) Town Center Boulevard - 100 feet.

6 (b) Central Avenue, between the traffic circles -
7 65 feet.

8 (c) Central Avenue, other than between the traffic
9 circles - 100 feet.

10 (d) Market Avenue to Central Avenue - 80 feet.

11 (e) Hospital Drive - 80 feet.

12 (f) Royal Palm Parkway - 124 feet, except where
13 constrained east of the intersection with Town Center
14 Boulevard.

15 (g) City Place may, at Developers discretion and
16 expense as further detailed below, be extended from Lake Avenue
17 to connect to Royal Palms Parkway.

18
19 Each phase is anticipated to last at least 5 years,
20 from the date of this Amendment, unless extended pursuant to
21 Section 380.06(19), *Florida Statutes*, or unless Developer
22 elects to accelerate the beginning date of a subsequent phase,
23 provided that all mitigation requirements for the particular
24 phase to be affected are met. The end date of a phase shall
25 not be affected by an acceleration of the beginning date.

1 Unused development rights from a particular phase
2 shall carry over into the next phase until buildout. Physical
3 development shall commence no later than January 1, 2005.

4 Although the Town Center DRI is phased through 2036,
5 buildout (disbursement of all development rights) may not occur
6 by that date. As a result, the DRI termination date and the
7 expiration date of this Order are both established as of April
8 12, 2036. On the DRI termination date, all un-assigned
9 development rights granted under this DRI DO shall revert back
10 to the City.

11 6. **Effective Date.** This Amended and Restated DRI DO shall
12 take effect upon approval by City Council.

13 7. **Monitoring Official.** The City Manager or designee
14 shall be the local official responsible for monitoring the Town
15 Center DRI for compliance by Developer with this Order.

16 8. **Downzoning Protection.** The Town Center DRI, as
17 approved in this Order, shall not be subject to downzoning or
18 reduction of land uses before December 31, 2032, unless
19 Developer consents to such change, or the City demonstrates
20 that substantial changes in the conditions underlying the
21 approval of this Order have occurred or that this Order was
22 based on substantially inaccurate information provided by
23 Developer or that the changes are essential to public health,
24 safety and welfare.

25 9. **Election Regarding Environmental Rules.** Pursuant to
Section 380.06(5)(c), *Florida Statutes*, Developer has elected

1 to be bound by the rules adopted pursuant to Chapter 373 and
2 403, *Florida Statutes*, in effect as of the date of this Order,
3 including, but not limited to, the provisions of Section
4 373.414(13), *Florida Statutes*. Such rules shall be applicable
5 to all applications for permits pursuant to those chapters
6 which are necessary for and consistent with the development
7 authorized in this Order, except that a later adopted rule
8 shall be applicable to an application if:

9 (a) the later adopted rule is determined by the
10 adopting agency to be essential to the public health, safety
11 and welfare, or

12 (b) the later adopted rule is being adopted pursuant
13 to Section 403.061(27), *Florida Statutes*; or

14 (c) the later adopted rule is being adopted pursuant
15 to a subsequently enacted statutorily mandated program; or

16 (d) the later adopted rule is mandated in order for
17 the state to maintain delegation of a federal program; or

18 (e) the later adopted rule is required by state or
19 federal law.

20 Further, to qualify for the benefits of this provision,
21 the application must be filed within 5 years from the issuance
22 of this Order and the permit shall not be effective for more
23 than 8 years from the effective date of this Order. Nothing
24 in this Section shall be construed to alter or change any
25 permitting agency's authority to approve permits or to
determine applicable criteria for longer periods of time.

1 10. **Level of Service Standards.**

2 (a) The Town Center DRI shall be required to meet all
3 level of service standards in the City's Comprehensive Plan
4 and all requirements of the City's concurrency management
5 system. However, pursuant to Section 163.3180(12), *Florida*
6 *Statutes*, if authorized by the City's Comprehensive Plan, the
7 Developer may satisfy the transportation concurrency
8 requirements by meeting the transportation conditions
9 contained in this Order. In addition, the onsite roadway system
10 within the Town Center DRI shall be exempt from the City's
11 Comprehensive Plan concurrency requirements, with the
12 exception of Town Center Boulevard (formerly Seminole Woods
13 Parkway extension).

14 (b) Because Developer completed the DRI's offsite
15 mitigation obligations, the City hereby agrees that all owners
16 within the current DRI Property are vested for water, sewer,
17 traffic, park, and all other public services concurrency for
18 the Present Entitlements identified in Section 3 herein. The
19 DRI has been vested with school concurrency for the first 2,500
20 residential dwellings only. After the initial 2,500 residential
21 units, school concurrency determination will be as required in
22 the LDC. Nothing contained herein shall be construed to waive
23 the City's right to collect all types of impact fees from each
24 property owner at the times delineated in the City's Unified
25 Land Development Code ("ULDC"). Further, while the Developer
has satisfied all of its parks and open space requirements,

1 all residential developments that occur within the DRI DO shall
2 provide for its residents' standard and customary amenities
3 that usually are associated with the type of residential
4 dwelling built. For example, if a single-family subdivision is
5 built, a typical amenity is a clubhouse. If a multi-family
6 community is built, a typical amenity is a swimming pool and
7 an on-site playground or dog park. These examples are intended
8 to be illustrative, non-comprehensive, and non-binding.
9 Rather, the examples are intended to provide a sampling of
10 standard and customary amenities typically associated with
11 different types of residential communities.

12 (c) Should Developer choose to convert land use, as
13 outlined more specifically in Section 4 herein, Developer shall
14 be required to assess the impact of the conversion on the
15 public water, sewer, and other public services which will be
16 impacted by such conversion (but not traffic as the conversion
17 method used is based on equivalent trips). After a review of
18 the impacts on the public services, and a finding that the
19 Level of Service standards will be met after the conversion,
20 the Declarant's conversion shall be vested. A finding of
21 vesting shall be issued, in writing, by the City Manager, or
22 other designee. If the Level of Service standard is not met,
23 such finding shall be issued by the City Manager, or other
24 designee.

25 (d) If the Developer does not assign or develop all
the Present Entitlements for which the Town Center DRI is

1 vested, the Declarant shall retain rights to develop the
2 remaining entitlements and retain its vested rights for such
3 within the DRI Property. Developer may, at Developer's sole
4 discretion, choose to apply the remaining entitlements to
5 future development on the DRI Property, or to properties that
6 the City approves for annexation into the Town Center DRI.

7
8 **11. Biennial Reporting.**² This requirement has been deleted
9 as the requirements contained in the DRI DO have either been
10 completed or have been specifically assigned to the respective
11 property owner to which the requirements are applicable.
12 Further, the Statutes and rules regulating Developments of
13 Regional Impacts no longer require the biennial reporting,
14 unless required by the City. However, based upon request made
15 by City, Developer shall report, biennially, the development
16 entitlements that have been assigned. This report shall
17 identify the entitlements assigned, to what track they have
18 been assigned, and if any conversion took place to create such
19 development rights. The first report shall be due January 31,
20 2022 for the period covering January 1, 2020 through December
21 31, 2021.

22
23 **12. Application for Proposed Changes.** Developer shall
24 submit simultaneously to the City, any applications for the
25

² See Exhibit "I" for the current status of this requirement. Exhibit "I" shall control over anything contrary contained herein.

1 proposed changes to the Town Center DRI. Developer, or
2 Developer's assigns, shall be the only party(ies), other than
3 the City, that may apply for changes to the Town Center DRI.

4 13. **Limitations of Approval.** The approvals provided in
5 this Order shall not be construed to obviate the duty of
6 Developer to comply with all other applicable local or state
7 permitting procedures.

8 14. **Impact Fee Credits.** Developer or its assignee shall
9 receive impact fee credits for impact fees that are paid in
10 connection with development within the Town Center DRI. The
11 impact fees and/or impact fee credits shall be impounded by
12 the City and used for projects contained within the Town Center
13 DRI.

14 15. **Notices.** Any and all notices required or allowed to
15 be given in accordance with this Order shall be mailed or
16 delivered as follows:

17 **To Developer:** Florida Landmark Communities, Inc. and
18 Palm Coast Holdings, Inc.
19 145 City Place, Suite 300
20 Palm Coast, Florida 32164
21 Attn: Jeff Douglas
22 Telephone: (386) 446-6226
23
24
25

1 **With a copy to:** Chiumento Law
2 145 City Place, Suite 301
3 Palm Coast, Florida 32164
4 Attn: Michael D. Chiumento, III
5 Telephone: (386) 445-8900

6 **To the City:** City of Palm Coast
7 160 Lake Avenue
8 Palm Coast, Florida 32164
9 Attn: City Manager
10 Telephone: (386) 447-4255

11 **With a Copy to:** Garganese Weiss D'Agresta & Salzman
12 111 N. Orange Avenue, Suite 2000
13 Orlando, Florida 32801
14 Attn: William E. Reischmann, Jr.
15 Telephone: (407) 425-9566

16 16. **Severability.** In the event any stipulation, or any
17 portion of any Section of this Order shall be declared invalid,
18 illegal, or unconstitutional by a court of competent
19 jurisdiction, such adjudication shall in no manner affect the
20 approval granted herein, and other stipulations, or the other
21 provisions of the affected stipulation, which shall remain in
22 full force and effect as if the stipulation or portion or
23 Section thereof so declared invalid, illegal, or
24 unconstitutional, were not originally a part hereof, provided,
25 however, that if the result of the severance of the stipulation

1 or portion or Section results in harm to the public health,
2 safety or welfare; results in a public harm; or substantially
3 negates a public benefit or imposes a public burden; then the
4 provisions of this Order shall be deemed not severable and this
5 Order shall be reformulated and reconstituted by the City to
6 address said matters.

7 **17. Rendition of Order to DCA.** Consistent with changes in
8 Florida Statutes regulating DRIs, rendition of this DO to DCA
9 is not required. School concurrency will be determined based
10 on Part II, Paragraph 10.

11 **18. Annexation of Additional Lands.**

12 The Developer may amend the DRI DO to annex additional
13 adjacent lands into the Town Center DRI ("Annexed Lands"). Any
14 annexation shall be made through the DRI DO amendment process.
15 School concurrency will be determined based on Part II,
16 Paragraph 10(b).

17 **19. Other General Conditions.**

18 (a) Notwithstanding any provision contained in this
19 Order to the contrary, the City shall have no financial
20 responsibility to contribute to or participate in the funding,
21 design, engineering, permitting, and/or construction of
22 improvements to State roads, County roads, or roads constructed
23 or to be constructed within the DRI Property.

24 (b) Development of the DRI Property based upon this
25 Order shall comply with all applicable Federal, State and local

1 laws, codes, ordinances, rules and regulations which are hereby
2 incorporated herein by this reference.

3 (c) The Developer acknowledges that the requirements
4 and conditions of this Order as set forth herein result from
5 the impacts of development of the DRI Property on public
6 facilities and systems, are reasonably attributable to the
7 development of the DRI Property, are based upon comparable
8 requirements and commitments that the City or other agencies
9 of government would reasonably expect to require a developer
10 to expend or provide, and are consistent with sound and
11 generally accepted land use planning and development practices
12 and principles.

13 (d) This Order and its terms and conditions and all
14 of the promises, commitments, obligations, covenants,
15 liabilities, and responsibilities of the Developer touch and
16 concern the DRI Property and shall continue to run with, follow
17 and burden the DRI Property. To this end, the said promises,
18 commitments, obligations, covenants, liabilities, and
19 responsibilities shall inure to the benefit of the City and
20 shall operate as a perpetual burden and servitude upon the DRI
21 Property unless released by the City by means of an appropriate
22 recordable instrument approved and executed by the City. The
23 said promises, commitments, obligations, covenants,
24 liabilities, and responsibilities herein incurred by the
25 Developer shall be binding upon the Developer and the

Developer's heirs, transferees, assigns and successors in interest (specifically including, but not by way of limitation, building permit applicants and any person or entity developing any part of the DRI Property) and shall inure to the benefit of the City and its assigns and successors in interest as to all parts and each part of the DRI Property. The Developer shall pay any and all costs of recording instruments in the public records of the County.

In addition to the foregoing general conditions, the following specific conditions are included in this Order to mitigate identified regional impacts.

PART III

SPECIFIC CONDITIONS TO THIS DEVELOPMENT ORDER³

1. **Vegetation and Wildlife.** Within 1 calendar year from the effective date of this Order the Developer shall make an unencumbered contribution of Eight Thousand Six Hundred and Sixty-Six and 00/100 Dollars (\$8,666.00) to the Florida Fish and Wildlife Conservation Commission in favor of Land Acquisition Trust Fund. No construction shall commence within any gopher tortoise habitat on the DRI Property until the Developer has obtained the necessary gopher tortoise permit from the Florida Fish and Wildlife Conservation Commission and complies with all permit conditions. In the absence of a permit,

³ The requirements contained in this Part III are part of the original 2003 DRI DO. The current status of these requirements, as amended, are attached as Exhibit "I" and control over anything contrary contained in this DRI DO.

1 development related activities on the DRI Property shall not
2 result in the harming, pursuit, or harassment of wildlife
3 species classified as endangered, threatened, or a species of
4 special concern by either the State or Federal governments in
5 contravention of applicable State and Federal laws, rules or
6 regulations. Should listed species be determine to reside on,
7 or otherwise be significantly dependent upon the DRI Property,
8 the Developer shall cease all development activities which
9 might negatively affect that individual or population. The DRI
10 Property shall be developed in full compliance with all
11 applicable laws, rules and regulations. The Developer shall
12 provide proper protection to the satisfaction of all agencies
13 with jurisdiction over the matter.

14 **2. Wetlands.**

15 (a) A minimum of 500 acres of wetlands on the DRI
16 Property shall be conserved and/or enhanced. Enhancement
17 activities, including but not limited to, rehydration, wetland
18 and upland vegetative plantings and creation of open water
19 habitat, shall occur in accordance with the requirements and
20 conditions set forth in any and all applicable permits. All
21 conserved and/or enhanced wetlands shall be placed under a
22 permanent conservation easement in accordance with the
23 provisions of Section 704.06(1) and (11), *Florida Statutes* and
24 no development activities shall be allowed, as defined in
25 Section 380.04, *Florida Statutes*, unless such activity is

1 specifically identified in the conservation easement language
2 which is approved by the City, St. John River Water Management
3 District ("SJRWMD") and the U.S. Corps of Engineers ("USACE").
4 The conservation easement shall be dedicated to SJRWMD and the
5 City, free and clear of any and all liens and encumbrances and
6 not subordinate to any encumbrances, including, but not limited
7 to, the rights of mortgagees and any lenders. The conservation
8 easement shall grant a third party interest to USACE, with full
9 enforcement rights, including all remedies available under law,
10 and providing, in the event USACE prevails in an enforcement
11 action, for an award of attorney's fees, litigation fees and
12 costs, at any level of enforcement, regardless of whether or
13 not litigation is necessitated.

14 (b) The Developer shall establish minimum upland
15 buffers of 15-feet with an average of 25-foot buffers around
16 all preserved and/or enhanced wetlands. Impervious development,
17 other than permitted road crossings and incidental stormwater
18 management structures shall be prohibited within this buffer,
19 provided, however, that the construction of boardwalks,
20 walkways, docks, and similar compatible amenities may be
21 permitted, subject to the regulations of applicable regulatory
22 agencies.

23 (c) Mitigation for wetland impacts shall be
24 determined by SJRWMD and/or USACE, as required.
25

1 (d) Piezometers and staff gauges shall be used to
2 monitor wetland hydrology. Details of the wetland monitoring
3 program shall be determined by SJRWMD/USACE and SJRWMD/USACE
4 shall monitor the results of the program to determine its
5 success and completion.

6 (e) The Developer shall install a minimum of 36-inch
7 culverts at all wetland road crossings to preserve wetland
8 functions and provide small wildlife crossings.

9 **3. Groundwater.**

10 (a) Use of Floridan Aquifer wells, that do not fall
11 within the SJRWMD's specific consumptive use permitting
12 requirements (less than 6 inches in diameter), are prohibited
13 on the DRI Property. This prohibition shall act as a deed
14 restriction relative to the DRI Property.

15 (b) Any abandoned wells discovered prior to or during
16 development shall be properly plugged and abandoned in
17 accordance with SJRWMD's rules and regulations. The Developer
18 shall be responsible for all Floridan Aquifer wells that are
19 discovered before and during the development of the Town Center
20 DRI. To the extent available, the following information shall
21 be provided to the City for each well:

- 22 (i) owner or tenant using the well;
- 23 (ii) location of the well;
- 24 (iii) well contractor who constructed the well;
- 25 (iv) date of well construction;

- 1 (v) use of the well;
- 2 (vi) status of the well (is it being used
- 3 currently or not?);
- 4 (vii) well-casing diameter and total depth of the
- 5 well; and
- 6 (viii) does the well free flow or does it require
- 7 pumping to remove the water from the ground?

8 4. **Surface Water.** A Limited Surface Water Quality

9 Monitoring Plan ("SWQMP") shall be developed for Town Center

10 DRI and shall be approved by the Northeastern District of the

11 Florida Department of Environmental Protection ("FDEP") and

12 shall include one site as approved by FDEP. The SWQMP shall be

13 implemented on site prior to initiating construction activities

14 to ensure adequate data collection for establishment of

15 background conditions. All background data shall be submitted

16 to the Northeastern District of the FDEP prior to initiation of

17 any construction activities. The development of the plan and

18 parameters to be sampled shall be developed in accordance with

19 FDEP criteria. Monitoring data shall be summarized in each

20 Monitoring Report.

21 5. **Floodplains.** No development shall occur within the 100-

22 year floodplain as determined on the Flood Insurance Rate Maps,

23 other than canal crossings. All canal crossings shall be

24 elevated or flood-proofed to the height that is at a minimum of

25

1 two feet above the base flood elevation of the 100-year
2 floodplain NGVD-1929.

3 **6. Water Supply.**

4 (a) Development of the Town Center DRI shall occur
5 concurrent with a provision of adequate central potable water
6 service meeting the adopted level of service in the City's
7 Comprehensive Plan. Sufficient capacity exists to accommodate
8 Phase 1 development of the Town Center DRI; no building permit
9 shall be issued for any subsequent phase of the Town Center DRI
10 until sufficient capacity exists from the water utility to
11 provide potable water meeting the adopted level of service in
12 the City's Comprehensive Plan.

13 (b) Use of Floridan Aquifer wells are hereby
14 prohibited by this covenant and deed restriction for the purpose
15 of irrigation, once-through-cooling, surface water level
16 maintenance and decorative uses.

17 (c) Irrigation shall use stormwater, and when
18 available to the site, reclaimed water shall serve as a backup
19 source. No potable water shall be used for irrigation, except
20 on a temporary basis until a stormwater or reclaimed water
21 source is available or if approved by the City.

22 (d) Water conservation strategies, including
23 Xeriscape landscape techniques and low-flow plumbing fixtures
24 shall be incorporated into the construction, operation and
25 maintenance phases of the Town Center DRI, and shall be included

1 in the covenants and deed restrictions as approved by the City.
2 The conservation strategies shall include, but are not limited
3 to, the following conditions:

4 (i) 50% of planted vegetation, by aerial extent,
5 shall consist of native, drought tolerant or Xeriscape
6 vegetation in all landscaped areas. Landscaped areas include
7 turf, planted vegetation and mulch, however, they do not include
8 hardscaped areas.

9 (ii) Developer shall include information on
10 Xeriscape and/or native vegetation and/or drought-tolerant
11 vegetation (SJRWMD Xeriscape Plant Guide), water conservation
12 guides and IFAS's Xeriscape plant guides and IFAS Cooperative
13 Extension Services' "Florida Yards and Neighborhoods"
14 materials) in design guidelines for all developers and residents
15 in Town Center DRI.

16 (iii) At least 70% slow-release granular or
17 organic fertilizers shall be utilized throughout all landscaped
18 common areas within the Town Center DRI.

19 (iv) Use of private irrigation wells and use of
20 potable water for irrigation are prohibited unless approved by
21 the City.

22 (v) Decorative and ornamental fountains shall
23 use reclaimed water, stormwater, or potable water, provided a
24 re-circulation treatment system is installed.
25

1 (vi) The Developer shall install efficient water
2 systems to minimize and conserve water consumption.

3 7. **Wastewater Management.** Development within Town Center
4 DRI shall occur concurrent with the provision of adequate
5 central sewer service meeting the adopted level of service of
6 the City's Comprehensive Plan.

7 (a) Sufficient capacity exists to accommodate Phase 1
8 development; no building permits shall be issued for any
9 subsequent phase of Town Center DRI until sufficient capacity
10 exists from the sewer utility to provide wastewater treatment
11 service meeting the adopted level of service of the City's
12 Comprehensive Plan. As also provided for in Subsection (h),
13 Section 11 under PART II above, each Monitoring Report shall
14 include an analysis demonstrating that there will be sufficient
15 capacity of wastewater facilities serving Town Center DRI for
16 the anticipated development for the insuring reporting period.

17 (b) Septic tanks are prohibited within the Town Center
18 DRI. Temporary surface tanks may be used to provide sewage
19 service to construction and marketing trailers until central
20 sewer lines are installed.

21 8. **Stormwater Management.**

22 (a) At a minimum, 20% of wet detention ponds shall
23 have a 30% littoral zone measured relative to pond surface at
24 normal water elevation.
25

1 (b) Developer shall use porous parking materials such
2 as grasspave, gravelpave, turfstone, pavers or other innovative
3 methods, including reduced parking and increased landscaping,
4 to decrease impervious surfaces on all remote, intermittent, or
5 overflow parking. Developer shall strive for a 25% reduction
6 in required impervious parking surfaces as a significant effort
7 to reduce development related runoff associated with impervious
8 parking surfaces.

9 (c) Outfall control structures shall regulate post-
10 development flows such that pre-development levels are not
11 exceeded.

12 (d) A stormwater pollution prevention plan ("SWPPP")
13 shall be attached to and incorporated into the construction and
14 permit documents for all projects constructed within the Town
15 Center DRI. The SWPPP shall be similar to the SWPPP provided
16 in **Exhibit "F"** hereto, but may be modified to accommodate the
17 specific construction project and site. However, all SWPPP's
18 shall include Paragraph 1, Preconstruction Activities and
19 Paragraph 3, Maintenance/ Inspection Procedures, as provided
20 for in **Exhibit "F"** hereto.

21 In addition to the requirements on individual
22 property owners/contractors outlined in the SWPPP, the
23 Developer, Community Development District or property owners
24 association shall monitor compliance with the SWPPP goals. The
25 compliance monitoring shall consist of the following:

1 (i) An individual shall be identified to monitor
2 compliance with the SWPPP. The SJRWMD and FDEP shall be
3 notified as to the individual who is responsible for monitoring
4 the SWPPP within the Town Center DRI. At a minimum, this
5 responsible individual shall:

6 • Be trained in erosion control
7 implementation techniques.

8 • Setup and oversee implementation of
9 SWPPP programs throughout the build out of Town Center DRI.

10 • Ensure that if the regular site
11 inspector is unable to attend pre-construction conferences, this
12 information is communicated to the inspector, including site
13 specific Best Management Practices, permit requirements and
14 erosion control implementation training.

15 • Meet with trained site superintendent
16 monthly, upon commencement of site construction, to ensure
17 implementation of SWPPP and resolve problems. Frequency of site
18 visits may be decreased if there is no indication of erosion
19 control problems and previous visits show a history of
20 compliance with the SWPPP.

21 • Submit a brief narrative update to the
22 City, FDEP and SJRWMD quarterly on activities and progress or
23 be available to meet with FDEP for quarterly site visits, unless
24 FDEP deems the visit unnecessary. Upon proper identification,
25

1 City, SJRWMD and FDEP personnel shall be granted access to the
2 DRI Property.

3 (ii) Attendance at all pre-construction
4 conferences.

5 (iii) Conduct homeowner's stormwater training
6 programs.

7 (iv) Conduct contractor's stormwater training
8 programs.

9 (v) Conduct periodic inspections of
10 construction sites.

11 (vi) Notifications to SJRWMD, FDEP and the City
12 of observed potential permit violations within 24 hours and
13 serve as agency liaison.

14 (vii) Annual reporting summaries of items (i)
15 through (vi) above.

16 (e) The SWPPP shall be implemented upon initiation of
17 construction activities. 3 years after initiation of
18 construction, the FDEP, SJRWMD and the City shall have the
19 opportunity to review the program. If it is found to be
20 unsatisfactory, the agencies shall evaluate alternatives with
21 the Developer including mandating program modification options.

22 (f) FDEP, SJRWMD and the City shall be allowed access
23 to the DRI Property to sample water quality.

24 (g) The following shall trigger the need for some form
25 of water quality monitoring program to be developed at such time

1 that FDEP or the City determines one of the following conditions
2 have been met:

3 (i) The conditions of the SWPPP monitoring
4 program are not met;

5 (ii) Piezometers and staff gauges show negative
6 changes in wetland hydrology that cannot be attributed to
7 natural causes;

8 (iii) The FDEP or the City receives substantiated
9 concerns about water quality problems caused by the Developer;

10 (iv) Sampling results of FDEP or the City shows
11 a water quality violation per requirements established in
12 Chapter 62-302 *Florida Administrative Code* or other established
13 regulatory water quality standard; or

14 (v) If discharges cause hydrologic alterations,
15 such as stream canalization; other such alterations that would
16 warrant sampling or the FDEP or the City has reason to suspect
17 water quality violation associated with the development of Town
18 Center DRI.

19 **9. Solid Waste.**

20 (a) Development of Town Center DRI shall occur
21 concurrent the provisions of adequate solid waste service
22 meeting the adopted level of service in the City's Comprehensive
23 Plan.

24 (b) Development within the Town Center DRI or
25 individual phases shall not occur until adequate permitted

1 capacity is verified from the identified service provider or a
2 substitute. As also provided for in Subsection (h), Section 11,
3 under PART II above, each Monitoring Report shall include an
4 analysis demonstrating that there will be sufficient capacity
5 of solid waste facilities serving Town Center DRI for
6 anticipated development for the ensuing reporting period.

7 (c) All users, generators and operators within the DRI
8 Property shall be required to adhere to all Federal, State and
9 local laws, codes, ordinances, rules and regulations with
10 respect to the use, management and disposal of hazardous waste.

11 **10. Donation of Utility Facilities.**

12 All water and sewer lines and related facilities that
13 are installed or constructed on the DRI Property (collectively
14 the "Utility Facilities") shall be donated to the City, without
15 charge, upon the City's request. In the event the Utility
16 Facilities are dedicated or title thereto is otherwise
17 transferred to the CDD, as planned by the Developer, the
18 provisions hereof shall run with the title and the CDD shall be
19 obligated to donate the Utility Facilities to the City, without
20 charge, upon the City's request.

21 **11. Public Facility site and Town Core Public Land.**

22 (a) Developer shall convey to the City title to the
23 site that is labeled Public Facility Site on the sketch that
24 is attached as **Exhibit "E"** hereto (the "Public Facility Site").
25 The City shall take title to the Public Facility Site subject

1 to a restriction limiting the uses thereof to the following:
2 fire station; police station; emergency management services;
3 parking for public vehicles and equipment; and any other public
4 use approved by the Developer.

5 Developer shall include the Public Facility Site, as
6 a separate platted lot, in the plat that will also include Town
7 Center Boulevard, which Developer shall submit to the City
8 within 12 months following the effective date of this Order
9 (the "Parkway Plat"). Seller shall convey to the City title
10 to the Public Facility Site within 90 days following the date
11 the Parkway Plat is recorded.
12

13 (b) In addition to the Public Facility Site, at the
14 option of the City, exercisable by the City at any time within
15 6 months following the effective date of this Order, the City
16 may agree to convey to Developer title to the land that is
17 labeled City's Exchange Land on the sketch that is attached as
18 **Exhibit "E"** hereto (the "City's Exchange Land") in exchange for
19 the 3 sites that are labeled on the sketch that is attached as
20 **Exhibit "E"** hereto, and referred to herein, as "Site A,"
21 "Site B" and "Site C" (collectively the "Town Core Public
22 Land").
23

24 (c) If the City exercises the option provided for in
25 (b) above, the City shall obtain appraisals of the current
market value of the City's Exchange Land ("Appraised Value of

1 City's Land") and the Town Core Public Land ("Appraised Value
2 of Public Land"). The Appraised Value of the Public Land shall
3 be specifically allocated among Site "A", Site "B" and Site
4 "C". If the Appraised Value of the City's Land exceeds the
5 Appraised Value of the Public Land, upon closing of the
6 exchange, Developer shall pay the City the difference in cash.
7 If the Appraised Value of the Public Land exceeds the Appraised
8 Value of the City's Land, the difference shall be regarded as
9 a donation by the Developer to the City for public purposes.
10 Appraisals shall be accomplished by an appraiser of the City's
11 choice who is a member of the Appraisal Institute (MAI) or the
12 American Society of Appraisers (ASA).
13

14 (d) The City shall take title to the Town Core Public
15 Land subject to the following:

16 • Site "A" - A restriction limiting the uses
17 to City governmental buildings ("Site "A" Primary Allowable
18 Use"), a library, a museum, parks and public places for outdoor
19 entertainment and festivals; and an assignable drainage
20 easement to and over the lake that will be excavated within the
21 permitted areas within Site "A" to be used consistent with the
22 overall permitted stormwater management plan for the Town
23 Center DRI; and a shared parking covenant which provides that
24 any parking area that is constructed on Site "A" shall be
25 available to the public, except a reasonable number of parking

1 spaces may be reserved for City employees and visitors at City
2 offices and all of the parking may be reserved, as needed and
3 as permitted by the City, for events that takes place on Site
4 "A".

5 • Site "B" - A restriction limiting the uses
6 to a youth center, recreational facilities, a library and
7 educational facilities (each a "Site "B" Allowable Use").

8 • Site "C" - A restriction limiting the use to
9 a cultural arts and/or performing arts center (Site "C" Primary
10 Use") that may include educational facilities, galleries, a
11 museum, a library and parks, with areas for outdoor
12 entertainment and festivals; and a shared parking covenant
13 which provides that any parking area that is constructed on
14 Site "C" shall be available to the public, except up to 10% of
15 the available parking spaces may be reserved for employees who
16 work at Site "C" and visitors to Site "C" and all of the parking
17 may reserved, as needed, for events that take place on Site
18 "C."
19

20 (e) In addition to the restrictions provided for
21 in (d) above, the City shall take title to the Town Core Public
22 Land subject to a reverter on the following terms:

23 • Title to Site "A" may, at Developer's
24 election, revert to Developer if construction of the Site A
25

1 Primary Allowable Use is not commenced thereon within 4 years
2 from the date the City takes title to Site "A".

3 • Title to Site "B" may, at Developer's
4 election, revert to Developer in the event construction of a
5 Site "B" Allowable Use is not commenced thereon within 6 years
6 from the date the City takes title to Site "B".

7 • Title to Site "C" may, at Developer's
8 election, shall revert to Developer in the event that
9 construction of the Site "C" Primary Allowable Use is not
10 commenced thereon within 10 years from the date the City takes
11 title to Site "C".
12

13 • Title to Site "A", and/or Site "B" and/or
14 Site "C" shall revert to the Developer, as to the particular
15 site, in the event that construction, as provided herein, as
16 to the particular site, is commenced thereon within the time
17 limit required but a minimum of 5,000 square feet of floor area
18 in each of the 3 sites is not completed within 2 years following
19 commencement as a result of abandonment of the construction
20 project by the City or other public or quasi public entity that
21 is building the facility on the site. Election by Developer
22 to cause the reversion must occur within 180 days of the date
23 that said right to reversion springs into effect.
24

25 In the event title to Site "A" and/or
Site "B" and/or Site "C" reverts to Developer, title thereto

1 shall not vest in Developer until Developer pays the City the
2 appraised value thereof, in the amount shown for the site in
3 the Appraised Value of Public Land for each particular site
4 that is the subject of the reversion. Payment must be made
5 within 90 days of the election of the reversion by the
6 Developer.

7 (f) The Developer shall take title to the City's
8 Exchange Land subject to a deed restriction limiting uses to
9 attached or detached residential dwelling units and any medical
10 and/or recreational facilities that are ancillary to the
11 primary residential use. The deed restriction shall be an
12 independent right of the City and is not a land development
13 regulation restriction.
14

15 (g) If the City exercises its option to acquire the
16 Town Core Public Land, within 6 months from the date of
17 exercise, the Developer shall include Site "A", Site "B" and
18 Site "C", as separate platted lots, in a plat which includes
19 the entire urban core area of the Town Center DRI (the "Urban
20 Core Plat"). Developer shall convey to the City title to the
21 Town Core Public Land and the City shall convey to the Developer
22 title to the City's Exchange Land within 90 days following the
23 date the Urban Core Plat is recorded (the "Property Exchange").
24

25 (h) The City shall be responsible for any site
preparation costs, including fill costs, for the Public

1 Facility Site and the Developer shall be responsible for all
2 site preparation costs, including fill costs, for the City's
3 Exchange Land and the Town Core Public Land. If it has not
4 already done so, within 6 months following the Property
5 Exchange, the Developer shall construct streets and extend
6 utility services to Site "A", Site "B" and Site "C" and clear
7 and fill Site "A", Site "B" and Site "C" to or above the 25
8 year storm elevation so buildings can be constructed thereon
9 without further site preparation costs, other than fill for
10 building pads.
11

12 (i) All costs associated with the conveyance of the
13 Public Facility Site and the Town Core Public Land to the City
14 and conveyance of the City's Exchange Land to the Developer
15 shall be paid by the Developer. The Developer shall also ensure
16 that the Public Facility Site and the City's Exchange Land are
17 conveyed without lien, encumbrance, or special assessment, and
18 that marketable title shall vest in the City.

19 (j) If the Developer acquires title to the City's
20 Exchange Land and the City's Exchange Land is designated on the
21 City's Comprehensive Land Use Plan as DRI or other
22 classification that is consistent with Developer's plan to use
23 the land for multi-family residential purposes, then, in that
24 event, the DRI Property shall include the City's Exchange Land
25 and the Master Plan shall be automatically modified to include
the City's Exchange Land, provided the addition of the City's

Exchange Land to the Town Center DRI shall not increase the permitted land use totals from that shown in Section 3, under Part II above.

12. **Transportation.**

(a) Notwithstanding the phasing schedule that is set forth in Section 5, under Part I above, for the purpose of phasing and transportation recommendations, Town Center DRI is divided into three phases, based upon actual trip counts, as shown on the following schedule:

	Build-Out	Daily Trips	PM Peak	Cumulative	
				Daily Trips	PM Peak
Phase 1	2017	56,565	5,226	56,565	5,226
Phase 2	2022	56,742	5,218	113,307	10,444
Phase 3	2027	42,953	4,048	156,260	14,492

(b) The Developer shall provide all right-of-way necessary to construct the internal roadway network and shall be responsible for constructing the internal roadway network.

(c) The Developer shall be responsible for the construction of all turn lanes (as required) providing direct access to Town Center DRI as well as the conveyance of additional necessary right-of-way, including but not limited to, right-of-way necessary to extend Royal Palm Parkway to Old Kings Road as a 4-lane road, which shall be conveyed without lien or

encumbrance with marketable title vesting in the appropriate jurisdiction.

(d) During development of Phase 1, the Developer shall be responsible for the construction of Town Center Boulevard from SR-100 to Old Kings Road and Market Avenue from Belle Terre Parkway to Central Avenue, including all intersection improvements, turn lanes, and signalization when warranted. Trips generated from Town Center DRI shall not exceed 550 actual PM peak hour trips before construction of Town Center Boulevard is completed. All additional necessary right-of-way as provided for in this Order shall be conveyed by the Developer (or the CDD) to the City without lien or encumbrance with marketable title vesting in the grantee.

(e) Pursuant to Section 163.3180(12), Florida Statutes, the Developer shall mitigate offsite transportation impacts for Town Center DRI, equal to 14,492 actual PM peak hour trips, as measured and reported in the Monitoring Reports, as shown in the following schedule:

Phase	Developer's Prop. Share (See Exhibit "G" hereto)	Mitigation Payment/ Project	Mitigation Schedule	Mitigation Credit*	Excess Credit Applied to Next Phase*
Phase 1	\$3,388,578	(1) \$180,000 cash contribution to the City for Palm Coast Parkway corridor study.	Within 90 days following the effectiveness of this Order.	\$180,000	-
		(2) \$400,000 cash contribution to FDOT to redesign the new I-95	Within 90 days following the effectiveness of this Order.	\$400,000	-

Phase	Developer's Prop. Share (See Exhibit "G" hereto)	Mitigation Payment/ Project	Mitigation Schedule	Mitigation Credit*	Excess Credit Applied to Next Phase*
		structure over SR-100.	On or before June 1, 2005.	\$3,250,000	-
		(3) \$3,250,000 cash contribution to FDOT to construct the new I-95 structure over SR-100.	Prior to 5,226 actual PM peak hour trips.	\$525,000	-
		(4) Construct 2-lane connection of Royal Palm Parkway to Town Center Boulevard (.75 miles)		\$1,047,000	
		(5) Old Kings Road widening from State Road 100 to Town Center Blvd.	Prior to 5,226 actual PM peak hour trips	TOTAL \$5,402,000	\$2,013,422
Phase 2	\$3,523,607 - \$2,013,422 (credit from Phase 1) = \$1,510,185	(1) Participation in South Old Kings Road - Special Assessment district to add 2-lanes to Old Kings Road from Palm Coast Pkwy. to Lehigh Canal (intersection with Royal Palm Parkway. ext.), incl. 4-lane canal crossing with sidewalk. (2) Total impact fees paid to the City after December 31, 2018 (excluding from parcels in Special Assessment District) shall be used to fund regionally significant road projects as mutually identified by the City and the Developer. Such project may include but are not limited to any one or combination of the Roadway/Intersectio	Prior to 5,226 actual PM peak hour trips.	\$6,750,000	\$5,239,815

Phase	Developer's Prop. Share (See Exhibit "G" hereto)	Mitigation Payment/ Project	Mitigation Schedule	Mitigation Credit*	Excess Credit Applied to Next Phase*
		n improvements listed for Phase 3 on Exhibit "G" hereto, the cost of which is shown on Exhibit "G"			
Phase 3	\$7,562,214 - \$5,239,815 credit from Phase 2 = \$2,322,399	Any one or combination of the Roadway/Intersection Improvements listed for Phase 3 on Exhibit "G" hereto, the cost of which, as shown on Exhibit "G" equals or exceeds Developer's Proportionate Share for Phase 3, less credit from Phase 2. -OR- Prior to 8,131 net external trips, Developer shall prepare a detailed monitoring and modeling report (the M&M Report). Based on the M&M Report, the City shall identify project(s) required for mitigation.	Prior to 10,444 net external trips -OR- As needed to mitigate transportation impacts from Town Center DRI, as determined from the M&M Report.	\$2,322,399	
Total Phases 1 - 3	\$14,474,399	-	-	\$14,474,399	-

* The dollar figures expressed herein are 2002 dollars. Phase 2 & 3 projects costs or Phase 2 & 3 funds shall be inflated consistent with the provisions of this agreement at a rate of 1% per annum

Developer may construct all or a portion of the above projects through the CDD, and/or a special taxing district

1 that may include land currently owned by Developer, other than
2 the DRI Property.

3 The Town Center DRI shall not commence beyond Phase 2,
4 equal to 10,444 actual PM peak hour trips, as measured and
5 reported in the Monitoring Reports, until the Developer has
6 completed the Phase 3 mitigation or prepared the M&M Report. If
7 Developer elects to prepare the M&M Report, preparation of the
8 M&M Report shall be preceded by a transportation methodology
9 meeting that includes the City. The transportation methodology
10 shall be approved by the City. The M&M Report shall then be
11 prepared in a manner consistent with the methodology. The actual
12 levels of service shall be as measured in the M&M Report. The
13 M&M Report shall identify those land uses scheduled for Phase 3
14 and estimate the trip generation, distribution and assignment
15 of trips for Phase 3. The M&M Report that allows the Developer
16 to proceed with Phase 3, or beyond 10,444 actual PM peak hour
17 trips, shall demonstrate that roadways will operate at
18 acceptable standards through build-out of Town Center DRI or
19 identify improvements necessary for build-out. The M&M Report
20 shall further identify the point in Phase 3 at which time the
21 identified improvements are necessary.

22
23 All roadway construction costs in this Agreement are
24 stated in 2002 dollar costs and construction estimates are
25 calculated in 2002 costs. Therefore, the cost of Phase 3

1 projects, built by Developer or its successors and used to
2 offset mitigation amounts, shall be estimated in 2002 costs as
3 provided for in the DRI documents. In the event the Developer
4 chooses to pay the City for Phase 3 mitigation in lieu of
5 building roadways, the amount of the payment shall reflect
6 compound inflation at a rate of 4% per year from 2002 to the
7 year the payment is made to the City.

8
9 In addition to the above provisions, the Developer's
10 proportionate share of the cost of roadway improvements needed
11 for Town Center DRI, equal to 14,492 actual PM peak hour trips,
12 shall be offset, in whole or in part, through impact fee credits,
13 as provided for in Section 14, under Part II above. As of the
14 date of recording this DRI DO, the Developer has completed all
15 off-site mitigation requirements to satisfy its off-site
16 mitigation requirements under the DRI DO.

17 (f) Prior to the traffic from the Town Center DRI
18 exceeding 10,444 PM peak hour trips, as reported in the
19 Monitoring Reports, the Developer shall install or cause to be
20 installed a box culvert within the Royal Palm Waterway that will
21 enable Royal Palm Parkway extension to be 4-laned to Old Kings
22 Road without requiring modifications to the I-95 overpass under
23 which the Royal Palm Parkway extension will be located.
24 Alternatively, consistent with Section 12(e) **Phase 2&3**
25 **Mitigation Payment/Project**, impact fees generated from the Town

1 Center DRI may fund the box culvert or other regionally
2 significant road project(s) as mutually agreed to and identified
3 by the City and the Developer.

4 (g) Notwithstanding anything contained herein to the
5 contrary, Developer may, at Developer's sole option and desire,
6 realign Town Center Boulevard and Royal Palms so long as the
7 relocation of the roadways are shown to have no adverse impacts
8 on the roadway network. Such showing may be demonstrated by a
9 traffic impact letter from a traffic engineer. The realignment
10 may be completed at Developer's sole cost and expense.

12 **13. Air Quality.**

13 (a) The following fugitive dust control measures shall
14 be undertaken during all construction activities throughout
15 build out of Town Center DRI and may be monitored by FDEP and
16 the City:

17 (i) Contractors shall moisten soil or use
18 resinous adhesives on barren areas, which shall include at a
19 minimum, all roads, parking lots or material stockpiles;

20 (ii) Contractors shall use mulch, liquid resinous
21 adhesives with hydro-seeding or sod on all landscaped areas;

22 (iii) Contractors shall remove soil and other
23 dust-generating material deposited on paved streets by vehicular
24 traffic, earth moving equipment or soil erosion;

1 (iv) Contractors shall utilize best operating
2 practices in conjunction with any burning resulting from land
3 clearing, which may include use of air curtain incinerators.

4 (b) Tree planting shall be placed along the internal
5 road rights-of-way and all parking areas to increase turbulence
6 and atmospheric disturbance minimizing ground level
7 concentrations of vehicular emissions.

8 **14. Hurricane Evacuation.**

9 (a) Access roads and parking lots for all hotels shall
10 be constructed above the base flood elevations.

11 (b) All residents of Town Center DRI shall be provided
12 with information regarding the vulnerability of Town Center DRI
13 to the impacts of hurricanes. This information shall take the
14 form of educational materials designed to increase evacuation
15 participation.

16 **15. Affordable Housing.**

17 An appropriate mix of residential development has been
18 proposed by the Developer.

19 A minimum of five (5%) of dwelling units within the DRI
20 Property shall be reserved for workforce housing. At the time
21 of this Amended and Restated DRI DO, Developer has met this
22 requirement for the entire project. As recommended by the PLDRB
23 at their May 2022 public hearing, an additional five (5)
24 workforce housing units will be provided within the Town Center
25 DRI.

1 **16. Police and Fire Protection.**

2 (a) Prior to the construction of any structure
3 exceeding 35 feet in height, the Developer shall contribute fire
4 equipment capable of reaching to the height of the structure to
5 be constructed. Developer shall be eligible for fire impact fee
6 credits as provided for in the impact fee ordinance in effect
7 at the time the credit is requested or otherwise agreed to by
8 the City.

9 (b) Before commencement of each phase of Town Center
10 DRI, a summary of impact fees shall be reviewed against the
11 estimated cost for fire, EMS and police services needed. If
12 fees paid are not sufficient to address identified needs,
13 Developer shall pay for the fair share of the unmet costs. The
14 costs for fire shall be based upon the development square footage
15 within the service delivery area. The cost of police shall be
16 based upon population and square footage of development within
17 the service area and an officer ratio of 1 officer and support
18 staff for each 1,300 residents.

19 **17. Recreation and Open Space**

20 (a) The Developer shall meet the adopted level of
21 service for recreation and open space as defined in the City's
22 Comprehensive Plan. The level of service standards shall be met
23 as follows: donating right-of-way for and constructing an
24 extensive bikepath system that will connect to the planned
25 rails-to-trails bikepath; setting aside large areas of open

1 space, including lake areas that will be available for active
2 and passive recreational opportunities; and providing areas for
3 public gatherings. In addition, developers of residential
4 parcels within Town Center will provide recreational facilities
5 for their residents and recreation impact fees will be paid as
6 Town Center builds out.

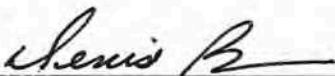
7 (b) The Developer shall institute adequate engineering
8 and institutional controls to mitigate for any development
9 activities or public access areas that connect to the Lehigh
10 Trail to mitigate for existing environmental contamination. The
11 Developer shall coordinate such measures with the Northeastern
12 District FDEP Hazardous Waste Cleanup Section.

13 18. **Historical and Archaeological Sites.** Should historical
14 or archaeological artifacts be discovered in the course of
15 development of Town Center DRI, the Department of State, Bureau
16 of Historic Preservation, Developer shall immediately notify the
17 Division of Historical Resources. No disruption of the findings
18 shall be permitted until the investigation is complete and the
19 Division of Historical Resources has rendered a recommendation,
20 which shall be binding on the Developer.
21
22
23
24
25

1 **WHEREFORE**, the parties hereto have caused these presents to
2 be signed all as of the date and year first above written.

3 ATTEST:

CITY OF PALM COAST

4 
5 _____
6 Denise Bevan,
City Manager



David Alfin, Mayor

Unofficial Copy

1 STATE OF FLORIDA)
2 COUNTY OF FLAGLER)

3 The foregoing instrument was acknowledged by means of
4 ☒ physical presence or ☐ online notarization before me this 5th
5 day of July, 2022, by David Alfin and Denise Bevan, the
6 Mayor and City Manager respectively, for and on behalf of the
7 City of Palm Coast, Florida, who are personally known to me and
8 who did not take an oath.

9 WITNESS my hand and official seal this 5th day of July,
10 2022.

11
12 (Seal)



Signature

Printed Name

WITNESSES:

FLORIDA LANDMARK

COMMUNITIES, INC., a Florida corporation

John Miller
Signature

Patrick J. Cutshall
Signature

John Miller
Printed Name

Patrick Cutshall
Printed Name

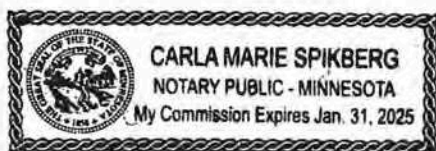
Senior Financial Analyst
Title

CFO
Title

STATE OF ^{Minnesota} ~~FLORIDA~~)
COUNTY OF St. Louis)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 6th day of July, 2022, by Patrick Cutshall, the CFO, for and on behalf of the FLORIDA LANDMARK COMMUNITIES, INC., who is personally known to me and who did not take an oath.

WITNESS my hand and official seal this 6th day of July, 2022.



(Seal)

Carla Spikberg
Signature

Carla Spikberg
Printed Name

Exhibit A

Description: Parcel "A"

A parcel of land lying within Government Sections 29 and 32, Township 11 South, Range 31 East, Flagler County, Florida, being more particularly described as follows:

A point of reference being the Southwest corner of Section 32, Township 11 South, Range 31 East, Flagler County, Florida, thence North $88^{\circ}24'49''$ East a distance of 2642.88 feet to the South quarter corner of Section 32 being the POINT OF BEGINNING of this description, thence North $00^{\circ}40'50''$ West along the West line of the Northeast quarter (1/4) a distance of 221.03 feet, thence departing said West line South $89^{\circ}15'49''$ West a distance of 510.00 feet to a point on the Easterly boundary of the plat Pine Grove Section 28, Map Book 9, Pages 51 through 66, of the Public Records of Flagler County, Florida, thence North $00^{\circ}40'55''$ West along the Easterly boundary of and departing said plat Section 28 a distance of 4569.91 feet, thence North $21^{\circ}00'44''$ East a distance of 1028.92 feet to a point on the Westerly line of the limited access right-of-way of Interstate 95, thence South $18^{\circ}20'58''$ East along said right-of-way a distance of 1809.43 feet, thence North $89^{\circ}52'23''$ East a distance of 290.97 feet; thence South $33^{\circ}20'58''$ East a distance of 502.28 feet, thence South $18^{\circ}20'55''$ East along said Westerly right-of-way line of Interstate 95 a distance of 3752.21 feet to a point on the South line of Section 32, thence departing Interstate-95 South $88^{\circ}46'16''$ West along the South line of Section 32 a distance of 2120.40 feet to the POINT OF BEGINNING.

Parcel "A" containing 202.3081 acres of land more or less.

Description: parcel "B"

A parcel of land lying within Government Section 4, 5, 6, 7, 8, and 9, Township 12 South, Range 31 East, Flagler County, Florida, being more particularly described as follows:

A point of reference being the Northwest corner of said government Section 5, Township 12 South, Range 31 East, being common as the Southwest corner of Section 32, Township 11 South, Range 31 East, thence South $01^{\circ}31'08''$ East along the West line of Section 5 a distance of 163.78 feet to the POINT OF BEGINNING of this description, thence departing said West line North $89^{\circ}15'49''$ East a distance of 1595.15 feet, thence South $00^{\circ}39'41''$ East a distance of 1318.27 feet, thence North $89^{\circ}20'19''$ East a distance of 1320.00 feet, thence North $00^{\circ}39'41''$ West a distance of 1320.00 feet, thence North $89^{\circ}15'49''$ East a distance of 1915.75 feet to a point on the West right-of-way line of Interstate 95, thence South $18^{\circ}20'58''$ East along said West right-of-way line a distance of 4927.55 feet to the Northeast corner of Memorial Hospital Flagler Inc. lands, recorded in Official Records Book 657, Page 1835, thence departing Interstate 95 South $71^{\circ}39'02''$ West along the Northerly boundary line of said Hospital lands a distance of 281.01 feet, thence South $36^{\circ}24'53''$ West a distance of 947.44 feet, thence departing said boundary of Hospital North $53^{\circ}36'18''$ West a distance of 61.27 feet, thence North $08^{\circ}33'46''$ East a distance of 99.48 feet, thence North $63^{\circ}16'51''$ West a distance of 51.99 feet, thence North $35^{\circ}29'45''$ West a distance of 69.86 feet, thence North $46^{\circ}37'11''$ East a distance of 34.40 feet, thence North $66^{\circ}03'22''$ East a distance of 38.81 feet, thence North $07^{\circ}07'30''$ West a distance of 71.05 feet, thence North $15^{\circ}25'07''$ West a distance of 57.60 feet, thence South $68^{\circ}48'21''$ West a distance of 43.08 feet to a point on the West line of Section 9, thence departing said West line continue South $68^{\circ}48'21''$

West a distance of 688.90 feet, thence South $39^{\circ}53'49''$ East a distance of 291.02 feet, thence South $76^{\circ}28'18''$ East a distance of 64.12 feet, thence North $67^{\circ}07'05''$ East a distance of 72.01 feet, thence South $39^{\circ}14'51''$ East a distance of 153.66 feet, thence South $62^{\circ}37'27''$ East a distance of 59.26 feet, thence North $46^{\circ}11'10''$ East a distance of 36.29 feet, thence North $51^{\circ}11'25''$ West a distance of 74.59 feet, thence North $31^{\circ}41'14''$ East a distance of 38.19 feet, thence North $69^{\circ}00'23''$ East a distance of 148.98 feet, thence South $78^{\circ}59'19''$ East a distance of 101.53 feet to a point on the Northwest boundary line of said Hospital lands recorded in Official Records Book 657, Page 1835, thence South $36^{\circ}24'53''$ West a distance of 336.01 feet, thence South a distance of 320.20 feet, thence South $74^{\circ}31'57''$ West a distance of 196.13 feet, thence departing said Northwest boundary line of Hospital South $02^{\circ}47'32''$ East a distance of 109.002 feet, thence South $49^{\circ}04'23''$ East a distance of 109.00 feet, thence South $00^{\circ}50'55''$ East a distance of 190.00 feet, thence South $89^{\circ}09'05''$ West a distance of 924.56 feet, thence South $21^{\circ}34'23''$ East a distance of 370.29 feet, thence South $89^{\circ}07'49''$ West a distance of 181.73 feet, thence South $21^{\circ}34'21''$ East a distance of 695.14 feet to a point on the North right-of-way line of State Road 100 (200'R/W), thence South $89^{\circ}09'05''$ West along said right-of-way a distance of 928.54 feet, thence departing State Road 100 North $02^{\circ}23'06''$ West a distance of 1356.48 feet, thence South $88^{\circ}41'00''$ West a distance of 663.41 feet to a point on the West line of the Northeast quarter (1/4) of Section 8, thence South $88^{\circ}49'35''$ West a distance of 668.63 feet, thence South $02^{\circ}08'49''$ East a distance of 692.67 feet, thence South $88^{\circ}59'33''$ West a distance of 1344.70 feet, thence South $01^{\circ}32'05''$ East a distance of 650.64 feet to a point on the North right-of-way line of State Road 100, thence South $89^{\circ}09'05''$ West along said right-of-way a distance of 297.82 feet, thence departing State Road 100 North $01^{\circ}13'40''$ West along the Easterly boundary line of Plat of Midway Par, Map Book 5, Page 25, a distance of 1337.58 feet, thence South $88^{\circ}49'35''$ West along the North line of Midway Park a distance of 378.00 feet to a point on the West line of government Section 8, thence North $01^{\circ}13'33''$ West along said West line of Section 8 a distance of 786.73 feet, thence departing said West line of Section 8 South $88^{\circ}17'00''$ West a distance of 125.00 feet, thence North $01^{\circ}13'33''$ West a distance of 140.00 feet, thence South $88^{\circ}17'00''$ West along the North line of Flagler County School Board Lands a distance of 1571.20 feet, thence South $01^{\circ}55'36''$ West along the West line of said School Board Lands a distance of 2205.60 feet to a point on the North right-of-way line of State Road 100, thence North $88^{\circ}04'24''$ West a distance of 2535.95 feet to the Southeast corner of Lil' Champ Food Store land recorded in Official Records Book 594, Pages 648 and 649, thence departing State Road 100 North $01^{\circ}55'36''$ East along the East boundary line of said Lil' Champ Land a distance of 250.00 feet, thence North $78^{\circ}46'38''$ West along the North line of said Lil' Champ Lands a distance of 250.00 feet to a point on the Easterly right-of-way line of Belle Terre Parkway, thence departing Lil' Champ Lands North $11^{\circ}13'22''$ East along said right-of-way of Belle Terre Parkway a distance of 1828.63 feet to a point of curvature, concave Westerly, thence Northerly a distance of 824.97 feet along the arc of said curve to the left having a central angle of $29^{\circ}32'31''$, a radius of 1600.00 feet, a chord bearing of North $03^{\circ}32'53''$ West and a chord distance of 815.86 feet to a point of tangency, thence North $18^{\circ}19'09''$ West a distance of 1118.45 feet to a point of curvature, concave Easterly, thence Northerly a distance of 103.37 feet along the arc of said curve to the right having a central angle of $42^{\circ}27'17''$, a radius of 1400.00 feet a chord bearing of North $02^{\circ}54'30''$ East and a chord distance of 1013.80 feet to a point of tangency, thence North $24^{\circ}08'08''$ East a distance of 559.85 feet, thence departing Belle Terre Parkway North $89^{\circ}15'49''$ East a distance of 2810.00 feet, thence North $00^{\circ}44'11''$ West a distance of 2015.00 feet, thence North $89^{\circ}15'49''$ East a distance of 1400.236 feet to the POINT OF BEGINNING.

Parcel "B" containing 1354.9211 acres more or less.

TOGETHER WITH:

A parcel of land lying in the Northwest Quarter (1/4) of Government Section 6, Township 12 South, Range 31 East, Flagler County, Florida as recorded in or book 640, pages 885-886 and or book 480, page 559 and being more particularly described as follows:

As a point of reference being the intersection of the Northeast corner of the subdivision plat Easthampton - Section 34, Seminole Woods at Palm Coast, Map Book 11, Pages 30 - 49 as recorded in the Public Records of Flagler county and the Easterly right-of-way line of Belle Terre Parkway (124' r/w); thence departing said right-of-way line North $89^{\circ}15'49''$ East for a distance of 2457.39 feet; thence South $00^{\circ}44'17''$ East for a distance of 253.00 feet to the POINT OF BEGINNING of this description; thence continue South $00^{\circ}44'11''$ East for a distance of 1762.00 feet to a point; thence South $89^{\circ}15'49''$ West for a distance of 2810.00 feet to a point on the Easterly right-of-way line of said Belle Terre Parkway; thence North $24^{\circ}08'08''$ East along the Easterly right-of-way line for a distance of 396.80 feet; thence North $89^{\circ}15'49''$ East for a distance of 711.58 feet, thence North $53^{\circ}17'23''$ East for a distance of 2386.72 feet to the POINT OF BEGINNING of this description.

LESS AND EXCEPT:

A parcel of land lying in Section 7, Township 12 South, Range 31 East, Flagler County, Florida, being more particularly described as follows:

Commence at the Northwest Corner of Section 7, Township 12 South, Range 31 East; thence South $01^{\circ}08'25''$ East, along the West line of said Section a distance of 2444.71 feet to a point lying on the Northerly Right-of-Way line of State Road No. 100, said point being a point on a curve concave Southerly having a tangent bearing of South $89^{\circ}57'38''$ East and a radius of 23,018.33 feet; thence run Easterly along the arc of said curve through a central angle of $01^{\circ}52'54''$ for a distance of 755.96 feet to the point of tangency; thence South $88^{\circ}04'44''$ East for a distance of 101.41 feet to the Southeast corner of that property described in Official Records Book 0594, Page 0649 of the Public Records of Flagler County, Florida; thence North $01^{\circ}55'16''$ East along the East line of said property for a distance of 20.00 feet to the POINT OF BEGINNING; thence leaving said Right-of-Way and continuing along said East line, North $01^{\circ}55'16''$ East for a distance of 230.00 feet to the Northeast corner of said property; thence North $78^{\circ}46'58''$ West along the North line of said property for a distance of 250.19 feet, to a point on the Easterly Right-of-Way line of Belle Terre Parkway; thence along said Right-of-Way, North $11^{\circ}12'57''$ East for a distance of 49.90 feet; thence leaving said Right-of-Way, South $78^{\circ}47'03''$ East for a distance of 262.73 feet; thence South $01^{\circ}55'16''$ West for a distance of 277.23 feet, to said Northerly Right-of-Way; thence North $88^{\circ}04'44''$ West for a distance of 20.43 feet to the POINT OF BEGINNING.

Containing 17980 Square Feet or 0.41 Acres, more or less

Exhibit B

Town Center at Palm Coast Master Development Plan Map

LAND USE KEY

-  Urban Core
-  Urban Center
-  Town Services
-  Town Business
-  Town Residential
-  Perimeter Commercial
-  Town Commons
-  Existing Lakes
-  Street R/W
-  Indicates Conceptual Location of Future Streets or Parking Lot Drives

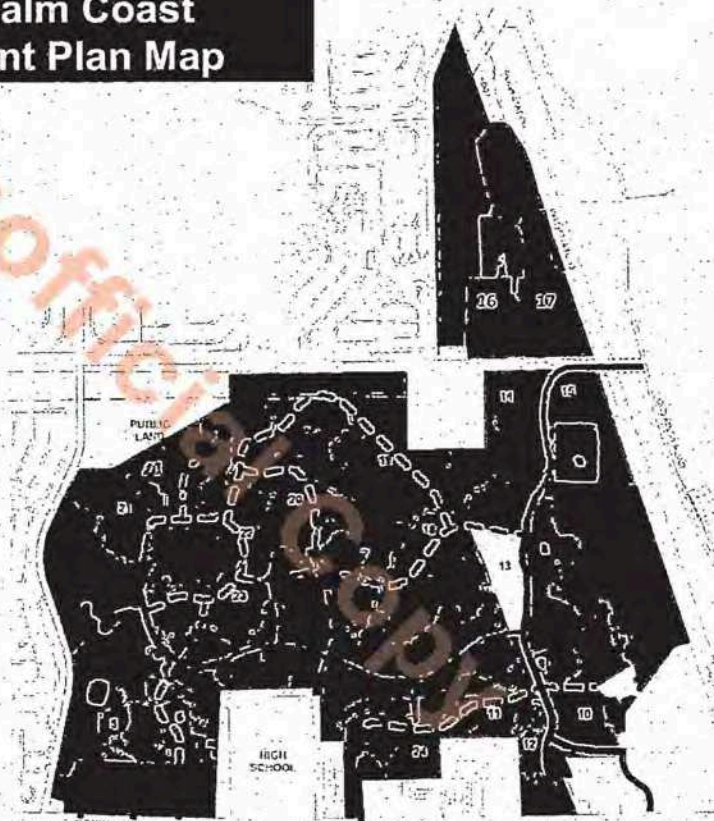


Exhibit B

Exhibit C

Page 1 of 1

Exhibit "C"
Town Center at Palm Coast
Land Use Conversion Factors

Land Use	PM Rate	Residential Per Unit	Office Per Ksf	Retail/Comm Per Ksf	Non-Retail Per Ksf	Institutional Per Ksf	Movie Theater Per Seat	Lodging Per Room	Nursing Home Per Bed
PM Rate		0.62	1.49	3.76	0.51	3.65	0.14	0.47	0.20
Residential	0.62 Per Unit	1.00	0.42	0.16	1.22	0.17	4.43	1.32	3.10
Office	1.49 Per Ksf	2.40	1.00	0.40	2.92	0.41	10.64	3.17	7.45
Retail/Comm	3.76 Per Ksf	6.06	2.52	1.00	7.37	1.03	26.86	8.00	18.80
Non-Retail/Comm	0.51 Per Ksf	0.62	0.34	0.22	1.00	0.14	3.64	1.09	2.55
Institutional*	3.65 Per Ksf	5.89	2.45	0.97	7.16	1.00	26.07	7.77	18.25
Movie Theater	0.14 Per Seat	0.23	0.09	0.04	0.27	0.04	1.00	0.30	0.70
Lodging	0.47 Per Room	0.76	0.32	0.13	0.92	0.13	3.36	1.00	2.35
Nursing Home	0.20 Per Bed	0.32	0.13	0.05	0.39	0.05	1.43	0.43	1.00

Examples

For every 1 residential unit you give up you may build 0.42 ksf of Office or 0.16 ksf of Retail/Comm. or 1.22 ksf of Non-Retail/Comm. or 0.17 ksf of Institutional or 4.43 movie theater seats or 1.32 lodging rooms or 3.10 beds of nursing homes

For every 1.00 KSF of Office you give up you may build 2.4 Residential units or 0.4ksf of Retail or 2.92 ksf of non-retail or 0.41ksf of Institutional or 10.64 Movie Theater seats or 3.17 rooms of lodging or 7.45 Nursing Home beds.

For every 1 room of lodging you give up you may build 0.76 Residential Units or 0.32ksf of office space or 0.13 ksf of retail or 0.92 ksf of Non-Retail/Comm of .13 ksf of Institutional or 3.36 theater seats or 2.35 nursing home beds.

*Institutional is an average of Government Office at 5.88 and Church at 1.41

REC 0959 PAGE 1571

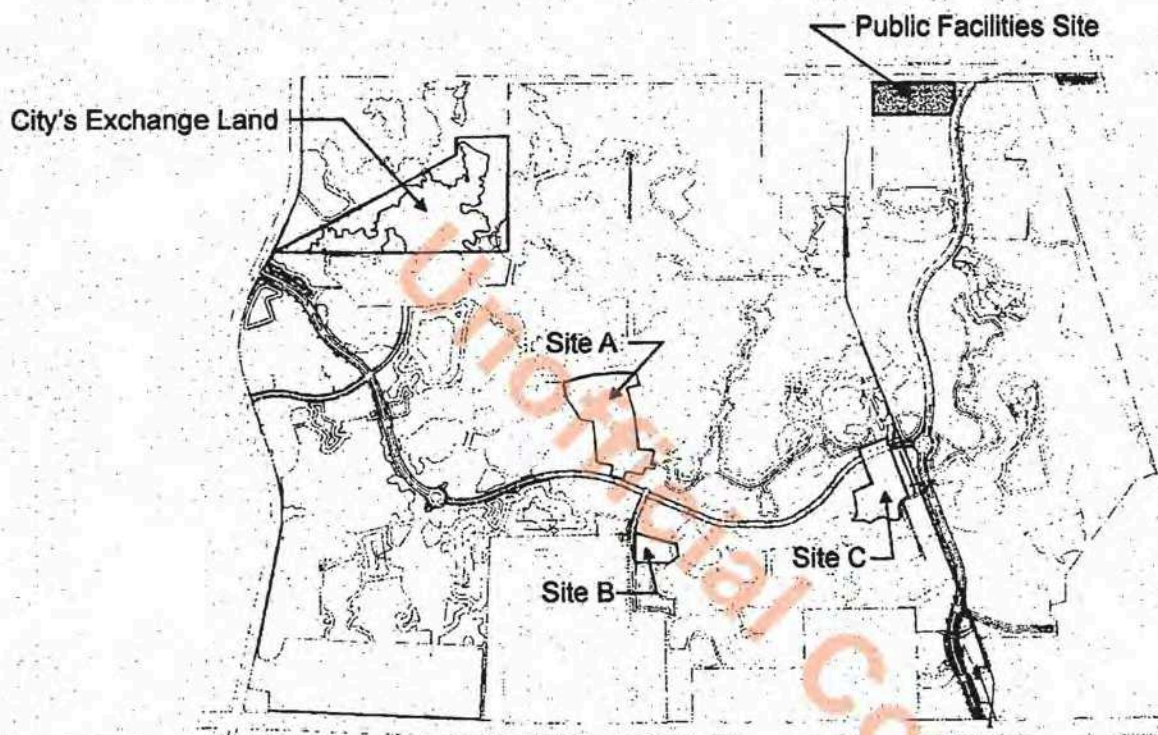
Exhibit B

Exhibit D



Exhibit B

Exhibit E



DATA SUMMARY

Parcel	Approximate Gross Acres	Approximate Upland Acres
Public Facilities Site	8.5	8.5
City's Exchange Land	44.6	27.0
Town Core Public Land		
Site A	15.0	15.0
Site B	3.5	3.5
Site C	8.5	8.5
Total	27.0	27.0

Exhibit "E"

OFF 0959 PAGE 1573

Exhibit B

Exhibit F

OFF REC 0959 PAGE 1574

STORMWATER POLLUTION PREVENTION PLAN

In order to ensure water quality is maintained and encroachment into environmentally sensitive areas are prohibited, the property Owner and Contractor shall make an effort to adhere to the following Operation Plan prior to and during construction.

STORMWATER POLLUTION PREVENTION PLAN APPROVAL

A Stormwater Pollution Prevention Plan (SWPPP) will be developed by the Engineer and included in the construction plans for each area of development. The Contractor is responsible to review the plan and make modifications that address construction activities. All modifications must be approved by the Owner and Engineer. The plan will correspond with the construction sequence and generally include the following:

1. The locations and types of control features shall be shown to prevent erosion or the transportation of eroded material off-site during each phase of construction. Supplementary sediment and erosion control devices may be required to accommodate the Contractor's phasing of construction activities. The Contractor will modify the SWPP to address the installation and maintenance of all sediment control devices during each phase of construction.
2. The Contractor will be solely responsible for the prevention, control, and abatement of erosion and water pollution and the transportation of eroded materials off site. The Contractor will also be responsible for maintaining any and all sediment control devices throughout the duration of construction as required by the Community Development District (CDD), Engineer, and the Florida Department of Environmental Protection.
3. All erosion control devices will be placed prior to beginning work of each construction phase. It is understood that "select clearing" is required for the placement of silt fence as detailed on the SWPPP. All erosion control devices will be maintained during construction and will be inspected weekly or after rainfall events of greater than 0.25 inches. Repairs will be performed as necessary and prior to suspension of work activities each weekend.
4. Sediment and erosion control barriers will be placed around all stormwater inlets and manholes during construction. Rock bags are to be placed at the downstream side of each curb inlet after the roadway base course is constructed to divert stormwater to the inlets.
5. Supplemental sediment and erosion control devices may be necessary during construction as determined by the Contractor or as directed by the Engineer or Community Development District (CDD).
6. Staging areas will be enclosed with silt fence, and drainage directed to stormwater ponds.

PRE-CONSTRUCTION ACTIVITIES

At least ten calendar days prior to the Pre-construction Conference, the Contractor will submit for approval by the Engineer a SWPPP prepared in accordance with the Florida Erosion and Sediment Control Inspector's Manual. The SWPPP will address the installation and maintenance of all temporary and

permanent sediment and erosion control devices to be used during each phase of construction, including tree removal, clearing and grubbing, hauling of excavated materials, and placement of backfill. The plan also will detail the erosion control measures to be employed at all stockpile and construction staging areas and will define the maximum limits of all active construction zones and the maximum amount of time each segment of the project will be unprotected against erosion.

Also, at least ten calendar days prior to the Pre-construction Conference, the Contractor will submit for approval by the Engineer an Excavation and Dewatering Plan (EDP). The plan will address excavation of the stormwater ponds and identify phasing of the excavation, including for each excavation phase, the limits of excavation, hauling of excavated materials, dewatering, control of on-site and off-site stormwater runoff, and measures to be employed for controlling erosion and for controlling the transportation of eroded materials off-site.

A Pre-construction Conference will be conducted prior to the start of any site construction. Attendees shall include the Contractor, CDD, Engineer and regulatory agency representatives. The purpose of this conference is to review the site specific details of the SWPPP and EDP, agree upon any modifications to these plans, and identify the individuals responsible for its implementation. In addition, specific conditions of regulatory permits will be reviewed and persons assigned to the monitoring for compliance with these conditions will be identified.

CONSTRUCTION ACTIVITIES

The Contractor shall at a minimum implement the requirements outlined below and those measures shown on the SWPPP. In addition, the Contractor shall implement additional measures required to maintain compliance with applicable permit conditions and state water quality standards. Depending on the nature of materials and methods of construction the contractor may be required to add flocculants to the detention system prior to discharge to Waters of the State.

Sequence of Major Erosion Control Activities:

The order of activities will be as follows:

1. Install stabilized construction entrance.
2. Select clear and install silt fences and hay bales as required.
3. Clear and grub for diversion swales/dikes and sediment basin.
4. Construct sedimentation basin.
5. Stock pile top soil if required.
6. Stabilize denuded areas and stockpiles as soon as practicable.
7. Complete grading and install/permanent seeding/sod and planting.
8. Remove accumulated sediment from basins.

9. Flocculate lake system, if required, to meet water quality standards.
10. When all construction activity is complete and the site is stabilized, remove any temporary diversion swales/dikes, silt fences, hay bales and reseed/sod as required.

Additional Controls

It is the Contractor's responsibility to implement the erosion and turbidity controls as shown on the SWPPP. It is also the Contractor's responsibility to ensure these controls are properly installed, maintained and functioning properly to prevent turbid or polluted water from leaving the project site. The Contractor will adjust the erosion and turbidity controls shown on the SWPPP and add additional control measures, as required, to ensure the site meets all federal, state and local erosion and turbidity control requirements. The following best management practices will be implemented by the Contractor as required by the SWPPP and as required to meet the sediment and turbidity requirements imposed on the project site by the regulatory agencies.

Erosion and sediment controls stabilization practices (See the site specific SWPPP for applicability.):

1. Straw bale barrier: Straw bale barriers will be used below disturbed areas subject to sheet and rill erosion with the following limitations:
 - a. Where the maximum slope behind the barrier is 3:1 (horizontal:vertical).
 - b. In minor swales or ditch lines where the maximum contributing drainage area is no greater than 2 acres.
 - c. Where effectiveness is required for less than 3 months.
 - d. Every effort should be made to limit the use of straw bale barriers constructed in live streams or in swales where there is the possibility of a washout. If necessary, measures shall be taken to properly anchor bales to insure against washout.
2. Filter Fabric Barrier: Filter fabric barriers shall be installed landward of upland buffers. Filter fabric barriers will be used below disturbed areas subject to sheet and rill erosion with the following limitations:
 - a. Where the maximum slope behind the barrier is 3:1.
 - b. In minor swales or ditch lines where the maximum contributing drainage area is no greater than 2 acres.
3. Sod with Filter Fabric: In areas with slopes steeper than 3:1, the slope shall be full sodded. Filter fabric barriers (silt fence) shall be installed at the toe of the slope.
4. Brush Barrier with Filter Fabric: Brush barrier will be used below disturbed areas subject to sheet and rill erosion where enough residue material is available on site.
5. Spreader Swale: A spreader swale will be used where sediment-free storm runoff is intercepted and diverted away from graded areas onto undisturbed stabilized areas. The water should not be allowed to reconcentrate after release.

6. **Stockpiling Material:** No excavated material shall be stockpiled in such a manner as to direct stormwater runoff off site into any adjacent water body.
7. **Limitation of Exposure of Erodible Earth:** The surface area of open, raw erodible soil exposed by clearing and grubbing operations or excavation and filling operations shall not exceed 17 acres without specific prior approval by the Engineer. This limitation applies separately to clearing and grubbing operations and excavation and filling operations. The Engineer may increase or decrease the amount of surface areas the Contractor may expose at any one time.
8. **Inlet Protection:** Inlets and catch basins which discharge directly off-site shall be protected from sediment-laden storm runoff.
9. **Temporary Seeding:** Cleared areas that are not designated for construction activity for more than 45 days shall be seeded or hydroseeded.
10. **Temporary Seeding and Mulching:** Slopes steeper than 6:1 shall receive approximately 2 inches loose measure of mulch material cut into the soil of the seeded area adequate to prevent movement of seed and mulch. Hydroseeding or hydromulching may be used in place of Seeding and Mulching.
11. **Temporary Grassing:** The Engineer may designate certain areas of grassing as temporary erosion control features. The Engineer may direct the Contractor to omit permanent type grass seed from grassing.
12. **Regrassing:** If, after 28 days from seeding, the temporary grassed areas have not attained a minimum of 75 percent good grass cover, the area will be reworked and additional seed applied sufficient to establish the desired vegetative cover.
13. **Maintenance:** All features of the project designed and constructed to prevent erosion and sediment shall be maintained during the life of the construction so as to function as they were originally designed and constructed.
14. **Permanent Seeding:** All areas which have been disturbed by construction will, as a minimum, be seeded. Slopes steeper than 4:1 shall be seeded and mulched or sodded. Hydroseeding may be used in place of Seeding and Mulching.
15. **Temporary Diversion Dike:** Temporary diversion dikes will be used to divert runoff through a sediment-trapping facility.
16. **Temporary Sediment Trap:** A sediment trap is usually installed in a drainage way at a storm drain inlet or at other points of discharge from a disturbed area.
17. **Sediment Basin:** Sediment Basin(s) will be constructed at the common drainage locations that serve an area with 10 or more disturbed acres at one time. Construct sedimentation basins in accordance with FDOT Roadway and Traffic Design Standards. All sediment collected in permanent or temporary sediment traps must be removed upon final stabilization.

Site Maintenance Activities

Waste Disposal

Waste Materials

All waste material shall be collected and stored in a securely lidded metal dumpster. The dumpster will meet all local and state solid waste management regulations. The dumpster will be emptied as needed and the trash will be hauled to a state approved landfill. All personnel will be instructed regarding the correct procedure for waste disposal. The site superintendent or the individual who manages the day-to-day site operations will be responsible for posting notices stating these practices at the construction site and for seeing that these procedures are followed.

All waste materials that are too large for the dumpster shall be stockpiled and hauled to a state approved landfill.

Hazard Waste

All hazardous waste materials will be disposed of in a manner specified by local or state regulation or by the manufacturer. Site personnel will be instructed in these practices and the site superintendent, the individual who manages the day-to-day site operations, will be responsible for seeing that these procedures are followed.

Sanitary Waste

All sanitary waste will be collected from the portable units as needed to prevent possible spillage. The waste will be collected and disposed of in accordance with state and local waste disposal regulations for sanitary sewer or septic systems.

Offsite Vehicle Tracking

A stabilized construction entrance will be provided to help reduce vehicle tracking of sediments. The paved street adjacent to the site entrance will be swept as needed or as directed by the Engineer to remove any excess mud, dirt or rock tracked from the site. Dump trucks hauling material from the construction site will be covered with a tarpaulin.

Spill Prevention Plan

Material Management Practices

The following are the material management practices that will be used to reduce the risk of spills or other accidental exposure of materials and substances to stormwater runoff.

Good Housekeeping

The following good housekeeping practices will be followed onsite during the construction project:

- * An effort will be made to store only enough product required to do the job.

- * All materials stored onsite will be stored in a neat, orderly manner in their appropriate containers and, if possible, under a roof or other enclosure.
- * Products will be kept in their original containers with the original manufacturer's label.
- * Substances will not be mixed with one another unless recommended by the manufacturer.
- * Whenever possible, all of a product will be used up before disposing of the container.
- * Manufacturer's recommendations for proper use and disposal will be followed.
- * The site superintendent will inspect daily to ensure materials onsite receive proper use and disposal.

Hazardous Products

These practices are used to reduce the risks associated with hazardous materials:

- * Products will be kept in original containers unless they are not resealable.
- * Original labels and material safety data will be retained; they contain important product information.
- * If surplus product must be disposed of, manufacturer's or local and state recommended methods for proper disposal will be followed.

Product Specific Practices

The following product specific practices will be followed onsite:

Petroleum Products

All onsite vehicles will be monitored for leaks and receive regular preventative maintenance to reduce the chance of leakage. Portable petroleum storage tanks shall not be placed within 200 feet of a wetland or water body including stormwater management ponds, unless secondary containment is provided. Petroleum products will be stored in tightly sealed containers which are clearly labeled. Any asphalt substances used onsite will be applied according to the manufacturer's recommendations.

Fertilizers

Fertilizers used will be applied only in the minimum amounts recommended by the manufacturer. Once applied, fertilizer will be worked into the soil to limit exposure to stormwater. Storage will be in a covered area. The contents of any partially used bags of fertilizer will be transferred to a sealable plastic bin to avoid spills.

Paints

All containers will be tightly sealed and stored when not required for use. Excess paint will not be discharged to the storm sewer system but will be properly disposed of according to manufacturer's instructions or state and local regulations.

The site superintendent responsible for the day-to-day site operations, will be the spill prevention and cleanup coordinator. He/she will designate at least one other site personnel who will receive spill prevention and cleanup training. These individuals will each become responsible for a particular phase of prevention and cleanup. The names of responsible spill personnel will be posted in the material storage area and if applicable, in the office trailer onsite.

MAINTENANCE / INSPECTION PROCEDURES

Erosion and Sediment Control Inspection and Maintenance Practices

The following are inspection and maintenance practices that will be used to maintain erosion and sediment controls:

- * All control measures will be inspected by the site superintendent, the person responsible for the day to day site operation or someone appointed by the site superintendent, at least once a week and following any storm event of 0.25 inches or greater.
- * All turbidity control measures will be maintained in good working order; if a repair is necessary, it will be initiated within 24 hours of report.
- * Built up sediment will be removed from silt fence when it has reached one-third the height of the fence.
- * Silt fence will be inspected for depth of sediment, tears, to see if the fabric is securely attached to the fence posts, and to see that the fence posts are firmly in the ground.
- * The sediment basins will be inspected for the depth of sediment. Sediment will be removed when it reaches 20 percent of the design capacity or at the end of the job.
- * Diversion dikes/swales show on the plans will be inspected and any breaches promptly repaired.
- * Temporary and permanent seeding and planting will be inspected for bare spots, washouts, and healthy growth.
- * A maintenance inspection report will be completed weekly. A completed copy will be submitted to the Engineer and a completed copy will be kept on site during construction and available upon request by the Owner, Engineer or any federal, state or local agency approving sediment and erosion plans, or stormwater management plans. The reports shall be made and retained as part of the SWPPP for at least three years (by the Owner) from the date that the site is finally stabilized and the notice of termination is submitted.
- * The site superintendent will select up to three individuals who will be responsible for inspections, maintenance and repair activities, and filling out the inspection and maintenance report.

- * Personnel selected for inspection and maintenance responsibilities will receive training from the site superintendent. They will be trained in all inspection and maintenance practices necessary for keeping the erosion and sediment controls used onsite in good working order.

NON-STORMWATER DISCHARGES

It is expected that the following non-stormwater discharges will occur from the site during the construction period:

- * Water from water line flushing.
- * Pavement wash waters (where no spills or leaks of toxic or hazardous materials have occurred).
- * Uncontaminated groundwater (from dewatering excavation).

All non-stormwater discharges will be directed to the sediment basin prior to discharge.

FDEP Development Order Recommendations DRI Stormwater Pollution Prevention Plan (SWPPP)

The following conditions for the Stormwater Pollution Prevention Plan (SWPPP) will be incorporated in the development order:

1. SWPPP Requirements

A SWPPP shall be incorporated into the construction and permit documents for projects constructed in the DRI which require a general or individual SJRWMD permit. The SWPPP shall be similar to the SWPPP shown in Exhibit ___ but may be modified to accommodate the specific construction project and site. However, all SWPPP's must include paragraphs describing Pre-Construction activities and Maintenance/Inspection Procedures.

2. SWPPP Monitoring

In addition to the requirements on individual property owners/contractors outlined in the SWPPP, the Developer, Community Development District (CDD) shall monitor compliance with the SWPPP goals. The compliance monitoring shall consist of the following:

A. Notifying the SJRWMD and FDEP of the individual responsible for monitoring SWPPP within the DRI.

At a minimum the responsible individual will:

- 1) be trained in erosion control implementation techniques
- 2) set up and oversee implementation of SWPPP programs throughout the buildout of the project
- 3) ensure that if the regular site inspector is unable to attend the pre-construction conference this information is communicated to the site inspector including site specific BMPs, permit requirements and erosion control implementation training.
- 4) meet with trained site superintendent monthly, upon commencement of site construction, to ensure implementation of SWPPP and resolve any problems. Frequency of site visits may be decreased if there is no indication of erosion control problems and previous visits show a history of compliance with the SWPPP.
- 5) submit a brief narrative update to FDEP and SJRWMD quarterly on activities and progress OR be available to meet with FDEP onsite for quarterly site visits, unless FDEP deems the visit unnecessary. Upon proper identification, FDEP personnel shall be granted access to the property.

B. Attendance at all pre-construction conferences.

C. Conducting Homeowners Stormwater Training Programs

D. Conducting Contractor Stormwater Training Programs

E. Conducting periodic inspections of construction sites

F. Notifications to SJRWMD and FDEP of observed potential permit violations within 24 hours and serve as agency liaison.

G. Annual reporting summary of Items A thru F.

3. The SWPPP shall be implemented upon initiation of construction activities. Three (3) years after initiation of construction, the FDEP and SJRWMD will have the opportunity to review the program. If it is found to be unsatisfactory, the agencies will discuss alternatives, including program modification options, with the applicant.

Exhibit G

TOWN CENTER AT PALM COAST DRI
PROPORTIONATE SHARE CALCULATION

PHASE 1

Roadway / Intersection	Length (mile)	Improvement	Construction Cost	Engineering Cost	Total Cost	Project Trips	Increase in the Capacity	Proportionate Share *	DRI Proportionate Share
Belle Terre Parkway/ White View Parkway	N/A	Signalize	\$61,800.00	\$6,180.00	\$67,980.00	95	237	0.40	\$27,249.37
Belle Terre Parkway/ Royal Palms Parkway	N/A	Signalize	\$61,800.00	\$6,180.00	\$67,980.00	19	79	0.24	\$16,349.62
SR 100 / Seminole Woods Parkway	N/A	Signalize	\$61,800.00	\$6,180.00	\$67,980.00	1490	3689	0.40	\$27,437.36
Subtotal for Signals									\$71,036.35
Old Kings Road	4.384	2 to 4 Lanes	\$6,137,600.00	\$613,760.00	\$6,751,360.00	251	930	0.27	\$1,822,141.25
Belle Terre Parkway	0.4	4 to 6 Lanes	\$560,000.00	\$56,000.00	\$616,000.00	195	880	0.22	\$137,200.00
Palm Coast Parkway	0.5	4 to 6 Lanes	\$944,000.00	\$94,400.00	\$1,038,400.00	112	880	0.13	\$132,160.00
I-95 East Ramp to Old Kings Road	0.2	4 to 6 Lanes	\$377,600.00	\$37,760.00	\$415,360.00	140	880	0.16	\$66,080.00
SR 100	0.1	4 to 6 Lanes	\$188,800.00	\$18,880.00	\$207,680.00	559	880	0.64	\$131,924.00
I-95 West Ramp to Seminole Woods	0.6	4 to 6 Lanes	\$1,132,800.00	\$113,280.00	\$1,246,080.00	726	880	0.83	\$1,028,016.00
Subtotal for Phase 1									\$3,385,577.59

PHASE 2

Roadway / Intersection	Length (mile)	Improvement	Construction Cost	Engineering Cost	Total Cost	Project Trips	Increase in the Capacity	Proportionate Share *	DRI Proportionate Share
Belle Terre Pkwy	1.0	2 to 4 Lanes	\$1,400,000.00	\$140,000.00	\$1,540,000.00	56	930	0.06	\$92,731.18
White View to Royal Palms Parkway	1.5	4 to 6 Lanes	\$2,100,000.00	\$210,000.00	\$2,310,000.00	733	930	0.79	\$1,820,677.42
Royal Palms Parkway to Main Road	0.7	4 to 6 Lanes	\$980,000.00	\$98,000.00	\$1,078,000.00	790	930	0.85	\$915,720.43
Florida Park Drive**	1.8	2 to 4 Lanes	\$4,410,000.00	\$441,000.00	\$4,851,000.00	56	740	0.08	\$367,102.70
SR 100	0.2	4 to 6 Lanes	\$377,600.00	\$37,760.00	\$415,360.00	733	930	0.79	\$327,375.14
Subtotal for Phase 2									\$3,523,606.87

PHASE 3

Roadway / Intersection	Length (mile)	Improvement	Construction Cost	Engineering Cost	Total Cost	Project Trips	Increase in the Capacity	Proportionate Share *	DRI Proportionate Share
Old Kings Road	1.7	2 to 4 Lanes	\$2,380,000.00	\$238,000.00	\$2,618,000.00	158	0	0.27	\$706,860.00
Belle Terre Pkwy	1.9	4 to 6 Lanes	\$2,660,000.00	\$266,000.00	\$2,926,000.00	632	930	0.68	\$1,988,421.51
Cypress Point Parkway	0.7	4 to 6 Lanes	\$980,000.00	\$98,000.00	\$1,078,000.00	158	930	0.17	\$183,144.09
Florida Park Drive	0.1	2 to 4 Lanes	\$140,000.00	\$14,000.00	\$154,000.00	79	740	0.11	\$16,440.34
SR 9	3.2	6 to 8 Lanes	\$7,280,000.00	\$728,000.00	\$8,008,000.00	395	1690	0.23	\$1,871,692.31
Palm Coast Pkwy (WB)	0.2	2 to 3 Lanes	\$188,800.00	\$18,880.00	\$207,680.00	316	880	0.36	\$74,576.00
Palm Coast Pkwy (EB)	0.2	2 to 3 Lanes	\$188,800.00	\$18,880.00	\$207,680.00	316	880	0.36	\$74,576.00
SR 100	0.4	4 to 6 Lanes	\$755,200.00	\$75,520.00	\$830,720.00	789	880	0.90	\$744,816.00
Seminole Woods Blvd to Belle Terre Pkwy	1.7	4 to 6 Lanes	\$3,209,600.00	\$320,960.00	\$3,530,560.00	474	880	0.54	\$1,901,688.00
Subtotal for Phase 3									\$7,562,214.44

Revised 6/11/2003

* Formula based on FDOT's Site Impact Handbook [(DRI Trips/Service Vol. Increase)*Cost]

** Florida Park Construction Estimates include ROW estimated at 75% of Construction Costs

***Old Kings Road is neither significant nor adverse. The "fair share" calculation is based on the project trips as a percentage of total roadway capacity.

Note: All dollar amounts shown on this table are stated in 2002 values.

Total for Phases 1-3

\$14,474,399.00

Exhibit B

EXHIBIT H

Has been deleted

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Exhibit "I"

<u>Section of DRI</u>	<u>Name of Section</u>	<u>Obligation</u>	<u>Status</u>
Part II, ¶ 5 (a)	Phasing, Buildout and Expiration	4 lane Seminole Woods from SR-100 to intersection with Main Street.	Completed.
Part II, ¶ 5 (b)	Phasing, Buildout and Expiration	2 lane Seminole Woods from SR-100 to Old Kings Road	Completed.
Part II, ¶ 5 (c)	Phasing, Buildout and Expiration	Construct Main Street as 2 lanes from traffic circle on Seminole Woods to Westerly traffic circle on Main Street.	Completed.
Part II, ¶ 5 (d)	Phasing, Buildout and Expiration	Construct Main Street as 4 lanes from Westerly traffic circle to about 800 feet from Belle Terre.	Completed.
Part II, ¶ 5 (e)	Phasing, Buildout and Expiration	Construct the last 800 feet of Main Street to Belle Terre.	Completed.
Part II, ¶ 5 (f)	Phasing, Buildout and Expiration	Extend Eastwood Drive to Main street as 3 Lanes	To be completed.
Part II, ¶ 5 (g)	Phasing, Buildout and Expiration	Construct Hospital Drive from Seminole Woods to hospital site. Must be 2 lane road.	Completed.
Part II, ¶ 5 (h)	Phasing, Buildout and Expiration	Construct master drainage system for Town Center.	Completed.
Part II, ¶ 5 (i)	Phasing, Buildout and Expiration	Install water system, sewer system, and underground electric along all roadways or multi-use easements.	All utilities are installed along all currently installed roadways. All future utility installation along new roadways are the responsibility of the individual property developer.
Part II, ¶ 5 (j)	Phasing, Buildout and Expiration	Install landscaping along roads and other public areas.	All roads and public areas currently erected are landscaped. All future landscaping along new

			roadways are the responsibility of the individual property developer.
Part II, ¶ 5 (k)	Phasing, Buildout and Expiration	Construct initial pedestrian/bikeway systems within Town Center.	Completed.
Part II, ¶ 5 (l)	Phasing, Buildout and Expiration	Place fill on selected development sites.	Completed.
Part II, ¶ 5 (m)	Phasing, Buildout and Expiration	Environmental mitigation to offset impacts.	Completed for all development undertaken by Developer. Each individual property owner is responsible for mitigating their impacts.
Part II, ¶ 5	Phasing, Buildout and Expiration	Before beginning Phase 2, extend Royal Palms Parkway to Seminole Woods.	Completed.
Part II, ¶ 5	Phasing, Buildout and Expiration	During Phase 2 and 3, as parcels are planned out, roads, utilities, and drainage shall all be installed accordingly.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 1	Vegetation and Wildlife	Within 1 year from effective date of DRI DO, Developer shall contribute \$8,666.00 to Florida Fish and Wildlife Conservation Commission.	Completed.
Part III, ¶ 1	Vegetation and Wildlife	No development shall occur if there are endangered species present on the property unless the appropriate permit is obtained from the appropriate regulatory agency.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 2 (a)	Wetlands	Developer shall conserve 500 acres of wetlands which shall be placed in a conservation easement that grants third party interest to USACE.	Completed.

Part III, ¶ 2 (b)	Wetlands	Establish 15-foot minimum with an average of 25-foot buffer around wetlands and no impervious area shall be placed in the buffer zone.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 2 (c)	Wetlands	Any and all wetland impact mitigation shall be determined by USACE and/or SJRWMD.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 2 (d)	Wetlands	Piezometers and staff gauges shall be installed to monitor wetland hydrology. The details of such monitoring program shall be determined by USACE and/or SJRWMD.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 2 (d)	Wetlands	Developer shall install minimum of 36-inch culvert pipes at all wetland crossings. Developer shall also install small wildlife crossings over the culvert.	Completed for all development undertaken by Developer. Any new culvert installation responsibility has been assigned to the individual property owners.
Part III, ¶ 3 (a)	Groundwater	Use of Floridan Aquifer Wells on the DRI Property that do not fall within SJRWMD's consumptive use permitting requirements are prohibited.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 3 (b)	Groundwater	Abandoned wells shall be plugged and abandoned in accordance with SJRWMD's rules. Further, Developer shall report pertinent information to City regarding each well.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 4	Surface Water	A SWQMP shall be approved by FDEP and shall be implemented prior to commencement of construction. Data shall be submitted to the Northeast District of FDEP.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 5	Floodplains	No development shall occur within 100 year floodplain except for	This requirement is ongoing and has been

		crossings which shall be built up to the elevation of the floodplain.	assigned to the individual property owners.
Part III, ¶ 6(a)	Water Supply	Development of Town Center shall not proceed beyond Phase 1 unless adequate potable water is available to meet the level of service standard.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 6(b)	Water Supply	Use of Floridan Aquifer is prohibited for irrigation, once-through-cooling, surface water level maintenance and decorative uses.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 6(c)	Water Supply	Stormwater shall be used for irrigation with reclaimed water as a backup. Potable water shall be used for irrigation if, and only if, stormwater and reclaimed water are unavailable, and then only until stormwater and/or reclaimed water become available again.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 6(d)	Water Supply	Water conservation strategies shall be implemented, including Xeriscape and low-flow plumbing fixtures.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 7(a)	Wastewater Management	No building permit shall be issued beyond Phase 1 unless adequate wastewater capacity is available to meet the level of service standard.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 7(b)	Wastewater Management	Septic tanks are prohibited within Town Center DRI. Temporary surface tanks may be used during construction and/or marketing trailers until central sewer lines are installed.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 8(a)	Stormwater Management	20% of wet detention ponds shall have a 30% littoral zone.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 8(b)	Stormwater Management	Developer shall use porous parking materials for overflow parking to attempt to reduce related runoff	This requirement is ongoing and has been

		associated with impervious parking surfaces.	assigned to the individual property owners.
Part III, ¶ 8(c)	Stormwater Management	Outfall control structures shall insure that post-development flows do not exceed pre-development flows.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 8(d)	Stormwater Management	Stormwater Pollution Prevention Plan shall be incorporated into all permits and construction practices.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 8(e)	Stormwater Management	SWPPP is revisited every 3 years by the appropriate agencies. If changes are needed, they will be discussed and agreed upon with Developer.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 8(f)	Stormwater Management	FDEP, SJRWMD, and the City have the right to access the property to test the water quality.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 8(g)	Stormwater Management	If certain conditions are met, a water quality monitoring program shall be implemented.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 9(a) and (b)	Solid Waste	No Development within the DRI Property shall occur unless and until there is adequate solid waste capacity to service the developing area at the adopted level of service standard.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 9(c)	Solid Waste	All individuals are responsible for compliance with appropriate regulations regarding hazardous materials.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 10	Donation of Utility Facilities	All water and sewer lines and related facilities shall be donated to the City.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 11(a)	Public Facility site and Town	Developer shall convey to City certain parcels identified in this section, which	Completed.

	Core Public Land	shall be used only for the uses identified herein.	
Part III, ¶ 11(b)	Public Facility site and Town Core Public Land	City may agree to convey certain properties to Developer in exchange for three (3) other sites identified herein.	Completed.
Part III, ¶ 11(c)	Public Facility site and Town Core Public Land	If the land donated by the City is more valuable than Developer's then Developer shall pay difference. If Developer's land is more valuable than the City's, City shall consider the addition as a donation to the City.	Completed.
Part III, ¶ 11(d) and (e)	Public Facility site and Town Core Public Land	City shall take title to land subject to conditions outlined in these sections.	Completed.
Part III, ¶ 11(f)	Public Facility site and Town Core Public Land	Developer shall take title to land subject to certain restrictions.	Completed.
Part III, ¶ 11(g)	Public Facility site and Town Core Public Land	If option exercised by City, Developer shall convey the identified sites to City within 90 days.	Completed.
Part III, ¶ 11(h)	Public Facility site and Town Core Public Land	City shall be responsible for all site preparations on the sites received under 11(g). If not already completed, Developer agrees to construct streets and extend utilities to the property at Developer's expense.	Completed.
Part III, ¶ 11(i)	Public Facility site and Town Core Public Land	All costs of conveyance of land identified in Part III, ¶ 11 shall be borne by Developer.	Completed.
Part III, ¶ 11(j)	Public Facility site and Town Core Public Land	If Developer acquires City Exchange Land, and the land has appropriate zoning and FLUM designation to fit Developer's desired use, then the	Completed.

		Master Plan shall be automatically modified.	
Part III, ¶ 12(a)	Transportation	Phases shall be determined by actual trip count as outlined in this paragraph.	No action required.
Part III, ¶ 12(b)	Transportation	Developer shall provide all right of way necessary to construct the internal roadway network and shall be responsible for constructing roadway.	Completed. All roadways necessary for connectedness within each parcel has been assigned to each individual parcel owner.
Part III, ¶ 12(c)	Transportation	Developer is responsible for obtaining and constructing all turn lanes into Town Center including extension of Royal Palms to Old Kings and the Four-Laning of Old Kings.	Completed.
Part III, ¶ 12(d)	Transportation	During Phase 1, Developer shall construct Seminole Woods Extension from SR-100 to Old Kings Road.	Completed.
Part III, ¶ 12(e)	Transportation	Developer shall mitigate offsite impacts as outlined in this section.	All Phase 1 requirements have been completed.
Part III, ¶ 12(f)	Transportation	Before PM peak hour trips exceed 10,444, Developer shall install, or cause to be installed, box culvert that allows Royal Palms to be four-laned to Old Kings Road	Removed.
Part III, ¶ 12(g)	Transportation	Extend Lake Avenue to connect Town Center Parkway and Central Avenue	Incomplete.
Part III, ¶ 12(h)	Transportation	Extend City Place to connect to Royal Palms Parkway.	Incomplete.
Part III, ¶ 12(i)	Transportation	Four lane Town Center Parkway to Royal Palms Parkway.	Incomplete.
Part III, ¶ 13(a)	Air Quality	All fugitive dust control measures shall be undertaken during construction activities through the build-out of Town Center.	This requirement is ongoing and has been assigned to the individual property owners.

Part III, ¶ 13(b)	Air Quality	Trees shall be planted on internal road right-of-ways and parking areas.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 14(a)	Hurricane Evacuation	Access roads and parking lots of hotels shall be constructed above base flood plane.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 14(b)	Hurricane Evacuation	All residents of Town Center shall be given information about the vulnerability of the DRI DO to hurricanes.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 15(a)	Affordable Housing	Before beginning Phase 2 and 3, Developer shall assess affordable housing impact and implement any mitigation as may be required.	Completed.
Part III, ¶ 15(b)	Affordable Housing	No building permits shall be issued unless a minimum of 30% of all residential units for the previous phase have been constructed.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 16(a)	Police and Fire Protection	Before construction of a building over 35 feet tall, developer shall contribute equipment that can reach the height of the structure to be constructed.	Completed.
Part III, ¶ 16(b)	Police and Fire Protection	Before beginning a new phase, impact fees received will be reviewed against estimated costs for fire, ems, and police. If collected fees are insufficient, then Developer shall meet deficit.	Eliminated
Part III, ¶ 17(a)	Recreation and Open Space	Developer shall meet the LOS for recreation and open space as adopted in the City's Comprehensive Plan. The LOS shall be met as outlined in this paragraph.	All of Developer's required donations have been made. All donations required on a per project basis have been assigned to the individual property owners.

Part III, ¶ 17(b)	Recreation and Open Space	Developer shall mitigate environmental contamination that occurs to Lehigh Trail due to development activities. Developer shall coordinate with FDEP.	Eliminated as redundant.
Part III, ¶ 18	Historical and Archaeological Sites	Should any archeological site be found during construction of any site, all construction shall cease and the appropriate governing body shall be notified.	This requirement is ongoing and has been assigned to the individual property owners.

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Exhibit C
2024 Amended Development Order

1 TOWN CENTER AT PALM COAST 2024 AMENDED AND RESTATED
2 DEVELOPMENT OF REGIONAL IMPACT DEVELOPMENT ORDER

3 THIS SECOND AMENDED AND RESTATED DEVELOPMENT
4 ORDER effective this 6th day of Febraury,
5 2024 by and between Florida Landmark
6 Communities, Inc., a Florida corporation and
7 Palm Coast Holdings, Inc., a Florida
8 Corporation (the "Developer") and the City
9 of Palm Coast, a municipal corporation
10 organized and existing under the laws of
11 the State of Florida (the "City").

12 WHEREAS: Developer filed an Application For Development
13 Approval ("ADA") dated April 9, 2002, as amended by ADA First
14 Sufficiency Response dated June 24, 2002, and ADA Second
15 Sufficiency Response dated August 28, 2002, for Town Center at
16 Palm Coast Development of Regional Impact ("Town Center DRI")
17 located on certain real property as more specifically described
18 on **Exhibit "A"** hereto (the "DRI Property");

19 WHEREAS, whenever an action or approval of the City is
20 referred to herein, except for actions relating to the City
21 Council, the action shall be taken by the City Manager, or
22 designee; and

23 WHEREAS, whenever an action, right or eligibility of the
24 Developer is referred to herein, the action may be taken by,
25 or the right or eligibility may belong to Town Center at Palm
Coast Community Development District ("CDD") but the Developer
shall have primary responsibility for all actions that are the
obligation of the Developer.

1 WHEREAS, the Town Center DRI is a proposed mixed-use
2 development on approximately 1,557 acres located in the City
3 at the northwest corner of the intersection of SR-100 and I-95.
4 The project is bordered by I-95 to the east, SR-100 to the
5 south, a major drainage canal to the north and Belle Terre
6 Parkway to the west; and

7 WHEREAS, the ADA was reviewed by the Northeast Florida
8 Regional Planning Council ("NEFRPC") as required by Section
9 380.06, *Florida Statutes*, and the NEFRPC recommended that the
10 ADA be approved, with conditions; and

11 WHEREAS, the Developer provided complete copies of the ADA,
12 as amended by the Sufficiency Responses to the Florida
13 Department Of Community Affairs ("DCA"), NEFRPC and the City;
14 and

15 WHEREAS, the Town Center DRI is consistent with the City's
16 Comprehensive Plan; and

17 WHEREAS, pursuant to Section 306.06, *Florida Statutes*, the
18 City Council of the City ("City Council") heard at a public
19 hearing convened on December 3, 2002, and July 1, 2003, the ADA
20 for the Town Center DRI and afforded the public and all affected
21 parties an opportunity to be heard and to present evidence; and

22 WHEREAS, after such public hearing and in consideration of
23 the recommendations made and submitted to the City Council, the
24 City Council has made certain findings and determinations; as
25 more specifically set forth hereinafter.

1 WHEREAS, the resolution approving Town Center DRI DO was
2 recorded on July 23, 2003 in Official Records Book 0959, Page
3 1509 of the Public Records of Flagler County, Florida;

4 WHEREAS, thereafter, the City passed Resolution 2008-89
5 providing for a three (3) year extension to the DRI DO which
6 was recorded in Official Records Book 1664, Page 1882 of the
7 Public Records of Flagler County, Florida;

8 WHEREAS, the City then acknowledged House Bill 7207 which
9 gave a developer the option to extend its development order for
10 a four-year period, which was completed and memorialized in
11 Official Records Book 1847, Page 1486 of the Public Records of
12 Flagler County, Florida;

13 WHEREAS, the City then amended the DRI DO on November 27,
14 2018 as outlined in Official Records Book 2321, Page 0549 of
15 the Public Records of Flagler County, Florida;

16 WHEREAS, the City passed Resolution 2022-76 on June 21,
17 2022, Approving the Town Center at Palm Coast DRI-DO, and such
18 DRI-DO is recorded in Official Records Book 2711, Page 1810 of
19 the Public Records of Flagler County, Florida;

20 WHEREAS, the City passed Resolution 2024-04 on January 16,
21 2024, Approving the Land Use conversion in the Town Center at
22 Palm Coast DRI-DO and the update of Tables 3(b) and 3(c) and
23 such changes are incorporated into this updated DRI-DO; and

24 NOW, THEREFORE, BE IT HEREBY ORDERED AND RESOLVED by the
25 City Council, that based upon the Findings of Fact and
Conclusions of Law, and the consent and agreement of the

1 Developer, and subject to the following terms and conditions,
2 the City Council hereby approves this Development Order,
3 pursuant to the provisions of Section 380.06, *Florida Statutes*,
4 and other applicable State laws, and the codes and ordinances
5 of the City:

6 **PART I**

7 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

8 1. The above Recitals/Whereas clauses are hereby adopted
9 and incorporated into this Section of this Order.

10 2. The DRI Property is not in an area designated as an
11 area of Critical State Concern pursuant to the provisions of
12 Section 380.05, *Florida Statutes*.

13 3. The Town Center DRI is consistent with the State's
14 Comprehensive Plan.

15 4. The Town Center DRI is consistent with the Strategic
16 Regional Policy Plan adopted by the NEFRPC.

17 5. The Town Center DRI is consistent with the City's
18 Comprehensive Plan.

19 6. The Town Center DRI is consistent with the
20 Assessment Report and Recommendations of the NEFRPC issued
21 pursuant to Section 380.06, *Florida Statutes*.

22 7. The public hearing to consider this Order was properly
23 noticed and held by the City Council pursuant to Section
24 380.06, *Florida Statutes*.

25 8. The Developer's authorized agent is Jeff Douglas whose
principal place of business is Douglas Property & Development;

1 145 City Place, Suite 300, Palm Coast, Florida 32164; telephone
2 number (386) 446-6226.

3 9. The development of the Town Center DRI pursuant to the
4 ADA was determined to be consistent with the achievement of
5 the objectives of the adopted State Comprehensive Plan, as
6 codified at Chapter 187, *Florida Statutes*, and will not
7 unreasonably interfere with the achievement of those
8 objectives.

9 **PART II**

10 **GENERAL CONDITIONS**

11 1. **ADA.** This section has been intentionally deleted as
12 all requirements have been incorporated into this document.

13 2. **Notice of Order.** Notice of this Order and any
14 subsequent amendment hereto shall be recorded by Developer in
15 accordance with the provisions of Section 28.222 and 380.06,
16 *Florida Statutes*, with the Clerk of the Circuit Court of
17 Flagler County, Florida. Any subsequent owner/developer or
18 assignee from Developer shall be subject to the provisions
19 contained in this Order. Any contract or agreement for sale
20 by Developer of all or any portion of the Town Center DRI shall
21 contain a legend substantially in the following form clearly
22 printed or stamped thereon.

23 THE PROPERTY DESCRIBED HEREIN IS PART OF THE
24 TOWN CENTER AT PALM COAST DEVELOPMENT OF
25 REGIONAL IMPACT AND IS SUBJECT TO A DEVELOPMENT
ORDER, NOTICE OF WHICH IS RECORDED IN THE

PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA,
 WHICH IMPOSES CONDITIONS, RESTRICTIONS AND
 LIMITATIONS UPON THE USE AND DEVELOPMENT OF THE
 SUBJECT PROPERTY WHICH ARE BINDING UPON EACH
 SUCCESSOR AND ASSIGN OF FLORIDA LANDMARK
 COMMUNITIES, INC. A COPY OF THE DEVELOPMENT
 ORDER MAY BE REVIEWED AT THE DEVELOPMENT
 SERVICES DEPARTMENT, CITY OF PALM COAST OR AT
 THE OFFICES OF THE DEPARTMENT OF COMMUNITY
 AFFAIRS, STATE OF FLORIDA, TALLAHASSEE,
 FLORIDA.

3. Land Use Totals.

(a) The Town Center DRI was originally approved for
 the following development criteria (the "Original
 Entitlements"):

<u>Land Use</u>	<u>Gross Bldg./Units or Area</u>	<u>Acreage *</u>
Residential	2,500/DUs	190 Acres
Office	1,400,000/SF	110 Acres
Retail/Comm.	2,000,000/SF	250 Acres
Non-Retail/Comm.	1,400,000/SF	180 Acres
Institutional	625,000/SF	80 Acres
Movie Theater	2,400 seats	8 Acres
Lodging	480 rooms	15 Acres
Nursing Home	240 beds	10 Acres
Common Area	--	714 Acres

* The Town Center DRI is planned as a traditional neighborhood
 development. As a result, land uses will be integrated, rather than

specifically assigned to designated areas. Consequently, acreage is approximate for each land use category.

(b) After the conversion requested and approved by Resolution 2024-04, Town Center DRI is entitled for the following:

Land Use	Gross Bldg./Units or Area	Acreage *
Residential	3,575/DUs	190 Acres
Office	1,285,417/SF	110 Acres
Retail/Comm.	1,909,240/SF	250 Acres
Non-Retail/Comm.	1,195,000/SF	180 Acres
Institutional	625,000/SF	80 Acres
Movie Theater	2,400 seats	8 Acres
Lodging	480 rooms	15 Acres
Nursing Home	485 beds	10 Acres
Common Area	--	714 Acres

* The Town Center DRI is planned as a traditional neighborhood development. As a result, land uses will be integrated, rather than specifically assigned to designated areas. Consequently, acreage is approximate for each land use category.

(c) Of the Present Entitlements identified above, the following are the currently remaining entitlements that have not been assigned to specific parcels of property within the current DRI Property:

Land Use	Approved	Sold	Remaining* ¹
Residential	3,575 Units	2,599 Units	775 Units
Office	1,285,417 Sq. Ft.	487,780 Sq. Ft.	797,637 Sq. Ft.

Retail/Commercial	1,909,240 Sq. Ft.	858,786 Sq. Ft.	1,141,214 Sq. Ft.
Non-Retail Commercial	1,195,000 Sq. Ft.	136,589 Sq. Ft.	1,058,411 Sq. Ft.
Institutional	625,000 Sq. Ft.	240,000 Sq. Ft.	385,000 Sq. Ft.
Movie Theater	2,400 Seats	2,400 Seats	0 Seats
Lodging	480 rooms	125 rooms	355 rooms
Assisted Living	485 rooms	202 rooms	283 rooms

* All remaining entitlements are owned by Developer and have not been assigned to any specific property.

¹ A chart showing the assignment of the listed entitlements is attached as Exhibit "K".

4. Land Use Conversion Table.

- Developer may increase and simultaneously decrease entitlements ("Land Use Conversions"), after filing a Notice of Proposed Change provided that (i) such changes are consistent with the conversion tabled attached as Exhibit "C" hereto (the "Conversion Table"), and this Section, and (ii) such changes do not have a substantial adverse effect or impact on public infrastructure facilities as determined by the City.

- Land Use Conversions (simultaneous increases or decreases) of the Present Entitlements, as shown in Section 3 above, shall be permitted, subject to the following

conditions and limitations: Declarant is entitled to conversions of up to 20% of the Present Entitlements (as identified in the First Amended and Restated DO). Notice of any conversions are required to be submitted to the City Manager's designee so that the City can track conversions and ensure that the 20% threshold is not exceeded. The notice to the City shall also contain evidence showing that the conversion will not result in an adverse impact to the community as more fully outlined in Section II, Paragraph 10 (c).

- Conversions of Present Entitlements (as identified in First Amended and Restated DO) in excess of 20%, but in no event cumulatively more than 30%, may occur, subject to City Council approval, to ensure that substantial and material adverse impacts on public facilities and the community do not occur as a result of the conversion.

5. **Phasing, Buildout and Expiration.** The Town Center DRI shall be developed in three phases as shown on the following schedule:

	Daily Trips	PM Peak Hour	Cumulative	
			Daily Trips	PM Peak Hour
Phase 1	56,565	5,226	56,565	5,256
Phase 2	56,742	5,218	113,307	10,444
Phase 3	42,953	4,048	156,260	14,492

1 During Phase 1¹, Developer shall construct or cause
2 to be constructed the major infrastructure improvements for
3 Town Center, consisting of the following:

4 (a) 4-lane modified urban section extension of Town
5 Center Boulevard (from SR-100 to its intersection with Central
6 Avenue). For purposes hereof, a modified urban section shall
7 consist of a road section with the bottom of the roadside swale
8 at an elevation above the seasonal high ground water table,
9 non-mountable curb along the median side, ribbon curb along
10 the swale side and drainage inlets within the swale.

11 (b) 2-lane modified urban section further extension
12 of Town Center Boulevard to Old Kings Road.

13 (c) Construction of Central Avenue as a 2-lane
14 modified urban section, from the traffic circle on Town Center
15 Boulevard to the westerly traffic circle on Central Avenue,
16 with diagonal parking adjacent to building sites.

17 (d) Construction of Central Avenue as a 4-lane
18 modified urban section from the westerly traffic circle to a
19 point approximately 800 feet east of Belle Terre Parkway.

20 (e) Construction of Central Avenue as a 4-lane urban
21 section for a distance of approximately 800 feet eastward from
22 Belle Terre Parkway.

24 ¹ All construction identified in sub-paragraphs (a) through (m) required to
25 be completed during Phase 1 has been completed.

1 (f) Extension of Market Avenue to Central Avenue as
2 a 3-lane urban section.

3 (g) Construction of Hospital Drive from Town Center
4 Boulevard to the hospital site as a 2-lane urban section.

5 (h) Construction of the master drainage system for
6 Town Center, which will create an extensive interconnected lake
7 system.

8 (i) Installation of a water distribution system,
9 sewage collection system and underground electric and conduit
10 within all road rights-of-way or adjacent multi-use easements.

11 (j) Installation of landscaping along roads and in
12 other public areas.

13 (k) Construction of the initial phase of the
14 pedestrian/bikeway system throughout Town Center, with a
15 connection to the right-of-way for the proposed Lehigh Trail.

16 (l) Site fill on selected development parcels.

17 (m) Environmental mitigation to offset impacts.

18 Prior to commencing Phase 2, as provided for in
19 Section 12, under Part III below, Royal Palm Parkway shall be
20 connected to Town Center Boulevard by a 2-lane urban section
21 roadway with two canal crossings. During Phases 2 and 3, as
22 development parcels are planned and developed, all the internal
23 streets and drainage systems shall be constructed and utility
24 services shall be extended as appropriate. Subject to wetlands
25 constraints, the internal streets and interconnected driveways
through parking areas shall create a grid roadway system,

1 substantially as shown on Exhibit "D" hereto, to provide
2 alternative means of ingress/egress throughout Town Center DRI.

3 The rights-of-way for the roads (and segments)
4 provided for above in this Section shall be as follows:

5 (a) Town Center Boulevard - 100 feet.

6 (b) Central Avenue, between the traffic circles -
7 65 feet.

8 (c) Central Avenue, other than between the traffic
9 circles - 100 feet.

10 (d) Market Avenue to Central Avenue - 80 feet.

11 (e) Hospital Drive - 80 feet.

12 (f) Royal Palm Parkway - 124 feet, except where
13 constrained east of the intersection with Town Center
14 Boulevard.

15 (g) City Place may, at Developers discretion and
16 expense as further detailed below, be extended from Lake Avenue
17 to connect to Royal Palms Parkway.

18
19 Each phase is anticipated to last at least 5 years,
20 from the date of this Amendment, unless extended pursuant to
21 Section 380.06(19), *Florida Statutes*, or unless Developer
22 elects to accelerate the beginning date of a subsequent phase,
23 provided that all mitigation requirements for the particular
24 phase to be affected are met. The end date of a phase shall
25 not be affected by an acceleration of the beginning date.

1 Unused development rights from a particular phase
2 shall carry over into the next phase until buildout. Physical
3 development shall commence no later than January 1, 2005.

4 Although the Town Center DRI is phased through 2036,
5 buildout (disbursement of all development rights) may not occur
6 by that date. As a result, the DRI termination date and the
7 expiration date of this Order are both established as April
8 12, 2036.

9 6. **Effective Date.** This Amended and Restated DRI DO shall
10 take effect upon approval by City Council.

11 7. **Monitoring Official.** The City Manager or designee
12 shall be the local official responsible for monitoring the Town
13 Center DRI for compliance by Developer with this Order.

14 8. **Downzoning Protection.** The Town Center DRI, as
15 approved in this Order, shall not be subject to downzoning or
16 reduction of land uses before December 31, 2032, unless
17 Developer consents to such change, or the City demonstrates
18 that substantial changes in the conditions underlying the
19 approval of this Order have occurred or that this Order was
20 based on substantially inaccurate information provided by
21 Developer or that the changes are essential to public health,
22 safety and welfare.

23 9. **Election Regarding Environmental Rules.** Pursuant to
24 Section 380.06(5)(c), *Florida Statutes*, Developer has elected
25 to be bound by the rules adopted pursuant to Chapter 373 and
403, *Florida Statutes*, in effect as of the date of this Order,

1 including, but not limited to, the provisions of Section
2 373.414(13), *Florida Statutes*. Such rules shall be applicable
3 to all applications for permits pursuant to those chapters
4 which are necessary for and consistent with the development
5 authorized in this Order, except that a later adopted rule
6 shall be applicable to an application if:

7 (a) the later adopted rule is determined by the
8 adopting agency to be essential to the public health, safety
9 and welfare, or

10 (b) the later adopted rule is being adopted pursuant
11 to Section 403.061(27), *Florida Statutes*; or

12 (c) the later adopted rule is being adopted pursuant
13 to a subsequently enacted statutorily mandated program; or

14 (d) the later adopted rule is mandated in order for
15 the state to maintain delegation of a federal program; or

16 (e) the later adopted rule is required by state or
17 federal law.

18 Further, to qualify for the benefits of this provision,
19 the application must be filed within 5 years from the issuance
20 of this Order and the permit shall not be effective for more
21 than 8 years from the effective date of this Order. Nothing
22 in this Section shall be construed to alter or change any
23 permitting agency's authority to approve permits or to
24 determine applicable criteria for longer periods of time.

25 **10. Level of Service Standards.**

1 (a) The Town Center DRI shall be required to meet all
2 level of service standards in the City's Comprehensive Plan
3 and all requirements of the City's concurrency management
4 system. However, pursuant to Section 163.3180(12), *Florida*
5 *Statutes*, if authorized by the City's Comprehensive Plan, the
6 Developer may satisfy the transportation concurrency
7 requirements by meeting the transportation conditions
8 contained in this Order. In addition, the onsite roadway system
9 within the Town Center DRI shall be exempt from the City's
10 Comprehensive Plan concurrency requirements, with the
11 exception of Town Center Boulevard (formerly Seminole Woods
12 Parkway extension).

13 (b) Because Developer completed the DRI's offsite
14 mitigation obligations, the City hereby agrees that all owners
15 within the current DRI Property are vested for water, sewer,
16 traffic, park, and all other public services concurrency for
17 the Present Entitlements identified in Section 3 herein. The
18 DRI has been vested with school concurrency for the first 2,500
19 residential dwellings only. After the initial 2,500 residential
20 units, school concurrency determination will be as required in
21 the LDC. Nothing contained herein shall be construed to waive
22 the City's right to collect all types of impact fees from each
23 property owner at the times delineated in the City's Unified
24 Land Development Code ("ULDC"). Further, while the Developer
25 has satisfied all of its parks and open space requirements,
all residential developments that occur within the DRI DO shall

1 provide for its residents' standard and customary amenities
2 that usually are associated with the type of residential
3 dwelling built. For example, if a single-family subdivision is
4 built, a typical amenity is a clubhouse. If a multi-family
5 community is built, a typical amenity is a swimming pool and
6 an on-site playground or dog park. These examples are intended
7 to be illustrative, non-comprehensive, and non-binding.
8 Rather, the examples are intended to provide a sampling of
9 standard and customary amenities typically associated with
10 different types of residential communities.

11 (c) Should Developer choose to convert land use, as
12 outlined more specifically in Section 4 herein, Developer shall
13 be required to assess the impact of the conversion on the
14 public water, sewer, and other public services which will be
15 impacted by such conversion (but not traffic as the conversion
16 method used is based on equivalent trips). After a review of
17 the impacts on the public services, and a finding that the
18 Level of Service standards will be met after the conversion,
19 the Declarant's conversion shall be vested. A finding of
20 vesting shall be issued, in writing, by the City Manager, or
21 other designee. If the Level of Service standard is not met,
22 such finding shall be issued by the City Manager, or other
23 designee.

24 (d) If the Developer does not assign or develop all
25 the Present Entitlements for which the Town Center DRI is
vested, the Declarant shall retain rights to develop the

1 remaining entitlements and retain its vested rights for such
2 within the DRI Property. Developer may, at Developer's sole
3 discretion, choose to apply the remaining entitlements to
4 future development on the DRI Property, or to properties that
5 the City approves for annexation into the Town Center DRI.

6 11. **Biennial Reporting.**² This requirement has been deleted
7 as the requirements contained in the DRI DO have either been
8 completed or have been specifically assigned to the respective
9 property owner to which the requirements are applicable.
10 Further, the Statutes and rules regulating Developments of
11 Regional Impacts no longer require the biennial reporting,
12 unless required by the City. However, based upon request made
13 by City, Developer shall report, biennially, the development
14 entitlements that have been assigned. This report shall
15 identify the entitlements assigned, to what track they have
16 been assigned, and if any conversion took place to create such
17 development rights. The first report shall be due January 31,
18 2022 for the period covering January 1, 2020 through December
19 31, 2021.

20 12. **Application for Proposed Changes.** Developer shall
21 submit simultaneously to the City, any applications for the
22 proposed changes to the Town Center DRI. Developer, or
23 Developer's assigns, shall be the only party(ies), other than
24 the City, that may apply for changes to the Town Center DRI.

25

² See Exhibit "I" for the current status of this requirement. Exhibit "I"
shall control over anything contrary contained herein.

1 13. **Limitations of Approval.** The approvals provided in
2 this Order shall not be construed to obviate the duty of
3 Developer to comply with all other applicable local or state
4 permitting procedures.

5 14. **Impact Fee Credits.** Developer or its assignee shall
6 receive impact fee credits for impact fees that are paid in
7 connection with development within the Town Center DRI. The
8 impact fees and/or impact fee credits shall be impounded by
9 the City and used for projects contained within the Town Center
10 DRI.

11 15. **Notices.** Any and all notices required or allowed to
12 be given in accordance with this Order shall be mailed or
13 delivered as follows:

14 **To Developer:** Florida Landmark Communities, Inc. and
15 Palm Coast Holdings, Inc.
16 145 City Place, Suite 300
17 Palm Coast, Florida 32164
18 Attn: Jeff Douglas
19 Telephone: (386) 446-6226

20 **With a copy to:** Chiumento Law
21 145 City Place, Suite 301
22 Palm Coast, Florida 32164
23 Attn: Michael D. Chiumento, III
24 Telephone: (386) 445-8900

25 **To the City:** City of Palm Coast

1 160 Lake Avenue

2 Palm Coast, Florida 32164

3 Attn: City Manager

4 Telephone: (386) 986-3702

5 **With a Copy to:** Garganese Weiss D'Agresta & Salzman

6 111 N. Orange Avenue, Suite 2000

7 Orlando, Florida 32801

8 Attn: Neysa Borkert

9 Telephone: (407) 425-9566

10 16. **Severability.** In the event any stipulation, or any
11 portion of any Section of this Order shall be declared invalid,
12 illegal, or unconstitutional by a court of competent
13 jurisdiction, such adjudication shall in no manner affect the
14 approval granted herein, and other stipulations, or the other
15 provisions of the affected stipulation, which shall remain in
16 full force and effect as if the stipulation or portion or
17 Section thereof so declared invalid, illegal, or
18 unconstitutional, were not originally a part hereof, provided,
19 however, that if the result of the severance of the stipulation
20 or portion or Section results in harm to the public health,
21 safety or welfare; results in a public harm; or substantially
22 negates a public benefit or imposes a public burden; then the
23 provisions of this Order shall be deemed not severable and this
24 Order shall be reformulated and reconstituted by the City to
25 address said matters.

1 17. **Rendition of Order to DCA.** Consistent with changes in
2 Florida Statutes regulating DRIs, rendition of this DO to DCA
3 is not required. School concurrency will be determined based
4 on Part II, Paragraph 10.

5 18. **Annexation of Additional Lands.**

6 The Developer may amend the DRI DO to annex additional
7 adjacent lands into the Town Center DRI ("Annexed Lands"). Any
8 annexation shall be made through the DRI DO amendment process.
9 School concurrency will be determined based on Part II,
10 Paragraph 10(b).

11 19. **Other General Conditions.**

12 (a) Notwithstanding any provision contained in this
13 Order to the contrary, the City shall have no financial
14 responsibility to contribute to or participate in the funding,
15 design, engineering, permitting, and/or construction of
16 improvements to State roads, County roads, or roads constructed
17 or to be constructed within the DRI Property.

18 (b) Development of the DRI Property based upon this
19 Order shall comply with all applicable Federal, State and local
20 laws, codes, ordinances, rules and regulations which are hereby
21 incorporated herein by this reference.

22 (c) The Developer acknowledges that the requirements
23 and conditions of this Order as set forth herein result from
24 the impacts of development of the DRI Property on public
25 facilities and systems, are reasonably attributable to the

1 development of the DRI Property, are based upon comparable
2 requirements and commitments that the City or other agencies
3 of government would reasonably expect to require a developer
4 to expend or provide, and are consistent with sound and
5 generally accepted land use planning and development practices
6 and principles.

7 (d) This Order and its terms and conditions and all
8 of the promises, commitments, obligations, covenants,
9 liabilities, and responsibilities of the Developer touch and
10 concern the DRI Property and shall continue to run with, follow
11 and burden the DRI Property. To this end, the said promises,
12 commitments, obligations, covenants, liabilities, and
13 responsibilities shall inure to the benefit of the City and
14 shall operate as a perpetual burden and servitude upon the DRI
15 Property unless released by the City by means of an appropriate
16 recordable instrument approved and executed by the City. The
17 said promises, commitments, obligations, covenants,
18 liabilities, and responsibilities herein incurred by the
19 Developer shall be binding upon the Developer and the
20 Developer's heirs, transferees, assigns and successors in
21 interest (specifically including, but not by way of limitation,
22 building permit applicants and any person or entity developing
23 any part of the DRI Property) and shall inure to the benefit
24 of the City and its assigns and successors in interest as to
25 all parts and each part of the DRI Property. The Developer

1 shall pay any and all costs of recording instruments in the
2 public records of the County.

3 In addition to the foregoing general conditions, the
4 following specific conditions are included in this Order to
5 mitigate identified regional impacts.

6 **PART III**

7 **SPECIFIC CONDITIONS TO THIS DEVELOPMENT ORDER³**

8 1. **Vegetation and Wildlife.** Within 1 calendar year from
9 the effective date of this Order the Developer shall make an
10 unencumbered contribution of Eight Thousand Six Hundred and
11 Sixty-Six and 00/100 Dollars (\$8,666.00) to the Florida Fish
12 and Wildlife Conservation Commission in favor of Land
13 Acquisition Trust Fund. No construction shall commence within
14 any gopher tortoise habitat on the DRI Property until the
15 Developer has obtained the necessary gopher tortoise permit
16 from the Florida Fish and Wildlife Conservation Commission and
17 complies with all permit conditions. In the absence of a permit,
18 development related activities on the DRI Property shall not
19 result in the harming, pursuit, or harassment of wildlife
20 species classified as endangered, threatened, or a species of
21 special concern by either the State or Federal governments in
22 contravention of applicable State and Federal laws, rules or
23 regulations. Should listed species be determine to reside on,
24

25 ³ The requirements contained in this Part III are part of the original 2003
DRI DO. The current status of these requirements, as amended, are attached
as Exhibit "I" and control over anything contrary contained in this DRI DO.

1 or otherwise be significantly dependent upon the DRI Property,
2 the Developer shall cease all development activities which
3 might negatively affect that individual or population. The DRI
4 Property shall be developed in full compliance with all
5 applicable laws, rules and regulations. The Developer shall
6 provide proper protection to the satisfaction of all agencies
7 with jurisdiction over the matter.

8 **2. Wetlands.**

9 (a) A minimum of 500 acres of wetlands on the DRI
10 Property shall be conserved and/or enhanced. Enhancement
11 activities, including but not limited to, rehydration, wetland
12 and upland vegetative plantings and creation of open water
13 habitat, shall occur in accordance with the requirements and
14 conditions set forth in any and all applicable permits. All
15 conserved and/or enhanced wetlands shall be placed under a
16 permanent conservation easement in accordance with the
17 provisions of Section 704.06(1) and (11), *Florida Statutes* and
18 no development activities shall be allowed, as defined in
19 Section 380.04, *Florida Statutes*, unless such activity is
20 specifically identified in the conservation easement language
21 which is approved by the City, St. John River Water Management
22 District ("SJRWMD") and the U.S. Corps of Engineers ("USACE").
23 The conservation easement shall be dedicated to SJRWMD and the
24 City, free and clear of any and all liens and encumbrances and
25 not subordinate to any encumbrances, including, but not limited

1 to, the rights of mortgagees and any lenders. The conservation
2 easement shall grant a third party interest to USACE, with full
3 enforcement rights, including all remedies available under law,
4 and providing, in the event USACE prevails in an enforcement
5 action, for an award of attorney's fees, litigation fees and
6 costs, at any level of enforcement, regardless of whether or
7 not litigation is necessitated.

8 (b) The Developer shall establish minimum upland
9 buffers of 15-feet with an average of 25-foot buffers around
10 all preserved and/or enhanced wetlands. Impervious development,
11 other than permitted road crossings and incidental stormwater
12 management structures shall be prohibited within this buffer,
13 provided, however, that the construction of boardwalks,
14 walkways, docks, and similar compatible amenities may be
15 permitted, subject to the regulations of applicable regulatory
16 agencies.

17 (c) Mitigation for wetland impacts shall be
18 determined by SJRWMD and/or USACE, as required.

19 (d) Piezometers and staff gauges shall be used to
20 monitor wetland hydrology. Details of the wetland monitoring
21 program shall be determined by SJRWMD/USACE and SJRWMD/USACE
22 shall monitor the results of the program to determine its
23 success and completion.
24
25

1 (e) The Developer shall install a minimum of 36-inch
2 culverts at all wetland road crossings to preserve wetland
3 functions and provide small wildlife crossings.

4 **3. Groundwater.**

5 (a) Use of Floridan Aquifer wells, that do not fall
6 within the SJRWMD's specific consumptive use permitting
7 requirements (less than 6 inches in diameter), are prohibited
8 on the DRI Property. This prohibition shall act as a deed
9 restriction relative to the DRI Property.

10 (b) Any abandoned wells discovered prior to or during
11 development shall be properly plugged and abandoned in
12 accordance with SJRWMD's rules and regulations. The Developer
13 shall be responsible for all Floridan Aquifer wells that are
14 discovered before and during the development of the Town Center
15 DRI. To the extent available, the following information shall
16 be provided to the City for each well:

- 17 (i) owner or tenant using the well;
18 (ii) location of the well;
19 (iii) well contractor who constructed the well;
20 (iv) date of well construction;
21 (v) use of the well;
22 (vi) status of the well (is it being used
23 currently or not?);
24 (vii) well-casing diameter and total depth of the
25 well; and

1 (viii) does the well free flow or does it require
2 pumping to remove the water from the ground?

3 4. **Surface Water.** A Limited Surface Water Quality
4 Monitoring Plan ("SWQMP") shall be developed for Town Center
5 DRI and shall be approved by the Northeastern District of the
6 Florida Department of Environmental Protection ("FDEP") and
7 shall include one site as approved by FDEP. The SWQMP shall be
8 implemented on site prior to initiating construction activities
9 to ensure adequate data collection for establishment of
10 background conditions. All background data shall be submitted
11 to the Northeastern District of the FDEP prior to initiation of
12 any construction activities. The development of the plan and
13 parameters to be sampled shall be developed in accordance with
14 FDEP criteria. Monitoring data shall be summarized in each
15 Monitoring Report.

16 5. **Floodplains.** No development shall occur within the 100-
17 year floodplain as determined on the Flood Insurance Rate Maps,
18 other than canal crossings. All canal crossings shall be
19 elevated or flood-proofed to the height that is at a minimum of
20 two feet above the base flood elevation of the 100-year
21 floodplain NGVD-1929.

22 6. **Water Supply.**

23 (a) Development of the Town Center DRI shall occur
24 concurrent with a provision of adequate central potable water
25 service meeting the adopted level of service in the City's

1 Comprehensive Plan. Sufficient capacity exists to accommodate
2 Phase 1 development of the Town Center DRI; no building permit
3 shall be issued for any subsequent phase of the Town Center DRI
4 until sufficient capacity exists from the water utility to
5 provide potable water meeting the adopted level of service in
6 the City's Comprehensive Plan.

7 (b) Use of Floridan Aquifer wells are hereby
8 prohibited by this covenant and deed restriction for the purpose
9 of irrigation, once-through-cooling, surface water level
10 maintenance and decorative uses.

11 (c) Irrigation shall use stormwater, and when
12 available to the site, reclaimed water shall serve as a backup
13 source. No potable water shall be used for irrigation, except
14 on a temporary basis until a stormwater or reclaimed water
15 source is available or if approved by the City.

16 (d) Water conservation strategies, including
17 Xeriscape landscape techniques and low-flow plumbing fixtures
18 shall be incorporated into the construction, operation and
19 maintenance phases of the Town Center DRI, and shall be included
20 in the covenants and deed restrictions as approved by the City.
21 The conservation strategies shall include, but are not limited
22 to, the following conditions:

23 (i) 50% of planted vegetation, by aerial extent,
24 shall consist of native, drought tolerant or Xeriscape
25 vegetation in all landscaped areas. Landscaped areas include

1 turf, planted vegetation and mulch, however, they do not include
2 hardscaped areas.

3 (ii) Developer shall include information on
4 Xeriscape and/or native vegetation and/or drought-tolerant
5 vegetation (SJRWMD Xeriscape Plant Guide), water conservation
6 guides and IFAS's Xeriscape plant guides and IFAS Cooperative
7 Extension Services' "Florida Yards and Neighborhoods"
8 materials) in design guidelines for all developers and residents
9 in Town Center DRI.

10 (iii) At least 70% slow-release granular or
11 organic fertilizers shall be utilized throughout all landscaped
12 common areas within the Town Center DRI.

13 (iv) Use of private irrigation wells and use of
14 potable water for irrigation are prohibited unless approved by
15 the City.

16 (v) Decorative and ornamental fountains shall
17 use reclaimed water, stormwater, or potable water, provided a
18 re-circulation treatment system is installed.

19 (vi) The Developer shall install efficient water
20 systems to minimize and conserve water consumption.

21 **7. Wastewater Management.** Development within Town Center
22 DRI shall occur concurrent with the provision of adequate
23 central sewer service meeting the adopted level of service of
24 the City's Comprehensive Plan.

1 (a) Sufficient capacity exists to accommodate Phase 1
2 development; no building permits shall be issued for any
3 subsequent phase of Town Center DRI until sufficient capacity
4 exists from the sewer utility to provide wastewater treatment
5 service meeting the adopted level of service of the City's
6 Comprehensive Plan. As also provided for in Subsection (h),
7 Section 11 under PART II above, each Monitoring Report shall
8 include an analysis demonstrating that there will be sufficient
9 capacity of wastewater facilities serving Town Center DRI for
10 the anticipated development for the insuring reporting period.

11 (b) Septic tanks are prohibited within the Town Center
12 DRI. Temporary surface tanks may be used to provide sewage
13 service to construction and marketing trailers until central
14 sewer lines are installed.

15 **8. Stormwater Management.**

16 (a) At a minimum, 20% of wet detention ponds shall
17 have a 30% littoral zone measured relative to pond surface at
18 normal water elevation.

19 (b) Developer shall use porous parking materials such
20 as grasspave, gravelpave, turfstone, pavers or other innovative
21 methods, including reduced parking and increased landscaping,
22 to decrease impervious surfaces on all remote, intermittent, or
23 overflow parking. Developer shall strive for a 25% reduction
24 in required impervious parking surfaces as a significant effort
25

1 to reduce development related runoff associated with impervious
2 parking surfaces.

3 (c) Outfall control structures shall regulate post-
4 development flows such that pre-development levels are not
5 exceeded.

6 (d) A stormwater pollution prevention plan ("SWPPP")
7 shall be attached to and incorporated into the construction and
8 permit documents for all projects constructed within the Town
9 Center DRI. The SWPPP shall be similar to the SWPPP provided
10 in **Exhibit "F"** hereto, but may be modified to accommodate the
11 specific construction project and site. However, all SWPPP's
12 shall include Paragraph 1, Preconstruction Activities and
13 Paragraph 3, Maintenance/ Inspection Procedures, as provided
14 for in **Exhibit "F"** hereto.

15 In addition to the requirements on individual
16 property owners/contractors outlined in the SWPPP, the
17 Developer, Community Development District or property owners
18 association shall monitor compliance with the SWPPP goals. The
19 compliance monitoring shall consist of the following:

20 (i) An individual shall be identified to monitor
21 compliance with the SWPPP. The SJRWMD and FDEP shall be
22 notified as to the individual who is responsible for monitoring
23 the SWPPP within the Town Center DRI. At a minimum, this
24 responsible individual shall:

1 • Be trained in erosion control
2 implementation techniques.

3 • Setup and oversee implementation of
4 SWPPP programs throughout the build out of Town Center DRI.

5 • Ensure that if the regular site
6 inspector is unable to attend pre-construction conferences, this
7 information is communicated to the inspector, including site
8 specific Best Management Practices, permit requirements and
9 erosion control implementation training.

10 • Meet with trained site superintendent
11 monthly, upon commencement of site construction, to ensure
12 implementation of SWPPP and resolve problems. Frequency of site
13 visits may be decreased if there is no indication of erosion
14 control problems and previous visits show a history of
15 compliance with the SWPPP.

16 • Submit a brief narrative update to the
17 City, FDEP and SJRWMD quarterly on activities and progress or
18 be available to meet with FDEP for quarterly site visits, unless
19 FDEP deems the visit unnecessary. Upon proper identification,
20 City, SJRWMD and FDEP personnel shall be granted access to the
21 DRI Property.

22 (ii) Attendance at all pre-construction
23 conferences.

24 (iii) Conduct homeowner's stormwater training
25 programs.

1 (iv) Conduct contractor's stormwater training
2 programs.

3 (v) Conduct periodic inspections of
4 construction sites.

5 (vi) Notifications to SJRWMD, FDEP and the City
6 of observed potential permit violations within 24 hours and
7 serve as agency liaison.

8 (vii) Annual reporting summaries of items (i)
9 through (vi) above.

10 (e) The SWPPP shall be implemented upon initiation of
11 construction activities. 3 years after initiation of
12 construction, the FDEP, SJRWMD and the City shall have the
13 opportunity to review the program. If it is found to be
14 unsatisfactory, the agencies shall evaluate alternatives with
15 the Developer including mandating program modification options.

16 (f) FDEP, SJRWMD and the City shall be allowed access
17 to the DRI Property to sample water quality.

18 (g) The following shall trigger the need for some form
19 of water quality monitoring program to be developed at such time
20 that FDEP or the City determines one of the following conditions
21 have been met:

22 (i) The conditions of the SWPPP monitoring
23 program are not met;

1 (ii) Piezometers and staff gauges show negative
2 changes in wetland hydrology that cannot be attributed to
3 natural causes;

4 (iii) The FDEP or the City receives substantiated
5 concerns about water quality problems caused by the Developer;

6 (iv) Sampling results of FDEP or the City shows
7 a water quality violation per requirements established in
8 Chapter 62-302 *Florida Administrative Code* or other established
9 regulatory water quality standard; or

10 (v) If discharges cause hydrologic alterations,
11 such as stream canalization; other such alterations that would
12 warrant sampling or the FDEP or the City has reason to suspect
13 water quality violation associated with the development of Town
14 Center DRI.

15 **9. Solid Waste.**

16 (a) Development of Town Center DRI shall occur
17 concurrent the provisions of adequate solid waste service
18 meeting the adopted level of service in the City's Comprehensive
19 Plan.

20 (b) Development within the Town Center DRI or
21 individual phases shall not occur until adequate permitted
22 capacity is verified from the identified service provider or a
23 substitute. As also provided for in Subsection (h), Section 11,
24 under PART II above, each Monitoring Report shall include an
25 analysis demonstrating that there will be sufficient capacity

1 of solid waste facilities serving Town Center DRI for
2 anticipated development for the ensuing reporting period.

3 (c) All users, generators and operators within the DRI
4 Property shall be required to adhere to all Federal, State and
5 local laws, codes, ordinances, rules and regulations with
6 respect to the use, management and disposal of hazardous waste.

7 **10. Donation of Utility Facilities.**

8 All water and sewer lines and related facilities that
9 are installed or constructed on the DRI Property (collectively
10 the "Utility Facilities") shall be donated to the City, without
11 charge, upon the City's request. In the event the Utility
12 Facilities are dedicated or title thereto is otherwise
13 transferred to the CDD, as planned by the Developer, the
14 provisions hereof shall run with the title and the CDD shall be
15 obligated to donate the Utility Facilities to the City, without
16 charge, upon the City's request.

17 **11. Public Facility site and Town Core Public Land.**

18 (a) Developer shall convey to the City title to the
19 site that is labeled Public Facility Site on the sketch that
20 is attached as **Exhibit "E"** hereto (the "Public Facility Site").
21 The City shall take title to the Public Facility Site subject
22 to a restriction limiting the uses thereof to the following:
23 fire station; police station; emergency management services;
24 parking for public vehicles and equipment; and any other public
25 use approved by the Developer.

1 Developer shall include the Public Facility Site, as
2 a separate platted lot, in the plat that will also include Town
3 Center Boulevard, which Developer shall submit to the City
4 within 12 months following the effective date of this Order
5 (the "Parkway Plat"). Seller shall convey to the City title
6 to the Public Facility Site within 90 days following the date
7 the Parkway Plat is recorded.

8 (b) In addition to the Public Facility Site, at the
9 option of the City, exercisable by the City at any time within
10 6 months following the effective date of this Order, the City
11 may agree to convey to Developer title to the land that is
12 labeled City's Exchange Land on the sketch that is attached as
13 **Exhibit "E"** hereto (the "City's Exchange Land") in exchange for
14 the 3 sites that are labeled on the sketch that is attached as
15 **Exhibit "E"** hereto, and referred to herein, as "Site A,"
16 "Site B" and "Site C" (collectively the "Town Core Public
17 Land").
18

19 (c) If the City exercises the option provided for in
20 (b) above, the City shall obtain appraisals of the current
21 market value of the City's Exchange Land ("Appraised Value of
22 City's Land") and the Town Core Public Land ("Appraised Value
23 of Public Land"). The Appraised Value of the Public Land shall
24 be specifically allocated among Site "A", Site "B" and Site
25 "C". If the Appraised Value of the City's Land exceeds the

1 Appraised Value of the Public Land, upon closing of the
2 exchange, Developer shall pay the City the difference in cash.
3 If the Appraised Value of the Public Land exceeds the Appraised
4 Value of the City's Land, the difference shall be regarded as
5 a donation by the Developer to the City for public purposes.
6 Appraisals shall be accomplished by an appraiser of the City's
7 choice who is a member of the Appraisal Institute (MAI) or the
8 American Society of Appraisers (ASA).

9
10 (d) The City shall take title to the Town Core Public
11 Land subject to the following:

12 • Site "A" - A restriction limiting the uses
13 to City governmental buildings ("Site "A" Primary Allowable
14 Use"), a library, a museum, parks and public places for outdoor
15 entertainment and festivals; and an assignable drainage
16 easement to and over the lake that will be excavated within the
17 permitted areas within Site "A" to be used consistent with the
18 overall permitted stormwater management plan for the Town
19 Center DRI; and a shared parking covenant which provides that
20 any parking area that is constructed on Site "A" shall be
21 available to the public, except a reasonable number of parking
22 spaces may be reserved for City employees and visitors at City
23 offices and all of the parking may be reserved, as needed and
24 as permitted by the City, for events that takes place on Site
25 "A".

1 • Site "B" - A restriction limiting the uses
2 to a youth center, recreational facilities, a library and
3 educational facilities (each a "Site "B" Allowable Use").

4 • Site "C" - A restriction limiting the use to
5 a cultural arts and/or performing arts center (Site "C" Primary
6 Use") that may include educational facilities, galleries, a
7 museum, a library and parks, with areas for outdoor
8 entertainment and festivals; and a shared parking covenant
9 which provides that any parking area that is constructed on
10 Site "C" shall be available to the public, except up to 10% of
11 the available parking spaces may be reserved for employees who
12 work at Site "C" and visitors to Site "C" and all of the parking
13 may reserved, as needed, for events that take place on Site
14 "C."
15

16 (e) In addition to the restrictions provided for
17 in (d) above, the City shall take title to the Town Core Public
18 Land subject to a reverter on the following terms:

19 • Title to Site "A" may, at Developer's
20 election, revert to Developer if construction of the Site A
21 Primary Allowable Use is not commenced thereon within 4 years
22 from the date the City takes title to Site "A".

23 • Title to Site "B" may, at Developer's
24 election, revert to Developer in the event construction of a
25

1 Site "B" Allowable Use is not commenced thereon within 6 years
2 from the date the City takes title to Site "B".

3 • Title to Site "C" may, at Developer's
4 election, shall revert to Developer in the event that
5 construction of the Site "C" Primary Allowable Use is not
6 commenced thereon within 10 years from the date the City takes
7 title to Site "C".

8 • Title to Site "A", and/or Site "B" and/or
9 Site "C" shall revert to the Developer, as to the particular
10 site, in the event that construction, as provided herein, as
11 to the particular site, is commenced thereon within the time
12 limit required but a minimum of 5,000 square feet of floor area
13 in each of the 3 sites is not completed within 2 years following
14 commencement as a result of abandonment of the construction
15 project by the City or other public or quasi public entity that
16 is building the facility on the site. Election by Developer
17 to cause the reversion must occur within 180 days of the date
18 that said right to reversion springs into effect.

19
20 In the event title to Site "A" and/or
21 Site "B" and/or Site "C" reverts to Developer, title thereto
22 shall not vest in Developer until Developer pays the City the
23 appraised value thereof, in the amount shown for the site in
24 the Appraised Value of Public Land for each particular site
25 that is the subject of the reversion. Payment must be made

1 within 90 days of the election of the reversion by the
2 Developer.

3 (f) The Developer shall take title to the City's
4 Exchange Land subject to a deed restriction limiting uses to
5 attached or detached residential dwelling units and any medical
6 and/or recreational facilities that are ancillary to the
7 primary residential use. The deed restriction shall be an
8 independent right of the City and is not a land development
9 regulation restriction.
10

11 (g) If the City exercises its option to acquire the
12 Town Core Public Land, within 6 months from the date of
13 exercise, the Developer shall include Site "A", Site "B" and
14 Site "C", as separate platted lots, in a plat which includes
15 the entire urban core area of the Town Center DRI (the "Urban
16 Core Plat"). Developer shall convey to the City title to the
17 Town Core Public Land and the City shall convey to the Developer
18 title to the City's Exchange Land within 90 days following the
19 date the Urban Core Plat is recorded (the "Property Exchange").
20

21 (h) The City shall be responsible for any site
22 preparation costs, including fill costs, for the Public
23 Facility Site and the Developer shall be responsible for all
24 site preparation costs, including fill costs, for the City's
25 Exchange Land and the Town Core Public Land. If it has not
already done so, within 6 months following the Property

1 Exchange, the Developer shall construct streets and extend
2 utility services to Site "A", Site "B" and Site "C" and clear
3 and fill Site "A", Site "B" and Site "C" to or above the 25
4 year storm elevation so buildings can be constructed thereon
5 without further site preparation costs, other than fill for
6 building pads.

7 (i) All costs associated with the conveyance of the
8 Public Facility Site and the Town Core Public Land to the City
9 and conveyance of the City's Exchange Land to the Developer
10 shall be paid by the Developer. The Developer shall also ensure
11 that the Public Facility Site and the City's Exchange Land are
12 conveyed without lien, encumbrance, or special assessment, and
13 that marketable title shall vest in the City.

14 (j) If the Developer acquires title to the City's
15 Exchange Land and the City's Exchange Land is designated on the
16 City's Comprehensive Land Use Plan as DRI or other
17 classification that is consistent with Developer's plan to use
18 the land for multi-family residential purposes, then, in that
19 event, the DRI Property shall include the City's Exchange Land
20 and the Master Plan shall be automatically modified to include
21 the City's Exchange Land, provided the addition of the City's
22 Exchange Land to the Town Center DRI shall not increase the
23 permitted land use totals from that shown in Section 3, under
24 Part II above.

25 **12. Transportation.**

(a) Notwithstanding the phasing schedule that is set forth in Section 5, under Part I above, for the purpose of phasing and transportation recommendations, Town Center DRI is divided into three phases, based upon actual trip counts, as shown on the following schedule:

	Build- Out	Daily Trips	PM Peak	Cumulative	
				Daily Trips	PM Peak
Phase 1	2017	56,565	5,226	56,565	5,226
Phase 2	2022	56,742	5,218	113,307	10,444
Phase 3	2027	42,953	4,048	156,260	14,492

(b) The Developer shall provide all right-of-way necessary to construct the internal roadway network and shall be responsible for constructing the internal roadway network.

(c) The Developer shall be responsible for the construction of all turn lanes (as required) providing direct access to Town Center DRI as well as the conveyance of additional necessary right-of-way, including but not limited to, right-of-way necessary to extend Royal Palm Parkway to Old Kings Road as a 4-lane road, which shall be conveyed without lien or encumbrance with marketable title vesting in the appropriate jurisdiction.

(d) During development of Phase 1, the Developer shall be responsible for the construction of Town Center Boulevard

from SR-100 to Old Kings Road and Market Avenue from Belle Terre Parkway to Central Avenue, including all intersection improvements, turn lanes, and signalization when warranted. Trips generated from Town Center DRI shall not exceed 550 actual PM peak hour trips before construction of Town Center Boulevard is completed. All additional necessary right-of-way as provided for in this Order shall be conveyed by the Developer (or the CDD) to the City without lien or encumbrance with marketable title vesting in the grantee.

(e) Pursuant to Section 163.3180(12), Florida Statutes, the Developer shall mitigate offsite transportation impacts for Town Center DRI, equal to 14,492 actual PM peak hour trips, as measured and reported in the Monitoring Reports, as shown in the following schedule:

Phase	Developer's Prop. Share (See Exhibit "G" hereto)	Mitigation Payment/ Project	Mitigation Schedule	Mitigation Credit*	Excess Credit Applied to Next Phase*
Phase 1	\$3,388,578	(1) \$180,000 cash contribution to the City for Palm Coast Parkway corridor study.	Within 90 days following the effectiveness of this Order.	\$180,000	-
		(2) \$400,000 cash contribution to FDOT to redesign the new I-95 structure over SR-100.	Within 90 days following the effectiveness of this Order.	\$400,000	-
		(3) \$3,250,000 cash contribution to FDOT to construct the new I-95 structure over SR-100.	On or before June 1, 2005.	\$3,250,000	-
					-

Phase	Developer's Prop. Share (See Exhibit "G" hereto)	Mitigation Payment/ Project	Mitigation Schedule	Mitigation Credit*	Excess Credit Applied to Next Phase*
		(4) Construct 2-lane connection of Royal Palm Parkway to Town Center Boulevard (.75 miles)	Prior to 5,226 actual PM peak hour trips.	\$525,000	
		(5) Old Kings Road widening from State Road 100 to Town Center Blvd.	Prior to 5,226 actual PM peak hour trips	\$1,047,000 TOTAL \$5,402,000	\$2,013,422
Phase 2	\$3,523,607 - \$2,013,422 (credit from Phase 1) = \$1,510,185	(1) Participation in South Old Kings Road – Special Assessment district to add 2-lanes to Old Kings Road from Palm Coast Pkwy. to Lehigh Canal (intersection with Royal Palm Parkway. ext.), incl. 4-lane canal crossing with sidewalk. (2) Total impact fees paid to the City after December 31, 2018 (excluding from parcels in Special Assessment District) shall be used to fund regionally significant road projects as mutually identified by the City and the Developer. Such project may include but are not limited to any one or combination of the Roadway/Intersection improvements listed for Phase 3 on Exhibit "G" hereto, the cost of which is shown on Exhibit "G"	Prior to 5,226 actual PM peak hour trips.	\$6,750,000	\$5,239,815
Phase 3	\$7,562,214 - \$5,239,815 credit from	Any one or combination of the Roadway/Intersection	Prior to 10,444 net external trips	\$2,322,399	

Phase	Developer's Prop. Share (See Exhibit "G" hereto)	Mitigation Payment/ Project	Mitigation Schedule	Mitigation Credit*	Excess Credit Applied to Next Phase*
	Phase 2 = \$2,322,399	n Improvements listed for Phase 3 on Exhibit "G" hereto, the cost of which, as shown on Exhibit "G" equals or exceeds Developer's Proportionate Share for Phase 3, less credit from Phase 2. -OR- Prior to 8,131 net external trips, Developer shall prepare a detailed monitoring and modeling report (the M&M Report). Based on the M&M Report, the City shall identify project(s) required for mitigation.	-OR- As needed to mitigate transportation impacts from Town Center DRI, as determined from the M&M Report.		
Total Phases 1 - 3	\$14,474,399	-	-	\$14,474,399	-

* The dollar figures expressed herein are 2002 dollars. Phase 2 & 3 projects costs or Phase 2 & 3 funds shall be inflated consistent with the provisions of this agreement at a rate of 4% per annum

Developer may construct all or a portion of the above projects through the CDD, and/or a special taxing district that may include land currently owned by Developer, other than the DRI Property.

The Town Center DRI shall not commence beyond Phase 2, equal to 10,444 actual PM peak hour trips, as measured and reported in the Monitoring Reports, until the Developer has

1 completed the Phase 3 mitigation or prepared the M&M Report. If
2 Developer elects to prepare the M&M Report, preparation of the
3 M&M Report shall be preceded by a transportation methodology
4 meeting that includes the City. The transportation methodology
5 shall be approved by the City. The M&M Report shall then be
6 prepared in a manner consistent with the methodology. The actual
7 levels of service shall be as measured in the M&M Report. The
8 M&M Report shall identify those land uses scheduled for Phase 3
9 and estimate the trip generation, distribution and assignment
10 of trips for Phase 3. The M&M Report that allows the Developer
11 to proceed with Phase 3, or beyond 10,444 actual PM peak hour
12 trips, shall demonstrate that roadways will operate at
13 acceptable standards through build-out of Town Center DRI or
14 identify improvements necessary for build-out. The M&M Report
15 shall further identify the point in Phase 3 at which time the
16 identified improvements are necessary.

18 All roadway construction costs in this Agreement are
19 stated in 2002 dollar costs and construction estimates are
20 calculated in 2002 costs. Therefore, the cost of Phase 3
21 projects, built by Developer or its successors and used to
22 offset mitigation amounts, shall be estimated in 2002 costs as
23 provided for in the DRI documents. In the event the Developer
24 chooses to pay the City for Phase 3 mitigation in lieu of
25 building roadways, the amount of the payment shall reflect

1 compound inflation at a rate of 4% per year from 2002 to the
2 year the payment is made to the City.

3 In addition to the above provisions, the Developer's
4 proportionate share of the cost of roadway improvements needed
5 for Town Center DRI, equal to 14,492 actual PM peak hour trips,
6 shall be offset, in whole or in part, through impact fee credits,
7 as provided for in Section 14, under Part II above. As of the
8 date of recording this DRI DO, the Developer has completed all
9 off-site mitigation requirements to satisfy its off-site
10 mitigation requirements under the DRI DO.
11

12 (f) Prior to the traffic from the Town Center DRI
13 exceeding 10,444 PM peak hour trips, as reported in the
14 Monitoring Reports, the Developer shall install or cause to be
15 installed a box culvert within the Royal Palm Waterway that will
16 enable Royal Palm Parkway extension to be 4-laned to Old Kings
17 Road without requiring modifications to the I-95 overpass under
18 which the Royal Palm Parkway extension will be located.
19 Alternatively, consistent with Section 12(e) **Phase 2&3**
20 **Mitigation Payment/Project**, impact fees generated from the Town
21 Center DRI may fund the box culvert or other regionally
22 significant road project(s) as mutually agreed to and identified
23 by the City and the Developer.
24

25 (g) Notwithstanding anything contained herein to the
contrary, Developer may, at Developer's sole option and desire,

1 realign Town Center Boulevard and Royal Palms so long as the
2 relocation of the roadways are shown to have no adverse impacts
3 on the roadway network. Such showing may be demonstrated by a
4 traffic impact letter from a traffic engineer. The realignment
5 may be completed at Developer's sole cost and expense.

6 **13. Air Quality.**

7 (a) The following fugitive dust control measures shall
8 be undertaken during all construction activities throughout
9 build out of Town Center DRI and may be monitored by FDEP and
10 the City:

11 (i) Contractors shall moisten soil or use
12 resinous adhesives on barren areas, which shall include at a
13 minimum, all roads, parking lots or material stockpiles;

14 (ii) Contractors shall use mulch, liquid resinous
15 adhesives with hydro-seeding or sod on all landscaped areas;

16 (iii) Contractors shall remove soil and other
17 dust-generating material deposited on paved streets by vehicular
18 traffic, earth moving equipment or soil erosion;

19 (iv) Contractors shall utilize best operating
20 practices in conjunction with any burning resulting from land
21 clearing, which may include use of air curtain incinerators.

22 (b) Tree planting shall be placed along the internal
23 road rights-of-way and all parking areas to increase turbulence
24 and atmospheric disturbance minimizing ground level
25 concentrations of vehicular emissions.

1 **14. Hurricane Evacuation.**

2 (a) Access roads and parking lots for all hotels shall
3 be constructed above the base flood elevations.

4 (b) All residents of Town Center DRI shall be provided
5 with information regarding the vulnerability of Town Center DRI
6 to the impacts of hurricanes. This information shall take the
7 form of educational materials designed to increase evacuation
8 participation.

9 **15. Affordable Housing.**

10 An appropriate mix of residential development has been
11 proposed by the Developer.

12 A minimum of five (5%) of dwelling units within the DRI
13 Property shall be reserved for workforce housing. At the time
14 of this Amended and Restated DRI DO, Developer has met this
15 requirement for the entire project. As recommended by the PLDRB
16 at their May 2022 public hearing, an additional five (5)
17 workforce housing units will be provided within the Town Center
18 DRI.

19 **16. Police and Fire Protection.**

20 (a) Prior to the construction of any structure
21 exceeding 35 feet in height, the Developer shall contribute fire
22 equipment capable of reaching to the height of the structure to
23 be constructed. Developer shall be eligible for fire impact fee
24 credits as provided for in the impact fee ordinance in effect
25

1 at the time the credit is requested or otherwise agreed to by
2 the City.

3 (b) Before commencement of each phase of Town Center
4 DRI, a summary of impact fees shall be reviewed against the
5 estimated cost for fire, EMS and police services needed. If
6 fees paid are not sufficient to address identified needs,
7 Developer shall pay for the fair share of the unmet costs. The
8 costs for fire shall be based upon the development square footage
9 within the service delivery area. The cost of police shall be
10 based upon population and square footage of development within
11 the service area and an officer ratio of 1 officer and support
12 staff for each 1,300 residents.

13 17. Recreation and Open Space

14 (a) The Developer shall meet the adopted level of
15 service for recreation and open space as defined in the City's
16 Comprehensive Plan. The level of service standards shall be met
17 as follows: donating right-of-way for and constructing an
18 extensive bikepath system that will connect to the planned
19 rails-to-trails bikepath; setting aside large areas of open
20 space, including lake areas that will be available for active
21 and passive recreational opportunities; and providing areas for
22 public gatherings. In addition, developers of residential
23 parcels within Town Center will provide recreational facilities
24 for their residents and recreation impact fees will be paid as
25 Town Center builds out.

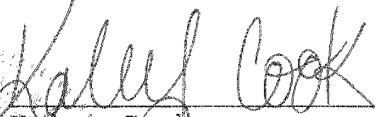
1 (b) The Developer shall institute adequate engineering
2 and institutional controls to mitigate for any development
3 activities or public access areas that connect to the Lehigh
4 Trail to mitigate for existing environmental contamination. The
5 Developer shall coordinate such measures with the Northeastern
6 District FDEP Hazardous Waste Cleanup Section.

7 18. **Historical and Archaeological Sites.** Should historical
8 or archaeological artifacts be discovered in the course of
9 development of Town Center DRI, the Department of State, Bureau
10 of Historic Preservation, Developer shall immediately notify the
11 Division of Historical Resources. No disruption of the findings
12 shall be permitted until the investigation is complete and the
13 Division of Historical Resources has rendered a recommendation,
14 which shall be binding on the Developer.

15
16
17 **WHEREFORE**, the parties hereto have caused these presents to
18 be signed all as of the date and year first above written.

19 ATTEST:

CITY OF PALM COAST

20
21 
22 Kaley Cook,
23 City Clerk
24
25

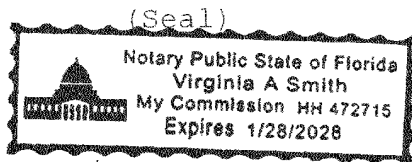

David Alfin, Mayor

1 STATE OF FLORIDA)
2 COUNTY OF FLAGLER)

3 The foregoing instrument was acknowledged by means of
4 ☒ physical presence or ☐ online notarization before me this 6
5 day of February, 2024, by David Alfin and Kaley Cook, the
6 Mayor and City Clerk respectively, for and on behalf of the
7 City of Palm Coast, Florida, who are personally known to me and
8 who did not take an oath.

9 WITNESS my hand and official seal this 6 day of February
10 2024.

11 Virginia A Smith
12 Signature



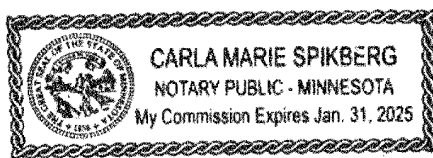
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Printed Name

WITNESSES:

FLORIDA LANDMARK
COMMUNITIES, INC., a Florida corporationAmy M. Hemmelen
SignaturePatrick L. Cutshall
SignatureAmy Hemmelen
Printed NamePatrick L. Cutshall
Printed NameExecutive assistant
TitleCFO
TitleMinnesota
STATE OF ~~FLORIDA~~)
COUNTY OF St. Louis)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 29th day of May, 2024, by Patrick L. Cutshall, the CFO, for and on behalf of the FLORIDA LANDMARK COMMUNITIES, INC., who is personally known to me and who did not take an oath.

WITNESS my hand and official seal this 29th day of May, 2024.

Carla Spikberg
Signature

(Seal)

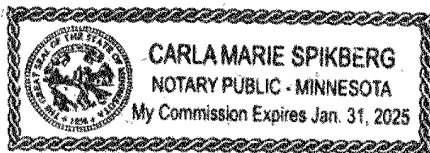
Carla Spikberg
Printed Name

WITNESSES:

PALM COAST HOLDINGS, INC.,
a Florida corporationAmy M. Honkala
SignaturePatrick L. Cutshall
SignatureAmy Honkala
Printed NamePatrick L. Cutshall
Printed NameExecutive assistant
TitleCFO
TitleMinnesota
STATE OF ~~FLORIDA~~)
St. Louis
COUNTY OF)

The foregoing instrument was acknowledged before by means of
☒ physical presence or ☐ online notarization me this 29th day of
May, 2024, by Patrick L. Cutshall, the CFO, for
 and on behalf of the PALM COAST HOLDINGS, INC., who is personally
 known to me and who did not take an oath.

WITNESS my hand and official seal this 29th day of May,
 2024.



(Seal)

Carla Spikberg
SignatureCarla Spikberg
Printed Name

Exhibit A

Description: Parcel "A"

A parcel of land lying within Government Sections 29 and 32, Township 11 South, Range 31 East, Flagler County, Florida, being more particularly described as follows:

A point of reference being the Southwest corner of Section 32, Township 11 South, Range 31 East, Flagler County, Florida, thence North $88^{\circ}24'49''$ East a distance of 2642.88 feet to the South quarter corner of Section 32 being the POINT OF BEGINNING of this description, thence North $00^{\circ}40'50''$ West along the West line of the Northeast quarter (1/4) a distance of 221.03 feet, thence departing said West line South $89^{\circ}15'49''$ West a distance of 510.00 feet to a point on the Easterly boundary of the plat Pine Grove Section 28, Map Book 9, Pages 51 through 66, of the Public Records of Flagler County, Florida, thence North $00^{\circ}40'55''$ West along the Easterly boundary of and departing said plat Section 28 a distance of 4569.91 feet, thence North $21^{\circ}00'44''$ East a distance of 1028.92 feet to a point on the Westerly line of the limited access right-of-way of Interstate 95, thence South $18^{\circ}20'58''$ East along said right-of-way a distance of 1809.43 feet, thence North $89^{\circ}52'23''$ East a distance of 290.97 feet; thence South $33^{\circ}20'58''$ East a distance of 502.28 feet, thence South $18^{\circ}20'55''$ East along said Westerly right-of-way line of Interstate 95 a distance of 3752.21 feet to a point on the South line of Section 32, thence departing Interstate-95 South $88^{\circ}46'16''$ West along the South line of Section 32 a distance of 2120.40 feet to the POINT OF BEGINNING.

Parcel "A" containing 202.3081 acres of land more or less.

Description: parcel "B"

A parcel of land lying within Government Section 4, 5, 6, 7, 8, and 9, Township 12 South, Range 31 East, Flagler County, Florida, being more particularly described as follows:

A point of reference being the Northwest corner of said government Section 5, Township 12 South, Range 31 East, being common as the Southwest corner of Section 32, Township 11 South, Range 31 East, thence South $01^{\circ}31'08''$ East along the West line of Section 5 a distance of 163.78 feet to the POINT OF BEGINNING of this description, thence departing said West line North $89^{\circ}15'49''$ East a distance of 1595.15 feet, thence South $00^{\circ}39'41''$ East a distance of 1318.27 feet, thence North $89^{\circ}20'19''$ East a distance of 1320.00 feet, thence North $00^{\circ}39'41''$ West a distance of 1320.00 feet, thence North $89^{\circ}15'49''$ East a distance of 1915.75 feet to a point on the West right-of-way line of Interstate 95, thence South $18^{\circ}20'58''$ East along said West right-of-way line a distance of 4927.55 feet to the Northeast corner of Memorial Hospital Flagler Inc. lands, recorded in Official Records Book 657, Page 1835, thence departing Interstate 95 South $71^{\circ}39'02''$ West along the Northerly boundary line of said Hospital lands a distance of 281.01 feet, thence South $36^{\circ}24'53''$ West a distance of 947.44 feet, thence departing said boundary of Hospital North $53^{\circ}36'18''$ West a distance of 61.27 feet, thence North $08^{\circ}33'46''$ East a distance of 99.48 feet, thence North $63^{\circ}16'51''$ West a distance of 51.99 feet, thence North $35^{\circ}29'45''$ West a distance of 69.86 feet, thence North $46^{\circ}37'11''$ East a distance of 34.40 feet, thence North $66^{\circ}03'22''$ East a distance of 38.81 feet, thence North $07^{\circ}07'30''$ West a distance of 71.05 feet, thence North $15^{\circ}25'07''$ West a distance of 57.60 feet, thence South $68^{\circ}48'21''$ West a distance of 43.08 feet to a point on the West line of Section 9, thence departing said West line continue South $68^{\circ}48'21''$

West a distance of 688.90 feet, thence South $39^{\circ}53'49''$ East a distance of 291.02 feet, thence South $76^{\circ}28'18''$ East a distance of 64.12 feet, thence North $67^{\circ}07'05''$ East a distance of 72.01 feet, thence South $39^{\circ}14'51''$ East a distance of 153.66 feet, thence South $62^{\circ}37'27''$ East a distance of 59.26 feet, thence North $46^{\circ}11'10''$ East a distance of 36.29 feet, thence North $51^{\circ}11'25''$ West a distance of 74.59 feet, thence North $31^{\circ}41'14''$ East a distance of 38.19 feet, thence North $69^{\circ}00'23''$ East a distance of 148.98 feet, thence South $78^{\circ}59'19''$ East a distance of 101.53 feet to a point on the Northwest boundary line of said Hospital lands recorded in Official Records Book 657, Page 1835, thence South $36^{\circ}24'53''$ West a distance of 336.01 feet, thence South a distance of 320.20 feet, thence South $74^{\circ}31'57''$ West a distance of 196.13 feet, thence departing said Northwest boundary line of Hospital South $02^{\circ}47'32''$ East a distance of 109.002 feet, thence South $49^{\circ}04'23''$ East a distance of 109.00 feet, thence South $00^{\circ}50'55''$ East a distance of 190.00 feet, thence South $89^{\circ}09'05''$ West a distance of 924.56 feet, thence South $21^{\circ}34'23''$ East a distance of 370.29 feet, thence South $89^{\circ}07'49''$ West a distance of 181.73 feet, thence South $21^{\circ}34'21''$ East a distance of 695.14 feet to a point on the North right-of-way line of State Road 100 (200'R/W), thence South $89^{\circ}09'05''$ West along said right-of-way a distance of 928.54 feet, thence departing State Road 100 North $02^{\circ}23'06''$ West a distance of 1356.48 feet, thence South $88^{\circ}41'00''$ West a distance of 663.41 feet to a point on the West line of the Northeast quarter (1/4) of Section 8, thence South $88^{\circ}49'35''$ West a distance of 668.63 feet, thence South $02^{\circ}08'49''$ East a distance of 692.67 feet, thence South $88^{\circ}59'33''$ West a distance of 1344.70 feet, thence South $01^{\circ}32'05''$ East a distance of 650.64 feet to a point on the North right-of-way line of State Road 100, thence South $89^{\circ}09'05''$ West along said right-of-way a distance of 297.82 feet, thence departing State Road 100 North $01^{\circ}13'40''$ West along the Easterly boundary line of Plat of Midway Par, Map Book 5, Page 25, a distance of 1337.58 feet, thence South $88^{\circ}49'35''$ West along the North line of Midway Park a distance of 378.00 feet to a point on the West line of government Section 8, thence North $01^{\circ}13'33''$ West along said West line of Section 8 a distance of 786.73 feet, thence departing said West line of Section 8 South $88^{\circ}17'00''$ West a distance of 125.00 feet, thence North $01^{\circ}13'33''$ West a distance of 140.00 feet, thence South $88^{\circ}17'00''$ West along the North line of Flagler County School Board Lands a distance of 1571.20 feet, thence South $01^{\circ}55'36''$ West along the West line of said School Board Lands a distance of 2205.60 feet to a point on the North right-of-way line of State Road 100, thence North $88^{\circ}04'24''$ West a distance of 2535.95 feet to the Southeast corner of Lil' Champ Food Store land recorded in Official Records Book 594, Pages 648 and 649, thence departing State Road 100 North $01^{\circ}55'36''$ East along the East boundary line of said Lil' Champ Land a distance of 250.00 feet, thence North $78^{\circ}46'38''$ West along the North line of said Lil' Champ Lands a distance of 250.00 feet to a point on the Easterly right-of-way line of Belle Terre Parkway, thence departing Lil' Champ Lands North $11^{\circ}13'22''$ East along said right-of-way of Belle Terre Parkway a distance of 1828.63 feet to a point of curvature, concave Westerly, thence Northerly a distance of 824.97 feet along the arc of said curve to the left having a central angle of $29^{\circ}32'31''$, a radius of 1600.00 feet, a chord bearing of North $03^{\circ}32'53''$ West and a chord distance of 815.86 feet to a point of tangency, thence North $18^{\circ}19'09''$ West a distance of 1118.45 feet to a point of curvature, concave Easterly, thence Northerly a distance of 103.37 feet along the arc of said curve to the right having a central angle of $42^{\circ}27'17''$, a radius of 1400.00 feet a chord bearing of North $02^{\circ}54'30''$ East and a chord distance of 1013.80 feet to a point of tangency, thence North $24^{\circ}08'08''$ East a distance of 559.85 feet, thence departing Belle Terre Parkway North $89^{\circ}15'49''$ East a distance of 2810.00 feet, thence North $00^{\circ}44'11''$ West a distance of 2015.00 feet, thence North $89^{\circ}15'49''$ East a distance of 1400.236 feet to the POINT OF BEGINNING.

Parcel "B" containing 1354.9211 acres more or less.

TOGETHER WITH:

A parcel of land lying in the Northwest Quarter (1/4) of Government Section 6, Township 12 South, Range 31 East, Flagler County, Florida as recorded in or book 640, pages 885-886 and or book 480, page 559 and being more particularly described as follows:

As a point of reference being the intersection of the Northeast corner of the subdivision plat Easthampton - Section 34, Seminole Woods at Palm Coast, Map Book 11, Pages 30 - 49 as recorded in the Public Records of Flagler county and the Easterly right-of-way line of Belle Terre Parkway (124' r/w); thence departing said right-of-way line North 89°15'49" East for a distance of 2457.39 feet; thence South 00°44'17" East for a distance of 253.00 feet to the POINT OF BEGINNING of this description; thence continue South 00°44'11" East for a distance of 1762.00 feet to a point; thence South 89°15'49" West for a distance of 2810.00 feet to a point on the Easterly right-of-way line of said Belle Terre Parkway; thence North 24°08'08" East along the Easterly right-of-way line for a distance of 396.80 feet; thence North 89°15'49" East for a distance of 711.58 feet, thence North 53°17'23" East for a distance of 2386.72 feet to the POINT OF BEGINNING of this description.

LESS AND EXCEPT:

A parcel of land lying in Section 7, Township 12 South, Range 31 East, Flagler County, Florida, being more particularly described as follows:

Commence at the Northwest Corner of Section 7, Township 12 South, Range 31 East; thence South 01°08'25" East, along the West line of said Section a distance of 2444.71 feet to a point lying on the Northerly Right-of-Way line of State Road No. 100, said point being a point on a curve concave Southerly having a tangent bearing of South 89°57'38" East and a radius of 23,018.33 feet; thence run Easterly along the arc of said curve through a central angle of 01°52'54" for a distance of 755.96 feet to the point of tangency; thence South 88°04'44" East for a distance of 101.41 feet to the Southeast corner of that property described in Official Records Book 0594, Page 0649 of the Public Records of Flagler County, Florida; thence North 01°55'16" East along the East line of said property for a distance of 20.00 feet to the POINT OF BEGINNING; thence leaving said Right-of-Way and continuing along said East line, North 01°55'16" East for a distance of 230.00 feet to the Northeast corner of said property; thence North 78°46'58" West along the North line of said property for a distance of 250.19 feet, to a point on the Easterly Right-of-Way line of Belle Terre Parkway; thence along said Right-of-Way, North 11°12'57" East for a distance of 49.90 feet; thence leaving said Right-of-Way, South 78°47'03" East for a distance of 262.73 feet; thence South 01°55'16" West for a distance of 277.23 feet, to said Northerly Right-of-Way; thence North 88°04'44" West for a distance of 20.43 feet to the POINT OF BEGINNING.

Containing 17980 Square Feet or 0.41 Acres, more or less

Exhibit B

Town Center at Palm Coast Master Development Plan Map

LAND USE KEY

-  Urban Core
-  Urban Center
-  Town Services
-  Town Business
-  Town Residential
-  Perimeter Commercial
-  Town Commons
-  Existing Lakes
-  Street R/W
-  Indicates Conceptual
Location of Future
Streets or Parking
Lot Drives

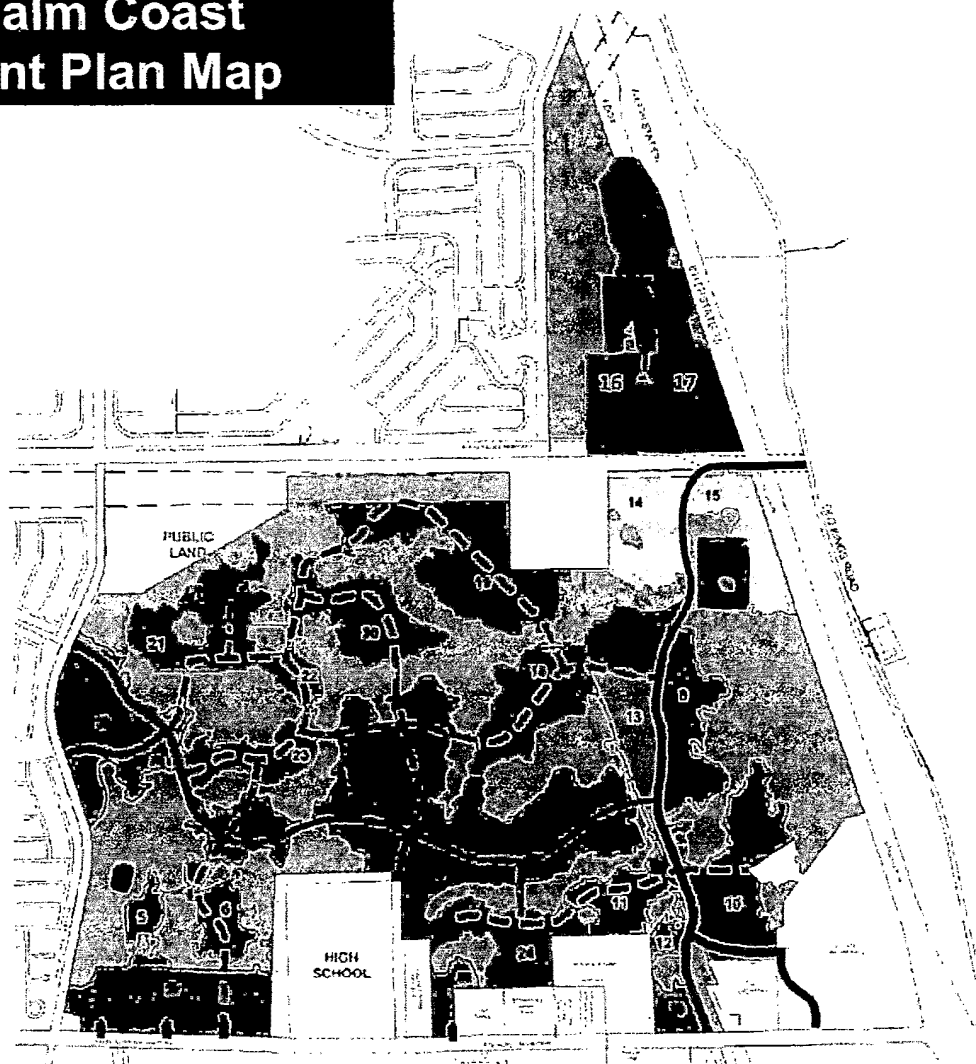


Exhibit C

Page 1 of 1

Exhibit "C" Town Center at Palm Coast Land Use Conversion Factors

Land Use	PM Rate	TO							
		Residential Per Unit	Office Per Ksf	Retail/Comm Per Ksf	Non-Retail Per Ksf	Institutional Per Ksf	Movie Theater Per Seat	Lodging Per Room	Nursing Home Per Bed
PM Rate		0.62	1.49	3.76	0.51	3.65	0.14	0.47	0.20
Residential	0.62 Per Unit	1.00	0.42	0.16	1.22	0.17	4.43	1.32	3.10
Office	1.49 Per Ksf	2.40	1.00	0.40	2.92	0.41	10.64	3.17	7.45
Retail/Comm	3.76 Per Ksf	6.06	2.52	1.00	7.37	1.03	26.86	8.00	18.80
Non-Retail/Comm	0.51 Per Ksf	0.82	0.34	0.22	1.00	0.14	3.64	1.09	2.55
Institutional*	3.65 Per Ksf	5.89	2.45	0.97	7.16	1.00	26.07	7.77	18.25
Movie Theater	0.14 Per Seat	0.23	0.09	0.04	0.27	0.04	1.00	0.30	0.70
Lodging	0.47 Per Room	0.76	0.32	0.13	0.92	0.13	3.36	1.00	2.35
Nursing Home	0.20 Per Bed	0.32	0.13	0.05	0.39	0.05	1.43	0.43	1.00

F
R
O
M

Examples

For every 1 residential unit you give up you may build 0.42 ksf of Office or 0.16 ksf of Retail/Comm. or 1.22 ksf of Non-Retail/Comm. or 0.17 ksf of institutional or 4.43 movie theater seats or 1.32 lodging rooms or 3.10 beds of nursing homes

For every 1.00 KSF of Office you give up you may build 2.4 Residential units or 0.4ksf of Retail or 2.92 ksf of non-retail or 0.41ksf of institutional or 10.64 Movie Theater seats or 3.17 rooms of lodging or 7.45 Nursing Home beds.

For every 1 room of lodging you give up you may build 0.76 Residential Units or 0.32ksf of office space or 0.13 ksf of retail or 0.92 ksf of Non-Retail/Comm of .13 ksf of institutional or 3.36 theater seats of 2.35 nursing home beds.

*Institutional is an average of Government Office at 5.88 and Church at 1.41

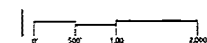
OFF
REC 0959 PAGE 1571

Exhibit C

Exhibit D



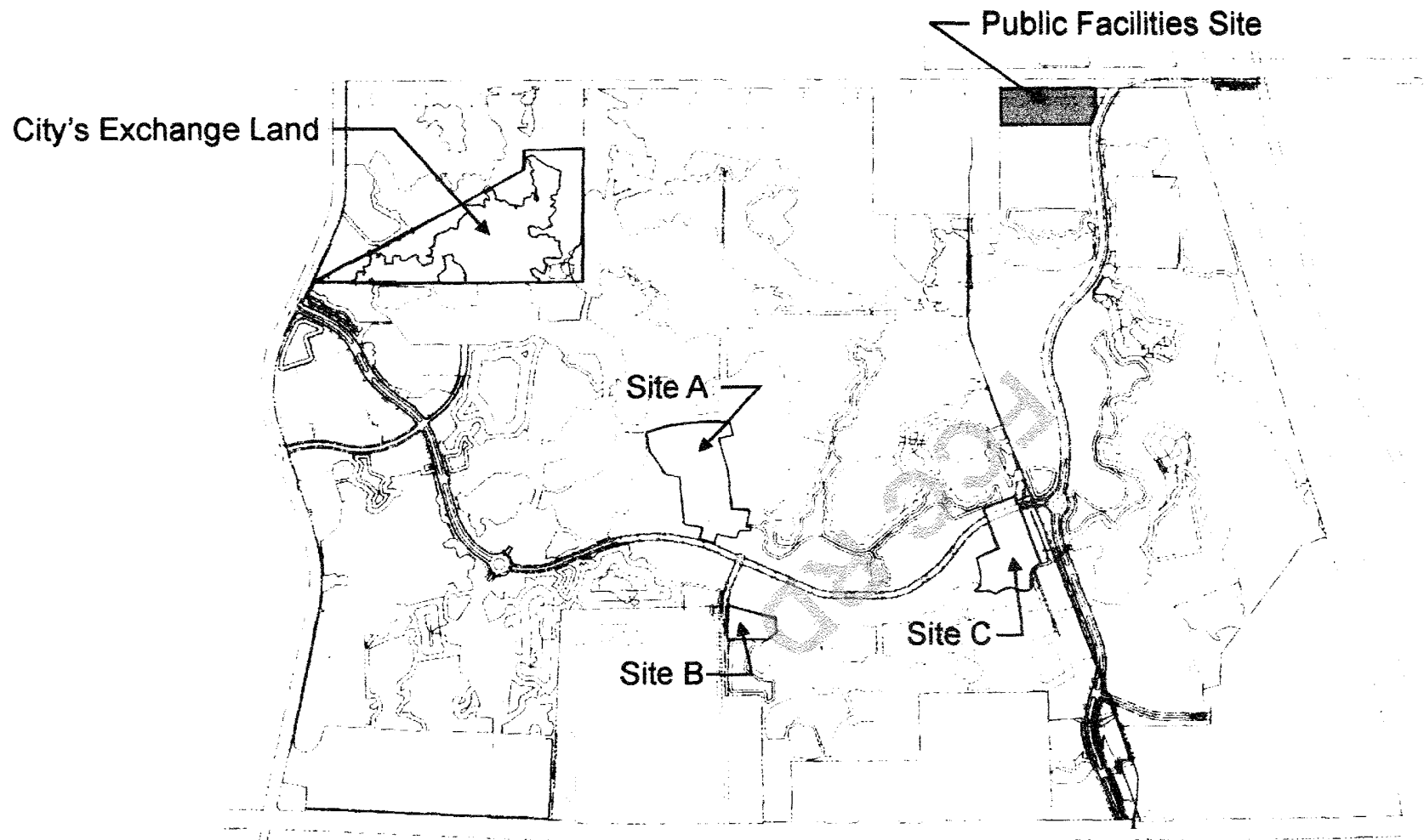
PALM COAST TOWN CENTER



DRAWING NO. 02 OF 02
DATE OF ISSUE 06/27/2025
BY/SCALE

MASTER PLAN

Exhibit C



DATA SUMMARY

Parcel	Approximate Gross Acres	Approximate Upland Acres
Public Facilities Site	8.5	8.5
City's Exchange Land	44.6	27.0
Town Core Public Land		
. Site A	15.0	15.0
. Site B	3.5	3.5
. Site C	8.5	8.5
Total	27.0	27.0

Exhibit "E"

Exhibit E

OFF REC 0959 PAGE 1573

Exhibit C

Exhibit F

OFF REC 0959 PAGE 1574

STORMWATER POLLUTION PREVENTION PLAN

In order to ensure water quality is maintained and encroachment into environmentally sensitive areas are prohibited, the property Owner and Contractor shall make an effort to adhere to the following Operation Plan prior to and during construction.

STORMWATER POLLUTION PREVENTION PLAN APPROVAL

A Stormwater Pollution Prevention Plan (SWPPP) will be developed by the Engineer and included in the construction plans for each area of development. The Contractor is responsible to review the plan and make modifications that address construction activities. All modifications must be approved by the Owner and Engineer. The plan will correspond with the construction sequence and generally include the following:

1. The locations and types of control features shall be shown to prevent erosion or the transportation of eroded material off-site during each phase of construction. Supplementary sediment and erosion control devices may be required to accommodate the Contractor's phasing of construction activities. The Contractor will modify the SWPP to address the installation and maintenance of all sediment control devices during each phase of construction.
2. The Contractor will be solely responsible for the prevention, control, and abatement of erosion and water pollution and the transportation of eroded materials off site. The Contractor will also be responsible for maintaining any and all sediment control devices throughout the duration of construction as required by the Community Development District (CDD), Engineer, and the Florida Department of Environmental Protection.
3. All erosion control devices will be placed prior to beginning work of each construction phase. It is understood that "select clearing" is required for the placement of silt fence as detailed on the SWPPP. All erosion control devices will be maintained during construction and will be inspected weekly or after rainfall events of greater than 0.25 inches. Repairs will be performed as necessary and prior to suspension of work activities each weekend.
4. Sediment and erosion control barriers will be placed around all stormwater inlets and manholes during construction. Rock bags are to be placed at the downstream side of each curb inlet after the roadway base course is constructed to divert stormwater to the inlets.
5. Supplemental sediment and erosion control devices may be necessary during construction as determined by the Contractor or as directed by the Engineer or Community Development District (CDD).
6. Staging areas will be enclosed with silt fence, and drainage directed to stormwater ponds.

PRE-CONSTRUCTION ACTIVITIES

At least ten calendar days prior to the Pre-construction Conference, the Contractor will submit for approval by the Engineer a SWPPP prepared in accordance with the Florida Erosion and Sediment Control Inspector's Manual. The SWPPP will address the installation and maintenance of all temporary and

permanent sediment and erosion control devices to be used during each phase of construction, including tree removal, clearing and grubbing, hauling of excavated materials, and placement of backfill. The plan also will detail the erosion control measures to be employed at all stockpile and construction staging areas and will define the maximum limits of all active construction zones and the maximum amount of time each segment of the project will be unprotected against erosion.

Also, at least ten calendar days prior to the Pre-construction Conference, the Contractor will submit for approval by the Engineer an Excavation and Dewatering Plan (EDP). The plan will address excavation of the stormwater ponds and identify phasing of the excavation, including for each excavation phase, the limits of excavation, hauling of excavated materials, dewatering, control of on-site and off-site stormwater runoff, and measures to be employed for controlling erosion and for controlling the transportation of eroded materials off-site.

A Pre-construction Conference will be conducted prior to the start of any site construction. Attendees shall include the Contractor, CDD, Engineer and regulatory agency representatives. The purpose of this conference is to review the site specific details of the SWPPP and EDP, agree upon any modifications to these plans, and identify the individuals responsible for its implementation. In addition, specific conditions of regulatory permits will be reviewed and persons assigned to the monitoring for compliance with these conditions will be identified.

CONSTRUCTION ACTIVITIES

The Contractor shall at a minimum implement the requirements outlined below and those measures shown on the SWPPP. In addition, the Contractor shall implement additional measures required to maintain compliance with applicable permit conditions and state water quality standards. Depending on the nature of materials and methods of construction the contractor may be required to add flocculants to the detention system prior to discharge to Waters of the State.

Sequence of Major Erosion Control Activities:

The order of activities will be as follows:

1. Install stabilized construction entrance.
2. Select clear and install silt fences and hay bales as required.
3. Clear and grub for diversion swales/dikes and sediment basin.
4. Construct sedimentation basin.
5. Stock pile top soil if required.
6. Stabilize denuded areas and stockpiles as soon as practicable.
7. Complete grading and install/permanent seeding/sod and planting.
8. Remove accumulated sediment from basins.

9. Flocculate lake system, if required, to meet water quality standards.
10. When all construction activity is complete and the site is stabilized, remove any temporary diversion swales/dikes, silt fences, hay bales and reseed/sod as required.

Additional Controls

It is the Contractor's responsibility to implement the erosion and turbidity controls as shown on the SWPPP. It is also the Contractor's responsibility to ensure these controls are properly installed, maintained and functioning properly to prevent turbid or polluted water from leaving the project site. The Contractor will adjust the erosion and turbidity controls shown on the SWPPP and add additional control measures, as required, to ensure the site meets all federal, state and local erosion and turbidity control requirements. The following best management practices will be implemented by the Contractor as required by the SWPPP and as required to meet the sediment and turbidity requirements imposed on the project site by the regulatory agencies.

Erosion and sediment controls stabilization practices (See the site specific SWPPP for applicability.):

1. Straw bale barrier: Straw bale barriers will be used below disturbed areas subject to sheet and rill erosion with the following limitations:
 - a. Where the maximum slope behind the barrier is 3:1 (horizontal:vertical).
 - b. In minor swales or ditch lines where the maximum contributing drainage area is no greater than 2 acres.
 - c. Where effectiveness is required for less than 3 months.
 - d. Every effort should be made to limit the use of straw bale barriers constructed in live streams or in swales where there is the possibility of a washout. If necessary, measures shall be taken to properly anchor bales to insure against washout.
2. Filter Fabric Barrier: Filter fabric barriers shall be installed landward of upland buffers. Filter fabric barriers will be used below disturbed areas subject to sheet and rill erosion with the following limitations:
 - a. Where the maximum slope behind the barrier is 3:1.
 - b. In minor swales or ditch lines where the maximum contributing drainage area is no greater than 2 acres.
3. Sod with Filter Fabric: In areas with slopes steeper than 3:1, the slope shall be full sodded. Filter fabric barriers (silt fence) shall be installed at the toe of the slope.
4. Brush Barrier with Filter Fabric: Brush barrier will be used below disturbed areas subject to sheet and rill erosion where enough residue material is available on site.
5. Spreader Swale: A spreader swale will be used where sediment-free storm runoff is intercepted and diverted away from graded areas onto undisturbed stabilized areas. The water should not be allowed to reconcentrate after release.

6. Stockpiling Material: No excavated material shall be stockpiled in such a manner as to direct stormwater runoff off site into any adjacent water body.
7. Limitation of Exposure of Erodible Earth: The surface area of open, raw erodible soil exposed by clearing and grubbing operations or excavation and filling operations shall not exceed 17 acres without specific prior approval by the Engineer. This limitation applies separately to clearing and grubbing operations and excavation and filling operations. The Engineer may increase or decrease the amount of surface areas the Contractor may expose at any one time.
8. Inlet Protection: Inlets and catch basins which discharge directly off-site shall be protected from sediment-laden storm runoff.
9. Temporary Seeding: Cleared areas that are not designated for construction activity for more than 45 days shall be seeded or hydroseeded.
10. Temporary Seeding and Mulching: Slopes steeper than 6:1 shall receive approximately 2 inches loose measure of mulch material cut into the soil of the seeded area adequate to prevent movement of seed and mulch. Hydroseeding or hydromulching may be used in place of Seeding and Mulching.
11. Temporary Grassing: The Engineer may designate certain areas of grassing as temporary erosion control features. The Engineer may direct the Contractor to omit permanent type grass seed from grassing.
12. Regrassing: If, after 28 days from seeding, the temporary grassed areas have not attained a minimum of 75 percent good grass cover, the area will be reworked and additional seed applied sufficient to establish the desired vegetative cover.
13. Maintenance: All features of the project designed and constructed to prevent erosion and sediment shall be maintained during the life of the construction so as to function as they were originally designed and constructed.
14. Permanent Seeding: All areas which have been disturbed by construction will, as a minimum, be seeded. Slopes steeper than 4:1 shall be seeded and mulched or sodded. Hydroseeding may be used in place of Seeding and Mulching.
15. Temporary Diversion Dike: Temporary diversion dikes will be used to divert runoff through a sediment-trapping facility.
16. Temporary Sediment Trap: A sediment trap is usually installed in a drainage way at a storm drain inlet or at other points of discharge from a disturbed area.
17. Sediment Basin: Sediment Basin(s) will be constructed at the common drainage locations that serve an area with 10 or more disturbed acres at one time. Construct sedimentation basins in accordance with FDOT Roadway and Traffic Design Standards. All sediment collected in permanent or temporary sediment traps must be removed upon final stabilization.

Site Maintenance Activities

Waste Disposal

Waste Materials

All waste material shall be collected and stored in a securely lidded metal dumpster. The dumpster will meet all local and state solid waste management regulations. The dumpster will be emptied as needed and the trash will be hauled to a state approved landfill. All personnel will be instructed regarding the correct procedure for waste disposal. The site superintendent or the individual who manages the day-to-day site operations will be responsible for posting notices stating these practices at the construction site and for seeing that these procedures are followed.

All waste materials that are too large for the dumpster shall be stockpiled and hauled to a state approved landfill.

Hazard Waste

All hazardous waste materials will be disposed of in a manner specified by local or state regulation or by the manufacturer. Site personnel will be instructed in these practices and the site superintendent, the individual who manages the day-to-day site operations, will be responsible for seeing that these procedures are followed.

Sanitary Waste

All sanitary waste will be collected from the portable units as needed to prevent possible spillage. The waste will be collected and disposed of in accordance with state and local waste disposal regulations for sanitary sewer or septic systems.

Offsite Vehicle Tracking

A stabilized construction entrance will be provided to help reduce vehicle tracking of sediments. The paved street adjacent to the site entrance will be swept as needed or as directed by the Engineer to remove any excess mud, dirt or rock tracked from the site. Dump trucks hauling material from the construction site will be covered with a tarpaulin.

Spill Prevention Plan

Material Management Practices

The following are the material management practices that will be used to reduce the risk of spills or other accidental exposure of materials and substances to stormwater runoff.

Good Housekeeping

The following good housekeeping practices will be followed onsite during the construction project:

- * An effort will be made to store only enough product required to do the job.

- * All materials stored onsite will be stored in a neat, orderly manner in their appropriate containers and, if possible, under a roof or other enclosure.
- * Products will be kept in their original containers with the original manufacturer's label.
- * Substances will not be mixed with one another unless recommended by the manufacturer.
- * Whenever possible, all of a product will be used up before disposing of the container.
- * Manufacturer's recommendations for proper use and disposal will be followed.
- * The site superintendent will inspect daily to ensure materials onsite receive proper use and disposal.

Hazardous Products

These practices are used to reduce the risks associated with hazardous materials:

- * Products will be kept in original containers unless they are not resealable.
- * Original labels and material safety data will be retained; they contain important product information.
- * If surplus product must be disposed of, manufacturer's or local and state recommended methods for proper disposal will be followed.

Product Specific Practices

The following product specific practices will be followed onsite:

Petroleum Products

All onsite vehicles will be monitored for leaks and receive regular preventative maintenance to reduce the chance of leakage. Portable petroleum storage tanks shall not be placed within 200 feet of a wetland or water body including stormwater management ponds, unless secondary containment is provided. Petroleum products will be stored in tightly sealed containers which are clearly labeled. Any asphalt substances used onsite will be applied according to the manufacturer's recommendations.

Fertilizers

Fertilizers used will be applied only in the minimum amounts recommended by the manufacturer. Once applied, fertilizer will be worked into the soil to limit exposure to Stormwater. Storage will be in a covered area. The contents of any partially used bags of fertilizer will be transferred to a sealable plastic bin to avoid spills.

Paints

All containers will be tightly sealed and stored when not required for use. Excess paint will not be discharged to the storm sewer system but will be properly disposed of according to manufacturer's instructions or state and local regulations.

The site superintendent responsible for the day-to-day site operations, will be the spill prevention and cleanup coordinator. He/she will designate at least one other site personnel who will receive spill prevention and cleanup training. These individuals will each become responsible for a particular phase of prevention and cleanup. The names of responsible spill personnel will be posted in the material storage area and if applicable, in the office trailer onsite.

MAINTENANCE / INSPECTION PROCEDURES

Erosion and Sediment Control Inspection and Maintenance Practices

The following are inspection and maintenance practices that will be used to maintain erosion and sediment controls:

- * All control measures will be inspected by the site superintendent, the person responsible for the day to day site operation or someone appointed by the site superintendent, at least once a week and following any storm event of 0.25 inches or greater.
- * All turbidity control measures will be maintained in good working order; if a repair is necessary, it will be initiated within 24 hours of report.
- * Built up sediment will be removed from silt fence when it has reached one-third the height of the fence.
- * Silt fence will be inspected for depth of sediment, tears, to see if the fabric is securely attached to the fence posts, and to see that the fence posts are firmly in the ground.
- * The sediment basins will be inspected for the depth of sediment. Sediment will be removed when it reaches 20 percent of the design capacity or at the end of the job.
- * Diversion dikes/swales shown on the plans will be inspected and any breaches promptly repaired.
- * Temporary and permanent seeding and planting will be inspected for bare spots, washouts, and healthy growth.
- * A maintenance inspection report will be completed weekly. A completed copy will be submitted to the Engineer and a completed copy will be kept on site during construction and available upon request by the Owner, Engineer or any federal, state or local agency approving sediment and erosion plans, or stormwater management plans. The reports shall be made and retained as part of the SWPPP for at least three years (by the Owner) from the date that the site is finally stabilized and the notice of termination is submitted.
- * The site superintendent will select up to three individuals who will be responsible for inspections, maintenance and repair activities, and filling out the inspection and maintenance report.

- * Personnel selected for inspection and maintenance responsibilities will receive training from the site superintendent. They will be trained in all inspection and maintenance practices necessary for keeping the erosion and sediment controls used onsite in good working order.

NON-STORMWATER DISCHARGES

It is expected that the following non-stormwater discharges will occur from the site during the construction period:

- * Water from water line flushing.
- * Pavement wash waters (where no spills or leaks of toxic or hazardous materials have occurred).
- * Uncontaminated groundwater (from dewatering excavation).

All non-stormwater discharges will be directed to the sediment basin prior to discharge.

FDEP Development Order Recommendations DRI Stormwater Pollution Prevention Plan (SWPPP)

The following conditions for the Stormwater Pollution Prevention Plan (SWPPP) will be incorporated in the development order:

1. SWPPP Requirements

A SWPPP shall be incorporated into the construction and permit documents for projects constructed in the DRI which require a general or individual SJRWMD permit. The SWPPP shall be similar to the SWPPP shown in Exhibit __ but may be modified to accommodate the specific construction project and site. However, all SWPPP's must include paragraphs describing Pre-Construction activities and Maintenance/Inspection Procedures.

2. SWPPP Monitoring

In addition to the requirements on individual property owners/contractors outlined in the SWPPP, the Developer, Community Development District (CDD) shall monitor compliance with the SWPPP goals. The compliance monitoring shall consist of the following:

A. Notifying the SJRWMD and FDEP of the individual responsible for monitoring SWPPP within the DRI.

At a minimum the responsible individual will:

- 1) be trained in erosion control implementation techniques
- 2) set up and oversee implementation of SWPPP programs throughout the buildout of the project
- 3) ensure that if the regular site inspector is unable to attend the pre-construction conference this information is communicated to the site inspector including site specific BMPs, permit requirements and erosion control implementation training.
- 4) meet with trained site superintendent monthly, upon commencement of site construction, to ensure implementation of SWPPP and resolve any problems. Frequency of site visits may be decreased if there is no indication of erosion control problems and previous visits show a history of compliance with the SWPPP.
- 5) submit a brief narrative update to FDEP and SJRWMD quarterly on activities and progress OR be available to meet with FDEP onsite for quarterly site visits, unless FDEP deems the visit unnecessary. Upon proper identification, FDEP personnel shall be granted access to the property.

B. Attendance at all pre-construction conferences.

C. Conducting Homeowners Stormwater Training Programs

D. Conducting Contractor Stormwater Training Programs

E. Conducting periodic inspections of construction sites

F. Notifications to SJRWMD and FDEP of observed potential permit violations within 24 hours and serve as agency liaison.

G. Annual reporting summary of Items A thru F.

3. The SWPPP shall be implemented upon initiation of construction activities. Three (3) years after initiation of construction, the FDEP and SJRWMD will have the opportunity to review the program. If it is found to be unsatisfactory, the agencies will discuss alternatives, including program modification options, with the applicant.

Exhibit G

TOWN CENTER AT PALM COAST DRI PROPORTIONATE SHARE CALCULATION

PHASE 1

Roadway / Intersection	Length (mile)	Improvement	Construction Cost	Engineering Cost	Total Cost	Project Trips	Increase in the Capacity	Proportionate Share *	DRI Proportionate Share
Belle Terre Parkway/ White View Parkway	N/A	Signalize	\$61,800.00	\$6,180.00	\$67,980.00	95	237	0.40	\$27,249.37
Belle Terre Parkway/ Royal Palms Parkway	N/A	Signalize	\$61,800.00	\$6,180.00	\$67,980.00	19	79	0.24	\$16,349.62
SR 100 / Seminole Woods Parkway	N/A	Signalize	\$61,800.00	\$6,180.00	\$67,980.00	1490	3689	0.40	\$27,457.36
Subtotal for Signals									\$71,056.35
Old Kings Road	4.384	2 to 4 Lanes	\$6,137,600.00	\$613,760.00	\$6,751,360.00	251	930	0.27	\$1,822,141.25
Belle Terre Parkway	0.4	4 to 6 Lanes	\$560,000.00	\$56,000.00	\$616,000.00	196	880	0.22	\$137,200.00
Palm Coast Parkway	0.5	4 to 6 Lanes	\$944,000.00	\$94,400.00	\$1,038,400.00	112	880	0.13	\$132,160.00
	0.2	4 to 6 Lanes	\$377,600.00	\$37,760.00	\$415,360.00	140	880	0.16	\$66,080.00
SR 100	0.1	4 to 6 Lanes	\$188,800.00	\$18,880.00	\$207,680.00	559	880	0.64	\$131,924.00
	0.6	4 to 6 Lanes	\$1,132,800.00	\$113,280.00	\$1,246,080.00	726	880	0.83	\$1,028,016.00
Subtotal for Phase 1									\$3,388,577.59

PHASE 2

Roadway / Intersection	Length (mile)	Improvement	Construction Cost	Engineering Cost	Total Cost	Project Trips	Increase in the Capacity	Proportionate Share *	DRI Proportionate Share
Belle Terre Pkwy	1.0	2 to 4 Lanes	\$1,400,000.00	\$140,000.00	\$1,540,000.00	56	930	0.06	\$92,731.18
	1.5	4 to 6 Lanes	\$2,100,000.00	\$210,000.00	\$2,310,000.00	733	930	0.79	\$1,820,677.42
	0.7	4 to 6 Lanes	\$980,000.00	\$98,000.00	\$1,078,000.00	790	930	0.85	\$915,720.43
Florida Park Drive**	1.8	2 to 4 Lanes	\$4,410,000.00	\$441,000.00	\$4,851,000.00	56	740	0.08	\$367,102.70
SR 100	0.2	4 to 6 Lanes	\$377,600.00	\$37,760.00	\$415,360.00	733	930	0.79	\$327,375.14
Subtotal for Phase 2									\$3,523,606.87

PHASE 3

Roadway / Intersection	Length (mile)	Improvement	Construction Cost	Engineering Cost	Total Cost	Project Trips	Increase in the Capacity	Proportionate Share *	DRI Proportionate Share
Old Kings Road	1.7	2 to 4 Lanes	\$2,380,000.00	\$238,000.00	\$2,618,000.00	158	0	0.27	\$706,860.00
Belle Terre Pkwy	1.9	4 to 6 Lanes	\$2,660,000.00	\$266,000.00	\$2,926,000.00	632	930	0.68	\$1,988,421.51
Cypress Point Parkway	0.7	4 to 6 Lanes	\$980,000.00	\$98,000.00	\$1,078,000.00	158	930	0.17	\$183,144.09
Florida Park Drive	0.1	2 to 4 Lanes	\$140,000.00	\$14,000.00	\$154,000.00	79	740	0.11	\$16,440.54
SR 9	5.2	6 to 8 Lanes	\$7,280,000.00	\$728,000.00	\$8,008,000.00	395	1690	0.23	\$1,871,692.31
Palm Coast Pkwy (WB)	0.2	2 to 3 Lanes	\$188,800.00	\$18,880.00	\$207,680.00	316	880	0.36	\$74,576.00
Palm Coast Pkwy (EB)	0.2	2 to 3 Lanes	\$188,800.00	\$18,880.00	\$207,680.00	316	880	0.36	\$74,576.00
SR 100	0.4	4 to 6 Lanes	\$755,200.00	\$75,520.00	\$830,720.00	789	880	0.90	\$744,816.00
	1.7	4 to 6 Lanes	\$3,209,600.00	\$320,960.00	\$3,530,560.00	474	880	0.54	\$1,901,688.00
Subtotal for Phase 3									\$7,562,214.44
Total for Phases 1-3									\$14,474,399.00

Revised 6/11/2003

* Formula based on FDOT's Site Impact Handbook [(DRI Trips/Service Vol. Increase)*Cost]

** Florida Park Construction Estimates include ROW estimated at 75% of Construction Costs

***Old Kings Road is neither significant nor adverse. The "fair share" calculation is based on the project trips as a percentage of total roadway capacity.

Note: All dollar amounts shown on this table are stated in 2002 values.

EXHIBIT H

Has been deleted

Exhibit "I"

<u>Section of DRI</u>	<u>Name of Section</u>	<u>Obligation</u>	<u>Status</u>
Part II, ¶ 5 (a)	Phasing, Buildout and Expiration	4 lane Seminole Woods from SR-100 to intersection with Main Street.	Completed.
Part II, ¶ 5 (b)	Phasing, Buildout and Expiration	2 lane Seminole Woods from SR-100 to Old Kings Road	Completed.
Part II, ¶ 5 (c)	Phasing, Buildout and Expiration	Construct Main Street as 2 lanes from traffic circle on Seminole Woods to Westerly traffic circle on Main Street.	Completed.
Part II, ¶ 5 (d)	Phasing, Buildout and Expiration	Construct Main Street as 4 lanes from Westerly traffic circle to about 800 feet from Belle Terre.	Completed.
Part II, ¶ 5 (e)	Phasing, Buildout and Expiration	Construct the last 800 feet of Main Street to Belle Terre.	Completed.
Part II, ¶ 5 (f)	Phasing, Buildout and Expiration	Extend Eastwood Drive to Main street as 3 Lanes	To be completed.
Part II, ¶ 5 (g)	Phasing, Buildout and Expiration	Construct Hospital Drive from Seminole Woods to hospital site. Must be 2 lane road.	Completed.
Part II, ¶ 5 (h)	Phasing, Buildout and Expiration	Construct master drainage system for Town Center.	Completed.
Part II, ¶ 5 (i)	Phasing, Buildout and Expiration	Install water system, sewer system, and underground electric along all roadways or multi-use easements.	All utilities are installed along all currently installed roadways. All future utility installation along new roadways are the responsibility of the individual property developer.
Part II, ¶ 5 (j)	Phasing, Buildout and Expiration	Install landscaping along roads and other public areas.	All roads and public areas currently erected are landscaped. All future landscaping along new

			roadways are the responsibility of the individual property developer.
Part II, ¶ 5 (k)	Phasing, Buildout and Expiration	Construct initial pedestrian/bikeway systems within Town Center.	Completed.
Part II, ¶ 5 (l)	Phasing, Buildout and Expiration	Place fill on selected development sites.	Completed.
Part II, ¶ 5 (m)	Phasing, Buildout and Expiration	Environmental mitigation to offset impacts.	Completed for all development undertaken by Developer. Each individual property owner is responsible for mitigating their impacts.
Part II, ¶ 5	Phasing, Buildout and Expiration	Before beginning Phase 2, extend Royal Palms Parkway to Seminole Woods.	Completed.
Part II, ¶ 5	Phasing, Buildout and Expiration	During Phase 2 and 3, as parcels are planned out, roads, utilities, and drainage shall all be installed accordingly.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 1	Vegetation and Wildlife	Within 1 year from effective date of DRI DO, Developer shall contribute \$8,666.00 to Florida Fish and Wildlife Conservation Commission.	Completed.
Part III, ¶ 1	Vegetation and Wildlife	No development shall occur if there are endangered species present on the property unless the appropriate permit is obtained from the appropriate regulatory agency.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 2 (a)	Wetlands	Developer shall conserve 500 acres of wetlands which shall be placed in a conservation easement that grants third party interest to USACE.	Completed.

Part III, ¶ 2 (b)	Wetlands	Establish 15-foot minimum with an average of 25-foot buffer around wetlands and no impervious area shall be placed in the buffer zone.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 2 (c)	Wetlands	Any and all wetland impact mitigation shall be determined by USACE and/or SJRWMD.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 2 (d)	Wetlands	Piezometers and staff gauges shall be installed to monitor wetland hydrology. The details of such monitoring program shall be determined by USACE and/or SJRWMD.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 2 (d)	Wetlands	Developer shall install minimum of 36-inch culvert pipes at all wetland crossings. Developer shall also install small wildlife crossings over the culvert.	Completed for all development undertaken by Developer. Any new culvert installation responsibility has been assigned to the individual property owners.
Part III, ¶ 3 (a)	Groundwater	Use of Floridan Aquifer Wells on the DRI Property that do not fall within SJRWMD's consumptive use permitting requirements are prohibited.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 3 (b)	Groundwater	Abandoned wells shall be plugged and abandoned in accordance with SJRWMD's rules. Further, Developer shall report pertinent information to City regarding each well.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 4	Surface Water	A SWQMP shall be approved by FDEP and shall be implemented prior to commencement of construction. Data shall be submitted to the Northeast District of FDEP.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 5	Floodplains	No development shall occur within 100 year floodplain except for	This requirement is ongoing and has been

		crossings which shall be built up to the elevation of the floodplain.	assigned to the individual property owners.
Part III, ¶ 6(a)	Water Supply	Development of Town Center shall not proceed beyond Phase 1 unless adequate potable water is available to meet the level of service standard.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 6(b)	Water Supply	Use of Floridan Aquifer is prohibited for irrigation, once-through-cooling, surface water level maintenance and decorative uses.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 6(c)	Water Supply	Stormwater shall be used for irrigation with reclaimed water as a backup. Potable water shall be used for irrigation if, and only if, stormwater and reclaimed water are unavailable, and then only until stormwater and/or reclaimed water become available again.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 6(d)	Water Supply	Water conservation strategies shall be implemented, including Xeriscape and low-flow plumbing fixtures.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 7(a)	Wastewater Management	No building permit shall be issued beyond Phase 1 unless adequate wastewater capacity is available to meet the level of service standard.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 7(b)	Wastewater Management	Septic tanks are prohibited within Town Center DRI. Temporary surface tanks may be used during construction and/or marketing trailers until central sewer lines are installed.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 8(a)	Stormwater Management	20% of wet detention ponds shall have a 30% littoral zone.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 8(b)	Stormwater Management	Developer shall use porous parking materials for overflow parking to attempt to reduce related runoff	This requirement is ongoing and has been

		associated with impervious parking surfaces.	assigned to the individual property owners.
Part III, ¶ 8(c)	Stormwater Management	Outfall control structures shall insure that post-development flows do not exceed pre-development flows.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 8(d)	Stormwater Management	Stormwater Pollution Prevention Plan shall be incorporated into all permits and construction practices.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 8(e)	Stormwater Management	SWPPP is revisited every 3 years by the appropriate agencies. If changes are needed, they will be discussed and agreed upon with Developer.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 8(f)	Stormwater Management	FDEP, SJRWMD, and the City have the right to access the property to test the water quality.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 8(g)	Stormwater Management	If certain conditions are met, a water quality monitoring program shall be implemented.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 9(a) and (b)	Solid Waste	No Development within the DRI Property shall occur unless and until there is adequate solid waste capacity to service the developing area at the adopted level of service standard.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 9(c)	Solid Waste	All individuals are responsible for compliance with appropriate regulations regarding hazardous materials.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 10	Donation of Utility Facilities	All water and sewer lines and related facilities shall be donated to the City.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 11(a)	Public Facility site and Town	Developer shall convey to City certain parcels identified in this section, which	Completed.

	Core Public Land	shall be used only for the uses identified herein.	
Part III, ¶ 11(b)	Public Facility site and Town Core Public Land	City may agree to convey certain properties to Developer in exchange for three (3) other sites identified herein.	Completed.
Part III, ¶ 11(c)	Public Facility site and Town Core Public Land	If the land donated by the City is more valuable than Developer's then Developer shall pay difference. If Developer's land is more valuable than the City's, City shall consider the addition as a donation to the City.	Completed.
Part III, ¶ 11(d) and (e)	Public Facility site and Town Core Public Land	City shall take title to land subject to conditions outlined in these sections.	Completed.
Part III, ¶ 11(f)	Public Facility site and Town Core Public Land	Developer shall take title to land subject to certain restrictions.	Completed.
Part III, ¶ 11(g)	Public Facility site and Town Core Public Land	If option exercised by City, Developer shall convey the identified sites to City within 90 days.	Completed.
Part III, ¶ 11(h)	Public Facility site and Town Core Public Land	City shall be responsible for all site preparations on the sites received under 11(g). If not already completed, Developer agrees to construct streets and extend utilities to the property at Developer's expense.	Completed.
Part III, ¶ 11(i)	Public Facility site and Town Core Public Land	All costs of conveyance of land identified in Part III, ¶ 11 shall be borne by Developer.	Completed.
Part III, ¶ 11(j)	Public Facility site and Town Core Public Land	If Developer acquires City Exchange Land, and the land has appropriate zoning and FLUM designation to fit Developer's desired use, then the	Completed.

		Master Plan shall be automatically modified.	
Part III, ¶ 12(a)	Transportation	Phases shall be determined by actual trip count as outlined in this paragraph.	No action required.
Part III, ¶ 12(b)	Transportation	Developer shall provide all right of way necessary to construct the internal roadway network and shall be responsible for constructing roadway.	Completed. All roadways necessary for connectedness within each parcel has been assigned to each individual parcel owner.
Part III, ¶ 12(c)	Transportation	Developer is responsible for obtaining and constructing all turn lanes into Town Center including extension of Royal Palms to Old Kings and the Four-Laning of Old Kings.	Completed.
Part III, ¶ 12(d)	Transportation	During Phase 1, Developer shall construct Seminole Woods Extension from SR-100 to Old Kings Road.	Completed.
Part III, ¶ 12(e)	Transportation	Developer shall mitigate offsite impacts as outlined in this section.	All Phase 1 requirements have been completed.
Part III, ¶ 12(f)	Transportation	Before PM peak hour trips exceed 10,444, Developer shall install, or cause to be installed, box culvert that allows Royal Palms to be four-laned to Old Kings Road	Removed.
Part III, ¶ 12(g)	Transportation	Extend Lake Avenue to connect Town Center Parkway and Central Avenue	Incomplete.
Part III, ¶ 12(h)	Transportation	Extend City Place to connect to Royal Palms Parkway.	Incomplete.
Part III, ¶ 12(i)	Transportation	Four lane Town Center Parkway to Royal Palms Parkway.	Incomplete.
Part III, ¶ 13(a)	Air Quality	All fugitive dust control measures shall be undertaken during construction activities through the build-out of Town Center.	This requirement is ongoing and has been assigned to the individual property owners.

Part III, ¶ 13(b)	Air Quality	Trees shall be planted on internal road right-of-ways and parking areas.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 14(a)	Hurricane Evacuation	Access roads and parking lots of hotels shall be constructed above base flood plane.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 14(b)	Hurricane Evacuation	All residents of Town Center shall be given information about the vulnerability of the DRI DO to hurricanes.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 15(a)	Affordable Housing	Before beginning Phase 2 and 3, Developer shall assess affordable housing impact and implement any mitigation as may be required.	Completed.
Part III, ¶ 15(b)	Affordable Housing	No building permits shall be issued unless a minimum of 30% of all residential units for the previous phase have been constructed.	This requirement is ongoing and has been assigned to the individual property owners.
Part III, ¶ 16(a)	Police and Fire Protection	Before construction of a building over 35 feet tall, developer shall contribute equipment that can reach the height of the structure to be constructed.	Completed.
Part III, ¶ 16(b)	Police and Fire Protection	Before beginning a new phase, impact fees received will be reviewed against estimated costs for fire, ems, and police. If collected fees are insufficient, then Developer shall meet deficit.	Eliminated
Part III, ¶ 17(a)	Recreation and Open Space	Developer shall meet the LOS for recreation and open space as adopted in the City's Comprehensive Plan. The LOS shall be met as outlined in this paragraph.	All of Developer's required donations have been made. All donations required on a per project basis have been assigned to the individual property owners.

Part III, ¶ 17(b)	Recreation and Open Space	Developer shall mitigate environmental contamination that occurs to Lehigh Trail due to development activities. Developer shall coordinate with FDEP.	Eliminated as redundant.
Part III, ¶ 18	Historical and Archaeological Sites	Should any archeological site be found during construction of any site, all construction shall cease and the appropriate governing body shall be notified.	This requirement is ongoing and has been assigned to the individual property owners.

Exhibit D
2023 Biennial Traffic Report



Via email: (PNguyen@palmcoastgov.com)

Ref: 5970.01

January 19, 2024

Phong Nguyen
Senior Planner
City of Palm Coast
160 Lake Avenue
Palm Coast, FL 32164

Re: Town Center Development of Regional Impact (DRI)
2023 Biennial Traffic Monitoring Report – Methodology Letter

Dear Mr. Nguyen:

LTG, Inc. was retained by Douglas Property & Development, Inc. to prepare a traffic analysis for the 2023 Biennial Traffic Monitoring Report for the Town Center DRI. This letter outlines the proposed methodology by which the 2023 Biennial Traffic Monitoring Report will be conducted. The purpose of the Biennial Report is to document the trip generation of the development that has occurred to date, evaluate the resulting traffic conditions, and to document the land uses that are anticipated to occur over the ensuing two-year period. The general procedures dictating the study format are set forth in the DRI Development Order (DO). The 2023 Biennial Traffic Monitoring Report will comply with Part II, Section 11 of the approved DO.

2024 p.m. peak-hour turning movement counts and analysis for the following intersections will be provided:

1. Belle Terre Parkway at Easthampton Boulevard
2. Belle Terre Parkway at Market Avenue
3. SR 100 at Belle Terre Parkway
4. SR 100 at Landing Boulevard
5. SR 100 at Bulldog Drive
6. SR 100 at Seminole Woods Parkway
7. SR 100 at I-95 SB Ramps
8. SR 100 at I-95 NB Ramps
9. SR 100 at Old Kings Road
10. Old Kings Road at Town Center Boulevard
11. Town Center Boulevard at Royal Palms Parkway
12. Town Center Boulevard at Central Avenue
13. Town Center Boulevard at Lake Avenue

It should be noted that the count data will be collected in February 2024. The City's daily traffic counts will be used for roadways within the city limits except SR 100, and I-95, which will be derived from FDOT's most recent counts. In addition to the intersections noted above, roadway segments adjacent to each intersection will be analyzed for current conditions and for the development planned within the ensuing two years to show the level of service (LOS) based on counts that are collected within the guidelines of the DO. The intersections will then be analyzed using *Highway Capacity Software*, HCS 2023.

Proposed Construction Schedule for the Ensuing Two Years

The proposed construction schedule for the land uses indicated in the DRI over the next two years is presented in Table 1. The two years that will be evaluated are the years 2024 and 2025. The results of the future analysis, due to the anticipated data collection date, will be reflective of February 2026 conditions.

Table 1
Approved & Pending Development - Planned COs for 2025 Future Condition
Town Center Development of Regional Impact (DRI)

Tract	Development	LAND USE	Status	Estimated Build-out Year	COMMERCIAL				RESIDENTIAL	
					GROSS FLOOR AREA (sq. ft.)			SEATS	DWELLING UNITS	ROOMS
					OFFICE	RETAIL	INSTITUTIONAL			
11	Wilton Apartments	Multifamily Residential	Approved	2024					251	
13	Kid City USA	Day Care Center ¹	Under Review	2024			11,892			
26	Lot 15 – Phase 1	General Office	Approved	2025	10,000					
19	The Gables	Single Family Residential	Approved	2026; 25 Cos ²					209	
22 & 23	The Haven	Multifamily Residential	Approved	2025					204	
TOTAL					0	0	11,892	0	664	0

¹190 Students

² 25 units occupied by end of year 2024; total buildout anticipated by end of year 2026

Note: Estimated Build-out Year based on year of completion anticipated and evaluated in the traffic analysis report.

Completed Construction to Date

A description of current development by land use, type, location, and amount of square footage will be presented along with a summary comparison of development activity proposed or conducted since the previous Biennial Report.

Certificates of Occupancy Issued Within the Past Two Years

All Certificate of Occupancy (CO) permits that have been issued within the past two years will be provided in tabular format. Additionally, a cumulative report of all COs issued to date is Attached in **Exhibit A**.

Trip Generation for Daily and Peak Hour Traffic

Project trip generation will be analyzed for completed and occupied land uses as well as the quantity expected to be constructed within the ensuing two years for daily and peak hour traffic based on the latest Institute of Transportation Engineers' (ITE) 11th Edition of the *Trip Generation Manual*. This analysis will include a cumulative summary for daily and peak hour trips for all developments.

Existing Conditions Analysis

As stated previously, 2024 p.m. peak hour traffic counts will be collected for the previously noted intersections and the City's most recent daily traffic counts will be obtained for other roadways. The turning movement counts will be used to determine the p.m. peak-hour directional level of service on roadways adjacent to the identified intersections. The intersections will then be analyzed using *Highway Capacity Software*, HCS 2023.

New and/or Improved Roadways

All roadway improvements underway or recently completed off-site, which will benefit the DRI traffic, will be presented including any new and/or improved roadways, traffic control devices or other transportation facility improvements to be constructed or provided by the developer.

Mr. Phong Nguyen
January 19, 2024
Page 3

Please let us know if the City agrees with the methodology as stated, or whether modifications are requested. If you have any questions or concerns during the review process, please feel free to contact us at 386-257-2571.

Sincerely,
LTG, INC.



Kady L. Dearing, PE
Sr. Project Engineer

Attachments:

Exhibit A – Cumulative Certificates of Occupancy

c: Thomas Russ, FDOT Traffic Operations, (Thomas.Russ@dot.state.fl.us)
Jeff Douglas, Douglas Property & Development, Inc. (jeff@douglaspd.com)
Walker Douglas, Douglas Property Development, Inc. (walker@douglaspd.com)
Michael Chiumento, Legal Team for Life (michael3@legalteamforlife.com)

EXHIBIT A

Certificates of Occupancy (Cumulative) - Existing Development

Certificates of Occupancy (Cumulative) - Existing Development

Town Center at Palm Coast DRI

As of October 2023

Tract	Development	LAND USE	COMMERCIAL				RESIDENTIAL	
			GROSS FLOOR AREA (sq. ft.)			SEATS	DWELLING UNITS	ROOMS
			OFFICE	RETAIL	INSTITUTIONAL			
1	City Hall	General Office	42,000					
1	City Centre/Central Park	General Office	52,400					
3	Epic Theatres of Palm Coast	Movie Theater				2,400		
3	Central Landings at Town Center	Multifamily Residential					150	
3	Central Landings at Town Center	Multifamily Residential (Age-Restricted)					83	
4	Palm Coast Arts Foundation	Multi-purpose Recreational/Art Center						
4	The Palms at Town Center Apartments	Multifamily Residential					88	
6	Palm Coast Landing Apartments	Multifamily Residential (Age-Restricted)					75	
13	Imagine School at Town Center	Private School (K-8)*			50,000			
10	N/A	General Office/Multi Tenant	27,000					
10	Town Center Medical	Medical Office Building	85,600					
10	Las Palmas - Sky Active Living	Multifamily Residential (Age-Restricted)					150	
10	The Windsor of Palm Coast	Assisted Living Facility						85
24	Reserve at Brookhaven Apartments	Multifamily Residential					134	
25	Publix & Retail Outparcels	Shopping Plaza w/ Supermarket		118,800				
26	Capstone Planning/Financial Planner	General Office	5,512					
28	Palm Coast Landing of Town Center	General Retail/Shopping Center		375,783				
30	Hilton Garden Inn	Business Hotel						125
30	Mixed Commercial/Multi Tenant	General Retail/Shopping Center		18,459				
TOTAL			212,512	513,042	50,000	2,400	680	210

*922 Students

LAND USE CATEGORY	TOTAL QUANTITY	UNITS
Office	212,512	SQ. FT.
Retail	513,042	SQ. FT.
Institutional	50,000	SQ. FT.
Single Family Residential	0	DU
Multifamily Residential	372	DU
Multifamily Age-Restricted	243	DU/Rooms
Hotel	125	Rooms

LTG, Inc.

Exhibit D

Exhibit E
2024 DEP Consent Order

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

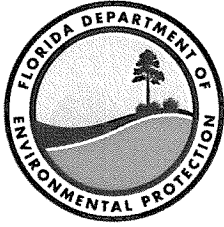
STATE OF FLORIDA DEPARTMENT	)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION	)	NORTHEAST DISTRICT
	)	
v.	)	OGC FILE NO. 24-2146
	)	
CITY OF PALM COAST	)	
_____	)	

CONSENT ORDER

This Consent Order (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and City of Palm Coast (Respondent) to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes (F.S.), and the rules promulgated and authorized in Title 62, Florida Administrative Code (F.A.C.). The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a person within the meaning of Section 403.031(9), F.S.
3. Respondent is the owner and is responsible for the operation of the Palm Coast WWTF #1, a 6.83 million gallons per day (MGD) conventional activated sludge domestic wastewater treatment plant consisting of one master influent pump station, one headwork structure, three oxidation ditches, six center-feed, peripheral draw secondary clarifiers, four disc filter units, four chlorine contact chambers, five aerobic digesters, one reclaimed water storage tank and a reclaimed water pump station. (Facility). The final treated discharged effluent is discharged into the Intracoastal Waterway (Class III-Marine Waters, WBID 2363D) through one discharge point or can be sent to Public Access Reuse Sites. The Facility is operated under Wastewater Permit No. FL0116009 (Permit), which was issued on September 12, 2022, and will expire on September 11, 2027. The Facility is located at 26 Utility Drive, in



FLORIDA DEPARTMENT OF Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

December 2, 2024

Sent electronically to: jdelorenzo@palmcoastgov.com

Mr. Jason DeLorenzo, Chief of Staff
City of Palm Coast
2 Utility Drive
Palm Coast, Florida 32137-7366

SUBJECT: Department of Environmental Protection v. City of Palm Coast
OGC File No. 24-2146
Facility ID No. FL0116009
Flagler County

Dear Mr. DeLorenzo:

Enclosed is the Consent Order to resolve the issues in the subject OGC File. Please review the Consent Order and, if you find it acceptable, sign and return the original document to this office within 14 days of receipt.

If you wish to modify the Consent Order, please respond to this office in writing within 14 days, explaining your concerns including any proposed changes.

If you have any questions concerning the Consent Order, please contact Abhi Maturi, at (904) 256-1606, or at abhi.maturi@floridadep.gov. Your continued cooperation in the matter is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "T.G. Kallemeyn", is written over a horizontal line.

Thomas G. Kallemeyn
Assistant Director

cc: FDEP-NED: Joni Petry, Herndon Sims, Monique Jordan, DEP_NED
Marco Pubill – mpubill@palmcoastgov.com
Danny Ashburn – dashburn@palmcoastgov.com
Peter Roussell- proussell@palmcoastgov.com

Exhibit E

Flagler County, Florida (Property). Respondent owns the Property on which the Facility is located.

4. The Department conducted a compliance evaluation and sanitary sewer inspection on May 23, 2023, and finds that the following violations occurred. The Department acknowledges that prevailing limits for pH and TDS were changed to the original background results on or about January 17, 2024.

a) Between November 2021 and February 2024, the facility exceeded the permit effluent and groundwater monitoring limits as noted in tables 1 and 2, in violation of Rule 62-4.160(1) F.A.C., respectively below:

Table 1: Effluent Exceedances

Monitoring Group	Date	Monitoring Location	Description	Result	Limit	Units	Statistical Base
R-002	01/31/2024	EFA-2	Coliform, Fecal	200	25	#/100mL	Maximum
R-002	12/31/2023	EFA-2	Coliform, Fecal	200	25	#/100mL	Maximum
R-002	10/31/2023	EFA-2	Coliform, Fecal	200	25	#/100mL	Maximum
R-002	09/30/2023	EFA-2	Coliform, Fecal	59	25	#/100mL	Maximum
R-002	01/31/2023	EFA-2	Coliform, Fecal	200	25	#/100mL	Maximum
R-002	08/31/2022	EFA-2	Coliform, Fecal	200	25	#/100mL	Maximum
R-002	07/31/2022	EFA-2	Coliform, Fecal	62	25	#/100mL	Maximum
R-002	06/30/2022	EFA-2	Coliform, Fecal	200	25	#/100mL	Maximum
R-002	03/31/2022	EFA-2	Coliform, Fecal	200	25	#/100mL	Maximum
R-002	01/31/2022	EFA-2	Coliform, Fecal	74	25	#/100mL	Maximum
R-002	02/29/2024	CAL-1	Coliform, Fecal, % less than detection	70	75	percent	Minimum
R-002	01/31/2024	CAL-1	Coliform, Fecal, % less than detection	52	75	percent	Minimum
R-002	12/31/2023	CAL-1	Coliform, Fecal, % less than detection	39	75	percent	Minimum
R-002	10/31/2023	CAL-1	Coliform, Fecal, % less than detection	63	75	percent	Minimum
R-002	09/30/2023	CAL-1	Coliform, Fecal, % less than detection	40	75	percent	Minimum

Monitoring Group	Date	Monitoring Location	Description	Result	Limit	Units	Statistical Base
R-002	02/28/2023	CAL-1	Coliform, Fecal, % less than detection	50	75	percent	Minimum
R-002	01/31/2023	CAL-1	Coliform, Fecal, % less than detection	64	75	percent	Minimum
R-002	07/31/2022	CAL-1	Coliform, Fecal, % less than detection	67	75	percent	Minimum
R-002	06/30/2022	CAL-1	Coliform, Fecal, % less than detection	50	75	percent	Minimum
R-002	04/30/2022	CAL-1	Coliform, Fecal, % less than detection	64	75	percent	Minimum
R-002	03/31/2022	CAL-1	Coliform, Fecal, % less than detection	59	75	percent	Minimum
D-001	12/31/2023	EFD-1	Enterococci	200	35	#/100mL	Monthly Geometric Mean
D-001	11/30/2023	EFD-1	Enterococci	200	35	#/100mL	Monthly Geometric Mean
D-001	10/31/2023	EFD-1	Enterococci	200	35	#/100mL	Monthly Geometric Mean
D-001	12/31/2023	EFD-1	Enterococci	200	130	#/100mL	90th Percentile
D-001	11/30/2023	EFD-1	Enterococci	200	130	#/100mL	90th Percentile
D-001	10/31/2023	EFD-1	Enterococci	200	130	#/100mL	90th Percentile
D-001	12/31/2023	EFD-1	Nitrogen, Kjeldahl, Total (as N)	23	16	mg/L	Maximum
D-001	11/30/2023	EFD-1	Nitrogen, Kjeldahl, Total (as N)	18.1	16	mg/L	Maximum
D-001	10/31/2023	EFD-1	Nitrogen, Kjeldahl, Total (as N)	21	16	mg/L	Maximum

Monitoring Group	Date	Monitoring Location	Description	Result	Limit	Units	Statistical Base
D-001	05/31/2024	EFA-2	Flow	6.851	6.83	MGD	Annual Average
D-001	04/30/2024	EFA-2	Flow	6.892	6.83	MGD	Annual Average
D-001	03/31/2024	EFA-2	Flow	6.942	6.83	MGD	Annual Average
D-001	02/29/2024	EFA-2	Flow	6.906	6.83	MGD	Annual Average
R-001	02/28/2023	EFA-1	Nitrogen, Nitrate, Total (as N)	14.4	12	mg/L	Maximum
R-001	06/30/2022	EFA-1	Nitrogen, Nitrate, Total (as N)	14.7	12	mg/L	Maximum
R-002	04/30/2024	EFA-2	Solids, Total Suspended	6.5	5	mg/L	Maximum
R-002	03/31/2024	EFA-2	Solids, Total Suspended	7	5	mg/L	Maximum
R-002	01/31/2024	EFA-2	Solids, Total Suspended	5.1	5	mg/L	Maximum
R-002	12/31/2023	EFA-2	Solids, Total Suspended	210	5	mg/L	Maximum
R-002	11/30/2023	EFA-2	Solids, Total Suspended	20	5	mg/L	Maximum
R-002	10/31/2023	EFA-2	Solids, Total Suspended	16	5	mg/L	Maximum
R-002	09/30/2023	EFA-2	Solids, Total Suspended	6.7	5	mg/L	Maximum
R-002	08/31/2023	EFA-2	Solids, Total Suspended	8.3	5	mg/L	Maximum
R-002	02/28/2023	EFA-2	Solids, Total Suspended	5.5	5	mg/L	Maximum
R-002	01/31/2023	EFA-2	Solids, Total Suspended	16	5	mg/L	Maximum
R-002	12/31/2022	EFA-2	Solids, Total Suspended	8.4	5	mg/L	Maximum
R-002	11/30/2022	EFA-2	Solids, Total Suspended	8	5	mg/L	Maximum
R-002	09/30/2022	EFA-2	Solids, Total Suspended	6.5	5	mg/L	Maximum
R-002	06/30/2022	EFA-2	Solids, Total Suspended	7.8	5	mg/L	Maximum
R-002	04/30/2022	EFA-2	Solids, Total Suspended	58	5	mg/L	Maximum

Monitoring Group	Date	Monitoring Location	Description	Result	Limit	Units	Statistical Base
R-002	03/31/2022	EFA-2	Solids, Total Suspended	14	5	mg/L	Maximum
R-002	02/28/2022	EFA-2	Solids, Total Suspended	5.5	5	mg/L	Maximum
R-002	11/30/2021	EFA-2	Solids, Total Suspended	6	5	mg/L	Maximum

b) The wastewater treatment facility has four incidents over the last 12 months where they have been operating at/over the permitted annual flow limit of 6.83 MGD. The highest reported flow was 6.942 MGD, in violation of Rule 62-600.405, F.A.C.

c) Past enforcement was taken for Flow, TSS, Cyanide and Fecal Coliform violations under consent order (CO) #20-0780. The permittee is currently addressing the flow capacity and expansion of the facility. The facility will be expanded from 6.83 MGD to 10.83 MGD. The preliminary design for this expansion is due to be completed in August 2024. The flow redirection is to be completed in three phases. Phase 1 project was completed in December 2023, redirecting 250,000 gallon per day (GPD) to WWTF#2. Phases 2 and 3 projects have not been completed. An estimated total of 800,000 GPD will be redirected from this WWTF to WWTF#2 when the project is completed.

d) Between September 2021 and March 2023, the following groundwater violations are noted below, in violation of Rules 62-4.160(1) and 62-520, F.A.C.:

Table 2: Compliance Monitoring Well Exceedances

Date	Monitoring Location	Description	Result	Limit	Units	Statistical Base
03/31/2022	MWC-5	Solids, Total Dissolved (TDS)	604	500	mg/L	Maximum
09/30/2021	MWC-5	Solids, Total Dissolved (TDS)	630	500	mg/L	Maximum
03/31/2022	MWC-7	Solids, Total Dissolved (TDS)	525	500	mg/L	Maximum
06/30/2022	MWC-9	pH	6.1	6.5-8.5	s.u.	RANGE
03/31/2022	MWC-9	pH	6.1	6.5-8.5	s.u.	RANGE

Date	Monitoring Location	Description	Result	Limit	Units	Statistical Base
12/31/2021	MWC-9	pH	6	6.5-8.5	s.u.	RANGE
09/30/2021	MWC-9	pH	6.22	6.5-8.5	s.u.	RANGE
06/30/2022	MWC-16	pH	5.88	6.5-8.5	s.u.	RANGE
03/31/2022	MWC-16	pH	6.01	6.5-8.5	s.u.	RANGE
12/31/2021	MWC-16	pH	6	6.5-8.5	s.u.	RANGE
09/30/2021	MWC-16	pH	5.91	6.5-8.5	s.u.	RANGE
03/31/2024	MWC-16	Coliform, Fecal	10	4	#/100mL	MB - Maximum
03/31/2024	MWC-5	Coliform, Fecal	10	4	#/100mL	MB - Maximum
03/31/2024	MWC-7	Coliform, Fecal	10	4	#/100mL	MB - Maximum
03/31/2024	MWC-9	Coliform, Fecal	10	4	#/100mL	MB - Maximum
03/31/2023	MWC-15	Coliform, Fecal	200	4	#/100mL	Maximum
06/30/2022	MWC-15	Coliform, Fecal	6	4	#/100mL	Maximum
MWC-5	06/30/2024	MWC-5	Chloride (as Cl)	350	250	mg/L

e) Sanitary Sewer Overflows (SSOs) occurred from the wastewater collection system, in violation of Rules 62-604.500 (3) and 62-620.300(1), F.A.C, as noted in table 3 below:

Table 3: Sanitary Sewer Overflows

Incident Date	SWO Number	Final Spill Volume	Water Body Affected	Spill Characteristics
9/30/2022	2022-7837	200	N/A	Untreated
9/30/2022	2022-7838	200	N/A	Untreated

Incident Date	SWO Number	Final Spill Volume	Water Body Affected	Spill Characteristics
9/30/2022	N/A	875	N/A	Untreated
9/30/2022	N/A	875	N/A	Untreated
9/30/2022	N/A	875	N/A	Untreated
11/10/2022	N/A	400	none	Untreated
11/10/2022	N/A	400	none	Untreated
11/10/2022	N/A	400	none	Untreated
11/10/2022	2022-9286	1750	none	Untreated
11/10/2022	2022-9287	1000	none	Untreated
11/10/2022	2022-9285	1500	none	Untreated
11/10/2022	2022-9288	500	none	Untreated
12/15/2022	2022-10280	8000	none	Untreated
3/27/2023	2023-2585	1500	none	Untreated
6/29/2023	2023-5270	1000	none	Untreated
8/2/2023	2023-6288	1500	N/A	Untreated
9/30/2023	2023-8254	2000	None	Untreated
9/30/2023	2023-8253	2000	None	Untreated
9/30/2023	2023-8258	2000	None	Untreated
9/30/2023	2023-8256	2000	None	Untreated
9/30/2023	2023-8255	2000	none	Untreated

Incident Date	SWO Number	Final Spill Volume	Water Body Affected	Spill Characteristics
10/12/2023	2023-8479	2500	None	Untreated
10/12/2023	2023-8470	1000	None	Untreated
10/12/2023	N/A	500	None	Untreated
10/12/2023	2023-8478	1500	None	Untreated
10/12/2023	2023-8477	2000	None	Untreated
10/12/2023	2023-8476	1000	None	Untreated
10/12/2023	2023-8473	1000	None	Untreated
10/12/2023	2023-8472	1000	None	Untreated
10/12/2023	2023-8471	1000	None	Untreated
10/12/2023	N/A	500	None	Untreated
10/12/2023	N/A	500	None	Untreated
11/16/2023	N/A	50	none	Untreated
12/16/2023	2023-10467	2000	N/A	Untreated
12/16/2023	2023-10464	2000	N/A	Untreated
12/16/2023	2023-10465	2000	N/A	Untreated
12/16/2023	2023-10468	1000	N/A	Untreated
12/17/2023	N/A	250	N/A	Untreated
12/17/2023	N/A	500	N/A	Untreated
12/17/2023	N/A	500	N/A	Untreated

Incident Date	SWO Number	Final Spill Volume	Water Body Affected	Spill Characteristics
12/17/2023	N/A	900	N/A	Untreated
12/17/2023	N/A	500	N/A	Untreated
12/17/2023	N/A	250	N/A	Untreated
12/17/2023	N/A	200	N/A	Untreated
12/17/2023	N/A	150	N/A	Untreated
12/17/2023	N/A	100	N/A	Untreated
12/17/2023	N/A	150	N/A	Untreated
12/20/2023	N/A	12000	none	Untreated
2/23/2024	2024-1658	200	Canal next to lift station	Untreated
3/4/2024	N/A	75	none	Untreated
3/13/2024	N/A	200	None	Untreated
4/11/2024	N/A	300	N/A	Untreated
06/11/2024	2024-4944	250	N/A	Untreated
06/11/2024	2024-4945	100	N/A	Untreated
06/11/2024	N/A	100	N/A	Untreated
07/16/2024	2024-5941	3000	N/A	Untreated
09/08/2024	2024-7750	1000	N/A	Untreated
09/12/2024	2024-7894	500	N/A	Untreated
09/12/2024	2024-7895	1000	N/A	Untreated

Incident Date	SWO Number	Final Spill Volume	Water Body Affected	Spill Characteristics
09/12/2024	2024-7896	1000	N/A	Untreated
9/12/2024	N/A	500	N/A	Untreated
9/12/2024	N/A	500	N/A	Untreated
09/12/2024	N/A	500	N/A	Untreated
09/12/2024	N/A	500	N/A	Untreated
09/13/2024	2024-7918	1000	N/A	Untreated
09/19/2024	2024-8095	500	N/A	Untreated
09/19/2024	2024-8096	500	N/A	Untreated
10/01/2024	2024-8622	200	N/A	Untreated
10/07/2024	2024-8835	500	N/A	Untreated
10/07/2024	2024-8837	500	N/A	Untreated
10/11/2024	2024-9120	2,358,000	N/A	Untreated

5. The Department acknowledges that the Respondent submitted a letter on December 4, 2023, detailing current and future improvement projects at the wastewater treatment facility to address the plant exceedances and SSOs.

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

ORDERED:

6. Respondent shall comply with the following corrective actions within the stated time periods:

7. Within 90 days of the effective date of this Order, Respondent shall submit to the Department a plan ("Plan") to meet the permitted effluent limits, groundwater standards, to

preventing sanitary sewer overflows, reduce infiltration and inflow into the collection system. The letter submitted on December 4, 2023, Mitigating Exceedances and SSOs, may be updated as necessary and submitted with the Plan.

- a) The Plan may involve modifications to the Facility, modifications to the treatment processes, or reductions in the amounts of contaminants entering the facility. The Plan shall be prepared and sealed by a professional engineer registered in the State of Florida and shall include a time schedule by which compliance shall be achieved. Respondent must receive written notification of review and acceptance of the Plan from the Department (Notification) prior to implementation. If the Plan is deemed incomplete by the Department, or if the Department Requests Further Information (RFI), the Respondent shall provide this information in a written response within 30 days of the date of the RFI.
- b) The Plan shall be implemented within 30 days of the date of Notification, or the timeframe included within the accepted Compliance Plan.
- c) Any design modifications to remedy the violations identified in paragraph 4 above and to ensure the Facility, including the effluent disposal system and associated collection system, will function in full and consistent compliance with all applicable rules shall be prepared and submitted to the Department under seal by a professional engineer registered in the state of Florida.
- d) Respondent shall submit a complete application for a Department wastewater permit to construct the modifications submitted pursuant to the Plan, if such permit is required. In the event the Department requires additional information to process the permit application, Respondent shall provide a written response to information requested by the department within 30 days of the date of the request.
- e) Within 60 days after completion of the construction, Respondent shall submit to the Department a Certification of Completion, prepared and sealed by a professional engineer registered in the State of Florida, stating that modifications to the Facility, effluent disposal system, and collection system have been constructed in

accordance with the provisions of the Permit or, if no Permit is required the design modification(s) submitted pursuant to the Plan.

f) Respondent shall prepare and submit a Plan, to include collection system upgrades to address the wastewater treatment facility expansion for future wastewater flows into the plant.

8. Respondent shall comply with the following discharge limitations and other requirements set forth in the Permit:

a. Beginning on the first day of the month following the effective date of this Order and lasting until December 28, 2028, the interim limits are as shown in Table 4, below:

Table 4- Interim Limits

Parameter	Units	Max/Min	Limit	Statistical Basis	Frequency of Analysis	Monitoring Site Number	Sample Type
Coliform, Fecal	#/100mL	Max	25 (see paragraph 11.a)	Single Sample	5 Days/Week (When Discharging)	EFA-2	Grab
Coliform, Fecal, % less than detection	Percent	Minimum	Report	Monthly Total	Monthly	CAL-1	Calculated
Enterococci	#/100mL	Maximum	Report	Monthly Geometric Mean	Weekly (During Discharge)	EFD-1	Grab
Enterococci	#/100mL	Maximum	Report	90 th Percentile	Weekly (During Discharge)	EFD-1	Grab

Parameter	Units	Max/Min	Limit	Statistical Basis	Frequency of Analysis	Monitoring Site Number	Sample Type
Nitrogen, Kjeldahl, Total	mg/L	Maximum	Report	Single, Monthly, Annual	Daily (During Discharge)	EFD-1	24-hour FPC
Nitrogen, Nitrate, Total	mg/L	Maximum	Report	Single Sample	Monthly	EFA-1	24-hr FPC
Solids, Total Suspended	mg/L	Maximum	5 (see paragraph 11.a)	Single Sample	Daily (7 Days/Week)	EFA-2	Grab
Coliform, Fecal	#/100mL	Maximum	Report	NA	Quarterly	MWC-15	Grab
Solids, Total Dissolved (TDS)	mg/L	Maximum	Report	NA	Quarterly	MWC-5 MWC-7	Grab
pH	s.u.	Range	Report	NA	Quarterly	MWC-16	Grab

b. Tests conducted pursuant to this monitoring program shall conform to Rule 62-4.246, Florida Statutes (Fla. Stat.), and Chapters 62-160 and 62-660, Fla. Admin. Code, and 40 Code of Federal Regulations 136, as appropriate.

c. These monitoring requirements do not act as State of Florida Department of Environmental Protection Wastewater Permit effluent limitations, nor do they authorize or otherwise justify violation of the Florida Air and Water Pollution Control Act, Part I, Chapter 403, Fla. Stat., during the pendency of this Order.

9. Every calendar quarter after the effective date of this Order and continuing until all corrective actions have been completed, Respondent shall submit to the Department a written report containing information about the status and progress of projects being completed under this Order, information about compliance or noncompliance with the applicable requirements of this Order, including construction requirements and effluent

limitations, and any reasons for noncompliance. These reports shall also include a projection of the work Respondent will perform pursuant to this Order during the 12-month period which will follow the report. Respondent shall submit the reports to the Department within 30 days following the end of each quarter.

a. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions by December 28, 2028, and be in full compliance with Chapter 62, Fla. Admin. Code and Chapter 403, Fla. Stat regardless of any intervening events or alternative time frames imposed in this order.

10. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$26,218.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$20,000.00 for civil penalties, \$5,000.00 for history of non-compliance, \$218.00 in economic benefit, and \$1,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalty in this case includes 3 violations (effluent, groundwater, and SSOs) that each warrant a penalty of \$2,000.00 or more.

11. Respondent agrees to pay the Department stipulated penalties in the amount of \$200.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 6 through 9 of this Order.

a. Stipulated penalties shall be assessed \$200.00 per day for any permit reuse exceedances (EFA-2), such as Flow, TSS and Fecal Coliform violations.

12. Respondent shall pay the Department stipulated penalties for any discharges of wastewater from the WWTF and/or collection/transmission system. These unauthorized discharges will be evaluated by the Department on a case-by-case basis using the table below and the volume. Respondent shall pay penalties as follows:

<u>Amount p/day p/discharge</u>	<u>Discharge Volume</u>
\$1000.00	up to 5,000 gallons
\$2,000.00	5,001 to 10,000 gallons
\$5,000.00	10,001 to 25,000 gallons

\$10,000

25,001 to 100,000 gallons

\$15,000

in excess of 100,000 gallons

The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in paragraph 14, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraphs 11 and 12 of this Order.

13. In lieu of making cash payment of \$25,218.00 in civil penalties as set forth in paragraph 10 above, Respondent may elect to off-set this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project and may not be a corrective action requirement of the Order or otherwise required by law. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$37,827.00. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Consent Order. Notwithstanding the election to implement an in-kind project, payment of the remaining \$1,000.00 in costs must be paid within 30 days of the effective date of the Consent Order.

a. If stipulated penalties are assessed for any violations under paragraphs 6 through 9 or paragraph 12, the Respondent shall have the option to elect an In-kind project in lieu of paying the penalty.

14. In the event that Respondent elects to off-set civil penalties including stipulated penalties by implementing an In-kind penalty project which is approved by the Department, during the period that this Order remains in effect or during the effective date of any Department issued Permit to Respondent whichever is longer (Prohibited Transfer Duration),

Respondent shall not transfer or use funds obtained by the Respondent from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System (hereinafter, Prohibited Transfer). Respondent shall annually certify to the Department using the Annual Certification Form located on Exhibit B to this Order that no Prohibited Transfer has occurred. In the event of any Prohibited Transfer, the In-Kind project option shall be forfeited, and entire civil penalty shall immediately become due and owing to the Department irrespective of any expenditures by the Respondent in furtherance of the In-Kind project.

15. If Respondent elects to implement an In-kind project as provided in paragraph 13, then Respondent shall comply with all the requirements and time frames in Exhibit A entitled In-Kind Projects.

16. Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at:

<http://www.fldepportal.com/go/pay/>. It will take a number of days after this order is final, effective and filed with the Clerk of the Department before ability to make online payment is available.

17. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Abhi Maturi, Department of Environmental Protection, Northeast District Office.

18. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

19. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property,

(a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

20. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

21. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

22. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

23. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

24. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$15,000.00 per day per violation, and criminal penalties.

25. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

26. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

27. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

28. This Consent Order is a final order of the Department pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

29. Respondent shall publish the following notice in a newspaper of daily circulation in Flagler County, Florida. The notice shall be published one time only within 15 days of the effective date of the Order. Respondent shall provide a certified copy of the published notice to the Department within 10 days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF CONSENT ORDER

The Department of Environmental Protection ("Department") gives notice of agency action of entering into a Consent Order with CITY OF PALM COAST pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the Sanitary Sewer Overflows and Permit Monitoring Violations at 26 Utility Drive. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Northeast District.

Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The name and address of each agency affected and each agency's file or identification number, if known;
- b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the

- petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c) A statement of when and how the petitioner received notice of the agency decision;
 - d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
 - e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
 - f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
 - g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida, 32399-3000, or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at Northeast District. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

30. Rules referenced in this Order are available at:

<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>

FOR THE RESPONDENT:



Lauren Johnston
Acting City Manager

12/6/24
Date

DONE AND ORDERED this ___ day of _____ 2024, in Duval, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Gergory J. Strong
District Director
Northeast District Office


Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk,
receipt of which is hereby acknowledged.

Clerk

Date

Copies furnished to:

FDEP OGC: Lea Crandall, Agency Clerk, Mail Station 35 (executed copy)
FDEP-NED: Abhi Maturi, Herndon Sims, Joni Petry, DEP_NED
DWRM/ WCAPHQ@dep.state.fl.us (executed copy)

Exhibit E

Exhibit A

In-Kind Projects

I. **Introduction**

Proposal

a. Within 60 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable, Respondent shall submit, by certified mail, a detailed in-kind project proposal to the Department for evaluation. The proposal shall include a summary of benefits, proposed schedule for implementation and documentation of the estimated costs which are expected to be incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the in-kind project.

Proposal Certification Form

b. The proposal shall also include a Certification by notarized affidavit from a senior management official for _____ (insert name of Respondent) who shall testify as follows:

My name is _____ (print or type name of senior management official) and do hereby testify under penalty of law that:

A. I am a person with management responsibilities for _____ (print or type name of Respondent) budget and finances. During the eighteenth month period prior to the effective date of Consent Order OGC Case No.: _____ and the attached proposed in-kind project, there has not been any transfer or use of funds obtained by the _____ (print or type name of Respondent) from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System.

B. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly submitting false information in this certification.

Sworn to and subscribed before me, by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__ by

Personally, known or by Production of the following Identification _____

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires: _____

Commission/Serial No.: _____

Annual Certification Form

My name is _____ (print or type name of senior management official) and do

hereby testify under penalty of law that:

A. I am a person with management responsibilities for _____ (print or type name of Respondent) budget and finances. During the twelve month period immediately preceding the notary date on this Certification, there has not been any transfer or use of funds obtained by the _____ (print or type name of Respondent) from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System or not related to the Department approved in-kind project .

B. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly submitting false information in this certification.

Sworn to and subscribed before me, by means of ☐ physical presence or ☐ online
notarization, this ____ day of _____, 20__ by

Personally, known or by Production of the following Identification _____

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires: _____

Commission/Serial No.: _____

c. If the Department requests additional information or clarification due to a partially incomplete in-kind project proposal or requests modifications due to deficiencies with Department guidelines, Respondent shall submit, by certified mail, all requested additional information, clarification, and modifications within 15 days of receipts of written notice.

d. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the proposal. Respondent shall correct and redress all the matters at issue and submit, by certified mail, a new proposal within 30 days of receipt of written notice. In the event that the revised proposal is not approved by the

Department, Respondent shall make cash payment of the civil penalties as set forth in paragraph 10 above, within 30 days of Department notice.

e. Within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable, Respondent shall obtain approval for an in-kind project from the Department. If an in-kind project proposal is not approved by the Department within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable then Respondent shall make cash payment of the civil penalties as set forth in paragraph 10 above, within 30 days of Department notice.

f. Within 180 days of obtaining Department approval for the in-kind proposal or in accordance with the approved schedule submitted pursuant to above, Respondent shall complete the entire in-kind project.

g. During the implementation of the in-kind project, Respondent shall place appropriate sign(s) at the project site indicating that Respondent's involvement with the project is the result of a Department enforcement action. Respondent may remove the sign(s) after the project has been completed. However, after the project has been completed Respondent shall not post any sign(s) at the site indicating that the reason for the project was anything other than a Department enforcement action.

h. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be

forfeited, and the entire amount of civil penalties shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$25,218.00 penalty, no additional penalties shall be assessed under paragraph 10 for failure to complete the requirement of this paragraph.

i. Within 15 days of completing the in-kind project, Respondent shall notify the Department, by certified mail, of the project completion and request a verification letter from the Department. Respondent shall submit supporting information verifying that the project was completed in accordance with the approved proposal and documentation showing the actual costs incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the project.

j. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to substantial deviations from the approved in-kind project; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all the matters at issue and submit, by certified mail, a new notification of completion within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalty shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$25,218.00, no additional penalties shall be assessed under paragraph 10 for failure to complete the requirements of this paragraph.

Exhibit F
2020 DEP Consent Order



Florida Department Of Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

May 11, 2020

Sent electronically to: radams@palmcoastgov.com

Mr. Richard Adams, Public Works Director
City of Palm Coast
2 Utility Drive
Palm Coast, Florida 32137

SUBJECT: Department of Environmental Protection v. City of Palm Coast
OGC File No. 20-0780
Palm Coast WWTF #1
Facility ID: FL0116009
Flagler County- Wastewater Enforcement

Dear Mr. Adams:

Enclosed is a copy of the executed Consent Order to resolve Case Number 20-0780.
The effective date of this Order is May 11, 2020, and all time frames will -be referenced from this date.

As a reminder, a Consent Order is a binding legal document and was voluntarily entered into by both parties.

Should you have any questions concerning the Consent Order, please contact Hillary Saunders, at Hillary.Saunders@FloridaDEP.gov, or by phone at (904) 256-1549. Your continued cooperation in the matter is appreciated.

Sincerely,

A handwritten signature in blue ink that reads "James R. Maher".

James R. Maher, PE
Assistant Director

Enclosure: Executed Consent Order

cc: FDEP-OGC: Lea Crandall, Agency Clerk
FDEP-NED: Arlene Wilkinson, DEP_NED

Exhibit F



FLORIDA DEPARTMENT OF Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

April 16, 2020

Sent electronically to: radams@palmcoastgov.com

Mr. Richard Adams, Public Works Director
City of Palm Coast
2 Utility Drive
Palm Coast, Florida 32137

SUBJECT: Department of Environmental Protection v. City of Palm Coast
OGC File No. 20-0780
Palm Coast WWTF #1
Facility ID: FL0116009
Flagler County – Wastewater Enforcement

Dear Mr. Adams:

The State of Florida Department of Environmental Protection ("Department") finds that City of Palm Coast ("Respondent") had Total Suspended Solids ("TSS"), Fecal Coliform, Cyanide, and Nitrogen effluent limit exceedances and flow exceedances between November 30, 2017 and December 31, 2019, in violation of Conditions I.A.1, I.B.1, I.D.1, I.E.1, and I.F.1, Permit No. FL0116009-020, and Rules 62-4.160(1) and 62-600.410(1), Fla. Admin. Code, as shown in Table 1, below:

Table 1: Effluent Limit Exceedances

Date	Parameter	Monitoring Group	Result	Limit	Stat Base
4/30/2019	TSS	R-002	5.8	5	Max
3/31/2019	TSS	R-002	12	5	Max
2/28/2019	TSS	R-002	5.7	5	Max
7/31/2018	TSS	R-002	12	5	Max
5/31/2018	TSS	R-002	12	5	Max
4/30/2018	TSS	R-002	7.4	5	Max
7/31/2019	Fecal Coliform	D-002/R-002	62	25	Max
6/30/2018	Fecal Coliform	R-002	27	25	Max
5/31/2018	Fecal Coliform	D-002/R-002	155	25	Max
12/31/2017	Fecal Coliform	R-002	31	25	Max

Exhibit F

Date	Parameter	Monitoring Group	Result	Limit	Stat Base
7/31/2019	Fecal Coliform, % less than detection	CAL-1	73	75	Max
6/30/2019	Fecal Coliform, % less than detection	CAL-1	80	75	Max
5/31/2019	Fecal Coliform, % less than detection	CAL-1	78	75	Max
12/31/2018	Flow	EFA-2	6.913	6.83	Annual Average
11/30/2018	Flow	EFA-2	7.016	6.83	Annual Average
10/31/2018	Flow	EFA-2	7.219	6.83	Annual Average
9/30/2018	Flow	EFA-2	7.623	6.83	Annual Average
8/31/2018	Flow	EFA-2	7.699	6.83	Annual Average
7/31/2018	Flow	EFA-2	7.758	6.83	Annual Average
6/30/2018	Flow	EFA-2	7.77	6.83	Annual Average
5/31/2018	Flow	EFA-2	7.6	6.83	Annual Average
4/30/2018	Flow	EFA-2	7.439	6.83	Annual Average
3/31/2018	Flow	EFA-2	7.05	6.83	Annual Average
2/28/2018	Flow	EFA-2	7.245	6.83	Annual Average
1/31/2018	Flow	EFA-2	7.133	6.83	Annual Average
12/31/2017	Flow	EFA-2	7.001	6.83	Annual Average
11/30/2017	Flow	EFA-2	6.893	6.83	Annual Average
6/30/2018	Cyanide	EFD-1	22	1	Max
6/30/2018	Nitrogen	EFA-1	18	12	Max

Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violations. These actions include:

- 1) Met with industrial providers about cyanide issues.
- 2) Ongoing gravity sewer manhole lining project.
- 3) Diverting existing flow from WWTP #1, to the new WWTP #2.
- 4) Expanding current disc filter capacity.

Due to the nature of the violations, the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

The Department's Offer

Based on the violations described above, the Department is seeking \$2,000.00 in civil penalties for the unpermitted effluent limit exceedances in violation of Rules 62-4.160 and 62-600.410(1), Fla. Admin. Code, pursuant to Section 403.121(3)(b), Fla. Stat., and \$250.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$2,250.00.

In lieu of making cash payment of \$2,000.00 in civil penalties as set forth in the paragraph above, Respondent may elect to off-set this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of **at least \$3,000.00**. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Consent Order. Notwithstanding the election to implement an in-kind project, payment of the remaining \$250.00 in costs **must be paid within 30 days of the effective date of the Consent Order**.

If Respondent elects to implement an in-kind project as provided in the paragraph above, then Respondent shall comply with all of the requirements and time frames in Exhibit A entitled In-Kind Projects.

Respondent's Acceptance

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return it to the Department at Florida Department of Environmental Protection, Northeast District, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256, **within 30 days of the issuance date of this Order**. The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), Fla. Stat. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, Fla. Stat., and the attached Notice of Rights.

By accepting this offer you, Richard Adams:

- (1) certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
- (2) acknowledge and waive Respondent's right to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat., on the terms of this offer, once final;
- (3) acknowledge and waive Respondent's right to an appeal pursuant to Section 120.68, Fla. Stat.; and
- (4) acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violation(s) referenced above.

Respondent's Performance

After signing and returning this document to the Department,

- (1) Respondent must either pay \$2,250.00 in full **within 30 days of the effective date of this Order** or pay \$250.00 in Departmental costs and submit an in-kind project notification as described above in "The Department's Offer" and in Exhibit A below, **within 30 days of the effective date of this Order**.
- (2) Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order is final and effective filed with the Clerk of the Department before ability to make online payment is available.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, Fla. Stat.

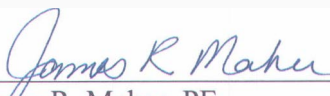
Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, Fla. Stat. Once this letter is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than the Respondent, whose interests will be substantially affected.

Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

Please be aware that if the Respondent declines to respond to the Department's offer, the Department will assume that the Respondent is not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact Hillary Saunders by phone at (904) 256-1549, or via email at Hillary.Saunders@FloridaDEP.gov.

Sincerely,


James R. Maher, PE
Assistant Director

FOR THE RESPONDENT:

I, RICHARD H ADAMS [Richard Adams], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: 
[Signature]

Date: 4/24/2020

Title: City of Palm Coast ~~Public Works~~ Director OF UTILITY 

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 11 day of May 2020, in Duval County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Gregory J. Strong
District Director
Northeast District



Filed, on this date, pursuant to section 120.52, Fla. Stat., with the designated Department Clerk,
receipt of which is hereby acknowledged.

Roxanne Smith

Clerk

May 11, 2020

Date

Attachments: Notice of Rights
 Exhibit A – In-Kind Projects

Final clerked copy furnished to:

FDEP-OGC: Lea Crandall, Agency Clerk (Lea.Crandall@FloridaDEP.gov)

Exhibit F

NOTICE OF RIGHTS

Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Order;
- d) A statement of when and how the petitioner received notice of the Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at the address indicated above. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.

Exhibit A

In-Kind Projects

I. Introduction

1. An in-kind project

a. Within 60 days of the effective date of this Consent Order, Respondent shall submit, by certified mail, a detailed in-kind project proposal to the Department for evaluation. The proposal shall include a summary of benefits, proposed schedule for implementation and documentation of the estimated costs which are expected to be incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the in-kind project.

b. If the Department requests additional information or clarification due to a partially incomplete in-kind project proposal or requests modifications due to deficiencies with Department guidelines, Respondent shall submit, by certified mail, all requested additional information, clarification, and modifications within 15 days of receipts of written notice.

c. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the proposal. Respondent shall correct and redress all of the matters at issue and submit, by certified mail, a new proposal within 30 days of receipt of written notice. In the event that the revised proposal is not approved by the Department, Respondent shall make cash payment of the civil penalties as set forth in paragraph (1) above under "Respondent's Performance," within 30 days of Department notice.

d. Within 120 days of the effective date of this Consent Order, Respondent shall obtain approval for an in-kind project from the Department. If an in-kind project proposal is not

approved by the Department within 120 days of the effective date of this Consent Order, then Respondent shall make cash payment of the civil penalties as set forth in paragraph (1) above under "Respondent's Performance," within 30 days of Department notice.

e. Within 180 days of obtaining Department approval for the in-kind proposal or in accordance with the approved schedule submitted pursuant to paragraph 2(a) above, Respondent shall complete the entire in-kind project.

f. During the implementation of the in-kind project, Respondent shall place appropriate sign(s) at the project site indicating that Respondent's involvement with the project is the result of a Department enforcement action. Respondent may remove the sign(s) after the project has been completed. However, after the project has been completed Respondent shall not post any sign(s) at the site indicating that the reason for the project was anything other than a Department enforcement action.

g. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be forfeited and the entire amount of civil penalties shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$2,000.00 penalty, no additional penalties shall be assessed for failure to complete the requirement of this paragraph.

h. Within 15 days of completing the in-kind project, Respondent shall notify the Department, by certified mail, of the project completion and request a verification letter from the Department. Respondent shall submit supporting information verifying that the project was completed in accordance with the approved proposal and documentation showing the actual costs

incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the project.

i. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to substantial deviations from the approved in-kind project; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all of the matters at issue and submit, by certified mail, a new notification of completion within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited and the entire amount of civil penalty shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$2,000.00, no additional penalties shall be assessed for failure to complete the requirements of this paragraph.

Exhibit G
2022 Interlocal Subaward Agreement

**INTERLOCAL SUBAWARD AGREEMENT
BETWEEN FLAGLER COUNTY AND CITY OF
PALM COAST FOR UTILITY INFRASTRUCTURE
IMPROVEMENTS UNDER THE AMERICAN
RESCUE PLAN ACT**

THIS INTERLOCAL SUBAWARD AGREEMENT is made and entered into this 7TH day of FEBRUARY, 2022 ("Effective Date"), and between **FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, whose address is 1769 E. Moody Blvd., Bldg. 2, Bunnell, Florida 32110, hereinafter referred to as "COUNTY", and the **CITY OF PALM COAST**, a Florida municipal corporation, whose address is 160 Lake Avenue, Palm Coast, Florida 32164, hereinafter referred to as "CITY". County and City shall be collectively referred to as "Parties").

W I T N E S S E T H:

WHEREAS, on March 11, 2021, Public Law No: 117-2 - The American Rescue Plan Act of 2021 ("ARPA" or the "Act") was signed into law to combat COVID-19, including the public health and economic impacts of same; and

WHEREAS, amongst other things, Subtitle M of the Act created the Coronavirus State and Local Fiscal Recovery Fund ("CLFRF") to provide \$65.1 billion in direct funding to counties; and

WHEREAS, the County is a recipient of funds under the CLFRF; and

WHEREAS, the Act provides that CLFRF funds may be used to make necessary improvements to water and sewer infrastructure; and

WHEREAS, the Interim Final Rule promulgated by the United States Department of Treasury further provides that water and wastewater infrastructure projects that would be eligible for funding under the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) programs would be eligible uses of CLFRF funds; and

WHEREAS, the parties have identified two capital improvement projects consisting of certain necessary improvements to the City's water and wastewater utility systems in order to provide an adequate minimum level of service to areas of the barrier island which are presently not served by centralized water and wastewater facilities, which projects are further described in Exhibit "A" hereto (hereinafter, the water and wastewater projects are referred to collectively as, "Projects"); and

WHEREAS, the Projects are unlikely to be funded using private sources of funds; and

WHEREAS, the City and County have determined that the Projects would be eligible for funding under the CWSRF and DWSRF programs and thus constitute eligible projects under the CLFRF; and

WHEREAS, the purpose of this Agreement is to provide for a subaward of CLFRF funds from the County to the City to assist the City with the funding of the Projects.

NOW THEREFORE, in consideration of the promises and mutual benefits set forth herein, COUNTY and CITY hereby agree as follows:

SECTION 1. RECITALS.

The recitals above are true and correct and form a material part of this Agreement.

SECTION 2. GENERAL.

The City does hereby agree to fully comply with the terms and conditions set forth in this Agreement and all attachments and exhibits hereto, Subtitle M of the Act establishing the CLFRF, and all implementing rules, regulations, and guidance related to same.

SECTION 3. TERM.

A. This Agreement shall commence and become effective upon the date it is filed with the Clerk of Court after its execution by the parties ("Effective Date") and shall remain in effect until 30 days after the final reimbursement of funds for the Projects is received by the City, as per Section 4.A. below (the "Termination Date").

B. All references to days herein shall refer to calendar days unless otherwise indicated.

SECTION 4. SUBAWARD.

A. Initial planning, design, engineering and construction of the Projects will be the responsibility of the City. However, for a period of twenty-five years from the Effective Date of this Agreement, the County will be responsible for and pay the costs and expenses associated with any modification, alteration or relocation of the Projects' improvements initiated by the County or necessitated by County work within County right-of-way. After the expiration of the first twenty-five year period, the City and County will split 50/50 the costs and expenses associated with any modification, alteration or relocation of the Project's improvements initiated by the County or necessitated by County work within County right-of-way for an additional 25 years. After 50 years from the Effective Date, City, or its successor, shall be solely responsible for the cost of eliminating any unreasonable interference of the Projects' improvements with the use,

maintenance, improvement, or expansion of any public right of way, in accordance with Section 337.403, Florida Statutes.

B. The City will furnish the County with invoices, on no less than a quarterly basis, along with backup documentation, for expenses or obligations incurred in planning, designing, engineering, or constructing the Projects pursuant to this Agreement. The County will pay the invoices with the CLFRF funds in accordance with Florida's Local Government Prompt Payment Act. The total compensation paid by the County to the City under this Agreement shall in no case exceed **five million one hundred thousand dollars (\$5,100,000.00)** (the "Subaward"). If at the construction bid phase the Projects' costs exceed the costs estimated by the Parties at the time of execution of this Agreement, the Parties will amend this Agreement prior to moving forward to the next phase of the Projects' construction. In the event the City wishes to utilize the funds subawarded to the City under this paragraph for any purpose other than to fund the Projects described in Exhibit "A" hereto, the City shall be required to obtain the express written approval of the County, which shall be memorialized via a written amendment or addendum to this Agreement.

C. The City and County hereby certify that the Projects are eligible for CLFRF funding under the Act.

D. Duplication of Benefit. The City hereby certifies and affirms that the costs and expenses to be funded under this Agreement shall not result in a prohibited duplication of the benefits obtained by the City from any other source. It is the City's responsibility and obligation to implement processes and procedures to ensure compliance with this paragraph. The City acknowledges and agrees that it has an affirmative obligation to promptly identify and report any duplication of benefits to the County. In the event that the City recovers costs incurred under this Agreement and reimbursed by the County from another source, the City shall reimburse the County for any funds provided under this Agreement that would be considered a duplication of benefits. Developer capacity fees for individual property utility agreements would not be considered a duplication of benefit as used herein.

SECTION 5. REPORTING REQUIREMENTS.

A. Financial and Performance Reports. Upon request by the County, the City shall furnish such financial and performance reporting information related to the Projects as the County requires in order to meet its reporting requirements under the Act. Provided, such financial and performance reports shall not be requested more frequently than once per calendar quarter.

B. Final Project Report. Within twenty (20) days following the Projects' completion, the City shall submit to the County a set of as-built drawings and a "Final Project Report," in which the City shall describe the status of the City's implementation of the Projects. The Final Project Report shall further include any additional information needed by the County in order to permit the County to meet all of its obligations and requirements for reporting under the Act. This section shall survive termination of this Agreement.

C. Funding Accountability and Transparency Act. Because of the federal funds

awarded under this Agreement, the County must comply with the Federal Funding Accountability and Transparency Act of 2006 ("FFATA"). FFATA requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, www.USASpending.gov. Grant recipients awarded a new Federal grant greater than or equal to \$25,000 awarded on or after October 1, 2010, are subject to FFATA. The City agrees to assist the County in providing the information necessary, over the life of this Agreement, for the County to comply with its reporting obligations under FFATA.

D. Nonconsumable and/or nonexpendable personal property or equipment that costs \$1,000 or more purchased by the City is subject to the requirements set forth in Chapter 274, F.S., Chapter 69I-73, F.A.C., and 2 C.F.R. Part 200 (for equipment in excess of \$5,000), as applicable. The City shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The City shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.

SECTION 6. LOBBYING PROHIBITION; CONFLICTS OF INTEREST.

The City agrees to comply with, and include in subcontracts and subawards, the following provisions:

A. The City certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the City, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. The City certifies that no funds provided under this Agreement have been used or will be used to engage in the lobbying of the Federal Government or in litigation against the United States.

C. Pursuant to 2 C.F.R. §200.450 and 2 C.F.R. §200.454(e), the City is hereby prohibited from using funds provided by this Agreement for membership dues to any entity or organization engaged in lobbying activities.

D. Hatch Act. In accordance with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), no funds provided, nor personnel employed under this Agreement, shall be in any way or any extent engaged in the conduct of political activities.

SECTION 7. COMPLIANCE WITH LAWS ; 2 C.F.R. PART 200.

A. The City shall comply with all applicable federal, state and local laws, rules, and regulations, and policies and regulations in performing under this Agreement. The failure of this Agreement to specifically reference a particular federal, state, or local law or regulation, or policy

or regulation shall not excuse the City from compliance with same to the extent such law, regulation, or policy is applicable to the City's performance under this Agreement. The City shall obtain any necessary permits from the Florida Department of Transportation, the Department of Environmental Protection, the County, or any other agency as required.

B. The City's procurement of any goods or services with funds paid to the City under this Agreement shall comply with 2 C.F.R. Part 200. The City shall also comply with the federal requirements identified and described in Exhibit B, attached hereto.

SECTION 8. NON-DISCRIMINATION; AFFIRMATIVE ACTION.

A. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Agreement. The City and its subcontractors shall comply with all federal and state laws, rules, regulations, policies and executive orders relating to non-discrimination.

B. An entity or affiliate who has been placed on the State of Florida's discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity. The City will not contract with a vendor on the State's discriminatory vendor list with funds awarded under this Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website: https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists.

C. Affirmative Action. The County supports diversity in its procurement program and requires that all subcontracting opportunities afforded by this Agreement embrace and encourage diversity. The City's award of subcontracts should reflect the diversity of the citizens of the State of Florida. In accordance with 2 C.F.R. § 200.321, the City and its subcontractors must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. The City agrees to use affirmative steps, and to require its subcontractors and subrecipients to utilize affirmative steps, to ensure that minority businesses and women's business enterprises are used when possible. Such affirmative steps shall at a minimum include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's

business enterprises;

4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, or women's business enterprises;

5. Utilizing services and assistance, as appropriate, of such organizations as the Small Business Administration, the Minority Business Development Agency of the Department of the Commerce, the Florida Department of Management Services (Office of Supplier Diversity), the Florida Department of Transportation, Minority Business Development Center, and Local Government M/DBE programs; and

6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above in subparagraphs (1) through (5).

7. As used herein, the term "minority and women business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. Prior to award of any subcontract under this Agreement, the City shall document its efforts made to comply with the requirements of this paragraph. The City shall state that it is an Equal Opportunity or Affirmative-Action employer in all solicitations or advertisements for subcontractors or employees who shall perform work under this Agreement.

8. The requirements outlined in subparagraphs (1) through (7) above do not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirements only impose an obligation to carry out and document the affirmative steps identified above.

9. The requirements described in subparagraphs (1) through (7) above outline the affirmative steps that the City must take; the requirements do not preclude the City from undertaking additional steps to involve small and minority businesses and women's business enterprises.

10. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the City to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

SECTION 9. DEBARMENT/SUSPENSION.

In accordance with Presidential Executive Order 12549, Debarment and Suspension (2 C.F.R. Part 180), the City agrees and certifies that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and, that the City shall not enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction. The City is responsible for reviewing the status of all proposed subcontractors in the System for Award Management (SAM)

at <https://sam.gov/SAM/> before entering into any subcontract or sub-award under this Agreement. The City shall include language incorporating the requirements of this section in all subcontracts or lower tier agreements executed under this Agreement.

SECTION 10. PROCUREMENT OF RECOVERED MATERIALS.

The City shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

SECTION 11. RECORDS; ACCESS TO RECORDS AND PERSONNEL.

A. The City shall retain all records generated under this Agreement in accordance with 2 C.F.R. §200.333.

B. The City shall comply with the Florida Public Records Law, codified at Chapter 119, Fla. Stat. Records made or received in conjunction with this Agreement are public records under Florida law. The City shall keep and maintain public records generated by the City in association with its performance of this Agreement.

C. This Agreement may be unilaterally canceled by the County for refusal by the City to either provide to the County upon request, or to allow inspection and copying of, all public records made or received by the City in conjunction with this Agreement and subject to disclosure under Chapter 119, F.S.

D. IF THE CITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS BY TELEPHONE AT (386) 313-4039, BY EMAIL AT jmurphy@flaglercounty.org, OR AT THE FOLLOWING MAILING ADDRESS 1769 EAST MOODY BLVD., BLDG. 2, BUNNELL, FL 32110.

E. The City acknowledges and agrees that the County, the U.S. Department of Treasury, the Treasury Office of Inspector General, the Comptroller General of the United States (Government Accountability Office (GAO)), or their authorized representatives, shall have timely and unrestricted access to any pertinent books, documents, papers, and records, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, investigations, excerpts, transcripts, or

other examinations as authorized by law. This also includes timely and reasonable access to the City's personnel for the purpose of interview and discussion related to such documents. In the event the City subcontracts any of the work of the Projects, the City shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.

F. The County, the U.S. Department of Treasury, the Treasury Office of Inspector General, the Comptroller General of the United States (GAO), or their authorized representatives shall have the right during normal business hours to conduct announced and unannounced onsite and offsite physical visits of the City and their subcontractors corresponding to the duration of their records retention obligation for this Agreement.

G. The rights of access in this Section are not limited to the required retention period for the applicable records but last as long as the records are retained.

H. The City agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

SECTION 12. MISCELLANEOUS.

A. Assignment. No assignment, delegation, transfer, or novation of this Agreement, or any part hereof, may be made unless in writing and signed by both Parties.

B. Execution in Counterparts. This Agreement, and any Amendments or Change Orders thereto, may be executed in multiple counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by email delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

C. Interpretation; Severability. This Agreement shall be construed in accordance with the laws of the State of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

D. Entire Agreement; Joint Preparation. This Agreement represents the entire agreement of the Parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by each of the Parties hereto, and attached to the original of this Agreement, unless otherwise provided herein. The Parties represent and agree that they have jointly negotiated this Agreement and have had the opportunity to consult with and be represented by their own competent counsel. This Agreement is therefore deemed to have been jointly prepared by the Parties and no part hereof shall be construed more severely against one of the Parties than the

other.

E. Time is of the Essence. Time is of the essence for each obligation in this Agreement.

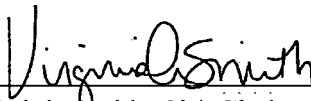
F. Force Majeure. Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations is delayed or prevented by a bona fide *force majeure*. For the purpose of this Agreement, a bona fide *force majeure* is defined in accordance with the common law of the State of Florida as being an event or circumstance beyond the control and authority and without the fault or negligence of the party seeking relief under this Section. The maximum relief granted to either party under this Section shall be the tolling of time for the duration of the *force majeure*. A *force majeure* may be deemed to excuse performance pursuant to this Agreement only to the extent such performance is actually prevented or precluded by such *force majeure*.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the dates written below.

CITY OF PALM COAST

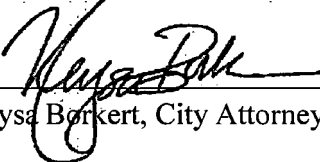

David Alfin, Mayor

ATTEST:


Virginia Smith, City Clerk

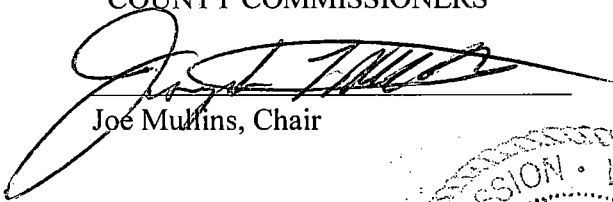


APPROVED AS TO FORM:

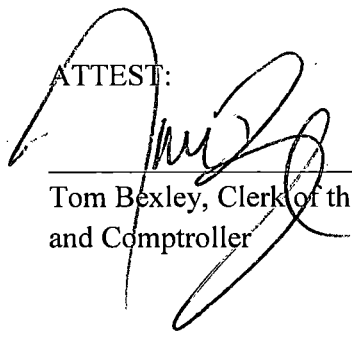

Neysa Borkert, City Attorney

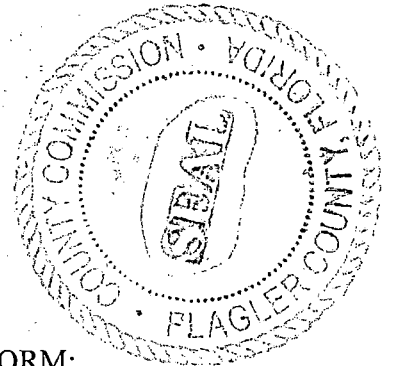
As approved by the City Council of the
City of Palm Coast, Florida, on
January 4, 2022

FLAGLER COUNTY BOARD OF
COUNTY COMMISSIONERS

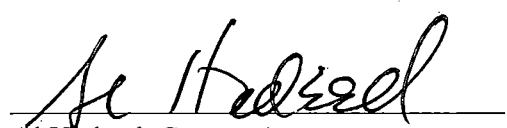

Joe Mullins, Chair

ATTEST:


Tom Bexley, Clerk of the Circuit Court
and Comptroller



APPROVED AS TO FORM:


Al Hadeed, County Attorney

As approved by the Flagler County
Board of County Commissioners at its
regular meeting on the 7TH day of
FEBRUARY, 2022.

EXHIBIT A THE PROJECTS

Extension of Wastewater Line to Hammock Community Center

This project entails the extension of the sewer line, owned and operated by the City, northward along the west side of State Road A1A from Jungle Hut Road to MalaComprá Road and then east under State Road A1A and continuing along the north side of MalaComprá Road to the Hammock Community Center and MalaComprá Park property.

This project will require right of way utilization permits from the State of Florida and the County to provide the infrastructure improvements to be constructed. Individual easements from private property owners may be necessary in some locations. The infrastructure improvements for this project are trunk waste water lines that will be able to provide individual service to property owners once certified by FDEP. The connections to individual properties will require separate agreements that are not part of this project's scope of improvements.

Estimated Start Date: April 2022

Estimated Completion Date: August 2024

County CLFRF Funds to be contributed to the City for the Project pursuant to this Agreement: \$3,300,000.

Extension of Water and Sewer Lines to the Willow Woods Neighborhood

This project entails the extension of the municipal water supply line and sewer dry line, owned and operated by the City, from the State Road A1A right of way westward along Old A1A into the Willow Woods neighborhood and then along the full lengths of Elizabeth Drive, Wendi Lane, and Debra Lane, and northward along Rawlins Road terminating at parcel number 37-10-31-1550-00000-0172.

This project will require right of way utilization permits from the State of Florida and the County and will also require an easement along Rawlins Road from the County in order to provide the required infrastructure improvements to be constructed. Individual easements from private property owners may be necessary in some locations. The infrastructure improvements are trunk water and waste water lines that will be able to provide individual service to property owners once certified by FDEP. Improvement funding for a future sewer pump station with site will be

necessary to active the sewer portion of the project. The connections to individual properties will require separate agreements that are not part of this project's improvements.

Estimated Start Date: April 2022

Estimated Completion Date: March 2024

County CLFRF Funds to be contributed to the City for the Project pursuant to this Agreement:
\$1,800,000.

EXHIBIT B**ADDITIONAL FEDERAL PROVISIONS APPLICABLE TO SUBRECIPIENT**

The projects, programs, and activities to be funded under this Agreement are fully or partially funded by Federal grants and therefore, the City and its contractors will be required to comply with the following provisions, as applicable:

1. **Drug Free Workplace Requirements:** The City and its contractors entering into Federal funded contracts over the simplified acquisition threshold (as defined at 41 U.S.C. § 134) must comply with the Drug Free Workplace Act of 1988 (41 U.S.C. 8102), which requires the City to take certain actions to provide a drug-free workplace.

2. **Davis-Bacon Act:** If applicable, the City agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. §§ 3141-3144 and 3136-3148), and to require all of its contractors performing work under this Agreement to adhere to same. The City and its contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the City and its contractors are required to pay wages not less than once a week. If the grant award contains Davis Bacon provisions, the City shall place a copy of the current prevailing wage determination issued by the Department of Labor in the solicitation documents. The decision to award a contract shall be conditioned upon the acceptance of the wage determination. The City shall report all suspected or reported violations of the Davis-Bacon Act to the County.

3. **Copeland Anti Kick Back Act:** The City and its contractors shall comply with all the requirements of the Copeland Anti-Kickback Act (18 U.S.C. § 874 and 40 U.S.C. § 3145, as supplemented by Department of Labor regulations at 29 CFR Part 3), which are incorporated by reference to this Agreement. The City and its contractors are prohibited from inducing by any means any person employed in the construction, completion or repair of public work to give up any part of the compensation to which he or she is otherwise entitled.

4. **Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701–3708):** Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must be in compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. **Debarment and Suspension (Executive Orders 12549 and 12689):** A contract award (see 2 CFR 180.220) must not be made under this Agreement to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), Debarment and Suspension. SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The contractor shall certify compliance. The City further agrees to include a provision requiring such compliance in its lower tier covered transactions and subcontracts, which shall read as follows:

Applicants or bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of the County and/or the applicable state or federal entity) are subject to 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants or bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, "New Restrictions on Lobbying," published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Governmentwide Guidance for New Restrictions on Lobbying," and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996)

6. **Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352):** The City or its contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. The City shall certify compliance.

7. **501(c)(4) Entities.** The Lobbying Disclosure Act of 1995, as amended (2 U.S.C. §1601 *et seq.*), prohibits any organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities, from receiving federal funds, including through an award, grant, and/or subgrant. The City shall ensure that its contractors and sub-awardees comply with this requirement.

8. **Federal Changes:** The City shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the contract.

9. **Safeguarding Personal Identifiable Information:** The City and its contractors will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, state and/or local laws regarding privacy and obligations of confidentiality.

10. **Energy Policy and Conservation Act (43 U.S.C. §6201):** Contracts shall comply with mandatory standards and policies relating to energy efficiency, stating in the state energy conservation plan issued in compliance with the Energy Policy and Conservation act. (Pub. L. 94-163, 89 Stat. 871) [53 FR 8078, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19645, Apr. 19, 1995].

11. **Right to Inventions Under Federal Grants.** If applicable, the City shall comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Exhibit H
2023 Interlocal Subaward Agreement

**INTERLOCAL SUBAWARD AGREEMENT BETWEEN
FLAGLER COUNTY AND CITY OF PALM COAST FOR
UTILITY INFRASTRUCTURE IMPROVEMENTS**

THIS INTERLOCAL SUBAWARD AGREEMENT ("Agreement") is made and entered into this 7th day of September, 2023, by and between the Flagler County, a political subdivision of the State of Florida, whose address is 1769 E. Moody Blvd., Bldg. 2, Bunnell, Florida 32110 ("County"), and the City of Palm Coast, a Florida municipal corporation, whose address is 160 Lake Ave., Palm Coast, FL 32164 ("City"). County and City shall be collectively referred to as "Parties".

WITNESSETH:

WHEREAS, the parties desire to reduce nutrient loading of surface waters by facilitating the conversion of septic wastewater systems on the barrier island of Flagler County to centralized sewer systems; and

WHEREAS, the Florida Department of Environmental Protection ("DEP") awarded the County up to \$8 million through Standard DEP Grant Agreement No.: LPA0287 (the "DEP Grant Agreement"), attached hereto and incorporated herein as Exhibit 1, to fund the extension of the wastewater line and associated facilities along the right-of-way of State Road A1A, from its intersection with MalaCompra Road to the southerly limits of the Town of Marineland (the "North Sewer Line Extension Project" or "Project"); and

WHEREAS, the Parties desire the City to design, engineer, and construct the North Sewer Line Extension Project pursuant to the terms and conditions herein utilizing funding of the DEP Grant Agreement; and

WHEREAS, the Parties wish to enter into this Agreement to provide for their respective obligations and the procedures by which the successful installation of the North Sewer Line Extension Project may occur; and

NOW THEREFORE, in consideration of the mutual promises and mutual benefits set forth herein, the County and City hereby agree as follows:

SECTION 1. RECITALS. The recitals above are true and correct and form a material part of this Agreement.

SECTION 2. TERM. This Agreement shall commence and become effective upon the date it is filed with the Clerk of Court after its execution by the parties in accordance with Section 163.01(11), Florida Statutes, ("Effective Date") and shall remain in effect until thirty days after the final reimbursement of funds for the North Sewer Line Extension Project is received by the City as per Section 3.B below ("Termination Date").

SECTION 3. SUBAWARD.

A. Initial planning, design, engineering, permitting, and construction of the Project will be the responsibility of the City utilizing funding of the DEP Grant Agreement as described herein. Thereafter, for a period of twenty-five years from the Effective Date of this Agreement, the County will be responsible for and pay the costs and expenses associated with any modification, alteration or relocation of the Projects' improvements initiated by the County or necessitated by County work within any public right-of-way. After the expiration of the first twenty-five year period, the City and County will split 50/50 the costs and expenses associated with any modification, alteration or relocation of the Project's improvements initiated by the County or necessitated by County work within any public right-of-way for an additional twenty-five years. After fifty years from the Effective Date, City, or its successor, shall be solely responsible for the cost of eliminating any unreasonable interference of the Projects' improvements with the use, maintenance, improvement, or expansion of any public right of way, in accordance with Section 337.403, Florida Statutes, as it may be amended.

B. The City will furnish the County with invoices, on no more than a quarterly basis, along with backup documentation, for expenses or obligations incurred in planning, designing, engineering, or constructing the Project pursuant to this Agreement. The backup documentation submitted by the City shall conform to the requirements of the County for reimbursement under the DEP Grant Agreement. Upon receipt of invoices and related documentation, the County will transmit a request for reimbursement to DEP and, upon receipt of the reimbursement, will pay the City the full amount of the invoice(s) submitted in accordance with Florida's Local Government Prompt Payment Act. The total compensation paid by the County to the City under this Agreement shall in no case exceed **EIGHT MILLION DOLLARS (\$8,000,000.00)** (the "Subaward"). If at the construction bid phase the Project's costs exceed the costs estimated by the Parties at the time of the execution of this Agreement, the parties will reduce the length of the sewer line extension to a cost matching the total amount of the Subaward. Moreover, the County's obligation to fund the North Sewer Line Extension Project shall in no case exceed the funds available to the County under the DEP Grant Agreement. Further, the City's obligations under this Agreement to plan, design, engineer, permit and construct the Project are limited to the total amount of the Subaward.

C. The Parties certify that the Project is eligible for funding under the DEP Grant.

D. The City certifies and affirms that the costs and expenses to be funded under this Agreement shall not result in a duplication of the benefits obtained by the City from any other source. It is the City's responsibility and obligation to implement processes and procedures to ensure compliance with this paragraph. The City acknowledges and agrees that it has an affirmative obligation to promptly identify and report any duplication of benefits to the County. In the event that the City recovers costs incurred under this Agreement and reimbursed by the County from another source, the City shall reimburse the County for any funds provided under this Agreement that would be considered a duplication of benefits. Developer capacity fees for

individual property utility agreements would not be considered a duplication of benefit as used herein.

E. The terms and conditions of the DEP Grant Agreement, attached to this Agreement as Exhibit 1 and incorporated herein, shall apply to the North Sewer Line Extension Project. The City acknowledges familiarity with the DEP Grant Agreement, including the requirements therein imposed on the County and the County's contractors and subcontractors, and shall adhere to the applicable terms and conditions of the DEP Grant Agreement in the implementation of the Project. Further, the City will perform its obligations hereunder in such a way to facilitate the County's reimbursement under the DEP Grant Agreement with regard to deliverables, documentation, and performance standards. Finally, the City has an affirmative obligation to bring any questions or concerns regarding the applicability of any DEP Grant Agreement requirements to the attention of the County as soon as is practicable under the circumstances.

SECTION 4. GENERAL PROVISIONS.

A. Assignment. This Agreement shall not be assigned by either party without the prior written approval of the other party.

B. Integration; Amendment; Joint Preparation. This Agreement represents the entire understanding of the parties with respect to the subject matter hereof and supersedes any prior agreements or understandings, whether verbal or written. This Agreement may not be modified except by a written instrument executed by both parties. The parties represent and agree that they have jointly negotiated this Agreement and have had the opportunity to consult with and be represented by their own competent counsel. This Agreement is therefore deemed to have been jointly prepared by the Parties, and no part hereof shall be construed more severely against one of the Parties than the other.

C. Interpretation; Severability. This Agreement shall be construed in accordance with the laws of the State of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

D. Time is of the Essence. Time is of the essence for each obligation of this Agreement.

E. Force Majeure. Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations is delayed or prevented by a bona fide force majeure. For the purpose of this Agreement, a bona fide force majeure is defined in accordance with the common law of the State of Florida as being an event or circumstance beyond the control and authority and without the fault or negligence of the party seeking relief under this Section. The maximum relief granted to either party under this Section

shall be the tolling of time for the duration of the force majeure. A force majeure may be deemed to excuse performance pursuant to this Agreement only to the extent such performance is actually prevented or precluded by such force majeure.

F. Liability. Subject to the scope and monetary limitations of Section 768.28, Fla. Stat., each party shall be responsible for the negligent or wrongful acts of its own employees, agents, and contractors in the performance of their respective obligations pursuant to this Agreement. Nothing herein is intended to be a waiver of the sovereign immunity of the parties, and nothing herein shall be construed as consent by either party hereto to be sued by third parties.

G. Further Assurance. The Parties each covenant to execute and deliver to the other Party any documentation reasonably necessary to carry out the intent of this Agreement.

H. Execution in Counterparts. This Agreement, and any amendments hereto, may be executed in multiple counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and same instrument.

[Signature Pages to Follow.]

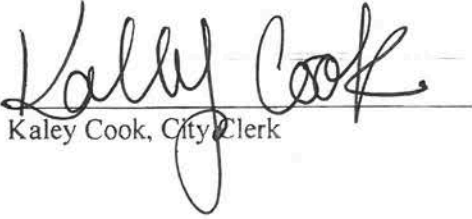
IN WITNESS WHEREOF, the parties have executed this Amendment by their duly authorized representatives as of the dates written below.

CITY OF PALM COAST



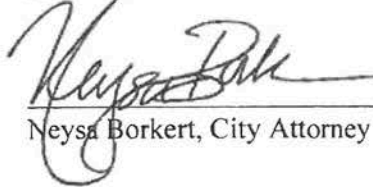
David Alfin, Mayor

ATTEST:



Kaley Cook, City Clerk

APPROVED AS TO FORM:

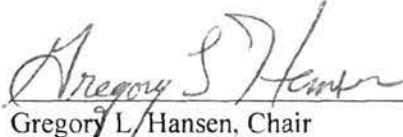


Neysa Borkert, City Attorney

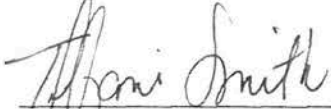
As approved the City Council of the City of
Palm Coast, Florida, on September 5th,
2023.

[Signature Page to Follow.]

FLAGLER COUNTY


Gregory L. Hansen, Chair

ATTEST:


Tom Bexley, Clerk of the Circuit
Court and Comptroller

APPROVED AS TO FORM:

Sean S. Moylan Digitally signed by Sean S. Moylan
Date: 2023.08.23 13:58:00 -04'00'
Sean S. Moylan, Deputy County Attorney

As approved by the Board of County
Commissioners at its regular meeting on the
6th day of September 2023.

[Exhibit 1 to Follow]

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement

Exhibit 1

This Agreement is entered into between the Parties named below, pursuant to Section 215.971, Florida Statutes:

1. Project Title (Project): **Flagler County Septic to Sewer Conversion Project on the Barrier Island** Agreement Number: **LPA0287**

2. Parties **State of Florida Department of Environmental Protection,
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000** (Department)

Grantee Name: **Flagler County** Entity Type: **Local Government**
Grantee Address: **1769 E. Moody Blvd. Bldg. 2; Bunnell, FL 32110** FEID: **59-6000605** (Grantee)

3. Agreement Begin Date: **Upon Execution** Date of Expiration: **September 30, 2025**

4. Project Number: **(If different from Agreement Number)** Project Location(s): **Lat/Long (29.615172, -81.202730)**

Project Description: **The Grantee will design, bid, and construct a sanitary sewer forcemain from state road A1A and Malacompra to just south of Marineland.**

5. Total Amount of Funding:	Funding Source?	Award #s or Line Item Appropriations:	Amount per Source(s):
\$8,000,000.00	☒ State ☐ Federal	LP, GAA LI 1665A, FY 22-23, GR	\$8,000,000.00
	☐ State ☐ Federal		
	☐ Grantee Match		
Total Amount of Funding + Grantee Match, if any:			\$8,000,000.00

6. Department's Grant Manager Name: **Savannah Atwell** or successor
Address: **3900 Commonwealth Blvd., MS 3570
Tallahassee, FL 32399-3000**
Phone: **850-245-2841**
Email: **Savannah.Atwell@FloridaDEP.gov**

Grantee's Grant Manager Name: **Michael Catalano** or successor
Address: **1769 E. Moody Blvd. Bldg. 2
Bunnell, FL 32110**
Phone: **386-313-4049**
Email: **MCatalano@FlaglerCounty.gov**

7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

☒ Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
☒ Attachment 2: Special Terms and Conditions
☒ Attachment 3: Grant Work Plan
☒ Attachment 4: Public Records Requirements
☒ Attachment 5: Special Audit Requirements
☐ Attachment 6: Program-Specific Requirements
☐ Attachment 7: Grant Award Terms (Federal) *Copy available at https://facts.fldfs.com , in accordance with §215.985, F.S.
☐ Attachment 8: Federal Regulations and Terms (Federal)
☐ Additional Attachments (if necessary):
☒ Exhibit A: Progress Report Form
☐ Exhibit B: Property Reporting Form
☒ Exhibit C: Payment Request Summary Form
☐ Exhibit D: Quality Assurance Requirements for Grants
☐ Exhibit E: Advance Payment Terms and Interest Earned Memo
☐ Additional Exhibits (if necessary):

8. The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331(a)(1):

Federal Award Identification Number(s) (FAIN):	
Federal Award Date to Department:	
Total Federal Funds Obligated by this Agreement:	
Federal Awarding Agency:	
Award R&D?	☐ Yes ☐ N/A

IN WITNESS WHEREOF, this Agreement shall be effective on the date indicated by the Agreement Begin Date above or the last date signed below, whichever is later.

Flagler County

GRANTEE

Grantee Name

By Heidi Petito Digitally signed by Heidi Petito
Date: 2022.12.21 16:36:27 -05'00'

Date Signed

Heidi Petito, County Administrator

Print Name and Title of Person Signing

State of Florida Department of Environmental Protection

DEPARTMENT

By Angela Knecht Digitally signed by Angela Knecht
Date: 2023.02.03 12:14:31 -05'00'

Date Signed

Angela Knecht, Director, Division of Water Restoration Assistance

Print Name and Title of Person Signing

☒ Additional signatures attached on separate page.

DWRA Additional Signatures

Savannah
Atwell

Digitally signed by
Savannah Atwell
Date: 2023.01.13 08:23:40

Savannah Atwell, DEP Grant Manager

Kathleen Downey

Digitally signed by Kathleen Downey
Date: 2023.02.02 16:27:24 -05'00'

Kathleen Downey, DEP QC Reviewer

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS**

ATTACHMENT 1

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:
 - i. Standard Grant Agreement
 - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:
 - (1) an increase or decrease in the Agreement funding amount;
 - (2) a change in Grantee's match requirements;
 - (3) a change in the expiration date of the Agreement; and/or
 - (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department.A change order to this Agreement may be used when:
 - (1) task timelines within the current authorized Agreement period change;
 - (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
 - (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
 - (4) fund transfers between budget categories for the purposes of meeting match requirements.This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.
- b. Invoice reduction
If Grantee does not meet a deadline for any deliverable, the Department will reduce the invoice by 1% for each day the deadline is missed, unless an extension is approved in writing by the Department.
- c. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.
 - ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, Department shall retain the right to

require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by Department or steps taken by Grantee shall preclude Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to Department as requested by Department's Grant Manager.

- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by Department may result in termination of the Agreement.

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with Section 215.422, Florida Statutes (F.S.).
- b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address:
<https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>.
- e. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.
- f. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.
- g. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.
- h. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.
- i. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to:
www.myfloridacfo.com/Division/AA/Vendors/default.htm.
- j. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.
 - i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract.
 - ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with Section 112.061, F.S.
- e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing \$5,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.
- f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
- g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.
- h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal

Attachment 1

4 of 12

Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.
- b. If Grantee fails to perform the requested work, or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.
- c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

- a. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.
- e. Insurance Trust. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured.

13. Termination.

- a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.

- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.
- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

14. Notice of Default.

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;
- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement;
- i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by Grantee of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or

- iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.

- d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- b. Pursuant to Sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:
- i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
 - ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
 - iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
 - iv. Notification. The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Build America, Buy America Act (BABA).

Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABA), including the following provisions:

- a. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. All construction materials are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

25. Scrutinized Companies.

- a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

26. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to Section 216.347, F.S., except that pursuant to the requirements of Section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with Sections 11.062 and 216.347, F.S.

27. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of Department's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

28. Audits.

- a. **Inspector General.** The Grantee understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its sub-grantees and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees and/or subcontractors, respectively.
- b. **Physical Access and Inspection.** Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
 - i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;
 - ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
 - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. **Special Audit Requirements.** The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit I, to Attachment 5. If Department fails to provide an updated copy of Exhibit I to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit I and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.331 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. **Proof of Transactions.** In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.
- e. **No Commingling of Funds.** The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of

money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.

- ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.

- iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

29. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

30. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of Department.

31. Subcontracting.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department will not deny Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

32. Guarantee of Parent Company.

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

33. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

34. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

35. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

36. Grantee's Employees, Subcontractors and Agents.

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

37. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

38. Compensation Report.

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

39. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Terms and Conditions
AGREEMENT NO. LPA0287**

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.

The Project funded under this Agreement is the Flagler County Septic to Sewer Conversion Project on the Barrier Island. The Project is defined in more detail in Attachment 3, Grant Work Plan.

2. Duration.

- a. Reimbursement Period. The reimbursement period for this Agreement begins on July 1, 2022 and ends at the expiration of the Agreement.
- b. Extensions. There are extensions available for this Project.
- c. Service Periods. Additional service periods are not authorized under this Agreement.

3. Payment Provisions.

- a. Compensation. This is a cost reimbursement Agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
- b. Invoicing. Invoicing will occur as indicated in Attachment 3.
- c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Cost Eligible for Reimbursement or Matching Requirements.

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
☐	☐	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
☐	☐	a. Fringe Benefits, N/A.
☐	☐	b. Indirect Costs, N/A.
☒	☐	Contractual (Subcontractors)
☐	☐	Travel, in accordance with Section 112, F.S.
☐	☐	Equipment
☐	☐	Rental/Lease of Equipment
☐	☐	Miscellaneous/Other Expenses
☐	☐	Land Acquisition

5. Equipment Purchase.

No Equipment purchases shall be funded under this Agreement.

6. Land Acquisition.

There will be no Land Acquisitions funded under this Agreement.

7. Match Requirements

There is no match required on the part of the Grantee under this Agreement.

8. Insurance Requirements

Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Grantee may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:

- a. Commercial General Liability Insurance.
The Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$250,000 for each occurrence and \$500,000 policy aggregate.
- b. Commercial Automobile Insurance.
If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage
- c. Workers' Compensation and Employer's Liability Coverage.
The Grantee shall provide workers' compensation, in accordance with Chapter 440, F.S. and employer liability coverage with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Grant.
- d. Other Insurance. None.

9. Quality Assurance Requirements.

There are no special Quality Assurance requirements under this Agreement.

10. Retainage.

Retainage is permitted under this Agreement. Retainage may be up to a maximum of 10% of the total amount of the Agreement.

11. Subcontracting.

The Grantee may subcontract work under this Agreement without the prior written consent of the Department's Grant Manager except for certain fixed-price subcontracts pursuant to this Agreement, which require prior approval. The Grantee shall submit a copy of the executed subcontract to the Department prior to submitting any invoices for subcontracted work. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.

12. State-owned Land.

The Board of Trustees of the Internal Improvement Trust Fund must be listed as additional insured to general liability insurance required by the Agreement and, if the Grantee is a non-governmental entity, indemnified by the Grantee.

13. Office of Policy and Budget Reporting.

The Grantee will identify the expected return on investment for this project and provide this information to the Governor's Office of Policy and Budget (OPB) within three months of execution of this Agreement. For each full calendar quarter thereafter, the Grantee will provide quarterly update reports directly to OPB, no later than 20 days after the end of each quarter, documenting the positive return on investment to the state that results from the Grantee's project and its use of funds provided under this Agreement. Quarterly reports will continue until the Grantee is instructed by OPB that no further reports are needed, or until the end of this Agreement, whichever occurs first. All reports shall be submitted electronically to OPB at env.roi@laspbs.state.fl.us, and a copy shall also be submitted to the Department at legislativeaffairs@floridaDEP.gov.

14. Common Carrier.

- a. Applicable to contracts with a common carrier – firm/person/corporation that as a regular business transports people or commodities from place to place. If applicable, Contractor must also fill out and return PUR 1808 before contract execution] If Contractor is a common carrier pursuant to section 908.111(1)(a), Florida Statutes, the Department will terminate this contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.
- b. Applicable to solicitations for a common carrier – Before contract execution, the winning Contractor(s) must fill out and return PUR 1808, and attest that it is not willfully providing any service in furtherance of transporting a person into this state knowing that the person unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The Department will terminate a contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808

15. Additional Terms.

None.

ATTACHMENT 3 GRANT WORK PLAN

PROJECT TITLE: Flagler County Septic to Sewer Conversion Project on the Barrier Island

PROJECT LOCATION: The Project will be located within Palm Coast, Flagler County; Lat/Long (29.615172, -81.202730).

PROJECT BACKGROUND: Flagler County (Grantee) has identified the elimination of septic systems as a priority for reducing nutrient leeching into the Intracoastal Waterway. Preventing discharge from septic systems and small wastewater treatment package plants will reduce nitrogen and phosphorous discharges. This project is the first phase of Flagler County's septic to sewer conversion project.

PROJECT DESCRIPTION: The Grantee will design, bid, and construct a sanitary sewer forcemain from state road A1A and Malacompra to just south of Marineland.

The Grantee does not anticipate that the funding under this Agreement will result in a fully completed project, so this Agreement will cover a portion of the work.

TASKS: All documentation should be submitted electronically unless otherwise indicated.

Task 1: Preconstruction Activities

Deliverables: The Grantee will conduct surveys, complete the design(s), and obtain all necessary permits for construction of the sanitary sewer forcemain.

Documentation: The Grantee will submit: 1) a signed acceptance of the completed work to date, as provided in the Grantee's Certification of Payment Request; 2) a summary of design activities to date, indicating the percentage of design completion for the time period covered in the payment request; and 3) copies of the survey report(s). For the final documentation, the Grantee will also submit a copy of the design completed with the funding provided for this task and a list of all required permits identifying issue dates and issuing authorities.

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables have been completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than quarterly.

Task 2: Project Management

Deliverables: The Grantee will perform project management, to include field engineering services, construction observation, site meetings with construction contractor(s) and design professionals, and overall project coordination and supervision.

Documentation: The Grantee will submit interim progress status summaries including summary of inspection(s), meeting minutes and field notes, as applicable.

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables have been completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

Task 3: Construction

Deliverables: The Grantee will construct a wastewater force main extension in accordance with the construction contract documents.

Documentation: The Grantee will submit 1) a copy of the final design; 2) a signed acceptance of the completed work to date, as provided in the Grantee's Certification of Payment Request; and 3) a signed Engineer's Certification of Payment Request.

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables have been completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than quarterly.

PROJECT TIMELINE & BUDGET DETAIL:

The tasks must be completed by, and all documentation received by, the corresponding task end date. Cost reimbursable grant funding must not exceed the budget amounts as indicated below.

Task No.	Task Title	Budget Category	Grant Amount	Task Start Date	Task End Date
1	Preconstruction Activities	Contractual Services	\$1,000,000	07/01/2022	12/31/2023
2	Project Management	Contractual Services	\$500,000	07/01/2022	03/01/2025
3	Construction	Contractual Services	\$6,500,000	07/01/2022	03/01/2025
Total:			\$8,000,000		

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Public Records Requirements**

Attachment 4

1. Public Records.

- a. If the Agreement exceeds \$35,000.00, and if Grantee is acting on behalf of Department in its performance of services under the Agreement, Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.

- b. The Department may unilaterally terminate the Agreement if Grantee refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term "contract" means the "Agreement." If Grantee is a "contractor" as defined in section 119.0701(1)(a), F.S., the following provisions apply and the contractor shall:

- a. Keep and maintain Public Records required by Department to perform the service.
- b. Upon request, provide Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to Department.
- e. Upon completion of the contract, transfer, at no cost, to Department all Public Records in possession of the contractor or keep and maintain Public Records required by Department to perform the service. If the contractor transfers all Public Records to Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to Department, upon request from Department's custodian of Public Records, in a format specified by Department as compatible with the information technology systems of Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.

- f. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT:**

Telephone: (850) 245-2118

Email: public.services@floridadep.gov

Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Audit Requirements
(State and Federal Financial Assistance)**

Attachment 5

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends \$750,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.
3. A recipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at www.cfda.gov

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT I to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512.
 - A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

- B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<http://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

Attachment 5

3 of 6

5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (non and for-profit organizations), Rules of the Auditor General, should indicate the date and the reporting package was delivered to the recipient correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

EXHIBIT - I

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
Federal Program A				\$	
Federal Program B					
				\$	

Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:

Federal Program	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
Federal Program A	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	
Federal Program B	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	

Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:				
Federal Program A	Federal Agency	CFDA	CFDA Title	Funding Amount
Federal Program B	Federal Agency	CFDA	CFDA Title	Funding Amount

Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:				
State Program A	State Awarding Agency	State Fiscal Year ¹	CSFA Number	CSFA Title or Funding Source Description
Original Agreement	Department of Environmental Protection	FY2022-2023	37.039	Statewide Water Quality Restoration Projects
State Program B	State Awarding Agency	State Fiscal Year ²	CSFA Number	CSFA Title or Funding Source Description

Total Award	\$8,000,000
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Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [www.cfda.gov] and/or the Florida Catalog of State Financial Assistance (CSFA) [https://apps.fldfs.com/fsaa/searchCatalog.aspx], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [https://apps.fldfs.com/fsaa/state_project_compliance.aspx]). The services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

¹ Subject to change by Change Order.

² Subject to change by Change Order.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Exhibit A
Progress Report Form**

DEP Agreement No.:	LPA0287
Project Title:	Flagler County Septic to Sewer Conversion Project on the Barrier Island
Grantee Name:	Flagler County
Grantee's Grant Manager:	Michael Catalano
Reporting Period:	Select Quarter - Select Year

Provide the following information for all tasks identified in the Grant Work Plan:

Summarize the work completed within each task for the reporting period, provide an update on the estimated completion date for each task, and identify any anticipated delays or problems encountered. Use the format provided below and use as many pages as necessary to cover all tasks. Each quarterly progress report is due no later than twenty (20) days following the completion of the quarterly reporting period.

Task 1: Select Task Title

- Progress for this reporting period:
- Identify delays or problems encountered:

Task 2: Select Task Title

- Progress for this reporting period:
- Identify delays or problems encountered:

Task 3: Select Task Title

- Progress for this reporting period:
- Identify delays or problems encountered:

Completion Status for Tasks:

Indicate the completion status for the following tasks, if included in the Grant Work Plan. For construction, the estimated completion percentage should represent the work being funded under this Agreement.

Design (Plans/Submittal): 30% ☐, 60% ☐, 90% ☐, 100% ☐

Permitting (Completed): Yes ☐, No ☐

Construction (Estimated): _____ %

This report is submitted in accordance with the reporting requirements of the above DEP Agreement number and accurately reflects the activities associated with the project.

Signature of Grantee's Grant Manager
(Original Ink or Digital Timestamp)

Date

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Exhibit C
Payment Request Summary Form**

The **Payment Request Summary Form** for this grant can be found on our website at this link:

<https://floridadep.gov/wra/wra/documents/payment-request-summary-form>

Please use the most current form found on the website, linked above, for each payment request.