ARTICLE X

DEVELOPMENT AGREEMENT PROCEDURES AND REGULATIONS

Sec. 10-1. Short Title 1
Sec. 10-2. Applicability 1
Sec. 10-3. Definitions 1
Sec. 10-4. General Requirements 4
Sec. 10-5. Development Agreement Application Procedures 10
Sec. 10-6. Annual Review Procedures 12
Sec. 10-7. Fees 13
Sec. 10-8. Investment Recouping Schedule 14
Sec. 10-9. Governing Laws and Regulations; Effect of Subsequently Adopted Laws and Regulations 15

Sec. 10-1. SHORT TITLE

This Article shall be known and may be cited as "Development Agreement Procedures and Regulations" and is enacted pursuant to the provisions of the Florida Local Government Development Agreement Act, as codified under Sections 163.3220 through 163.3243, inclusive, *Florida Statutes,* as the same may be amended from time to time.

Sec. 10-2. APPLICABILITY

This Article shall apply to all lands in the unincorporated area of the County.

Sec. 10-3. DEFINITIONS

In addition to the definitions set forth in Article I, the following definitions shall apply to this Article and this Article only, except where specifically noted. To the extent a conflict exists between the definitions in Article I and in this Article, the definitions in this Article shall apply.

(1) *Capacity:*

(a) *Available Capacity* means that portion of existing capacity not yet used or committed for use and which would not be depleted by pending Applications for capacity. For purposes of potable water, sanitary sewer, solid waste disposal and drainage (stormwater) facilities, Available Capacity will be based upon ninety percent of the design capacity.

b) *Existing Capacity* means used capacity plus capacity not used but available at the present time.

(c) *Reserved Capacity* means the amount of capacity reserved by a valid, unexpired CRC issued pursuant to the requirements set forth herein.

(2) *Concurrency/Impact Fee Coordinator* means the Director of the Department, or his or her designee.

(3) *Concurrency Management System,* codified in Article IV of the Code means the procedures and processes utilized by the County to assure that Final Development Orders and Final Development Permits are not issued unless the necessary Public Facilities to support the Development are available concurrent with the impacts of Development.

(4) *Concurrency Reservation Certificate (CRC)* means the official document issued by the Department upon finding that an Application for the certificate in reference to a specific Final Development Order or Final Development Permit for a particular Development will not result in the reduction of the adopted LOS standards for impacted potable water, sanitary sewer, parks and recreation, drainage (stormwater), and solid waste as set forth in the Comprehensive Plan. (5) *Department* is the Clay County Department of Economic and Development Services.

(6) *Development Agreement* means an enforceable agreement entered into pursuant to Article X, as amended, of the Land Development Code. Agreements entered into pursuant to the Clay County Second Amended Road Impact Fee Ordinance (2017-30), as amended, shall not be considered Development Agreements and shall not be governed by the terms of this Article.

Four types of Development Agreements are contemplated under this Article:

(a) *Type I Development Agreement:* A Type I Development Agreement is one by which, at the time a Memorandum of Agreement described in Section 20.10-5(2) is executed, the Applicant alleges that the potential impacts of the proposed Development will not result in the reduction of the adopted LOS standards for impacted potable water, sanitary sewer, recreation, drainage (stormwater), solid waste, and educational facilities, adopted in the Comprehensive Plan, based on the Available Capacity. The Type I Development Agreement shall not be subject to the procedural requirements of Sections 20.10-4(8) and (9) and 20.10-5(7) and (8) of this Article. The Type I Development Agreement shall be executed pursuant to Section 20.10-4(10).

(b) *Type II Development Agreement:* A Type II Development Agreement is one which, at the time at which the Memorandum of Agreement described in Section 20.10-5(2) is executed, the Applicant alleges that the potential impacts of the proposed Development will result in the reduction of the adopted LOS standards for impacted potable water, sanitary sewer, recreation, drainage (stormwater), solid waste, and educational facilities, adopted in the Comprehensive Plan, based on the Available Capacity. The Type II Development Agreement shall be subject to the procedural requirements of Sections 20.10-4(8) and (9), and Sections 20. 10-5(7) and (8), and shall be executed pursuant to Section 20.10-4(10).

(c) *Type III Development Agreement*: A Type III Development Agreement is one that sets forth systems of implementation and monitoring of land use controls such as phasing, PUD obligations, Master Plan obligations, credits, and bonuses that are either (1) set forth in the Land Development Regulations or otherwise established by site specific

PUD, PID, or PCD zoning for the proposed Development which is subject of the Development Agreement, (2) set forth in a Credit Agreement approved pursuant to the Impact Fee Ordinance, or (3) by mutual agreement of the County and the Applicant. A Type III Development Agreement may not expand on entitlements established previously or concurrently in the land use or zoning applicable to the Development and is not subject to the procedural requirements of Sections 20.10-4(8) and 20.10-5(1), (2), (6), (7), and (8) of this Article. A Type III Development Agreement shall be executed pursuant to Section 20.10-4(10).

(d) *Type IV Development Agreement*: A Type IV Development Agreement is one that includes public/private commitments and arrangements for the construction of infrastructure and/or provision of services and can include the creation of funding mechanisms such as stewardship districts, community development districts, special assessment districts, municipal service taxing units, tax increments financing, cost recoupment mechanisms, or other funding mechanisms authorized under state law. A Type IV Development Agreement may incorporate or refer to a Credit Agreement subject to the provisions of the Second Amended Impact Fee Ordinance. A Type IV Development Agreement is not subject to the procedural requirements of Section 20.10-5(1) and (2). A Type IV Development Agreement shall be executed pursuant to Section 20.10-4(10).

(7) *Director* means the Director of the Department of Economic and Development Services, or his or her designee. The Director shall designate a Concurrency Management Coordinator to administer this Article.

(8) *Development Order or Permit, or Final Development Order or Permit* as the context may require means any order issued by the County granting, denying or granting with conditions an application for a Development activity, including an application for a CRC.

(9) *Level of Service (LOS)* means an indicator of the extent or degree of service provided by, or proposed to be provided by, a facility based on and related to the operational characteristics of the facility. Level of Service shall indicate the Capacity per unit of demand for each Public Facility or service.

(10) *Memorandum of Agreement* means a written informal agreement entered into by the Developer or Owner, and the Director setting forth the terms which will serve as the basis of a future formal Development Agreement entered into pursuant to the requirements of this Article.

(11) *Party* means the County or a Developer or other person who has entered into a Development Agreement with the County.

(12) *Public Facility* means those facilities specified in the Comprehensive Plan, for which LOS standards have been adopted: potable water, sanitary sewer, solid waste, drainage (stormwater), and parks and recreation.

(13) *State Land Planning Agency* means the Florida Department of Economic Opportunity.

Sec. 10-4. GENERAL REQUIREMENTS

(1) *Minimum requirements of a Development Agreement.* A Development Agreement shall include but shall not be limited to the following, provided however that Type III and Type IV Development Agreements shall not be required to include items (e), (g) and (i) below, except as may be necessary to support the terms of the Development Agreement:

(a) A legal description of the land subject to the Development Agreement and the names and addresses of all of the legal and equitable Owner(s) and the Developer(s), if any, of the land;

(b) The duration and effective date of the Development Agreement;

(c) The proposed uses to be permitted on the land, including population densities, and building intensities and height;

(d) The Future Land Use Map series designation according to the Comprehensive Plan, and the current zoning classification;

(e) A description of the Public fFcilities that will service the proposed Development, including the identity of the person(s) who will provide such facilities and services; development progress thresholds measured in enclosed and/or unenclosed square feet or number of dwelling units; the date or schedule any required new facilities will be constructed; a schedule to assure Public Facilities and services are available concurrent with the impacts of the Development; and if necessary, any third party or other agreement assuring the provision of said Public Facilities and services;

(f) A description of any reservation or dedication of land for public purposes;

(g) A description of all Final Development Permits and/or Final Development Orders approved or needed to be approved in order for the proposed Development of the land to commence and proceed;

(h) A written description of the intended plan of proposed Development;

(i) A site development plan for the land subject to the Development Agreement containing the following:

1. A graphic layout of the proposed Development by land use that is suitably scaled, annotated and layered to sensibly disclose the same in a manner from which compliance therewith and with this Article can be determined, and that quantifies the acreage and density and/or intensity of each portion of the proposed Development in terms of enclosed and/or unenclosed square feet for all commercial development proposals, and in terms of total dwelling units by type of dwelling unit for residential development proposals;

2. Access points to the surrounding road system, internal and major road rights-of-way and road widths, and proposed pedestrian and bicycle facilities, and other easements;

3. Landscape and buffer areas, common open space and native habitat preservation and mitigation areas, recreational areas and any public purpose lands; and

4. Stormwater retention areas.

(j) The location of any on-site potable water supply (e.g., wells) or sanitary sewer facilities. This requirement may be waived in whole or in part by the Director if he/she determines that the size or nature of the proposed Development does not warrant the inclusion of such information within the Development Agreement, provided, however, that the Development Agreement shall meet the minimum requirements set forth in the Florida Local Government Development Agreement Act, as codified under Sections 163.3220 through 163.3243, inclusive, *Florida Statutes,* as the same may be amended from time to time.

(k) A finding that the Development permitted or proposed is consistent with the Comprehensive Plan and the Land Development Code;

(l) A description of any conditions, terms, restrictions, or other requirements or third party agreements determined to be necessary by the County for the public health, safety and welfare of the public;

(m) A statement that the Development Agreement is voluntarily entered into in consideration of the benefits inuring to and the rights of the parties arising thereunder;

(n) A statement indicating that the failure of the Development Agreement to address a particular permit, condition, term, or restriction shall not relieve the Developer of the necessity of complying with the appropriate law governing said permitting requirements, conditions, terms or restrictions; and,

(o) A description of the requirements for the filing of an annual report, the designation of the Party or person required to file an annual report, and a schedule setting forth the required submission dates.

(2) *Optional provision concerning development time frames.* A Development Agreement may provide that the entire Development or any phase thereof be commenced or completed within a specific period of time.

(3) *Duration of a Development Agreement.* The duration of a Development Agreement shall generally be for the actual duration of the proposed Development, or the length of time mutually agreed upon in the case of Reserved Capacity not associated with the Development, but in any case must be of duration of not less than forty-two months or greater than twenty years from its effective date, unless otherwise provided by law. The duration must be included in the Memorandum of Agreement as provided in Section 20.10-5(2). The duration may be extended by mutual consent of the County, the Developer, and any third party to the Development Agreement, pursuant to the

public hearing requirements as provided in Section 20.10-4(8). No Development Agreement shall be effective or be implemented unless any Comprehensive Plan amendment(s) implementing or related to the Development Agreement are found in compliance with Chapter 163, *Florida Statutes,* by the State Land Planning Agency.

(4) *Processing of Application for Development Agreement with other Applications for development approval.* In the event an Application for a Development Agreement is submitted in conjunction with other Applications for Development approval, the review periods for processing the Development Agreement Application may be altered by the Director, at the Applicant's request, to accommodate the concurrent processing of the other Applications.

(5) *Periodic review of a Development Agreement.* Prior to each anniversary date of a Development Agreement, and then once a year thereafter, the County shall inspect the land subject to the Development Agreement to determine if there has been demonstrated good faith compliance with the terms of the Development Agreement. In addition to these requirements, the Developer or his authorized representative shall submit an annual report to the Department on the date specified in the Development Agreement, pursuant to Section 20.10-6. For each annual review conducted during years six through twenty of a Development Agreement, the review shall be incorporated into a written report which shall be submitted to all parties to the Development Agreement and to the State Land Planning Agency. If the County finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of the Development Agreement, the Development Agreement may be amended or cancelled by the County.

(6) *Amendment or cancellation of a Development Agreement.* A request to amend or cancel a Development Agreement may be initiated by the Department, the Owner or Developer of real property for which a Development Agreement has been approved, or any Party to the Development Agreement. A Development Agreement may be canceled or amended by the County, subject to the procedural and public hearing requirements contained in this Article, and under one or more of the following conditions, provided, the request to amend or cancel a Development Agreement sets forth the basis for the request and includes facts sufficient to indicate why there is justification for the amendment or cancellation:

(a) Where there is mutual consent to the amendment or cancellation by all of the parties or their successors in interest;

(b) Where state or federal laws have been enacted which prohibit one or more parties to the Development Agreement from complying with the terms of the Development Agreement;

(c) Where the County has determined that there has been a failure to comply with the terms of the Development Agreement;

(d) Where the conditions in a Type III Development Agreement implement to conditions of a site specific PUD, PID, PCD, or Credit Agreement and the applicable conditions of the PUD, PID, or PCD being implemented are changed by a rezoning, the corresponding conditions of the associated Development Agreement shall be amended pursuant to an Application for amendment;

(e) If the site specific PUD, PID, PCD, or Credit Agreement which is the basis for conditions in a Type III Development Agreement expires, the associated Development Agreement shall not expire unless it does so by its express terms and, in the absence of express terms, may be amended or cancelled only pursuant to an Application for same; or

(f) Where, pursuant to Section 20.10-9, the County may apply subsequently adopted local laws and policies to a Development Agreement.

(7) *Requirements for cancellation or amendment of an approved Development Agreement.*

(a) At the request of the Owner or Developer, or upon the initiative of the Department, a proposed amendment or cancellation of a Development Agreement may be submitted to the Board for consideration. Such proposed amendment or cancellation Application shall contain the following items:

1. A list of conditions that require the Owner or Developer to mitigate the impacts of all existing and proposed Development, including mitigation of any impacts resulting from changes in the original or amended Development Agreement due to the cancellation or amendment of the same;

2. A list of conditions that require the Owner or Developer to request and receive a rescission of or amendment to all Final Development Permits, Final Development Orders or other approvals issued by the County which authorize Development beyond that which is authorized under an amended or canceled Development Agreement;

3. A list of conditions that require the Developer to satisfy all applicable conditions of the existing Development Agreement with regard to existing and proposed Development:

4. A description of the actual amount of Development completed, the size and scope of the resulting plan of Development (after cancellation or amendment), and a description of the extent to which existing permits or approvals authorize Development which would exceed that allowed under the resulting plan of Development (after cancellation or amendment);

5. A description of the amount of existing Development of the land subject to the Development Agreement, including the amount of existing vertical Development by land use in gross square feet, dwelling units, or other applicable units of measure, and the amount of infrastructure completed on- and off-site. A copy of the approved site Development plan, if applicable, shall be attached to the request as an exhibit thereto;

6. An identification of the amount of Development that is planned (after cancellation or amendment), including the amount of vertical Development by land use in gross square feet, dwelling units, or other applicable units of measure, and the amount of infrastructure to be completed on- and off-site. A copy of the site development plan,

if applicable, for the Development as proposed after cancellation or amendment shall be attached to the request as an exhibit thereto;

7. An identification of all state and federal permits applied for or obtained to date, by agency, type of permit and function of each permit. A copy of each permit or permit Application (if no permit has been issued) shall be attached to the request as an exhibit thereto;

8. An identification of all undeveloped tracts of land (other than individual single family lots) sold to separate entities or Developers, specifying the size and buyer of each tract or parcel. A map identifying the undeveloped tracts shall be attached to the Application as an exhibit thereto;

9. A statement regarding the position of all parties to the Development Agreement or their successors in interest as to cancellation or amendment, attached to the request as an exhibit thereto;

10. An explanation of the reason for seeking cancellation or amendment of the Development Agreement;

11. A discussion of any material adverse impacts of the Development subject to the Development Agreement, and/or its amendments, on any existing resources, or existing or planned facilities, and the mitigation for these impacts, attached to the Application as an exhibit thereto; and,

12. A list of each of the conditions in the Development Agreement, and/or amendments thereto, included to protect or mitigate the Development's impact to resources or facilities, including an explanation and documentation that each condition pertinent to existing Development was satisfied by the Developer, or will be satisfied as to the level of proposed Development after cancellation or amendment, shall be attached to the Application as an exhibit thereto.

(b) Nothing in this section shall be construed to abrogate validly existing common law equitable vested rights.

(8) *Public hearings.* Before the County enters into, amends or cancels a Development Agreement two public hearings shall be held. The first public hearing shall be held by the local planning agency within sixty days after the date upon which the Director accepts the Development Agreement Application in writing pursuant to Section 20.10-5(4). The second public hearing shall be held by the Board within ninety days after the date of written acceptance.

(a) The notices of the public hearings shall state the intent of the Board to consider a Development Agreement, or its amendment or cancellation, and shall specify the time, place and location of each public hearing, identify the location of the land subject to the proposed Development Agreement, or its amendment or cancellation, the Development issues addressed by the proposed Development Agreement, or its amendment or cancellation, and shall specify a place

where a copy of the proposed Development Agreement, or proposed amendment or cancellation, may be obtained.

(b) Notice of each public hearing shall be advertised in a newspaper of general circulation in the County at least once, approximately seven calendar days prior to each public hearing. The published notice shall be in the form prescribed by the Department and placed by the Applicant at the Applicant's expense. Notice of intent to consider a Development Agreement shall also be mailed at the Applicant's expense to all property owners within a 500 foot radius from the boundary of the real property subject to the Development Agreement, according to the most current maps in the Property Appraiser's office and current ownership records, no later than ten calendar days prior to the first public hearing. The notice of intent to consider a Development Agreement mailed to the property owners shall specify the location of the land subject to the Development Agreement, describe the development issues addressed by the proposed Development Agreement, and shall specify a place where a copy of the proposed agreement can be obtained. The Applicant shall furnish proof of mailing and the date thereof at the first public hearing. The date, time and place at which the second public hearing will be held shall be announced at the first public hearing.

(c) With respect to any County-initiated action concerning an amendment to or cancellation of a Development Agreement, all parties to the Development Agreement shall be sent a written notice of such proposed action at least thirty days in advance of the first public hearing by certified mail, return receipt requested.

(9) *Recording.* Within fourteen calendar days after the County has executed a Development Agreement approved by the Board, the Development Agreement shall be recorded in the public records of the County by the County and at the expense of the Applicant. A copy of the recorded Development Agreement shall be submitted to the State Land Planning Agency within fourteen calendar days after the Development Agreement is recorded. A Development Agreement shall not be effective until it is recorded in the public records and until thirty days after having been received by the State Land Planning Agency. An amendment to or cancellation of a recorded Development Agreement shall be recorded in the same manner as Development Agreements.

(10) *Binding nature of the Development Agreement; Execution.* The burdens of the Development Agreement shall be binding upon, and the benefits of the Development Agreement shall inure to, all successors in interest to the parties to the Development Agreement. A Development Agreement or an amendment or cancellation thereof shall be executed by all persons having a legal or equitable interest in all land subject to the Development Agreement, including but not limited to the fee simple owner and all mortgagees, unless the County Attorney's office approves the execution of a Development Agreement without the necessity of such joinder or subordination, based on a determination that the substantial interests of the County will not be adversely affected. The Agreement shall be executed on behalf of the County as follows:

(a) A Type I Development Agreement shall be executed by the Concurrency/Impact Fee Coordinator and the Director;

(b) A Type II and Type IV Development Agreement shall be executed by the Board;

(c) A Type III Development Agreement shall be executed by the Director and the County Manager;

(d) Any Development Agreement that includes the provision of educational facilities or that extends the duration of a School Concurrency Reservation Certificate shall be executed by the Clay County School Board and the Board.

Sec. 10-5. DEVELOPMENT AGREEMENT APPLICATION PROCEDURES

(1) *Mandatory Concurrency review.* Prior to submitting an Application for a Development Agreement associated with proposed Development, the proposed Development shall first undergo Concurrency review under the terms of Article IV of the Code and receive a CRC, or be formally denied a CRC.

(2) *Memorandum of Agreement.*

(a) Type I Development Agreement. When the Applicant for a Development Agreement contends that capacity is available, a Memorandum of Agreement shall be executed by the Applicant and submitted to the Director with the required fee at any time subsequent to the issuance, but prior to the expiration, of the CRC pursuant to Section 20.4-8. Required time frames and written instructions for proceeding with the Development Agreement proposal shall be distributed to all parties thereto along with the Memorandum of Agreement executed by the Director.

(b) Type II Development Agreement. If the Applicant for a Development Agreement is unable or does not desire to procure a CRC due to a capacity deficiency or if the terms of a CRC would not meet the needs of the project, then a Memorandum of Agreement stating the intention to enter into a Development Agreement with the proposed improvements to capacity may be submitted with the required fee at any time after notice of insufficient capacity is given by the County. Required time frames and written instructions for proceeding with the Development Agreement proposal shall be distributed to all parties thereto along with the Memorandum of Agreement executed by the Director.

(3) *Pre-Application conference.* Prior to filing an Application for a Development Agreement, an Applicant shall request a pre-Application conference. A pre-Application conference shall be held within twenty one days after the date of execution of the Memorandum of Agreement. The Director will determine the appropriate County or other governmental entity whose staff assistance will be required, and will issue a written request to each affected agency or department head or division chief, who shall send a representative to attend the conference. At the conference, the following items shall be discussed:

(a) Information and/or actions necessary to bring the Application into conformity with these regulations or other regulations applying generally to the land involved and/or to define specifically other information and/or actions essential to the preparation of the proposed Development Agreement;

(b) Any other Applications for Development approval that might be filed with the proposed Development Agreement;

(c) Other jurisdictional agencies that need to become a Party to the proposed Development Agreement; and,

(d) Any known LOS or other compatibility issues which need to be addressed.

(4) *Development Agreement Application.* The Development Agreement Application shall be filed with the Director, together with the required fee and number of copies determined by the Director to be necessary within fourteen days from the date after the pre-Application conference. The Director shall review the Application for completeness of submittal within fourteen working days after the filing date. If the Application is determined by the Director to be insufficient or incomplete, or any of the County or other governmental entity staff representatives request additional information, the proposed Development Agreement Application time schedule shall be tolled and the Director shall notify the Applicant in writing of the insufficiency or incompleteness, or request for additional information. The insufficiency or incompleteness, or request for additional information shall be cured or addressed within fourteen days after the date of mailing of the written notice. The Applicant's failure to cure the insufficiency or incompleteness, furnish the additional information, or otherwise address the deficiency within the fourteen day period shall result in the cancellation of the proposed Development Agreement review process and shall cause the release of Reserved Capacity being held by the Director under any associated Memorandum of Agreement for the proposed Development. Upon the date of determination that the Application is sufficient and complete, the Director shall accept the Application, stamp that date on the Application and distribute copies of the Application to all appropriate County or other governmental entity staff representatives.

(5) *Comments and recommendations concerning the Development Agreement Application.* Each County or other governmental staff representative whose assistance is requested by the Director shall review the Development Agreement Application, and shall transmit comments and recommendations concerning the Application to the Director no later than twenty-one days after the Application acceptance date.

(6) *Director's preliminary report.* The Director shall compile and distribute his or her preliminary report concerning the Application to all parties within thirty one days from the acceptance date. The preliminary report shall incorporate the initial reports of each County or other governmental staff representative, as well as reports of County and other governmental staff representatives with regard to any changes requested by the Applicant in the Application since the Application acceptance date. No amendments to the Application shall be accepted from the Applicant after the Director's preliminary report is issued. If the Director provides data identifying impacts to the LOS for any Public Facility as defined in the Comprehensive Plan, in his or her preliminary report for a previously submitted Type I Development Agreement, then the Development Agreement Application will be subject to the public hearing requirements of Section 20.10-4(8).

(7) *Local planning agency public hearing.* The local planning agency shall hold the first public hearing on the Application for Development Agreement. The Director's preliminary report on the Application shall be considered and discussed during the next available local planning agency public hearing for which adequate legal notice pursuant to Section 20.10-4(8) has been given. Prior to the close of the public hearing the Applicant shall have the right to respond to any evidence or testimony presented during the public hearing, and to respond to the Director's preliminary report. The local planning agency shall make a report to the Board, and shall include one of the following recommendations:

(a) That the proposed Development Agreement be approved;

(b) That the proposed Development Agreement be approved with modifications supported by competent substantial evidence in the record; or,

(c) That the proposed Development Agreement be disapproved.

The report and recommendation(s) of the local planning agency shall be advisory only and shall not be binding upon the Board.

(8) *Board's public hearing.* The local planning agency report with a recommendation regarding the Development Agreement shall be presented to the Board at the second public hearing on the Application being held before the Board. The Applicant shall have the right, prior to the close of the public hearing, to respond to testimony or other evidence presented during the public hearing. After the close of the public hearing, the Board may approve the proposed Development Agreement, approve the proposed Development Agreement with modifications, or disapprove the proposed Development Agreement. If modifications, other than those recommended by the local planning agency modifications, are proposed by the Board, such modifications shall be either prepared by or reviewed by the County Attorney's Office and the Director, and approved as to both substance, form and legality prior to final approval by the Board at any subsequent meeting of the Board.

Sec. 10-6. ANNUAL REVIEW PROCEDURES

(1) *Annual monitoring report.* Annual monitoring reports shall be submitted by the person designated in the Development Agreement to the Department by the date specified in the Development Agreement, and each year thereafter, until such time as the Development Agreement expires or the terms and conditions of the Development Agreement are satisfied. This report shall contain:

(a) A listing of any changes in the Development Agreement;

(b) A summary comparison of Development activity proposed and actually developed, if any;

(c) A listing of any undeveloped tracts of land, other than individual single family lots, that have been sold to a separate entity or Developer;

(d) An assessment of the level of compliance with the conditions contained in the approved Development Agreement by all parties to the Development Agreement;

(e) A list of local, state or federal permits relative to the Development Agreement which have been obtained or which are pending, if any, by agency, type of permit, permit number, and purpose of permit; (f) The identification of any changes in local, state or federal legislation substantially affecting compliance with the approved Development Agreement, if any; and,

(g) Failure to submit an annual report or the deliberate misrepresentation or the use of gross inaccuracies in the report may be grounds for the initiation of proceedings by the Department to amend or cancel the Development Agreement.

(2) *Annual Development Agreement review.*

(a) Within ten days after receipt of the annual monitoring report, the Department shall send a copy of the submitted report to each County or other governmental staff representative whose assistance is requested by the Director for his or her review, analysis, and comments.

(b) Each County or other governmental staff representative, upon receipt of the submitted report, will have fifteen days to evaluate the report and submit written comments to the Department. The written comments shall address the following:

1. The completeness and accuracy of the information contained within the submitted document;

2. The degree of compliance with the terms of the Development Agreement; and

3. The identification of any changes warranting an amendment to or cancellation of the Development Agreement.

(c) Upon receipt of all review agency comments, the Department shall, within fourteen days, issue a formal report on the findings of the annual review and issue a determination of compliance with the terms of the Development Agreement. This report shall be sent to all parties to the Development Agreement and shall be available for public inspection at the Department.

(3) *Determination of non-compliance.* In the event that it is determined by the Department that there has been a failure to comply with the terms of the Development Agreement by the Developer, the Department shall provide written notice to all parties to the Development Agreement of such determination by certified mail, return receipt requested. The parties shall have thirty days from the date of mailing to respond to the Department's determination. If the parties do not cure the non-compliance to comply or fail to respond within the thirty day period, the Department shall submit as an agenda item at the next regularly scheduled meeting of the Board a request to initiate proceedings to amend or cancel the Development Agreement. All parties to the Development Agreement shall be provided with written notice of the Department's intention to take such action at least ten days prior to the Board's meeting, by certified mail, return receipt requested.

Sec. 10-7. FEES

The fees for services provided in this Article are set forth in the County's Development Services and Related Fees Resolution, as amended, which fees may be adjusted or refunded from time to time as set forth therein.

The County may retain a consultant who is knowledgeable in transportation analysis to assist the County in the review of any transportation portion of the Development Agreement Application and in making

recommendations to the Board on the proposed Application. In addition to the above-referenced fees for a Development Agreement, the Applicant shall pay the reasonable cost for such consultation. To secure payment, the Applicant shall deposit with the County cash in an amount equal to the estimated cost for such consulting services as determined by the Director. In the event the amount deposited is insufficient to cover the cost of consulting services, the Applicant shall be notified and shall, within ten working days of written notification from the County, deposit additional funds estimated by the Director to be sufficient to cover the consulting fees to be incurred. Failure to deposit the funds indicated within ten working days shall cause the suspension of staff review. In all cases, any outstanding balance shall be paid in full prior to submission of the Development Agreement to the local planning agency. Funds deposited in excess of the final cost of consulting services shall, after submission of the Development Agreement to the Board, be refunded upon the Applicant's written request.

Sec. 10-8. INVESTMENT RECOUPING SCHEDULE

(1) The Board may authorize the Director to negotiate and establish an investment recouping schedule whereby a Party to a Development Agreement who funds and/or constructs any improvement required to return a compromised LOS to the required LOS standard in order to accommodate the impacts of proposed Development upon a Public Facility as required by the Concurrency Management System, may be eligible to participate in an equitable system of investment recoupment for additional capacity provided by the Public Facility improvement which is in excess of the capacity required by any proposed Development or that is the subject of the Development Agreement

(2) Further, the Board may authorize the Director to establish and implement an investment recouping schedule for Public Facility projects funded, in whole or in part, by the County, which will allow the County to recover the cost of the improvement.

(3) Upon Board authorization, the Director shall prepare and promulgate rules to implement the investment recouping schedule, which shall include but not be limited to:

(a) Qualification criteria for a Public Facility project to participate in an investment recouping schedule, including minimum project cost;

(b) Methods and criteria for establishing capacity and identifying excess capacity of public projects, which methods and criteria shall be the same as those adopted by the Concurrency Management System testing agencies;

(c) Methods and criteria for establishing total investment recouping amounts for each project;

(d) Procedures for establishing and delineating recoupment areas;

(e) Duration of investment recouping schedules;

(f) The establishment and collection of investment recouping schedule administrative fees;

(g) An investment recouping fee collection and distribution schedule; and,

(h) Documentation required to prepare investment recouping schedules.

(4) Upon Board authorization, the Director may establish an investment recouping schedule which may become a part of the Development Agreement, and which shall include the following components:

(a) Description of the Public Facilities included in the investment recouping schedule;

(b) The applicable investment recouping schedule area; and,

(c) Engineering computations and documentation of estimated construction costs which form the basis for determining cost recovery amounts for the investment recouping schedule. The estimated construction costs shall be amended in the investment recouping schedule upon completion of the project should they differ from the original estimated costs. The Party funding and/or constructing the project shall be responsible for furnishing the updated construction cost data to the Director prior to any disbursement according to the investment recouping schedule.

(5) The Director shall collect Public Facility investment recouping schedule fees, the amount of which is determined by the anticipated project and according to the criteria established herein for all Development falling within the boundaries of the investment recouping schedule area.

(6) The County shall be exempt from payment of investment recouping schedule fees to other parties when improvements funded solely by the County are constructed in investment recouping schedule areas.

(7) Any Public Facility improvement project constructed prior to the effective date of this Article which is not required pursuant to a Development Order under Chapter 380, *Florida Statutes,* and which has a positive impact on the applicable LOS established in the Comprehensive Plan, and for which available capacities still exist, shall be eligible to participate in the investment recouping schedule program developed under this section.

SEC. 10-9. GOVERNING LAWS AND REGULATIONS; EFFECT OF SUBSEQUENTLY ADOPTED LAWS AND REGULATIONS

(1) Subject to subsection (2), the laws and regulations governing the Development of land in the County at the time of the execution of the Development Agreement shall govern the Development of the land subject to the Development Agreement for the duration thereof.

(2) The County may apply laws and regulations adopted by the Board to a Development Agreement subsequent to the effective date of the Development Agreement if the Board holds at least two public hearings pursuant to the requirements of Sections 20.10-5(7) and (8), and it is determined one or more of the following with respect to such laws or regulations:

(a) They are not in conflict with the laws and policies governing the Development Agreement and do not prevent or adversely affect Development of the land uses, intensities, or densities in the Development Agreement;

(b) They are essential to the public health, safety, or welfare, and expressly state they shall apply to Development that is subject to a Development Agreement;

(c) They are specifically anticipated and provided for in the Development Agreement;

(d) The County demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of the Development Agreement; or

(e) The Development Agreement is based upon substantially inaccurate information supplied by the Developer.

(3) This section is not intended to and shall not abrogate any common law equitable vested rights.