

EXHIBIT A

CHAPTER 20. CLAY COUNTY LAND DEVELOPMENT CODE

ARTICLE 20.10A. FAIR SHARE PROGRAM

SECTION 20.10A-1 APPLICABILITY

This Article applies to all lands in the unincorporated areas of Clay County and shall be known as the Clay County Fair Share Program.

SECTION 20.10A-2 FINDINGS AND INTENT

The Board of County Commissioners of Clay County, Florida (the Board) finds and determines that:

- (a) The implementation of a Fair Share Program is a public necessity which will enhance and protect the quality of life in the County and the State of Florida;
- (b) The requirements and standards of this Ordinance are necessary for the health, safety and welfare of the citizens of Clay County in that the implementation of a Fair Share Program will maximize the use of public funds for the creation of adequate transportation facilities to serve the future growth of Clay County;
- (c) The creation of a Fair Share Program which will authorize development notwithstanding a failure of Transportation Concurrency by allowing an Applicant to contribute a proportionate share of the cost of a transportation facility will promote a strong commitment to comprehensive facilities planning, contribute to the provision of adequate public facilities for future growth and promote certainty in the development approval process and reduce the economic costs of development by providing greater regulatory certainty;
- (d) Construction of planned transportation improvements may, in certain circumstances, be expedited due to the presence of the Fair Share Program funds which will allow the County to supplement the funds currently allocated for transportation improvements in the Capital Improvements Element;
- (e) A Fair Share Program improves public facilities and encourages private participation in the construction of necessary transportation facilities thus strengthening the public planning process and encouraging sound capital improvement planning and financing;
- (f) This Ordinance implements and is consistent with the Clay County Comprehensive Plan and the provisions are intended to be the minimum requirements necessary to accomplish the purposes and objectives hereof;

(g) The County is responsible for the funding of the schedule of road improvements and additions designated in the Clay County Impact Fee Ordinance (08-30), as the same may be amended from time to time. These improvements for which Fair Share payments will be allocated are included in the Five Year Schedule of Capital Improvements in the Capital Improvement Element of the Comprehensive Plan. In the event insufficient Fair Share payments are collected to fund the improvements, the County will be responsible for the shortfall;

(h) This Ordinance is adopted pursuant to the authority of the Clay County Home Rule Charter, Section 163.3180, Florida Statutes, Section 163.3164, Florida Statutes, and Rule 9J-5.0055, Florida Administrative Code; and

(i) The Board of County Commissioners finds that the road improvements and additions designated in the Clay County Impact Fee Ordinance (08-30), will significantly benefit the transportation system impacted by future development subject to the Fair Share Program when they are constructed.

SECTION 20.10A-3 DEFINITIONS

(a) *Analyzed Improvement* means an improvement to that portion of a Deficient Roadway lying within the Traffic Impact Area of a Project, which, if constructed, would maintain the adopted LOS standard for said roadway. The cost of the Analyzed Improvement will form the basis for determining the Fair Share obligation under this Ordinance. The cost of the Analyzed Improvement includes rights-of way acquisition, planning, design, engineering, permitting, environmental mitigation, utility costs and other associated physical development costs directly required and associated with the improvement) The Analyzed Improvement however, for practical, legal, economic or other valid reasons, may not be actually programmed for construction. The Analyzed Improvement will consist of the addition of through lanes to the Deficient Roadway which if constructed, would result in the restoration of available capacity and the adopted LOS standard for that roadway.

(b) *Agreement* means *Fair Share Agreement* as defined in this Ordinance. The two terms may be used interchangeably.

(c) *Applicant or Developer or Owner* means any individual, corporation, business trust, estate trust, partnership, association, two or more persons have a joint or common interest, governmental agency, or any other legal entity, which has submitted an Application for A Fair Share Agreement and/or who desires to participate in the Fair Share Program.

(d) *Application* means an application presented to the County containing the information required pursuant to this Ordinance.

(e) *Authorized Improvement* means an unconstructed road improvement or addition designated in the Clay County Impact Fee Ordinance (08-30) and included in the Capital

Improvement Element of the Comprehensive Plan, as each may be amended from time to time ,(including rights-of way acquisition, planning, design, engineering, permitting, environmental mitigation, utility costs and other associated physical development costs directly required and associated with the improvement.)

(f) *Board* means the Board of County Commissioners.

(g) *Capital Improvements Element (CIE)*, as the same may be amended from time to time, means the element of the Comprehensive Plan adopted pursuant to Chapter 163 (Part II), *Florida Statutes*, which is based on the need for public facilities as identified in the other Comprehensive Plan elements and as defined in the applicable definitions for each type of public facility, which estimates the cost of improvements for which the local government has fiscal responsibility, which analyzes the fiscal capability of the local government to finance and construct improvements, which adopts financial policies to guide the funding of improvements, and which schedules the funding and construction of improvements in a manner necessary to ensure that capital improvements are provided when required based on needs identified in the other adopted Comprehensive Plan elements.

(h) *Capacity* means a maximum and quantifiable ability for a public facility to provide service to its users, calculated relative to the County's adopted Level Of Service infrastructure standard.

(i) *Comprehensive Plan* means the Clay County Comprehensive Plan adopted pursuant to Ordinance 92-03 on January 23, 1992, as subsequently amended.

(j) *Concurrency/Impact Fee Coordinator* means the Division Director of the Clay County Department of Development Services, or his or her designee.

(k) *Concurrency Management System* means the procedures and/or 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. The requirements of the Concurrency Management System are provided for in the Concurrency Management Ordinance of Clay County, enacted pursuant to Clay County Ordinance 92-19, as amended.

(l) *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 level of service standards for impacted potable water, sanitary sewer, parks and recreation, drainage, solid waste, transportation (roads) and mass transit facilities and services, as set forth in the Plan. A Development Agreement or a Fair Share Agreement entered into between the County and an Applicant pursuant to the provisions of Article 10A of the Clay County Land Development code shall serve as the functional equivalent of a CRC when the possession of a CRC is necessary for commencing or continuing Development.

- (m) *County* means Clay County, Florida.
- (n) *Department* is the Clay County Department of Growth Management. The Department of Planning and Zoning within the Department of Growth Management shall be primarily responsible for the administration of this Ordinance.
- (o) *Designated County Road List* is the schedule of road improvements and additions designated in the Impact Fee Study which is incorporated in the Clay County Road Impact Fee Ordinance (08-30) as the same may be amended or added to from time to time, pursuant to provisions therefore in the Ordinance.
- (p) *Development* means the carrying out of any commercial, residential, or other building activity, or mining operation, the making of any material change in the use of any structure or land, or the dividing of land into three or more parcels according to a plat of record.
- (q) *Deficient Roadway*. For the purposes of this Ordinance, a Deficient Roadway is a roadway or link on the Roadway Network which is within the Traffic Impact Area of a proposed development, which development (1) would cause the LOS standard for the affected roadway or link to fall below the minimum accepted level as determined under the County's Concurrency Management System, or (2) has an impact of one or more P.M. Peak Hour trips on an existing Deficient Roadway. Deficient roadways also include roadways designated as constrained or backlogged.
- (r) A *Fair Share Agreement*, adopted pursuant to this Ordinance is a binding contract entered into between the County and an Owner or Developer of land wherein the Owner or Developer is authorized to proceed with a proposed development, notwithstanding a failure of the development to satisfy the transportation requirements of the Concurrency Management System.
- (s) *Impacted Road Segment* means any road segment or link on the Roadway Network that is wholly or partially within the project's traffic impact area.
- (t) *JUATS Model (Model)* means the Jacksonville Urban Area Transportation Study Model, created by the First Coast Metropolitan Planning Organization, as the same may be amended from time to time.
- (u) *Land Development Regulations* means ordinances enacted by the Board for the regulation of any aspect of development and includes, but is not limited to, any concurrency action, zoning, rezoning, subdivision, environmental, building construction, or sign regulation controlling the development of land.
- (v) *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. LOS is indicated by the capacity per unit of

demand for each public facility or service. The County will determine its adopted LOS standards.

(w) *Major Roadway Network* means an interconnected system of freeway, arterial and collector roads identified by the County in its Comprehensive Plan and Concurrency Management System for which the Level Of Service standards must be maintained.

(x) *Modeled Volume* means the actual or projected number of vehicles on a roadway or link during a specific time period.

(y) *Modeled Volume to Capacity (mv/c)* means the ratio of the volume to capacity of a roadway or link, resulting from the application of the Model to the applicable Roadway Network link, or Authorized Improvement.

(z) *Mixed Use Development* means land development that includes a residential land use and one or more other land uses. For example, a development consisting of residential, commercial and industrial.

(aa) *NERPM Model (Model)* means the Northeast Florida Regional Planning Model created by the First Coast Metropolitan Organization, as the same may be amended from time to time.

(bb) *P.M. Peak Hour* means, typically, the sixty-minute period between 4:00 p.m. and 6:00 p.m. with the greatest sum of traffic volumes on a roadway segment, but may be different depending on the type of development.

(cc) *P. M. Peak Hour Trips* means the total vehicular trips entering and exiting a development during the P.M. Peak Hour.

(dd) *Public Facility* means those facilities and/or services for which Level Of Service standards have been adopted: roads, mass transit, potable water, sanitary sewer, solid waste, drainage, and parks and recreation.

(ee) *Traffic Impact Area* Traffic impacts attributed to a proposed Development shall be evaluated for all affected whole or partial roadway segments on the Roadway Network in accord with the provisions therefor in the Clay County Concurrency Ordinance (92-19), as the same may be amended from time to time.

(ff) *Transportation Concurrency* means that the necessary public facilities and services to maintain the applicable adopted Level Of Service standards for road facilities are available when the impacts of development occur, as is more particularly described in Clay County Ordinance 92-19, as amended, and known as the Concurrency Management Ordinance of Clay County, Florida.

SECTION 20.10A-4 GENERAL REQUIREMENTS

(a) A Fair Share Agreement shall be considered if all of the following requirements are met:

i. The Comprehensive Plan is in compliance as of the effective date of the Fair Share Agreement;

ii. The proposed development is otherwise consistent with the Comprehensive Plan and the County's other Land Development Regulations;

iii. The proposed development has been denied a CRC;

iv. For monetary fair share payments, the Five Year Schedule of Capital Improvements in the Capital Improvement Element of the Comprehensive Plan identifies transportation improvements as mitigation for traffic impacts from a proposed development;

v. With the County's approval, the construction of an Authorized Improvement which approval shall not be unreasonably withheld;;

vi. The Department has calculated the fair share of the cost of providing transportation facilities adequate to serve the proposed development according to the methodology established in Sections 20.10A-9 and 20.10A-10 herein and the assessment has a reasonable relationship to the transportation impact generated by the proposed development;

(b) The burdens and benefits of a Fair Share Agreement are binding upon all parties to the Agreement, their successors in interest, and their assigns.

(c) A Fair Share Agreement may be assigned without the approval of the Board of County Commissioners. In the event of an assignment, the assignor shall notify the County within 10 days of the assignment and provide the date of the assignment, the name of the assignee, telephone number and address.

(d) Nothing in this Ordinance shall preclude an Owner or Developer from voluntarily making transportation improvements pursuant to a Development Agreement dedicated to and approved by the County pursuant to the provisions of Clay County Ordinance 95-44, as the same may be amended from time to time, relating to Development Agreements.

(e) The County is ultimately responsible for funding all CIE improvements for which Fair Share payments will be collected including any shortfalls. In the event a County proposed development or Clay County School Board school facility development would cause the LOS standard on a roadway or link on the Roadway Network to fall below the minimum accepted level as determined under the County's Concurrency Management System, then the proposed development and the cumulative number of trips from it will

be analyzed pursuant to Section 20.10A-10 and included in the total modeled capacity available from an Analyzed Improvement for the applicable Deficient Roadway. Neither the County nor the Clay County School Board will be required to pay a Fair Share payment or make an Authorized Improvement in order to proceed with their respective proposed development.

(f) A Fair Share Agreement may have a duration of 3 years for all projects which generate 150 p.m. peak hour trips or less. An additional year may be added to the duration of the Agreement for each additional 50 p.m. peak hour trips or less increment of trips which is generated by the project. No agreement shall have a term in excess of 10 years regardless of the number of trips generated by the project.

(g) A development shall not be required to pay more than its proportionate fair-share. The fair market value of the proportionate fair share mitigation for the impacted facilities shall not differ regardless of the method of mitigation.

(h) The Capital Improvement Element shall be reviewed annually and updated as necessary to reflect proportionate fair share contributions.

(i) Notwithstanding the above requirements or any other matter in this Ordinance, An applicant may not be able to participate in the Fair Share Program if the County Manager recommends and the Board of County Commissioners finds that the proposed fair share application and associated project would compromise the public health, safety or welfare of the County.

(j) Updates to the Five Year Schedule of Capital Improvements in the Capital Improvement Element of the Comprehensive Plan which reflect proportionate share contributions will satisfy the financial feasibility requirements of Section 163.3164(32) and 163.3177(3), Florida Statutes, so long as additional funding sources or contributions are reasonably anticipated during a period not to exceed ten years to fully mitigate impacts on the transportation facilities.

SECTION 20.10A-5 PRE-APPLICATION MEETING

A pre-Application meeting is required prior to submitting an Application to enter into, amend, or cancel a Fair Share Agreement. In the case of an initial Application, the meeting must be held within 45 days of the denial of a CRC. The purpose of the meeting is to discuss requirements for Application submittal, the eligibility requirements, mitigation methods including an estimated fair share obligation, and other issues arising out of the initial Application, amendment or cancellation.

SECTION 20.10A-6 APPLICATION SUBMITTAL

(a) The County may not refuse to accept an Application for review. The County's regulations governing development and the terms of this Ordinance, as the same may be amended from time to time, which are in effect as of the date the Application is

determined to be complete and eligible under subsection 20.10A-8(b), shall apply to the Application, the Fair Share Agreement, and the administration of the Fair Share Agreement. This shall not be interpreted as allowing for vesting from any future revisions to the Land Development Regulations.

(b) An Application for a Fair Share Agreement must be filed with the Department within 45 days of a pre-Application meeting, along with a filing fee. The Applicant's material revision of a submitted application or the subsequent submittal of a materially different Application, as determined by the County, acting reasonably, must be accompanied by a new filing fee. A materially different Application means a material change in subsections (b) through (g) of Section 20.10A-7. The filing fees are set forth in the County's Development Services and Related Fees resolution and may be adjusted or refunded as set forth therein.

SECTION 20.10A-7 APPLICATION CONTENT

An Application in the form specified by the Department must include the following information, at a minimum:

- (a) Name, address, and phone number of Owner(s), Developer and agent;
- (b) Property location, including parcel identification numbers;
- (c) Legal description and survey of property;
- (d) Project description, including type and amount of development;
- (e) Phasing schedule, if applicable;
- (f) Description of requested fair share method(s) which shall include a detailed description of an Authorized Improvement if that method is requested;
- (g) A conceptual site plan; and
- (h) CRC application number and date of denial.

SECTION 20.10A-8 REVIEW PROCESS

(a) The Department may agree to an extension of any of the time limits established for the review process when it is necessary to facilitate Application review and the preparation of the Fair Share Agreement. The extension of time shall be the minimum time necessary to complete the review or to prepare the Fair Share Agreement. In the event the Applicant requests an extension of time during the review process which extension is approved by the County, and, in the event the Fair Share formula factors are updated during the time of any extension, then the Applicant's Fair Share obligation is subject to change based upon the application of the new data/formula factors.

(b) The Concurrency/Impact Fee Coordinator will confirm that the Application is sufficient and meets the criteria provided for in Section 20.10A-4 to participate in the Fair Share Program, in writing, within 5 business days of submittal of the Application. If an Application is determined to be insufficient or ineligible to participate, the Concurrency/Impact Fee Coordinator will also confirm the deficiencies or the reasons for ineligibility in writing, within 5 business days of submittal of the Application. No further review will be made until the deficiencies of the Application are remedied and the time limits for performing under this Ordinance shall be tolled during this remedial process. If any deficiencies in the Application are not remedied by the Applicant within 30 days of receipt of the above referenced written notification, then the Application will be deemed abandoned.

(c) Once an Application is determined to be sufficient and eligible, the County shall notify the Applicant of the proposed Fair Share obligation and prepare and deliver a Fair Share Agreement within 30 days of the above referenced notification. Except as provided in Sections 20.10A-8(a) and (g), from the time an Application is determined to be sufficient and eligible, there will be no changes to the Fair Share obligation due to, for example, updates to the formula factors as a result of traffic count updates, new traffic studies or modeling, or changes made to the Concurrency Management System. However, changes to the Fair Share obligation may be made at any time prior to the execution of the Fair Share Agreement to correct mathematical or clerical errors or error in applying the Concurrency Management System formula factors, in the calculation of the obligation.

(d) The Applicant will have 30 days from the date the County delivers the proposed Agreement in which to respond to the County with any concerns about the Agreement. If the Applicant does not respond within 30 days or does not obtain an extension to respond, the application will be deemed abandoned.

(e) The Concurrency/Impact Fee Coordinator shall have 30 days from the date of receipt of the Applicant's response to schedule the Agreement for consideration by the Board of County Commissions at a duly noticed public meeting. The Applicant may request that the Board of County Commissioners consider the Agreement at a public hearing instead. All costs associated with advertising the public hearing shall be borne by the Applicant and the Applicant shall be responsible for ensuring that reasonable notice of the hearing is advertised prior to the hearing date. The County shall approve the form of the advertising.

(f) The proposed development in the Fair Share Application must be consistent with the Comprehensive Plan. If a rezoning is required based upon the nature of the proposed development, then a rezoning application must be submitted within 30 days of submittal the Fair Share Application. Notwithstanding any other time deadlines in this Ordinance, a rezoning application which accompanies a Fair Share Application must be heard at a public hearing which occurs prior to the public hearing which may be scheduled for consideration of the Fair Share Agreement. The County's acceptance of and review of a Fair Share Application which is accompanied by a rezoning application shall in no way

obligate the Board of County Commissioners to approve the companion rezoning application. If the Board of County Commissioners does not approve the companion rezoning, then the Board shall not enter into the Fair Share Agreement on the basis of failure of the Agreement to comply with the terms of this Ordinance. In the event the Fair Share formula factors are updated during the time prior to a rezoning hearing, then the Applicant's Fair Share obligation is subject to change based upon the application of the new data/formula factors.

SECTION 20.10A-9 FAIR SHARE METHODS

(a) If the proposed development would cause the LOS standard on a roadway or link on the Roadway Network to fall below the minimum accepted level as determined under the County's Concurrency Management System, or which has an impact of one or more P.M. Peak Hour trips on an existing Deficient Roadway, mitigation of traffic impacts is required to improve the deficiency prior to the impacts of the proposed development. The traffic impacts may be mitigated through payment of Fair Share payments, in kind donations of right of way or other necessary real property for an unconstructed road improvement on the Designated County Road list, the construction of a road on the Designated County Road list, or a combination of the three.

(b) The County may, in its sole discretion and acting reasonably, reject an applicant's request to construct an Authorized Improvement, if the improvement does not also provide a functional and usable connection to the County's Roadway Network existing during the time for performance under the applicable Fair Share Agreement. All Authorized Improvements must be dedicated to Clay County, Florida, upon completion and acceptance of the construction.

(c) The traffic impacts may be mitigated as follows:

i. The monetary contribution must equal the proposed development's Fair Share obligation;

ii. The fair market value of any donation of right of way for the purposes of satisfying a fair share obligation shall be determined as of the date of the donation by the preparation of an appraisal performed by an Appraiser licensed in the State of Florida and selected by the County. The cost of the appraisal shall be the responsibility of the Applicant.

iii. At the Applicant's option and upon County approval, he or she may opt to construct an Authorized Improvement. The Authorized Improvement must be located wholly or partially within the same Road Construction District as the Deficient Roadway affected by the proposed development. The Road Construction Districts are depicted on Exhibit 1 attached hereto and incorporated herein. Any construction of an Authorized Improvement under this Ordinance must be first approved by the County and conform to any applicable County or Florida Department of Transportation standards and regulations. The cost of the Authorized Improvement, will be determined using the most

recent data regarding transportation costs available from the Florida Department of Transportation, as adjusted by the inflation factor pursuant to Section 20.10A-10(e) for the year in which the Authorized Improvement is scheduled to commence construction.

iv. In the event the Applicant opts to construct an Authorized Improvement, and the cost of the Authorized Improvement, arrived at using the methodology described in subsection 20.10A-9(d)(iii) is less than the applicable Fair Share obligation, then the Applicant must pay the difference to the County to satisfy its Fair Share obligation.

v. In the event the Applicant opts to construct an Authorized Improvement, then, prior to commencing construction, the Applicant, or the Applicant's contractor must demonstrate financial responsibility for the completion of the Improvement by submitting a payment bond and performance bond pursuant to the requirements of Section 255.055, Florida Statutes, in favor of the County. The Applicant, or the Applicant's contractor must also demonstrate that the County's minimum insurance requirements for work performed on public County property have been satisfied.

vi. In the event the Applicant constructs an Authorized Improvement, then at the time of dedication to Clay County, Florida, the Applicant shall be required to post a warranty bond against faulty workmanship, as is more particularly described in the County's subdivision ordinances codified in Appendix A Subdivisions of the Clay County Code.

vii. If a developer is constructing a portion of a road (e.g. two lanes of a four lane divided highway), then the contribution for the construction of the two lane portion will be calculated as a percentage of the costs associated with the final configuration of the roadway.

viii. Upon completion, the Authorized Improvement or applicable phase thereof including applicable right of way must be dedicated to the County prior to the opening of the improvement for use by the public.

ix. In the event a developer opts to construct an Authorized Improvement, then, as a condition of recording the final plat, the Fair Share Agreement will contain a provision requiring the Applicant to post an unconditional letter of credit or other suitable security in an amount representing the cost to the County in the event the County must construct the Authorized Improvement which shall include the costs of right of way, engineering, etc. At the time construction commences on the Authorized Improvement, and the bond and insurance requirements are in place, then the County shall release the letter of credit or other security.

x. If the Fair Share Agreement contains a provision that the recording of the final plat is subject to the condition that a building permit or certificate of occupancy, either or both as the County may decide, may not be issued until the construction of the Authorized Improvement commences, then the letter of credit or security referenced in Section 20.10A-9(ix) shall not be required. Any Fair Share Agreement which contains a

provision that the recording of the final plat is subject to said condition shall be recorded in the public records of Clay County, Florida, at the Applicant's expense. The Applicant shall pay the cost to record to the County prior to the Board's consideration of the Fair Share Agreement.

xi. A non-development of regional impact (DRI) Applicant will not have to post the letter of credit or other security referenced in Section 20.A-9(ix) for the construction of any roadway satisfying the "usable connection" requirement for the construction of an Authorized Improvement if the construction of that roadway is an obligation contained in a valid development order issued pursuant to Chapter 360, Florida Statutes, for a DRI. Notwithstanding the immediate preceding sentence, the Non-DRI Applicant's development will be limited to 500 units prior to the commencement of construction of said roadway contained in the valid development order for a DRI.

SECTION 20.10A-10 FAIR SHARE OBLIGATION

(a) The Fair Share obligation will be derived by applying the following formula to all Deficient Roadways identified within any part of the Traffic Impact Area for a proposed development: Fair Share Obligation = $(A/B) * C$ [A divided by B times C].

(b) Where (A) is the cumulative number of P.M. Peak Hour trips from the proposed development expected to reach the Impacted Road Segments from the complete build out of the proposed development. The value of A in this formula will be derived from the traffic study utilized in the concurrency evaluation for the proposed development which resulted in the prerequisite denial of a CRC.

(c) Where (B) is the increase in the Two-Way Peak Hour Capacity which would be created by the Analyzed Improvement(s) to the Deficient Roadway, which Analyzed Improvement would be sufficient to maintain the adopted LOS standard for said roadway in light of the applicable development. The generalized tables of the Florida Department of Transportation *Quality/Level Of Service Handbook* or latest edition available, will be used to calculate the value of (B) in this formula.

(d) Where (C) is the total cost of constructing an Analyzed Improvement to the Deficient Roadway necessary to maintain the adopted LOS standard. The most recent data regarding transportation costs available from the Florida Department of Transportation will be used to calculate the value of (C) in the formula. The urban classification will be used when the Deficient Roadway is within the Metropolitan Planning Organization (MPO) boundary and a rural classification will be used when the Deficient Roadway is outside of the MPO boundary. The construction cost will be in addition to all associated improvement costs and right-of-way costs which the project may require. Associated improvement costs will include planning, design, engineering, permitting, environmental mitigation, utility costs and other associated physical development costs directly required and associated with the construction of the improvement as determined by the County. The construction costs will be calculated based upon the actual length of the Deficient segment and the highway construction cost

per centerline mile regardless of whether the road is state or county owned or maintained. Associated improvement costs will be forty-seven (47%) percent of the construction cost. Right-of way costs will be nineteen (19%) of the construction cost. The total cost estimate for an Analyzed Improvement shall be the total of the construction costs, the associated improvement cost and the right of way costs. In the event the County Engineer, in the exercise of his or her professional judgment and acting reasonably, determines that a project generates associated improvement costs and right of way costs which are less than the above referenced percentages of construction costs, then the lesser costs shall be used in computing the cost of the Analyzed Improvement.

(e) All Agreements with a duration exceeding one year must contain an inflation factor covering the number of years over which the Fair Share payments will be made. This factor will be determined utilizing the Florida Department of Transportation's most recent Construction Cost Inflation Factors. The fair share obligation will increase or decrease on an annual basis according to the predetermined factor. Partial years will be prorated. The inflation factors to be utilized are to be included in the Fair Share agreement.

SECTION 20.10A-11 FAIR SHARE AGREEMENT CONTENT

All Fair Share Agreements must contain the following:

- (a) All information required in the Application submitted pursuant to Section 20.10A-7 of this Ordinance.
- (b) A Fair Share obligation computation sheet prepared by the County;
- (c) The names and addresses of all of the legal and equitable Owners of the property;
- (d) The proposed uses to be permitted on the land including the densities and intensities;
- (e) The duration of the Agreement;
- (f) If the Board agrees to a duration of the Agreement in excess of three years, then the Agreement must contain a phasing and payment schedule. The phasing schedule shall include progress milestones which must be completed throughout the course of the Agreement. The Agreement shall state that if the progress milestones are not met, then the Agreement will be subject to termination pursuant to the Ordinance.
- (g) A conceptual site plan containing the following, as a minimum: A graphic layout of the proposed development by land use quantifying the acreage, density and/or intensity of each portion of the proposed development; and access points to the surrounding road system;

- (h) A finding that the proposed development is consistent with the Comprehensive Plan;
- (i) A statement indicating the Agreement is voluntarily entered into in consideration of the benefits and the rights of the parties arising there under;
- (j) A statement indicating that the burdens and benefits of an Agreement are binding upon all parties to the Agreement or their successors in interest;
- (k) A statement indicating that the failure of the Agreement to address a particular permit, condition, term, or restriction does not relieve the Owners of the necessity of complying with the appropriate law governing said permitting requirements, conditions, terms or restrictions;
- (l) A description of any conditions, terms, restrictions, or other requirements or third party Agreements, not otherwise prohibited by law, and determined to be necessary by the County for the public health, safety and welfare of the public;
- (m) A description of all transportation capacity reservations for all Roadway Network links within the Traffic Impact Area of the proposed development which are reserved pursuant to the Concurrency Management System, if any exist or are applicable, and the date they will expire under the Fair Share Agreement;
- (n) A map of the Major Roadway Network impacted by the proposed development clearly identifying the impacted road segments that are deficient;
- (o) If applicable, a description of the Authorized Improvement required to be constructed, including the date or schedule of construction and completion time; and if necessary, the date upon which any third party Agreement assuring the provision of said improvements must be provided to the County prior to commencement of construction of any Authorized Improvement;
- (p) A description of the credit for the Fair Share Obligation after application of an in-kind payment in the form of a donation of right of way, or an Authorized Improvement;
- (q) A description of the security for the Authorized Improvement required pursuant to Section 20.10A-9(d)(ix).
- (r) If applicable, a description of any reservation or dedication of land for public purposes;
- (s) Identify the affected Road Construction District, and the amount of funds to be allocated to the appropriate CIE road improvement contained therein;

(t) A statement regarding the responsibility and the timing of the payment of the difference between a development's Fair Share obligation and any road impact fee for the applicable development in order to fulfill the Applicant's Fair Share Obligation under this Ordinance;

(u) Any other provisions the County deems necessary or appropriate;

(v) The requirement for the submission of an annual report due on the anniversary of the Board's approval of the Fair Share Agreement.

SECTION 20.10A-12 ADMINISTRATION

(a) Fair Share payments and donations of real property are due at one of the following times:

i. Fair Share payments for residential development are due upon the recording of the final plat. Failure to obtain a final plat prior to the expiration of the Fair Share Agreement shall render the Agreement null and void and the Applicant shall be required to reapply for the Fair Share Program.

ii. Fair Share payments for commercial development are due at the time the building permit is issued by the County. Failure to obtain a building permit prior to the expiration of the Fair Share Agreement shall render the Agreement null and void and the Applicant shall be required to reapply for the Fair Share Program.

iii. If the period prior to payment exceeds 12 months from the date of execution of the Agreement, then, at the time of payment, the fair share obligation will be recalculated based on the application of the inflation factor described in Section 20.10A-10.

(b) Payments or improvements made pursuant to the Fair Share methods described in Sections 20.10A-9 and 20.10A10 are non-refundable. Payments or improvements made prior to the expiration of a Fair Share Agreement are non-refundable.

(c) The scheduling for the completion of Authorized Improvements which serve to satisfy Fair Share obligations shall be set forth in the Fair Share Agreement but shall be the minimum time which is reasonably necessary to complete the Authorized Improvement.

(d) Beginning January 1, 2009, a development's Fair Share payment will be credited against the total road impact fee due for the Project pursuant to provisions for credit in the Clay County Road Impact Fee ordinance (08-30.) At the time the Fair Share Obligation is being determined, the County shall also compute the anticipated impact fee obligation for the proposed development.

(e) The following events shall constitute a material default under the terms of a Fair Share Agreement and subject the Fair Share Agreement to termination by the County at a duly noticed public hearing:

i. Failure to make a Fair Share payment or in kind donation, in accord with the requirements of the Fair Share Agreement. In the event of termination, the Applicant will not be entitled to a return or refund of any payments previously made.

ii. Failure to commence or complete an Authorized Improvement in accord with the requirements of the Fair Share Agreement and this Ordinance. The County will terminate the Fair Share Agreement if the default is not cured within 20 days of receipt of notice from the County of the default. In the event of termination, the Applicant will not be entitled to a return or refund of any Fair Share payments previously made which may have been part of the Applicant's total Fair Share obligation. Delay caused by entities outside of the control of the Applicant such as governmental regulatory agencies with jurisdiction over the proposed development shall not constitute a default under this subsection as long as the Applicant demonstrates a good faith effort to resolve delays as expeditiously as possible. In the event of a delay caused as a result of these circumstances, an extension of time to complete the Authorized Improvement will be authorized by the Concurrency/Impact Fee Coordinator but only so much time as is necessary to complete the Authorized Improvement. Delays caused by weather which is not typical or expected for the applicable time of year shall not constitute a default under this subsection and shall be administered in the same manner as delays caused by regulatory agencies, as further described above.

iii. Failure of the Applicant or its approved contractor to maintain the insurance and bond requirements required by the Fair Share Agreement and this Ordinance. The County will terminate the Fair Share Agreement if the default is not cured within 15 days of receipt of notice from the County of the default. During any time of default prior to cure, all work being performed on the Authorized Improvement must stop. In the event of termination, the Applicant will not be entitled to a return or refund of any Fair Share payments previously made which may have been part of the Applicant's total Fair Share obligation.

(f) In the event of a termination of a Fair Share Agreement for any reason, all development approvals in the Fair Share Agreement for which the fair share obligation has not been satisfied and all transportation Capacity reservations for unbuilt units or development for all Roadway Network links within the Traffic Impact Area of the proposed development, which were reserved pursuant to the Concurrency Management System, if any exist or are applicable, shall immediately expire and the Capacity reserved thereby released.

(g) All Fair Share Agreements must be recorded at the Applicant's expense in the Official Records of Clay County within 30 days following transmittal of the Board approved Fair Share Agreement to the Applicant.

SECTION 20.10A-13 ALLOCATION OF FUNDS AND ROAD CONSTRUCTION DISTRICTS

(a) Three districts are hereby created with boundaries as shown on Exhibit 1 "Road Construction Districts" attached hereto and incorporated herein.

(b) Fair Share payments will be collected and used to assist in the funding of Designated County Roads which are located in the same district as the Deficient Roadways (as defined in Section 20.10A-3(q) of this Ordinance) which are affected by the proposed development.

(c) When a proposed development affects a Deficient Roadway(s) (as defined in Section 20.10A-3(q) of this Ordinance) which is located in more than one Road Construction Districts, the Board will determine how the Fair Share payments will be allocated among the applicable Road Construction Districts.

SECTION 20.10A-14 SPECIAL REVENUE FUND

(a) There is hereby created a special revenue fund called the Fair Share Fund. Fair Share payments made pursuant to this Ordinance shall be appropriated into the Fund. The Fair Share payments may be utilized, along with other legally available funds, for the funding of the Designated County Roads which when completed will significantly benefit the traffic impacts from the proposed developments subject to the Fair Share Program. The monies in the Fund may be pooled and expended on any CIE scheduled transportation improvements which are located within the same Road Construction District and which, when completed, will significantly benefit the impacts on the transportation system from the proposed developments in order to maximize funds and expedite construction, but only upon separate approval of each project by the Board of County Commissioners.

(b) In the event a Designated County Road is deleted from the CIE, then the Fair Share funds collected towards its construction may be applied towards the construction of other Designated County Roads located within the same Road Construction District which will significantly benefit the impacts on the transportation system from the proposed development.

SECTION 20.10A-17 CERTIFICATE OF COMPLIANCE

(a) The Applicant must apply for a certificate of compliance for each phase of the proposed development. The application must be submitted with the required Fair Share payment and/or evidence of completion and the County's acceptance of the Authorized Improvement as provided in the Fair Share Agreement in accordance with Section 20.10A-13(a). Within 5 business days of application submittal, the Concurrency/Impact Fee Coordinator shall determine if the project has complied with the terms of the Fair Share Agreement. If the project is deemed to be in compliance, a certificate of

compliance shall be issued. If the project is determined to not be in compliance, the applicant shall be notified, in writing, of the deficiencies.

(b) A certificate of compliance will include, as a minimum, the following:

- i. Fair Share Agreement number;
- ii. CRC Number;
- iii. Name of the proposed development;
- iv. Description of the proposed development including the uses, density, and intensity, for which a final development order or final development permit may be granted;
- v. Date and amount of Fair Share payment; and,
- vi. Date of completion, date of County's acceptance, and description of the Authorized Improvement(s), if applicable.

SECTION 20.10A-18 AMENDMENTS AND TERMINATION

(a) An Application to amend a Fair Share Agreement, which shall include a request to extend its term by less than 3 years, must be filed within 15 days of a pre-Application meeting, and at least 30 days prior to the Fair Share Agreement's expiration, along with a filing fee of \$500.00. The Board of County Commissioners may extend the term of a Fair Share Agreement upon a demonstration by the Applicant that it has proceeded in good faith with the development contemplated by the Fair Share Agreement and/or the failure to commence or complete the Project or otherwise fail to comply with the Fair Share Agreement during the initial term has not been caused solely by the Applicant. The Board of County Commissioners will consider an amendment of a Fair Share Agreement, at a duly noticed public meeting. The amended Agreement shall be recorded at the Applicant's expense in the Official Records of Clay County pursuant to the requirements of Section 20.10A-12(g).

(b) The County shall terminate a Fair Share Agreement when there has been a default of a material term of the Agreement as provided for in Section 20.10A-13, which has not been cured as provided for in that Section. The Board, however, in its sole discretion, may grant one extension of time to cure only if it determines, by clear and convincing evidence presented at the public hearing, that the Applicant has shown good cause for the extension. Good cause shall mean the Applicant has taken reasonable steps to commence to effect a cure and has the present ability to perform the cure within the time allotted. The extension of time shall be for the minimum necessary to cure the default, not to exceed 60 days.

(c) An Application to amend a Fair Share Agreement to extend its duration for a period of time greater than three years must be filed within 45 days of a pre-Application meeting, and at least 60 days prior to the Fair Share Agreement's expiration, along with a filing fee of \$800.00. Any application for an amendment to extend the duration for a period greater than three years must be accompanied by updated concurrency criteria. The Fair Share obligation will be recomputed for any uncompleted development. The

new Fair Share obligation shall be computed using updated concurrency criteria and an updated traffic analysis for the impacted public facilities in accord with Clay County Ordinance 92-19, as amended. No additional development will be authorized until the updated concurrency analysis is complete and the fair share obligation recomputed and paid. An amendment under this subsection must be approved by the Board of County Commissioners at a public meeting. The amended Agreement shall be recorded at the Applicant's expense in the Official Records of Clay County pursuant to the requirements of Section 20.10A-12(g).

ords/concurrency/fair share Ordinance - Iley Revision - ROW 4-07--updated 9-11-08 with all revisions for pc and bcc

EXHIBIT 1