CHAPTER 20. CLAY COUNTY LAND DEVELOPMENT CODE

ARTICLE 10. DEVELOPMENT AGREEMENT PROCEDURES AND REGULATIONS

20.10-1. Short Title.

This Article shall be known and may be cited as "Development Agreement Procedures and Regulations".

20.10-2. Applicability.

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

20.10-3. Definitions.

(a) *Act* means 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.

(b) *Aggrieved or Adversely Affected Person* means any Person or local government which will suffer an adverse effect to an interest protected or furthered by the Plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, educational facilities, equipment or services, or environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in community good shared by all Persons.

(c) *Applicant* means any Person or such Person's duly authorized agent who makes application for a Development Agreement in accordance with this Article for the purpose of obtaining approval thereof.

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

(e) *Capacity:*

(1) *Available Capacity - Current* 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, wastewater treatment, solid waste disposal and stormwater facilities, Available Capacity - Current will be based upon ninety percent of the design capacity. For other facilities, Available Capacity - Current will be based upon one hundred percent of the adopted maximum service volume, except for traffic circulation facilities designated as "constrained" in the Comprehensive Plan. For constrained traffic circulation facilities, available capacity will be based on 110 percent of the capacity determined at the adoption of the Comprehensive Plan. Concurrency Reservation Certificate (CRC) applications not approved pursuant to a Development Agreement shall be reviewed based on Available Capacity – Current plus Improvement Capacity less Pending Capacity and Reserved Capacity. Review of the impacts of Development in the first three years of an

application for a Concurrency Reservation Certificate pursuant to a Development Agreement, shall also be based on Available Capacity -Current plus Improvement Capacity less Pending Capacity and Reserved Capacity.

(2) *Available Capacity - Future Transportation* means that portion of existing capacity relating solely to a transportation facility(s) not yet used or otherwise reduced by the capacity represented by the growth rate for the transportation facility identified in Table 11 of the Traffic Circulation Element of the Plan times the number of future years analyzed.

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

(4) *Improvement Capacity* means added capacity potential expected by a guaranteed capital improvement, but not including existing capacity, if any.

(5) *Pending Capacity* means that capacity demanded by the impacts of CRC applications on a first come, first served basis for:

a. A proposed Development for which an application for a CRC has been accepted and is under review in accordance with this Article; or

b. A proposed Development denied a CRC. provided the applicant has given written notice of its intent to negotiate modifications in the application within ten days after notification of such denial; executes a Memorandum of Agreement, expressing his or her intent to enter into a Development Agreement pursuant to this Article, or appeals the decision within thirty days from the date of denial notification by the County, pursuant to provision therefore in the Code; or

c. A proposed Development denied a CRC, which denial has been" sustained on appeal, provided the applicant executes a Memorandum of Agreement within thirty days from the date of notification of the decision on appeal.

(6) *Reserved Capacity* means those capacities reserved by a valid, unexpired CRC issued pursuant to the requirements set forth herein.

(f) *Comprehensive Plan* means the Clay County 2001 Comprehensive Plan adopted pursuant to Ordinance 92-03 on January 23, 1992, by the Board, as the same may be amended from time to time.

(g) *Concurrency* means that the necessary public facilities and services to maintain the adopted level of service standards are available when the impacts of Development occur.

(h) *Concurrency Reservation Certificate (CRC)* means the official document issued by the County upon finding that an application therefore 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, recreation, drainage,

solid waste, education, traffic circulation and mass transit facilities and services, as set forth in the Plan.

(i) *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 facilities to support the development are available concurrent with the impacts of development. These procedures and/or processes are specified in the *Concurrency Management Handbook for Clay County, Florida.*

(j) *County* means Clay County, Florida.

(k) *Department* means the Planning Department of the County.

(l) *Developer* means any Person, including a governmental agency, undertaking any Development.

(m) *Development* means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels according to a plat of record.

(1) The following activities or uses shall be taken for the purposes of this Ordinance to involve "Development":

a. A reconstruction, alteration of the size, or material change in the external appearance of a structure on land;

b. A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land, or an increase in the number of businesses, manufacturing establishments or offices in a structure or on land;

c. Alteration of a shore or bank of a river, stream, lake, pond, creek or canal, including any coastal construction defined in Section 161.021, *Florida Statutes;*

d. Commencement of drilling (except to obtain soil samples), mining, or excavation on a parcel of land;

e. Demolition of a structure as a part of construction;

f. Clearing of land as a part of construction;

g. Deposit of refuse, solid or liquid waste, or fill on a parcel of land; or

h. A change in the use of land which modifies the demand for any public facility or service.

(2) The following operations or uses shall not be deemed for the purpose of this Article to constitute "Development":

a. The impacts of work by a transportation or public works agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right of way;

b. Work by any utility and other persons engaged in the distribution or transmission of utilities, for the purpose of inspecting, repairing, removing, constructing or reconstructing on established rights of way, easements or licenses any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like;

c. Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure;

d. The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling;

e. The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; engaging in pisciculture; or for other agricultural purposes;

f. A change in use of land or structure from a use within a designation or classification specified in a County ordinance or rule to another use in the same designation or classification;

g. Short term or temporary impacts resulting from special events, with a duration of not more than forty-five consecutive days;

h. A change in the ownership or form of ownership of any parcel or structure; or

i. The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.

(3) "Development" as designated in an ordinance, rule, or development permit includes all other development customarily associated with it unless otherwise specified. When appropriate to the context, "Development" refers to the act of developing or to the result of development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not Development. Reference to particular operations is not intended to limit the generality of this paragraph.

(n) *Development Agreement* means an agreement entered into between the County and any person(s) pursuant to the terms of this Article and the Act. A Development Agreement provides the opportunity to engage in a public/private, long term agreement as to aspects of land use controls, and is particularly well-suited to a development that requires a negotiated, tailored resolution to a problem or need that requires long-term commitments from the County, the developer(s) and/or landowners. Whenever a Development Agreement is utilized to meet the requirements of this Article it shall result I the maintenance of and/or return to the required level of service

standard for any public facility, as defined in Section 20.4-5(o), that has been or will be compromised by the potential impacts of the proposed development which is the subject of the Development Agreement. Two types of Development Agreements are contemplated under this Article to the exclusion of all others:

(1) *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(b) is executed, the applicant alleges that the potential impacts of the proposed development will not result in the reduction of the adopted level of service standards for impacted potable water, sanitary sewer, recreation, drainage, solid waste, educational facilities, traffic circulation and mass transit adopted in the Plan, based on the available capacity. The Type I Development Agreement shall not be subject to the procedural requirements of Sections 20.10-4(h) and (i) and 20.10-5(g) and (h) of this Article and Section 163.3225, *Florida Statutes*. The Type I Development Agreement shall be executed pursuant to Section 20.10-4(j).

(2) *Type II Development Agreement:* A Type II Development Agreement is one :y which, at the time at which the Memorandum of Agreement described in Section 20.10-5(b) is executed, the applicant alleges that the potential impacts of the proposed development will result in the reduction of the adopted levels of service standards for impacted potable water, sanitary sewer, recreation, drainage, solid waste, educational facilities, traffic circulation and mass transit 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-(h) and (i), and Sections 20. 10-5(g) and (h).

(o) *Director* means the Director of the Department, or his or her designee.

(p) *Final development permit or final development order* means a final approval given by the County for a development project which has been precisely defined in terms of the intensity and use of the project. The final development order authorizes the project, whereas the preliminary development order authorizes specific components of the project. A CRC is required prior to the issuance of a final development order, which term shall include a move-on permit for a single-family mobile home as well as any mobile home used for non-residential purposes; a permit for construction of a single family dwelling unit; a permit for an addition to any existing single family dwelling unit: a permit for any non-residential construction including the construction of any additional square footage to an existing non-residential structure; a permit to move a building to a new site within the unincorporated area of the county; approval of a final plat; a home occupation permit; and a permit for any modification to an existing structure or site where use or intensity has changed. No final development order shall be issued or granted by any board, commission, department or agency of the County without a CRC, unless in accordance with the criteria set forth in this Article.

(q) *Land* means the earth, and water and air above, below, or on the surface, and includes any improvements of structures customarily regarded as land.

(r) *Land development regulations* mean ordinances enacted by the Board for the regulation of any aspect of development and includes any concurrency action, zoning, rezoning, subdivision, environmental, building construction, or sign regulation controlling the development of land.

(s) *Local planning agency* means the Clay County Planning Commission.

(t) *Memorandum of Agreement* means a written informal agreement entered into by the Developer or Landowner, 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.

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

(v) *Person* means any individual, corporation, business or land trust, estate trust, partnership, association, two or more persons having a joint or common interest, state agency, or any legal entity.

(w) *Public facilities or services* means those facilities and services specified in the Plan as required by Section 163.3177, *Florida Statutes,* for which level of service standards have been adopted: traffic circulation, potable water, sanitary sewer, solid waste, educational facilities, drainage, recreation and mass transit.

(x) *State land planning agency* means the Florida Department of Community Affairs.

20.10-4. General Requirements.

(a) *Minimum requirements of a Development Agreement.* A Development Agreement shall include but shall not be limited to the following:

(1) 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;

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

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

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

(5) A description of the public facilities and services 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;

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

(7) 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.

(8) A written description of the intended plan of proposed development;

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

a. 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;

b. 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;

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

d. Stormwater retention areas; and,

e. The location of any on-site potable water supply (e.g., wells) or wastewater treatment facilities. This requirement may be waived in whole or in part by the Director if he/she determines that the size of the proposed development or nature of the proposed Development Agreement 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 Act.

(10) A finding that the development permitted or proposed is consistent with the Plan and all applicable land development regulations;

(11) 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;

(12) 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;

(13) 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,

(14) 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.

(b) *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.

(c) *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(b). 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(h). 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.

(d) *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.

(e) *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.

(f) *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:

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

(2) 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;

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

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

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

(1) 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:

a. 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;

b. 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 which authorize development beyond that which is authorized under an amended or canceled Development Agreement; and,

c. 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.

(2) Each request for a proposed amendment or cancellation of a Development Agreement shall include the following items:

a. 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);

b. 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;

c. 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;

d. 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;

e. 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;

f. 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;

g. An explanation of the reason for seeking cancellation or amendment of the Development Agreement, attached to the application as an exhibit thereto;

h. 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;

i. 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;

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

(h) *Public hearings.* Before the County enters into, amends or cancels a Development Agreement two public hearings shall be held as required by the terms of this Article. 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 pursuant to Section 20.10-5(d). The second public hearing shall be held by the Board within ninety days after the date of said written acceptance.

(1) 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 arising from the proposed Development Agreement, or its amendment or cancellation, the land uses and development proposed for the land, including residential densities and building intensities and height, and shall specify a place where a copy of the proposed Development Agreement, or proposed amendment or cancellation, may be obtained.

(2) 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 said property owners shall specify the location of the land subject to the Development Agreement, the development uses proposed on the property, the proposed population densities, and the proposed building intensities and height 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.

(3) The applicant for a Development Agreement shall post signs at the applicant's expense at intervals of not more than every five hundred feet along all street sides of the land which is the subject of the application. The signs shall be in the form required by the Department and shall be posted by the applicant in full public view no less than fifteen days prior to the first public hearing and maintained by the applicant until after the conclusion of all public hearings.

(4) 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.

(i) *Recording.* Within fourteen calendar days after the County has executed a Development Agreement approved by the Board, said Development Agreement shall be recorded in the public

records of the County by 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 properly 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.

(j) *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. An amendment to or cancellation of a Development Agreement shall be effected in the same manner as provided hereinabove. 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:

(1) A Type I Development Agreement shall be executed by the Concurrency Management Coordinator and the Director.

(2) A Type II Development Agreement shall be executed by the Board.

(3) 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, in addition to the parties listed above.

20.10-5. Development agreement application procedures.

(a) *Mandatory concurrency review.* Prior to submitting an application for a Development Agreement associated with proposed development, the proposed development shall first undergo concurrency review and receive a CRC, or be formally denied a CRC.

(b) *Memorandum of Agreement.*

(1) 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.

(2) 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 or upon notice that the scheduling and phasing of a development project is not met with a CRC. 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.

(c) *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 fourteen 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:

(1) 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;

(2) Any other applications for development approval that might be filed with the proposed Development Agreement;

(3) Other jurisdictional agencies that need to become a party to the proposed Development Agreement;

(4) Any known level of service or other compatibility issues which need to be addressed.

(d) *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 ten days from the date after the pre-application conference. The Director shall review the application for completeness of submittal within five working days after the filing date. If the application is determined by the Director to be insufficient or incomplete, or if 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 ten days after the date of mailing of the written notice. The applicant's failure to cure the insufficiency or incompleteness, or, furnish the additional information or otherwise address the deficiency within the ten day period shall result in the cancellation of the proposed Development Agreement review process and shall cause the subsequent 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.

(e) *Comments and recommendations concerning the Development Agreement application.* Each County or other governmental staff representative whose assistance is requested by the Director shall forthwith 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.

(f) *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 levels of service for any public facility as defined in the 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(h).

(g) *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(h) 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:

(1) That the proposed Development Agreement be approved;

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

(3) 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.

(h) *Board's public hearing.* The local planning agency report with recommendation regarding the Development Agreement shall be presented to the Board at the second public hearing 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.

20.10-6. Annual review procedures.

(a) *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:

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

(2) A summary comparison of development activity proposed and actually developed, if any;

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

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

(5) 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; and

(6) The identification of any changes in local, state or federal legislation substantially affecting compliance with the approved Development Agreement, if any. 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.

(b) *Annual Development Agreement review.*

(1) Within five 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.

(2) 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:

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

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

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

(3) Upon receipt of all review agency comments, the Department shall, within ten (10) 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.

(c) *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 seven days prior to the Board's meeting, by certified mail, return receipt requested.

Sec. 20.10-7. Schedule of fees. The following schedule of fees shall apply. The effective date and time of tiling of the application shall be upon receipt of the required fee by the Department. None of the following fees will be refunded if the applicant decides not to pursue a Memorandum of Agreement or a Development Agreement or any amendment or cancellation, thereof.

(a) Application for a Development Agreement --
plus $10.00 per acre or portion thereof over five acres $750.00

(b) Request for an amendment to a Development Agreement $500.00

(c) Request for a cancellation of a Development Agreement $750.00

(d) Memorandum of Agreement $100.00

The County may retain a consultant who is knowledgeable in transportation analysis to assist the County in the review of the 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 consulting sendees. 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 Board. 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.

20.10-8. Investment Recouping Schedule.

(a) The Board may authorize the Director to negotiate and establish within a Development Agreement 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 as prescribed in the Comprehensive Plan in order to accommodate the impacts of proposed development upon such 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.

(b) 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.

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

(1) Qualification criteria for a public facility project to participate in an investment recouping schedule, including minimum project cost;

(2) 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;

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

(4) Procedures for establishing and delineating recoupment areas;

(5) Duration of investment recouping schedules;

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

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

(8) Documentation required to prepare investment recouping schedules.

(d) 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:

(1) Description of the public facilities included in the investment recouping schedule;

(2) An exhibit delineating the applicable investment recouping schedule area; and,

(3) 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.

(e) 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.

(f) 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.

(g) 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.

20.10-9. Governing laws and regulations; effect of subsequently adopted laws and regulations.

(a) Subject to subsection (b), 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.

(b) 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(g) and (h) and determines one or more of the following with respect to such laws or regulations:

(1) 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;

(2) 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;

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

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

(5) The Development Agreement is based upon substantially inaccurate information supplied by the developer.

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

Sec. 20.10-10. Delegation of authority. Whenever a provision requires the Director or some other County official or employee to do some act or perform some duty, it shall be construed to authorize that person to designate, delegate and authorize his respective designee or subordinate to perform the required act or duty unless the terms of that provision or section specifically otherwise require.

Sec. 20.10-11. Legal status of ordinance. To the extent of any conflict with the other regulations of the County, and except as herein specifically provided, this Ordinance supersedes the other regulations with respect to the subject matter hereof.

Sec. 20.10-12. Enforcement. Any party or any Aggrieved or Adversely Affected Person or the state land planning agency may file an action for injunctive relief in the Circuit Court where the local government is located to enforce the terms of a Development Agreement or to challenge compliance of the Development Agreement with the provisions of the Act.