

(This document is only a guide for developers for use in preparing a "Utilities Agreement." Developers should use the document, allowing for their own set of circumstances. The need for this agreement is the result of the SB 360 that mandates that improvements appear on Washington County's Capital Improvements List and that the Developer provide firm commitment for the provision of potable water and wastewater treatment treatment. This agreement will be completed and submitted to the Planning Office immediately before the scheduled adoption hearing before the governing entity.)

DEVELOPMENT AGREEMENT FOR UTILITIES SERVICES

THIS DEVELOPMENT AGREEMENT FOR UTILITIES SERVICES ("Agreement") is entered into on (place date here, 2007) by and between political subdivision of the State of Florida, acting by and through its Board of County Commissioners ("County"), and the Town of (Place name of town here if applicable) and (place the name of developer here) the Developer of the Project subject to this Agreement ("Developer"), for the purpose of establishing and binding the Developer's commitment to providing potable water service and wastewater treatment service to the Project; providing assurances to the Developer that upon receipt of Development Orders, the developer may proceed in accordance with existing laws and policies subject to the conditions of this Agreement; and insuring that this Agreement is in compliance with applicable portions of the Florida Statutes.

PREAMBLE

The promotion of development that encourages the efficient provisions of services and occurs in areas that will have the capacity to service new population and commerce is an expressed policy of the State of Florida, the County, or Governing Entity.

Section 163.3177(3)(a)(5), *Florida Statutes* (2006), provides in pertinent part as follows:

For capital improvements that will be funded by the developer, financial feasibility shall be demonstrated by being guaranteed in an enforceable development agreement or interlocal agreement pursuant to paragraph (10)(h) [of this subpart], or other enforceable agreement. These development agreements and interlocal agreements shall be reflected in the schedule of capital improvements if the capital improvement is necessary to serve development within the 5-year schedule. Policy 2-5, Capital Improvements Element, of the County's Comprehensive Plan provides that development orders and/or development permits shall only be issued after the County and/or Municipality has determined that the adopted level of service standards for public facilities will be maintained, or, as an alternative, the developer and the County and/or Municipalities have entered into an enforceable development agreement that guarantees that necessary facilities and services (at the level of service standards adopted in the Comprehensive Plan) will be in place when the impacts of development occur.

The Developer desires to develop the Project with a mixture of residential, commercial, and recreational uses. The Project will be developed over a number of years, and therefore the County and/or Municipality desires to obtain certainty and assurance regarding the provision of potable water and wastewater treatment service to the Project.

The Developer and the County and/or Municipality have agreed upon terms and conditions relating to the provision of potable water and wastewater treatment service to the development of the Project, and desire to reduce their agreement to written form.

The Developer and the County and/or Municipality agrees that this Agreement is the appropriate method to document the assurances sought by both parties.

FINDINGS

The County and/or Municipality hereby make the following findings:

1. (place name of the owner(s) here) are the owners in fee simple of the Property upon which the Project is planned.
2. The Property consists of approximately (place number of acres here) acres located in Washington County, Florida, (location directions here) and is designated as (insert the land use category here).
3. The Developer has applied for an amendment to Washington County's Comprehensive Plan to change the designation of the property to a (place new category here).
4. The County has held a transmittal public hearing and an adoption public hearing in accordance with Section 163.3184, *Florida Statutes*, on (place date here), for the Comprehensive Plan Amendment. Notices of such hearings were provided in accordance with law.
5. The proposed development of the Project is to consist of (number) dwelling units on (number) and (number) square feet of retail/commercial (number) acres. Open Space/Green Space comprises approximately (number) acres of the property's total acreage. Build-out is anticipated in (number) years, with dwelling unit increments of (number) lots per year. Commercial developments build out is estimated to occur in (number) years.
6. It is in the best interest of the County and/or Municipality and the citizens of the County and/or Municipality, that the development of the property be completed in a manner that ensures that adequate potable water and sanitary wastewater treatment service will be provided to the Project.
7. The development permitted and proposed by this Agreement is consistent with the Comprehensive Plan and the Land Development Regulations.

DEFINITIONS

When capitalized and used in this Agreement, the following terms shall have the following meanings:

1. "**Comprehensive Plan**" shall mean the Washington County Comprehensive Plan adopted by the County pursuant to Chapter 163, *Florida Statutes*, as of the date hereof.

2. "**Comprehensive Plan Amendment**" shall mean the amendment to the County's Comprehensive Plan that changes the Future Land Use Map designation of the Property from Agriculture -Silviculture to Mixed Use-Planned Unit Development.
3. "**County**" shall mean Washington County, a political subdivision of the State of Florida, acting by and through the Washington County Board of Commissioners.
4. "**Developer**" shall mean those parties listed as legal owners of and participating parties whose names appear on the deed of property or the application of the Comprehensive Plan Amendment and the Project, and any successors in interest, successors in title, and assigns.
5. "**Development Order**" shall mean the Development Order or Orders, issued by the County authorizing the Developer to proceed with and carry on certain development activities upon the Property.
6. "**Effective Date**" shall mean the date this Agreement becomes effective as set forth herein.
7. "**Land Development Regulations**" shall mean the Washington County Land Development Regulations enacted by the County, as subsequently amended.
8. "**Project**" shall mean the overall development of the Property as described in this Agreement.
9. "**Property**" shall mean the real property of which the Project is comprised from time to time, and specifically shall only apply to and include that certain real property to which the Developer holds title, which is that real property legally described in Exhibit "B" attached hereto.

PUBLIC FACILITIES

The public facilities described below, needed to service development of the Project, are hereby subject to the following conditions:

1. **Potable Water Service.** Potable water service will be supplied to the Project by (name of governing municipality or entity). The Developer will construct or cause to be constructed all necessary potable service infrastructure within the Project. Potable water service must be provided at the current adopted level of service in the Comprehensive Plan, which is (place number of gallons here) gallons per capita per day.
2. **Wastewater Treatment and Disposal.** Wastewater treatment service will be supplied to the Project by the Developer. The Developer will construct or cause to be constructed all necessary Wastewater treatment and disposal infrastructure within the Project. The County and/or Municipality does not currently have an adopted level of service for private central wastewater treatment and disposal wastewater treatment systems. The level of service provided shall be sufficient to service all available permitted development
3. **Extension of Existing Facilities.** The provision of potable water service and/or wastewater treatment service may be accomplished for all or part of the Project through the extension of existing facilities. In the event potable water service or wastewater treatment service is provided in such a manner, the adopted level of service of the facilities being extended shall apply to that portion of the Project being serviced by such extended facilities.

4. **Concurrency Review.** An executed copy of this Agreement shall be deemed sufficient to satisfy the requirements for the issuance of a Certificate of Concurrency for potable water service and wastewater treatment service.
5. **Demonstration of Service Availability Required.** Prior to the issuance of a Certificate of Occupancy for any dwelling unit, commercial facility, or any other structure for which a Certificate of Occupancy is required, the Developer must demonstrate that potable water and wastewater treatment service is available at the applicable level of service. This requirement shall not apply to temporary structures associated with the development of the Project such as construction trailers.
6. **Necessity for Other Permits.** The Developer must obtain any permits, exemptions, or authorizations which may be required by agencies having jurisdiction over the Property other than the County and/or Municipality prior to engaging in development activities upon the Property which may require such permits, exemptions or authorizations, including any permits required by any regional, state, or federal agency with jurisdiction.
7. **Compliance With All Applicable Permit and Approval Requirements.** The County and/or Municipality and the Developer hereby acknowledge that the failure of this Agreement to address a particular permit or approval requirement with respect to the development of the Project, shall not relieve the Developer of the necessity of complying with or obtaining any applicable permit or approval prior to initiating any part or phase of the development of the Property for which such permit or approval may be required.

MISCELLANEOUS

1. **Duration of the Agreement.** The duration of this Agreement shall be eight (8) years from the Effective Date, unless otherwise extended by mutual consent of the parties in accordance with applicable law and applicable sections of this Agreement.
2. **Recording and Effectiveness.** An executed copy of this Agreement shall be submitted to the State Department of Community Affairs as part of, or as a supplement to, the adoption package for the Comprehensive Plan Amendment described herein for the Property. This Agreement shall not be effective until a final order has been entered determining that the adopted Comprehensive Plan Amendment described herein is "in compliance," as provided by Section 163.3189(2)(a), *Florida Statutes*. Within thirty (30) days after the Comprehensive Plan Amendment described herein is determined to be "in compliance," the Developer shall cause this Agreement to be recorded in the Official records of Washington County, Florida. The Agreement shall be binding upon and shall benefit and enure to the successors in interest of the parties to the Agreement.
3. **Remedies.** Jurisdiction and venue for any dispute between the Parties shall be proper exclusively in the Circuit Court of the Fourteenth Judicial Circuit, in and for Washington County, Florida, or in the United States District Court, Northern District of Florida, Panama City Division. If the Developer or the County and/or Municipality fails to carry out any of its covenants herein contained, the party aggrieved shall be entitled to all remedies available at law or equity including, without limitation, the remedy of injunction

or mandamus. In the event a third-party challenge to this Agreement, the County and/or Municipality agrees to defend the legality and efficacy of this Agreement, unless a court competent jurisdiction determines that the Agreement was not legal or effective.

4. **Notices.** Any notices required to be given or elected to be given by either of the Parties pursuant to the terms of this Agreement shall be deemed effectively provided when placed in the United States Mail, Certified Return Receipt Requested or placed in the hands of an overnight service, e.g., Federal Express, Airborne Express, or faxed to parties at the last known address of the parties.

- 5 **Precedential Effect.** The County and/or Municipality are exercising sound discretion in this instance by entering into this Agreement to achieve mutual benefits that are particular and unique to the circumstances underlying this Agreement. This Agreement shall in no way establish a precedent, or bind the County and/or Municipality to grant similar approvals to third persons.

DONE AND AGREED ON THE FIRST DAY WRITTEN ABOVE BY:

TOWN COUNCIL
TOWN OF VERNON

Mayor

BOARD OF COUNTY COMMISSIONERS
WASHINGTON COUNTY, FLORIDA

Jerry Sapp, Chairman

PROPERTY DEVELOPER (Place name here)
