

**TRANSPORTATION PROPORTIONATE SHARE
AGREEMENT**

This TRANSPORTATION PROPORTIONATE SHARE AGREEMENT (“Agreement”) is made and entered into by and between WALTON COUNTY (“COUNTY”) and the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION (“FDOT”) to address the impacts to the State Highway System and/or Strategic Intermodal System created by developments permitted by the COUNTY, and to provide for the COUNTY’s collection of the statutorily required transportation proportionate fair share funds from such developments:

WHEREAS, the COUNTY and FDOT desire to cooperate in order to maintain acceptable levels of service within the COUNTY on FDOT maintained transportation facilities; and

WHEREAS, SR 20, SR 81, SR 83, SR 85, SR 285, US 90, US 98, and US 331 are components of the State Highway System and/or Strategic Intermodal System (“SH S/SIS”) within the COUNTY and as such are part of the COUNTY’s Concurrency Management System (CMS) ; and

WHEREAS, the COUNTY is currently providing transportation concurrency reviews for unincorporated areas of the COUNTY for proposed development projects in accordance with Florida Statute 163.3180 ; and

WHEREAS, the COUNTY's CMS currently is identifying a number of segments of the SHS/SIS within the COUNTY that would exceed acceptable levels of service based on proposed project traffic from project reviews; and

WHEREAS, if the COUNTY were to approve such projects, improvements to address the level of service deficiencies generated by the proposed project traffic on these roadways will not be under construction within three years; and

WHEREAS, the projects therefore have failed to satisfy the transportation concurrency requirement of the COUNTY's CMS and comprehensive plan; and

WHEREAS, the COUNTY has adopted Ordinance 2006-02 for the purpose of assessing proportionate share mitigation options for traffic impacts provided the COUNTY has the concurrence of the FDOT ; and

WHEREAS, Section 163.3180, Florida Statutes, authorizes use of proportionate share contributions by developers to satisfy concurrency requirements; and

WHEREAS, the COUNTY desires to manage growth in the COUNTY, and to cooperate with FDOT by collecting proportionate fair share contributions in accordance with Section 163.3180, Florida Statutes, when developments have failed to satisfy the transportation concurrency requirement of the County's comprehensive plan and land development code; and

WHEREAS, the COUNTY and the FDOT agree that the developer proportionate fair share contributions shall be collected by the COUNTY prior to issuance of a COUNTY development order; and

WHEREAS, the COUNTY and the FDOT agree that these monies will be utilized only for transportation capacity improvements identified within the individual corridors as funds become available through PFS contributions, other County contributions, or FDOT monies as appropriated through the federal and/or state legislatures, and

WHEREAS, the COUNTY and the FDOT have determined that the proposed improvements for these roadways, as presented in "Attachment A", would sufficiently mitigate the projects' impacts and thus allow the COUNTY to approve projects on these corridors; and

WHEREAS, the COUNTY and the FDOT have determined that proportionate share contributions are authorized for the above identified transportation corridors pursuant to Section 163.3180 Florida Statutes, which requires the concurrence of the FDOT on all project traffic impacts to SHS/SIS facilities ; and

WHEREAS, The COUNTY and FDOT will evaluate the proposed roadway improvements on an annual basis to determine financial and project feasibility. In the event that funds available from either party to this agreement are insufficient to fully fund construction of any transportation improvement required by the COUNTY's CMS and CIP, the COUNTY and FDOT will work together to identify possible opportunities to develop an alternative project which will significantly benefit the impacted transportation system.

NOW, THEREFORE, in consideration of the premises hereof, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct, and are hereby incorporated by the parties as part of this Agreement as if fully set forth herein.

2. Proportionate Fair Share (PFS) Calculation. The COUNTY and FDOT do hereby acknowledge and agree to the PFS calculations as identified in "Attachment B" for use in calculating PFS impacts for project traffic impacts in accordance with Section 163.3180, Florida Statutes and the COUNTY'S CMS and PFS program. Both parties agree to update the PFS calculations annually to adjust for changes in project costs or additional funding sources that may be identified.

3. Proportionate Share Contribution by Developers. The COUNTY shall require that Developers contribute their Proportionate Fair Share contribution for roadway improvements, per project traffic impacts identified in the COUNTY CMS and Proportional Fair Share program, to the COUNTY prior to a Development Order being issued. This contribution may be in the form of monetary payment and/or land dedication as agreed upon by the COUNTY Concurrency Manager. For land dedication, the COUNTY shall require that the Developer provide an appraisal that is consistent with the Uniform Standards of Professional Appraisal Practice (USPAP) establishing the fair market value for the property. The FDOT District 3 Appraisal Office shall review the appraisal to ensure that it reflects a reasonably accurate estimate of current fair market value. The COUNTY shall also require that the Developer provide a Phase I environmental report, a boundary and topographic

survey, and legal description of the property to be dedicated. Dedication shall be in the form of a warranty deed to the COUNTY.

4. Management Agreement. The COUNTY and FDOT agree that the COUNTY shall administer the COUNTY's CMS and Proportionate Fair Share Program and shall collect the Developer's proportionate fair share contribution ("Proportionate Share") required under Chapter 163 Florida Statutes for any project traffic impacts on the SHS/SIS.

5. Approval by Local Government. The COUNTY may issue a Development Order to a Developer upon receipt of a Proportionate Share contribution from the Developer to the COUNTY for project traffic impacts.

6. Responsibilities of the COUNTY. For monetary payment the COUNTY shall hold and maintain each Proportionate Share contribution collected, and shall place said contributions into individual accounts for each transportation corridor identified above. Said individual account monies shall be disbursed according to later agreements pertaining to their respective transportation corridors. Further, the COUNTY shall work with FDOT and the Okaloosa-Walton MPO, of which it is a member, to identify additional funding sources and to prioritize improvement projects for the various corridors within the COUNTY for which PFS contributions are collected.

7. Capital Improvement Plan (CIP). The COUNTY shall develop and adopt by ordinance a long term CMS and CIP to include transportation improvement projects which will mitigate for the deficiencies identified in the COUNTY's CMS and allow for the collection of

proportionate fair share funds. A copy of this Agreement shall be attached or noted in the capital improvement plan update forwarded to the Department of Community Affairs in order to determine the plan's financial feasibility and to extend the time of commencement of construction of any proposed transportation improvements to a 10-year time frame pursuant to Section 163.177(16)(b)1, Florida Statutes.

8. Responsibilities of FDOT. FDOT shall work with the COUNTY and the Okaloosa-Walton MPO to identify additional funding sources and to prioritize transportation improvement projects for the various corridors within the COUNTY for which PFS contributions are collected.

9. Feasibility. The COUNTY and FDOT agree that based upon reasonably anticipated funding sources from Developer Contributions, and COUNTY, State, and Federal funds that the proposed transportation improvements identified in the COUNTY's CIP will be financially feasible and can be designed, permitted, and constructed in an expeditious manner. The projects identified in the COUNTY's CMS will be evaluated on an annual basis to determine financial and project feasibility. In the event funds available from either party to this agreement are insufficient to fully fund construction of any transportation improvement identified in the COUNTY's CIP, as it pertains to the SHS/SIS, the COUNTY and FDOT will work together to identify possible opportunities to develop an alternative project which will significantly benefit the impacted transportation system.

10. Construction of Improvements. The COUNTY and FDOT acknowledge and agree that a Developer's Proportionate Share shall be applied toward transportation improvements as described within the COUNTY's Long Term Capital Improvements Plan in accordance with the standards and design criteria of the COUNTY and FDOT with respect to such transportation corridors.

11. Satisfaction of Transportation Improvement Requirements. The COUNTY and FDOT hereby acknowledge and agree that upon the receipt of a Developer's Proportionate Share contribution as required herein, the Developer shall be deemed to have satisfied all requirements under Chapter 163, Florida Statutes, for the mitigation of traffic impacts of the project on all state and regional roads without regard to whether the transportation improvement is constructed or the Proportionate Share contribution is used otherwise.

12. Governing Law/Binding Effect. This Agreement shall be interpreted and governed by Florida Law. Each of the parties hereto warrants and represents that this Agreement is valid, binding and enforceable against them in accordance with the terms and conditions of Florida law.

13. Remedies. The parties hereto shall have all rights and remedies provided herein and under Florida Law with respect to the enforcement of this Agreement and hereby acknowledge and agree that each party hereto shall have the right and remedy to bring an action or actions for specific performance and such other equitable or injunctive relief as

appropriate and necessary to enforce this Agreement. The parties agree that the venue for any enforcement action shall be the Circuit Court in Leon County, Florida.

14. Notice of Default. The parties acknowledge and agree that no party shall be considered in default for failure to perform under this Agreement until such party has received written notice specifying the nature of such default or failure to perform and said party fails to cure said default or fails to perform within thirty (30) days of receipt of written notice.

15. Notices. All notices which are required or permitted under this Agreement shall be given to the parties by certified mail with return receipt requested, hand deliver, or express courier, and shall be effective upon receipt when delivered to the parties at the addresses set forth herein below (or such other address as provided by the parties by written notice delivered in accordance with this paragraph):

INSERT NAMES AND ADDRESSES HERE

16. Amendments. No amendment, modification, or other changes in this Agreement shall be binding upon the parties unless in writing executed by all of the parties. Should future legislation affect provisions in this agreement which are based on the law in existence at the time of execution of this agreement, such changes shall result in the parties amending appropriate provisions in order to be in conformance with such future legislation.

17. Successors and Assigns Bound. The rights and obligations contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

18. Recording. The COUNTY shall record this Agreement in the Public Records of The COUNTY at the COUNTY's expense.

19. Effective Date. This Agreement shall become effective upon the date it is executed by both parties to the Agreement.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute duplicates of one and the same instrument.

Proposed FDOT revision-3-13-07