



Florida Department of Transportation

**RICK SCOTT
GOVERNOR**

719 S. Woodland Blvd.
DeLand, FL 32720

**ANANTH PRASAD, P.E.
SECRETARY**

May 16, 2011

Bradley Arnold
County Administrator
Sumter County
7375 Powell Road
Wildwood, FL 34785

RE: Amendment to The Villages of Lake-Sumter, Inc. DRI Transportation Proportionate Share and Joint Participation Agreement and the Corresponding County Amended Road Impact Fee Credit Agreement with The Villages

Dear Mr. Arnold:

I have reviewed your letter dated April 19, 2011 regarding an amendment to transportation obligations of The Villages Development of Regional Impact (DRI). Through the past several years, the Department has worked diligently with The Villages to identify the appropriate facilities to mitigate transportation impacts created by The Villages. The Villages and the Department memorialized our agreement in the Transportation Proportionate Share Agreement (PSA), which created obligations for both The Villages and the Department. The following highlights my initial response to your letter.

First, the State Infrastructure Bank Loan (SIB) for the US 301 improvements in Marion County requires the reimbursement of \$9,314,576 which was negotiated prior to the PSA as part of a 2005 Agreement between The Villages and the Department. Consistent with the 2005 Agreement, the first payment for the SIB loan in the amount of \$3,000,000 is due in December 2011. Because bonds have been sold to finance the loan, another source of fund must be identified to repay the debt. The Department does not have the authority to simply forgive the terms of the SIB loan.

Secondly, in accordance with Section H of the PSA, The Villages has contributed \$1,992,974 towards a list of projects that was identified during the DRI process. The Department worked with The Villages representatives to identify the priority list of projects starting with the most critical (US 27/441 and CR 466) to the least critical (CR 466 and Morse Boulevard). Contrary to the assertion on your letter, the Department is not obligated to fund all the listed intersection improvements. The PSA requires the Department to utilize only the funds provided by the developer for these improvements. Regardless, the Department has programmed the three remaining intersection projects for design in 2012 and for construction in 2014.

Bradley Arnold
Amendment to The Villages of Lake-Sumter, Inc. DRI
May 15, 2011
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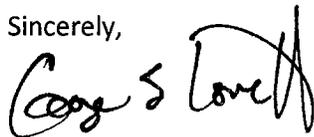
Based on changes that may be occurring within the region, the Department has approached Sumter County, The Villages and the Lake-Sumter MPO with the option of using the funds (or a portion of these funds) to a higher priority local project that is regionally beneficial. It is our continued desire to work with the County and The Villages to determine the best opportunity for maximizing these improvements.

The Department has worked with Sumter County and The Villages in the justification and design of the I-75 and CR 466 interchange. It is important to note that the interchange was a development driven interchange initiated by The Villages. As such, the Department does not anticipate the advancement of the interchange at this time. If it is the desire of Sumter County to modify the impact fee agreement with The Villages to delete this project and add the 4-laning of CR 468 between SR 44 and the Turnpike, this would be a Sumter County decision.

The Department recognizes the efforts put forth by Sumter County and The Villages with providing amendments of the Proportionate Share and the Road Impact Fee Credit Agreements. However, the Department has some remaining concerns particularly with the SIB loan within Marion County. In the spirit of continued coordination, I would welcome a meeting with Sumter County, The Villages, and the Lake-Sumter MPO to discuss the opportunities.

As always, it is a pleasure to work with Sumter County and I look forward to working through the details on this matter.

Sincerely,



George S. Lovett
Director of Transportation Development
District Five

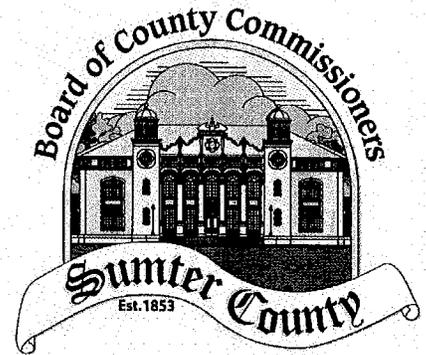
GSL:JM:m

Cc: T.J. Fish, Executive Director, Lake-Sumter MPO
Scott Cottrell, P.E., Public Works Director, Sumter County
Gary Moyer, The Villages of Lake-Sumter, Inc.
John Moore, Systems Planner, FDOT District 5

Board of County Commissioners

Sumter County, Florida

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Website: <http://sumtercountyfl.gov>



Received

APR 21 2011

DE Executive Suite

April 19, 2011

Mr. George Lovett
Director of Transportation Development
Florida Department of Transportation, District 5
MS4-503
719 S. Woodland Blvd.
Deland, FL 32720

RE: Amendment to The Villages of Lake-Sumter, Inc. DRI Transportation Proportionate Share and Joint Participation Agreement and the Corresponding County Amended Road Impact Fee Credit Agreement with The Villages

Dear Mr. Lovett,

In response to recent developments related to transportation improvement obligations of The Villages Development of Regional Impact (DRI), an opportunity has evolved that benefits the Florida Department of Transportation (FDOT), Sumter County (County), and The Villages. This opportunity will require amendments to agreements with The Villages, to which both FDOT and Sumter County are parties. Drafts of these proposed amended agreements are enclosed for your review and consideration.

First, this opportunity started with the concern raised by FDOT related to the cost to complete the capacity intersection improvements, required by the existing Proportionate Share and Joint Participation Agreement between FDOT and The Villages (PSA), at US 301 and the Florida Turnpike. In addition, FDOT expressed some concern whether other intersection improvements within the existing PSA were warranted.

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Bradley S. Arnold,
County Administrator
(352) 689-4400
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Gloria R. Hayward, Clerk & Auditor
(352) 793-0215
209 North Florida Street
Bushnell, FL 33513

County Attorney
The Hogan Law Firm
Post Office Box 485
Brooksville, Florida 34605

From these concerns, Mr. Gary Moyer, Vice President of The Villages of Lake-Sumter, Inc. proposed a change to the existing PSA by removing the obligation of The Villages to repay the State Infrastructure Bank Loan (SIB) for the US 301 improvements in Marion County as a benefit for The Villages. Also proposed is removing the FDOT obligations of the intersection improvements of US 301 @ Turnpike, US 301 @ SR44, and US 301 @ C-466, and C-466 @ Morse Boulevard. The intersection of C-466 and Morse Boulevard was completed by Sumter County. This is a benefit for FDOT. The PSA also provided for an intersection improvement on US 27/441 @ C-466 in Lake County.

The Villages contributed \$1,992,974 to FDOT for these intersection capacity improvements and Sumter County reimbursed The Villages, \$1,392,974 for the intersection improvements within Sumter County via the concurrently negotiated Road Impact Fee Credit Agreement.

Mr. Moyer further offered that FDOT retain the \$1,992,974 contributed by The Villages to FDOT with no project obligation for FDOT. At a meeting on April 5, 2011, between the County, FDOT, The Villages, and the Lake-Sumter Metropolitan Planning Organization (MPO), the MPO expressed a desire to utilize the money for a PD&E on Rolling Acres Road, in Lake County, to connect to SR 44. Sumter County and Mr. Moyer recognize the regional transportation benefit of the extension of Rolling Acres Road and suggest the funds be used to move forward with the PD&E.

The Villages would then return the \$1,392,974 in road impact fee funds to Sumter County for use on improvements to C-466A from Powell Road to US 301. The return of the road impact fee funds is a benefit to the County.

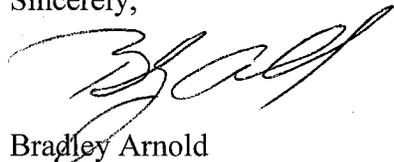
FDOT has made it clear that it prefers a significant delay in the construction of the new interchange at I-75 and C-466. Sumter County is willing to work with FDOT regarding the same and approached The Villages to alter the existing road impact fee credit agreement to provide for a deletion of this project as reimbursable to The Villages and instead add the 4-laning of C-468 between SR 44 and the Turnpike to be developed concurrently with the new interchange on the Florida Turnpike at C-468.

It is Sumter County's position that by agreeing to moving the capacity improvement of C-468 to coincide with The Villages obligation in the PSA of the Turnpike Interchange at C-468 that it significantly reduces the timing and capacity improvements that were a concern by FDOT at the intersections of US 301 @ Turnpike and US 301 @ SR44. The rationale is the continued construction pace of The Villages would allow for the C-468 @ Turnpike to relieve the north bound Turnpike traffic that would have the City of Wildwood or The Villages as its destination to exit at this interchange. Further, the future intersection from the north of Morse Boulevard with C-468 to the south @ SR44 would make a direct link to The Villages. Mr. Moyer stated The Villages support for this concept could be included in the modifications to the existing road impact fee credit agreement with the County and amendment to FDOT's PSA.

Finally, Sumter County is completing its preliminary engineering and design study for C-466 from US 301 to the future interchange at I-75. With un-funding the I-75 interchange at C-466, Sumter County would focus its attention only to 4-laning C-466 from CR 209 east to US 301 and can include at the County's cost the necessary intersection capacity improvements at US 301 @ C-466 eliminating the need for the project in FDOT's PSA.

Again, we see this as a great opportunity for all three parties and hope that you see the same. Attached are our proposed changes to the PSA and the Road Impact Fee Credit Agreement. Please review and provide FDOT's concurrence on the proposed changes. Upon notification from FDOT, we will move forward to execute the revised agreements.

Sincerely,



Bradley Arnold
County Administrator

C: Honorable Sumter County Board of County Commissioners
John Moore, Systems Planner, FDOT District 5
T.J. Fish, Executive Director, Lake-Sumter MPO
Brad Cornelius, Sumter County Planning & Development Director
Scott B. Cottrell, P.E., Sumter County Public Works Director
Gary Moyer, The Villages of Lake-Sumter, Inc.

AMENDED THE VILLAGES OF LAKE-SUMTER, INC. DRI TRANSPORTATION PROPORTIONATE SHARE AND JOINT PARTICIPATION AGREEMENT

**THIS AMENDED THE VILLAGES OF LAKE-SUMTER, INC. DRI
TRANSPORTATION PROPORTIONATE SHARE AND JOINT PARTICIPATION
AGREEMENT** (“Amended Agreement”) is made and entered into this _____ day of _____, 2011 (“Effective Date”), by and between **THE VILLAGES OF LAKE-SUMTER, INC.**, a Florida corporation, (“Developer”), the **STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION**, and **SUMTER COUNTY**, a political subdivision of the State of Florida, (“County”).

WHEREAS, on January 27, 2009, the Developer and FDOT entered into The Villages DRI Transportation Proportionate Share and Joint Participation Agreement (“Proportionate Share Agreement”) for certain transportation improvements. The transportation improvements that are under consideration as part of this Amended Agreement are as follows:

- A. US 301 – Repayment by Developer to FDOT for the State Infrastructure Bank (“SIB”) loan to widen to four (4) lanes from milepost 0.000 on the south to milepost 1.207 on the north in Marion County.
- B. US 301 – Intersection safety improvement at US 301 and Florida Turnpike.
- C. US 301 – Intersection improvement at C-466.
- D. US 301 – Intersection improvement at SR 44.
- E. Florida Turnpike – New interchange at C-468.
- F. C-466 - Intersection improvement at Morse Boulevard.

WHEREAS, the Developer has paid FDOT \$1,992,974.00 to FDOT for the following transportation intersection improvements:

- A. US 301 – Intersection safety improvement at US 301 and Florida Turnpike (Sumter County).
- B. US 301 – Intersection improvement at C-466 (Sumter County).
- C. US 301 – Intersection improvement at SR 44 (Sumter County).
- D. C-466 - Intersection improvement at Morse Boulevard (Sumter County).
- E. US27/441 – Intersection improvement at C-466 (Lake County).

Of the \$1,992,974.00 paid to FDOT by the Developer, \$1,392,974.00 is allocated for the four (4) intersection improvements in Sumter County.

WHEREAS, the Proportionate Share Agreement requires the Developer to repay FDOT for the SIB loan for US 301 improvements in Marion County based on the following schedule:

December 2011 - \$3,000,000.00

December 2015 - \$3,000,000.00

December 2018 - \$3,314,576.00

The total Developer SIB repayment obligation is \$9,314,576.00 by December 2018.

WHEREAS, the County paid the Developer \$1,392,974.00 pursuant to a road impact fee agreement between the Developer and County dated February 10, 2009.

WHEREAS, the County completed the intersection improvement at C-466 and Morse Boulevard, and

WHEREAS, the County is in the final stages of design and permitting for the widening of C-468 from the Florida Turnpike to SR 44, and

WHEREAS, the construction and operation of the new interchange on the Florida Turnpike at C-468, together with the widening of C-468 from the Florida Turnpike to SR 44 is anticipated to eliminate the need for the US 301 safety improvement at the Florida Turnpike and the US 301 intersection improvement to SR 44, and

WHEREAS, the County is developing a preliminary engineering and design report for C-466 from US 301 to I-75. It is anticipated that C-466 from US 301 to CR 209 will be widened to four (4) lanes in the future. At the time of the widening of C-466 from US 301 to CR 209, the County will make the required improvements at the C-466 and US 301 intersection, and

WHEREAS, the Developer, FDOT, and County deem that it is in the best interests of all parties that the County become a signatory to this Amended Agreement due to the impacts on County maintained transportation facilities (C-466, C-466A, Morse Boulevard, C-468), and

WHEREAS, at this time, the Developer, FDOT, County wish to set forth their amendment to the Proportionate Share Agreement. Those portions of the Proportionate Share Agreement that are not amended by this Amended Agreement shall remain in full force and effect, and

NOW THEREFORE, accepting the above recitals as true and incorporating them as if stated herein, and in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agree that the Proportionate Share Agreement is amended hereby, and further that this Amended Agreement sets forth the parties agreements.

A. Amendments to Proportionate Share Agreement.

- a. FDOT shall absolve any commitment or obligation of the Developer to repay FDOT for the SIB loan for the widening of US 301 in Marion County as described in Section D and G of the Proportion Share Agreement. FDOT shall take on the full independent responsibility to repay the aforesaid SIB loan.
- b. FDOT shall eliminate the following intersection improvements in Section H of the Proportionate Share Agreement:
 - i. US 301 Safety Improvement at Florida Turnpike
 - ii. C-466 at US 301
 - iii. US 301 at SR 44
 - iv. Morse Boulevard at C-466
- c. FDOT shall retain the \$1,992,974.00 payment made by the Developer to FDOT. The \$1,992,974.00 may be used by FDOT on any transportation project at FDOT's discretion.
- d. The Developer shall pay the County ~~\$1,392,974.00~~ within sixty (60) days of the effective date of this Agreement. The County shall utilize these funds for improvements to C-466A from Powell Road to US 301.
- e. Exhibit E is hereby deleted.

B. Effective Date. The effective date shall be the date of final execution of this Amended Agreement.

C. Survivability. Unless specifically amended herein, all other terms and conditions of the Proportionate Share Agreement remain in full force and effect. Any conflicts in interpretation or application between this Amended Agreement and the Proportionate Share Agreement shall be resolved in favor of this Amended Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Amended Agreement on the day and year above first written.

SIGNATURE PAGES TO BE PROVIDED

AMENDED IMPACT FEE AGREEMENT

THIS AMENDED IMPACT FEE AGREEMENT (“Amended Agreement”) is made and entered into this ____ day of _____, 2011 (“Effective Date”), by and between **THE VILLAGES OF LAKE-SUMTER, INC.**, a Florida corporation, whose address is 1020 Lake Sumter Landing, The Villages, Florida 32162 (“Developer”), and **SUMTER COUNTY**, a political subdivision of the State of Florida, whose address is 7375 Powell Road, Wildwood, Florida 34785 (“County”).

RECITALS

WHEREAS, on February 10, 2009, the Developer and County entered into an Impact Fee Agreement (“Original Agreement”) for the development of the following transportation improvements:

- A. US 301 – Widen to four (4) lanes from milepost 24.615 on the south to milepost 27.329 on the north.
- B. US 301 – Intersection safety improvement at US 301 and Florida Turnpike.
- C. US 301 – Intersection improvement at C-466.
- D. US 301 – Intersection improvement at SR 44.
- E. Florida Turnpike – New interchange at C-468.
- F. C-466 – New interchange at I-75 and associated widening to four (4) lanes from CR 245 to 7/10ths of one mile east of I-75.
- G. C-466 - Intersection improvement at Morse Boulevard.

WHEREAS, on January 27, 2009, the Developer and the State of Florida Department of Transportation (“FDOT”) entered into The Villages DRI Transportation Proportionate Share and Joint Participation Agreement (“Proportionate Share Agreement”) for improvements to US 301 and Florida Turnpike, as described above, and

WHEREAS, the Proportionate Share Agreement between the Developer and FDOT does not address the design, permitting, and construction of the new interchange at C-466 and I-75 and the related widening to C-466, as described above, and

WHEREAS, the widening of US 301 to four (4) lanes, as described above is under construction and is anticipated to be complete by December 2011, and

WHEREAS, the County completed the intersection improvement at C-466 and Morse Boulevard, and

WHEREAS, on _____, 2011, FDOT amended its Proportionate Share Agreement with the Developer to remove the intersection improvement projects on US 301 at the Florida Turnpike, C-466, and SR 44. The C-466 intersection improvement at Morse Boulevard was also removed, and

WHEREAS, the County is in the final stages of design and permitting for the widening of C-468 from the Florida Turnpike to SR 44, and

WHEREAS, at this time, the Developer and County wish to set forth their amendment to the Original Agreement. Those portions of the Original Agreement that are not amended by this Amended Agreement shall remain in full force and effect, and

NOW THEREFORE, accepting the above recitals as true and incorporating them as if stated herein, and in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agree that the Original Agreement is amended hereby, and further that this Amended Agreement sets forth the parties agreements for the construction of certain improvements to C-468 from the Florida Turnpike to SR 44. Any conflicts in interpretation or application between this Amended Agreement and the Original Agreement shall be resolved in favor of this Amended Agreement.

A. COUNTYWIDE IMPROVEMENTS TO US 301

1. Sections A(1)(B), A(1)(C), and A(1)(D) of the Original Agreement are hereby deleted.
2. Section A(2)(B) of the Original Agreement is amended and replaced as follows: Within sixty (60) days of the effective date of this Amended Agreement, the Developer shall pay the County \$1,392,974.00. The County shall exclusively utilize these funds for the improvement of C-466A from Powell Road to US 301.

B. DISTRICT NO. 1 IMPROVEMENTS TO THE FLORIDA TURNPIKE AT C-468, AND ALSO C-466

1. Section B(2) of the Original Agreement is hereby deleted.
2. The following transportation project is added:

a. IMPROVEMENT TO C-468 FROM FLORIDA TURNPIKE TO SR 44

1. **The Project.** The Project involves the construction of the widening of C-468 to four (4) lanes from the Florida Turnpike to SR 44 consistent with the design plans developed by the County.
2. **Responsibilities.** The Developer shall be responsible for the construction of the Project. The County has retained the services of Springstead Engineering, Inc. to provide design and engineering services for the Project. The

Developer shall utilize the engineered Construction Documents provided by the County Inc. for the construction.

3. **Right-of-Way.** The County shall secure all right-of-way for the construction of the Project. The Developer agrees to cooperate with the County in assisting the County in securing such right-of-way.
4. **Construction of Project.** The Developer shall construct the Project in accordance with all applicable regulations, including periodic inspections and submission to the County of all testing reports and final inspection prior to acceptance of the Project. The Developer shall commence construction of the Project no later than December 1, 2014, and in coordination with the development of the new interchange at the Florida Turnpike and C-468. The Developer shall complete construction of the Project for final acceptance by the County within eighteen (18) months from commencement of construction.
5. **Impact Fee Credit and Reimbursement.** The County agrees that the Developer shall be entitled to road impact fee credit and reimbursement based upon the actual cost of construction of the Project funded by the Developer pursuant to this Amended Agreement. However, in no event shall the Developer be entitled to any credit or reimbursement in excess of 120% of the estimated construction cost of the Project set forth in Exhibit "A", unless the Project is competitively bid, in which case, the Developer shall be entitled to road impact fee credit and reimbursement in the amount of the actual cost of construction of the Project. Also, in no event shall the Developer be entitled to any reimbursement except to the extent of any funds on deposit in the County's road impact fee fund.
 - a. **Records.** The Developer may apply for a credit and/or reimbursement from the County road impact fee fund based upon the percentage of work completed by delivering to the County a certification by a third party licensed Professional Engineer indicating the percentage of work completed, through the date of certification, which credit and/or reimbursement shall be available to the Developer upon inspection, approval, and acceptance by the County. The Developer shall pay road impact fees pursuant to such ordinance until the County's first approval of a portion of the credit entitlement under this Amended Agreement. During construction, such road impact fee credit shall accrue, and/or reimbursement paid to the Developer in an amount equal to 90% of the cost of the Project completed. Upon completion of the Project, 100% of the cost associated with shall be available for credit and/or reimbursement to the Developer upon inspection, approval, and acceptance by the County. Road impact fees paid by the Developer to the County before the date the Developer first established road impact fee credits shall be rebated to the Developer to the extent of the Developer's impact fee credit entitlement on a monthly basis.

Notwithstanding the fact that the Developer has established a road impact fee credit balance, the Developer shall continue to make payment for road impact fees on or before the issuance of building permits. If the Developer has not previously assigned its road impact fee credits pursuant to the Section below, within fifteen (15) days after end of each month, the County shall rebate to the Developer an amount equal to previous month's end balance of road impact fees paid by the Developer, provided such rebate does not exceed the existing credit entitlement available to the Developer. The amount of each monthly rebate shall be deducted from the credit entitlement available to the Developer. The County shall deliver to the Developer monthly reports indicating all activity on the account during the month, and the month end balance. The Developer shall keep or provide for retention of adequate records and supporting documentation which concern or reflect total Project cost. This information will be available to the County, or its duly authorized agent or representative, for audit, inspection, or copying, for a minimum of five (5) years from the termination of this Agreement.

b. Assignment of Road Impact Fee Credits by Developer. The road impact fee credits shall be fully transferrable and assignable by the Developer in accordance with this section. Prior to the issuance of a building permit, the owner of the Developer contribution credit must file an application to assign the credits with the Sumter County Planning Director. An assignment of road impact fee credits must meet the following requirement to be accepted by the Sumter County Planning Director:

i. Developer contribution credits can only be assigned once, not including any collateral assignments in favor of a bank, a community development district created pursuant to Chapter 190, Florida Statutes, or other local unit of special purpose government.

c. Financial Accounting. All financial records of the Developer pertaining to this Amended Agreement shall be maintained according to generally accepted accounting principles. A separate project will be created in the accounting records to account for the Project costs. The financial records shall enable ready identification of all Project costs. The County shall have the right to audit or verify the amount and accuracy of Project costs and Project documentation throughout the term of this Amended Agreement and for five (5) years subsequent, and shall have access to any and all records, documents, or correspondence related to this Project.

- d. Annual Review and Audit. The County shall conduct an annual review and audit of performance under this Amended Agreement to determine whether or not there has been demonstrated good faith compliance with the terms of this Amended Agreement and to report the credit applied toward payment of road impact fees and the balance of available and unused credit. If the County finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of this Amended Agreement, this Amended Agreement may be revoked or modified by the County. Prior to taking any such action, the County agrees to give the Developer written notice with reasonable time in which to cure any alleged failure.

C. GENERAL PROVISIONS. The General Provisions of the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amended Agreement on the day and year above first written.

**BOARD OF COUNTY COMMISSIONERS
SUMTER COUNTY, FLORIDA**

ATTEST:

Donald Burgess, Chairman

Gloria Hayward, Clerk of the Court

Approved as to Form
And Legal Sufficiency

Sumter County Attorney

THE VILLAGES OF LAKE-SUMTER, INC.

ATTEST:

H. Gary Morse, President

Gary L. Moyer, Vice President