



Florida Department of Transportation

**RICK SCOTT
GOVERNOR**

1109 S. Marion Avenue
Lake City, FL 32025-5874

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

September 3, 2014

The Honorable Ed Braddy
Mayor, City of Gainesville
Post Office Box 490, Station 11
Gainesville, Florida 32627-0490

Dear Mayor Ed Braddy:

The Florida Department of Transportation (FDOT) wishes to send our support for the continued efforts of the City of Gainesville (City) to bring economic development opportunities to North-Central Florida and prosperity to Florida's citizens. The FDOT is pleased to work with the City to deliver transportation solutions that serve Gainesville, Alachua County, and the State.

It is the FDOT's understanding the City has recently amended Future Land Use Element (FLUE) Policy 4.3.6.a.29 of the City's Comprehensive Plan relating to the Butler Development Planned Use District, which states as follows:

In accordance with the [Planned Development] zoning ordinance, S. Clark Butler Properties . . . shall coordinate with FDOT to address transportation impacts that affect FDOT facilities and satisfy the FDOT requirements listed below. Proof of satisfying these requirements shall be provided to the City in the form of a letter or other written documents issued by the FDOT.

- a. The PD zoning ordinance shall establish thresholds and a timeframe for the completion of an Interchange Modification Report (IMR) consistent with FDOT IMR typical procedures. This IMR would evaluate alternatives and determine a feasible long term plan for the Archer Road (SR 24)/I-75 interchange. . . .
- b. Prior to issuance of the first certificate of occupancy (CO) for any new building in Subarea 1 or 2 or issuance of certificates of occupancy for net, new additional square footage associated with development or redevelopment in Subareas 3 or 4 that cumulatively result in 500 net, new p.m. peak hour trips of adjacent street traffic . . . , S. Clark Butler Properties . . . shall:

(i) Construct a third southbound left turn lane at the Archer Road/I-75 Interchange, subject to the review and approval by the [FDOT]; or

(ii) Execute an agreement with FDOT that includes payment from S. Clark Butler Properties . . . to the FDOT to construct or have constructed the appropriate Archer Road/I-75 interchange modifications as determined by FDOT staff.

Additionally, the City has recently adopted Ordinance No. 121108 which includes the Planned Development (PD) rezoning report for the Butler Development. The PD zoning entitlement establishes the threshold and timeframe for completion of the above-referenced IMR and states as follows:

When the cumulative net, new average daily trip generation threshold reaches 9,775 trips . . . , the Developer shall commence an Interchange Modification Report (IMR) for the Archer Rd/I-75 interchange, consistent with Florida Department of Transportation IMR typical procedures. The IMR shall be completed within 18 months from when it is commenced.

The FDOT has determined the IMR for the Archer Road/I-75 interchange will be performed by the FDOT in house and that the above-referenced requirements will be met in full by actions undertaken by the FDOT directly. The FDOT will accomplish such modifications in a coordinated manner with other ongoing I-75 improvements and the FDOT has executed an agreement with S. Clark Butler Properties. Therefore, in accordance with FLUE Policy 4.3.6.a.29 of the City's Comprehensive Plan, the FDOT is submitting this letter and the enclosed agreement as documentation demonstrating the above-referenced requirements are satisfied.

If I can be of further assistance, please contact me at 386-961-7800 or by email:

greg.evans@dot.state.fl.us

Sincerely,



Greg Evans
District Two Secretary

Cc: Ms. Deborah Butler, President Butler Enterprises

**AGREEMENT REGARDING THE STATE ROAD 24/I-75 INTERCHANGE
IN GAINESVILLE, FLORIDA**

THIS AGREEMENT ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and Butler North Parkway, LLC, a Florida Limited Liability Company ("Butler").

RECITALS:

- A. The Department supports the continued efforts of the City of Gainesville, Florida ("City"), to bring economic development opportunities to North-Central Florida and prosperity to Florida's citizens; and
- B. The Department wishes to work with the City on transportation solutions for the City, Alachua County, and the State of Florida; and
- C. The Department is the owner of State Road 24 ("SR 24"), also known as Archer Road, and Interstate 75 ("I-75"); and
- D. The Department is the owner of the Archer Road (SR 24)/I-75 Interchange; further described in the attached Exhibit "A"; and
- E. Butler represents S. Clark Butler Properties Ltd., S. Clark Butler Properties Corporation, and the Butler Development Planned Use District; and
- F. The City has amended Future Land Use Element ("FLUE") Policy 4.3.6.a.29 of the City's Comprehensive Plan relating to the Butler Development Planned Use District; and adopted Ordinance No. 121108 which requires Butler to: (a) perform an Interchange Modification Report ("IMR") consistent with the Department's typical procedures for evaluating alternatives and determining a feasible long-term plan for the Archer Road (SR 24)/I-75 Interchange; and (b) prior to issuance of the first certificate of occupancy for any new building in Subarea 1 or 2 or issuance of certificates of occupancy for net, new additional square footage associated with development or redevelopment in Subarea 3 or 4 that cumulatively result in 500 net, new p.m. peak hour trips of adjacent street traffic as calculated using the latest edition of the ITE Trip Generation Manual, Butler shall: (i) construct a third southbound left turn lane at the Archer Road (SR 24)/I-75 Interchange, subject to the review and approval by the Department; or (ii) execute an agreement with the Department that includes payment to the Department to construct or have constructed the appropriate Archer Road (SR 24)/I-75 Interchange modifications as determined by Department staff; and
- G. The Department has determined it can perform the IMR and construct the third southbound left turn lane at the Archer Road (SR 24)/I-75 Interchange as part of the Department's work program; and
- H. The Department is amenable to performing the IMR and constructing the third southbound left turn lane at the Archer Road (SR 24)/I-75 Interchange given Butler's willingness to execute and perform this Agreement; and

NOW THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound hereby, acknowledge and agree as follows:

1. RECITALS & EXHIBITS

The recitals set forth above and the Exhibits attached hereto are specifically incorporated herein by reference and made part of this Agreement.

2. EFFECTIVE DATE

The effective date of this Agreement shall be the date on which the last of the parties executes the Agreement ("Effective Date").

3. LEGISLATIVE APPROPRIATION

Execution of this Agreement does not guarantee that the Department's projects will be authorized. The Department's obligation to pay for any project is contingent upon the annual appropriation by the Florida Legislature. In the event this contract is for a project in excess of \$25,000.00 and a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Fla. Stat., are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

4. DEPARTMENT

A. Subject to the limitations of Florida Law, in Department Fiscal Year ("FY") 2015/2016, the Department shall commence construction on a third southbound left turn lane at the Archer Road (SR 24)/I-75 Interchange southbound off-ramp. The Department may construct any other modifications to the Archer Road (SR 24)/I-75 Interchange the Department deems appropriate.

B. Subject to the limitations of Florida Law, in Department FY 2015/2016, the Department shall commence work on an IMR, or, in the sole discretion of the Department, other analysis as appropriate, for the Archer Road (SR 24)/I-75 Interchange. The Department shall complete the IMR or other analysis within eighteen (18) months of the commencement of work.

5. FUTURE LAND USE ELEMENT

The parties agree this Agreement fulfills the requirement of FLUE Policy 4.3.6.a.29(b)(ii) of the City's Comprehensive Plan that Butler execute an agreement with the Department.

6. EMINENT DOMAIN AND DAMAGES

Under no circumstances shall the Department's reasonable exercise of any right provided in this Agreement, including, without limitation, termination of the Agreement, create any right, title, interest, or estate entitling Butler to full and just compensation from the Department either through inverse condemnation or eminent domain laws or any similar laws regarding the taking of property for public purposes ("Eminent Domain Law"). Butler forever waives and relinquishes all legal rights and monetary claims which it has, or which may arise in the future, for compensation and/or damages, including, without limitation, special damages, severance damages, removal costs, and loss of business profits resulting in any manner from the Department's exercise of any right provided in this Agreement. This waiver and relinquishment specifically includes all damages flowing from adjacent properties owned, leased, or otherwise controlled by Butler as a result of the Department's exercise of any right provided in this Agreement.

7. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Fla. Stat. (2014). The Department's liability for breach of this Agreement is specifically: (1) limited to actual damages incurred by Butler as a direct result of the Department's breach; and (2) further limited in amount and shall not, under any circumstances, exceed the limitations of liability for tort actions set forth in §768.28(5), Fla. Stat. (2014).

8. NOTICE

All notices, communications, and determinations between the parties hereto and those required by this Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department: Florida Department of Transportation
 Attention: District 2 Secretary
 Florida Department of Transportation, District Two
 1109 S. Marion Avenue, MS 2000
 Lake City, FL 32025-5874

With a copy to: Florida Department of Transportation
 Attention: Chief Counsel
 1109 South Marion Avenue, Mail Station 2009
 Lake City, Florida 32025

Butler: Butler North Parkway, LLC
 c/o Deborah Butler
 3217 SW 35th Boulevard
 Gainesville, Florida 32608

With a copy to: David A. Theriaque, Esquire
 Theriaque & Spain
 433 N. Magnolia Drive
 Tallahassee, Florida 32308

9. GOVERNING LAW

This Agreement shall be governed in all respect by the laws of the State of Florida.

10. INITIAL DETERMINATION OF DISPUTES

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance, or breach of this Agreement.

11. VENUE AND JURISDICTION

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance, or breach of this Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. Butler and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance, or breach of this Agreement.

12. JURY TRIAL

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance, or breach of this Agreement, including, without limitation, damages allegedly flowing therefrom.

13. THIRD PARTY BENEFICIARIES

Butler shall not assign, pledge, or transfer any of the rights, duties, and obligations provided in this Agreement to third parties without the prior written consent of the Department's District Secretary or his/her designee.

14. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations, or remedies upon any other person or entity except as expressly provided for herein.

15. VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other that: (i) it understands all of the rights and obligations set forth in this Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of this Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of this Agreement and executes this Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of this Agreement.

16. ENTIRE AGREEMENT

This instrument, together with the attached Exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein, and superseded hereby.

17. SUFFICIENCY OF CONSIDERATION

By their signature below, the parties hereby acknowledge the receipt, adequacy, and sufficiency of consideration provided in this Agreement and forever waive the right to object to or otherwise challenge the same.

18. WAIVER

The failure of either party to insist on the strict performance or compliance with any term or provision of this Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

19. INTERPRETATION

No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

20. CAPTIONS

Paragraph titles or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

21. SEVERANCE

If any section, paragraph, clause, or provision of this Agreement is adjudged by a court, agency, or authority of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect and the parties shall be bound thereby so long as the principal purposes of this Agreement remain enforceable.

22. COMPUTATION OF TIME

In computing any period of time prescribed in this Agreement, the day of the act, event, or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

23. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

24. EXECUTION IN COUNTERPARTS

This Agreement may be executed in counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties execute this Agreement consisting of seven (7) pages (excluding Exhibits).

- Signatures on Following Pages -

Florida Department of Transportation

By: Greg Evans
Printed Name: Greg Evans
Title: District 2 Secretary
Date: 09/02/14

Witnesses:

Khanda Harrington
Printed Name: Khanda Harrington
Joye Brown
Printed Name: JOYE BROWN

Legal Review:

By: [Signature]
Office of the General Counsel

State of Florida
County of Columbia

The foregoing instrument was acknowledged before me this 3 day of Sept., 2014, by Greg Evans, District 2 Secretary, who is personally known to me.

Lisa Lambert



Butler North Parkway, LLC

[Signature]
Deborah Butler, Manager

Date: 8/20/2014

Witnesses:

[Signature]
Printed Name: Sue Poindexter

[Signature]
Printed Name: Jerry W. Jones

State of Florida
County of Alachua

The foregoing instrument was acknowledged before me this 20th day of August, 2014, by Deborah Butler, Manager, who is personally known to me, or who produced _____ as identification.

[Signature]



