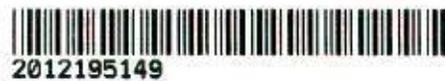


RECORD AND RETURN TO:  
Barbara L. Wilhite, P.A.  
2550 Permit Place  
New Port Richey, FL 34655



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Rcpt: 1475884 Rec: 231.00  
DS: 0.00 IT: 0.00  
11/15/12 L. Korb, Dpty Clerk

**DEVELOPMENT AGREEMENT BETWEEN PASCO COUNTY AND  
ADAM SMITH ENTERPRISES, INC., DEVELOPER OF RECORD, FOR  
DEVELOPMENT OF REGIONAL IMPACT NO. 157, TRINITY COMMUNITIES**

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**THIS DEVELOPMENT AGREEMENT (DA)** is made and entered into by and between Pasco County, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter called "COUNTY," and Adam Smith Enterprises, Inc., a Florida corporation, the Developer of Record for Trinity Communities Development of Regional Impact (DRI) No. 157, hereinafter called "DEVELOPER."

**WITNESSETH:**

PAULA S. O'NEIL, Ph.D. PASCO CLERK & COMPTROLLER  
11/15/12 04:07pm 1 of 27  
OR BK 8785 PG 558

**WHEREAS,** the COUNTY approved a development order for the Trinity Communities DRI that has been amended over the years, and that is legally described in the Trinity Communities DRI development order (the "Project"). The actions of the COUNTY to approve and to amend the Trinity Communities DRI development order are collectively hereinafter referred to as the "Development Order" (DO);

**WHEREAS,** on June 23, 2009, the COUNTY approved a development order amendment with conditions for DRI No. 157 in response to a Notice of Proposed Change ("NOPC") for the DRI ("2009 DO Amendment"); and

**WHEREAS,** the Development Order sets forth the required mitigation for the transportation impacts of the Project, including impacts to SR 54/Community Drive intersection and SR 54/Trinity Boulevard intersection, which mitigation has been partially satisfied by the DEVELOPER to date and will be fully satisfied by the DEVELOPER through the payment of mobility fees in accordance with the 2009 DO Amendment; and

**WHEREAS,** DEVELOPER has prepared a traffic analysis for the build-out of the Project along Community Drive, including 650 additional single family units in Trinity Lakes (250) and Heritage Springs Phase B (400), 80,000 SF commercial and 180,000 SF office ("Community Dr. Build-out");

**WHEREAS,** COUNTY has reviewed and accepted the traffic analysis and has agreed that the following are the improvements to the SR 54/Community Drive intersection and the SR54/Trinity Boulevard intersection

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that will be designed, permitted and constructed for the Community Dr. Build-out ("Intersection Improvements"):

- a. Signalization of SR 54 and Community Drive ("Community Dr. Intersection Improvement").
- b. New eastbound to southbound turn lane 400 feet long at SR 54 and Trinity Boulevard intersection.
- c. Extend the existing westbound to southbound turn lane to a total length of 1,485 feet at SR 54 and Trinity Boulevard intersection.
- d. Extend the existing northbound to westbound turn lane to a total length of 245 feet at SR54 and Trinity Boulevard intersection.  
(b.,c. and d. are collectively referred to herein as the "Trinity Blvd. Intersection Improvements").

**WHEREAS**, in consideration for the agreement by DEVELOPER to design, permit and construct the Intersection Improvements for the County pursuant to this Agreement, COUNTY has agreed that design, permitting and/or construction of the Intersection Improvements shall not be a condition of approval for development of any Community Dr. Build-out entitlement.

**WHEREAS**, the COUNTY and DEVELOPER desire to enter into an agreement for the DEVELOPER to design, permit and construct the Intersection Improvements for the COUNTY and to set forth the parties respective obligations relating to same.

**NOW, THEREFORE**, in consideration of the mutual covenants and provisions herein contained and other good and valuable consideration, receipt, and sufficiency of which is hereby acknowledged, the COUNTY and the DEVELOPER hereby agree as follows:

1. WHEREAS CLAUSES

The WHEREAS clauses set forth above and all exhibits attached hereto are incorporated herein by reference and made a part of this DA.

2. PURPOSE

It is the purpose and intent of this DA to further set forth the terms and conditions for the DEVELOPER to design, permit and construct the Intersection Improvements for the COUNTY and to set forth the parties respective obligations regarding same. All terms and conditions of this DA shall be interpreted in a manner consistent with, and in furtherance of, the purposes as set forth herein.

3. GENERAL REQUIREMENTS

This DA shall be for the duration of ten (10) years, subject to any conditions precedent or termination provisions herein or mutual agreement, from the effective date of this DA. The effective date of this DA shall be upon execution by all parties.

4. FINANCE AND CONSTRUCTION OF INTERSECTION IMPROVEMENTS

a. DEVELOPER agrees to design, permit and construct the Intersection Improvements as set forth herein.

b. DEVELOPER agrees to commence the Intersection Improvements upon the effective date of this DA and to file applications for the required permits and/or approvals within 180 days thereafter.

c. DEVELOPER agrees to commence construction of the Trinity Blvd. Intersection Improvements in connection with construction of the infrastructure for the Trinity Lakes subdivision within the Project or within ninety (90) days of issuance of all necessary permits/approvals. DEVELOPER shall complete construction of the Trinity Blvd. Intersection Improvements within a year of commencement of construction.

d. DEVELOPER agrees to commence construction of the Community Drive Intersection Improvement in connection with construction of the infrastructure for the Trinity Lakes subdivision within the Project or within ninety (90) days of issuance of all necessary permits/approvals. DEVELOPER shall complete construction of the Community Drive Intersection Improvement within a year of commencement of

construction. In the event that the Florida Department of Transportation does not approve the signalization of Community Drive within one (1) year after DEVELOPER and/or COUNTY submits to FDOT for the permit/approval for same, then the DEVELOPER shall not be responsible for constructing such improvement or for any contribution thereto. In that event, the County shall be responsible for such improvement when the FDOT approves same, and DEVELOPER shall receive reimbursement/credits for 100% of any Reimbursable Amounts (as defined herein) incurred pursuant to the process set forth in Section 7 below.

e. COUNTY and/or FDOT shall provide all necessary rights of way for the Intersection Improvements at no cost of the DEVELOPER. DEVELOPER agrees to use its best efforts to design the Intersection Improvements to minimize the need, if any, for additional right of way. If any additional right of way is needed, the parties hereto agree to use their best efforts to first use property already owned by the COUNTY. If it becomes necessary for the COUNTY to acquire additional right of way, all commencement and completion dates shall be deemed automatically extended by the number of days it takes for the COUNTY to acquire the additional right of way. If the COUNTY is not able to reasonably acquire the additional right of way, in its sole determination, the COUNTY may terminate this agreement and DEVELOPER shall have no further obligations for the applicable Intersection Improvement. In such event, DEVELOPER shall receive reimbursements/credits for 100% of any Reimbursable Amounts (as defined herein ) incurred pursuant to the process set forth in Section 7 below.

f. DEVELOPER shall be responsible for thirty-three (33%) percent of the actual amount spent by DEVELOPER for the Community Dr. Intersection Improvement. DEVELOPER shall receive reimbursements in the form of cash reimbursements and MF credits as set forth in Section 7. for sixty-seven (67%) percent of the actual, reasonable amount spent by the DEVELOPER for the Community Dr. Intersection Improvement and one-hundred (100%) percent of the actual, reasonable amount spent by the DEVELOPER for the Trinity Blvd. Intersection Improvements. The procedures for such reimbursements/credits are set forth in Section 7. below.

g. For all purposes under this DA, the term(s) "commence" or "commencement" shall mean the submission of a draft bid package to the COUNTY for the applicable Intersection Improvements

and the term(s) "complete" or "completed" shall mean the applicable Intersection Improvements have been accepted by the COUNTY, the required Defect Guarantee has been provided and the applicable Intersection Improvements are open to the traveling public.

5. INTERSECTION IMPROVEMENTS DESIGN AND PERMITTING

a. Design, Permitting, and Construction Requirements: All design, permitting and construction for the Intersection Improvements shall be in accordance with the standards promulgated by the FDOT in accordance with Section 366.045, F.S. and the COUNTY, as applicable, and shall include, but not be limited to, cross sections, drainage, and plan/profile sheets.

b. COUNTY/FDOT Review and Approval of Design: The DEVELOPER shall complete and submit 100 percent design plans to the COUNTY and/or the FDOT, as applicable, for review and approval unless the FDOT and/or COUNTY agrees in writing to or have adopted an alternative submittal schedule. The DEVELOPER shall obtain approval of the 100 percent design and right-of-way plans for the Intersection Improvements from the COUNTY and/or the FDOT, as applicable, prior to commencement of any bidding of the Intersection Improvements. Any reviews and approvals by the COUNTY shall be completed by the COUNTY within thirty (30) days of submission by the DEVELOPER of complete and correct documents to the COUNTY. The COUNTY shall make a completeness review and notify the DEVELOPER within five (5) business days of receipt of the submission by DEVELOPER if not complete and correct. All plans once funded by the County, and/or once accepted and approved for construction by the COUNTY and/or FDOT, as applicable, shall become the property of the COUNTY and/or FDOT.

c. Permitting Requirements: The DEVELOPER and/or its contractor shall obtain any and all required permits for the work it is to perform from the COUNTY and/or FDOT, as applicable, and any and all applicable local and State regulatory agencies, including the Southwest Florida Water Management District. The COUNTY agrees to be the applicant for any permit/approvals required by FDOT for the Intersection Improvements and agrees that no separate COUNTY permits will be required

d. COUNTY Cooperation: The COUNTY agrees to use its best efforts to expedite the processing of the permit applications for the Intersection Improvements, and the DEVELOPER agrees to

use its best efforts to expeditiously secure all permits that are necessary for the design and construction of the Intersection Improvements. COUNTY agrees, immediately upon execution of this DA by all parties hereto, to use its best efforts to initiate and coordinate meeting(s) with FDOT, the Pasco County School District, and DEVELOPER, regarding the permitting/approval of the Community Dr. Intersection Improvement.

e. Utilities Relocation. The DEVELOPER shall coordinate the relocation of any utilities infrastructure in conflict with the Intersection Improvements, including COUNTY utilities. Relocation of any utilities infrastructure which is in conflict with the Intersection Improvements, including COUNTY utilities, shall be completed and paid for by the owner of the utilities infrastructure to the extent required by Sections 337.403-337.404, F.S. COUNTY shall ultimately be responsible for ensuring that any COUNTY utilities are relocated in a timely manner at the sole cost of the COUNTY Utility Department. The COUNTY, agrees, upon the request of DEVELOPER, to cooperate with the DEVELOPER, in requiring the relocation of any such utilities infrastructure to the extent allowed by Sections 337.403-337.404, F.S., in a timely manner.

6. INTERSECTION IMPROVEMENTS BIDDING AND CONSTRUCTION

a. The DEVELOPER shall comply with the bidding procedures set forth in the County's Developer Pipeline Project Provisions document attached hereto and incorporated herein as Attachment 1, unless otherwise approved by the County Administrator. The contract(s) for the Intersection Improvements shall be separate from the DEVELOPER'S contract(s) for construction of infrastructure for the Trinity Lakes Subdivision or any other development.

b. Intersection Improvements Construction. The DEVELOPER shall complete the construction of the Intersection Improvements in accordance with the final alignment, design, specification, and construction plans as approved by the COUNTY and other applicable Federal, State, and regional regulatory agencies.

c. Tender of Improvement Area: Upon the issuance of Notice to Proceed by the DEVELOPER to its contractor, the area covered by that Notice to Proceed shall be deemed to be tendered to the DEVELOPER'S contractor, and such entity shall be in the custody and control of the project areas. The DEVELOPER'S contractor shall be responsible for providing a safe work zone for the public.

d. COUNTY & FDOT Observation: The COUNTY's and/or FDOT's personnel and authorized representatives, as applicable, reserve the right to inspect, observe, and materials-test any and all work associated with the Intersection Improvements and shall at all times have access to the work being performed pursuant to this DA for the COUNTY'S and/or FDOT's observation. However, should the COUNTY and/or FDOT observe any deficiencies inconsistent with the plans or construction not in accordance with the specifications, the COUNTY and/or FDOT shall notify the DEVELOPER and its representative in writing, and the DEVELOPER shall, at its cost, correct the deficiencies as necessary. Nothing herein shall require the COUNTY and/or FDOT to observe or inspect the work of the Intersection Improvements. The DEVELOPER shall be solely responsible for ensuring that the Intersection Improvements are constructed in accordance with the plans, specifications, and required standards. Observations by the COUNTY and/or FDOT or their inspectors that do not discover that construction is not in accordance with the approved plans, specifications, and required standards shall not be deemed a waiver of the DEVELOPER'S requirements herein.

e. Construction Requirements: During the construction phase of the Intersection Improvements, the DEVELOPER and/or its construction contractor(s) shall:

(1) Provide its own on-site inspection and observation under the direction of a professional engineer registered in the State of Florida for the purpose of observing and inspecting the progress and quality of the work and to ensure that it is constructed according to the plans, contract documents, and specifications.

(2) The Construction Engineering and Inspection (CEI) contractor shall be approved by the County.

(3) Obtain the necessary Right-of-Way Use Permit(s) from the FDOT.

(4) Be responsible for supervising and inspecting the construction of the Intersection Improvements and shall be responsible for ensuring the accuracy of all reference points, grade lines, right-of-way lines, and field measurements associated with such construction.

(5) Be responsible for full and complete performance of all construction activities required pursuant to this DA. The DEVELOPER'S contractor shall be responsible for the care and

protection of any materials provided or work performed for the Intersection Improvements until the improvements are completed and accepted by the COUNTY and/or FDOT, which acceptance shall not be unreasonably withheld.

(6) Require testing by an independent laboratory, acceptable to the COUNTY and/or FDOT, as applicable, in accordance with the COUNTY Engineering Services Department's and/or FDOT, as applicable, testing specifications for construction of roads, stormwater drainage, and utilities as applicable. Any failed tests shall be reported to the COUNTY Engineer and/or FDOT, as applicable, immediately and all test reports shall be provided on a quarterly basis to the COUNTY Engineer and/or FDOT, as applicable.

(7) Provide a certification from a professional engineer registered in the State of Florida which shall certify that all designs, permits, and construction activities for the Intersection Improvements are in substantial conformance with the standards established by the FDOT pursuant to Section 336.045, Florida Statutes, and by the COUNTY, as applicable. The said certification shall conform to the standards in the industry and be in a form acceptable to the COUNTY and/or FDOT.

(8) Provide to the COUNTY and/or FDOT, as applicable, copies of all design drawings, as-built drawings, and permits received for the Intersection Improvements, and such information shall become the property of the COUNTY upon submission. All plans submitted to the COUNTY and/or FDOT, as applicable, shall include electronic files compatible with *AutoCADD*.

7. MOBILITY FEES, CREDITS AND REIMBURSEMENTS

a. The Project shall be assessed mobility fees in accordance with the COUNTY'S adopted mobility fee regulations as amended and this DA.

b. Upon the effective date of this DA, COUNTY agrees to budget, in a MF account, any roadway/interstate (SIS) portion of the mobility fees paid to the COUNTY from within the Project ("Trinity MF Paid Account"). The Trinity MF Paid Account shall not include the bicycle/pedestrian, transit or administrative portions of the mobility fees paid to the COUNTY from within the Project. The DEVELOPER shall not be eligible for any interest on the Trinity MF Paid Account.

c. The process for DEVELOPER to receive mobility fee credits against the roadway/interstate (SIS) portion of the mobility fees ("MF Credits") for the actual, reasonable amounts spent for the Intersection Improvements is as follows. Actual, reasonable amounts spent by the DEVELOPER for the Intersection Improvements shall include design, permitting and construction costs, bonding and insurance costs, testing and CEI expenses and services (shall be submitted on an hourly rate basis) ("Creditable Expenditures"). Creditable Expenditures for Design & Permitting and CEI shall not exceed the following:

- (1) Design and Permitting \$100,000.00
- (2) Construction Engineering and Inspections 10% of the total project cost

However, in no event shall the total MF Credits for the Community Dr. Intersection Improvements exceed 67% of the total Creditable Expenditures for said improvement.

d. Upon commencing design of the Intersection Improvements, the DEVELOPER shall be eligible to apply for and receive MF Credits in the Trinity MF Credit Account for Creditable Expenditures. Requests for credits may be submitted to the COUNTY at a frequency no greater than monthly and in accordance with the guidance outlined in the County's "Developer Pipeline Project Provisions" document, unless otherwise provided for herein. COUNTY shall establish a credit in the Trinity MF Credit Account for all undisputed Creditable Expenditures within sixty (60) days of submittal. Any disputed amounts not approved prior to the end of the sixty (60) day period, will be carried over to the next submittal for credit or denial. Should any amount be denied for credit, the DEVELOPER may appeal such decision in a manner

consistent with the adopted mobility fee regulations. All such requests and invoices shall be submitted to the COUNTY within ninety (90) days of final acceptance by the FDOT and/or COUNTY as applicable, or for amounts under dispute, no later than ninety (90) days after the conclusion of the dispute, unless extended by the County Administrator or his designee. The COUNTY agrees to place the Intersection Improvements in the CIP for the appropriate fiscal year(s) and to keep the Intersection Improvements in the CIP to the extent necessary to allow for the MF Credits provided for herein.

e. Simultaneously with the first two requests for credit issuance, DEVELOPER may apply to exchange MF Credits to be established in the Trinity MF Credit Account for cash reimbursements from the Trinity MF Paid Account. Thereafter, requests to exchange MF Credits in the Trinity MF Credit Account for cash reimbursements from the Trinity MF Paid Account may be submitted to the COUNTY at a frequency of no greater than quarterly. All such exchange requests shall include documentation identifying the amount of the roadway/interstate mobility fees the DEVELOPER believes have been collected by the COUNTY since the DEVELOPER's last exchange request and identifying the corresponding lots, parcels and/or addresses. To the extent that funds exist in the Trinity MF Paid Account, County shall make the cash reimbursement payment to the DEVELOPER within sixty (60) days of submittal. The cash reimbursement payment to the DEVELOPER shall be subject to all other requirements of the Prompt Payment Act. All cash reimbursements from the Trinity MF Paid Account shall result in a corresponding decrease in the Trinity MF Credit Account. In no event shall DEVELOPER receive cash reimbursements from COUNTY from any account other than the Trinity MF Paid Account.

f. Nothing herein shall alter or impact the requirement that end users of Phase 1 entitlements are required to pay a sum equal to 25% of the roadway/interstate and bicycle/pedestrian portions of the mobility fee to the DEVELOPER in accordance with the DO, as may be amended, and to present a letter to the COUNTY executed by the DEVELOPER regarding same ("Phase 1 75% Eligibility Letter"). End users of Phase 1 entitlements are also required to pay to the COUNTY 75% of the roadway/interstate and bicycle/pedestrian portions of the mobility fee in accordance with the DO, as may be amended ("75% MF Phase 1 Payment") and 100% of the transit and administrative portions of the mobility fee, less any assigned

credits. End users of Phase 1A entitlements are required to pay to the County 100% of the mobility fee, less any assigned credits.

g. DEVELOPER may sell and assign MF Credits received pursuant to this Agreement to end users within the project (and end users outside of the project to the extent allowed by the mobility fee regulations) and execute credit letters to be presented to the County ("MF Credit Letters"). The MF Credit Letters shall be separate from the Phase 1 75% Eligibility Letter. MF Credits received pursuant to this agreement may only be used for the roadway/interstate portion of the mobility fee. End users may not use MF Credits for the bicycle/pedestrian, transit and administrative portions of the mobility fee, even if the end user has paid the DEVELOPER for 25% of the bicycle/pedestrian portion of the mobility fee pursuant to Section 7.f. above. It is anticipated that, to the maximum extent possible, MF Credit letters will be submitted to the COUNTY whenever the DEVELOPER has COUNTY approved MF Credits to cover the mobility fees that are due.

h. It is recognized that end users of Phase 1 Project entitlements may inadvertently pay the COUNTY 100% of the roadway/interstate and bicycle/pedestrian portions of the mobility fee resulting in a 25% overpayment of the roadway/interstate and bicycle/pedestrian portions of the mobility fee (or such percentage pursuant to a DO Amendment) ("MF Overpayment"). In that event, and notwithstanding anything to the contrary herein, DEVELOPER shall be eligible to apply for (at a frequency no greater than quarterly) and receive cash reimbursements for the MF Overpayments. Cash reimbursements for MF Overpayments are independent of the reimbursements allowed pursuant to Section 7.e. above, and MF Overpayment reimbursements shall not reduce the Trinity MF Credit Account. Entitlements that utilize MF Credit letters from the DEVELOPER shall not be deemed entitlements that have inadvertently paid the COUNTY 100% of the roadway/interstate and bicycle/pedestrian portions of the mobility fee, because DEVELOPER has ample opportunity to prevent an inadvertent payment from such entitlements through the issuance of the Phase 1 75% Eligibility Letter and the MF Credit letter.

8. PERFORMANCE, PAYMENT AND DEFECT GUARANTEES

a. Performance and Payment Guarantees: Prior to commencing construction of the applicable Intersection Improvement, DEVELOPER shall require that the DEVELOPER'S contractor post in favor of the COUNTY and DEVELOPER and provide the COUNTY, for its approval, performance and payment guarantee(s) acceptable to the COUNTY and DEVELOPER to guarantee payment of the contractors obligations as required by law and to guarantee CONTRACTOR'S performance of its contractual obligations. The performance and payment guarantee(s) shall be with a bank, surety, or other financial institution acceptable to the COUNTY and DEVELOPER, which is authorized to do business in the State of Florida, and which has an "A" policyholders rating and a financial rating of at least Class VII in accordance with the most current Best's Key Rating Guide. The performance and payment guarantee(s) shall be in the amount of 100% of the Construction Contract amount. Upon final acceptance of the applicable Intersection Improvements by the COUNTY, and if the performance guarantee does not cover the defect guarantee, the County Administrator or designee shall within forty-five (45) days present an agenda item to the Board of County Commissioners to release the performance guarantee and accept the defect guarantee required below.

b. Defect Guarantees:

(1) Community Dr. Intersection Improvements: Upon completion of the Community Dr. Intersection Improvements and final acceptance by the COUNTY the DEVELOPER'S contractor shall guarantee to the COUNTY that all equipment furnished and work performed is free of defects in workmanship or materials for a period of one (1) year after final acceptance, and, that if any part of the construction should fail within this period, it shall be repaired, replaced, and/or restored to satisfactory condition and/or operation at no cost to the COUNTY or DEVELOPER. The performance guarantee for the applicable Intersection Improvements may cover this guarantee, if it remains in place for a period of one (1) year after final acceptance in an amount equal to fifteen percent 15% of the applicable construction contract amount or the DEVELOPER'S contractor may post a separate defect guarantee acceptable to the COUNTY and the DEVELOPER. The DEVELOPER'S contractor is required to advise the DEVELOPER and the COUNTY of the warranty option it has selected prior to the parties' final acceptance of the applicable Intersection

Improvements. DEVELOPER shall be responsible for requesting, in writing, a final inspection from the COUNTY'S Engineering Inspections Division not before ninety (90) days prior to the termination of the one (1) year defect guarantee period. Upon receipt of the request for final inspection, the Engineering Inspections Division shall notify the DEVELOPER within ten (10) days of such request, providing a list of defects in workmanship or materials to be remedied by DEVELOPER or its contractor before the expiration of the one (1) year defect guarantee period. Upon the remedy of any defects in materials or workmanship, or in the case of no defects, but in any case no sooner than the expiration of the one (1) year defect guarantee period, the County Administrator or designee within forty-five (45) days shall present an agenda item to the Board of County Commissioners to release the defect guarantee.

(2) Trinity Blvd. Intersection Improvements: DEVELOPER agrees that its Contractor shall provide any defect guarantee required by the FDOT for the Trinity Blvd. Intersection Improvements. The COUNTY shall be an additional beneficiary of said guarantee to the extent allowed by FDOT.

9. INDEMNIFICATION AND INSURANCE

a. Indemnification:

(1) The DEVELOPER shall indemnify and hold harmless the COUNTY and FDOT, and the employees and agents of the COUNTY and FDOT from and against all liabilities, claims, suits, demands, damages, losses, and expenses, including, but not limited to, attorneys' fees arising out of or resulting from the performance of the applicable Intersection Improvements, provided that any such liability, claim, suit, demand, damage, loss or any expense: (a) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the applicable Intersection Improvements itself), including the loss of use resulting therefrom; and (b) is caused in whole or in part by an act or omission of the DEVELOPER or anyone directly or indirectly employed by DEVELOPER, or anyone for whose acts any of them may be liable.

(2) The DEVELOPER shall indemnify and hold harmless the COUNTY and FDOT and anyone directly or indirectly employed by the COUNTY and/or FDOT from and against all claims, suits, demands, damages, losses, and expenses including, but not limited to, attorney's fees, arising out of any infringement of patent rights, copyrights, trademarks, trade dress, or other intellectual property rights held by others in connection with the performance of the applicable Intersection Improvements, and shall defend all such claims in connection with any alleged infringement of such rights.

b. Insurance - DEVELOPER'S contractor(s): Prior to the execution of the construction agreement for the applicable Intersection Improvements between DEVELOPER and its contractor, the contractor shall provide DEVELOPER a certificate of insurance and a true and exact copy of all insurance policies, including additional insured endorsements. Said insurance coverage, and contracts for insurance other than Worker's Compensation and Employer's Liability Policy, shall name the following as additional insureds:

DEVELOPER  
Adam Smith Enterprises, Inc.  
43309 US Highway 19 North  
Tarpon Springs, Florida 34689

COUNTY

Pasco County, Florida  
Pasco County Government Center  
Attn: John J. Gallagher, County Administrator  
7530 Little Road, Suite 310  
New Port Richey, FL 34654  
Fax: (727) 847-8084

Florida Department of Transportation ("DEPARTMENT")  
605 Suwannee Street  
Tallahassee, FL 32399  
Telephone: (850) 414-4100

c. General Conditions For All Required Policies: All insurance shall be provided by responsible companies authorized to transact business in the State of Florida which have an "A" policyholder's rating and a financial rating of at least Class VIII in accordance with the most current Best's Key Rating Guide.

Developer's contractor(s) will provide evidence of insurance coverage as follows:

To the DEVELOPER:

One (1) true and exact copies of all required insurance policies, including additional insured endorsements, and

One (1) original, executed Certificate of Insurance on the form provided by the County.

To the COUNTY:

One (1) true and exact copy of all required insurance policies, including additional insured endorsements, and

Four (4) original, executed Certificate of Insurance on the accord form provided by the County

To the DEPARTMENT:

One (1) true and exact copies of all required insurance policies, including additional insured endorsements, and

One (1) original, executed Certificate of Insurance on the accord form provided by the County.

The Certificate should set forth the original signatures of the authorized representative of the insurance company(ies) identified. The Certificate should also reference the Agreement between the DEVELOPER and its contractor for the applicable Intersection Improvements.

All policies shall require the insurer to deliver to the DEVELOPER and the COUNTY thirty (30) days written notice prior to any cancellation, intent not to renew or reduction in coverage and ten (10) days written notice of any nonpayment of premium. Such notice shall be delivered by U.S. Mail to the above addresses.

The insurance required herein shall be primary to any insurance or self-insurance program of the DEVELOPER or the COUNTY which is applicable to the work provided.

The COUNTY shall have the right to review and approve the provided insurance coverage prior to the execution of the construction agreement or issuance of the Notice to Proceed, whichever is earlier.

Insurance Certificates and Policies provided by the DEVELOPER'S contractor will provide evidence of insurance coverage in amounts as follows:

The insurance carrier is required to waive its rights of subrogation against the DEVELOPER and the COUNTY as well as their agents and employees.

Employer's Liability:	\$1,000,000 per accident
Commercial General Liability:	\$2,000,000 general aggregate
Product & Complete Operations:	\$2,000,000 general aggregate

Bodily Injury (including death):	\$1,000,000 per person \$2,000,000 per occurrence
Personal Injury & Advertising Injury:	\$500,000 per occurrence
Property Damage:	\$1,000,000 per occurrence
Fire Damage:	\$500,000 per any (1) fire
Hired & Non-Owned Autos or Automobile - Owned Bodily /Personal Injury Property Damage:	\$1,000,000 combined single limit
Excess/Umbrella Liability:	\$3,000,000 per occurrence \$3,000,000 general aggregate

d. Insurance - DEVELOPER'S Engineer: Prior to the execution of the agreement for the applicable Intersection Improvements between DEVELOPER and its engineer, the engineer shall provide DEVELOPER and COUNTY evidence of insurance coverage as follows:

Professional Errors and

Omissions Liability: \$1,000,000 per occurrence

Occurrence from professional liability insurance is preferred, however, in the event the engineer is only able to secure claims made professional liability insurance, the engineer shall be obligated in the agreement between the DEVELOPER and the engineer to maintain insurance in effect with no less limits of liability nor any more restrictive terms and/or conditions for a period of five (5) years from the date of said agreement.

10. GENERAL PROVISIONS

a. Independent Capacity: The DEVELOPER and any consultants, contractors, or agents are and shall be, in the performance of all work, services, and activities under this DA, independent contractors and not employees, agents, or servants of the COUNTY and/or FDOT, or joint ventures with the COUNTY and/or FDOT. The DEVELOPER does not have the power or authority to bind the COUNTY and/or FDOT in any promise, agreement, or representation other than specifically provided for in this DA. The COUNTY and FDOT shall not be liable to any person, firm, or corporation who contracts with or provides goods or services to the DEVELOPER in connection with the Intersection Improvements, or for debts or claims

accruing to such parties against the DEVELOPER. There is no contractual relationship expressed or implied between the COUNTY and/or FDOT and any other person, firm, or corporation supplying any work, labor, services, goods, or materials to the DEVELOPER as a result of the Intersection Improvements.

b. Termination: Either party may terminate this DA upon the other party's failure to comply with the terms and conditions of this DA. The terminating party shall provide the other party with a written Notice of Termination, stating the party's intent to terminate and describing those terms and conditions with which the other party has failed to comply. If the other party has not remedied the failure or initiated good faith efforts to remedy the failure within thirty (30) days after receiving the Notice of Termination, or thereafter is not proceeding with due diligence to remedy the failure, the terminating party may terminate this DA immediately without further notice. This paragraph is not intended to replace any other legal or equitable remedies available to the parties under Florida law, but it is in addition thereto.

c. Contracts: All contracts entered into by the DEVELOPER for the Intersection Improvements shall be made in accordance with all applicable laws, rules, and regulations; shall be specified by written contract or agreement; and shall be subject to each paragraph set forth in this DA. The DEVELOPER shall monitor all contracts on a regular basis to ensure contract compliance.

d. Law Compliance: The DEVELOPER and the COUNTY will comply with all applicable Federal, State, and local laws, rules, regulations, and guidelines related to performance under this DA. In particular, the DEVELOPER verifies and affirms that it is in compliance with the 8 USC, Section 1324, prohibiting the employment either directly or by contract, subcontract, or exchange of unauthorized aliens in the United States. The COUNTY will consider the employment of unauthorized aliens by the DEVELOPER or by any contractor or vendor of the DEVELOPER during the term of the DA a violation of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this DA by the COUNTY.

e. Certification: The DEVELOPER shall provide certification to the COUNTY or FDOT, as applicable, under the seal and signature of a registered, professional engineer that the Intersection Improvements have been constructed in accordance with the standards promulgated by the FDOT in Section 336.045, F.S, COUNTY standards, the contract documents and this DA.

f. Notice: Whenever one (1) party gives notice to the other party concerning any of the provisions of this DA, including notice of termination, such notice shall be given by certified mail, return-receipt requested. The said notice shall be deemed given when it is deposited in the U.S. Mail with sufficient postage prepaid (notwithstanding that the return-receipt is not subsequently received). Notices shall be addressed as follows: Daniel Aldridge, Adam Smith Enterprises, Inc., 43309 US Highway 19 N, Tarpon Springs, FL 34689, with a copy to Barbara L. Wilhite, Esq., Barbara L. Wilhite, P.A., 2550 Permit Place, New Port Richey, FL 34655, the COUNTY, c/o Bipin Parikh, P.E., Assistant County Administrator (Development Services), West Pasco Government Center, 7530 Little Road, Suite 320, New Port Richey, Florida 34654, with a copy to David A. Goldstein, Chief Assistant County Attorney, West Pasco Government Center, 7530 Little Road, Suite 340, New Port Richey, Florida 34654. These addresses may be changed by giving notice as provided for in this paragraph.

g. Entire Agreement: This DA embodies and constitutes the entire understanding and agreement between the parties with respect to the transactions contemplated herein, and this DA supersedes all prior and contemporaneous agreements, understandings, representations, communications, and statements, either oral or written.

h. Modification and Amendment: Neither this DA, nor any portion hereof, may be waived, modified, amended, discharged, nor terminated, except as authorized by law pursuant to an instrument in writing, signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought and then only to the extent set forth in such instrument.

i. Waiver: The failure of any party to this DA to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this DA shall not be construed as a waiver of the violation or breach or of any future violation, breach, or wrongful conduct.

j. Contract Execution: This DA may be executed in several counterparts, each constituting a duplicate original, but all such counterparts shall constitute one (1) and the same agreement.

k. Gender: Whenever the contract hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and the neuter and vice versa.

- l. Headings: All article and descriptive headings of paragraphs in this DA are inserted for convenience only and shall not affect the construction or interpretation hereof.
- m. Construction: The parties hereby agree that each has played an equal part in the negotiation and drafting of this DA and, in the event any ambiguity should be realized in the construction or interpretation of this DA, the result of such ambiguity shall be equally assumed and realized by each of the parties to this DA.
- n. Cancellation: This DA may be canceled by mutual consent of the parties to the DA.
- o. Third Party Beneficiaries: Nothing in this DA shall be construed to benefit any person or entity not a party to this DA.
- p. Strict Compliance with Laws: The DEVELOPER agrees that acts to be performed by it in connection with this DA shall be performed in strict conformity with all applicable Federal, State, and local laws, rules, regulations, standards, and guidelines.
- q. Nondiscrimination: The DEVELOPER will not discriminate against any employee employed in the performance of this DA or against any applicant for employment because of race, creed, color, handicap, national origin, or sex. The DEVELOPER shall insert a similar provision in all contracts for the Intersection Improvements.
- r. Signatories Authority: By the execution hereof, the parties covenant that the provisions of this DA have been duly approved and signatories hereto are duly authorized to execute this DA.
- s. Right-of-Way Use Permit: The DEVELOPER shall obtain an appropriate Right-of-Way Use Permit from the COUNTY and/or FDOT, as applicable.
- t. Controlling Law: This DA shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any litigation arising from this DA shall be in Pasco County, Florida.
- u. Successors and Assigns: The DEVELOPER and owners may assign this DA and all its rights and obligations hereunder to any person, firm, corporation, or other entity, with the consent of the parties to this DA, which consent should not be unreasonably withheld or delayed, and any such assignee

shall be entitled to all the rights and powers of such participation hereunder. Upon any such assignment, such assignee shall succeed to all the rights and obligations of the assignor hereto, and shall, for purposes of specific rights and/or obligations assigned, or otherwise, all purposes hereof, be substituted for such participant.

v. Force Majeure: In the event the DEVELOPER'S or COUNTY'S performance of this DA is prevented or interrupted by consequent act of God, or of the public enemy, or national emergency, or a governmental restriction upon the use or availability of labor or materials, or civil insurrection, riot, racial or civil rights disorders or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, sinkholes, earthquake, or other casualty, disaster, or catastrophe, or judgment, or a restraining order or injunction of any court, the DEVELOPER or COUNTY shall not be liable for such nonperformance. This paragraph shall not apply to force majeure events caused by the DEVELOPER or under the DEVELOPER'S control, or caused by the COUNTY or under the COUNTY'S control, as applicable.

**IN WITNESS WHEREOF**, the parties hereto have by their duly authorized representatives executed this DA on the dates set forth below.



BOARD OF COUNTY COMMISSIONERS  
OF PASCO COUNTY, FLORIDA

Paula S. O'Neill  
PAULA S. O'NEILL, CLERK & COMPTROLLER

Ann Hildebrand

ANN HILDEBRAND, CHAIRMAN

Date: APPROVED IN SESSION

NOV 07 2012

PASCO COUNTY

ADAM SMITH ENTERPRISES, INC., a  
Florida corporation

WITNESSES:

Lydia M. Crider  
Lydia M. Crider

Barbara L. Wilhite  
Barbara L. Wilhite

Lew Friedland

BY:

LEW FRIEDLAND  
Print

Its PRESIDENT  
Title

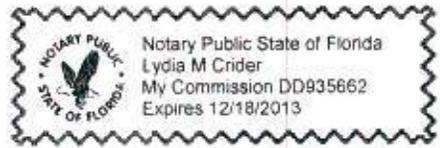
STATE OF FLORIDA  
COUNTY Pasco

The foregoing instrument was acknowledged before me this 14th day of November, 2012  
(date), by Lew Friedland, President of Adam Smith Enterprises, Inc.  
(name of person acknowledging), who is personally known to me or who has produced \_\_\_\_\_

\_\_\_\_\_  
(type of identification) as identification.

Seal:

Lydia M. Crider  
NOTARY



ATTACHMENT 1  
DEVELOPER PIPELINE BID PROCESS

## DEVELOPER PIPELINE BID PROCESS

### 1. Pasco County Engineering Services Department Standard Construction Provisions

Upon County approval of the related Development Agreement (DA) or other Board approved Agreement, all Developers who will be seeking compensation from the County (cash, transportation impact fee credits, etc., as provided under the County's Transportation Impact Fee (TIF) Ordinance, Mobility Fee Ordinance or economic development agreement) for the infrastructure improvements to be performed pursuant to the DA, or other Board approved Agreement will be provided with a set of the County's Standard Construction Provisions for Developer Pipeline Projects which the Developer shall incorporate into any final bid document prepared for the project. (The County reserves the right to modify its sample documents at its discretion.) The Pipeline Project shall be handled separately from the Developer's private construction projects.

### 2. Preparation of Bid Documents

A. The Developer shall be responsible for ensuring that all technical specifications and special conditions necessary for the completion of the proposed project are incorporated into the bid in addition to the County's conditions. If a governmental entity such as a Community Development District will be performing the work as the Developer or for the Developer, the bid should reflect whether or not the governmental entity reserves the right to make direct purchases of materials (which may be sales tax exempt) and/or whether the bidders should or should not include sales tax in their pay items for materials in their bid proposals.

B. The Developer must include a complete list of pay items and quantities for pay items in the bid for completion by the successful contractor.

C. The Developer must also include pay items and quantities for the County's portion of the work (that portion of work for which a credit will be sought).

(1) If County Design Plans are being used, the County will provide pay items and quantities.

(2) If the Developer is doing the design, the Developer or the Developer's engineer will be responsible for identifying the items and quantities specific to the County-specified work.

(3) At the time of submission of the bid, the Developer or the Developer's design engineer must certify that the County portion of the pay items does not include any site-related work for the Developer.

D. **Prior to advertisement**, the Developer must submit six (6) copies of the completed bid for review to the County's Engineering Services Department at the following address:

Engineering Services Department  
Program Administrator  
West Pasco Government Center  
8731 Citizens Drive, Suite 320

New Port Richey, FL 34654

NOTE: This contact information should be used for all deliverables required under these guidelines.

The County will have five (5) working days from receipt of the package to review and approve the pay items for the County's portion of the work and to confirm that the County's standard contract provisions are included. If the County objects to any part of the bid, the Developer shall address the objections to the County's satisfaction before advertising the project. If no objections are received from the County by the end of this time period, the Developer can proceed with advertising the project.

- E. The Developer must coordinate the date and time of the prebid meeting and bid opening with the County's Engineering Services Department.
- F. A complete bid document, including all technical specifications, plans, etc., must be available for prospective bidders on the date of the bid advertisement.

3. **Public Advertisement**

The Developer must advertise the project in a newspaper of general circulation in Pasco County (such as the Tampa Bay Time or Tampa Tribune) at least twice over a fifteen (15) day period prior to the bid opening date. The response deadline for bid proposals should be no less than thirty (30) days from the date of initial advertisement.

In addition, the Developer also has the discretion to advertise in any other trade publication or trade resource of its choice.

4. **Contents of Legal Ad**

- A. The bid opening date, as well as the date, time, and location of any mandatory or nonmandatory pre-bid meeting, will be determined by the Developer. This information must be included in the legal ad. The Developer is responsible, however, for coordinating the bid opening date with the County's Engineering Services Department prior to posting the advertisements.
  - See the sample advertisement form included in the County's standard contract package.
- B. The bidder should be directed to send all sealed bid proposals to a designated location. Upon prior notice to the County, the Developer has the option of having the proposals directed to the County at the following address:

Purchasing Department  
West Pasco Government Complex  
8919 Government Drive  
New Port Richey, FL 34654

5. **Developer Responsibilities During Bid Process**

- A. The Developer and/or their design engineering firm is responsible for answering any questions received from interested bidders and for ensuring that a copy of the responses provided are circulated to all potential bidders who purchased a set of the bid documents prior to the bid opening date. A copy of any bid addendums or RFIs should also be provided to the County at the time, such addendums are issued to the Bidders.
- B. The Developer will also be responsible for handling the prebid meeting. The County shall be notified in advance of any pre-bid meeting and reserves the right to have a representative present.

6. **Bid Opening and Post Bid Developer Obligations**

- A. The Developer shall open the bids at the date, time, and location designated in the legal ad in the presence of a County representative.
- B. The Developer is responsible for reviewing the bids and determining the lowest, responsive, responsible bid. A copy of the ranking (and at the County's request a copy of the proposals) shall be provided to the County prior to the Developer's award of the contract.
- C. The County shall have fifteen (15) days for review of the proposed final contract and to provide a statement of objection or no objection. The Developer shall also require the proposed contractor to submit the insurance information specified in the County's standard contract provisions to the County's Engineering Services Department for approval by the County at least seven (7) days prior to execution of the construction contract. If the County objects to any part of the contract or insurance, the Developer shall address the objections to the County's satisfaction before awarding the contract.
- D. If the County issues a statement of no objection, the Developer may proceed to award the contract for the project and shall execute a formal, written agreement containing the specific terms and conditions of the construction, as set forth in the approved contract documents and in the format previously accepted by the County.
- E. **Prior to the commencement of construction**, the Developer shall require the contractor to submit a copy of the Payment and Performance Bonds required for the project to the County's Engineering Services Department to confirm compliance with the provisions in the County's Standard Construction Provisions for Developer Pipeline Projects. These documents will be circulated to the Engineering Inspections Division and the County Attorney's office for review. The County will have seven (7) days to review the documents. If the County objects to any part of the bonds, the Developer shall address the objections to the County's satisfaction before issuing a Notice to Proceed to its contractor.
- F. The Developer shall promptly furnish to the County two (2) copies of the executed contract along with a copy of the Notice to Proceed issued to the contractor. During the course of the project, the Developer shall also be obligated to provide the County with any amendments, supplements to the agreement, or change orders thereafter executed.
- G. The County reserves their right to access the site and observe and comment on the work during the construction period.

H. Upon completion of the project and prior to final acceptance of the County work involved in the project, the Developer's contractor shall be required to provide the Warranty/Performance Guarantee to the County as provided in the County's standard contract provisions.

**7. Post Design/Post Construction Invoicing for Credits, Cash Reimbursement, or Other**

A. If the Developer seeks transportation impact fee credits, cash reimbursement, or other for the design, right-of-way, and/or construction work performed, the Developer shall prepare and submit two (2) complete sets of the following documentation to the County's Engineering Services Department:

- (1) Cover sheet signed by all applicable parties with the amount of the transportation impact fee credits, cash reimbursement, or other for disbursement by the County.
- (2) Summary sheet of all invoices, attached by vendor, with a cumulative total.
- (3) All backup invoices with proof of payment (copies of all canceled checks) attached to each invoice and any other documentation required as part of the bid and/or contract documents.
- (4) Copies of vendor agreements for the design, environmental issues, construction engineering and inspection services, construction management, etc., that are the subject of the request for impact fee credits, cash reimbursement, or other.
- (5) The County reserves the right to request the above information in electronic format.

B. Upon receipt of all documentation described above, County staff will have up to four (4) weeks to review and contact the Developer with a response. If there are no revisions or supplemental information required by the Developer, the County's Engineering Services Department will obtain the required signatures (the Assistant County Administrator for the Development Services Branch and the Budget Director for the Office of Management and Budget) and transmit the documentation to the Financial Services Department for establishment of the Developer's account and/or payment. If the Developer must prepare revisions to the documentation or provide supplemental information, up to four (4) additional weeks will be required to review this information before obtaining the required signatures and transmittal to the Financial Services Department. Further requests for additional information will require additional time for review by the County's Engineering Services Department.

**8. Compliance with Developer Pipeline Bid Process**

**A Developer's failure to comply with the provisions as outlined herein may be considered by the County as a breach of the underlying agreement and may impact the eligibility of the work performed for compensation from the County.**