



Cooper City Commission Meeting
Agenda Item Request Form

Commission Meeting/Workshop Date: July 17, 2018

Requesting Department: Utilities

Subject: _____

Section:

Presentation

Consent

Regular

Discussion

Background and Recommendation (attach backup material to Item Request Form):

This is a recommendation for Commission approval of the attached Water & Sewer Developer's Agreement for water and sewer service for O'Reilly Auto Parts, 4100 N. University Drive, Cooper City.

General Ledger Account Number(s) and Amount(s):

N/A

Approvals:

Finance Director _____

City Manager

City Clerk _____

RESOLUTION NO. 18-7-2

A RESOLUTION OF THE CITY OF COOPER CITY, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A WATER AND SEWER DEVELOPER'S AGREEMENT WITH O'REILLY AUTO PARTS, 4100 NORTH UNIVERSITY DRIVE; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF COOPER CITY, FLORIDA:

Section 1: That the Mayor and City Clerk be and hereby are authorized to execute a Water and Sewer Developer's Agreement with O'Reilly Auto Pars, 4100 North University Drive, a copy of which is attached hereto as Exhibit "A" and made a part hereof by this reference.

Section 2: This Resolution shall be in force and take full effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 17th day of July, A.D., 2018.

GREG ROSS
Mayor

ATTEST:

KATHRYN SIMS
City Clerk

ROLL CALL

Mayor Ross _____
Commissioner Sims _____
Commissioner Mallozzi _____
Commissioner Curran _____
Commissioner Green _____



COOPER CITY UTILITIES DEPARTMENT MEMORANDUM

DATE: June 19, 2018

TO: Bruce Loucks, City Manager

FROM: Michael F. Bailey, P.E., Utilities Director/City Engineer *MB*

SUBJECT: **Water and Sewer Developer's Agreement
O'Reilly Auto Parts**

This is recommendation for Commission approval of Water and Sewer Developer's Agreement for water and sewer service for O'Reilly Auto Parts, 4100 N. University Drive, Cooper City.

Also included, is a check in the amount of \$8,792.50.

Attachments

cc: Kathryn Sims, City Clerk/Dir. Admin. Svc.
Finance Department

The CITY OF COOPER CITY
WATER AND SEWER

DEVELOPER'S AGREEMENT

FOR: Monterra | O'Reilly Auto Parts
(NAME OF DEVELOPMENT)

GENERAL LOCATION: 4100 N. University Drive

Cooper City FL 33328

THIS AGREEMENT effective this 8th day of June, 2018,
made and entered into by and between:

THE CITY OF COOPER CITY, a municipal corporation of
The State of Florida, hereinafter called "CITY"

and

Boos-Cooper City LLC / Boos Florida Development LLC A Florida Limited Liability Co.
hereinafter called "DEVELOPER",

THIS AGREEMENT, made and entered into, this ____ day of June, 2018 by and between **The City of Cooper City**, a municipal corporation of the State of Florida, hereinafter designated as the "**CITY**", and Boos Cooper City LLC, a Florida Corporation, hereinafter designated as the "**DEVELOPER**".

WITNESSETH:

WHEREAS, the **DEVELOPER** desires water and sewer service to be rendered to property owned by the **DEVELOPER**, and **O'Reilly Auto Parts**

WHEREAS, the, **CITY** operates the water and sewage systems operated within the **CITY** boundaries.

NOW, THEREFORE, in consideration of the mutual covenants entered into between the parties hereto to be made and performed and in consideration of the benefits to accrue to each of the respective parties, it is covenanted and agreed to as follows:

1. **DEVELOPER'S PROPERTY.** The **DEVELOPER** owns a certain tract of land in the City of Cooper City, Florida, which is legally described in **Exhibit "A"** attached hereto and made a part hereof, hereinafter described as the "**PROPERTY.**" The **DEVELOPER** has requested that the **CITY** render water and sewer service to the **PROPERTY** and the **CITY** agrees to do so subject to the terms, covenants and conditions contained herein.

2. **WAIVER.** No delay or failure to exercise a right under this Agreement or any other Agreement shall impair or shall be construed to be a waiver thereof. No waiver or indulgence of any breach of this Agreement or series of breaches shall be deemed or construed as a waiver of any other breach of same or as voiding or altering any other obligation of the parties under this Agreement or any other Agreement. No order or directive given by the **CITY** or its agents shall be considered as waiving any portion of this Agreement unless done in writing by a person having actual authority to grant such waiver.

3. **DEVELOPER ACKNOWLEDGMENT.** The **DEVELOPER** hereby acknowledges and agrees that any right to connect the **PROPERTY** to the **CITY'S** water and sewer system is subject to the terms, covenants and conditions set forth in, any and all current, subsequent or future agreements, court orders, judgments, consent orders, consent decrees and the like entered into between the **CITY** and the United States, State of Florida and/or any other governmental entity, and all other current, subsequent or future enforcement and regulatory rules, actions and proceedings.

4. **PROVISION OF SERVICE AND CONSTRUCTION CHARGES.** The **CITY** will provide an adequate (domestic [] commercial [] industrial []) water supply for the

PROPERTY and will receive and dispose of sanitary sewage from the **PROPERTY** as provided herein. The **DEVELOPER** shall pay a one time Construction Charge in the amount of \$ 8,792.50 for the privilege of connecting to the subportion of the **CITY'S** water and sewer system designated in the copy of the final approved site plan attached hereto as Exhibit "C" (the "Subportion"). Said Construction Charges shall be deemed to be a reimbursement of **DEVELOPER'S** share of the costs of constructing the Subportion. Construction Charges received by the **CITY** from future developers connecting to the Subportion shall be used by the **CITY** to reimburse the **DEVELOPER** for that portion of the Subportion utilized by a future developer, as determined by the **City** pursuant to the **City Code**.

5. **GUARANTEED REVENUES.** **DEVELOPER** shall pay to **CITY** a fee to defray the cost to **CITY** of maintaining reserve water and sewer systems (the "**GUARANTEED REVENUE**"). The **GUARANTEED REVENUE** is equal to the applicable monthly service availability charge for water and sewer service.

a. **DEVELOPER** shall pay to **CITY**, **GUARANTEED REVENUES** when due, at the rates in effect when due, and as amended from time to time. **GUARANTEED REVENUES** are equal to the service availability charge for water and sewer service. **GUARANTEED REVENUES** are due and payable monthly.

b. The payment of **GUARANTEED REVENUES** required by this Agreement shall commence six (6) months after the effective date of this Agreement. Has a plat for the property been recorded with Broward County YES X NO. If **NO**, then **GUARANTEED REVENUES** commence one (1) year after the effective date of this

Agreement. **GUARANTEED REVENUES** shall be due for all UNITS or equivalent residential connections (ECR's) assigned to the **PROPERTY** unless otherwise specified by this Agreement. ERC refers to the assumed average daily flow of a detached single-family residential unit.

c. **GUARANTEED REVENUES**, if initiated, shall no longer accrue for a unit when metered water and sewer services are established at a particular building and the required customer deposits are paid to the **CITY**. However, if accounts are open in **DEVELOPER'S** name and closed without a new account being established, the **GUARANTEED REVENUES** shall resume.

d. The parties acknowledge the **GUARANTEED REVENUE** payments made by **DEVELOPER** shall be considered as revenue (income).

6. **CONTRIBUTION PAYMENTS FROM DEVELOPER.** Contribution charges are computed based upon the representations made by the **DEVELOPER** on the final approved site plan for the **PROPERTY**. A copy of the final approved site plan shall be reduced to 8 ½ ' x 14' and attached hereto as **Exhibit "C"**. The contribution charges for both water and sewer services shall be calculated according to the rates set by resolution of the City Commission and the payment of which shall be a condition precedent to the execution of this Agreement. The contribution charges applicable for this Agreement are summarized as follows:

CONTRIBUTION (WATER)

Residential..... # _____ Units X _____ ERC's Per Unit @ \$ _____ Per ERC
Non-Residential. # 2.5 ERC's @\$ 1,316.00 Per ERC
Total ERC's 2.5 (WATER)

CONTRIBUTION (SEWER)

Residential... .. # _____ Units X _____ ERC's Per Unit @ \$ _____ Per ERC
Non-Residential. # 2.5 ERC's @\$ 2,201.00 Per ERC
Total ERC's 2.5 (SEWER)

CONTRIBUTION CHARGES IN THE AMOUNT OF \$ 8,792.50 ARE DUE AT THE TIME THIS AGREEMENT IS APPROVED BY CITY COMMISSION.

Upon the **CITY'S** collection and expenditure of the Contribution Charge for the construction of the **CITY'S** utility system which is intended to enable the **CITY** to serve the **PROPERTY**, all Contribution Charges shall become non-refundable.

7. **OTHER USES ON THE PROPERTY.** If the **DEVELOPER** constructs buildings other than those outlined in **Exhibit "D"** attached, or otherwise changes the use of structures built at the **PROPERTY**, the **CITY** shall determine if additional capacity is needed, as calculated using **Exhibit "D"** attached hereto. If additional capacity is required, additional connection charges, computed at prevailing rates, capacity allocation, if available, and construction connection charges, if any, shall be required of the **DEVELOPER**. If requested by the **CITY**, the **DEVELOPER** shall provide the **CITY** a list of all tenants and building units and/or use prior to the installation of any water meters by the **CITY** for the **PROPERTY**. The **CITY** may require **DEVELOPER** to make certain modifications to **CITY'S** water and sewer systems in order to alleviate the burden that providing service to the **PROPERTY** has on the systems. The required modifications are set forth in **Exhibit "E"** and shall be performed by **DEVELOPER** at **DEVELOPER'S** sole

cost and expense. The **DEVELOPER** will not receive a Certificate of Occupancy prior to the completion of the required modifications.

8. **DESIGN AND CONSTRUCTION OF FACILITIES.** The **DEVELOPER** at its own cost and expense shall cause to be designed, constructed and installed all of the necessary water and/or sewer facilities provided for in this Agreement unless otherwise specified. The facilities shall include any and all water mains, valves, fittings, fire hydrants, firelines, service connections, service lines, shutoffs, meter boxes, air release valves, gravity sewer mains, laterals, manholes, and all appurtenances thereto for a complete installation. The final design and construction of the facilities shall be subject to approval by the **CITY** and require an engineering permit from the Office of the City Engineer.

9. **INSPECTION.** **DEVELOPER** shall, at its sole cost and expense, retain the services of a licensed engineer for the purposes of providing necessary inspection and supervision of the work performed to ensure compliance with accepted engineering practices as well as with the approved plans and specifications. **DEVELOPER** shall notify the **CITY** in writing within five (5) days of such an engagement. A copy of each field report shall be submitted to the **CITY** by the engineer. The **CITY** shall retain the right, but not be obligated, to make engineering inspections of all the construction work performed by the **DEVELOPER** under the terms of this Agreement including private facilities not to be conveyed to the **CITY**. Such inspections shall not be construed to constitute any representation or guarantee on the part of the **CITY** as to the quality and condition of materials and workmanship. Any inspections by the **CITY** shall not relieve the **DEVELOPER** of any responsibility for proper construction of said facilities in accordance

with approved plans and specifications. Furthermore, any inspections by the **CITY** shall not relieve the **DEVELOPER** of responsibility for the quality and condition of materials and workmanship.

10. **TESTS.** During construction and at the time when various tests are required, the **CITY'S** engineer or its authorized representative, together with the **DEVELOPER'S** engineer and contractor, shall jointly be present to witness tests for determination of conformance with approved plans and specifications. The **DEVELOPER** shall notify the **CITY** a minimum of twenty-four (24) hours in advance of the tests. Copies of test results shall be furnished to the **CITY** upon the completion of each test.

11. **CONSTRUCTION MEETINGS.** **DEVELOPER** shall arrange for a pre-construction meeting with the **CITY** prior to the commencement of each phase of construction. Notification for each meeting shall be made in writing and must be received by all parties at least seventy-two (72) hours in advance of the proposed meeting. The meeting shall be held at least twenty-four (24) hours prior to the commencement of each phase of construction. The **CITY** reserves the right to schedule construction meetings with the **DEVELOPER'S** representatives (Engineer, Project Manager, Construction Superintendent and others) at a place designated by the **CITY** with respect to project related matters upon twenty-four (24) hours notice.

12. **SUBCONTRACTORS AND CONSULTANTS.** The **CITY** reserves the right, at any time, to bar any subcontractor or consultant employed by the **DEVELOPER** from engaging in any sort of work or activity related to this Agreement, if such be in the interests of the **CITY**. In the event the **CITY** rejects any subcontractor or consultant, said

subcontractor or consultant will immediately cease work on anything related to this Agreement. The **DEVELOPER** shall not be entitled to compensation for any monies previously paid to any subcontractor or consultant if said subcontractor or consultant is rejected by the **CITY**.

13. **COMPLIANCE WITH ALL LAWS.** The **DEVELOPER**, at its own cost and expense, shall comply with all applicable laws, statutes, rules, and ordinances in carrying out the activities contemplated herein.

14. **APPROVALS AND PERMITS.** The **DEVELOPER** shall be fully responsible for obtaining all required approvals from all appropriate governmental and regulatory agencies and all necessary permits for all facilities contemplated in this Agreement. Notwithstanding anything else contained herein to the contrary, this Agreement shall not constitute or be interpreted as a waiver of any requirements of any other agency of Broward County and/or any requirements of the Code the City of Cooper City or of the Code of Broward County. The **DEVELOPER** is responsible for obtaining all permits as may be required for the work contemplated herein.

15. **CITY AS PERMITTEE.** Certain federal, state and county agencies, including but not limited to the State of Florida Department of Transportation, the South Florida Water Management District, the Central Broward Water Control District, the U.S. Army Corps of Engineers and Florida railway entities may require that the **CITY** be named as permittee for certain construction activities even though the **DEVELOPER'S** contractor will actually perform the work. To insure that the **CITY** will incur no costs or liability as a result of being

named permittee on such permits, the **DEVELOPER** shall provide sufficient security as acceptable to the **CITY** which shall indemnify and protect the **CITY** from all claims, actions, judgments, liability, loss, cost and expense, including reasonable attorney's fees, related to work performed by the **DEVELOPER** pursuant to such permits. The security shall be furnished prior to the start of construction and shall be in an amount equal to the **CITY'S** cost estimate for the permit work. The **DEVELOPER** shall have sixty (60) days to resolve any claims by a permittor. Otherwise, the **CITY** shall be entitled to pay said claims from the security. The **DEVELOPER** shall be liable for all costs in excess of the security.

16. **OWNERSHIP OF WATER METER.** The **CITY** shall own and install the required water meter as a part of any water service installation. Ownership by the **CITY** shall terminate at the outlet side of each water meter. The **DEVELOPER** shall pay all applicable installation charges.

17. **TREATMENT AND TRANSMISSION CAPACITY.** In addition to the covenants and conditions set forth herein, water and sewer service to be rendered by the **CITY** is subject to the following:

- a. issuance of a valid operation permit by the State of Florida for the **CITY'S** sewage treatment facility serving the **PROPERTY** which allows additional connections,
- b. sufficient available capacity in the **CITY'S** sewage system and connection approval,
- c. available water by the **CITY**.

However, in no event will the **CITY** be obligated to supply any more water or sewage treatment capacity in any one year than is called for by the building connection schedule attached as **Exhibit "D"**. Any variation from said connection schedule which results in increased yearly demand on the water resources or sewage treatment facility capacity of the **CITY** not specifically provided for in **Exhibit "D"** shall be subject to the written approval and consent of the **CITY** and shall be dependent on the availability of the water resource and the various restrictions placed on the supply of water or the disposal of sewage by local, state and federal government agencies and the physical limitations on the **CITY'S** supply and treatment capacity. If the **DEVELOPER** does not utilize the yearly amount of water or sewage treatment facility allocation projected in **Exhibit "D"**, said amount will be available to the **DEVELOPER** in the next calendar year subject to the limitations and provisions specified herein.

18. **ALLOCATION OF CAPACITY.** The **CITY** agrees to include the aforesaid allocation in its regional water supply, production and transmission facilities and regional sanitary sewer system, once the **DEVELOPER** is granted necessary sewer allocation. However, it is mutually agreed and understood by the **CITY** and the **DEVELOPER** that the allocation of capacity by the **CITY** does not guarantee the ability of the **CITY** to supply water for the **PROPERTY** or the ability to receive and dispose of sewage originating from the **PROPERTY**. Capacity allocation is subject to local, state and federal agencies and other regulatory bodies having jurisdiction. In connection therewith, the **DEVELOPER** agrees that the **CITY** shall not be liable or in any way responsible for any costs, claims or losses incurred by the **DEVELOPER** as a result of actions by regulatory bodies, which are related to capacity allocation.

19. **FACILITIES EASEMENTS.** If the facilities contemplated herein or any portion thereof are installed within private property outside of public right-of-way, the facilities shall be installed in the center of a twelve (12) foot wide easement for water facilities and fifteen (15) foot wide easement for sewer facilities. Both require a twenty-five (25) foot minimum vertical clearance above the finished grade. The **CITY** shall have twenty-four (24) hour access to the easement for emergency purposes. If the facilities are not located in platted easements, then easements shall be granted to the **CITY** by the **DEVELOPER** prior to the **CITY'S** installation of a water meter and/or the rendition of sewer service to the **PROPERTY**. The **DEVELOPER** may not place any structures in an easement area which would prevent the **CITY**, at its sole discretion, from making full use of the easement, and the **DEVELOPER** shall remove same, at the **DEVELOPER'S** cost, at the direction of the **CITY**. The **DEVELOPER** may place structures in the easement area if such structures may be removed, with minimal effort by the **CITY**. In the event that such structures need to be removed in order for the **CITY** to make use of the easement; the **DEVELOPER** hereby recognizes that **DEVELOPER** has placed such structures in the easement area at **DEVELOPER'S** own risk, and that the **CITY** shall not be liable for any costs incurred by the **DEVELOPER** in replacing any such structures removed by the **CITY**.

20. **CONVEYANCE OF TITLE.** Conveyance of all easements shall be by separate instruments in recordable form as approved by the **CITY** and shall be accompanied by a written opinion of title by an attorney licensed to practice law in the State of Florida, which states that the **DEVELOPER** is the owner of the property interest to be

conveyed, subject only to liens, encumbrances and restrictions as are acceptable to the **CITY**. The opinion shall also state that upon execution by the **DEVELOPER**, a valid and enforceable easement will be vested to the **CITY**. The **DEVELOPER** shall pay for all applicable recording fees and for all applicable documentary stamps. The details for all conveyances are specified herein. Failure of the **DEVELOPER** to provide proper conveyances shall be cause for the **CITY** to refuse to render service to the **PROPERTY**.

21. **DRAWINGS AND CONVEYANCE DOCUMENTS.** Following completion of the water and/or sewer facilities contemplated herein for **CITY** ownership, the **CITY** shall provide conveyance documents, which may include bills of sale, releases of lien and grants of easement for execution by the **DEVELOPER**. The properly executed documents shall be delivered to and accepted by the **CITY** prior to the rendition of water and/or sewer service by the **CITY**. The **DEVELOPER** shall pay for all applicable recording fees and for all applicable documentary stamps. These conveyances shall be accompanied by copies of paid bills and/or lien waivers, releases, or satisfactions from all persons who performed work on the **PROPERTY** or on the water and/or sewer facilities and all persons who incorporate materials into the **PROPERTY** or into the water and/or sewer facilities, together with a breakdown of the actual cost of said facilities. Concurrently, the **DEVELOPER** shall furnish the **CITY** with one (1) set of mylar as-built drawings showing specific locations and depths among other things, of all facilities as located by a licensed surveyor, along with four (4) prints of the as-built drawings which have been sealed by a surveyor and certified by the engineer of record. An additional copy of As-Built drawings shall be provided in an electronic format compatible with the C.A.D. format. Approval by the **CITY** of all required conveyance documents, drawings and survey specified herein shall constitute final

acceptance by the **CITY** of said facilities. After final acceptance, the facilities shall remain at all times the sole, complete, and exclusive property of the **CITY** and under the exclusive control and operation of the **CITY**.

22. **WARRANTY AND MAINTENANCE BOND.** The **DEVELOPER** warrants that the water and sewer facilities to be owned by the **CITY** shall be free from defects in materials and workmanship for a period of one (1) year from final acceptance by the **CITY**. At the time of execution of this Agreement, **DEVELOPER** shall deliver to the **CITY** a performance bond or other security in a form acceptable to the City Attorney in an amount equal to one hundred ten (110) percent of the estimated cost of construction as approved by the **CITY**. Upon completion of construction and simultaneously with the transfer of the water and/or sewer facilities to the **CITY**, the Bond shall be reduced to twenty-five (25) percent of the certified completed cost of the water and/or sewer facilities. The remaining Bond shall be held for an initial one (1) year period and shall act as a maintenance bond, which shall guarantee the warranty. Release of the remaining Bond shall be contingent upon the satisfactory inspection of all improvements, and the approval of the City Commission. If it becomes necessary to repair and/or replace any part of the facilities during the initial one (1) year period, then the warranty as to those items repaired and/or replaced shall continue to remain in effect for an additional period of one (1) year from the date of final acceptance by the **CITY** of those repairs and/or replacements. The bonds shall have as the surety thereon only such surety company as is acceptable to the **CITY** and which is authorized to write bonds of such character and amount under the laws of the State of Florida.

23. **CONDITION OF AGREEMENT.** Both the **DEVELOPER** and the **CITY** recognize that time is of the essence and that this Agreement shall be deemed null and

void and unenforceable if the **DEVELOPER** fails to comply with any of the following conditions, where applicable:

- a. After execution of this Agreement, work on the water and/or sewer facilities shall commence within one hundred eighty (180) days from the execution date. Work shall be considered to have commenced and be in active progress when engineering drawings are submitted to the **CITY** for review and approval, and, upon the **CITY'S** issuance of said approval, a full complement of workmen and equipment is present at the site to diligently incorporate materials and equipment into the construction of the water and/or sewer facilities throughout the day on each full working day, weather permitting.
- b. Once the **DEVELOPER** commences work on the water and/or sewer facilities, said work cannot be suspended, abandoned, or not in active progress for a period exceeding one hundred eighty (180) days.
- c. The remedies specified herein are cumulative with and supplemental to any other rights which the **CITY** may have pursuant to the law or any other provision of this Agreement.

24. **INDEMNIFICATION; INSURANCE.**

(a) The **DEVELOPER** shall defend , indemnify and hold harmless the **CITY** and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the **CITY** or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the **DEVELOPER** or its employees, agents,

servants, partners, principals, contractors and/or subcontractors. The **DEVELOPER** shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the **CITY**, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The **DEVELOPER** expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the **DEVELOPER** shall in no way limit the responsibility of **DEVELOPER** to defend, indemnify, keep and save harmless the **CITY** or its officers, employees, agents and instrumentalities as herein provided. In the event that the provisions of Sec. 725.06(2) and / or Sec. 725.08(2), Florida Statutes are applicable to work performed by or through **DEVELOPER** pursuant to this Agreement, this paragraph shall be deemed to provide for **DEVELOPER** to defend, indemnify and hold **CITY** harmless solely to the fullest extent allowed by said statutes, as applicable.

(b) The **DEVELOPER** shall have in place and shall maintain through that portion of the duration of this Agreement during which **DEVELOPER** is to construct water and sewer facilities and for one year thereafter, liability insurance, issued by a company authorized to do business in the State of Florida, and of a type that will protect **DEVELOPER** and the **CITY**, which shall be added as an additional insured, from any acts of **DEVELOPER** or its contractor in connection with the performance of the construction of any water and sewer facilities which **DEVELOPER** is required to provide pursuant to this Agreement, resulting in any claims against the **CITY** or **DEVELOPER** or both. The minimum amount of insurance coverage to be maintained shall be as follows:

| | | |
|---|------------------|----------------|
| GENERAL LIABILITY | PER OCCURRENCE | AGGREGATE |
| Comprehensive, including | \$1,000,000 | \$2,000,000 |
| Premises-Operations | | |
| Contractual Liability | | |
| Personal Injury | | |
| Explosion and Collapse | | |
| Underground Hazard | | |
| Products/Completed Operations | | |
| Broad Form Property Damage | | |
| Independent Contractors | | |
| Cross Liability and Severability of Interest Clause | | |
| | | |
| AUTOMOBILE LIABILITY | PER PERSON | PER OCCURRENCE |
| Comprehensive, including | \$500,000 | \$1,000,000 |
| Owned | | |
| Hired | | |
| Non-Owned | | |
| | | |
| PROFESSIONAL LIABILITY | \$1,000,000 | |
| | | |
| WORKERS' COMPENSATION | Statutory Amount | |

A certificate of insurance showing the required coverage and showing the **CITY** as an additional insured shall be provided to **CITY** prior to commencement of any work in accordance with this Agreement. The certificate shall also provide for at least 30 days written notice to **CITY** of any cancellation or change to the policy.

25. **FORCE MAJEURE.** Should either party be prevented from performing any obligations herein, including but not limited to water and/or sewer service, due to or resulting from a force majeure or inevitable accident or occurrence, such party shall be excused from performance for the duration of such event of force majeure or the inevitable accident or occurrence. As used herein, force majeure shall mean an act of God which includes but is not limited to sudden, unexpected or extraordinary forces of nature such as floods, washouts, storms, hurricanes, fires, earthquakes, landslides, epidemics, explosions

or other forces of nature. Inevitable accidents or occurrences shall mean those which are unpreventable by either party and shall include but not be limited to strikes, lockouts, other industrial disturbances, wars, blockades, acts of public enemies, insurrections, riots, federal, state, county and local governmental restraints and restrictions, military action, civil disturbances, explosions, conditions in federal, state, county and local permits, bid protests, manufacturing and delivery delays, unknown or unanticipated soil, water or ground conditions and cave-ins, or otherwise, and other causes reasonably beyond the control of either party, whether or not specifically enumerated herein.

26. **SERVICE CHARGES.** The **DEVELOPER** agrees to pay to the **CITY** the prevailing service charges for water supply and fire protection, sewage collection and disposal within the **PROPERTY** as may be applicable until the responsibility for payment of said charges is properly transferred in accordance with the **CITY'S** regulations.

27. **USE OF FACILITIES BY CITY.** The **CITY** reserves the right to make full use of the water and/or sewer facilities to be owned by the **CITY** as contemplated herein to serve other customers at any time.

28. **OPINION OF TITLE.** With the execution of this Agreement, the **DEVELOPER** at its own expense shall deliver to the **CITY** an opinion of title for the **PROPERTY**, issued by a qualified attorney licensed to practice law in the State of Florida, which states that the **DEVELOPER** owns fee simple title to the property referred to herein.

29. **ASSIGNMENT OF AGREEMENT.** The terms of this Agreement shall run with the **PROPERTY** and be binding on the **DEVELOPER**, its successors, assigns and all other subsequent owners of the **PROPERTY**. No right to any water supply and sewage disposal service commitment provided for in this Agreement shall be transferred, assigned or otherwise conveyed to any other party without the express written consent of the Utilities Director of the **CITY** or his designee except as noted below. The consent of the **CITY** shall not be required in connection with the sale, lease or other conveyance of the **PROPERTY** or any residential units or commercial establishments to any party who will be the ultimate user of the **PROPERTY**, including but not limited to a bona fide purchaser, lessee, resident or occupant. The intent of this paragraph is to require consent of the **CITY** for assignments or transfers of any water and sewage disposal capacity allocation to any party who holds such **PROPERTY** as an investment for resale or who intends to develop for sale a portion of the **PROPERTY**, so that the **CITY** may adequately determine the demand for water and sewage disposal capacity and plan for the fair and equitable allocation of water and sewage disposal capacity among the residents of the **CITY**. Consent, when required, shall not unreasonably be withheld by the **CITY**. If the **PROPERTY** is transferred or conveyed, the **DEVELOPER** shall remain liable to the **CITY** for all sums of money and all obligations due hereunder unless released in writing by the **CITY**.

30. **EXCLUSIVE RIGHTS OF CITY.** **CITY** shall have the exclusive right to furnish water service and sewage collection service to consumers within the **PROPERTY** covered by this Agreement.

31. **WELLS PROHIBITED EXCEPT FOR IRRIGATION.** **DEVELOPER**, his successors and assigns, and the owners and occupants of buildings on the **PROPERTY** shall

not install or maintain any water wells except for irrigation purposes. These wells shall not be connected to any potable water system.

32. **PROMULGATION OF REASONABLE RULES OF SERVICES.** The **CITY** shall have the right to promulgate from time to time reasonable rules and regulations relating to the furnishing of water service and sewage collection service to consumers within the **PROPERTY** encompassed by this Agreement. Such rules and regulations may relate to, but are not limited to, rates, deposits, water conservation programs, and connection charges and the right to discontinue services under certain conditions. The water and sewer rates to be charged by **CITY** to said customers shall be the rates now or hereafter charged to other customers within the area of service of the **CITY**. **DEVELOPER** hereby acknowledges and agrees that rates are subject to change at any time by **CITY**.

33. **CITY NOT LIABLE FOR DEVELOPER'S OR CONSUMER'S PROPERTY.** The **CITY** shall not be liable or responsible for maintenance or operation of any pipes, pipelines, valves, fixtures or equipment on any of the properties of the **DEVELOPER**, customers, consumers or users on the **PROPERTY** other than the water service lines and sewage collection system within easements granted to **CITY** pursuant to this Agreement.

34. **EFFECTIVE DATE.** Unless otherwise specified in this Agreement, this Agreement shall not be binding until fully executed, but once executed, it shall have a retroactive effect commencing from the date of the City Commission Meeting at which it was approved, and shall remain in full force and effect for the duration of the period of time for which **CITY** water and/or sewer service is available or is provided to the **PROPERTY**.

35. **OVER-SIZE METERS ON SINGLE FAMILY HOMES.** It is assumed that a single family home on the **PROPERTY** will be serviced by a 5/8 inch water meter. If a larger water meter is needed, then **CITY** will be paid by **DEVELOPER**, Assignee, or Homeowner the additional ERC's at the rate prevailing at the time of the application for the larger meter.

36. **SYSTEM ON CONSUMER'S PROPERTY TO BE KEPT IN GOOD WORKING CONDITION.** Each consumer of water service or sewage collection service on the **PROPERTY** shall keep all water pipes, service lines, connections and necessary fixtures and equipment on the premises occupied by said consumer, and within the interior lines of the lot occupied by the consumer in good order and condition. The sale of water by **CITY** to the consumer shall occur at the consumer's side of the entire meter installation, but the obligation for the maintenance of the lines shall be as set forth above and in applicable **CITY** regulations. The "Clean-out" for the sewer lateral shall be at the property or easement line.

37. **CONDITIONS ON FIRE HYDRANT USE.** No water from **CITY'S** water distribution system shall be used or disbursed by **DEVELOPER** or his agents, through fire hydrants or water mains, or by any person, firm, corporation or agency, public or private, unless there has first been made adequate provisions for compensating **CITY** for such water, as provided for within **CITY'S** Utility Ordinance and implementing **CITY** resolutions.

38. **ENTIRE AGREEMENT.** This Agreement supersedes all previous agreements and representations, whether oral or written, between the **DEVELOPER** and

the **CITY** and made with respect to the matters contained herein and when duly executed constitutes the complete Agreement between the **DEVELOPER** and the **CITY**.

39. **NOTICE.** All notices given pursuant to this Agreement shall be mailed by United States Postal Service registered or certified mail to the parties at the addresses specified below addresses otherwise properly furnished.

City of Cooper City

DEVELOPER

City Manager

**Boos Cooper City LLC /Boos Florida
Development, LLC A Florida Limited Liability Co.**

9090 S.W. 50th Place
Cooper City, Florida 33328

410 Park Place Blvd. # 100
Clearwater, FL 33759

40. **RECORDING OF AGREEMENT.** This Agreement is being recorded in the public records of Broward County, Florida, for the particular purpose of placing all owners and occupants, their successors and assigns, upon notice of the provisions herein contained. The **DEVELOPER** shall pay all recording fees.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year indicated below:

Signed, sealed and delivered
in the presence of:

THE CITY OF COOPER CITY

MAYOR

DATE: _____

ATTEST:

CITY MANAGER

DATE: _____

CITY CLERK

Approved as to form and legal sufficiency for the use and reliance of the CITY only:

CITY ATTORNEY

DEVELOPER

**Boos Cooper City LLC /Boos Florida
Development, LLC A Florida Limited Liability Co.**

BY: Robert D. Boos

NAME: Robert D. Boos

TITLE: Manager

DATE: 6/13/18

Aracelis Stanley
WITNESS
Maria Fernandez
WITNESS

WITNESS

WITNESS

See Next Page
for original
Mortgagee
Signature

MORTGAGEE (If Applicable)
VALLEY NATIONAL BANK

By _____

Print Name: _____

DATE: _____

Print Title: _____

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year indicated below:

Signed, sealed and delivered
in the presence of:

THE CITY OF COOPER CITY

MAYOR

DATE: _____

ATTEST:

CITY MANAGER

DATE: _____

CITY CLERK

Approved as to form and legal sufficiency for the use and reliance of the CITY only:

CITY ATTORNEY

DEVELOPER

**Boos Cooper City LLC /Boos Florida
Development, LLC A Florida Limited Liability Co.**

BY: Robert D. Boos

NAME: Robert D. Boos

TITLE: Manager

DATE: 6/13/18

Priscilla Stanley
WITNESS
Maria Fernandez
WITNESS

C. Emmons
WITNESS

Camela Shakun
WITNESS

MORTGAGEE (If Applicable)

VALLEY NATIONAL BANK

By: _____
Print Name: Vincent Chillura

DATE: 6-19-18

Print Title: SR VICE PRES

STATE OF FLORIDA)
) ss.
COUNTY OF PINELLAS)

Before me personally appeared **ROBERT D. BOOS**, as Managing Member of **BOOS FLORIDA DEVELOPMENT, LLC**, the Manager of **BOOS-COOPER CITY, LLC**, a Florida limited liability company, to me well known to be the person who executed the foregoing instrument and who having been first duly sworn did depose and state that the above is true and correct and acknowledged to and before me that he executed said document for the purpose therein expressed.

WITNESS my hand and official seal this 13th day of June, 2018

Maria Fernandez
NOTARY PUBLIC, STATE OF FLORIDA

My commission expires: 1/17/2020



STATE OF FLORIDA)
) ss.
COUNTY OF HILLSBOROUGH)

Before me personally appeared _____, as _____ of **VALLEY NATIONAL BANK**, to me well known to be the person who executed the foregoing instrument and who having been first duly sworn did depose and state that the above is true and correct and acknowledged to and before me that s/he executed said document for the purpose therein expressed.

WITNESS my hand and official seal this _____ day of _____, 2018

NOTARY PUBLIC, STATE OF FLORIDA

My commission expires:

See Next Page
for original
notary for
Valley National Bank

STATE OF FLORIDA)
) ss.
COUNTY OF PINELLAS)

Before me personally appeared **ROBERT D. BOOS**, as Managing Member of **BOOS FLORIDA DEVELOPMENT, LLC**, the Manager of **BOOS-COOPER CITY, LLC**, a Florida limited liability company, to me well known to be the person who executed the foregoing instrument and who having been first duly sworn did depose and state that the above is true and correct and acknowledged to and before me that he executed said document for the purpose therein expressed.

WITNESS my hand and official seal this 13th day of June, 2018

Maria Fernandez
NOTARY PUBLIC, STATE OF FLORIDA

My commission expires: 1/17/2020



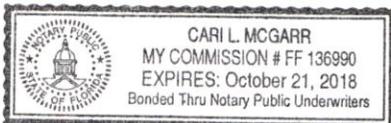
STATE OF FLORIDA)
) ss.
COUNTY OF HILLSBOROUGH)

Before me personally appeared Vincent Chillura, as SR VICE PRES of **VALLEY NATIONAL BANK**, to me well known to be the person who executed the foregoing instrument and who having been first duly sworn did depose and state that the above is true and correct and acknowledged to and before me that s/he executed said document for the purpose therein expressed.

WITNESS my hand and official seal this 19 day of June, 2018

Cari McGarr
NOTARY PUBLIC, STATE OF FLORIDA

My commission expires:



EXHIBITS

The following exhibits are attached, as part of this Agreement and are incorporated into this Agreement:

EXHIBIT "A" - Legal Description of PROPERTY

EXHIBIT "B" - Receipt from third party for a portion of Contribution charge

Included _____ Not Included X

EXHIBIT "C" - A copy of the site plan of the PROPERTY reduced to 8 1/2" by 14" page size

EXHIBIT "D"- Building Connection Schedule: a listing for the PROPERTY indicating the number of buildings to be built, the number of ERC's allocated to each building, the number of meters per building, and the meter size(s)

EXHIBIT "E" - Modifications of CITY'S water or sewer facilities if required by CITY, if applicable

Included _____ Not Included X

AFFIDAVIT SHALL BE COMPLETED WHEN MORTGAGEE SIGNATURE IS NOT APPLICABLE

I _____ do hereby affirm that I am
the _____ of _____
_____ and that I have executed a Water and Sewer Developer's Agreement with the CITY OF COOPER
CITY for _____ project and that I am the owner of the property covered by said
Developer's Agreement.

There are no mortgages held on the property which is the subject of said Developer's
Agreement.

FURTHER AFFIANT SAYETH NOT.

Signature

DATED: _____

STATE OF FLORIDA)
) ss.
COUNTY OF BROWARD)

Before me personally appeared _____
to me well known to me to be the person who executed the foregoing instrument and who having
been first duly sworn did depose and state that the above is true and correct and acknowledged to
and before me that _____s/he_____ executed said document for the purpose therein expressed.

WITNESS my hand and official seal this _____ day of _____,
20____.

NOTARY PUBLIC, STATE OF FLORIDA

My commission expires:

**EXHIBIT "A" OF AGREEMENT
BETWEEN
THE CITY OF COOPER CITY
AND**

LEGAL DESCRIPTION

A portion of Parcels "C-1" and "B", "Monterra Plat", according to the plat thereof, as recorded in Plat Book 175, Pages 155 through 168, inclusive, of the Public Records of Broward County, Florida, described as follows:

Commence at the Southernmost Northeast corner of said Parcel "C-1", said corner lying along the arc of a circular curve to the left from which the radius point bears North $88^{\circ}19'26''$ East; thence Southerly along the arc of said curve having a radius of 2964.79 feet, through a central angle of $03^{\circ}33'27''$, for an arc distance of 184.09 feet to the Point of Beginning, the last described course being along the East boundary of said Parcel "C-1"; thence continue along the last described curve having a radius of 2964.79 feet, through a central angle of $07^{\circ}09'14''$, for an arc distance of

370.17 feet, the last described curve lying along the East boundary of said Parcels "C-1" and "B"; thence South $77^{\circ}36'46''$ West, radial to the last and next described curves, a distance of 50.00 feet to a point on the arc of a circular curve to the left; thence Northwesterly along the arc of said curve, having a radius of 130.00 feet, through a central angle of $45^{\circ}25'44''$, for an arc distance of 103.07 feet to a point of reverse curvature of a circular curve to the right; thence Northwesterly along the arc of said curve having a radius of 80.00 feet, through a central angle of $24^{\circ}11'20''$, for an arc distance of 33.77 feet to a point of reverse curvature of a circular curve to the left; thence Northwesterly along the arc of said curve, having a radius of 1017.00 feet, through a central angle of $19^{\circ}14'59''$, for an arc distance of 341.68 feet to a point of tangency; thence North $52^{\circ}52'37''$ West, a distance of 17.60 feet; thence North $87^{\circ}46'51''$ East, a distance of 321.20 feet to the Point of Beginning.

Abbreviated Legal:

MONTERRA PLAT 175-155 B POR OF PAR B & C1,BEG AT NW COR OF PARC C-1,E 295.41,SE 52.55, SLY 495.58,SW 88.69,NWLY 8.29, NWLY 63.69,NW 61.35,NWLY 26.90, NW 301.49,NWLY 54.35,N 164.12,E 30 TO POB,LESS PORTIONS DESC IN OR 51245/567 & INSTR# 112760119 AKA: OUTPARCEL C-1

EXHIBIT D

COOPER CITY WATER AND SEWER AGREEMENT

DEVELOPMENT Monterra – O'Reilly Auto Parts :

| BUILDING # | # OF UNITS | # OF ERC's | # OF METERS | METER SIZE |
|-------------------|-------------------|-------------------|--------------------|-------------------|
| | 1 | 2.5 | 1 | 1" |
| TOTAL | 1 | 2.5 | 1 | 1" |