

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
DESIGN AND CONSTRUCTION AGREEMENT

THIS DESIGN AND CONSTRUCTION AGREEMENT (this "Agreement") is made and entered into by and between the State of Florida, Department of Transportation, 801 N. Broadway Avenue, Bartow, FL 33831-1249 (hereinafter referred to as the "DEPARTMENT") and Babcock Ranch Community Independent Special District, a Florida independent Special District (hereinafter referred to as the "DISTRICT").

WITNESSETH:

WHEREAS, the DEPARTMENT is authorized and required by Section 334.044(13), Florida Statutes, to coordinate the planning, development, and operation of the State Highway System; and

WHEREAS, pursuant to Section 339.282, Florida Statutes, the DEPARTMENT may contract with a property owner to finance, construct, and improve public transportation facilities; and

WHEREAS, the DEPARTMENT, Babcock Property Holdings, LLC, a Delaware limited liability company (the "DEVELOPER") and the DISTRICT, are parties to that certain Amended and Restated Babcock Ranch Community Master Roadway Improvement and Partial Assignment Agreement, dated June 22, 2021 (the "2021 Master Roadway Agreement") for a project to widen and improve State Road 31, in Lee County and Charlotte County, Florida, from an existing two-lane undivided rural roadway to a divided four-lane highway from State Road 78 (Bayshore Road) in Lee County to Horseshoe Road, in Charlotte County, expandable to six lanes from State Road 78 to Cypress Parkway, in Charlotte County, including regional drainage improvements that will extend to just north of Cook Brown Road, in Charlotte County (the "Project") as more specifically described in the Babcock Ranch Community Increment 1 DRI Incremental Development Order (Charlotte County Ordinance No. 2020-070) ("IDO-1") Transportation section 4.A.(1)b.(3)(a)1.1 and the Engineer's Report attached hereto as Exhibit A (the Project); and

WHEREAS, the parties desire to enter into this Agreement for the DISTRICT to make improvements within the DEPARTMENT'S right-of-way and on property to be conveyed¹ at no cost to the Department and utilizing the Department's property donation procedures by the DEVELOPER and/or the DISTRICT to design and construct the roadway improvements, which will become the property of the DEPARTMENT upon acceptance of the work.

NOW, THEREFORE, based on the premises above, and in consideration of the mutual covenants contained herein, the parties hereby agree that the construction of the Project shall proceed in accordance with the following terms and conditions:

1. The recitals set forth above are specifically incorporated herein by reference and made a part of this Agreement. The DISTRICT is authorized, subject to the conditions set forth herein, to enter the DEPARTMENT'S right-of-way to perform all activities necessary to construct the Project.

2. The Project shall be designed and constructed in accordance with the latest edition of the DEPARTMENT'S Standard Specifications for Road and Bridge Construction and Standard Plans and the Manual of Uniform Traffic Control Devices ("MUTCD"). The following guidelines shall apply as deemed appropriate by the DEPARTMENT: the DEPARTMENT'S Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, the Florida Design Manual ("FDM"), Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the "Florida Green Book") and the DEPARTMENT'S Traffic Engineering Manual. The DISTRICT will be required to submit 90% and 100% construction plans required by the DEPARTMENT for review and approval prior to any work being commenced. Should any revisions to the plans be required during construction of the Project, the DISTRICT shall be required to notify the DEPARTMENT of the revisions and receive approval from the DEPARTMENT prior to the revisions being constructed. Any minor field changes may be approved by the DEPARTMENT Consultant Construction Engineering Inspection (CCEI). The DISTRICT shall maintain the area of the project at all times and coordinate any work needs of the DEPARTMENT during construction of the Project.

3. The DISTRICT shall design and construct all landscaping identified during the design process and maintain those landscaping improvements within the Project limits agreed upon by the parties pursuant to a Landscape Maintenance Agreement (if applicable).

4. The DISTRICT shall procure design-build services pursuant to Chapter 287.055, Florida Statutes and provide a procurement method schedule to the DEPARTMENT. The DEPARTMENT will participate in the DISTRICT'S design-build procurement including, but not limited to, review and approval on the DISTRICT'S Request for Qualifications (RFQ), the Design Build Firm's qualification packages and participate in meetings within twenty-one (21) calendar days of receipt of any items hereunder. Notwithstanding any failure of the Department to respond within twenty-one (21) calendar days, the DISTRICT may continue to move forward with the procurement process.

5. The DEPARTMENT will procure a Consultant Construction Engineering Inspection (CCEI) contractor, which will be funded by the DISTRICT. The DISTRICT shall not commence construction until the funds for the CCEI contractor have been transferred to the DEPARTMENT and the DEPARTMENT has procured the CCEI contract.

6. In the event disputes arise between the DISTRICT and the DEPARTMENT during PROJECT construction, the parties shall attempt to resolve issues by implementing an escalation process that identifies three (3) distinct levels of increasing authority, the personnel, and timelines for resolution at each level. In the event of an impasse after completion of the escalation process, the DEPARTMENT shall have final authority for resolution of all PROJECT related issues.

¹ The Developer or the District will convey the rights of way to Department at no cost to the Department. However, the monetary value of such conveyances shall be calculated and appropriate proportionate share mitigation credit provided by Charlotte County pursuant to the Development of Regional Impact development orders as such may be modified or amended from time to time.

7. The DISTRICT shall notify the DEPARTMENT a minimum of 48 hours before beginning construction of the roadway improvements that are part of the Project.

8. Pursuant to Section 7-13 of the DEPARTMENT'S *Standard Specifications for Road and Bridge Construction*, the DISTRICT is required to possess general liability insurance naming the DEPARTMENT as an additional insured and insuring the DEPARTMENT and the DISTRICT against any and all claims for injury or damage to persons and property, and for the loss of life or property that may occur (directly or indirectly) by reason of the DISTRICT accessing the DEPARTMENT'S right-of-way and the DISTRICT'S performance of the Project. Such amount shall be carried in a minimum amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury or death to any one person or any number of persons in any one occurrence, and not less than One Million and 00/100 Dollars (\$1,000,000.00) for property damage, or a combined coverage of not less than Five Million and 00/100 Dollars (\$5,000,000.00). Additionally, the DISTRICT shall supply the DEPARTMENT with a payment and performance bond in the amount of the estimated cost of construction provided by a surety authorized to do business in the State of Florida, payable to the DEPARTMENT. The bond and insurance shall remain in effect until completion of construction and acceptance by the DEPARTMENT. Prior to commencement of the Project and on such other occasions as the DEPARTMENT may reasonably require, the DISTRICT shall provide the DEPARTMENT with certificates documenting that the required insurance coverage is in place and effective. The DISTRICT is a governmental entity and is exempt from these requirements. However, the DISTRICT shall ensure that the design build company hired by the DISTRICT shall be bonded and insured and the DEPARTMENT is listed as an additional insured.

9. The DISTRICT shall be responsible for monitoring construction operations and the maintenance of traffic ("MOT") throughout the course of the project in accordance with the latest edition of the DEPARTMENT Standard Specifications, section 102. The DISTRICT is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the DEPARTMENT'S Standard Plans, Index 102-600 series. Any MOT plan developed by the DISTRICT that deviates from the DEPARTMENT Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the DEPARTMENT prior to implementation. Construction/MOT operations will be monitored by the DEPARTMENT'S CCEI Firm.

10. The DISTRICT shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility at the DISTRICT'S expense.²

11. The DISTRICT will be responsible for obtaining all permits that may be required by other agencies or local governmental entities. The DEPARTMENT agrees to cooperate with the DISTRICT in obtaining any and all permits that may be required by any agencies or local government entities.

12. It is hereby agreed by the parties that this Agreement creates a permissive use only and all improvements resulting from this Agreement shall become the property of the DEPARTMENT. Neither the granting of the permission to use the DEPARTMENT'S right-of-way nor the placing of facilities upon the DEPARTMENT'S property shall operate to create or vest any property right to or in the DISTRICT, except as may otherwise be provided in separate agreements. The DISTRICT shall not acquire any right, title, interest or estate in the DEPARTMENT right-of-way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the DISTRICT'S use, occupancy or possession of DEPARTMENT'S right-of-way. The parties agree that this Agreement alone does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to chapter 163, Florida Statutes.

13. The DISTRICT shall perform all required testing (environmental or otherwise) associated with the design and construction of the project. Testing results shall be made available to the DEPARTMENT upon request. The DEPARTMENT shall have the right to perform its own independent testing during the course of the Project.

14. The DISTRICT shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the DEPARTMENT, applicable Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, the Army Corps of Engineers, the United States Coast Guard and local governmental entities.

15. If the DEPARTMENT determines a condition exists which threatens the public's safety, the DEPARTMENT may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right-of-way at the sole cost, expense, and effort of the DISTRICT. The DISTRICT shall bear all construction delay costs incurred by the DEPARTMENT.

16. All work and construction shall be completed within 2,555 days of the date of the last signature affixed to this agreement unless otherwise agreed to in writing by both parties which shall not be unreasonably withheld. If construction is not completed within this time, the DEPARTMENT may make a claim on the bond. The DEPARTMENT may terminate this Agreement due to a breach of its terms by the DISTRICT and/or the DEVELOPER or if the DEPARTMENT needs to take over the project for safety reasons, by providing 60 days of prior written notice of termination to the DISTRICT. However, the DISTRICT has 45 days following written notification to cure the breach or safety concern(s).

17. The DISTRICT shall be responsible to maintain and restore all existing features that might require relocation within the DEPARTMENT'S right-of-way.

18. The DISTRICT will be responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.

19. Upon completion of construction, the DISTRICT will be required to submit to the DEPARTMENT final as-built plans and an engineering certification that construction was completed in accordance with the contract documents, including the Design-Build Request for Qualifications, Plans, and Specifications. Prior to the termination of this Agreement, the DISTRICT shall remove its presence, including, but not limited to, all of the DISTRICT'S property, machinery, and equipment from DEPARTMENT'S right-of-way and shall

² The DISTRICT will not be responsible for cost associated with the relocation of conflicting Florida Gas & Transmission (FGT) utilities. The costs of FGT utility relocations will be the responsibility of the DEVELOPER. Generally, utility relocations required for a SIB funded construction project are entitled to loan reimbursement.

restore those portions of DEPARTMENT'S right-of-way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.

20. If the DEPARTMENT determines that the Project is not completed in accordance with the provisions of this Agreement, the DEPARTMENT shall deliver written notification of such to the DISTRICT. The DISTRICT shall have 30 days from the date of receipt of the DEPARTMENT'S written notice, or such other time as the DISTRICT and the DEPARTMENT mutually agree to in writing, to commence completing the Project and upon completion of the Project, provide the DEPARTMENT with written notice of the same (the "Notice of Completion"). If the DISTRICT fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the DEPARTMENT, within its discretion may: 1) provide the DISTRICT with written authorization granting such additional time as the DEPARTMENT deems appropriate to correct the deficiency(ies); or 2) if the Department determines that the issue creates a hazard for the traveling public and with prior written notice to DISTRICT of the estimated cost, correct the deficiency(ies) at the DISTRICT'S sole cost and expense, without DEPARTMENT liability to the DISTRICT for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the DEPARTMENT elects to correct the deficiency(ies), the DEPARTMENT shall provide the DISTRICT with an invoice for the costs incurred by the DEPARTMENT and the DISTRICT shall pay the invoice within 60 days of the date of the invoice.

21. The DISTRICT agrees to include in its contract with the Design/Build Contractor and subcontractors and all others who perform work on the project covered under this Agreement, the Value Added (i.e. Warranty) Specifications language to be provided by the DEPARTMENT. In addition, said contract shall include language that requires the Design/Build Contractor and subcontractors to remedy any errors and/or defects which may exist, appear, occur or result in or from said work performed in connection with this Agreement within a period of two (2) years from the date of final acceptance of the project by the DEPARTMENT.

22. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the DEPARTMENT'S or DISTRICT'S sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes. The DEPARTMENT'S and DISTRICT'S liability for breach of this Agreement is limited in amount and shall not exceed the limitations of liability for tort actions as set forth in Section 768.28(5), Florida Statutes.

23. All formal notices, proposed changes and determinations between the parties hereto and those required by this Agreement, including, but not limited to, changes to the notification addresses set forth below, shall be in writing and by overnight mail, return receipt required, to the parties at the contact information listed below with copies provided to Hopping Green and Sams, P.A., Wrathell Hunt and Associates, LLC, and Developer.

24. The DISTRICT shall not cause any liens or encumbrances to attach to any portion of DEPARTMENT right-of-way at the time of conveyance/donation, unless otherwise agreed to by the parties as part of the conveyance process.

25. This Agreement shall be governed by the laws of the State of Florida in terms of interpretation and performance. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

26. The DISTRICT may not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the DEPARTMENT'S District Secretary or his/her designee. The DEPARTMENT has the sole discretion and authority to grant or deny proposed assignments, with or without cause. Nothing herein shall prevent the DISTRICT from delegating its duties hereunder, but such delegation shall not release the DISTRICT from its obligation to perform this Agreement.

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

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

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

30. The failure of either party to insist on one or more occasions on the strict performance or compliance with any term or provision of this Agreement shall not be deemed a waiver or relinquished in the future of the enforcement thereof, and it shall continue in full force and effect unless waived or relinquished in writing by the party seeking to enforce the same.

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

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

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

34. To the extent allowed by applicable law from time to time, and without waiving the provisions of Section 768.28, Florida Statutes, the DISTRICT agrees to promptly indemnify, defend, save and hold harmless the DEPARTMENT and all of its officers, agents and employees from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, penalties, costs, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, or arising out of or related to the performance or breach of this Agreement by the DISTRICT, including, without limitation, performance of the Project within the DEPARTMENT'S right-of-way. The term "liabilities" shall specifically include, without limitation, any act, action, neglect or omission by the DISTRICT, its officers, agents, employees or representatives in any way pertaining to this Agreement, whether direct or indirect, except that neither the DISTRICT nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence, intentional or wrongful acts of the DEPARTMENT or any of its officers, agents or employees. The DISTRICT shall notify the DEPARTMENT in writing immediately upon becoming aware of such liabilities. The DISTRICT'S inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph. The indemnities assumed by the DISTRICT shall survive termination of this Agreement. The insurance coverage and limits required in

this Agreement may or may not be adequate to protect the DEPARTMENT and such insurance coverage shall not be deemed a limitation on the DISTRICT's liability under the indemnities granted to the DEPARTMENT in this Agreement.

35. DISTRICT:

- (1) shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the DISTRICT and their Design/build contractor(s) during the term of the contract; and
- (2) shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

36. COMPLIANCE WITH LAWS:

The DISTRICT shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the DISTRICT in conjunction with this Agreement. Specifically, if the DISTRICT is acting on behalf of a public agency the DISTRICT shall:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the DEPARTMENT in order to perform the services being performed by the DISTRICT.
- (2) Provide the public with access to public records on the same terms and conditions that the DEPARTMENT would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (4) Meet all requirements for retaining public records and transfer, at no cost, to the DEPARTMENT all public records in possession of the DISTRICT upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the DEPARTMENT in a format that is compatible with the information technology systems of the DEPARTMENT. Failure by the DISTRICT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT. The DISTRICT shall promptly provide the DEPARTMENT with a copy of any request to inspect or copy public records in possession of the DISTRICT and shall promptly provide the DEPARTMENT a copy of the DISTRICT's response to each such request.

DISTRICT CONTACT INFORMATION

Name: Craig Wrathell Title: District Manager, Wrathell Hunt and Associates
 Office No.: _____ Cell: _____ Email: wrathellc@whhassociates.com
 Mail Address: Babcock Ranch Community Independent Special District, 200 Glades Road, Suite 410w, Boca Raton, FL 33431

With Copy to:

Name: Jonathan T. Johnson Title: _____
 Office No.: _____ Cell: _____ Email: jonathanj@hgslaw.com
 Mail Address: Hopping Green & Sams, P.A., 119 South Monroe Street, Suite 00, Tallahassee, FL 32301

Name: Craig Wrathell Title: District Manager, Wrathell Hunt and Associates
 Office No.: _____ Cell: _____ Email: wrathellc@whhassociates.com
 Mail Address: Wrathell Hunt and Associates, LLC, 200 Glades Road, Suite 410w, Boca Raton, FL 33431

Name: John Broderick Title: _____
 Office No.: _____ Cell: _____ Email: jbroderick@kitsonpartners.com
 Mail Address Babcock Property Holdings, LLC, 42850 Crescent Loop, Ste 200, Babcock Ranch, FL 33952

IN WITNESS WHEREOF, DISTRICT and the DEPARTMENT have executed this Agreement for the purposes herein expressed on the dates indicated below.

**BABCOCK RANCH COMMUNITY INDEPENDENT
SPECIAL DISTRICT**

By: _____ (Signature)

William Vander May _____ (Print Name)

Chairman _____ (Title)

June 14, 2021 _____ (Date)

DEPARTMENT OF TRANSPORTATION

By: _____ (Signature)

John M. Kubler _____ (Print Name)

Director of Transportation Development _____ (Title)

06/21/2021 _____ (Date)

Legal Review: _____

EXHIBIT A

**BABCOCK RANCH COMMUNITY INCREMENT 1 DRI INCREMENTAL
DEVELOPMENT ORDER (IDO-1), TRANSPORTATION SECTION
4.A.(1)B.(C)(A)1.1**

ENGINEERS REPORT DATED JANUARY 5, 2021

ENGINEERS REPORT
FOR
BABCOCK RANCH
STATE ROAD 31 OFFSITE IMPROVEMENTS

JANUARY 5, 2021

Prepared for:



BABCOCK RANCH
FLORIDA

Community Independent Special District

Prepared by:

JOHNSON
ENGINEERING
2122 Johnson Street
Fort Myers, Florida 33901
(239) 334-0046
EB 642



Introduction

The purpose of this report is to describe the offsite improvements for **Babcock Ranch Community Independent Special District (ISD)** as part of the State Infrastructure Bank (SIB) loan (the “Loan”) application, which is located along State Road 31 (S.R. 31) in Lee and Charlotte Counties, Florida. This report will describe the proposed improvements to be constructed and financed by the ISD and the proposed cost estimates.

Proposed Work

This roadway capacity improvement project involves the widening of the existing two-lane undivided segment of S.R. 31 from State Road 78 (“S.R. 78” also referred to as Bayshore Road) in Lee County, to Horseshoe Road, in Charlotte County, to a four-lane divided facility, which will be expandable to six-lanes from State Road 78 to Cypress Parkway (the “S.R. 31 Project”). S.R. 31 from Cypress Parkway to Horseshoe Road will be widened from the existing two-lane undivided segment, to an ultimate four-lane divided facility. The regional drainage improvements will extend to just north of Cook Brown Road. The total project length is approximately 5.2 miles. The proposed S.R. 31 Project proposes to add four new lanes and a median, access management improvements, traffic signals or roundabouts, bike lanes, and multi-modal regional trails. The project includes Chain of Lakes drainage improvements to help alleviate the historical overtopping of S.R. 31 within the project limits. Depending on the final roadway typical section accepted by FDOT, additional right-of-way may need to be acquired either east or west of the existing S.R. 31 throughout a portion or all of the S.R. 31 Project limits. Additionally, the ISD secured a commitment from Babcock Property Holdings, LLC (the “Developer”) to procure the required right-of-way for the drainage system associated with the expansion of S.R. 31 from North River Road (County Road 78) to north of Cook Brown Road. These right-of-way and drainage easements for the S.R. 31 improvements will be conveyed to FDOT at the conclusion of the S.R. 31 Project¹. FDOT will own and maintain both segments after the S.R. 31 Project completion.

At the direction of FDOT the S.R. 31 Project described in this report reflects the present intentions for the development of the Babcock Ranch Community. The exact location of facilities may be modified during the course of approval and implementation, but these changes will not diminish or alter the benefits to be received by the land. The ISD retains the right to make reasonable adjustments to the S.R. 31 Project to meet the requirements of any governmental agency while providing the same or greater benefits to the land. Regulatory criteria will continue to evolve, and future changes may affect the implementation of the S.R. 31 Project, as it may be changed from time to time. The implementation of any improvement outlined within the S.R. 31 Project requires the final approval of the ISD’s Board of Supervisors.

¹ The Developer or the ISD will convey the rights of way to FDOT at no monetary cost. However, the monetary value of such conveyances shall be calculated and appropriate proportionate share mitigation credit provided pursuant to the Development of Regional Impact development orders as such may be modified or amended from time to time. Nothing herein prohibits the Developer or ISD from pursuing additional credit or other benefit from the value of such conveyance as appropriate pursuant to any agreement regarding same.



Costs contained in this report have been prepared based on opinions of probable costs using available information. It is possible that the probable costs could vary based on final engineering and ultimate construction costs.

Schedule² and Cost Estimate³

The S.R. 31 Project will be split in two phases. Phase 1 consists of work along S.R. 31 from S.R. 78 to North River Road (County Road 78), and Phase 2 consists of roadway widening along S.R. 31 from North River Road (County Road 78) to Horseshoe Road, with Chain of Lakes improvements extending to north of Cook Brown Road.

S.R. 78 to Cook Brown Road SEIR is underway and scheduled to be complete April 2021

Four Lane S.R. 31 from S.R. 78 to North River Road (County Road 78)

Design July 2021
Right-of-Way Future acquisition by FDOT will be required
Construction Complete April 2026

Four Lane S.R. 31 from North River Road (County Road 78) to Horseshoe Road

Design July 2021
Right-of-Way Future conveyance to FDOT will be required
Construction Complete February 2025

The estimated cost of the S.R. 31 Project to be funded with proceeds of the SIB Loan, which includes four lanes from S.R. 78 to Horseshoe Road, is as follows:

Table 1: S.R. 31 Four Lane from S.R. 78 to Horseshoe Rd. Estimated SIB Project Cost

Project Costs	
Design, Permitting, and Survey	\$ 4,295,317.00
Right-of-Way	\$ 4,482,200.00
Construction Services and Construction Engineering Inspection (CEI)	\$41,067,848.00
SEIR/PD&E	\$ 1,350,000.00
Prior Design, Permitting, Survey, and Environmental Mitigation	\$ 2,341,487.00
Constructed Chain of Lakes (Storm Water Treatment)	\$ 2,500,000.00
Gas Line Relocation	\$10,000,000.00
Future Environmental Mitigation	\$ 2,270,000.00
Right-of-Way Conveyance	\$10,134,000.00
Contingency (10% of Construction Cost)	\$ 3,610,832.00
Project Estimated Total	\$82,051,684.00

² All dates provided herein are contingent upon SIB Loan approval.

³ Construction Services and CEI estimated costs were based on assumed rural roadway typical section(s), Long Range Estimates (LRE) costs provided by FDOT on October 27, 2019, and other project assumptions at the time estimates were developed. Any changes to the roadway typical section(s), intersections, or roadway alignment may change the estimated costs.



Summary and Conclusion

The infrastructure, as discussed above, is necessary for the functional development of the ISD. The S.R. 31 Project phases are anticipated to be funded through the SIB Loan with the Florida Department of Transportation in favor of the ISD. The ISD will utilize transportation fees collected by Developer and remitted to the ISD to pay the annual SIB Loan payments. In any year in which the transportation fees collected are not sufficient to make the annual SIB Loan payment, the ISD may collect special assessments as outlined in an assessment methodology report adopted by the ISD. The Developer will fund the S.R. 31 Project to the extent not funded through the SIB Loan. The ISD will construct the S.R. 31 Project as described above. The Developer will provide funds to the ISD for any amounts exceeding the amount of the SIB Loan necessary for completion of the S.R. 31 Project pursuant to a completion agreement executed in conjunction with the SIB Loan agreement.

The planning and design of the infrastructure will be in accordance with current governmental regulatory requirements and industry standards. The infrastructure will serve its intended function so long as the construction is in substantial compliance with the design, permits and local governing agencies. Items for construction in this report are based on current estimates for quantities for infrastructure construction and these infrastructure improvements will benefit and add value to the ISD.

Engineer's Certification

It is our opinion that the extent of proposed improvements and probable costs are fair and reasonable. The impact of market conditions, increased regulatory actions, and other factors that may affect future costs cannot be completely assessed and may impact the S.R. 31 Project over time. Where necessary, information from other professionals and contractors has been used in the preparation of this report. Qualified professionals from these entities have provided design, permitting, and cost information for the purposes of this report. Assuming the S.R. 31 Project occurs as scheduled, it is our opinion that the improvements can be permitted, constructed and installed at the costs described in this report.

I hereby certify that the foregoing is a true and correct copy of the Engineer's Report for the Babcock Ranch Community Independent Special District S.R. 31 Offsite Improvements.

Joshua Hildebrand, P.E., PTOE
Florida Registration Number 73952
Date: _____
Johnson Engineering, Inc.

Prepared By: Johnson Engineering, Inc.
2122 Johnson Street
Fort Myers, Florida 33901
(239) 334-0046

4. TRANSPORTATION

A. Representations and Commitments as Conditions.

(1) Increment 1.

a. Developer shall be fully responsible for the required site-related roadway and intersection improvements associated with Increment 1 as set forth herein. Site-related improvements include, but are not limited to, the following: site driveways and roads; median cuts made necessary by those driveways or roads; right-turn, left-turn, and deceleration or acceleration lanes leading to or from those driveways or roads; traffic control measures for those driveways or roads; and roads or intersection improvements whose primary purpose at the time of construction is to provide access to the development. The specific site-related improvements shall be subject to review and approval under the Site Plan Review process as provided in Section 3-9-75.1 of the Code of Laws and Ordinances of Charlotte County, Florida ("Code"), and coordination with FDOT. The site-related improvements are as follows:

a. SR 31 and South Town Center Project Entrance (DD)

- ~~Add NB Left-Turn Lane~~
- Add NB Right-Turn Lane
- Add SB Left-Turn Lane
- ~~Add SB Right-Turn Lane~~
- Add WB Dual Left-Turn Lanes
- Add WB Thru/Right-Turn Lane
- Signal, If and When Warranted
- Traffic Monitoring

b. SR 31 and Horseshoe Road/Project Entrance (CC)

- Add NB Left-Turn Lane (Completed)
- Add NB Right-Turn Lane (Completed)
- Add SB Left-Turn Lane (Completed)

- ~~— Add SB Right-Turn Lane~~
- Add WB Left-Turn Lane (Completed)
- Add 2nd WB Left-Turn Lane
- Reconfigure WB – Thru/Right-Turn Lane (Completed)
- Signal, If and When Warranted
- Traffic Monitoring

c. SR 31 and Cook Brown Road/Project Entrance (BB)

- Add NB Right-Turn Lane
- Add SB Left-Turn Lane
- Add WB Left-Turn Lane
- Reconfigure WB Thru/Right-Turn Lane
- Signal, If and When Warranted
- Traffic Monitoring

d. SR 31 and North Project Entrance

- Add NB Right-Turn Lane
- Add SB Left-Turn Lane
- Add WB Left-Turn/Right-Turn Lane
- Traffic Monitoring

Construction of ingress and egress driveways, as necessary along SR 31.

- b. The off-site traffic impacts of Increment 1, through 2026, as estimated by the AIDA/Amendment traffic analysis are identified in Exhibit J, which is attached hereto and incorporated herein by reference. These off-site traffic impacts have been accepted by FDOT, County, Lee County, Department of Economic Opportunity, Division of Community Development (“DEO”), and the SWFRPC, as the impacts resulting from Increment 1.

~~1. There are no significant and adversely impacted roadways for Increment 1 that are not “transportation deficient” per Chapter 163.3180(5)(h)4., F.S. Therefore, there are no identified road segment improvements for Increment 1.~~

12. The mutually agreed upon significantly and adversely impacted roadways intersections, that are not transportation deficient, and the identified improvements for Increment 1 are:

~~a. SR 80 and SR 31~~

- ~~— Convert NB Left Turn/Thru Lane to Thru Lane~~
- ~~— Add NB Thru Lane~~
- ~~— Channelize NB Right Turn Lane~~
- ~~— Channelize SB Right Turn Lane~~
- ~~— Add EB Left Turn Lane~~
- ~~— Add WB Left Turn Lane~~

~~b. SR 31 and SR 78~~

- ~~— Add NB Thru Lane~~
- ~~— Add SB Thru Lane~~

~~c. SR 31 and North River Road~~

- ~~— Add SB Right Turn Lane~~
- ~~— Add EB Left Turn Lane~~
- ~~— Add EB Right Turn Lane~~
- ~~— Add WB Left Turn Lane~~
- ~~— Add WB Right Turn Lane~~
- ~~— Signalization, if and when warranted~~

~~d. SR 80 and Tropic Avenue~~

- ~~— Add NB Right Turn Lane~~
- ~~— Add SB Right Turn Lane~~

a. SR 31 from SR 78 to Old Rodeo Drive

- Widen from 4 to 6 Lanes

b. SR 31 from Old Rodeo Drive to North River Road

- Widen from 4 to 6 Lanes

c. SR 31 from North River Road to Shirley Lane

- Widen from 4 to 6 Lanes

d. SR 31 from Shirley Lane to Fox Hill Road

- Widen from 4 to 6 Lanes

e. SR 31 from Fox Hill Road to Busbee Lane

- Widen from 4 to 6 Lanes

f. SR 31 from Busbee Lane to Charlotte County Line

- Widen from 2 to 6 Lanes

g. SR 31 from Lee County Line to Cypress Parkway
- Widen from 2 to 6 lanes

h. SR 31 from Cypress Parkway to Lake Babcock Drive
- Widen from 2 to 4 Lanes

2. The mutually agreed upon significantly and adversely impacted intersections, that are not transportation deficient, and the identified improvements for Increment 1 are:

a. SR 78 and Slater Road
- Add SB Right-Turn Lane

b. SR 80 and Orange River Boulevard
- Add WB Left-Turn Lane
- Reconfigure NB Approach – Dual Left-Turn Lanes & Shared Left/Thru/Right-Turn Lane

c. SR 80 and SR 31
- Add WB Thru Lane

d. SR 31 and SR 78
- Add EB Left-Turn Lane

e. SR 31 and North River Road
- Add WB Right-Turn Lane

f. SR 78 and Old Bayshore Road
- Add EB Left-Turn Lane

The Increment 1 proportionate share of the improvements, as shown on Exhibit K, has been calculated consistent with F.S. 163.3180 (12)(a) and ~~73C 40.045, F.A.C.5~~. The Increment 1 proportionate share calculation was based on ~~4,488~~ 5,614 pm peak hour two-way external trips and ~~4,475~~ 5,584 pm peak hour two-way net new trips established by the AIDA/NOPC traffic analysis. The calculated proportionate share for Increment 1 is \$

~~1,756,000\$~~ \$45,729,000 based upon the proportionate share percentages as calculated per lane mile for each improvement as shown on Exhibit K. The proportionate share percentages have been accepted by ~~FDOT, County, Lee County, DEO, and the SWFRPC~~ FDOT for Increment 1, recognizing that the actual costs may increase or decrease based upon the final actual costs of the agreed upon improvements.

3. a. The Increment 1 agreed upon mitigation of the significantly and adversely impacted roadways and intersection improvements identified in Condition 4(A) (1).b.1. and 2., accepted by ~~FDOT, County, and FDOT, and Lee County, DEO, and SWFRPC,~~ shall be the following schedule of listed improvements and date-certain payment provisions:

Reference #	Item ⁽²⁾	Total Cost ⁽²⁾	Anticipated Start Date ⁽³⁾
1.1	Off-Site Road Segments		
	SR 31		
	a. SR 78 to CR 78	<u>\$20,960,000</u>	<u>SR 31 PD&E Study⁽⁶⁾</u>
	- <u>Widen from 2 to 4 Lanes</u>		
	- <u>With infrastructure and grading provided for a 6-lane expansion</u>		
	b. CR 78 to Cypress Parkway	<u>\$47,170,000</u>	<u>SR 31 PD&E Study⁽⁶⁾</u>
	- <u>Widen from 2 to 4 Lanes</u>		
	- <u>With infrastructure and grading provided for a 6-lane expansion</u>		
	c. Cypress Parkway to Horseshoe Road	<u>\$7,730,000</u>	<u>SR 31 PD&E Study⁽⁶⁾</u>
	- <u>Widen from 2 to 4 Lanes</u>		
- <u>Sidewalk one side</u>			
	Sub-Total	<u>\$75,860,000</u>	
	d. Prior Project Contributions	<u>\$6,191,000</u>	
	Sub-Total	<u>\$82,052,000</u>	
1.2	Off-site Intersections		
	a. SR 78 and Slater Road	\$1,434,000 <u>\$284,000</u>	Monitoring⁽¹⁾
	- <u>Add SB Right-Turn Lane</u>		
b. SR 80 and Orange River Boulevard	<u>\$186,000</u>		
- <u>Add WB Left-Turn Lane</u>			
- <u>Restripe NB Approach: Dual Left Turn Lanes</u>			

	<p><u>and Share</u> <u>Left/Thru/Right-Turn</u> <u>Lane</u></p> <p>a-c. SR 80 and SR 31</p> <ul style="list-style-type: none"> — Convert NB Left-Turn/Thru Lane to Thru Lane — Add NB Thru Lane — Channelize NB Right-Turn Lane — Channelize SB Right-Turn Lane — Add EB Left Turn Lane - Add WB Left-Turn/Thru Lane <p>b-d. SR 31 and SR 78</p> <ul style="list-style-type: none"> - Add ENB Thru Lane/Left-Turn Lane — Add SB Thru Lane <p>e-e. SR 31 and North River Road</p> <ul style="list-style-type: none"> — Add SB Right Turn Lane — Add EB Left Turn Lane — Add EB Right Turn Lane — Add WB Left Turn Lane - Add WB Right-Turn Lane Signalization, if and when warranted <p>d.f. SR 7880 and Tropic Avenue/Old Bayshore Road</p> <ul style="list-style-type: none"> - Add NEB Right/Left-Turn Lane Add SB Right Turn Lane <p>Sub-Total</p>	<p><u>\$595,000</u></p> <p><u>\$136,000</u></p> <p><u>\$2,380,000</u></p> <p><u>\$284,000</u></p> <p><u>\$136,000</u></p> <p><u>\$1,451,000</u></p> <p><u>\$1,621,000</u></p> <p><u>\$568,000</u></p> <p><u>\$5,833,000</u></p>	<p><u>Monitoring⁽¹⁾</u></p> <p><u>Monitoring⁽⁴⁾</u></p> <p><u>Monitoring⁽⁴⁾</u></p> <p><u>Monitoring⁽¹⁾</u></p> <p><u>Monitoring⁽¹⁾</u></p> <p><u>Monitoring⁽¹⁾</u></p> <p><u>Monitoring⁽¹⁾</u></p>
2	<p>SR 31 -+ PD&E Study</p> <ul style="list-style-type: none"> • Provide funding to the FDOT to prepare Project Development and Environment Study of SR 	<p>\$1,000,000</p>	<p>Completed⁽⁵⁾</p>

	31 from SR 78 to North River Road <ul style="list-style-type: none"> • Cause to prepare State Environmental Impact Report of SR 31 from SR 78 to North River Road (CR 78) • Prepare State Environmental Impact Report of SR 31 from North River Road (CR 78) to Cook Brown Road. 		
3	SR 31 Traffic Count Stations	\$200,000	2019 ⁽⁴⁾
	TOTAL	\$ 7,033,000	85,416,000

- (1) Start date as required per Condition 4(A)(1)b.(4)(a).
- (2) Subject to agreement between FDOT and the Developer, the scope of the schedule of improvements may be increased with credit for any increased cost funded by the Developer reimbursed consistent with Condition 4.(A).1.b.6. [Footnote intentionally left blank]
- (3) Dates are anticipated and subject to adjustment by Developer and FDOT without a need to amend this IDO development order. Start dates, as well as the associated mitigation requirements, contained within the IDO are subject to extension under Section 252.363, Florida Statutes.
- (4) Traffic Count Stations to be installed at Project Entrances, when built, no later than January 31, 2018 as the Project Entrances are built. Traffic count stations were installed at the Project Entrance across from Horseshoe Road in 2019.
- (5) These tasks have been mitigated by Developer to facilitate completion of required improvements from prior traffic assessment but these requirements are no longer warranted based on current traffic assessment. The paid mitigation is creditable towards future assessments consistent with Condition 4.(A).1.b.6.
- (6) FDOT SR 31 PD&E Study from Cook Brown Road to SR 80 is currently ongoing.
- (7) Includes FDOT State Infrastructure Bank Loan Improvement Cost Estimate of \$75,860,197.
- (6)

~~b. If and when requested by County, the Developer shall also make certain intersection improvements at SR 31 and CR 74, to extend the Northbound to Westbound Left Turn Lane, at an estimated cost of \$100,000, and as set forth in more detail in Section 4.d. below.~~

4. After the effective date of this IDO, the Developer shall:
 - a. Initiate the intersection improvements (Transportation Condition 4.A(1).b.(3).(a)) no later than 90 days after the monitoring report indicates that the Project is generating at least 300 pm peak hour, two-way external trips and the intersection is projected to operate below the adopted level of service standard within 12 months. If these improvements are not initiated within the above time period, no building permits beyond these limitations can be issued until these improvements are initiated.
 - b. Initiate the below improvements of SR 31 to eventually (during the full development of Babcock Ranch) result in the four-lane forlaning of SR 31 from SR 78 to Horseshoe Road/Cook Brown Road/Lake Babcock Drive

(Reference #2 above and i-ii below). The improvements will consist of the following:

- i) Provide funding to the FDOT up to a total of \$1,000,000 to facilitate the preparation of the Project Development and Environment Study (PD&E) and/or State Environmental Impact Report (SEIR) for SR31 from SR 78 to North River Road. This funding will be used by the FDOT to prepare a complete PD&E Study or SEIR Study of SR 31 from SR 78 to North River Road. This funding has been provided to the FDOT.
- ii) Coordinate with FDOT to fund, continue and complete the Project Development and Environment Study (PD&E) or State Environmental Impact Report (SEIR) for SR 31 from North River Road to Cook Brown Road.
 - c. Install permanent traffic count stations at and north and south of the Project's Entrance access points off SR 31 and north and south of access points at the time entrance points are constructed ~~the access points, and up to four permanent, Permanent traffic count stations along SR 31, north and south of were installed at the proposed permanent entrances to the~~

~~Community no later than January 31, 2018. Final location of the count stations will be coordinated with County (Reference #3 above). [NOTE: Dates contained within the IDO, as well as the associated mitigation requirements, are subject to extension in accordance with Section 252.363, Florida Statutes.] Project access point across from Horseshoe Road.~~

Permanent traffic count stations were installed at the project access points across from Horseshoe Road in 2019.

~~d. If and when requested by County the Developer will provide for the extension of the northbound SR 31 left turn lane at CR 74 (Transportation Condition 4.A(1).(b).3.(b)). County will complete the analysis to determine the extent of the improvement and the timing requirement of the improvement.~~

5. FDOT has maintenance authority for SR 31 and the intersection improvements set forth above. Developer shall be responsible for the guaranteed construction of the above improvements, in accordance with the above schedule, and in

accordance with the binding and enforceable commitment by the Developer in this IDO, to assure construction or improvement of these facilities, pursuant to F.S. 163.3180(12)(a)4. and 73C 40.045, F.A.C.,

6. IfAs the cost of the mitigation provided by the Developer for Increment 1 exceeds the proportionate share of the impacts resulting from mitigation by ~~from~~ Increment 1 of \$45,729,000 ~~\$1,756,000~~ (as adjusted up or down in accordance with actual costs and based upon the accepted proportionate share percentages shown on Exhibit K), the Developer shall be entitled to a credit toward~~credited to~~ the overall impact of the Project for the cost of improvements beyond the proportionate share amount and receive mitigation credit for subsequent increments or phases, as provided in the MDO and applicable law. Developer and County may enter into a Transportation Credit Agreement to further delineate the terms and procedures for implementing credits for identified improvements set forth above in excess of the proportionate share of Increment 1. Credit for the cost of additional improvements as set forth above shall be analyzed as part of transportation analysis for future increments and be included in subsequent incremental development orders.

c. Satisfaction of the required mitigation in the timeframes as outlined and compliance with the transportation related provisions of this IDO for Increment 1 shall satisfy the road or traffic concurrency requirements of the Charlotte 2050 Comprehensive

Plan, LDR, and the Charlotte County Concurrency Management System, through ~~February 28, 2030~~ November 21, 2033 (the buildout date of Increment 1). If the Developer proposes to extend the buildout date of Increment 1 beyond ~~February 28, 2030~~ November 21, 2033, the Developer and the ~~review agencies~~ County, during the development order amendment process pursuant to Section 380.06(107), Florida Statutes, shall re-evaluate the future traffic impact of Increment 1 ~~the development~~ in a manner consistent with the MDO ~~Master Development Order~~, and shall re-evaluate the concurrency status of Increment 1 on all roadway segments and intersections listed in Conditions 4(A)(1)b.1. and 2., above.

d. DEO has determined that SR 31 is a Regionally Significant Roadway ~~as defined in 73C-40.045, F.A.C.~~

e. County, by approving this IDO, has exercised its discretion to accept this mitigation for Increment 1.

f. Improvements to the facilities outlined above shall be mitigated at the time that a road segment or intersection is expected to operate below the level of service standard adopted in County's ~~an impacted jurisdiction's~~ Comprehensive Plan. If the road or the intersection operates below the adopted Level of Service, no building permits for residential and non-residential development shown on Exhibit E for Increment 1 shall be issued unless the improvements are: a) complete, b) under construction, c) the subject of a clearly identified, executed and recorded local government development agreement consistent with Sec. 163.3220 through 163.3423, F.S., ensuring completion concurrent with impacts; d) the subject of a binding commitment ensuring completion concurrent with impacts or e) the DRI's proportionate share mitigation may be pipelined into specific

improvements as deemed necessary and mutually agreed upon between FDOT and the developer.

(2) The Master Internal Circulation Plan for Increment 1 is attached hereto as Exhibit G.

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5. VEGETATION, WILDLIFE, AND WETLANDS

A. Representations and Commitments as Conditions.

(1) No additional species have been documented within Increment 1 over those identified in the MDO.

✓ (2) Development within Increment 1 shall comply with the threatened and endangered management plan ("T&E Plan") provided for in the Conceptual ERP and United States Army Corps of Engineers Permit SAJ 2006-6656 (IP-MJD) ("ACOEP").

(3) Development within Increment 1 shall comply with the mitigation requirements provided for in the ERP and ACOEP.

(4) Mitigation for wetlands and listed species within the Increment 1 boundary may occur outside the Increment 1 boundary in accordance with state and federal permits and the MDO.

(5) The approved T&E Plan and approved Mitigation Plan ~~will be~~are provided as part of the ~~first applicable~~2016 Biennial Report to the County, the SWFRPC and the DEO in accordance with Condition ~~131~~14 herein. The Biennial Report shall also contain copies of any conservation easements that have been recorded relative to Increment 1 that were not provided in a previously submitted Biennial Report.

(6) ~~Developer shall provide a~~A copy of the Prescribed Fire Plan ~~once completed~~was provided as part of the ~~applicable~~2016 Biennial Report in accordance with Condition ~~143~~ herein.

(7) ~~An updated~~A Greenway Map for Increment 1 is attached hereto as Exhibit H1 and Exhibit H2. Developer shall comply with the Babcock Ranch Community