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August 21, 1992  
Road Impact Fee Interlocal

INTERLOCAL AGREEMENT

This Agreement is made and entered into this 23rd day of September, 1992, between the CITY OF FORT MYERS, an incorporated city within Lee County, hereinafter referred to as "CITY," and LEE COUNTY, a Political Subdivision of the State of Florida, hereinafter referred to as "COUNTY."

WITNESSETH:

WHEREAS, Section 163, Florida Statutes, has been established to encourage and ensure cooperation between and among municipalities and counties and to provide services in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, COUNTY has adopted the Roads Impact Fee Ordinance, Number 89-17, as amended, hereinafter referred to as the "Ordinance"; and

WHEREAS, The CITY and COUNTY desire to enter into a revised interlocal agreement for the purposes of collecting and disbursing roads impact fees for land development occurring within the CITY boundaries wherein the fees are to be collected and spent by the CITY for the purposes described in the Ordinance; and

WHEREAS, both the CITY and COUNTY believe it is in the best interest of the citizens of the CITY and COUNTY to enter into this agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the CITY and COUNTY do hereby agree as follows:

1) With respect to the Lee County Roads Impact Fee Program:

(a) The CITY agrees:

i) To continue to participate in said program, subject to the terms of this agreement.

ii) To collect roads impact fees imposed by the Ordinance in the City before any building permit, mobile home move-on permit or recreational vehicle development order, as those terms are defined in the Ordinance, will be issued by the City.

iii) That it shall be entitled to keep that percentage of the funds collected which the Ordinance designates be kept to offset the cost of collections and administration of the Ordinance. This percentage shall be kept by CITY as an administrative fee for collecting and accounting for the funds. The balance of the impact fees collected pursuant to the ordinance shall be retained by CITY and spent for the purposes described in the Ordinance, subject to the restrictions set forth below.

iv) Not to spend road impact fees until and unless it has informed the Lee County Board of County Commissioners, in writing, of the specific project, amount and timing of a proposed roads impact fee expenditure at least thirty (30) days prior to making the expenditure.

v) To expend roads impact fee funds for the improvement of only those roads which are part of the road network illustrated on the Interim Traffic Circulation Plan Map defined in Section Four of the Ordinance or shown on in the Traffic Circulation Plan Element of the CITY's Comprehensive Plan.

vi) That the CITY's Mayor or his designee is hereby designated as the County Administrator's designee (as defined in the Ordinance except as modified in this agreement) to administer the collection and administration of roads impact fees within the incorporated area of the CITY.

vii) To determine the amount of credits which may be created pursuant to the Ordinance as to construction or rights-of-way within the City, consistent with the procedures established therefor in the Ordinance.

viii) To determine whether a requested permit is exempt from the impact fee requirements of the Ordinance consistent with the categories thereof established in the Ordinance.

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- ix) To determine whether a refund is owed pursuant to the Ordinance consistent with the provision of the Ordinance. Refunds shall be paid by the CITY.
- x) To contact, verbally or in writing, the County Administrator, or his designee, when a building or development permit is applied for that is not specifically listed in the Ordinance or County's administrative code, and to collect the fee as determined for that use by the County Administrator.
- xi) To be bound by the interpretations of the Ordinance which are established under the appeal provisions, Section Thirteen of the Ordinance. The City shall be given an opportunity to participate in the appeal procedure. If an administrative appeal decision is appealed to the Circuit Court, the appeal shall be defended by the COUNTY, at its expense, unless the CITY elects to provide the defense of the case itself.
- xii) To maintain records of all impact fees collected and spent by reference to fee payers name and address, the amount paid, in cash or by use of credits, dates of collection and expenditures, the permit number, and the capital improvement acquired using the impact fees. Similar records shall be maintained for exemptions from the Ordinance. COUNTY shall have access to the above records

du-ing normal business ho's, and CITY shall provide reasonable assistance to COUNTY to locate, copy and interpret such records.

(b) The COUNTY agrees:

i) To provide to CITY administrative procedures and administrative assistance in setting up bookkeeping and other accounting procedures necessary for CITY to collect the fees.

ii) To hold CITY harmless should any suit or legal action be brought to contest the validity of the Ordinance or this agreement. The COUNTY agrees to provide any legal defense necessary for this purpose at no cost to CITY. However, should any Court order any refund of any impact fee, or should any refund be agreed to by settlement of the suit or legal action by the COUNTY, said refund shall be paid solely by CITY. Should any such refund be claimed the CITY shall be given an opportunity to join in the legal proceedings. In no case may the COUNTY consent to the finding of liability of the CITY to pay a refund; provided, however, that, subject to the provisions set forth below, the CITY hereby agrees to indemnify the COUNTY for any judgments entered against the COUNTY for impact fee expenditures improperly made by the CITY and hereby authorizes the COUNTY to file any and all legal or equitable

proceedings which may be necessary to secure payment of this indemnity.

iii) The indemnification provisions set forth above shall not apply if the impact fee expenditure in question was first acknowledged in writing by the County Attorney to be, in his opinion, a proper use of impact fees based upon a complete and accurate disclosure of the facts. The County Attorney will issue such an opinion upon request of the CITY within thirty days of the date the request is received.

iv) That all funds collected by the CITY or collected as a result of building or development permits issued within the CITY shall be considered, for the purposes of Section 336.025, Florida Statutes, as CITY transportation expenditures.

v) To respond to requests for fee determinations as specified in Section (1)(a)(x) of this agreement within 10 working days; in the event a response is not made within the time allowed, COUNTY agrees that CITY may make the fee determination in question. Should any applicant for a CITY building or development permit file a request for an independent fee calculation as provided for in the Ordinance, the COUNTY's procedure shall apply in full.

vi) To amend the Roads Impact Fee Ordinance to create a

benefit district consisting enerally of the City of Fort Myers to the mutual satisfaction of both the COUNTY and the CITY.

2) Pursuant to Chapter 163.01(5)(b), Florida Statutes, this agreement may be rescinded or revised by mutual agreement of both the CITY and COUNTY at any time, or it may be rescinded by either party upon thirty (30) days written notice to the other party for any reason whatsoever, or it may be rescinded upon written notice of a material breach of the agreement, provided that, prior to such termination due to material breach, the breaching party shall be given (30) days from the receipt of such written notice to correct any alleged material breach. Should this Agreement be canceled by the CITY for other than the violation or enforceability of the COUNTY's Ordinance, the COUNTY's obligation to defend and hold harmless the CITY for acts occurring prior to the date of the cancellation shall continue in full force and effect. Should this Agreement be canceled by the COUNTY for any reason other than the CITY's failure to provide the notices described in paragraph 1)(a)(iv) above or failure to

spend impact fees lawfully, the COUNTY's indemnification obligations under paragraph 1)(b)(ii) above shall continue for actions occurring prior to the cancellation. Should this Agreement be canceled by either party for any reason, the CITY's indemnification obligations under paragraph 1)(b)(ii) above shall remain in full force and effect.

3) Section 8) and any other portion not previously repealed of the January 8, 1992 Interlocal Agreement and the entire September 27, 1989 Interlocal Agreement are hereby repealed by agreement of the parties.

4) COUNTY and CITY agree that nothing contained within this agreement shall serve as a waiver of any governmental immunity conferred by Florida Statutory Law provision

IN WITNESS TO THIS AGREEMENT, the undersigned parties hereby affix their signatures.

ATTEST:

CHARLIE GREEN, CLERK

BY: Dee A. Price  
Deputy Clerk

BOARD OF COUNTY  
COMMISSIONERS OF  
LEE COUNTY, FLORIDA

[Signature]

Doug St. Cergy, Chairman

ATTEST:

CITY OF FORT MYERS

Maria Adams  
City Clerk

[Signature]  
Wilbur C. Smith III, Mayor

APPROVED AS TO FORM:

*August A. Hagler*  
Office of County Attorney

*September 29, 1992*  
Date

*Racquel Sue W. Hubbard*  
City Attorney

*September 9, 1992*  
Date