

INTERLOCAL SERVICE BOUNDARY AGREEMENT

This Interlocal Service Boundary Agreement (“Agreement”) is entered into by and among Collier County, Florida (“County”), the City of Naples, Florida (“City”), and the East Naples Fire Control and Rescue District (“Fire District”).

RECITALS

WHEREAS, the Collier Park of Commerce Owners’ Association submitted a petition for annexation to the City in or around June 7, 2006; and

WHEREAS, Florida’s Interlocal Service Boundary Agreement Act, Sections 171.20 – 171.212, *Fla. Stat.*, (“Act”) strongly encourages local governments to determine how to provide services to residents and property in the most efficient and effective manner by establishing procedures encouraging and allowing for intergovernmental coordination in planning, service delivery and boundary adjustments during annexations and also to avoid conflicts and litigation; and

WHEREAS, on or about September 12, 2006, the County adopted an initiating Resolution as prescribed by Section 171.203(1) of the Act to negotiate any and all issues concerning service delivery, fiscal responsibilities and or boundary adjustments in connection with the Collier Park of Commerce (“CPOC”) annexation. A copy of the CPOC, *i.e.*, the area to be annexed, is attached as Exhibit 1; and

WHEREAS, the City, on or about November 15, 2006, adopted a responding Resolution to the County as required by Section 171.203(2) of the Act; and

WHEREAS, the Fire District, on or about November 14, 2006, also adopted a responding Resolution to the County’s Resolution; and

WHEREAS, the County, the City and the Fire District have met on a number of occasions in publicly noticed and publicly open negotiation sessions to negotiate this Agreement; and

WHEREAS, the negotiations included discussion of fire prevention services, fire station expansion, commercial recycling, public road maintenance, utility and communication taxation, Florida Power and Light (“FPL”) franchise fees, and concurrency as well as other matters as authorized by the Act; and

WHEREAS, after consideration, the County, City and Fire District have determined this Agreement is in the public interest and for the public’s benefit.

NOW, THEREFORE, in consideration of the mutual covenants and promises and the consideration set forth in this Agreement, the sufficiency of which is acknowledged by the County, the City, and the Fire District, and with the intent to be legally bound, the County, City, and Fire District mutually agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into and made part of this Agreement.

2. Fire Services.

a. Term. The Fire District shall be the service provider to the annexed property from the effective date of the annexation until October 1, 2013, except as provided for in subsection b. of this section, if the City annexes CPOC and elects to assume the Fire District’s service responsibilities by December 31, 2007.

b. Plans Examination, Permitting and Inspections. Ninety (90) days after the annexation (the “Transition Date”), the City shall review all new applications for permits and plan review and perform all required inspections. The Fire District will continue to review applications for new permits and plan review that were filed prior to the Transition Date in order to avoid any disruption in the permitting process. The Fire District’s regulations shall apply to those applications for

permits and plan review that were filed before the Transition Date, and to those inspections that occur before the Transition Date. The Fire District's fees for plan review, permitting and inspections filed prior to the Transition Date, if applicable, shall be charged pursuant to the Fire District's fee schedule. The City's regulations shall apply to those new applications for permit or plan review filed on or after the Transition Date, and to all inspections performed by the City on or after the Transition Date. Fees for plan review, permitting and inspections on or after the Transition Date shall be pursuant to the City's fee schedule. The Fire District shall cooperate in the transition of these services by providing a plan reviewer for briefing of City staff for no more than a twenty-hour period if requested by the City after the Transition Date. Following the Transition Date, the City shall provide to the Fire District copies of all final and approved permits and site plans within ten days of approval by the City at no cost to the Fire District to allow the Fire District to review such permits and plans in order to provide the appropriate response in an emergency situation. The Fire District does not have the authority to approve or revise such approved permits or site plans nor to provide for or charge for inspections. From the Transition Date to September 30, 2010, the Fire District may charge a developer a fee for its review of a site plan or permit application. This site plan fee may not be more than the total of its existing inspection fees on the Transition Date, unless such fees are increased on a district-wide basis, including but not limited to, new fire flow fees, key box inspection fees, and new and existing building inspection fees, in order to supplement the Fire District's costs to review final and approved permits and site plans for the annexed property. Upon submission of a new application for a permit or plan review, the City shall provide such request to the Fire District so that the Fire District may confirm that the appropriate District site plan review fees have been charged and collected. These fees shall be collected by the City and distributed to the Fire District within thirty (30) days of receipt. The City may deduct a two (2) percent collection fee from the fees collected on behalf of the Fire District pursuant to this paragraph.

- c. District Boundary Contraction. The boundary of the Fire District shall contract to delete the annexed area on September 30, 2008.
- d. Employees. Any employee of the Fire District that may be displaced as a result of the annexation of CPOC will be considered for employment by the City in the same capacity or in an equivalent capacity as may be available within the City.
- e. Equipment. Any equipment that may be deemed to be surplus by the Fire District as a result of the annexation of CPOC will be considered for purchase or assumption of the lease or other obligation by the City at its then fair value.
- f. Payments by the City. The Fire District shall collect its ad valorem taxes from the annexed area for fiscal year 2007/2008. Beginning with fiscal year 2008/2009 through fiscal year 2012/2013, the City shall pay the Fire District the amount that the Fire District would have collected in ad valorem taxes and non-ad valorem assessments, with non-ad valorem assessments being defined as those non-ad valorem assessments charged by the District for fire protection and rescue services, for such fiscal year had the property not been annexed by the City. The City shall pay the Fire District payments required under this section by March 31 of each of the applicable fiscal years. However, the City is not required to pay the Fire District monies that have not been paid on a specific parcel within the annexed property until such time as the monies have been received by the City. Within 30 days after receipt, the City shall make payment of such monies to the Fire District.
- g. User Charges and Impact Fees. The Fire District shall continue to collect user charges, including false alarm fees, and impact fees until September 30, 2013, as long as such user charges and impact fees have not been adopted to solely apply to the annexed property. However, the Fire District is authorized to adopt a fee as allowed pursuant to section 2b., which is charged to property that has been annexed that it continues to provide services to pursuant to an interlocal agreement. Recognizing that the County currently collects the Fire District's impact fees and submits the payments to the Fire District, the City agrees to collect the impact fee of the entity providing fire protection services and submit

fifty (50) percent of such payments to the Fire District within thirty (30) days of receipt. The City shall retain fifty (50) percent from the impact fees collected.

- h. Failure to Annex by December 31, 2007. As a result of action or inaction attributed to the City, if the City fails to annex CPOC and elect to assume services provided by the Fire District by December 31, 2007, the Fire District shall remain the service provider for five years beginning October 1 of 2009. All other dates provided for in this section shall also concurrently be extended to reflect the revised term.

3. The Financing of Future Fire Station Expansion. In its Urban Services Report for the annexation of Collier Park of Commerce, dated October 17, 2006, the City acknowledges that it plans to expand its fire station at the Naples Airport for purposes of assuming fire service to the CPOC and other areas in the future. The City further acknowledges that this station, referred to as Station 3, will serve approximately 2,000 acres and that the CPOC comprises only approximately 112 acres of that area or about 6% of Station 3's contemplated expanded operations. According to the Urban Service Report, the financial impact for this expansion of operations by the City caused by the annexation of the CPOC is estimated to be \$73,755.00. The City agrees that should it become necessary to specially assess property owners for the expanded operations in the future, the CPOC owners shall only be responsible for their pro rata share and that funding of the full expansion of Station 3 shall not be borne solely by the CPOC property owners.

4. Recycling. The City agrees that the Collier County Nonresidential Recycling Ordinance, Ordinance No. 2004-50, will continue to be followed for the CPOC following annexation. The City is in the process of considering for adoption its own Nonresidential Recycling Ordinance, and upon adoption, the City's ordinance will be followed.

5. Wastewater Service. The County shall continue to provide wastewater service as contemplated by the City's Urban Services Report; however, the City and County recognize the CPOC as an area that may possibly become part of a wastewater service area exchange or "swap" in the future and agree that they will continue to work cooperatively and in good faith toward a possible negotiated agreement for such a service area exchange or "swap".

6. Public Road Maintenance. In its Urban Services Report and during the course of negotiations, the City stated that as part of the annexation Agreement it will be necessary for public road right-of-ways within the CPOC to be brought to acceptable standards. This will involve resurfacing and other improvements. Certain property owners within the CPOC have come forward as volunteers to agree to pay up to \$175,000.00 of the monies necessary to make the renovations or repair(s) to the public road right-of-ways within the CPOC. The repairs needed shall be determined by the City. Neither the County nor the Fire District shall be obligated to contribute to any maintenance or repairs to the public road right-of-ways required by the City as part of the annexation of the CPOC. A copy of a confirming letter from attorneys representing the CPOC Property Owners' Association is attached as Exhibit 2 to this Agreement.

7. Utility Taxes and Communications. The parties acknowledge that the County, as a property owner in the CPOC, is immune from and shall not be subject to any utility tax or communications tax levied by the City. *See also* Sections 166.231 and 202.19, *Fla. Stat.* The Fire District, as a property owner in the CPOC, is immune from and shall not be subject to any communications tax levied by the City and is exempt from and shall not be subject to any utility tax levied by the City. *See also* Sections 202.125(3) and 166.231, *Fla. Stat.* The parties acknowledge that immunity from taxation is created, conditioned and/or abolished by operation of state law, not by local enactment.

8. Concurrency. The County and the City are jointly concerned about the level of service on Airport Road and at intersections around the CPOC. Accordingly, should any increase in density or intensity of use beyond that authorized by the current CPOC zoning be permitted or should any additional development or redevelopment occur within the CPOC following annexation, the City agrees that it shall coordinate the review of the development to assess the impacts and collect any fair share contributions to make necessary intersection improvements as determined by the County and the City at Horseshoe Drive – Progress Avenue and Enterprise Avenue at Airport Road, and Progress Avenue and Enterprise Avenue at Livingston Road. Both the County and the City agree that these intersections could be in a state of failure and require needed improvements should there be any such increase of density or intensity or additional development or redevelopment of land uses within the CPOC following annexation. The City further agrees that needed contributions toward fair share (based upon trips generated) shall be made within six (6) months after any post annexation zoning or approvals increasing density or intensity or within a reasonably agreed upon time frame of any new approvals of development or redevelopment of uses within the CPOC. The County and the City further agree that any roadway or intersection improvements will be reviewed jointly and permitted and managed by the County.

9. County and Fire District Agreement Not to Object to CPOC Annexation. The County and the Fire District agree that they will forego objection and challenge to the CPOC annexation which is the subject of this Agreement.

10. Amendments. This Agreement may only be amended by written instrument specifically referring to this Agreement and executed with the same formalities as this Agreement.

11. Severability. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid or unconstitutional, the validity of the remaining parts, terms and provisions shall not be affected thereby and such an illegal, invalid or unconstitutional part, term or provision shall be deemed not to be part of this Agreement.

12. Dispute Resolution. Should any disputes or alleged breaches arise under this Agreement, the City, the County, and the Fire District agree that such disputes shall be resolved in accordance with the Florida Interlocal Service Boundary Agreement Act, Sections 171.20-171.212 *Fla. Stats.* However, nothing in this Agreement shall prohibit the parties from attempting to first resolve or to resolve any disputes under this Agreement by voluntary mediation, in the most expeditious and least expensive means possible. The parties agree to work cooperatively to select a mutually acceptable mediator within thirty (30) days after a dispute or alleged breach of this Agreement arises. If no consensus as to a mediator is reached, the parties will request the Chief Judge of the Twentieth Judicial Circuit to appoint a mediator with experience in local government law and contract law. The parties agree that all expenses of such voluntary mediation shall be divided equally among them.

13. Construction. This Agreement shall be governed by and construed under the laws of the State of Florida.

14. Recording. The County, the City, and the Fire District agree that this Agreement shall be recorded in the Official Records of Collier County, Florida as soon as practicable after approval and execution by all parties. The County shall pay the costs of recording this Agreement.

15. Term. The initial term of this Agreement shall be for five (5) years following the effective date, or the expiration of the term provided for in Section 2 of this Agreement,

whichever is later. Renegotiation between or among the parties affected shall commence not later than 18 months before the date of expiration, and the renegotiation shall be governed by the initial negotiation procedures as set forth in the Act.

16. Termination Upon Failure to Annex. If the City does not annex CPOC by December 31, 2008, then any party to the Agreement may terminate the Agreement upon thirty (30) days written notice to the chairman of the governing body of the other parties.

17. Effective Date. The parties acknowledge that this Agreement may be executed on different dates by the parties. Accordingly, this Agreement shall only become effective on the date it is signed by the last party to execute the Agreement.

IN WITNESS WHEREOF, the County, the City, and the Fire District have caused this Agreement to be executed by their appropriate officials.

DATED:
ATTEST: Dwight E. Brock, CLERK

BOARD OF COUNTY COMMISSIONERS
OF COLLIER COUNTY, FLORIDA

BY: _____
DEPUTY CLERK

BY: _____
James Coletta, CHAIRMAN

Approved as to form and legal sufficiency:

Michael W. Pettit
Chief Assistant County Attorney

DATE: _____

DATED:
ATTEST: Tara A. Norman, CITY CLERK

CITY OF NAPLES

BY: _____
DEPUTY CLERK

BY: _____
Bill Barnett, MAYOR

Approved as to form and legal sufficiency:

Robert D. Pritt, City Attorney

DATE: _____

WITNESSES:

Signature

Printed Name

Signature

Printed Name

Approved as to form and legal sufficiency:

Laura Jacobs Donaldson, Esq.

BOARD OF COMMISSIONERS, EAST
NAPLES FIRE CONTROL AND RESCUE
DISTRICT

BY: _____
Thomas G. Cannon, CHAIRMAN

DATE: _____

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