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OFFICE OF THE
BOARD OF GOVERNORS
STATE UNIVERSITY
SYSTEM OF FLORIDA

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Office of the President

December 22, 2008

Mark B. Rosenberg
Chancellor
Board of Governors
State University System of Florida
325 W. Gaines Street, Suite 1614
Tallahassee, FL 32399-0400

Dear Chancellor Rosenberg:

Per 1013.30(15), F.S., on October 20, 2008, FLORIDA GULF COAST UNIVERSITY Board of Trustees approved a Campus Development Agreement consistent with the requirements of 1013.30 (11), (12), (13) and (14), F.S. Additionally, Lee County Government approved the aforementioned agreement on December 9, 2008. The Agreement describes deficiencies in facilities and services the proposed campus development, as described in the adopted campus master plan, will create or to which it will contribute over its five (5) year duration. A copy of the agreement is attached.

The University requests the Board of Governors staff prepare an agenda item authorizing release of \$9,705,893.00 from the State University System Concurrency Trust Fund under the provisions of 1013.63, F.S. The purpose is for funding university improvements required to meet concurrency standards.

Sincerely,

Wilson G. Bradshaw, Ph.D.
President

cc: Chris Kinsley, Director of Finance and Facilities, BOG
Stanley Goldstein, Architect, BOG

Enclosure

**FOURTH AMENDMENT TO THE
CAMPUS DEVELOPMENT AGREEMENT
BETWEEN THE FLORIDA BOARD OF EDUCATION AND LEE COUNTY**

THIS AMENDMENT TO THE CAMPUS DEVELOPMENT AGREEMENT is made and entered into this 9th day of December 2008, by and between **LEE COUNTY** (herein referred to as the "County"), a political subdivision of the State of Florida, and **FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES** (hereinafter referred to as "FGCU").

WITNESSETH:

WHEREAS, the campus of FGCU is considered to be a vital public facility which will provide research and educational benefits of statewide and national importance, and which will further provide substantial educational, economic, and cultural benefits to the County, and

WHEREAS, in recognition of this unique relationship between campuses of the State University System and the local governments where they are located, the Florida Legislature has established special provisions for campus planning and concurrency in Chapter 1013, Florida Statutes, which supersede the requirements of Part II of Chapter 163, Florida Statutes, except when stated otherwise, and

WHEREAS, FGCU prepared and adopted a campus master plan for the Florida Gulf Coast University in compliance with the requirements set forth in Chapter 1013, Florida Statutes, and

WHEREAS, upon adoption of the campus master plan, FGCU and the County are required to enter into a Campus Development Agreement, and

WHEREAS, the Campus Development Agreement determines the impacts of proposed campus development reasonably expected over the term of the Campus Development Agreement on public facilities and services, including roads, sanitary sewer, solid waste, drainage/storm water management, potable water, parks and recreation, and public transportation, and

WHEREAS, the Campus Development Agreement identifies any deficiencies in public facilities and services that the proposed campus development will create or to which it will contribute, and

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WHEREAS, the Campus Development Agreement identifies all improvements to facilities or services necessary to eliminate these deficiencies, and

WHEREAS, the Campus Development Agreement must identify FGCU's "fair share" of the cost of all improvements to facilities or services necessary to eliminate these deficiencies; and

WHEREAS, the original Campus Development Agreement was adopted on September 15, 1998, and was later amended on September 12, 2000, and November 26, 2002.

NOW, THEREFORE, in consideration of the covenants contained herein and the performance thereof, the parties do hereby agree to further amend the Campus Development Agreement as follows:

1.0 RECITATIONS

The foregoing recitals are true and correct and are incorporated herein by reference.

2.0 DEFINITIONS OF TERMS USED IN THIS AGREEMENT

- 2.1 The term "Administration Commission" means the Governor and the Cabinet.
- 2.2 The term "affected person" means a host local government; an affected local government; any state, regional or federal agency; or a person who resides, owns property, or owns or operates a business within the boundaries of a host local government or affected local government.
- 2.3 The term "aggrieved or adversely affected person" means any person or local government which will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, or environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in community good shared by all persons.
- 2.4 The term "campus master plan" means a plan that meets the requirements of Chapter 1013, Florida Statutes.

- 2.5 The term "comprehensive plan" means a plan that meets the requirements of Subsections 163.3177 and 163.3178, Florida Statutes.
- 2.6 The term "concurrency" means that public facilities and services needed to support development are available when the impacts of such development occur.
- 2.7 The term "development" means any building activity, any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.
- 2.8 The term "development order" means any order granting, denying, or granting with conditions an application for a development permit.
- 2.9 The term "development permit" includes building permits, zoning permits, subdivision approvals, rezonings, certifications, special exemptions, variances, or other official actions of local government having the effect of permitting the development of land.
- 2.10 The term "force majeure" means acts of God, earthquakes, blizzards, tornados, hurricanes, fire, flood, sinkhole, malicious mischief, insurrection, riots, strikes, lockouts, boycotts, picketing, labor disturbances, landslides, explosions, epidemics, or compliance with any court order, ruling, injunction or decree.
- 2.11 The term "public facilities and services" means potable water, sanitary sewer, solid waste, storm water management, parks and recreation, roads, and public transportation facilities.
- 2.12 The term "state land planning agency" means the Department of Community Affairs

3.0 INTENT AND PURPOSE

- 3.1 This Agreement is intended to implement the requirements of concurrency contained in Chapter 1013, Florida Statutes. It is the intent of FGCU and County to ensure that adequate potable water, sanitary sewer, solid waste, storm water management, parks and recreation, roads, and public transportation facilities are available consistent with the level of service standards for these facilities as adopted in the County's comprehensive plan.
- 3.2 This Agreement is intended to address concurrency implementation and the mitigation of impacts reasonably expected over the term of the Agreement on public facilities and services, including roads, sanitary sewer, solid waste,

drainage/storm water management, potable water, parks and recreation, and public transportation.

- 3.3 This Agreement is not intended to alter or limit the land uses, densities, intensities, or site development or environmental management standards to be applied to campus development.

4.0 GENERAL CONDITIONS

- 4.1 The conditions, terms, restrictions and other requirements of this Agreement are legally binding and will be strictly adhered to by FGCU and the County.
- 4.2 FGCU represents that they have full power and authority to enter into and perform this Agreement in accordance with its terms and conditions without the consent or approval of any third parties, and this Agreement constitutes the valid, binding and enforceable Agreement of FGCU.
- 4.3 The County represents that it has full power and authority to enter into and perform this Agreement in accordance with its terms. Further, the County represents that this Agreement has been duly authorized by its Commissioners and constitutes a valid, binding and enforceable contract. This Agreement has been approved by a resolution adopted by the Board of County Commissioners and was the subject of two duly noticed public hearings as required by law. This Agreement does not violate any other Agreement to which the County is a party, the Constitution of the State of Florida, or any charter, ordinance, judgment or other requirement of law.
- 4.4 Except as specifically referenced herein, County development permits, development orders, or development approvals cannot be required by the County for construction projects subject to this Agreement.
- 4.5 If all or a portion of a project authorized pursuant to this Agreement is destroyed by a fire, storm, or other force majeure, FGCU, its grantees, successors and assigns, has the right to rebuild and/or repair the project. Furthermore, the time periods for performance by FGCU will be automatically extended so long as there is strict compliance with this Agreement.
- 4.6 Campus development activity authorized pursuant to this Agreement is subject to federal, state and regional environmental program requirements. FGCU agrees to comply with the environmental permitting requirements of the Department of Environmental Protection, the U.S. Army Corps of Engineers, and the South Florida Water Management District.

- 4.7 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in or incorporated into this Agreement. Accordingly, it is agreed that no deviation from the terms hereof can be predicated upon any prior representations or agreements, whether oral or written.
- 4.8 Upon execution of this Agreement, all campus development projects occurring from 2005 – 2010 identified in Exhibit "A", which summarizes projects identified in the adopted FGCU Campus Master Plan, dated September 12, 2007, may proceed without further review by the County provided it is consistent with the terms of this Agreement and FGCU's adopted campus master plan.
- 4.9 If any part of this Agreement is found by a court of law to be contrary to, prohibited by, or deemed invalid under any applicable law or regulation, the offending provisions will be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid. The remainder of this Agreement will be given full force and effect.

5.0 DURATION OF AGREEMENT

This Agreement is effective upon execution by both parties and will remain in effect for ten years, from 2005 - 2015, unless extended by the mutual consent of FGCU and the County, in accordance with Section 15.0 of this Agreement. The concurrency payment identified in this Agreement is to cover projects in Phase 2A for 2005-2010.

6.0 GEOGRAPHIC AREA COVERED BY THIS AGREEMENT

The real property subject to this Agreement is identified in Exhibit "B", attached hereto and described in the warranty deed from Alico, Inc., to the Board of Trustees of the Internal Improvement Trust Fund, as recorded in O.R. Book 2497 at page 1564 of the Public Records of Lee County, Florida.

7.0 DESCRIPTION OF PUBLIC FACILITIES AND SERVICES

The following public facilities and services are available to support development authorized under the terms of this Agreement.

- 7.1 Plans for the Storm water Management System for the FGCU campus have been approved by the U.S. Army Corps of Engineers and South Florida Water

Management District (Permit No. 36-02881-S and 36-02881P). Storm water Management facilities will be developed in a sequence that meets the development needs of the university and maintains standards for water quality and quantity.

- 7.2 Lee County Utilities (LCU) is the assignee of a formal service agreement with FGCU to provide potable water service to meet the demands of students, faculty, and staff of FGCU and also provide the Fire Protection Water System. LCU will expand and extend potable and fire protection water services as necessary to serve FGCU's development, population and provide necessary fire flows.
- 7.3 LCU is the assignee of a formal service agreement with FGCU to provide sanitary sewer service to the university. LCU will expand and extend sanitary sewer services as necessary to serve FGCU's development population.
- 7.4 Deleted in Third Amendment.
- 7.5 FGCU has recreation facilities for its student population. The more than 300 acres of wetlands on the FGCU campus offer opportunities for the development of nature and interpretive trails and other unique natural areas. Lee County maintains approximately 876 acres of parks and recreation areas within 10 miles of the FGCU campus.
- 7.6 Interstate 75 (I-75) has been established as part of the Florida Intrastate Highway System (FIHS). Interstate 75 is the primary north-south traffic route within and through Lee County. In the vicinity of the FGCU campus, I-75 has four through lanes with a 2006 annual average daily traffic volume of approximately 78,000 vehicles per day. The entrance to the FGCU campus is from Ben Hill Griffin Parkway, formerly known as Treeline Boulevard. In the vicinity of the FGCU campus, Ben Hill Griffin Parkway is an existing four lane north-south arterial that travels from Corkscrew Road to Colonial Boulevard. The 2006 annual average daily traffic volume on this segment is approximately 20,500 vehicles per day. Alico Road is an east-west arterial that travels east from U.S. 41 and terminates at Corkscrew Road east of I-75. In the vicinity of the FGCU campus, Alico Road has four through lanes with a 2006 annual average daily traffic volume of approximately 12,600 vehicles per day. Corkscrew Road is also an east-west arterial that begins at U.S. 41 and runs east to the County line. In the vicinity of the FGCU campus, Corkscrew Road has four through lanes with a 2006 annual average daily traffic volume of approximately 13,500 vehicles per day.
- 7.7 Lee County had an interlocal agreement with FGCU to provide bus service to the campus but that agreement expired by its own terms on June 30, 2006.

Pursuant to the agreement, transit service is available Monday through Saturday from approximately 6:00 a.m. to 9:30 p.m. The terms and conditions of bus service to FGCU are set forth in Paragraph 8.7.

- 7.8 The San Carlos Park Fire Protection and Rescue Services District has an agreement with FGCU to provide fire protection and rescue services to the campus.

8.0 LEVEL OF SERVICE STANDARDS ESTABLISHED BY THE COUNTY

- 8.1 The Lee County Comprehensive Plan establishes the following level of service standards for storm water management facilities:

Surface water management systems in new private and public developments (excluding widening of existing roads) shall be designed to South Florida Water Management District (SFWMD) criteria to detain or retain excess storm water to match the predevelopment discharge rate for the 25-year, 3-day storm event (rainfall). Storm water discharges from development must meet relevant water quality and surface water management standards as set forth in Chapters 17-3, 17-40, and 17-302, and Rule 40E-4, F.A.C. New developments shall be designed to avoid increased flooding of surrounding areas. Developments shall be designed to minimize increases of discharge into public water management infrastructure (or to evapotranspiration) that exceed historic rates, to approximate the natural surface water systems in terms of rate, hydroperiod, basin and quality, and to eliminate the disruption of wetlands and flow-ways, whose prevention is deemed in the public interest.

- 8.2 The Lee County Comprehensive Plan level of service standard for potable water facilities requires facilities within certificated, designated or franchised service areas to provide a supply and treatment capacity of 250 gallons per day per equivalent residential connection (ERC) for the peak month.
- 8.3 The Lee County Comprehensive Plan level of service standard for sanitary sewer facilities requires facilities within certificated, designated or franchised service areas to provide a supply and treatment capacity of 200 gallons per day per equivalent residential connection (ERC) for the peak month.
- 8.4 The Lee County Comprehensive Plan level of service standard for solid waste facilities requires facilities to provide a disposal capacity of 7 pounds of waste (or equivalent volume) per capita per day.

8.5 The Lee County Comprehensive Plan establishes the following level of service standards for parks and recreation facilities:

(a) Regional Parks

6 acres of developed regional park land open for public use per 1,000 total County population.

(b) Community Parks

0.8 acres of developed standard community parks open for public use per 1,000 population unincorporated County only.

8.6 The Lee County Comprehensive Plan establishes the following level of service standards for State and County roads:

The design level of service for new and widened roads in Lee County shall be level of service (LOS) "C" on an annual average peak hour basis, and LOS "D" on a peak season, peak hour basis. The minimum acceptable peak hour, peak season, peak direction, level of service is as follows:

	Minimum Acceptable Peak Hour Peak Season Peak Direction, LOS
STATE & COUNTY (NON-FHIS ROADS)	
Arterials	E
Collector	E
Freeways (non-FIHS system)	D
I-75	
Collier Line to Charlotte Line	
Transitioning Area*	C
Urbanized Area*	D

* As defined pursuant to applicable state rules.

8.7 In order to reduce the impact on the levels of service on State and County roads, FGCU has entered into an agreement with Lee County to provide bus service and related ADA Para Transit Service to FGCU. The County will provide vehicles suitable for mass transit service. The County will set the parameters of

the route, which will operate from approximately 6:00 a.m. to 9:30 p.m., Monday through Saturday, excluding New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day beginning July 1, 2006 through June 30, 2011. The fare will be the same as the fixed-route bus system. The County will offer similar discounted bus passes to encourage and promote ridership of Route 60/FGCU. The County will provide printed schedules for distribution to the media and public at locations throughout the County for the purpose of actively promoting the route to the University. The sale of advertising on buses remains the right and responsibility of the County (Lee Tran). All advertising revenue will accrue to the County (Lee Tran).

9.0 FINANCIAL ARRANGEMENTS BETWEEN FGCU AND SERVICE PROVIDERS

FGCU has entered into the following financial arrangements for the provision of public facilities and services necessary to support the continued growth and development of the FGCU campus, in accordance with the projects listed in Exhibit "A" to this Agreement:

- 9.1 FGCU has no existing financial arrangements with the County or any other entity for the provision of storm water management facilities or services to the campus.
- 9.2 FGCU's formal service agreement has been assigned to Lee County Utilities (LCU) for the provision of potable water facilities and services to the campus. LCU will expand and extend potable and fire protection water services to serve FGCU's development, population, and provide necessary fire flows. Pursuant to the formal service agreement, FGCU has agreed to pay for the system capacity improvements necessary for the delivery of potable water to the campus. FGCU will provide \$3,757,498 to Lee County Utilities to provide for future water service to the campus.
- 9.3 FGCU's formal service agreement has been assigned to Lee County Utilities (LCU) for the provision of sanitary sewer facilities and services to the campus. LCU will expand and extend sanitary sewer services to serve FGCU's development population. Pursuant to the formal service agreement, FGCU has agreed to pay for the system capacity improvements necessary for the delivery of sanitary sewer service to the campus. FGCU will provide \$4,181,675 to Lee County Utilities to provide for future sewer service to the campus.
- 9.4 FGCU has a contract with the County's franchise collection contractor/hauler for the provision of solid waste and recycling services to the campus. FGCU will pay the service fees set forth in the franchise contract for solid waste collection and disposal service to the campus. In addition, the FGCU will pay the County's

annual solid waste disposal facility assessment established and adopted by the Board of County Commissioners.

- 9.5 FGCU has no existing financial arrangements with the County or any other entity for the provision of open space or recreation facilities or services to the campus.
- 9.6 FGCU entered into a cost sharing agreement with the County for the provision of transportation facilities and services to the campus. The payments originally identified in Section 12.6 have been made. FGCU has provided \$3,777,881 to the County for the provision of transportation facilities and services to the campus.
- 9.7 As a part of the agreement with Lee County for the provision of public transportation facilities and services to campus, FGCU has made financial arrangements with the County for the provision of mass transit facilities or services to the campus for five years (2006-2011) through a cost sharing arrangement.

The cost to provide bus service to FGCU over a five-year period beginning July 1, 2006 through June 30, 2011 is \$3,033,440. FGCU and Lee County will share the cost of service with the FGCU share being \$1,516,720.

- 9.8 FGCU has made financial arrangements with the San Carlos Fire Protection and Rescue Services District for the procurement of additional resources in response to the need to provide fire protection and rescue services to the campus. FGCU will pay \$250,000 for the delivery of the fire protection and rescue services to the campus. These funds will be paid to Lee County, who will then disburse the entire \$250,000 to the San Carlos Fire Protection and Rescue Service District.

10.0 IMPACTS OF CAMPUS DEVELOPMENT ON PUBLIC FACILITIES AND SERVICES

- 10.1 FGCU and County agree that development proposed in the adopted FGCU Campus Master Plan should not degrade the operating conditions for public storm water management facilities below the level of service standards adopted by the County.
- 10.2 FGCU and County agree that development proposed in the adopted FGCU Campus Master Plan will degrade the operating conditions for potable water facilities below the level of service standards adopted by the County. Mitigation of the above deficiencies will be addressed by sanitary sewer strategies identified in Section 11.2 of this agreement.

- 10.3 FGCU and County agree that development proposed in the adopted FGCU Campus Master Plan will degrade the operating conditions for sanitary sewer facilities below the level of service standards adopted by the County. Mitigation of the above deficiencies will be addressed by sanitary sewer strategies identified in Section 11.3 of this agreement.
- 10.4 FGCU and County agree that development proposed in the adopted FGCU Campus Master Plan should not degrade the operating conditions for solid waste collection and disposal facilities below the level of service standards adopted by the County.
- 10.5 FGCU and County agree that development proposed in the adopted FGCU Campus Master Plan should not degrade the operating conditions for open space and recreational facilities below the level of service standards adopted by the County.
- 10.6 FGCU and County agree that based on a cumulative analysis of the development identified in the adopted FGCU Campus Master Plan and in Exhibit "A" of this Agreement will not contribute to the degradation of the operating conditions on the following roadway segments below the level of service standards adopted by the County:
- (a) Ben Hill Griffin Parkway, from the University Entrance to Alico Road;
 - (b) Alico Road, from US 41 to Phlox Road;
 - (c) Alico Road, from Lee Road to Oriole Road;
 - (d) US 41, from Coconut Road to Williams Road; and
 - (e) US 41, from Alico Road to Island Park Road.
 - (f) Ben Hill Griffin Parkway from Estero Parkway extension to Daniels Parkway.
 - (g) I-75 from Alico Road to Colonial Boulevard.
- 10.7 FGCU and County agree that the development proposed in the adopted FGCU Campus Master Plan will degrade the operating conditions of the existing mass transit facilities and services to campus below the level of service standards adopted by the County. Mitigation of the above deficiencies will be addressed by mass transit strategies identified in Section 11.7 of this Agreement.

10.8 FGCU and County agree that the development proposed in the adopted FGCU Campus Master Plan will degrade the operating conditions of the existing fire protection and rescue services to the campus below the level of service standards adopted by the County. Mitigation of the above strategies will be addressed by fire protection and rescue services strategies identified in Section 11.8 of this Agreement.

11.0 IMPROVEMENTS REQUIRED TO MAINTAIN LEVELS OF SERVICE

In order to meet concurrency, the construction of the following off-campus improvements will be required.

11.1 FGCU and County agree that there is sufficient storm water management facility capacity to accommodate the impacts of development proposed in the adopted FGCU Campus Master Plan and in Exhibit "A" of this Agreement, and to meet the future needs of FGCU for the duration of this Agreement. FGCU and County further agree that no off-campus storm water management improvements are necessary.

11.2 FGCU and County agree that the following off-campus potable water facility improvements are necessary to correct deficiencies identified in Section 10.2 of this Agreement:

(a) The Corkscrew WTP expanded by 5 MGD for a total capacity of 15 MGD.

(b) The Pinewoods WTP expanded by 3 MGD for a total capacity of 5.2 MGD.

(c) The Green Meadows WTP expanded by 7 MGD for a total capacity of 16 MGD.

11.3 FGCU and County agree that the following off-campus sanitary sewer facility improvements are necessary to correct deficiencies identified in Section 10.3 of this Agreement:

The Three Oaks Wastewater Treatment plant expanded by 3 MGD for a total capacity of 6 MGD.

11.4 FGCU and County agree that there is sufficient solid waste facility capacity to accommodate the impacts of development proposed in the adopted FGCU Campus Master Plan and in Exhibit "A", and to meet the future needs of FGCU for the duration of this Agreement. FGCU and County further agree that no off-campus solid waste improvements are necessary.

- 11.5 FGCU and County agree that there is sufficient open space and recreation facility capacity to accommodate the impacts of development proposed in the adopted FGCU Campus Master Plan and in Exhibit "A", and to meet the future needs of FGCU for the duration of this Agreement. FGCU and County further agree that no off-campus open space and recreation improvements are necessary.
- 11.6 FGCU and County agree that there are sufficient off-campus roadways to accommodate the impact of development proposed in the adopted FGCU Campus Master Plan and in Exhibit "A" of this Agreement to meet the future needs of FGCU for the duration of the Agreement. FGCU and County further agree that no off-campus roadway improvements are necessary.
- 11.7 FGCU and County agree that improvements to mass transit facilities and services are necessary to correct deficiencies in section 10.7 of this Agreement. These improvements will be accomplished through the service plan set forth in Paragraphs 7.7, 8.7 and 9.7.
- 11.8 FGCU and County agree that improvements to the existing fire protection and rescue services are necessary to correct deficiencies in Section 10.8 of this Agreement. These improvements will be accomplished through an interlocal agreement between FGCU and the San Carlos Fire Protection and Rescue District.

12.0 FINANCIAL ASSURANCES FOR PUBLIC FACILITIES

The following financial assurances are provided by FGCU to guarantee FGCU's fair share of the costs of improvements to public facilities and services necessary to support development identified in the adopted FGCU Campus Master Plan and Exhibit "A" of this Agreement:

- 12.1 FGCU and County agree that no off-campus storm water management improvements need be assured by the FGCU.
- 12.2 FGCU and County agree that the potable water improvements necessary to accommodate FGCU are assured by FGCU in the formal service agreement referenced in paragraph 9.2. FGCU and the County agree that the FGCU's responsibility for the cost of system improvements for potable water and sanitary sewer is \$3,757,498.
- 12.3 FGCU and County agree that the sanitary sewer improvements necessary to accommodate FGCU are assured by FGCU in a formal service agreement referenced in paragraph 9.3. FGCU and the County agree that the FGCU's

responsibility for the cost of system improvements for sanitary sewer is \$4,181,675.

- 12.4 FGCU and County agree that no off-campus solid waste improvements need be assured by FGCU.
- 12.5 FGCU and County agree that no off-campus parks and recreation improvements need be assured by FGCU.
- 12.6 FGCU and County agree that no off-campus roadway improvements need to be assured by FGCU.
- 12.7 FGCU and County recognize the previous payment by FGCU to the County in the amount of \$3,777,881 identified in Section 9.6, which represents the fair share contribution for transportation impacts for the development anticipated under this agreement.
- 12.8 FGCU will provide funds in the amount of \$1,516,720 to the County to fund mass transit service to the campus from July 1, 2006 through June 30, 2011. Payments will be delivered to the County in accordance with the schedule set forth in Paragraph 9.7.
- 12.9 FGCU will provide funds in the amount of \$250,000 to the County, who will then disperse the entire \$250,000 to the San Carlos Fire Protection and Rescue District to fund the delivery of fire protection and rescue services to the campus.
- 12.10 Upon execution of this agreement, FGCU will request that The Florida Board of Governors encumber State University System Concurrency Trust Funds in the amount of \$9,705,893, which will constitute the fair share contribution payable to the County for mitigation of those impacts described in paragraphs 10.2, 10.3, 10.7, and 10.8 (the payments of which are identified in paragraphs 12.2, 12.3, 12.8 and 12.9). FGCU will request that The Florida Board of Governors pay this amount to the County in two separate payments within 60 and 240 days, respectively, after execution of the Agreement.

13.0 DEVELOPMENT VESTING

- 13.1 This section applies to the development identified in the Capital Improvements Element of the FGCU Campus Master Plan adopted on July 21, 1995 as revised June 2000, January 16, 2002, and September 12, 2006, and listed in Exhibit "A" attached hereto.

- 13.2 The uses, maximum densities, intensities and building heights for development identified in Exhibit "A" are those established in the Future Land Use Element of the FGCU Campus Master Plan adopted on September 12, 2006.
- 13.3 The development identified in Exhibit "A" will not be subject to the County's concurrency management requirements if FGCU complies with all of the terms and conditions to provide financial assurances set forth in Section 12.0 of this Agreement.
- 13.4 The development identified in Exhibit "A" for Phase 2A, encompassing 2005-2010, will remain vested as provided for in this section even if it is not completed within the time period of this Agreement. The development for Phase 2B, encompassing 2010-2015 is not vested in this Agreement.

14.0 APPLICABLE LAWS

- 14.1 The state government law and policies regarding concurrency and concurrency implementation governing this Agreement will be those laws and policies in effect at the time of approval of this Agreement.
- 14.2 If state or federal laws are enacted after execution of this Agreement, which are applicable to or preclude either party's compliance with the terms and conditions of this Agreement, this Agreement will be modified or revoked or amended, as necessary, to comply with the relevant state or federal laws.

15.0 AMENDMENT

- 15.1 Amendment of this Agreement will be made in accordance with the notification requirements set forth in Section 22.0 of this Agreement.
- 15.2 It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein will be effective unless contained in a written document approved and executed by all the parties hereto.
- 15.3 In the event of a dispute arising from the implementation of this Agreement, both parties must resolve the dispute in accordance with the dispute resolution requirements set forth in Section 17.0 of this Agreement.

16.0 CONSISTENCY WITH ADOPTED COMPREHENSIVE PLANS

The County finds that this Agreement and the proposed development provided for herein are consistent with the County's Comprehensive Plan.

17.0 DISPUTE RESOLUTION

- 17.1 In the event of a dispute arising from the implementation of this Agreement, each party will select one mediator and notify the other party in writing of the selection. Thereafter, within 15 days after their selection, the two mediators will select a neutral third mediator to complete the mediation panel.
- 17.2 Each party will be responsible for all costs and fees payable to the mediator selected by it and will equally share the costs and fees of the third mediator for services rendered and costs expended in connection with resolving issues in dispute.
- 17.3 The mediation panel must convene 10 days after the selection of the mediation panel to resolve the issues in dispute. The panel must issue a report containing a recommended resolution of the issues in dispute within 60 days of their meeting.
- 17.4 If either FGCU or County rejects the recommended resolution of the issues in dispute, the matter will be forwarded to the Department of Community Affairs (DCA). Pursuant to Chapter 1013, Florida Statutes, DCA has 60 days to hold informal hearings, if necessary; identify remaining issues in dispute; prepare a record of the proceedings; and submit the matter to the Administration Commission for final action. The report to the Administration Commission must list each issue in dispute, describe the nature and basis for each dispute, identify alternative resolutions of each dispute, and make recommendations. The Administration Commission will then take action to resolve the issues in dispute. In resolving this matter, the Administration Commission may, pursuant to Chapter 1013, Florida Statutes, prescribe by order the contents of this Agreement.

18.0 MONITORING AND OVERSIGHT

- 18.1 The County may inspect related activity on the FGCU campus to verify that the terms of this Agreement are satisfied. FGCU agrees to provide the County with copies of all site plan drawings and building plans within 90 days of FGCU approval in order for the County to determine if there has been demonstrated good faith compliance with the terms of this Agreement.
- 18.2 If either party finds that there has been a failure to comply with the terms of this Agreement, the aggrieved party must serve notice on the other that such failure to comply has occurred in accordance with the notification requirements set forth in Section 22.0 of this Agreement.

18.3 Disputes that arise in the implementation of this Agreement must be resolved in accordance with the provisions of Section 17.0 above.

19.0 ENFORCEMENT

Any party to this Agreement or aggrieved or adversely affected person may file an action for injunctive relief in the circuit court where the County is located to enforce the terms and conditions of this Agreement, or to challenge the compliance of the Agreement with Chapter 1013, Florida Statutes. This action will be the sole and exclusive remedy of an aggrieved or adversely affected person other than a party to the agreement to enforce any rights or obligations arising from this Agreement.

20.0 SUCCESSORS AND ASSIGNS

This Agreement is binding upon the parties hereto, their successors in interest, heirs, assigns and personal representatives.

21.0 RECORDING OF THIS AGREEMENT

A copy of the executed Agreement must be forwarded to the Department of Community Affairs by FGCU within 14 days after the date of execution.

22.0 NOTICES

22.1 All notices, demands, requests or replies provided for or permitted by this Agreement must be in writing and may be delivered by any of the following methods:

By personal service or delivery;

By registered or certificated mail;

By deposit with an overnight express delivery service.

22.2 Notices by personal service or delivery will be deemed effective at the time of personal delivery. Notices by registered or certificated mail will be deemed effective three business days after deposit with the United States Postal Service. Notices by overnight express delivery service will be deemed effective one business day after deposit with the express delivery service. Notices will not be effective unless properly addressed.

For the purpose of notice, the address of the County will be:

Lee County Manager
2115 Second Street, Fourth Floor
Post Office Box 398
Fort Myers, Florida 33902-0398

With a copy to:

Ms. Donna Marie Collins
Chief Assistant Lee County Attorney
2115 Second Street
Post Office Box 398
Fort Myers, Florida 33902-0398

The address of FGCU will be:

Ms. Vee Leonard
General Counsel
Florida Gulf Coast University
10501 FGCU Blvd. South
Fort Myers, Florida 33965-6565

23.0 EXHIBITS AND SCHEDULES

The Exhibits and Schedules to this Agreement consist of the following, all of which are incorporated into and form a part of this Agreement:

Exhibit "A" --- Development Authorized By The Agreement

Exhibit "B" --- Geographic Area Covered By The Agreement

IN WITNESS WHEREOF, the parties have set their hands and seals on the day and year indicated

Signed, sealed and delivered in the presence of:

[Signature]
Witness Signature

LAHLEEN R. Bottoms
Witness Printed Name

[Signature]
Witness Signature

BANAMA A. Kaeel
Witness Printed Name

FLORIDA GULF COAST UNIVERSITY
BOARD OF TRUSTEES

[Signature]
By: Scott Lutgert, Chair

Date: 10/20/08

APPROVED AS TO FORM
AND EXECUTION

[Signature]
General Counsel

STATE OF FLORIDA
COUNTY OF LEE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in Lee County, Florida, to take acknowledgments, personally appeared Scott Lutgert, Chair for and on behalf of the Florida Gulf Coast University Board of Trustees, to me known to be the person described herein and who executed the foregoing, and acknowledged the execution thereof to be his free act and deed, for the purposes therein mentioned.

WITNESS my hand and official seal this 21st day of October, 2008.

NOTARY PUBLIC-STATE OF FLORIDA
 Diane St. John
Commission # DD456228
Expires: SEP. 12, 2009
Bonded Thru Atlantic Bonding Co., Inc.

(Notarial Seal)

[Signature]
Notary Public

My Commission Expires: Sept. 19, 2009

APPROVED by the County Commission on December 9, 2008.
CHARLIE GREEN, CLERK
ATTEST:

COUNTY COMMISSION OF THE
COUNTY OF LEE, FLORIDA

Marcia Wilson
Deputy Clerk

By: Ray Judah
Ray Judah, Chair

APPROVED AS TO FORM AND
LEGAL CORRECTNESS:

By: Donna Marie Collins
Donna Marie Collins
Chief Assistant County Attorney



STATE OF FLORIDA
COUNTY OF LEE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in Lee County, Florida, to take acknowledgments, personally appeared Ray Judah as Commissioner for the County Commission of the County of Lee County, to me known to be the person described herein and who executed the foregoing, and acknowledged the execution thereof to be his free act and deed, for the purposes therein mentioned.

WITNESS my hand and official seal this 9 day of December, 2008.



(Notarial Seal)

Georgia Sekulski
Notary Public

My Commission Expires: _____

EXHIBIT A
(As revised 12/2007)

PHASE TWO 2005-2015

Phase 2A:

2005-2010

<u>Building Space</u>	<u>Size/Area</u>
Academic 6/College of Business Engineering Building	63,000
Academic 7	70,000
Fine Arts Phase 2 Auditorium	60,000
Central Energy Plant Phase 2	25,000
Support	1500 ton chiller
Support	11,522
Academic 8	11,522
Academic 9	75,000
Academic 10	81,000
Recreation Center	81,000
Recreation Center	50,000
Southeast Housing Phase 8	408 Beds
Southeast Housing Phase 9	408 Beds
Southeast Housing Phase 10	408 Beds
Parking Deck 1	650 Cars
Parking Deck 2	1,000 Cars
Parking Deck 3	1,000 Cars
Parking Deck 4	1,000 Cars
Science and Technology Building	36,000
Residential Dining Facility	12,600
Multipurpose Education Facility	93,000

Phase 2B: 2010-2015 (Future Impacts)

<u>Building Space</u>	<u>Size/Area</u>
College of Health Professions	33,000
Forensic Science Buildings	51,000
Academic 11	90,000
Academic 12	107,233
Academic 13	90,000
Health Education Conf. Center	20,000
Academic 14	110,000
Northwest Mixed Use Building 1	25,000
Northwest Mixed Use Building 2	25,000
Student Center Expansion	30,000

Southeast Housing Phase 10	576 Beds
Southeast Housing Phase 11	576 Beds
Student Recreation Center Phase 2	25,000
Parking Structure 5	1,000 Cars
Parking Structure 6	1,200 Cars
Residential Dining Center Expansion	10,000
Parking Structure 7	1,000 Cars
Parking Structure 8	1,000 Cars