ORDINANCE NO. 2014 - 04

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, AMENDING CHAPTER 74 OF THE COLLIER COUNTY CODE OF LAWS AND ORDINANCES (THE COLLIER COUNTY CONSOLIDATED IMPACT FEE ORDINANCE) BY AMENDING PROVISIONS RELATING TO THE TIMING OF PAYMENT OF IMPACT FEES THAT WILL NOW OCCUR NO LATER THAN PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY OR CERTIFICATE OF COMPLETION FOR THE SUBJECT DEVELOPMENT; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR INCLUSION IN THE COLLIER COUNTY CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Collier County has used impact fees as a funding source for growth-related capital improvements for transportation since 1985; and

WHEREAS, on March 13, 2001, the Board of County Commissioners (Board) adopted Ordinance No. 2001-13, the Collier County Consolidated Impact Fee Ordinance, repealing and superseding all of the County's then existing impact fee regulations, and consolidating all of the County's impact fee regulations into that one Ordinance, codified in Chapter 74 of the Collier County Code of Laws and Ordinances (the "Code"); and

WHEREAS, Collier County uses impact fees to supplement the funding of necessary capital improvements required to provide public facilities to serve new population and related development that is necessitated by growth in Collier County; and

WHEREAS, based on guidance and direction provided by the Board of County Commissioners at the regular meeting of the Board of County Commissioners on May 28, 2013 and the workshop held on June 4, 2013, provisions have been drafted to move the required timing of payment of impact fees to a later point in time.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, that:

SECTION ONE. Article I, *General,* Section 74-108, *General definitions*, of the Collier County Code of Laws and Ordinances is hereby amended to read as follows:

Sec. 74-108. General definitions.

When used in this chapter, the following terms shall have the following meanings, unless the context clearly indicates otherwise. Terms contained in article III or the rate schedules supercede these general definitions to the extent of any conflict(s).

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Certificate of completion shall mean a certificate stating that materials and products meet specified standards or that work was done in compliance with approved construction documents. A certificate of completion is evidence that the structure complies substantially with the plans and specifications that have been submitted to, and approved by, the local authority and allows for use, where occupancy is not needed.

Certificate of occupancy shall mean a certificate providing evidence that the building complies substantially with the plans and specifications that have been submitted to, and approved by, the local authority and allows for occupancy.

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SECTION TWO. Article II, *Impact Fees,* Section 74-202, *Payment*, of the Collier County Code of Laws and Ordinances is hereby amended to read as follows:

(a) Unless deferred or waived by a written agreement with the county as a party thereto, or unless exempted, within the unincorporated county, the impact fee shall be paid in full as a prerequisite to the issuance of a ~~building permit~~ certificate of occupancy or certificate of completion for the development, and no building permit or any other authorization to use the land included in the development shall be issued a certificate of occupancy or a certificate of completion until each applicable impact fee has been paid in full. Notwithstanding any other provision of this section, staff shall not accept prepayment (early payment) of impact fees prior to submittal of the related and complete building permit application for the respective development ~~in all cases where issuance of a conventional building permit renders the respective impact fees due and payable~~. In instances where a conventional building permit is not required (e.g., golf course, park, change of use, etc.), staff shall not accept prepayment (early payment) of impact fees prior to the (whichever occurs first) event that renders such impact fees due and payable. Payment of estimated impact fees prerequisite to issuance of a certificate of public facility adequacy (COA) is not prohibited pre-payment, and prepayment of estimated impact fees shall not grandfather such estimated impact fees against impact fee increases, if any, that occur subsequent

to such pre-payment but before the respective estimated impact fees are quantified and become finally due and payable.

(b) If ~~the issuance of~~ a conventional building permit for the development is not required (e.g., golf course, park, change of use, etc.), then an applicant shall pay the Impact fee prior to the occurrence of any one of the following events, whichever occurs first:

(1) The date when the first ~~building permit~~ certificate of occupancy has been issued for any building or structure accessory to the principle use or structure of the development; or

(2) The date when the first ~~building permit~~ certificate of occupancy is issued for the first nonaccessory building or nonaccessory structure to be used by any part of the development; or

(3) The date when a final development order, final development permit or other final authorization is issued authorizing construction of a parking facility for any portion of the development; or

(4) The date when a final development order, final development permit or other final approval is issued for any part of the development in instances where no further building permit is required for that part of the development; or

(5) The date when any part of the development opens for business or goes into use.

(c) Owners of all golf courses must submit to the county a certified legal description and a certified surveyors sketch (to scale) of the course prepared by a professional engineer before the date the construction of the golf course commences.

(d) If the development is located within the unincorporated area of the county, the impact fee shall be paid directly to the county.

(e) If the development is located within a municipality, the impact fee shall be paid as follows:

(1) If the municipality has entered into a Florida Interlocal Cooperation Act, F.S. § 163.01 agreement with the county that provides for the collection of the impact fee, such impact fees shall be paid and collected in accordance with the provisions of the agreement.

(2) If the municipality has not entered into a Florida Local Government Development Agreement with the county providing for the collection of the impact fee, such impact fees shall be paid directly to the county. The time that such impact fees become due and payable shall be the same as if the development were in unincorporated Collier County.

(f) If the development is located within a municipality and the governing body of the municipality has not agreed to require proof of payment of the impact fee to the county prior to the issuance of a ~~building permit~~ certificate of occupancy or certificate of completion by the municipality or to require additionally the payment of the impact fee as a condition of the ~~issuance~~ final approval of a building permit by the municipality, the impact fees shall be collected as provided in subsections 74-202(a) and (b), or, in the event of delinquency in payment, pursuant to section 74-501

(g) The obligation for payment of the impact fees and impact fees paid shall run with the land. Assignment of impact fee credits from one parcel to another parcel of land shall not be permitted except in accordance with the requirements of section 74-205

(h) In the event a building permit ~~issued for a development~~: (i) expires prior to commencement of any part of the development for which the building permit was issued, (ii) is officially cancelled, (iii) is revised after payment of impact fees and the permit's revision results in a reduction in the impact fees applicable for the development, or (iv) results in the impact fees being overpaid due to an incorrect application of the rate schedule, calculation error(s), or prior payment within the same subject property, the then current owner may, within four years of payment, apply for a reimbursement of a portion of or the entire impact fee, depending on the basis for the request for reimbursement. All such requests for reimbursement shall be calculated by applying the impact fee rate schedule that was in effect on the date of the respective building permit application. Failure to make timely application for a reimbursement of the impact fee shall waive any right to a reimbursement.

(1) The application for reimbursement shall be filed with the county manager and shall contain the following:

a. The name and address of the owner;

b. The location of the property upon which the respective development was authorized by the respective building permit;

c. The date the impact fee was paid;

d. A copy of the receipt of payment for the impact fee; and

e. The date the building permit was issued and the date of expiration, cancellation or approval of the revision, as applicable;

f. Payment of a non-refundable "impact fee reimbursement processing fee" equal to two percent of the total impact fees requested to be reimbursed, except that the minimum processing fee shall be $25.00 and the maximum processing fee will not

exceed $500.00. Reimbursement requests which are determined to arise from either an incorrect application of the rate schedule or a calculation error by county staff will not be required to pay the "impact fee reimbursement processing fee".

g. If the request is due to a revision to the building permit, a copy of the approved revision including original and revised square footage, number of units, date of approval of the revision, and an explanation of the nature of the revision (change of size, use, etc.).

h. If the request is due to an overpayment, receipts from previous payments, corresponding building permit numbers, and evidence of the current square footage (area) and uses of existing structures must be included in the application.

(2) After verifying that the building permit has expired or was cancelled before the development had commenced or was revised and thereby required a reduction in the impact fee assessed for the development, the county manager shall forward the request for reimbursement of the impact fee to the appropriate division staff for further processing as set forth below.

(3) If a building permit is subsequently ~~issued~~ approved for a development on the same property, which was previously approved for a reimbursement, then the impact fee in effect at that time must be paid.

(4) After verifying all information relating to the request for reimbursement, staff shall forward the request to the applicable division administrator for approval. The division administrator shall approve or deny the request and forward all approved requests to the clerk of the circuit court's finance department for processing.

(5) All reimbursement requests totaling $25,000.00 or more, cannot be approved administratively and must be submitted to board of county commissioners.

(i) The impact fee shall be paid in addition to all other fees, charges and assessments due for the ~~issuance of a~~ building permit.

(j) In the event a development is a mixed use development, the county manager shall calculate each impact fee based upon each separate impact fee land use category included in the proposed mixed use development as set forth in the applicable rate schedule.

(k) In the event a development involves a land use not contemplated under the impact fee land use categories set forth in the rate schedules in appendix A, the county manager shall calculate the appropriate impact fees utilizing the methodologies

contained in the impact fees adopted by section 74-106. The county manager shall utilize as standards in his determination the impact fee rate calculation variables applicable to the most similar land use categories in the applicable impact fee rate schedules.

SECTION THREE. Article II, *Impact Fees,* Section 74-204, *Alternative fee calculation,* of the Collier County Code of Laws and Ordinances is hereby amended to read as follows:

(a) The impact fee may be determined by an alternative fee calculation of the fiscal impact of the development on the public facilities if:

(1) Any person commencing a development which increases demand on any public facility chooses to have the impact fee for that public facility determined by the alternative fee calculation and pays to the county in full the impact fee calculated pursuant to the applicable impact fee rate schedule and a non-refundable alternative fee calculation review fee of $2,500.00 or any other review fee amount then established by the board by ordinance or resolution; and

(2) The applicant believes that the nature, timing or location of the proposed development makes it likely to generate impacts costing less than the amount of the impact fee generated by application of section 74-201 and the impact fee rate calculations in sections 74-302 through 74-309, as applicable for the public facilities at issue; and

(3) The applicant commences the alternative fee calculation process by requesting in writing to the county manager, and attends with the county manager, the preapplication meeting described in subsection 74-204(b) within 90 days of the issuance of ~~the building permit~~ a certificate of occupancy or certificate of completion for the development; and

(4) The applicant submits to the county manager a completed alternative fee calculation study as described in this section within 12 months of the issuance of the ~~building permit~~ certificate of occupancy or certificate of completion for the development. Prior to expiration of the foregoing 12-month period, the applicant may request in writing to the county manager up to a six-month extension of time to submit the completed alternative fee calculation study. Such extension request may be granted by the county manager for good cause shown for extending the time period in which the study is to be completed. Other extensions of time timely requested by the applicant in writing may be granted.

(b) Prior to commencing the alternative fee calculation, the applicant shall arrange and attend a pre-application meeting with the county manager to discuss the

requirements, procedures and methodology of the alternative fee calculation. The pre-application meeting will normally cover the following topics: (1) proposed previous studies; (2) credits; (3) proposed study sites; (4) study data elements; (5) proposed data collection methodology; and (6) report format.

(c) Subsequent to the pre-application meeting, the applicant shall submit three copies of the proposed approach to the alternative fee calculation to the county manager. The county manager shall have 30 county working days to respond in writing to the proposed approach. If the county manager concurs with the proposed approach, the applicant will be notified to proceed with the alternative fee calculation. If the county manager disagrees with the proposed approach, the county manager shall identify the problem areas for the applicant to incorporate and address in its resubmittal to the county. The applicant shall be required to receive approval from the county manager prior to proceeding with the alternative fee calculation. If the county manager has not approved the applicant's proposed approach after one resubmittal, the applicant may request a decision from the county manager whereupon the county manager shall either approve, approve with conditions, or deny the proposed approach.

(d) The alternative fee calculation shall be undertaken through the submission of an impact analysis for the public facilities at issue, which shall be based on data, information, methodology and assumptions contained in this chapter and/or the impact fee studies incorporated herein, or an independent source, including local studies for alternative impact fee calculations performed by others within the immediately preceding three years, provided that the independent source is a local study supported by a data base adequate for the conclusions contained in such study performed pursuant to a methodology generally accepted by professionals in the field of expertise for the public facilities at issue and based upon standard sources of information relating to facilities planning, cost analysis and demographics and generally accepted by professionals in the field of expertise for the public facilities at issue. Technical details of approach, methodology, procedures and other matters relating to the alternative fee calculation may be addressed in an administrative procedures manual developed by the county manager and approved by resolution of the board.

(e) The alternative fee calculation shall be submitted by the applicant for the proposed development and shall be prepared and certified as accurate by persons accepted by the county as qualified professionals in the field of expertise for the public facilities at issue, and shall be submitted to the county manager.

(f) Within 30 county working days of receipt of an alternative fee calculation, the county manager shall determine if it is complete. If the county manager determines the application is not complete, he shall send a written statement specifying the deficiencies to the person submitting the application at the address set forth in the application. The county manager will not be required to take any further action on the alternative fee calculation until all specified deficiencies have been corrected.

(g) After the county manager determines that the alternative fee calculation is complete, he shall notify the applicant of its completion within ten days, and he shall, within 30 county working days, complete a review of the data, analysis, and conclusions asserted in the alternative fee calculation. If this review is not completed within these time frames, and if requested by the applicant, the item will be scheduled for the next available board meeting.

(h) If the county manager determines that in the alternative fee calculation the county's cost to accommodate the proposed development is statistically significantly different than the impact fee established pursuant to section 74-201 and the applicable sections 74-302 through 74-309, the amount of the impact fee shall be reduced to a dollar amount consistent with the amount determined by the alternative fee calculation, subject to the board's approval.

(i) In the event the applicant disagrees with a decision of the county manager that effectively results in a denial of the alternative fee calculation, the applicant may file a written appeal petition with the board not later than 30 days after receipt of notice of such a decision by the county manager. In reviewing the decision, the board shall use the standards established herein. The appeal petition must advise the board of all issues and shall explain the precise basis the applicant asserts that the decision(s) of the county manager is/are alleged to be incorrect.

SECTION FOUR. Article II, *Impact Fees,* Section 74-205, *Developer contribution credit,* of the Collier County Code of Laws and Ordinances is hereby amended to read as follows:

(a) A person may apply for a credit against any impact fee owed pursuant to section 74-201 for a specific type of public facility for any contribution, construction or land dedication conveyed to, accepted and received by the county for that same type of public facility. The county may grant a credit against the impact fee imposed against a development pursuant to section 74-201, for the construction, installation or contribution of any public facilities, or improvements and additions thereto, or land dedication related thereto, required pursuant to a development

order for the development, or not required by such development order. Such construction, contribution or land dedication shall be subject to the approval of the county manager and the board as described herein and shall be an integral part of, and a necessary accommodation to, existing or contemplated public facilities. Anything to the contrary notwithstanding, a contribution or dedication related to a specific type of public facility shall be available as a credit only against the impact fee for the same type of public facility and there shall be no intermingling or cross-over of credits from one type of public facility to another type of public facility.

(b) A credit granted against the applicable impact fee for certain dedications of land or for the contributions of off-site improvements to the transportation network, contributions of construction or installation of regional water and/or regional sewer systems, buildings, facilities and/or improvements and/or additions thereto, made to the regional water and sewer systems, or for other authorized contributions or dedications for other public facilities authorized in this chapter, whether required to be made pursuant to a development order by the county or not, shall be subject to the following standards:

(1) The dedicated land shall be an integral part of, and a necessary accommodation to, contemplated off-site improvements to the adopted needs plan transportation network, or the county's regional water and regional sewer systems needs, whether on-site or off-site, or the county's other public facility needs, as determined by the county;

(2) The road off-site improvements to be contributed shall be an integral part of, and a necessary accommodation to, the adopted cost feasible plan for the transportation network;

(3) Except as provided in sections 74-205(b)(1) and (b)(2), no other dedications of land, contributions of off-site improvements, contributions of construction or installation of improvements shall be entitled to developer contribution credit from the impact fee;

(4) All dedicated land for road right-of-way shall be conveyed in fee to the county by statutory warranty deed. Other conveyances to the county, including right-of-way or easements required by the county shall be conveyed to the county pursuant to ordinances, resolutions, guidelines or regulations then in effect and in form of conveyance acceptable to the county attorney.

(5) The credit for a dedication of land shall not exceed the fair market value of the land dedication as based upon a written appraisal by a qualified and professional appraiser acceptable to the county, based upon comparable sales of similar property between unrelated parties in a bargaining transaction as of the date of the contribution; the date of the

commencement of the construction; the date of the land dedication; or for dedications, the day before the date of the issuance of the development order approval (zoning amendment, site plan approval, PUD approval, or other development order approval) wherein the contribution, construction or land dedication was proffered or required; whichever occurs first.

(6) In the case of contributions of construction or installation of improvements, the value of the proposed contribution shall be adjusted upon completion of the construction to reflect the actual costs of construction or installation of improvements contributed by the developer. The actual cost of construction for the contribution shall be based upon costs certified by a professional engineer or architect, as appropriate. However, in no event shall any upward adjustment in the credit amount as set forth in the developer contribution agreement between the owner and the county exceed 15 percent above the initial certified estimate of costs for contributions as provided by the professional engineer or architect, as appropriate. Upon adjustment of the value of the developer's contribution, the contribution credit shall be adjusted accordingly.

(7) Until the contribution credit is finally adjusted upon completion of construction, no more than 75 percent of the initial estimate of costs for contributions to the regional water and/or sewer systems identified in the contribution agreement shall be actually applied or used in the calculations of available credit against water and/or sewer systems impact fees.

(8) No credit whatsoever for lands, easements, construction or infrastructure otherwise required to be built or transferred to the county by law, ordinance or any other rule or regulation shall be considered or included in the determination of any value of any developer's contribution.

(9) All construction cost estimates shall be based upon, and all construction plans, specifications and conveyances shall be in conformity with, the construction standards and procedures of the county as then adopted by ordinance. All plans and specifications must be approved by the county manager, transportation administrator, public utilities administrator or appropriate division or department administrator, and other appropriate governmental entity prior to commencement of construction. A determination of the amount of credit or reimbursement shall be made prior to consideration by the board.

(10) No credit for a particular type of public facility shall exceed the impact fee for that type of public facility for the proposed development imposed by this chapter, unless a credit (developer's) agreement has been completed pursuant to the requirements of this section.

(c) An applicant who desires to make a dedication of land or contribution for impact fee credits shall, prior to issuance of a ~~building permit~~ certificate of occupancy or certificate of completion, submit to the county a proposed plan for the dedication of land or for the contribution. The proposed plan of construction or dedication shall include:

(1) A designation and legal description of the development for which the plan is being submitted;

(2) A list of the contemplated improvements;

(3) A legal description of any land or interest in land proposed to be dedicated and a written appraisal prepared in conformity with the requirements of this section;

(4) An estimate of proposed construction costs certified by a professional engineer or architect, as appropriate; and

(5) A proposed time schedule for completion of the proposed plan of construction or dedication prepared by a professional engineer or architect, as appropriate;

(d) Upon submission of a complete plan, the transportation administrator or the public utilities administrator, or appropriate division or department administrator, shall present to the board at a regularly scheduled meeting or a special meeting called for the purpose of reviewing the proposed plan and shall provide the applicant or owner written notice of the time and place of the presentation. The board shall authorize the county attorney to prepare a contribution agreement with the owner only if:

(1) There is a finding that the dedications or contributions contemplated by the agreement are consistent with the comprehensive plan and the requirements of this section;

(2) Such proposed plan is in conformity with contemplated improvements and additions to the transportation network in compliance with the requirements of sections 74-205(b)(1) and (b)(2) or contemplated improvements and additions to the regional water and/or sewer systems, or otherwise in compliance with sections 74-205(b)(1) and (b)(2) for other public facilities;

(3) There is sufficient funding remaining in the adopted road impact fee annual credit threshold budget, or any threshold that may be established for other public facilities, to cover the request for such credits; and

(4) Such proposed plan, viewed in conjunction with other existing or proposed plans, will not create a detrimental imbalance between the treatment and transmission capabilities of the regional water and/or sewer systems; and

(5) The transportation administrator or public utility administrator or county manager has determined that the proposal furthers the development of the applicable component of the public facilities and the proposed plan is, in the opinion of the board of county commissioners, consistent with the public interest.

(6) Such proposed plan, viewed in conjunction with other existing or proposed plans, will not adversely impact the cash flow or liquidity of the applicable public facility impact fee trust account in such a way as to frustrate or interfere with other planned or ongoing growth necessitated capital improvements and additions to such public facility systems; and

(7) The proposed time schedule for completion of the plan is consistent with the then most recently adopted five-year capital improvement program for the applicable public facility.

(e) Upon approval of a proposed plan of dedication or contribution, the transportation administrator or public utilities administrator or county manager shall determine the amount of developer credit and shall approve the timetable for completion of construction. The amount of developer credit to be applied against the applicable public facility impact fee shall be determined according to the standards of valuation described in section 74-205(b).

(f) Upon approval of a plan for the dedication or contribution, a developer contribution agreement shall be entered into between the county and the owner. A nonrefundable processing, review and audit fee of $2,500.00 shall be due once the voluntary plan has been approved and prior to the preparation of a contribution agreement by the county attorney. The processing, review and audit fee shall be returned to the applicant if either the county manager, the authorized division or department administrator, or the board determines the proposed plan is not acceptable. The processing, review and audit fee shall become non-refundable when the board authorizes the county attorney to prepare a contribution agreement. The contribution agreement shall, at a minimum, provide for and include, but not be limited to:

(1) Identification of the parties including a representation from the owner or owners disclosing who are the record owners of the real property described in the contribution agreement. If requested by the county attorney, the applicant or owner shall provide to the county attorney, at no cost to the county, an attorney's opinion identifying the record owner, his authority to enter into the contribution agreement and identify any lien holders having a lien or encumbrance on the real property that is the subject of the agreement. Said opinion shall specifically describe each of the recorded instruments under which the record owner holds title, each

lien or encumbrance, and cite appropriate recording information and incorporate by reference a copy of all such referenced instruments.

(2) A finding that the contributions and dedications contemplated by the agreement are consistent with the comprehensive plan.

(3) A legal description of all lands included in the development subject to the agreement.

(4) Impact fee credits shall run with the land in perpetuity, interest free, until used or assigned.

(5) A graphic drawing or rendering and a legal description of the dedication or contribution to be made pursuant to the agreement.

(6) An acknowledgement that the dedications or contributions contemplated under the agreement shall be construed and characterized as work done and property rights acquired by a highway or road agency for the improvement of a road within the boundaries of a right-of-way, or by the county, a utility, or other persons or entities engaged in the distribution and transmission of water and/or collection or transmission of sewerage for the purpose of constructing or installing on established rights-of-way, mains, pipes, cables, utility infrastructure or the like.

(7) An acknowledgement that the contribution agreement shall not be construed and characterized as a development agreement under the Florida Local Government Development Agreement Act, as then amended, or otherwise.

(8) Adoption of the approved time schedule for completion of the plan.

(9) Determination of the dollar value amount of credit based upon the standard of valuation as set forth in section 74-205(b)(1) and (2).

(10) A written appraisal for any land dedication.

(11) The initial professional opinion of probable construction costs, if any, provided by a professional engineer or professional architect, as appropriate.

(12) A requirement that the owner keeps or provides for retention of adequate records and supporting documentation that concern or reflect total project cost of the improvements to be contributed. This information shall be available to the county, or its duty authorized agent or representative, for audit, inspection or copying, for a minimum of five years after the termination of the contribution agreement.

(13) A requirement that the credit for impact fees for the specific public facility identified in the contribution agreement shall run with the land of the subject development and shall be reduced by the entire amount of the impact fee for that public facility due for each building permit ~~issued thereon~~ until the development project is either completed or the credits are exhausted or are no longer available, or have been assigned by operation

of or pursuant to an assignment agreement with the county. The foregoing reduction in the impact fee credit shall be calculated based on the amount of the impact fees for that public facility in effect at the time of the building permit application. The credit shall specify the specific type of public facility impact fee to which it shall apply (e.g., roads, sewer, water, etc.) and shall not apply to any other type of public facility impact fee.

(14) That the burdens of the contribution agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the contribution agreement.

(15) An acknowledgment that the failure of the contribution agreement to address any permit, condition, term, or restriction shall not relieve either the applicant or owner, or their successors, of the necessity of complying with any law, ordinances, rule or regulation governing said permitting requirements, conditions, terms or restrictions.

(16) Compliance with the then applicable risk management guidelines which may be established by the county's risk management department from time to time, including but not limited to insurance and indemnification language acceptable to the county for any contribution or dedication.

(17) Annual examination and audit of compliance performed by an independent auditor to determine compliance with, and performance under, the contribution agreement, including whether or not there has been demonstrated good faith compliance with the terms of the contribution agreement and to report the credit applied toward payment of impact fees and the balance of available and unused credit. If the board finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of the contribution agreement, the agreement may be revoked or modified by the county.

(18) A provision that mandates modification or revocation of the contribution agreement as may thereafter be necessary to comply with then-applicable and relevant state and federal laws, if state or federal laws are enacted after the execution of the contribution agreement which are applicable to and which preclude the parties' compliance with the terms of the contribution agreement.

(19) Amendment or cancellation by mutual consent of the parties to the contribution agreement or by their successors in interest.

(20) Recording of the contribution agreement in the official records within 14 days after the county enters into the contribution agreement. All costs of recording and conveyance shall be paid by the applicant or owner.

(21) The ability to file an action for injunctive relief in the circuit court of the county to enforce the terms of the contribution agreement, said remedy

being cumulative with any and all other remedies available to the parties for enforcement of the agreement.

(22) An acknowledgment that the contribution agreement shall not be construed or characterized as a development agreement under the Florida Local Government Development Agreement Act.

(g) Any developer contribution credit granted from the specific type of public facility impact fee shall only be for those dedications or contributions made to accommodate growth, within the respective impact fee district where the development is located, or an adjacent district (for the purposes of road impact fees), and for the same type of public facility impact fee for which the dedications or contribution has been made.

(h) All road impact fee credits shall be awarded on an annual basis from an allocation established each fiscal year of the county based upon the recommended annual budget threshold amount as established in the budget of the transportation services division. No road impact fee credits greater than this annual allocated sum shall be allowed in any fiscal year. The balance of any annual unexpended road impact fee credits may be carried over from one fiscal year to the next fiscal year, subject to the allocation limit each fiscal year, until expended. Should Developer be unable to commence Development as originally contemplated in the contribution agreement, the parties may enter into a reimbursement agreement, subject to annual appropriation, provided such agreement for reimbursement shall not be for a period in excess of seven years from the date of recording the contribution agreement in the official records of the county, and shall provide for a forfeiture of any remaining reimbursement balance at the end of such time period.

(i) All right-of-way dedications must be consistent with the county's adopted needs plan in order to be eligible for road impact fee credits at the time of the request.

(j) Any dedication or contribution for which a road impact fee credit is requested must be in the county's cost feasible plan of the transportation network at the time of the request.

(k) If road impact fee credits are not available at the time of request, the county shall otherwise compensate and may award a cash reimbursement subject to conformity to all other requirements for credit eligibility and subject to the following additional conditions:

(1) If a phase or phases of the contribution and dedication, or either, are included in the five-year CIE, the county shall compensate and may agree

to reimburse for that phase or phases of off-site improvements at the time the funds are scheduled to become available in the five-year CIE; and

(2) If the county has a budget for advanced right-of-way acquisition, the county may reimburse for the value of the right-of-way, up to the level of the remaining budget for such land acquisition.

(l) The county shall not reimburse for contributions that are not included in the five-year CIE or that exceed the amount of credits established in the threshold level budgeted.

(m) In order to maintain the pro-rata or proportionate share purpose of this chapter, it is necessary that a uniform method be used countywide in determining credit against the impact fee. Therefore, the county, when considering compensation or credit, shall apply the then-applicable standards it has established in the unincorporated areas throughout the entire incorporated and unincorporated county, i.e., with regard to roads, the dedication of the minimum local road widths is non-compensable, thus putting the unincorporated areas and the incorporated areas in the same posture and thereby maintaining the integrity of the pro-rata or proportionate share concept.

(n) Impact fee credits shall not be assigned or otherwise transferred from one development to another development except by written agreement executed by the county, and then, shall only be transferable from one development to another development within the same or adjacent impact fee district for the same type of public facility impact fee. This assignment or transfer may be to commercial and/or residential developments. Impact fee credits will be accomplished only through the operation of a credit agreement. Should an assignment of credit be approved by the county through execution of such an agreement, the assignee shall take the agreement as is and shall be bound by all of the terms and conditions of the agreement as originally executed by the assignor and other parties. No assignee (or transferee) of any such agreement shall have the right to any review procedure under this chapter except to the extent expressly granted in the agreement. The provisions of this paragraph shall apply to subsequent purchasers or successors in title to the owner.

(o) Any applicant who submits a proposed credit agreement pursuant to this chapter and desires the immediate issuance of <u>a certificate of occupancy or certificate of completion for</u> a building permit shall pay the impact fee ~~prior to or at the time of the application for the building permit~~. Said payment shall be deemed paid "under protest" and shall not be construed as a waiver of any review rights. Any

difference between the amount paid and the amount due, as determined by the county manager, shall be refunded to the applicant or owner.

(p) In the event the amount of impact fee credit for a specific type of public facility, pursuant to an approved contribution or dedication, exceeds the total amount of impact fee for that same type of public facility imposed upon the development, the contribution agreement may provide for the future reimbursement to the owner of the excess of such contribution credit from future receipts by the county of impact fees. However, no reimbursement shall be paid until such time as all development at the location which was subject to the credit has been completed. Such reimbursement shall be made over a period of five years from the date of completion of the development as determined by the county.

SECTION FIVE. Article III, *Special Requirements for Specific Types of Impact Fees,* Section 74-302, *Special requirements for road impact fees,* of the Collier County Code of Laws and Ordinances is hereby amended to read as follows:

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(h) *Payment of road impact fees to obtain a certificate of adequate public facilities.*

(1) A certificate of public facility adequacy (COA) shall be issued concurrent with the approval of the next to occur final local development order. At the time a certificate of public facility adequacy is issued, thirty-three percent (33%) of the estimated payment will be due and deposited into the applicable impact fee trust fund. The funds will then be immediately available for appropriation by the Board of County Commissioners for transportation capital improvements and are non-refundable. Final calculation of impact fees due will be based on the intensity of development actually permitted for construction and the impact fee schedule in effect at the time of the building permit(s) application submittal, such that additional impact fees may be due prior to issuance of a certificate of occupancy or certificate of completion for the building permit(s).

(2) Offsets for road impact fees assessed to building permits for impact fees paid in accordance with this subsection, will be applied equally to units or square footage and will run with the subject land.

(3) This provision is to be read in conjunction with Section 10.02.07 of the Collier County Land Development Code. To the extent this provision conflicts with this or with any other Collier County ordinance, rule or regulation, the provisions of this section shall control.

***

SECTION SIX. Article IV, *Affordable Housing Impact Fee Deferral,* Section 74-401, *Impact fee deferral,* of the Collier County Code of Laws and Ordinances is hereby amended to read as follows:

***

(d) *Repayment for owner-occupied units.*

(1) All impact fees deferred for owner-occupied dwelling units ~~at the time the building permit was issued~~ shall become due and payable and shall be immediately paid in full to the county upon:

a. The sale of the dwelling; or

b. Refinancing of the purchase mortgage or loans secured by senior real property security instruments; or

c. A loss of the homestead exemption under Section 4, Article X of the State Constitution.

d. The first occurrence of any sale or transfer of any part of the affected real property, and in any such event the deferred impact fees shall be paid in full to the county not later then the closing of the sale, or not later then the effective date of the transfer.

(2) Repayment shall include any accrued interest. Interest shall be computed at the rate of five percent per annum, but no event shall it exceed 25 percent of the total fee amount.

(3) Notwithstanding anything in this subsection (d)(1) of this section 74-401, the director of the financial administration and housing department of community development and environmental services division may waive the triggering of the obligation to pay deferred impact fees due to a refinancing if the director determines that the refinancing is for improvements or repairs to the dwelling that will enhance the value of the dwelling, and is of such a nature as not to justify that the deferred impact fees should become due and payable because of the sale, transfer, or refinancing.

***

(m) *Timing of payment.* Any units meeting the requirements of this subsection that are sold below the maximum home sales price in Collier County for Florida Housing Finance Corporation Programs, or qualify for and enter into an approved deferral agreement shall not be required to pay the impact fees applicable for the unit or building any sooner than issuance of a certificate of occupancy or certificate of

completion for the building permit for construction or as may otherwise be set forth in such waiver or deferral agreement. In order to obtain a certificate of adequate public facilities concurrently with the issuance of the final site development plan or plat, the applicant shall first enter into an approved deferral agreement with Collier County or provide a notarized affidavit to the county manager, which must include the following:

(1) Name of project, legal description and number assigned by Collier County to the development order;
(2) Name of applicant and owner, if different;
(3) Number of dwelling units;
(4) Statement of intent that the subject dwelling unit sales price will meet the affordability guidelines of the Florida Housing Finance Corporation for Collier County.

***

SECTION SEVEN. Article V, *Miscellaneous Provisions,* Section 74-401, *Collection of impact fees in default,* of the Collier County Code of Laws and Ordinances is hereby amended to read as follows:

Sec. 74-501. Collection of impact fees in default.

Whenever the county determines that an impact fee was not paid ~~prior to the issuance of~~ for a building permit for the affected development, the county shall proceed to collect the impact fee as follows:

***

SECTION EIGHT: CONFLICT AND SEVERABILITY.

In the event this Ordinance conflicts with any other ordinance of Collier County or other applicable law, the more restrictive shall apply. If any phrase or portion of the Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

SECTION NINE: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Collier County, Florida. The sections of the Ordinances may be renumbered

or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

SECTION TEN: EFFECTIVE DATE.

This Ordinance shall be effective upon filing with the Department of State.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida, this 11th day of February, 2014.

ATTEST:
DWIGHT E. BROCK, CLERK

By: _____
Deputy Clerk

Attest as to Chairman's signature only.

Approved as to form and legality:

_____
Jeffrey A. Klatzkow
County Attorney

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

By: _____
TOM HENNING, CHAIRMAN

This ordinance filed with the Secretary of State's Office the 11th day of February, 2014 and acknowledgement of that filing received this 12th day of February, 2014.

By _____
Deputy Clerk

Underlined text is added; ~~Struck through~~ text is deleted

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

February 17, 2014

Honorable Dwight E. Brock
Clerk of the Circuit Court
Collier County
Post Office Box 413044
Naples, Florida 34101-3044

Attention: Martha Vergara, Deputy Clerk

Dear Mr. Brock:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Collier County Ordinance No. 2014-04, which was filed in this office on February 17, 2014.

Sincerely,

Liz Cloud
Program Administrator

LC/elr
Enclosure

R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
Telephone: (850) 245-6270 • Facsimile: (850) 488-9879
www.dos.state.fl.us