

**THIRD AMENDMENT TO THE
LEE COUNTY/CITY OF CAPE CORAL
EAST-WEST CORRIDOR INTERLOCAL AGREEMENT**

This Third Amendment to the Lee County/City of Cape Coral East-West Corridor Interlocal Agreement dated March 22, 1995, the Amended and Restated Lee County/City of Cape Coral East-West Corridor Interlocal Agreement dated May 22, 2001, and Second Amendment to the Lee County/City of Cape Coral East-West Corridor Interlocal Agreement dated November 26, 2002, is made and entered into this ____ day of _____, 2020 by and between LEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY" and the CITY OF CAPE CORAL, a Florida municipal corporation located within Lee County, hereinafter referred to as "CITY", collectively, the "Parties".

WHEREAS, pursuant to the powers and authority granted the Parties under the Constitution of the State of Florida and by statute, each has planned, separately and in cooperation with the other, an integrated road network; and

WHEREAS, in a cooperative effort between the Parties to accomplish shared transportation objectives, certain interrelated capital transportation facilities known as the "Midpoint Bridge" (from Deleon Street in the City of Fort Myers to the Del Prado Interchange in the City of Cape Coral, the "East-West Corridor" [now known as the "Veterans Memorial Parkway"]) from the Del Prado Interchange west to the County Line including Burnt Store Road from Pine Island Road north to the County Line and Colonial Boulevard from Deleon Street to Solomon Boulevard in the City of Fort Myers) (collectively, the "PROJECT") have been planned and are, or are being constructed; and

WHEREAS, the CITY and COUNTY entered into an Interlocal Agreement regarding their respective duties and responsibilities for the PROJECT; and

WHEREAS, it is in the public's interest of both the CITY and the COUNTY to amend the Interlocal Agreement dated March 22, 1995, the Amended and Restated Lee County/City of Cape Coral East-West Corridor Interlocal Agreement dated May 22, 2001, and the Second Amendment to the Lee County/City of Cape Coral East-West Corridor Interlocal Agreement dated November 26, 2002, attached hereto as Exhibits "A", "B" and "C" respectively; and

WHEREAS, the March 22, 1995 Interlocal Agreement's main purpose was to build the interrelated facilities known as the "Midpoint Bridge" (from Deleon Street in the City of Fort Myers to the Del Prado Interchange in the City of Cape Coral), the "East-West Corridor" (from the Del Prado Interchange to Santa Barbara Boulevard in the City of Cape Coral) and Colonial Boulevard from Deleon Street to Solomon Boulevard in the City of Fort Myers; and,

WHEREAS, the May 22, 2001 Restated and Amended Agreement's main purpose was to extend the "East-West Corridor" from Santa Barbara Boulevard to Miracle Parkway in the City of Cape Coral, and from Surfside Boulevard in Cape Coral to Pine Island Road (known as Veteran's Memorial Parkway); and,

WHEREAS, the November 26, 2002 Second Amendment's main purpose was to widen Burnt Store Road from Pine Island Road (SR 78) to the Charlotte County line and provide technology and toll plaza upgrades to the Cape Coral Bridge and Midpoint Bridge Toll Facilities; and,

WHEREAS, the Parties seek to continue the cooperative effort through the financing, design, right-of-way acquisition, and construction of the PROJECT in a manner that fairly accomplishes the Parties' respective transportation goals and objectives; and

WHEREAS, the Parties seek to utilize the "Toll Revenues" and "Net Surplus Toll Revenues" as herein defined, to equitably distribute same, to meet future CITY and COUNTY transportation needs.

NOW, THEREFORE, in consideration of the above promises and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, the CITY and COUNTY hereby agree to amend the Interlocal Agreement as follows:

1. The Recitals as set forth above are incorporated into the terms of this Agreement as if set out herein at length.
2. The Second Amendment to the Agreement is hereby amended as follows, with underlined language being the amendment to previously adopted text and deleted language being shown by ~~struck-through type~~ stricken text.

2.1 This Agreement shall remain in full force and effect through the Calendar Year ~~2020~~ 2030, and will be evaluated by the Parties hereto in Calendar Year ~~2007~~ 2029.

2.2 The Parties acknowledge and agree that certain PROJECTS and/or financing of PROJECTS will be funded through this Agreement. Those PROJECTS may include, but are not limited to:

- a. Replacement of the westbound span of the Cape Coral Bridge.
- b. Technology upgrades at the Cape Coral and Midpoint Memorial Bridges toll plazas.
- c. Burnt Store Road widening from Van Buren Parkway to the Charlotte County line.
- d. Congestion improvements at Veterans Parkway and Santa Barbara Boulevard.
- e. Congestion improvements at Colonial Boulevard and Summerlin Road.
- f. Congestion improvements at Cape Coral Bridge/College Parkway Overpass and McGregor Boulevard.

g. Veterans Parkway widening from Chiquita Boulevard to Skyline Boulevard.

2.3 The Parties may seek an alternate design concept for the replacement of the westbound span of the Cape Coral Bridge that may include a sidewalk/bike path/lighting. The COUNTY and CITY will review the design concepts and jointly determine the feasibility of the cost and whether joint funding is feasible or desired. If the Parties cannot agree on the feasibility and cost share of the sidewalk/bike path/lighting, that portion of the replacement will not go forward; however, the Parties will continue to pursue the replacement identified in 2.2.a. herein.

2.4 The COUNTY and CITY will coordinate planning efforts to determine whether another bridge across the Caloosahatchee River is warranted based on projected volumetrics and/or feasibility.


3. The remaining terms in the Interlocal Agreement dated March 22, 1995, the Amended and Restated Agreement dated March 22, 2001, and the Second Amendment to the Agreement attached hereto, remain the same.

IN WITNESS WHEREOF, the parties hereto have caused the execution hereby by their duly authorized officials on the date set forth above.

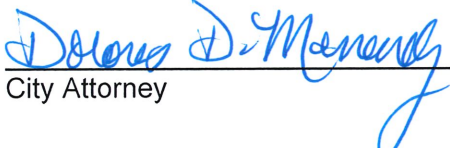
ATTEST:

CITY OF CAPE CORAL

BY: 
City Clerk

BY: 
Joe Coviello, Mayor

APPROVED AS TO FORM


City Attorney

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Brian Hamman, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

County Attorney's Office

EXHIBIT A

LEE COUNTY/CITY OF CAPE CORAL EAST-WEST CORRIDOR INTERLOCAL AGREEMENT

This Interlocal Agreement is made and entered into this 22nd day of March, 1995, by and between LEE COUNTY, FLORIDA, a political subdivision of the State of Florida, (hereinafter "COUNTY") and the CITY OF CAPE CORAL, FLORIDA, a Florida municipal corporation located within Lee County; (hereinafter "CITY"), collectively, the "Parties" hereto.

WHEREAS, pursuant to the powers and authority granted the Parties under the constitution of the State of Florida and by statute, each has planned, separately and in cooperation with the other, an integrated road network; and,

WHEREAS, in a cooperative effort between the Parties to accomplish shared transportation objectives, certain interrelated capital transportation facilities known as the "Midpoint Bridge" (from Deleon Street in the City of Fort Myers to the Del Prado Interchange in the City of Cape Coral), the "East-West Corridor" (from the Del Prado Interchange to Santa Barbara Boulevard in the City of Cape Coral) and Colonial Boulevard from Deleon Street to Solomon Boulevard in the City of Fort Myers (collectively, the "PROJECT") have been planned; and,

WHEREAS, the cooperative effort of the Parties has included successful participation in the litigation and related expense to establish the authority of the Parties to plan and construct the PROJECT, as reflected in Lee County and The City of Cape Coral v. The City of Fort Myers, Case No. 88-5598-CA; and,

WHEREAS, the cooperative effort of the Parties has included shared expense of preliminary engineering and the preparation and approval through the public hearing process of the Environmental Impact Statements (E.I.S.) for the PROJECT; and,

WHEREAS, the Parties seek to continue the cooperative effort through the financing, design, right-of-way acquisition, and construction of the PROJECT in a manner that fairly accomplishes the Parties' respective transportation goals and objectives; and,

WHEREAS, the cooperative financing effort includes a proposal to utilize a share of the CITY'S debt capacity to fund the construction of a portion of the PROJECT; and,

WHEREAS, the Parties seek to utilize the "Toll Revenues" and "Net Surplus Toll Revenues" as herein defined, in order to mitigate the effect of the pledge of the CITY'S credit, and to equitably distribute same, so as to meet future CITY and COUNTY transportation needs.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. The Parties agree that the PROJECT shall be included within the Lee County Road System for the purposes of superintendence and control by the COUNTY as set forth in the "Florida Transportation Code" Chapter 334.01 et. seq., Florida Statutes, and for all other legal purposes.
2. The Parties acknowledge and agree that the COUNTY shall use all reasonable efforts to finance, design, construct and maintain the transportation facility

known as the "Midpoint Bridge" project. The "Midpoint Bridge" project herein referred to shall consist of construction of the toll funded multi-laned road and bridge from Deleon Street in the City of Fort Myers to Del Prado Boulevard in the City of Cape Coral. The Parties further acknowledge and agree that the COUNTY shall use all reasonable efforts to finance, design, construct, acquire right-of-way for and maintain the Del Prado Boulevard Interchange, which connects the "Midpoint Bridge" project with the "East-West Corridor".

3. a) The Parties agree that the CITY, with the COUNTY'S prior request, review and approval, will use its bonding capacity to finance part of the "East-West Corridor", west of the Del Prado Interchange to Santa Barbara Boulevard. COUNTY'S approval of said financing shall not be unreasonably withheld. Subsequent to the COUNTY'S issuance of its "Toll Bonds" for the PROJECT, the CITY agrees to issue Local Option Gas Tax Revenue Bonds sufficient to finance no more than \$18.6 million of COUNTY construction funds for the Del Prado Interchange to Santa Barbara Boulevard portion of the PROJECT and \$5.0 million, or such other amount as provided for below, for the financing of CITY transportation projects at its discretion. The application of interest earnings from the proceeds of the Gas Tax Bonds issued by the CITY will be determined by the distribution of the bond proceeds to the Parties. The Parties agree that at the time of the issuance of the CITY'S bonds, the CITY may withhold \$5.0 million, or such other amount as provided for below, from the proceeds of the CITY'S bond issue.

If the COUNTY finds and notifies the CITY that the estimated CITY Gas Tax

bonding needs for the development of the Del Prado Interchange to Santa Barbara portion of the PROJECT is less than currently anticipated, the CITY agrees to reduce the total amount of the bonded debt accordingly. To the extent that the COUNTY'S required construction proceeds from the CITY'S Gas Tax bond issue are less than \$16.0 million, there will be a corresponding proportional reduction in the amount of funds to be withheld by the CITY. For purposes of establishing the percentage reduction for the CITY'S withheld funds, the "Total Gas Tax Bond Issue" shall mean the COUNTY'S actual construction proceeds, plus \$5.0 million. The proportional reduction in the funds to be withheld by the CITY shall be as follows: 1) from \$16.0 million to \$13.4 million of COUNTY construction proceeds, 24% of the total Gas Tax bond issue will be withheld by the CITY, 2) from \$13.3 million to \$3.0 million of COUNTY construction proceeds, 21% of the total Gas Tax bond issue will be withheld by the CITY (See: Exhibit "A" attached hereto, for examples of distribution). Any such reduction in the amount bonded by the CITY shall not affect the CITY'S released dedication of certain Gas Tax proceeds as set forth in paragraph c), below.

b) The balance of the funds required to finance the East-West Corridor will be provided solely by the COUNTY. The CITY will pledge its share of the COUNTY'S Local Option Gas Tax revenues (Section 336.025(1), Florida Statutes) as set forth herein, pursuant to a bond resolution, and by this Agreement, the COUNTY will pay to the CITY on an annual basis with toll or any other lawfully available County revenue sources, a sum of funds equal to the CITY'S actual debt service on the CITY'S total bond issue for the term of said bonds. Other than as set forth in this section, the

COUNTY shall use all reasonable efforts to finance, design, construct, acquire right-of-way for, and maintain the PROJECT.

c) The Parties agree that upon execution of this Agreement, the 2% increase to the allocation for Fiscal Year 1994-95 Gas Tax proceeds and the 4% increase to the allocation for Fiscal Year 1995-96 Gas Tax proceeds designated for use on the East-West Corridor as outlined in the June 27, 1994, Addendum to Gas Tax Interlocal Agreement (Section 3) between the Parties, shall be released from the dedication requirement.

4. The Parties acknowledge that an extension of the "East-West Corridor" project west of Santa Barbara Boulevard to Miracle Parkway is a future additional, essential link in the PROJECT in order to establish a continuous facility from the eastern to the western limits of the CITY. The Parties agree that the COUNTY shall use all reasonable efforts to design that portion of the "East-West Corridor" from Santa Barbara Boulevard to connect with Miracle Parkway. The Parties agree that the CITY may, but is not required to, conduct advance right-of-way acquisition for the Santa Barbara Boulevard to Miracle Parkway portion of the PROJECT in order to expedite construction and to control cost. Unless otherwise agreed to by the CITY under official CITY action, the actual costs of the advance right-of-way cost (not including "internal" or "in-house" costs), shall be reimbursed to the CITY by the COUNTY at or prior to commencement of construction. Such reimbursement shall be conditioned upon COUNTY'S approval of CITY'S purchase price and costs for any property acquired by CITY prior to closing of each parcel. Such approval shall not be unreasonably withheld

by COUNTY. COUNTY agrees to construct this portion of the corridor when necessary, appropriate and financially feasible.

5. The Parties acknowledge that both the existing Cape Coral Bridge and the future Midpoint Bridge facility will produce certain toll revenues. The Parties further acknowledge that based upon revenue projections by the feasibility and financial consultants retained by the COUNTY, there may be at some point in time, "Net Surplus Toll Revenues" as herein defined, generated by the Cape Coral Bridge and Midpoint Bridge facilities.

For purposes of this Section 5, the terms used herein shall have the following meaning:

1. "Additional Obligations" shall mean indebtedness payable on a parity with the Outstanding Bonds, whether such indebtedness is initially issued on a parity basis or achieves parity status by accession as set forth in the Resolution.

2. "Bonds" shall mean the Outstanding Bonds and any Additional Obligations.

3. "Bridges" shall mean the Cape Coral Bridge and the Midpoint Bridge.

4. "Bridges Debt Service Requirement" shall mean the sum of (a) the product of the Debt Service Requirement for the Outstanding Bonds multiplied by the ratio derived by dividing the sum of the amount or proceeds of the Outstanding Bonds used to finance the Bridges and extensions and improvements thereto and any capitalized interest in connection therewith by the total proceeds of the Outstanding Bonds less the sum of (i) any accrued interest, (ii) all issuance costs including any bond insurance premium or other credit enhancement fees, and (iii) any deposit to the Reserve

Subaccount established pursuant to the Resolution, and (b) the product of the Debt Service Requirement for any outstanding Additional Obligations and Subordinated Indebtedness multiplied by the ratio derived by dividing the amount of proceeds of any such Additional Obligations and Subordinated Indebtedness used to finance improvements, modifications or extensions to the Bridges and any capitalized interest in connection therewith by the total proceeds of such Additional Obligations and Subordinated Indebtedness less the sum of (i) any accrued interest, (ii) all issuance costs including any bond insurance premium or other credit enhancement fees, and (iii) any deposit to the Reserve Subaccount established pursuant to the Resolution or to any reserve account for Subordinated Indebtedness.

5. "Debt Service Requirement" for any annual period shall mean the aggregate amount of (a) interest paid or to be paid on account of the Bonds or any Subordinated Indebtedness during such annual period, except to the extent that such interest is paid from the proceeds of such Bonds or Subordinated Indebtedness, (b) principal of the Bonds or Subordinated Indebtedness paid or to be paid during such period whether such payment is due to maturity or mandatory redemption, (c) any deposits to the Reserve Subaccount required by the Resolution, or to any reserve account for Subordinated Indebtedness, during such period, and (d) disbursements for the expenses, liabilities and compensation of any paying agent, registrar, credit bank or depository related to the Bonds or Subordinated Indebtedness during such period.

6. "Gross Revenues" shall have the meaning provided therefor in the Resolution.

7. "Net Revenues" shall mean Gross Revenues less Operating Expenses.

8. "Operating Expenses" shall have the meaning provided therefor in the Resolution.

9. "Outstanding Bonds" shall mean (a) the Lee County, Florida Transportation Facilities Revenue Bonds, Series 1987, (b) the Lee County, Florida Transportation Facilities Refunding Revenue Bonds, Series 1991, (c) the Lee County, Florida Transportation Facilities Refunding Revenue Bonds, Series 1993 & 1993A, and (d) the Lee County, Florida Transportation Facilities Revenue Bonds, Series 1995.

10. "Renewal and Replacement Costs" shall mean an amount equal to five percent (5%) of the Gross Revenues of the Bridges.

11. "Resolution" shall mean Resolution No. 86-4-12 of the COUNTY, as restated, amended and supplemented.

12. "Subordinated Indebtedness" shall mean indebtedness secured by Net Revenues on a basis junior and subordinate to the Bonds.

On each April 1, following the first September 30 subsequent to completion of the Midpoint Bridge, the COUNTY shall remit to the CITY from monies available in the Surplus Account established by the Resolution, forty percent (40%) of the Net Surplus Toll Revenues as defined herein derived from operation of the Bridges during the preceeding fiscal year (October 1 to September 30) prior to each payment date, along with an accounting for such payment. Such percentage may be reviewed and renegotiated by the Parties in good faith, each five (5) years following the execution of this Agreement.

For purposes of this Agreement, "Net Surplus Toll Revenues" shall mean Gross Revenues of the Bridges less (i) Operating Expenses of the Bridges, (ii) the Bridges Debt Service Requirement, (iii) the Renewal and Replacement Costs of the Bridges, (iv) any payments made by the COUNTY to reimburse the CITY for debt service pursuant to Section 3 hereof, (v) debt service payments made by the COUNTY with respect to its Capital and Transportation Facilities Refunding Revenue Bonds, Series 1993A , (vi) any debt service payments made by the COUNTY with respect to obligations it issues to pay for costs of the PROJECT other than the Bonds and the obligations of the COUNTY secured by a pledge of the COUNTY'S share of the gas tax levied by the COUNTY pursuant to Section 336.025(1), Florida Statutes, as described in the Interlocal Agreement between the Parties dated June 27, 1994 (Lee County Contract No. C-93-0835), and (vii) any other debt service payments on any of the outstanding bonds as defined in paragraph 9. above, if necessary.

"Net Surplus Toll Revenues" shall be calculated prior to any deduction of debt service payments by the COUNTY for bonded transportation projects other than the PROJECT, which for purposes of this provision, shall also include the proposed road improvements from Santa Barbara to the Burnt Store Road Extension in the City of Cape Coral.

"Net Surplus Toll Revenues" shall further be calculated after the allocations to the CIP as currently contained in the Lee County CIP for FY 95-99, and programmed for Fiscal Years 94-95, 95-96 and 96-97, have been deducted. For all years following

Fiscal Year 96-97, "Net Surplus Toll Revenues" shall be calculated prior to any

allocations to the Lee County D.O.T. CIP. Funds paid to the CITY pursuant to this Agreement shall be used for any transportation purpose as authorized by applicable Florida Statutes.

It is expressly understood and agreed by the CITY that the obligation of the COUNTY to make payments to the CITY required by this Agreement is in all respects subject to the Resolution, and that such payments shall be made only from the Surplus Account established pursuant to the Resolution, to the extent monies are available therein for such purpose, and are junior and subordinate to all payments required by the Resolution.

Finally, except for the Gas Tax Bonds as contemplated by this Agreement and as issued by the CITY, nothing herein shall be construed or interpreted to create or constitute an obligation or responsibility of the CITY for any deficits in the revenues from the PROJECT.

6. The Burnt Store Road Extension consists of the continuation of Burnt Store Road south of State Road 78 to the East-West Corridor at Miracle Parkway. This Agreement shall not affect the existing Interlocal Agreement between the Parties pertaining to Burnt Store Road.

7. The Parties acknowledge that the CITY has made certain expenditures for matters in advance of construction of the Midpoint Bridge to assist the COUNTY. The CITY'S efforts include filling certain canals necessitated by the future construction, relocation of existing in-service sewer lines in the PROJECT path, and additional wastewater engineering services associated with the Midpoint Bridge project. The

COUNTY agrees to reimburse the CITY the total sum of \$200,000 for those expenditures, pursuant to invoices from the CITY with back-up documentation.

8. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity or illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be constructed as if such invalid, illegal or unenforceable provision had never been contained herein.

9. This Agreement shall remain in full force and effect through the calendar year 2017, and will be evaluated by the Parties hereto in calendar year 2007, except that the Net Surplus Toll Revenue sharing formula as set forth herein shall remain in full force and effect as long as either or both the Cape Coral or Midpoint Bridges shall remain toll facilities. This Agreement shall be construed in accordance with the laws of the State of Florida.

10. If this Agreement is not adopted and executed by the City of Cape Coral within fourteen (14) days from the date of execution by Lee County, then this Agreement will automatically become void, and of no further force or effect.

11. This Agreement may be executed in counterparts, with each Agreement becoming a fully effective and binding document upon the Parties once both Parties have each executed this Interlocal Agreement by their duly authorized representatives. -

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals
the date and year first above written.

ATTEST:
CHARLIE GREEN, CLERK

By: 
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: 
Chairman

APPROVED AS TO FORM:

By: 
Office of County Attorney

ATTEST:

By: 
Bonnie J. Vent, City Clerk

CITY OF CAPE CORAL

By: 
Roger G. Butler, Mayor

APPROVED AS TO FORM:

By: 
Office of City Attorney

**EXAMPLES OF
BOND PROCEEDS TO BE PAID TO CAPE CORAL**

LEE COUNTY PROCEEDS	CAPE CORAL PROCEEDS	TOTAL BOND PROCEEDS
\$18,600,000	\$5,000,000	\$23,600,000
18,000,000	5,000,000	23,000,000
17,000,000	5,000,000	22,000,000
16,000,000	5,000,000	21,000,000
15,000,000	4,736,842	19,736,842
14,000,000	4,421,053	18,421,053
13,400,000	4,231,579	17,631,579
12,000,000	3,189,873	15,189,873
11,000,000	2,924,051	13,924,051
10,000,000	2,658,228	12,658,228
9,000,000	2,392,405	11,392,405
8,000,000	2,126,582	10,126,582
7,000,000	1,860,759	8,860,759
6,000,000	1,594,937	7,594,937
5,000,000	1,329,114	6,329,114
4,000,000	1,063,291	5,063,291
3,000,000	797,468	3,797,468

EXHIBIT B

AMENDED AND RESTATED LEE COUNTY / CITY OF CAPE CORAL EAST-WEST CORRIDOR INTERLOCAL AGREEMENT

This Amended and Restated Interlocal Agreement is made and entered into this 22nd day of May, 2001, by and between LEE COUNTY, FLORIDA, a political subdivision of the State of Florida, (hereinafter "COUNTY") and the CITY OF CAPE CORAL, FLORIDA, a Florida municipal corporation located within Lee County; (hereinafter "CITY"), collectively, the "Parties" hereto.

WHEREAS, pursuant to the powers and authority granted the Parties under the constitution of the State of Florida and by statute, each has planned, separately and in cooperation with the other, an integrated road network; and,

WHEREAS, in a cooperative effort between the Parties to accomplish shared transportation objectives, certain interrelated capital transportation facilities known as the "Midpoint Bridge" (from Deleon Street in the City of Fort Myers to the Del Prado Interchange in the City of Cape Coral, the "East-West Corridor" [now known as the "Veterans Memorial Parkway"] (from the Del Prado Interchange to Burnt Store Road in the City of Cape Coral) and Colonial Boulevard from Deleon Street to Solomon Boulevard in the City of Fort Myers (collectively, the "PROJECT") have been planned and are, or are being constructed; and,

WHEREAS, the cooperative effort of the Parties has included successful participation in the litigation and related expense to establish the authority of the Parties to plan and construct the PROJECT, as reflected in Lee County and The City of Cape

Coral v. The City of Fort Myers, Case No. 88-5598-CA; and,

WHEREAS, the cooperative effort of the Parties has included shared expense of preliminary engineering and the preparation and approval through the public hearing process of the Environmental Impact Statements (E.I.S.) for the PROJECT; and,

WHEREAS, the Parties seek to continue the cooperative effort through the financing, design, right-of-way acquisition, and construction of the PROJECT in a manner that fairly accomplishes the Parties' respective transportation goals and objectives; and,

WHEREAS, the cooperative financing effort includes a proposal to utilize a share of the CITY'S debt capacity to fund the construction of a portion of the PROJECT; and,

WHEREAS, the Parties seek to utilize the "Toll Revenues" and "Net Surplus Toll Revenues" as herein defined, in order to mitigate the effect of the pledge of the CITY'S credit, and to equitably distribute same, so as to meet future CITY and COUNTY transportation needs.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. The Parties agree that the PROJECT shall be included within the Lee County Road System for the purposes of superintendence and control by the COUNTY as set forth in the "Florida Transportation Code" Chapter 334.01 et. seq., Florida Statutes, and for all other legal purposes.

2. The Parties acknowledge and agree that the COUNTY shall use all reasonable efforts to finance, design, construct and maintain the transportation facility known as the "Midpoint Bridge" project. The "Midpoint Bridge" project herein referred to

shall consist of construction of the toll funded multi-laned road and bridge from Deleon Street in the City of Fort Myers to Del Prado Boulevard in the City of Cape Coral. The Parties further acknowledge and agree that the COUNTY shall use all reasonable efforts to finance, design, construct, acquire right-of-way for and maintain the Del Prado Boulevard Interchange, which connects the "Midpoint Bridge" project with the "East-West Corridor".

3. The Parties acknowledge that an extension of the "East-West Corridor" project west of Santa Barbara Boulevard to Miracle Parkway is a future additional, essential link in the PROJECT in order to establish a continuous facility from the eastern to the western limits of the CITY. The Parties agree that the COUNTY shall use all reasonable efforts to design that portion of the "East-West Corridor" from Santa Barbara Boulevard to connect with Miracle Parkway. The Parties agree that the CITY may, but is not required to, conduct advance right-of-way acquisition for the Santa Barbara Boulevard to Miracle Parkway portion of the PROJECT in order to expedite construction and to control cost. Unless otherwise agreed to by the CITY under official CITY action, the actual costs of the advance right-of-way cost (not including "internal" or "in-house" costs), shall be reimbursed to the CITY by the COUNTY at or prior to commencement of construction. Such reimbursement shall be conditioned upon COUNTY'S approval of CITY'S purchase price and costs for any property acquired by CITY prior to closing of each parcel. Such approval shall not be unreasonably withheld by COUNTY. COUNTY agrees to construct this portion of the corridor when necessary, appropriate and financially feasible.

4. The Parties acknowledge that both the existing Cape Coral Bridge and the

future Midpoint Bridge facility will produce certain toll revenues. The Parties further acknowledge that based upon revenue projections by the feasibility and financial consultants retained by the COUNTY, there may be at some point in time, "Net Surplus Toll Revenues" as herein defined, generated by the Cape Coral Bridge and Midpoint Bridge facilities.

For purposes of this Section 4., the terms used herein shall have the following meaning:

1. "Additional Obligations" shall mean indebtedness payable on a parity with the Outstanding Bonds, whether such indebtedness is initially issued on a parity basis or achieves parity status by accession as set forth in the Resolution.
2. "Bonds" shall mean the Outstanding Bonds and any Additional Obligations.
3. "Bridges" shall mean the Cape Coral Bridge and the Midpoint Bridge.
4. "Bridges Debt Service Requirement" shall mean the sum of (a) the product of the Debt Service Requirement for the Outstanding Bonds multiplied by the ratio derived by dividing the sum of the amount or proceeds of the Outstanding Bonds used to finance the Bridges and extensions and improvements thereto and any capitalized interest in connection therewith by the total proceeds of the Outstanding Bonds less the sum of (i) any accrued interest, (ii) all issuance costs including any bond insurance premium or other credit enhancement fees, and (iii) any deposit to the Reserve Subaccount established pursuant to the Resolution, and (b) the product of the Debt Service Requirement for any outstanding Additional Obligations and Subordinated Indebtedness multiplied by the ratio derived by dividing the amount of proceeds of any such Additional Obligations and

Subordinated Indebtedness used to finance improvements, modifications or extensions to the Bridges and any capitalized interest in connection therewith by the total proceeds of such Additional Obligations and Subordinated Indebtedness less the sum of (i) any accrued interest, (ii) all issuance costs including any bond insurance premium or other credit enhancement fees, and (iii) any deposit to the Reserve Subaccount established pursuant to the Resolution or to any reserve account for Subordinated Indebtedness.

5. "Debt Service Requirement" for any annual period shall mean the aggregate amount of (a) interest paid or to be paid on account of the Bonds or any Subordinated Indebtedness during such annual period, except to the extent that such interest is paid from the proceeds of such Bonds or Subordinated Indebtedness, (b) principal of the Bonds or Subordinated Indebtedness paid or to be paid during such period whether such payment is due to maturity or mandatory redemption, (c) any deposits to the Reserve Subaccount required by the Resolution, or to any reserve account for Subordinated Indebtedness, during such period, and (d) disbursements for the expenses, liabilities and compensation of any paying agent, registrar, credit bank or depository related to the Bonds or Subordinated Indebtedness during such period.

6. "Gross Revenues" shall have the meaning provided therefor in the Resolution.

7. "Net Revenues" shall mean Gross Revenues less Operating Expenses.

8. "Operating Expenses" shall have the meaning provided therefor in the Resolution.

9. "Outstanding Bonds" shall mean (a) the Lee County, Florida Transportation

Facilities Revenue Bonds, Series 1987, (b) the Lee County, Florida Transportation Facilities Refunding Revenue Bonds, Series 1991, (c) the Lee County, Florida Transportation Facilities Refunding Revenue Bonds, Series 1993 & 1993A, and (d) the Lee County, Florida Transportation Facilities Revenue Bonds, Series 1995.

10. "Renewal and Replacement Costs" shall mean an amount equal to five percent (5%) of the Gross Revenue of the Bridges.

11. "Resolution" shall mean Resolution No. 86-4-12 of the COUNTY, as restated, amended and supplemented.

12. "Subordinated Indebtedness" shall mean indebtedness secured by Net Revenues on a basis junior and subordinate to the Bonds.

On each April 1, following the first September 30 subsequent to completion of the Midpoint Bridge, the COUNTY shall remit to the CITY from monies available in the Surplus Account established by the Resolution, forty percent (40%) of the Net Surplus Toll Revenues as defined herein derived from operation of the Bridges during the preceding fiscal year (October 1 to September 30) prior to each payment date, along with an accounting for such payment. Such percentage may be reviewed and renegotiated by the Parties in good faith, each five (5) years following the execution of this Agreement.

For purposes of this Agreement, "Net Surplus Toll Revenues" shall mean Gross Revenues of the Bridges less (i) Operating Expenses of the Bridges, (ii) the Bridges Debt Service Requirement, (iii) the Renewal and Replacement Costs of the Bridges pursuant to the Lee County Bond Covenants, (iv) any payments made by the COUNTY to reimburse the CITY for debt service pursuant to Section 3 hereof, (v) debt service payments made

by the COUNTY with respect to its Capital and Transportation Facilities Refunding Revenue Bonds, Series 1993A, (vi) any debt service payments made by the COUNTY with respect to obligations it issues to pay for costs of the PROJECT other than the Bonds and the obligations of the COUNTY secured by a pledge of the COUNTY'S share of the gas tax levied by the COUNTY pursuant to Section 336.025(1), Florida Statutes, as described in the Interlocal Agreement between the Parties dated June 27, 1994 (Lee County Contract No. C-93-0835), (vii) any repayment of the Toll Facilities Revolving Trust Fund (TFRTF) loan by the State of Florida for Veteran's Memorial Parkway between Santa Barbara Boulevard and Surfside Boulevard; (viii) any repayments to the commercial paper debt incurred for the construction of Veteran's Memorial Parkway between Santa Barbara Boulevard and Miracle Parkway; (ix) any project costs, including land acquisition, professional fees, permits and construction of Veteran's Memorial Parkway between Santa Barbara Boulevard and Surfside; (x) construction costs, including any monies advanced by COUNTY for construction of Veteran's Memorial Parkway, of that portion of road segment formally known as "Veteran's Memorial Parkway Extension", from Surfside Boulevard to approximately 800 feet north of Pine Island Road, including the intersection of Veteran's and Pine Island Road; State of Florida Infrastructure bank loans, or any other enhancement projects as mutually agreed to by both government entities, and (xi) any other debt service payments on any of the outstanding bonds as defined in subsection 9. above, if necessary.

"Net Surplus Toll Revenues" shall be calculated prior to any deduction of debt service payments by the COUNTY for bonded transportation projects other than the

PROJECT, which for purposes of this provision, shall also include the proposed road improvements from Santa Barbara to the Burnt Store Road Extension in the City of Cape Coral.

Funds paid to the CITY pursuant to this Agreement shall be used for any transportation purpose as authorized by applicable Florida Statutes.

It is expressly understood and agreed by the CITY that the obligation of the COUNTY to make payments to the CITY required by this Agreement is in all respects subject to the Resolution, and that such payments shall be made only from the Surplus Account established pursuant to the Resolution, to the extent monies are available therein for such purpose, and are junior and subordinate to all payments required by the Resolution.

Finally, except for the Gas Tax Bonds as contemplated by this Agreement and as issued by the CITY, nothing herein shall be construed or interpreted to create or constitute an obligation or responsibility of the CITY for any deficits in the revenues from the PROJECT.

5. The "Burnt Store Road Extension" of the Veteran's Memorial Parkway consists of the continuation of Burnt Store Road south of State Road 78 to the East-West Corridor at Surfside Boulevard. This Agreement shall not affect the existing Interlocal Agreement between the Parties pertaining to the Burnt Store Road Extension" of the Veteran's Memorial Parkway. Prior to the disbursement of any Net Surplus Toll Revenues, any costs for construction of the Veteran's Memorial Parkway Extension will be deducted as previously provided in Section Four, subparagraph five herein.

The CITY and the COUNTY acknowledge that the construction of the Veteran's Memorial Parkway Extension, consisting of Veteran's Memorial Parkway between Santa Barbara Boulevard and Surfside Boulevard, and Surfside Boulevard to approximately 800 feet north of Pine Island Road, including the intersection of Veteran's and Pine Island Road, will commence in Calendar Year 2001. The COUNTY will use all reasonable efforts to complete construction in Calendar Year 2002.

6. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity or illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be constructed as if such invalid, illegal or unenforceable provision had never been contained herein.

7. This Agreement shall remain in full force and effect through the Calendar Year 2020, and will be evaluated by the Parties hereto in Calendar Year 2010, except that the Net Surplus Toll Revenue sharing formula as set forth herein shall remain in full force and effect as long as either or both the Cape Coral or Midpoint Bridges shall remain toll facilities. This Agreement shall be construed in accordance with the laws of the State of Florida.

8. This Agreement may be executed in counterparts, with each Agreement becoming a fully effective and binding document upon the Parties once both Parties have each executed this Interlocal Agreement by their duly authorized representatives.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the
date and year first above written.

ATTEST:

By: 

Bonnie Mazurkiewicz
City Clerk

CITY OF CAPE CORAL

By: 

Arnold Kempe, Mayor

APPROVED AS TO FORM:

By: 

City Attorney

ATTEST: CHARLIE GREEN
CLERK OF COURTS

By: 

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: 

Vice Chairman

APPROVED AS TO FORM:

By: 

Office of the County Attorney

EXHIBIT C

SECOND AMENDMENT TO THE LEE COUNTY/CITY OF CAPE CORAL EAST-WEST CORRIDOR INTERLOCAL AGREEMENT

This Amendment to the Lee County/City of Cape Coral East-West Corridor Interlocal Agreement dated March 22, 1995 and Amended and Restated Lee County/City of Cape Coral East-West Corridor Interlocal Agreement dated May 22, 2001, is made and entered into this 26 day of November, 2002, by and between LEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY" and the CITY OF CAPE CORAL, a Florida municipal corporation located within Lee County, hereinafter referred to as "CITY", collectively, the "Parties".

WHEREAS, pursuant to the powers and authority granted the Parties under the constitution of the State of Florida and by statute, each has planned, separately and in cooperation with the other, an integrated road network; and

WHEREAS, in a cooperative effort between the Parties to accomplish shared transportation objectives, certain interrelated capital transportation facilities known as the "Midpoint Bridge (from DeLeon Street in the City of Fort Myers to the Del Prado Interchange in the City of Cape Coral, the "East-West Corridor" [now known as the "Veterans Memorial Parkway"]) from the Del Prado Interchange west to the County Line including Burnt Store Road from Pine Island Road north to the County Line and Colonial Boulevard from DeLeon Street to Solomon Boulevard in the City of Fort Myers) (collectively, the "PROJECT") have been planned and are, or are being constructed; and

WHEREAS, the CITY and COUNTY entered into an Interlocal Agreement regarding their respective duties and responsibilities for the PROJECT; and

WHEREAS, it is in the public's interest of both the CITY and the COUNTY to amend the Interlocal Agreement dated March 22, 1995 and Amended and Restated Lee County/City of Cape Coral East-West

Corridor Interlocal Agreement dated March 22, 2001, attached hereto as Exhibits "A" and "B" respectively.

WHEREAS, the cooperative effort of the Parties has included successful participation in the litigation and related expense to establish the authority of the Parties to plan and construct the PROJECT, as reflected in *Lee County and the City of Cape Coral v. the City of Fort Myers*, Case No. 88-598-CA; and,

WHEREAS, the cooperative effort of the Parties has included shared expense of preliminary engineering and the preparation and approval through the public hearing process of the Environmental Impact Statements (E.I.S.) for the PROJECT; and

WHEREAS, the Parties seek to continue the cooperative effort through the financing, design, right-of-way, acquisition, and construction of the PROJECT in a manner that fairly accomplishes the Parties' respective transportation goals and objectives; and

WHEREAS, the Parties seek to utilize the "Toll Revenues" and "Net Surplus Toll Revenues" as herein defined, to equitably distribute same, so as to meet future CITY and COUNTY transportation needs.

NOW, THEREFORE, in consideration of the above promises and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, the CITY and COUNTY hereby agree to amend the Interlocal Agreement as follows:

1. The Recitals as set forth above are incorporated into the terms of this Agreement as if set out herein at length.
2. The Amended and Restated Agreement is hereby amended as follows, with underlined language being the amendment to previously adopted text and deleted language being shown by struck-through type.

On each April 1, following the first September 30 subsequent to completion of the Midpoint Bridge,

the COUNTY shall remit to the CITY from monies available in the Surplus Account established by the Resolution, forty percent (40%) of the Net Surplus Toll Revenues as defined herein derived from operation of the Bridges during the preceding fiscal year (October 1 to September 30) prior to each payment date, along with an accounting for such payment. Such percentage may be reviewed and renegotiated by the Parties in good faith, each five (5) years following the execution of this Agreement.

For purposes of this Agreement, "Net Surplus Toll Revenues" shall mean Gross Revenues of the Bridges less (i) Operating Expenses of the Bridges; (ii) the Bridges Debt Service Requirement; (iii) the Renewal and Replacement Costs of the Bridges pursuant to the Lee County Bond Covenants; (iv) any payments made by the COUNTY to reimburse the CITY for debt service pursuant to Section 3 hereof; (v) debt service payments made by the COUNTY with respect to its Capital and Transportation Facilities Refunding Revenue Bonds, Series 1993A; (vi) any debt service payments made by the COUNTY with respect to obligations it issues to pay for costs of the PROJECT other than the Bonds and the obligations of the COUNTY secured by a pledge of the COUNTY's share of the gas tax levied by the COUNTY pursuant to Section 336.025(1), Florida Statutes, as described in the Interlocal Agreement between the Parties dated June 27, 1994 (Lee County Contract No. C-93-0835); (vii) any repayment of the Toll Facilities Revolving Trust Fund (TFRTF) loan by the State of Florida for Veteran's Memorial Parkway between Santa Barbara and Surfside Boulevard; (viii) any repayments to the commercial paper debt incurred for the construction of Veteran's Memorial Parkway between Santa Barbara Boulevard and Miracle Parkway; (ix) any project costs, including land acquisition, professional fees, permits and construction of Veteran's Memorial Parkway between Santa Barbara Boulevard and Surfside; (x) construction costs, including any monies advanced by COUNTY for construction of "Veteran's Memorial Parkway Extension", from Surfside Boulevard to approximately 800 feet north of Pine Island Road,

including the intersection of Veteran's and Pine Island Road and project costs relating to Burnt Store Road from SR 78 (Pine Island Road) north to the County line; (xi) State of Florida Infrastructure bank loans, or any other enhancement projects as mutually agreed to by both government entities; and (xii) any other debt service payments on any of the outstanding bonds as defined in subsection 9. above, if necessary; (xiii) and the Cape Coral Toll Plaza Rehabilitation, and (xiv) technology relating to electronic toll collection for Cape Coral and Midpoint Toll Facilities.

3. The County will undertake a corridor study for this roadway from Burnt Store Road at the north county line to Colonial Boulevard's interchange with Interstate I-75. The County will also provide street lighting at Veterans Parkway intersection with State Road 78. Additional street lighting will be provided when warranted and consistent with the adopted County policy on street lighting. Also, the County will construct turn lane improvements at Ceitus Parkway.

43. All of the remaining terms in the Interlocal Agreement dated March 22, 1995 and the Amended and Restated Agreement dated March 22, 2001, attached hereto, remain the same.

IN WITNESS WHEREOF, the parties hereto have caused the execution hereby by their duly authorized officials on the date set forth above.

ATTEST:

CITY OF CAPE CORAL

By: Bonnie J. Mazzurco

City Clerk

By: Arnold Kempe

Arnold Kempe, Mayor

APPROVED AS TO FORM:

By: Dolores D. Menendez

City Attorney

ATTEST:

CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: Michelle B. Cooper

Deputy Clerk

By: W. E. Albright

Vice - Chairman

APPROVED AS TO FORM BY:

[Signature]

Office of the County Attorney