

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20021167

1. REQUESTED MOTION:

ACTION REQUESTED: Hold the first public hearing on the Second Amendment to the FGCU Campus Development Agreement. After hearing, direct agenda item to second public hearing, November 12, 2002, at 9:30 a.m.

WHY ACTION IS NECESSARY: This Amendment is necessary in order to implement the Second Amendment to the FGCU Campus Master Plan and comply with Florida law.

WHAT ACTION ACCOMPLISHES: Complete the Campus Master Plan process set out in Chapter 240 of the Florida Statutes.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT #

9:30

3. MEETING DATE:

10-22-2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT County Attorney
- C. DIVISION Land Use
- BY: Timothy Jones
Chief Assistant County Attorney

7. BACKGROUND: Pursuant to Chapter 240 of the Florida Statutes and the FGCU Campus Master Plan, the County has negotiated the attached amendment to the Campus Development Agreement with the Board of Regents and FGCU. The Second Amendment to the Campus Development Agreement addresses the changes to the FGCU Campus Master Plan. The amended Campus Master Plan and the proposed amendment to the Campus Development Agreement provide for development of campus facilities over the next 10 years.

The proposed amendment to the Campus Development Agreement has been reviewed by the following departments including the Planning Division, Lee County Department of Transportation, Public Safety, Lee Tran, and San Carlos Fire District.

Florida law requires two public hearings for the amendment to the Campus Development Agreement. Staff recommends approval of the proposed amendment.

Attachment: Draft Second Amendment to the FGCU Campus Development Agreement

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

| A Department Director | B Purchasing or Contracts | C Human Resources | D Other | E County Attorney | F Budget Services | | | | G County Manager |
|-----------------------------|------------------------------------|-------------------------|------------|-------------------------|----------------------|----------|------------|----------|---------------------|
| N/A | N/A | N/A | N/A | <i>[Signature]</i> | OA | OM | RISK | GC | <i>[Signature]</i> |
| | | | | | RK 10/10/02 | 10/10/02 | B 10/10/02 | 10/10/02 | |

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

| | |
|-----------|----------------|
| RECEIVED | BY: RK |
| COUNTY | DATE: 10/10/02 |
| FORWARDED | TIME: 3:15 PM |
| | BY: BH |
| | DATE: 10/10/02 |

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

THIS AMENDMENT TO THE CAMPUS DEVELOPMENT AGREEMENT is made and entered into this _____ day of _____, 2002, by and between **LEE COUNTY** (herein referred to as the "County"), a political subdivision of the State of Florida, and the **STATE OF FLORIDA BOARD OF EDUCATION** (hereinafter referred to as the "FBOE"), by and on behalf of the **FLORIDA GULF COAST UNIVERSITY** (hereinafter referred to as "FGCU").

WITNESSETH:

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

WHEREAS, in recognition of this unique relationship between campuses of the State University System and the local governments where they are located, the Florida Legislature has established special provisions for campus planning and concurrency in Section 240.155, Florida Statutes, which supersede the requirements of Part II of Chapter 163, Florida Statutes, except when stated otherwise, and

WHEREAS, the FBOE/FGCU prepared and adopted a campus master plan for the Florida Gulf Coast University in compliance with the requirements set forth in Subsections 240.155 (3)-(6), Florida Statutes, and

WHEREAS, upon adoption of the campus master plan by the FBOE, the FBOE and County are required to enter into a campus development agreement, and

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

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

WHEREAS, the campus development agreement identifies all improvements to facilities or services necessary to eliminate these deficiencies, and

WHEREAS, the campus development agreement must identify the FBOE's "fair share" of the cost of all improvements to facilities or services necessary to eliminate these deficiencies; and

WHEREAS, the original campus development agreement was adopted on September 15, 1998 and was later amended on September 12, 2000.

NOW, THEREFORE, in consideration of the covenants contained herein and the performance thereof, the parties do hereby agree to further amend the campus development agreement as follows:

1.0 RECITATIONS

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

2.0 DEFINITIONS OF TERMS USED IN THIS AGREEMENT

- 2.1 The term "Administration Commission" means the Governor and the Cabinet.
- 2.2 The term "affected person" means a host local government; an affected local government; any state, regional or federal agency; or a person who resides, owns property, or owns or operates a business within the boundaries of a host local government or affected local government.
- 2.3 The term "aggrieved or adversely affected person" means any person or local government which will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, or environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in community good shared by all persons.
- 2.4 The term "campus master plan" means a plan that meets the requirements of Subsections 240.155 (3) through (6), Florida Statutes.
- 2.5 The term "comprehensive plan" means a plan that meets the requirements of Subsections 163.3177 and 163.3178, Florida Statutes.

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

3.0 INTENT AND PURPOSE

- 3.1 This Agreement is intended to implement the requirements of concurrency contained in Subsection 240.155 (11)-(15), Florida Statutes. It is the intent of the FBOE/FGCU and County to ensure that adequate potable water, sanitary sewer, solid waste, storm water management, parks and recreation, roads, and public transportation facilities are available consistent with the level of service standards for these facilities as adopted in the County's comprehensive plan.
- 3.2 This Agreement is intended to address concurrency implementation and the mitigation of impacts reasonably expected over the term of the Agreement on public facilities and services, including roads, sanitary sewer, solid waste, drainage/storm water management, potable water, parks and recreation, and public transportation.
- 3.3 This Agreement is not intended to alter or limit the land uses, densities, intensities, or site development or environmental management standards to be applied to campus development.

4.0 GENERAL CONDITIONS

- 4.1 The conditions, terms, restrictions and other requirements of this Agreement are legally binding and will be strictly adhered to by the FBOE/FGCU and the County.
- 4.2 The FBOE/FGCU represents that they have full power and authority to enter into and perform this Agreement in accordance with its terms and conditions without the consent or approval of any third parties, and this Agreement constitutes the valid, binding and enforceable Agreement of the FBOE/FGCU.
- 4.3 The County represents that it has full power and authority to enter into and perform this Agreement in accordance with its terms. Further, the County represents that this Agreement has been duly authorized by its Commissioners and constitutes a valid, binding and enforceable contract. This Agreement has been approved by a resolution adopted by the Board of County Commissioners and was the subject of two duly noticed public hearings as required by law. This Agreement does not violate any other Agreement to which the County is a party, the Constitution of the State of Florida, or any charter, ordinance, judgment or other requirement of law.
- 4.4 Except as specifically referenced herein, County development permits, development orders, or development approvals cannot be required by the County for construction projects subject to this Agreement.
- 4.5 If all or a portion of a project authorized pursuant to this Agreement is destroyed by a fire, storm, or other force majeure, the FBOE/FGCU, its grantees, successors and assigns, has the right to rebuild and/or repair the project. Furthermore, the time periods for performance by the FBOE/University FGCU will be automatically extended so long as there is strict compliance with this Agreement.
- 4.6 Campus development activity authorized pursuant to this Agreement is subject to federal, state and regional environmental program requirements. The FBOE/FGCU agrees to comply with the environmental permitting requirements of the Department of Environmental Protection, the U.S. Army Corps of Engineers, and the South Florida Water Management District.
- 4.7 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in or incorporated into this Agreement. Accordingly, it is agreed that no deviation from the terms hereof can be predicated upon any prior representations or agreements, whether oral or written.

- 4.8 Upon execution of this Agreement, all campus development identified in Exhibit "A", which summarizes projects identified in the adopted FGCU Campus Master Plan, dated December 2000 may proceed without further review by the County provided it is consistent with the terms of this Agreement and FGCU's adopted campus master plan.
- 4.9 If any part of this Agreement is found by a court of law to be contrary to, prohibited by, or deemed invalid under any applicable law or regulation, the offending provisions will be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid. The remainder of this Agreement will be given full force and effect.

5.0 DURATION OF AGREEMENT

This Agreement is effective upon execution by both parties and will remain in effect for ten years from that date, unless extended by the mutual consent of the FBOE/FGCU and the County, in accordance with Section 15.0 of this Agreement.

6.0 GEOGRAPHIC AREA COVERED BY THIS AGREEMENT

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

7.0 DESCRIPTION OF PUBLIC FACILITIES AND SERVICES

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

- ~~7.1 FGCU has no existing storm water management system except for the drainage ditches built before the State accepted the property designated to become the FGCU campus. The natural wetland slough, which transverses the site along the south and southeast, provides a drainage outfall for much of the campus site as well as many sections of land to the northeast.~~
- ~~7.2 FGCU has no existing potable water or fire protection water system. In a December 1992 Utilities Cost Study, the consulting firm of Wilson, Miller, Barton & Peek concluded that the Gulf Utilities Company represents the most cost effective solution for providing potable water and fire protection water services to FGCU. Gulf Utility Company has been certificated by the Florida Public Service Commission to provide potable water to the area that includes the FGCU campus.~~

- ~~7.3 FGCU has no existing central sanitary sewer system. Gulf Utilities Company has been certificated by the Florida Public Service Commission to provide sanitary sewer service to the area that includes the FGCU campus.~~
- ~~7.4 FGCU has no existing solid waste collection and disposal system. Gulf Disposal, Inc., a division of Waste Management, a private solid waste company operating under contract and temporary franchise from Lee County, provides for the collection of solid waste in the area that includes the FGCU campus.~~
- 7.1 Plans for the Storm water Management System for the FGCU campus have been approved by the U.S. Army Core of Engineers (Permit No. 199400807) and South Florida Water Management District (Permit No. 36-08881-5). Storm water Management facilities will be developed in a sequence that meets the development needs of the university and maintains standards for water quality and quantity.
- 7.2 Gulf Environment Services (GES) has a formal service agreement with FGCU to provide potable water service to meet the demands of students, faculty, and staff of FGCU and also provide the Fire Protection Water System. GES will expand and extend potable and fire protection water services as necessary to serve FGCU's development, population and provide necessary fire flows.
- 7.3 GES has a formal service agreement with FGCU to provide sanitary sewer service to the university. GES will expand and extend sanitary sewer services as necessary to serve FGCU's development population.
- 7.4 Lee County has a contract with FGCU for its division of Solid Waste to provide solid waste collection and disposal for the university through the year 2005.
- 7.5 FGCU has ~~no existing~~ recreation facilities for its student population. The more than 300 acres of wetlands on the FGCU campus offer opportunities for the development of nature and interpretive trails and other unique natural areas. Lee County maintains approximately 876 acres of parks and recreation areas within 10 miles of the FGCU campus.
- 7.6 Interstate 75 (I-75) has been established as part of the Florida Intrastate Highway System (FIHS). Interstate 75 is the primary north-south traffic route within and through Lee County. In the vicinity of the FGCU campus, I-75 has four through lanes with a ~~1995~~ 2001 annual average daily traffic volume of approximately 44,400 59,000 vehicles per day. The entrance to the FGCU campus is from Ben Hill Griffin Parkway, formerly known as Treeline Boulevard. In the vicinity of the FGCU campus, Ben Hill Griffin Parkway is an existing four lane north-south arterial that travels from Corkscrew Road to Alico Road. The 2001 annual average daily traffic

volume on this segment is approximately 5,300 vehicles per day. Alico Road is an east-west arterial that travels east from U.S. 41 and terminates at Corkscrew Road east of 1-75. In the vicinity of the FGCU campus, Alico Road has two through lanes with a ~~1995~~ 2001 annual average daily traffic volume of approximately ~~3,400~~ 6,500 vehicles per day. Corkscrew Road is also an east-west arterial that begins at U.S. 41 and runs east to the county line. In the vicinity of the FGCU campus, Corkscrew Road has two through lanes with a ~~1995~~ 2001 annual average daily traffic volume of approximately ~~2,300~~ 7,700 vehicles per day.

7.7 ~~Lee County and FGCU will provide mass transit service to the Campus from major activity centers and system transfer points in accordance with an interlocal agreement dated July 8, 1997. Under the agreement, service will be provided Monday through Saturday from approximately 7:30 a.m. to 7:30 p.m.. The agreement terminates on June 30, 2001, and transit service to the Campus will end on that date unless the BOR, FGCU and the County agree on terms for continuing the service.~~ Lee County had an interlocal agreement with FGCU to provide bus service to the campus but that agreement expired by its own terms on June 30, 2001. Pursuant to the agreement, transit service is available Monday through Saturday from approximately 7:30 a.m. to 7:30 p.m. Lee County and the FBOE/FGCU are negotiating the terms of a new interlocal agreement to provide mass transit service to the campus for July 1, 2001 to June 30 2006.

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

8.0 LEVEL OF SERVICE STANDARDS ESTABLISHED BY THE COUNTY

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

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

disruption of wetlands and flow-ways, whose prevention is deemed in the public interest.

- 8.2 The Lee County Comprehensive Plan level of service standard for potable water facilities requires facilities within certificated, designated or franchised service areas to provide a supply and treatment capacity of 250 gallons per day per-equivalent residential connection (ERC) for the peak month. Where a private water utility has provided an alternate standard for application within its certificated or franchised area, and that standard has been adopted into the County's comprehensive plan, the alternate standard will be used for concurrency management in the area.
- 8.3 The Lee County Comprehensive Plan level of service standard for sanitary sewer facilities requires facilities within certificated, designated or franchised service areas to provide a supply and treatment capacity of 200 gallons per day per equivalent residential connection (ERC) for the peak month. Where a private sewer utility has provided an alternate standard for application within its certificated or franchised area, and that standard has been adopted into the County's comprehensive plan, the alternate standard will be used for concurrency management in the area.
- 8.4 The Lee County Comprehensive Plan level of service standard for solid waste facilities requires facilities to provide a disposal capacity of 7 pounds of waste (or equivalent volume) per capita per day.
- 8.5 The Lee County Comprehensive Plan establishes the following level of service standards for parks and recreation facilities:

- (a) Regional Parks

- 7 acres of developed regional park land open for public use per 1,000 total county population.

- (b) Community Parks

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

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

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

Minimum Acceptable Peak Hour
Peak Season Peak Direction,
LOS

COUNTY ROADS

STATE & COUNTY (NON-FHIS
ROADS)

| | |
|-------------------------------------|---|
| Arterials | E |
| Collector | E |
| Freeways (<u>non-FHIS system</u>) | D |

STATE ROADS

| | |
|-----------------------------|---|
| Principal Arterials | |
| —— U.S. 41 | E |
| —— Other | D |
| —— Minor Arterials & Others | E |
| —— Freeways (I-75) | D |

I-75

Collier Line to Charlotte Line

| | |
|----------------------------|----------|
| <u>Transitioning Area*</u> | <u>C</u> |
| <u>Urbanized Area*</u> | <u>D</u> |

* As defined pursuant to applicable state rules.

9.0 FINANCIAL ARRANGEMENTS BETWEEN THE FBOE/FGCU AND SERVICE PROVIDERS

The FBOE/FGCU has entered into the following financial arrangements for the provision of public facilities and services necessary to support the continued growth and development of the FGCU campus:

9.1 The FBOE/FGCU has no existing financial arrangements with the County or any other entity for the provision of storm water management facilities or services to the campus.

- 9.2 ~~The FBOE/FGCU has no existing financial arrangements a formal service agreement with GES with the County or any other entity for the provision of potable water facilities or and services to the campus. The FBOE/FGCU however, pay all applicable Gulf Utility Company pay the service fees set forth in the agreement for the delivery of potable water to the campus.~~
- 9.3 ~~The FBOE/FGCU has no existing financial arrangements with the County or any other entity a contract with GES for the provision of sanitary sewer facilities or and services to the campus. The FBOE/FGCU will, however, pay all applicable Gulf Utilities Company pay the service fees set forth in the contract for the delivery of sanitary sewer service to the campus.~~
- 9.4 ~~The FBOE/FGCU has no existing financial arrangements a contract with the County or any other entity for the provision of solid waste facilities or and services to the campus. The FBOE/FGCU will, however, pay all applicable Gulf Disposal, Inc. pay the service fees set forth in the contract for solid waste disposal service to the campus, and In addition, the FGCU will pay the County's annual solid waste disposal facility assessment established and adopted by the Board of County Commissioners.~~
- 9.5 The FBOE/FGCU has no existing financial arrangements with the County or any other entity for the provision of open space or recreation facilities or services to the campus.
- 9.6 ~~The BOR/FGCU has no existing financial arrangements with the County or any other entity for the provision of transportation facilities or services to the campus. FGCU entered into a cost sharing agreement with the county for the provision of transportation facilities and services to the campus. The payments originally identified in Section 12.6 have been made. The FBOE/FGCU has provided \$3,107,107 to the county for the provision of transportation facilities and services to the campus. The FBOE/FGCU will provide an additional payment of \$670,773 in the future.~~
- 9.7 The FBOE/FGCU has made financial arrangements with the County for the provision of mass transit facilities or services to the campus for four years through a cost sharing arrangement described in the interlocal agreement between FGCU and the County dated July 8, 1997. This interlocal agreement expired by its own terms on June 30, 2001. The FBOE/FGCU and Lee County have negotiated a new interlocal agreement whereby the FBOE/FGCU will provide a payment of \$555,887 for mass transit facilities and services until June 2006.
- 9.8 The FBOE/FGCU has made financial arrangements with the San Carlos Fire Protection and Rescue Services District for the provision of fire protection and

rescue services to the campus. The FBOE/FGCU will pay \$250,000 for the delivery of the fire protection and rescue services to the campus. These funds will be paid to Lee County, who will then disburse the entire \$250,000 to the San Carlos Fire Protection and Rescue Service District.

10.0 IMPACTS OF CAMPUS DEVELOPMENT ON PUBLIC FACILITIES AND SERVICES

- 10.1 The FBOE/FGCU and County agree that development proposed in the adopted FGCU Campus Master Plan should not degrade the operating conditions for public storm water management facilities below the level of service standards adopted by the County.
- 10.2 The FBOE/FGCU and County agree that development proposed in the adopted FGCU Campus Master Plan should not degrade the operating conditions for potable water facilities below the level of service standards adopted by the County.
- 10.3 The FBOE/FGCU and County agree that development proposed in the adopted FGCU Campus Master Plan should not degrade the operating conditions for sanitary sewer facilities below the level of service standards adopted by the County.
- 10.4 The FBOE/FGCU and County agree that development proposed in the adopted FGCU Campus Master Plan should not degrade the operating conditions for solid waste collection and disposal facilities below the level of service standards adopted by the County.
- 10.5 The FBOE/FGCU and County agree that development proposed in the adopted FGCU Campus Master Plan should not degrade the operating conditions for open space and recreational facilities below the level of service standards adopted by the County.
- 10.6 The FBOE/FGCU and County agree that based on a cumulative analysis of the development identified in the adopted FGCU Campus Master Plan and in Exhibit "A" will cause or contribute to the degradation of the operating conditions on the following roadway segments below the level of service standards adopted by the County:
- (a) Treeline Boulevard, from the University Entrance to Alico Road;
 - (b) Alico Road, from US 41 to Phlox Road;
 - (c) Alico Road, from Lee Road to Oriole Road;

(d) US 41, from Coconut Road to Williams Road; and

(e) US 41, from Alico Road to Island Park Road.

(f) Ben Hill Griffin Parkway from Koreshan Boulevard extension to Daniels Parkway.

(g) I-75 from Alico Road to Colonial Boulevard.

Mitigation of the above deficiencies will be addressed by transportation strategies identified in Section 11.6 of this Agreement.

10.7 The FBOE/FGCU and County agree that the development proposed in the adopted FGCU Campus Master Plan will degrade the operating conditions of the existing mass transit facilities and services to campus below the level of service standards adopted by the County. Mitigation of the above deficiencies will be addressed by mass transit strategies identified in Section 11.7 of this Agreement.

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

11.0 IMPROVEMENTS REQUIRED TO MAINTAIN LEVELS OF SERVICE

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

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

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

- 11.3 The FBOE/FGCU and County agree that there is sufficient sanitary sewer facility capacity to accommodate the impacts of development proposed in the adopted FGCU Campus Master Plan and in Exhibit "A", and to meet the future needs of FGCU for the duration of this Agreement. The FBOE/FGCU and County further agree that no off-campus sanitary sewer improvements are necessary.
- 11.4 The FBOE/FGCU and County agree that there is sufficient solid waste facility capacity to accommodate the impacts of development proposed in the adopted FGCU Campus Master Plan and in Exhibit "A", and to meet the future needs of FGCU for the duration of this Agreement. The FBOE/FGCU and County further agree that no off-campus solid waste improvements are necessary.
- 11.5 The FBOE/FGCU and County agree that there is sufficient open space and recreation facility capacity to accommodate the impacts of development proposed in the adopted FGCU Campus Master Plan and in Exhibit "A", and to meet the future needs of FGCU for the duration of this Agreement. The FBOE/FGCU and County further agree that no off-campus open space and recreation improvements are necessary.
- 11.6 The FBOE/FGCU and County agree that the following off-campus roadway improvements are (or were) necessary to correct deficiencies identified in Section 10.6 of this Agreement:

(a) Improvements Identified in the 1998 Analysis.

- (1) Treeline Boulevard, from the University entrance to Alico Road, would be widened from a two-lanes arterial to a four-lanes arterial. (Completed in 1996)
- (b)(2) Alico Road, from US 41 to Phlox Road, would be widened from a four-lanes arterial to a six-lanes arterial. (Under construction in 2002)
- (c)(3) Alico Road, from Lee Road to Oriole Road, would be widened from a four-lanes arterial to a six-lanes arterial. (Under construction in 2002)
- (d)(4) US 41, from Coconut Road to Williams Road, would be widened from a four-lanes arterial to a six-lanes arterial. (Scheduled to commence construction in 2002)
- (e)(5) US 41, from Alico Road to Island Park Road, would be widened from a six-lane arterial to an eight-lane arterial; extend six lane Metro Parkway, from Alico Road to Ben C. Pratt/Six Mile Cypress Parkway, a parallel improvement to US 41 (scheduled to begin construction in 2004).

(b) Improvements identified in 2002 analysis:

(1) Ben Hill Griffin Parkway, from Koreshan Boulevard extension to Daniels Parkway, widen to six lanes.

(2) I-75, from Alico Road to Colonial Boulevard, widen to six lanes.

11.7 The FBOE/FGCU and County agree that improvements to mass transit facilities and services are necessary to correct deficiencies in Section 10.7 of this Agreement. These improvements will be accomplished through an interlocal agreement between FGCU and Lee County for mass transit facilities and services.

11.8 The FBOE/FGCU and County agree that improvements to the existing fire protection and rescue services are necessary to correct deficiencies in Section 10.8 of this agreement. These improvements will be accomplished through an interlocal agreement between FGCU and the San Carlos Fire Protection and Rescue District.

12.0 FINANCIAL ASSURANCES FOR PUBLIC FACILITIES

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

12.1 The FBOE/FGCU and County agree that no off-campus storm water management improvements need be assured by the FBOE/FGCU.

12.2 The FBOE/FGCU and County agree that no off-campus potable water improvements need be assured by the FBOE/FGCU.

12.3 The FBOE/FGCU and County agree that no off-campus sanitary sewer improvements need be assured by the FBOE/FGCU.

12.4 The FBOE/FGCU and County agree that no off-campus solid waste improvements need be assured by the FBOE/FGCU.

12.5 The FBOE/FGCU and County agree that no off-campus parks and recreation improvements need be assured by the FBOE/FGCU.

12.6 The FBOE/FGCU and County agree that the FBOE/FGCU's responsibility for paying its fair share of the costs of improvements identified in Section 11.6 (transportation) will be met as follows:

(a) ~~The FBOE/FGCU will provide~~ has provided funds in the amount of ~~\$149,563~~ \$3,107,107 to the County to fund the FBOE/FGCU's fair share of the cost of the improvements identified in the 1998 analysis and summarized in section 11.6(a) of this agreement. The FBOE/FGCU's fair share for each segment is set forth below: ~~improving Treeline Boulevard, from the University entrance at Alico Road, from a two-lane arterial to a four-lane arterial.~~

| | |
|---|--------------------|
| <u>(1) Treeline Avenue from the University entrance to Alico Road</u> | <u>\$149,563</u> |
| <u>(2) Alico Road from US 41 to Phlox Road</u> | <u>\$1,220,340</u> |
| <u>(3) Alico Road from Lee Road to Oriole Road</u> | <u>\$ 229,841</u> |
| <u>(4) US 41 from Coconut Road to Williams Road</u> | <u>\$ 613,366</u> |
| <u>(5) US 41 from Alico Road to Island Park road (Metro Ext.)</u> | <u>\$ 893,997</u> |
| <u>TOTAL</u> | <u>\$3,107,107</u> |

(b) ~~The FBOE/FGCU will provide funds in the amount of \$1,220,340 to the County to fund the FBOE/FGCU's fair share of the cost of improving Alico Road, from US 41 to Phlox Road, from a four-lane arterial to a six-lane arterial.~~

~~(c) The FBOE/FGCU funds in the amount of \$229,841 to the County to fund the FBOE/FGCU's fair share of the cost of improving Alico Road, from Lee Road to Oriole Road, from a four-lane arterial to a six-lane arterial.~~

~~(d) The FBOE/FGCU funds in the amount of \$613,366 to the County to fund the FBOE/FGCU's fair share of the cost of improving US 41, from Coconut Road to Williams Road, from a four-lane arterial to a six-lane arterial.~~

~~(e) The FBOE/FGCU funds in the amount of \$893,997 to the County to fund the FBOE/FGCU's fair share of the cost of improving US 41, from Alico Road to Island Park Road.~~

(b) The FBOE/FGCU will provide funds in the cumulative amount of \$3,777,881 to the county to fund the FBOE/FGCU's fair share of the cost of the improvements identified in the 2002 analysis and summarized in section 11.6(b) of this agreement. The FBOE/FGCU fair share for each segment is set forth below:

| | |
|--|--------------------|
| <u>(1) Ben Hill Griffin Parkway/Treeline Avenue, from Koreshan Boulevard extension to Daniels Parkway, widen from a four-lane arterial to a six-lane arterial.</u> | <u>\$2,251,329</u> |
|--|--------------------|

(2) I-75 from Alico Road to Colonial Boulevard. \$1,526,552

Total: \$3,777,881

- 12.7 The FBOE/FGCU and County recognize the previous payment by the FBOE/FGCU to the County in the amount of ~~\$2,005,000~~ \$3,107,107 identified in 12.6 (a), which will be credited toward the total fair share contribution (~~\$3,107,107~~) of \$3,777,881 identified in Section 12.6(b). The FBOE/FGCU and County agree that the remaining balance of the fair share contribution for transportation impacts to be provided under this Agreement is ~~\$1,102,107~~ \$670,773. ~~The FBOE will pay this remaining fair share amount to the County within 90 days after this agreement is signed by all parties:~~
- 12.8 The FBOE/FGCU will provide funds in the amount of \$555,887 to the county to fund mass transit service to the campus.
- 12.9 The FBOE/FGCU will provide funds in the amount of \$250,000 to the County, who will then disperse the entire \$250,000 to the San Carlos Fire Protection and Rescue District to fund the delivery of fire protection and rescue services to the campus.
- 12.10 Upon execution of this agreement, the FBOE will encumber State University System Concurrency Trust Funds in the amount of \$1,476,660, which will constitute the fair share contribution payable to the County for mitigation of those impacts described in paragraphs 11.6, 11.7, and 11.8. The FBOE will pay this amount to the County within 90 days after execution of the Agreement.

13.0 DEVELOPMENT VESTING

- 13.1 This section applies to the development identified in the Capital Improvements Element of the FGCU Campus Master Plan adopted on July 21, 1995 as revised June 2000 and January 16, 2002, and listed in Exhibit "A" attached hereto.
- 13.2 The uses, maximum densities, intensities and building heights for development identified in Exhibit "A" are those established in the Future Land Use Element of the FGCU Campus Master Plan adopted on ~~July 21, 1995~~ January 16, 2002.
- 13.3 The development identified in Exhibit "A" will not be subject to the County's concurrency management requirements if the FBOE/FGCU complies with all of the terms and conditions to provide financial assurances set forth in Section 12.0 of this Agreement.

13.4 The development identified in Exhibit "A" will remain vested as provided for in this section even if it is not completed within the time period of this Agreement.

14.0 APPLICABLE LAWS

14.1 The state government law and policies regarding concurrency and concurrency implementation governing this Agreement will be those laws and policies in effect at the time of approval of this Agreement.

14.2 If state or federal laws are enacted after execution of this Agreement, which are applicable to or preclude either party's compliance with the terms and conditions of this Agreement, this Agreement will be modified or revoked or amended, as necessary, to comply with the relevant state or federal laws.

15.0 AMENDMENT

15.1 Amendment of this Agreement will be made in accordance with the notification requirements set forth in Section 22.0 of this Agreement.

15.2 It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein will be effective unless contained in a written document approved and executed by all the parties hereto.

15.3 In the event of a dispute arising from the implementation of this Agreement, both parties must resolve the dispute in accordance with the dispute resolution requirements set forth in Section 17.0 of this Agreement.

16.0 CONSISTENCY WITH ADOPTED COMPREHENSIVE PLANS

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

17.0 DISPUTE RESOLUTION

17.1 In the event of a dispute arising from the implementation of this Agreement, each party will select one mediator and notify the other party in writing of the selection. Thereafter, within 15 days after their selection, the two mediators will select a neutral third mediator to complete the mediation panel.

17.2 Each party will be responsible for all costs and fees payable to the mediator selected by it and will equally share the costs and fees of the third mediator for

services rendered and costs expended in connection with resolving issues in dispute.

- 17.3 The mediation panel must convene 10 days after the selection of the mediation panel to resolve the issues in dispute. The panel must issue a report containing a recommended resolution of the issues in dispute within 60 days of their meeting.
- 17.4 If either the FBOE/FGCU or County rejects the recommended resolution of the issues in dispute, the matter will be forwarded to the Department of Community Affairs (DCA). Pursuant to Subsection 240.155 (16), Florida Statutes, DCA has 60 days to hold informal hearings, if necessary; identify remaining issues in dispute; prepare a record of the proceedings; and submit the matter to the Administration Commission for final action. The report to the Administration Commission must list each issue in dispute, describe the nature and basis for each dispute, identify alternative resolutions of each dispute, and make recommendations. The Administration Commission will then take action to resolve the issues in dispute. In resolving this matter, the Administration Commission may, pursuant to Subsection 240.155 (16), Florida Statutes, prescribe by order the contents of this Agreement.

18.0 MONITORING AND OVERSIGHT

- 18.1 The County may inspect related activity on the FGCU campus to verify that the terms of this Agreement are satisfied. The FBOE/FGCU agrees to provide the County with copies of all site plan drawings and building plans within 90 days of FBOE/FGCU approval in order for the County to determine if there has been demonstrated good faith compliance with the terms of this Agreement.
- 18.2 If either party finds that there has been a failure to comply with the terms of this Agreement, the aggrieved party must serve notice on the other that such failure to comply has occurred in accordance with the notification requirements set forth in Section 22.0 of this Agreement.
- 18.3 Disputes that arise in the implementation of this Agreement must be resolved in accordance with the provisions of Section 17.0 above.

19.0 ENFORCEMENT

Any party to this Agreement or aggrieved or adversely affected person may file an action for injunctive relief in the circuit court where the County is located to enforce the terms and conditions of this Agreement, or to challenge the compliance of the Agreement with Section 240.155, Florida Statutes. This action will be the sole and exclusive remedy of an

aggrieved or adversely affected person other than a party to the agreement to enforce any rights or obligations arising from this Agreement.

20.0 SUCCESSORS AND ASSIGNS

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

21.0 RECORDING OF THIS AGREEMENT

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

22.0 NOTICES

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

By personal service or delivery;

By registered or certificated mail;

By deposit with an overnight express delivery service.

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

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

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

With a copy to:

Mr. Timothy Jones
Chief Assistant Lee County Attorney
2115 Second Street
Post Office Box 398
Fort Myers, Florida 33902-0398

The address of the FBOE will be:

Florida Board of Education
325 West Gaines Street
Tallahassee, Florida 32399-1950

With a copy to:

Mr. Curtis Bullock, Vice President for Administrative Services
Florida Gulf Coast University
10501 FGCU Blvd. South
Fort Myers, Florida 33965-6565

23.0 EXHIBITS AND SCHEDULES

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

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

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

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

Signed, sealed and delivered in the presence of:

Chancellor Division of Colleges and
Universities

for the Florida Board of Education,
FLORIDA GULF COAST UNIVERSITY

Date: _____

STATE OF FLORIDA
COUNTY OF LEON

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

WITNESS my hand and official seal this ____ day of _____, 2002

Notary Public

(Notarial Seal)

My Commission Expires:

On _____, 2002, the Florida Board of Education, at a regularly scheduled and on noticed public meeting, approved and authorized the execution of this Agreement by the Chancellor of the Division of Colleges and Universities.

APPROVED by the County Commission on _____, 2002.

ATTEST:

COUNTY COMMISSION OF THE
COUNTY OF LEE, FLORIDA

Deputy Clerk

BY: _____
Robert P. Janes, Chairman

Date: _____

Date: _____

APPROVED AS TO FORM AND
LEGAL CORRECTNESS:

Timothy Jones
Chief Assistant County Attorney

EXHIBIT "A"

DEVELOPMENT AUTHORIZED BY THE AGREEMENT
(As revised June 2000 May 2002)

PHASE ONE: 1997-2002

| <u>Space Type</u> | <u>GSF¹</u> |
|---------------------------|------------------------|
| Classroom | 32,655 |
| Teaching Labs | 38,856 |
| Research Labs | 36,007 |
| Library | 34,874 |
| Instructional Media | 3,448 |
| Assembly/Exhibition | 33,750 |
| Gymnasium | 51,300 |
| Student Services | 40,705 |
| Office/Computer | 46,081 |
| Support | 14,691 |
| Central Energy | 24,000 |
| <u>Student Residences</u> | <u>224,000</u> |

SUBTOTAL 580,367

PHASE TWO: 2003-2007

| <u>Space Type</u> | <u>GSF¹</u> |
|--------------------------------|------------------------|
| Classroom | 17,105 |
| Teaching Labs | 20,255 |
| Research Labs | 30,445 |
| Library | 14,180 |
| Instructional Media | 1,800 |
| Assembly/Exhibition | 0 |
| Gymnasium | 0 |
| Student Services | 6,545 |
| Office/Computer | 43,850 |
| Support | 7,040 |
| Central Energy | 0 |
| SUBTOTAL | 141,220 |
| TOTAL | 721,587 |

PHASE TWO 2000 - 2010
Phase 2A: 2000 - 2005

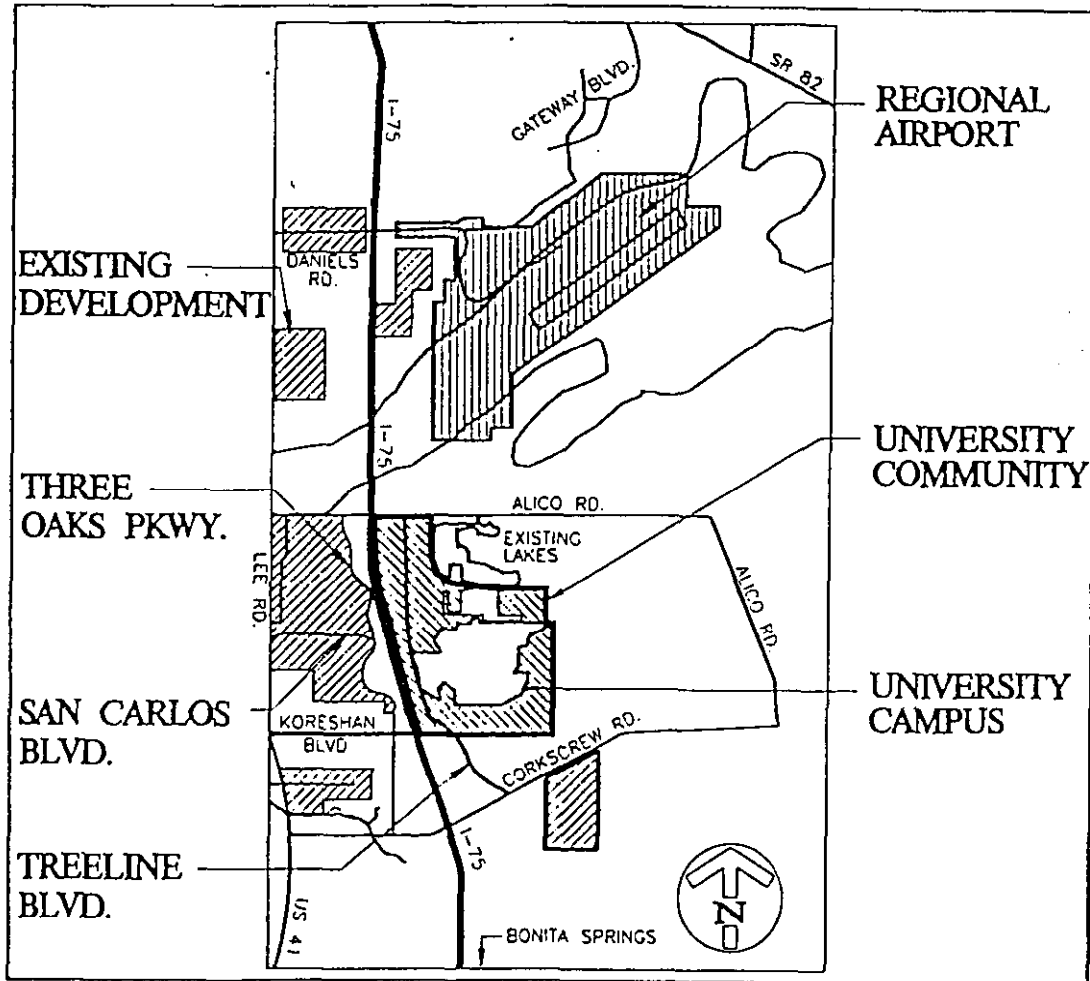
| <u>Building/Space</u> | <u>Size/Area</u> |
|------------------------------|------------------|
| <u>Academic 5</u> | <u>53,622</u> |
| <u>Library Addition</u> | <u>117,066</u> |
| <u>Multipurpose Building</u> | <u>71,759</u> |
| <u>Central Energy Plant</u> | <u>9,906</u> |
| <u>Visual Arts/Academic</u> | <u>36,371</u> |
| <u>Performing Arts</u> | <u>74,718</u> |
| <u>Natatorium</u> | <u>55,196</u> |
| <u>Teaching Gym</u> | <u>61,329</u> |
| <u>Housing PH 3</u> | <u>288 beds</u> |
| <u>Housing PH 4</u> | <u>274 beds</u> |
| <u>Central Oval</u> | |
| <u>Pedestrian Corridor</u> | |

Phase 2B: 2006-2010

| <u>Building/Space</u> | <u>Size/Area</u> |
|--|-------------------|
| <u>Administration</u> | <u>32,048</u> |
| <u>Academic 8</u> | <u>29,678</u> |
| <u>Academic 7</u> | <u>54,297</u> |
| <u>Support</u> | <u>11,522</u> |
| <u>Support</u> | <u>11,522</u> |
| <u>Academic 9</u> | <u>95,016</u> |
| <u>Academic 10</u> | <u>40,716</u> |
| <u>Academic 11</u> | <u>45,562</u> |
| <u>Academic 12</u> | <u>107,253</u> |
| <u>Academic 13</u> | <u>40,946</u> |
| <u>Academic 14</u> | <u>43,360</u> |
| <u>Academic 15</u> | <u>24,014</u> |
| <u>Recreation Center</u> | <u>42,964</u> |
| <u>Housing PH 5, 6, 7</u> | <u>1,600 beds</u> |
| <u>Parking Deck 1</u> | <u>560 spaces</u> |
| <u>Parking Deck 2</u> | <u>560 spaces</u> |
| <u>Parking Deck 3</u> | <u>804 spaces</u> |
| <u>Parking Deck 4</u> | <u>720 spaces</u> |
| <u>Parking Deck 5</u> | <u>560 spaces</u> |
| <u>Parking Deck 6</u> | <u>560 spaces</u> |
| <u>Parking Deck 7</u> | <u>830 spaces</u> |
| <u>West Main Entrance</u> | |
| <u>East Main Entrance</u> | |
| <u>Small Oval</u> | |
| <u>West Quad</u> | |
| <u>East Pedestrian Corridor</u> | |
| <u>Third Road Connection to Ben Hill Griffin</u> | |
| <u>Eastern Road Connection</u> | |

Note: Areas shown are for planning purposes and may vary from CIP submissions
¹Gross square feet

EXHIBIT "B"
GEOGRAPHIC AREA COVERED BY THE AGREEMENT



FLORIDA GULF COAST
UNIVERSITY

LOCATION MAP