

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: April 6, 2010 **Consent** **Regular**
 Workshop **Public Hearing**

Department:

Submitted By: Engineering & Public Works

Submitted For: Traffic Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A Second Amendment to a Road Impact Fee Agreement (R2000-0155), with Northern Palm Beach County Improvement District and Abacoa Development Company (Abacoa).

SUMMARY: Approval of this board item will allow Palm Beach County to use the impact fees Abacoa no longer needs and transfers their responsibility to fund future traffic signals to Palm Beach County.

District 1 (LB)

Background and Justification: The Board of County Commissioners entered into an Agreement with Northern Palm Beach County Improvement District and Abacoa dated February 1, 2000, establishing that 81% of Abacoa impact fees would be deposited into the Abacoa Impact Fee Credit Account and 19% of the Abacoa impact fees would be deposited into the Abacoa Impact Fee Trust Sub Account. Abacoa has completed their entire roadway improvements required in the Transportation Agreement. Palm Beach County will fund up to six traffic signals if they become warranted. However, preliminary staff analysis indicates the majority of the six intersections will never meet our adopted signal warrants.

Attachment:

Second Amendment to Agreement (3)

Recommended by: _____

Division Director

Date

Approved By: _____

S. J. Williams

County Engineer

3/16/10

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	*\$ -0-	-0-	-0-	-0-	-0-

ADDITIONAL FTE POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No ____
 Budget Acct No.: Fund ___ Dept. ___ Unit ___ Object ___
 Program

*** B. Recommended Sources of Funds/Summary of Fiscal Impact:**

This item has no additional fiscal impact. Impact fees which would have previously been deposited in the Abacoa Impact Fee Account (Fund 3515) will now be deposited in the Abacoa Trust Sub Account (Fund 3516). This funding will be used by the County to signalize intersections when warranted as set forth in the agreement.

C. Departmental Fiscal Review: Atwillhite

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

[Signature]
 OFMB Mc 3-11-10
 3/14/10

[Signature] 3/15/10
 Contract Dev. and Control

B. Approved as to Form and Legal Sufficiency:

[Signature]
 Assistant County Attorney

This amendment complies with our review requirements.

C. Impact Fee Review:

[Signature]
 Willie Swoope

This summary is not to be used as a basis for payment.

**SECOND AMENDMENT TO
ROAD IMPACT FEE AGREEMENT
BETWEEN
PALM BEACH COUNTY, FLORIDA,
NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT
AND
ABACOA DEVELOPMENT COMPANY**

THIS SECOND AMENDMENT to the February 1, 2000 ROAD IMPACT FEE AGREEMENT BETWEEN PALM BEACH COUNTY, FLORIDA, NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT AND ABACOA DEVELOPMENT COMPANY, as amended by the FIRST AMENDMENT TO ROAD IMPACT FEE AGREEMENT BETWEEN PALM BEACH COUNTY, FLORIDA, NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT AND ABACOA DEVELOPMENT COMPANY (the "Agreement") is being entered into by and among Palm Beach County, Florida, 301 North Olive Avenue, West Palm Beach, Florida 33401, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY"; Northern Palm Beach County Improvement District, 359 Hiatt Drive, Palm Beach Gardens, Florida 33418, a political subdivision of the State of Florida, hereinafter referred to as "NORTHERN"; and Abacoa Development Company, 1200 University Drive, Suite 210, Jupiter, Florida 33458, hereinafter referred to as "DEVELOPER".

WITNESSETH:

WHEREAS, DEVELOPER is obligated to potentially signalize six intersections in and adjacent to ABACOA if those signals are warranted in the future; and

WHEREAS, with the exception of these signals, all of the road improvements contemplated by the Agreement as hereby amended have been completed; and

WHEREAS, NORTHERN has been fully reimbursed from the Abacoa Impact Fee Credit Account for all of the road improvements constructed by NORTHERN pursuant to the Agreement except for the widening of Donald Ross Road; and

WHEREAS, NORTHERN is currently being reimbursed from the Abacoa Impact Fee Credit Account for the Donald Ross Road widening; and

WHEREAS, as long as DEVELOPER is obligated to fund the signalization of the six intersections, the COUNTY would need to continue to fund the Abacoa Impact Fee Credit Account, with the money in that account being held so that NORTHERN would be reimbursed for its signalizing any of the six intersections once signalization is warranted; and

WHEREAS, the parties desire to amend the Agreement to provide that the COUNTY will cease funding the Abacoa Impact Fee Credit Account once NORTHERN

is fully reimbursed for the widening of Donald Ross Road, with all future impact fees collected after NORTHERN is fully reimbursed to be deposited into the Abacoa Impact Fee Trust Sub-Account for use by the COUNTY consistent with the Agreement in exchange for the COUNTY herein accepting responsibility for signaling the six intersections.

NOW, THEREFORE, the COUNTY, NORTHERN and DEVELOPER, for and in consideration of the mutual benefits set forth herein, do enter into this Second Amendment to the Agreement and hereby represent, covenant and agree as follows:

ARTICLE 1. RECITALS. The recitals as set forth hereinabove are true and correct to the best of the knowledge of the parties hereto and are incorporated herein by this reference.

ARTICLE 2. AUTHORITY FOR AGREEMENT. Each party does hereby acknowledge and agree that it has the lawful authority to enter into this Second Amendment to the Agreement for the purposes set forth herein.

ARTICLE 3 SPECIFIC AMENDMENTS TO AGREEMENT.

Section 3.01 Article 4 of the Agreement is amended as follows:

ARTICLE 4. ROADWAY IMPROVEMENTS. The listing and allocation of ABACOA related roadway improvements that are the DEVELOPER's responsibility and the COUNTY's responsibility, plus the road impact fee credit eligibility status for each such roadway improvement, was initially set forth in the Transportation Agreement. The impact fee eligibility and scope of each improvement have been further defined by the parties. The specific roadway improvements which are eligible for impact fee credit pursuant to this Agreement (hereinafter referred to as "Eligible Roadway Improvements") and the scope of each improvement are described on attached Exhibit "B". In addition, the signalization of the six intersections listed in Paragraph 6.06 are also Eligible Roadway Improvements. The road impact fee credit amount for such Eligible Roadway Improvements shall be determined by COUNTY pursuant to Paragraph 6.04 of this Agreement.

Section 3.02 A new Paragraph 6.06 is added to the Agreement, to read as follows:

Paragraph 6.06. COUNTY Responsibility to Signalize Intersections. The DEVELOPER is responsible for signaling the following intersections when warranted:

- 108. Central Boulevard and University Drive
- 109. Central Boulevard and Barcelona Drive
- 109. Central Boulevard and Dakota Drive
- 109. Central Boulevard and Canterbury Place/Community Drive
- 110. Indian Creek Parkway and Windsor Park Connection

111. Military Trail and Promenade Way

The numbers 108 through 111 listed above for the therein described six intersections are the Abacoa DRI Development Order condition numbers that require the intersections to be signalized when warranted. The COUNTY hereby assumes responsibility for signalizing all of these intersections when signals are warranted. Notwithstanding anything to the contrary contained in Article 9 or elsewhere in the Agreement, the COUNTY'S responsibility for signalizing these intersections shall continue until one of the following occurs: (i) all of the intersections have been signalized; or (ii) the Town of Jupiter acknowledges that the DEVELOPER, its successors and assigns and the COUNTY are no longer responsible for signalizing these intersections and the Abacoa DRI Development Order is amended to remove the signalization requirement for any of the intersections that are not yet signalized; or (iii) the Abacoa DRI Development Order expires (currently January 1, 2025 per DRI condition 4) or is otherwise terminated with no further obligation imposed on the DEVELOPER, its successors and assigns and the COUNTY for signalizing these intersections. This Paragraph 6.06 shall survive the expiration or termination of the Agreement.

Section 3.03 A new Paragraph 6.07 is added to the Agreement, to read as follows:

Paragraph 6.07. COUNTY Obligations Pursuant to Paragraphs 6.02(A) and 6.02 (C). Paragraph 6.02(C) provides that once there are no further Eligible Roadway Improvements to be constructed by DEVELOPER and an amount of impact fees equal to the total amount of impact fee credit has been remitted to NORTHERN, the COUNTY is no longer obligated to deposit 81 cents of every impact fee dollar received by the COUNTY into the Abacoa Impact Fee Credit Account as required by Paragraph 6.02(A). Instead, the COUNTY is required to deposit all of the impact fees collected for development within Abacoa into the Abacoa Trust Sub-Account for use by the COUNTY pursuant to the Transportation Agreement. As of the Effective Date of the Second Amendment to the Agreement, the only Eligible Roadway Improvements remaining to be constructed by the DEVELOPER are the signalization of the six intersections listed in Paragraph 6.06. At the time of adoption of the Second Amendment to the Agreement, NORTHERN has been fully reimbursed from the Abacoa Impact Fee Credit Account for all of the Eligible Roadway Improvements constructed by NORTHERN except for its previously constructed widening of Donald Ross Road. Because the COUNTY has assumed responsibility for constructing the remaining Eligible Roadway Improvements (the signalization of the six intersections), the parties agree that there are no further Eligible Roadway Improvements to be constructed by the DEVELOPER and, once NORTHERN has been fully reimbursed from the Abacoa Impact Fee Credit Account for the widening of Donald Ross Road, the total amount of impact fee credit will have been remitted to NORTHERN. Therefore, the parties agree that once NORTHERN has been fully reimbursed from the Abacoa Impact Fee Credit Account for the widening of Donald Ross Road, the requirements of Paragraph 6.02(C) will be met and the COUNTY is no longer obligated to deposit any impact fees collected for development within Abacoa into the Abacoa Impact Fee Credit Account.

Section 3.04 Article 10 of the Agreement is amended as follows:

ARTICLE 10. TERM OF AGREEMENT. If not sooner terminated as permitted herein, this Agreement shall terminate and the responsibility of the COUNTY to pay NORTHERN those road impact fees collected as a result of development within ABACOA and held in the Abacoa Impact Fee Credit Account shall cease upon either (i) NORTHERN receiving payment of all the road impact fees that would equal the road impact fee credit the DEVELOPER would otherwise be entitled to for constructing the Eligible Roadway Improvements described in Article 4 of this Agreement and the COUNTY no longer being responsible for signaling any intersections pursuant to Paragraph 6.06; or (ii) twenty-five (25) years from February 1, 2000, the initial effective date of this Agreement, whichever occurs first.

Section 3.05 Paragraph 11.01 of the Agreement is amended as follows:

Paragraph 11.01. Notice Format. All notices, requests, consents, and other communications required or permitted under this Agreement shall be in writing (including telex, facsimile or telegraphic communication) and shall be (as elected by the person giving such notice) hand delivered by prepaid express overnight courier or messenger service, telecommunicated, or mailed (airmail if international) by registered or certified mail postage prepaid), return receipt requested, to the following addresses:

As to COUNTY:

PALM BEACH COUNTY, FLORIDA
Department of Engineering and Public Works
2300 North Jog Road ~~160 Australian Avenue~~
West Palm Beach, FL 33411 33406
Attn: Dan Weisberg ~~Charles R. Walker, Jr.~~
Director of Traffic
Phone: (561) 684-4030
Fax: (561) 478-5770

With a copy to:

Willie M. Swoope, Impact Fee Coordinator
2300 North Jog Road ~~160 Australian Avenue~~
West Palm Beach, FL 33411 33406
Phone: (561) 233-5025
Fax: (561) 233-5167

With a copy to:

Leonard Berger, Esquire
Assistant County Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401
Phone: (561) 355-2225
Fax: (561) 355-4398

As to NORTHERN

NORTHERN PALM BEACH COUNTY
IMPROVEMENT DISTRICT
359 357 Hiatt Drive
Palm Beach Gardens, FL 33418
Attn: O'Neal Bardin, Jr. ~~Peter L. Pimentel~~,
Executive Director
Phone: (561) 624-7830
Fax: (561) 624-7839

With a copy to:

Kenneth W. Edwards, Esquire
CALDWELL & PACETTI EDWARDS SCHOECH
& VIATOR
250 S. Australian Avenue, #600 324 Royal Palm-
Way, Third Floor
West Palm Beach, FL 33401 33480
Phone: (561) 655-0620
Fax: (561) 655-3775

As to DEVELOPER

Nader Salour
Abacoa Development Company
1200 University Boulevard, Suite 210 675 West-
Indiantown Road, Suite 203
Jupiter, FL 33458-7556
Phone: (561) 745-6400
Fax: (561) 745-6403

With a copy to:

John Gary, Esq.
Gary, Dytrych & Ryan
701 U.S. Highway 1
Suite 402
North Palm Beach, FL 33408
Phone: (561) 844-3700
Fax: (561) 844-2388

With a copy to:

John Corbett, Esq.
Corbett & White, P.A.
1111 Hypoluxo Road 505 South Flagler Drive
Suite 207 Suite 1003
Lantana West Palm Beach, FL 33462 33401
Phone: (561) 586-7116 659-0804
Fax: (561) 586-9611 659-3375

If any party changes its mailing address or designated recipient for notice, such change shall be communicated in writing to the other parties within thirty (30) days of the change.

ARTICLE 4. MISCELLANEOUS PROVISIONS.

Paragraph 4.01. Construction. The parties acknowledge that each has shared equally in drafting and construction of this Amendment, and, accordingly, no Court construing this Amendment shall construe it more strictly against one party than the others and every covenant, term and provision of this Amendment shall be construed simply according to its fair meaning.

Paragraph 4.02. Severability. If any part of this Amendment is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

Paragraph 4.03. Effective Date. The effective date of this Amendment shall be the last date this instrument has been executed by all of the parties hereto.

Paragraph 4.04. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Executed by COUNTY on _____.

ATTEST:

PALM BEACH COUNTY

By: _____

Jeff Koons, Chairman

Burt Aaronson, Chair

Approved as to form and legal sufficiency

Approved as to terms and conditions

Executed by NORTHERN this 2th day of JANUARY, 2010

ATTEST:

NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT

By: [Signature]

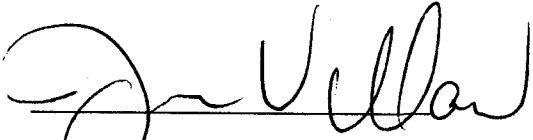
(District Seal)

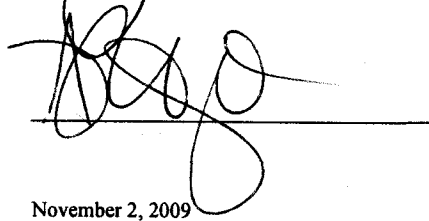
By: [Signature]
Deborah Diaz, President

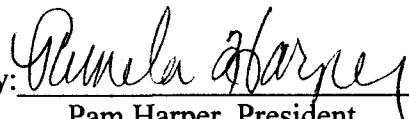
Executed by DEVELOPER this 12th day of January, 20 10.

ABACOA DEVELOPMENT COMPANY

WITNESSES:





By: 

Pam Harper, President

November 2, 2009