

Meeting Date
May 12, 2015



AGENDA	
Section	Consent
Item No.	II.A.1

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	APPROVAL RE: INTERLOCAL AGREEMENT WITH TOWN OF GRANT/VALKARIA REGARDING TRANSPORTATION IMPACT FEE PROGRAM (DISTRICT 3)
DEPT/OFFICE:	PLANNING AND DEVELOPMENT DEPARTMENT

Requested Action:
 It is requested that the Board of County Commissioners approve the Interlocal Agreement between Brevard County and the Town of Grant/Valkaria Providing for Participation in the Brevard County Transportation Impact Fee Ordinance and authorize the Chairman to execute the agreement.

Summary Explanation & Background:
 The Town of Grant/Valkaria has recently expressed a desire to enter into this Interlocal Agreement in order to provide input into how transportation impact fees collected in the Town are spent. The agreement will allow the Town to appoint a representative to the Impact Fee Advisory Committee which prepares transportation impact fee funding recommendations for consideration by the Board of County Commissioners. Transportation impact fees were collected in the Town prior to the adoption of the Transportation Impact Fee Moratorium in 2009 and have been held in reserve because the Town had not entered into an Interlocal Agreement.

Fiscal Impact: Approximately \$1.2 million in transportation impact fees were collected within the Town of Grant/Valkaria prior to the adoption of the Transportation Impact Fee Moratorium in 2009 and are available for expenditure in FY14/15.

Staff Contact: Stephen M. Swanke
 (321) 633-2069

Clerk to the Board instruction:

Exhibits Attached:
 Interlocal Agreement executed by the Town of Grant/Valkaria

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager Stockton Whitten	Assistant County Manager Mel Scott, AICP	Department Director / Extension Robin M. Sobrino, AICP 5-2069
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Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

May 13, 2015

MEMORANDUM

TO: Robin Sobrino, Planning and Development Director Attn: Stephen Swanke

RE: Item II.A.1., Interlocal Agreement with Town of Grant/Valkaria for Transportation Impact Fee Program

The Board of County Commissioners, in regular session on May 12, 2015, executed Interlocal Agreement with the Town of Grant/Valkaria providing for participation in the Brevard County Transportation Impact Fee Program. Enclosed is original Interlocal Agreement for your action.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/ds

Encl. (1)

cc: Contracts Administration
Budget
Finance

INTERLOCAL AGREEMENT
BETWEEN
BREVARD COUNTY, FLORIDA
AND THE
TOWN OF GRANT-VALKARIA, FLORIDA
PROVIDING FOR PARTICIPATION IN THE
BREVARD COUNTY TRANSPORTATION IMPACT FEE ORDINANCE

This is an Agreement between: BREVARD COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, through its Board of County Commissioners, hereinafter referred to as "County," and the TOWN OF GRANT-VALKARIA, FLORIDA, a municipal corporation existing under the laws of the State of Florida, hereinafter referred to as "Town".

WHEREAS, Brevard County provides public roadways within the Town of Grant-Valkaria; and

WHEREAS, the Board of County Commissioners of Brevard County and the Town Council of the Town of Grant-Valkaria have determined that the public roadway network must be expanded in order to maintain current level of service standards and accommodate the traffic generated by new land development; and

WHEREAS, Brevard County has authorized and received an independently prepared study that analyzed the fiscal impacts of new development activity on the roadway network and calculated the maximum impact fee that could be imposed on new development for public roadways based on currently available data and analysis; and

WHEREAS, the Florida Legislature, through enactment of Section 163.3202(3), Florida Statutes, has sought to encourage local governments to enact impact fees as land development regulations; and

WHEREAS, the Board of County Commissioners adopted and amended from time to time, Ordinance 89-04, the Brevard County Transportation Impact Fee Ordinance, which has been incorporated into the Code of Ordinances of Brevard County, Florida as Chapter 62, Article V, Division 6, Sections 62-801 through 62-819, hereinafter referred to as "Ordinance"; and

WHEREAS, the Ordinance applies to the unincorporated areas of Brevard County and by execution of this Agreement by the Town and the County will also apply to properties within the Town; and

WHEREAS, it is necessary for the County and Town to establish and clarify the duties, responsibilities and obligations of the respective parties in order to effectively administer the Ordinance; and

WHEREAS, the County and Town entered into an Interlocal Agreement Regarding Municipal Services for the Town of Grant/Valkaria in 2007 through which the Town contracted with the County to provide building permit review, issuance and inspection for the Town; and

WHEREAS, the County and Town amended the Interlocal Agreement Regarding Municipal Services for the Town of Grant/Valkaria in 2008 and may adopt other subsequent amendments in the future to extend the terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, County and Town agree as follows:

Section 1: Incorporation of Recitals

1.1 The above recitals are true and correct and are incorporated herein by this reference.

Section 2: Purpose

2.1 The purpose of this Agreement is to ensure that the transportation impact fees necessary for the adequate provision of roadways in the Town of Grant-Valkaria and Brevard County, Florida are imposed upon and collected from new development in the Town in an equitable and fair manner, and are appropriated and expended in accordance with the Ordinance and applicable laws.

Section 3: Obligations of the Town

3.1 Impact Fee Notice: The Town hereby agrees to notify each applicant for a building permit that the applicant must obtain a transportation impact fee proof of payment receipt or a notice of exemption from transportation impact fees from the County for the property for which the permit is sought. The notice shall include the requirement that the building permit applicant is required to submit an impact fee application and pay the required impact fee to Brevard County prior to the issue of a Certificate of Occupancy or Certificate of Completion by the Town. The notice shall also inform the applicant that it is the applicant's responsibility, if eligible, to immediately contact the Brevard County Land Development Office to claim an impact fee exemption and initiate the process for determining eligibility except as provided in Subsection 3.1.1.

3.1.1 The Town Building Official is entitled to determine eligibility for those impact fee exemptions specified in Section 62-815(a)(1) through 62-815(a)(5) of the Ordinance. This section of the ordinance exempts: (1) alteration or expansion of existing residences where no additional units are created; (2) construction of accessory buildings; (3) replacement of an existing residence with a residential unit of the same type; (4) replacement of a non-residential building or structure with a new building or structure of the same size and use; and (5) construction of government owned buildings utilized in their entirety for public purposes.

- 3.2 **Impact Fee Collection:** The Town hereby agrees to reasonably assist and cooperate with the County in the collection of Transportation Impact Fees within the jurisdiction of the Town. In compliance with the Ordinance, the Town agrees to require, as a condition precedent to the issuance of a Certificate of Occupancy or Certificate of Completion, presentation of a transportation impact fee proof of payment receipt or a notice of exemption from transportation impact fees from the County for the property for which the certificate will be issued.
- 3.2.1 Unless an transportation impact fee proof of payment receipt or a notice of exemption from transportation impact fees from the County has been presented by the building permit applicant, the Town agrees not to issue a Certificate of Occupancy for any property unless the building permit applicant provides written documentation from the County evidencing that an appeal has been filed with the County pursuant to the terms of the Ordinance and the building permit applicant has posted a bond or submitted an irrevocable letter of credit or other surety in the amount of the transportation impact fee calculated to be due, which bond, letter of credit, or other surety has been approved and accepted by the County.
- 3.3 **Impact Fee Advisory Committee:** In order to facilitate input from the Town with regard to the appropriation of transportation impact fees collected within its jurisdiction towards the development of new or expanded roadway improvements, the County agrees to convene a Transportation Impact Fee Advisory Committee for each Benefit District in which the lands under its jurisdiction are located.
- 3.3.1 **Membership:** The Town, by this agreement with the County, is entitled to appoint one representative to the Transportation Impact Fee Advisory Committee for each benefit district in which the lands under its jurisdiction are located. The representative so appointed must be knowledgeable about land development activity within the benefit district, the need for roadway improvements within the benefit district, and limitations on the use of impact fees. Representatives may include but are not limited to elected officials, Town or County Managers, planners, engineers, attorneys or concerned citizens residing in the jurisdiction. The appointment of an individual to the Impact Fee Advisory Committee by a participating jurisdiction shall be an assurance to all other participating jurisdictions that the appointee meets the requirements of this paragraph. The total membership of the Impact Fee Advisory Committee shall consist of one representative from the Brevard County and each municipality with an effective interlocal agreement.
- 3.3.2 **Role of Impact Fee Advisory Committee:** The role of the Impact Fee Advisory Committee is to consider the need for and cost of new or expanded roadways within the benefit district in order to maintain adopted level of service standards, as well as, to consider projections of impact fee revenues available for appropriation in order to make recommendations to the Board of County Commissioners regarding the appropriation of available impact fees for eligible projects.

- 3.3.3 Advisory Committee Recommendations: The recommendations of the Transportation Impact Fee Advisory Committee regarding the appropriation of impact fees toward specific roadway improvement projects shall not be binding on the Board of County Commissioners, but the Board of County Commissioners shall regard the Advisory Committee's recommendations as highly persuasive and accord said recommendations great weight in their deliberations regarding the appropriation of impact fees to eligible projects.
- 3.4 Donation of Land and Developer Funded Improvements: In the event that the Town approves a development order that requires the developer to donate land or construct roadway improvements to the Town or County roadway network, the Town agrees to coordinate with the County to ensure that any transportation impact fee credit that is due to the developer is considered in a timely manner.
- 3.5 Agreement to Accept Benefit District & Rate Structure: The Town accepts the transportation impact fee rate schedule established in Section 62-818 and the impact fee benefit district boundaries established in Section 62-817 of the Transportation Impact Fee Ordinance as amended by Ordinance 01-21 adopted by the Board of County Commissioners on April 24, 2001. The Town's acceptance is based on the County's assurances that: the transportation impact fee rate structure and benefit district boundaries are based on an impact fee study prepared by a qualified consultant; said study is based on current and reliable socio-economic data; the transportation impact fee program, rate structure and benefit district boundaries will not be amended unless based on an updated study prepared by a qualified consultant; and that the impact fee program established by the Ordinance would more likely than not be upheld in a court of competent jurisdiction. The County waives any right to assert said acceptance by the Town as a defense to any hold harmless or indemnification clause in this Agreement or otherwise expressly or impliedly made by the County.
- 3.6 Interlocal Agreement Regarding Municipal Services: In acknowledgement of the Interlocal Agreement Regarding Municipal Services for the Town of Grant/Valkaria and subsequent amendment(s) to said Agreement, through which the Town has contracted with the County to provide building permit review, issuance and inspection services for the Town, the County shall assume the obligations of the Town found under paragraphs 3.1 and 3.2 of this Agreement while the Interlocal Agreement Regarding Municipal Services for the Town of Grant/Valkaria remains in effect.

Section 4: Obligations of the County

- 4.1 Administration and Enforcement: It is the obligation of the County to administer all aspects of the ordinance and to make every reasonable effort to enforce the provisions of the Transportation Impact Fee Ordinance, as it has been adopted and as it may be amended from time to time.
- 4.1.1 Assessment: The County, within a reasonable period of time after receipt of a completed County Form A, shall provide the applicant with an assessment notice that identifies the amount of the transportation impact fee that is due within a

reasonable time. For single-family detached residences, mobile or manufactured homes, or duplexes, the assessment notice will usually be provided within one business day. For residential developments with more than two units and all non-residential developments, the assessment notice will usually be provided within five business days or less. Upon payment of the appropriate transportation impact fee amount by the applicant, the County shall immediately issue a transportation impact fee proof of payment receipt to the applicant to provide to the Town.

- 4.1.2 Special Reviews: Upon receipt of an independent fee calculation study provided for in Section 62-809(b), a request for a refund as provided for in Section 62-814, and/or a request for an exemption or credit as provided for in Section 62-815 of the Transportation Impact Fee Ordinance, the County shall make a good faith effort to expeditiously process the request and take appropriate action within a reasonable period of time.
- 4.1.3 Collection: Brevard County has established the Brevard County Development Cashier as the central collection point for transportation impact fee payments and the issuance of transportation impact fee proof of payment receipts or notices of exemption from transportation impact fees. The Development Cashier is located in Building A of the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera 32940. The Board of County Commissioners has established alternative collection points at many of the Brevard County Tax Collector's Offices.
- 4.1.4 Use of Funds: All transportation impact fees collected by Brevard County shall immediately be deposited in the Transportation Impact Fee Trust Fund established for each benefit district pursuant to the requirements of Section 62-812. After the Impact Fee Advisory Committee makes its recommendation and the Board of County Commissioners appropriates transportation impact fees to an eligible project, the County will transfer those funds to the appropriate administrative entity for expenditure.
- 4.1.5 Administration Fee: The County is entitled to retain up to but not more than eight percent of the amount of transportation impact fees collected for administration of the ordinance. In calculating the amount of the administrative fee, the County shall include those expenditures that are reasonably associated with administration of the program. These expenditures may include but are not limited to, compensation and benefits for personnel involved in the administration of the ordinance; supplies and expenses related to administration of the ordinance; costs associated with consulting services for establishment and periodic updates of the ordinance; and those attorneys fees that may be necessary for administration and enforcement of the ordinance. The County acknowledges that it administers other impact fee programs not related to transportation and pledges to consolidate its administrative efforts in order to cost effectively administer all impact fee programs. When shared administrative costs cannot be isolated by specific impact fee program, the County shall prorate those costs based on amount of revenue collected within each program.

Section 5: Maintenance of Records

- 5.1 The County shall maintain complete and comprehensive records of all funds collected within the Town and all expenditures of said funds, identified by Benefit District, for a period of seven years from receipt and expenditure to satisfy the refund provisions of Section 62-814 of the Transportation Impact Fee Ordinance.
- 5.2 The County shall maintain complete and comprehensive records of all exemptions granted, all incentives awarded, any impact fee credit awarded and any refund given for a period of seven years from receipt or award.
- 5.3 The County and the Town shall have the reciprocal right to review the records of the other as to issuance of building permits, certificates of occupancy, and receipt, allocation and expenditure of impact fees. All such inspections shall be made upon reasonable notice and at a reasonable time and place. Upon a request to review or obtain copies of records by one party to the other hereunder, the party responding to a request for review shall furnish assistance as well as copies of appropriate records for the project to the requesting party.

Section 6: Indemnification

- 6.1 The County agrees to hold the Town harmless from all liability that may result from the performance of or omission to perform any of the County's obligations herein. Except as limited by law, the County agrees to indemnify the Town against all losses, damages, errors, omissions, claims, court costs, or attorney's fees incurred, directly or indirectly, arising from or: (1) as a result of the Town's defense of its actions or omission to act resulting, directly or indirectly, from the performance of this Agreement or in cooperation with the County in pursuit of fulfilling the requirements of the Transportation Impact Fee Ordinance; (2) in refusing to issue either a building permit or certificate of occupancy in furtherance of enforcing the Transportation Impact Fee Ordinance and the impact fee effectuated by that ordinance or this Agreement; and/or (3) as a result of the County's actions pursuant to the transportation impact fee program or ordinance, including but not limited to the making of, failure to make or to timely make: (a) determinations regarding vested rights, alternative impact fee calculation studies, exemptions from impact fees, award of impact fee credits, or eligibility for and award of incentives for affordable housing construction; (b) properly return funds to which any person may be entitled; and/or (c) issue a transportation impact fee proof of payment receipt. Notwithstanding any other provision of this Agreement, the parties hereto agree that the hold harmless and indemnification provisions of this Agreement shall continue in full force and effect regardless of the termination of this Agreement with regard to acts or omission committed during the term of this Agreement. Nothing herein shall be construed to constitute a commitment by the County to indemnify the Town for acts of negligence, be they commission or omission under any development permit or regulatory activity of the Town pursuant to this Agreement or otherwise. Nothing herein shall be construed to constitute a general pledge of County or Town revenues.

Section 7: Entire Agreement

7.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the disbursement 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 this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written regarding disbursements unless specifically incorporated into this agreement by writing.

Section 8: Notices

8.1 Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended, at the place specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. The parties designate the following as the respective places for giving of notice to-wit:

For County: County Manager
 Board of County Commissioners
 2725 Judge Fran Jamieson Way
 Viera, Florida 32940

For Town: Town Administrator
 Town of Grant-Valkaria
 P.O. Box 766
 Grant-Valkaria, Florida 32949

Section 9: Amendments

9.1 The parties may amend this Agreement, if required by legislation, to conform to mandates in state guidelines, directives, and objectives relating to the use of transportation impact fees. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Board of County Commissioners of Brevard County, Florida and the Town Council of the Town of Grant-Valkaria. Such amendment will not affect specific activities commenced under this agreement prior to amendment, which were in compliance at the time of commencement. No other modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

Section 10: Term of Agreement

- 10.1 This agreement shall commence on the day that the fully executed agreement is recorded in the Public Records of Brevard County, Florida. This agreement shall remain in effect until it has been terminated pursuant to Section 11 below.

Section 11: Termination

- 11.1 In the event that the County repeals the Transportation Impact Fee Ordinance, this agreement shall remain in effect until all funds collected by the County under the provisions of the ordinance have been expended on eligible improvements.
- 11.2 In the event that the Town initiates activities to adopt a transportation impact fee ordinance that would supersede the Brevard County Transportation Impact Fee Ordinance within those areas under the jurisdiction of the Town, the Town shall give the County notice at least ninety days prior to the effective date of the proposed Town ordinance in order to coordinate with the County regarding the transition to the Town ordinance and termination of this Agreement.

Section 12: Effective Date; Recording

- 12.1 Pursuant to Section 163.01(11), Florida Statutes, this Agreement, and any amendments hereto, shall not become effective until and unless recorded in the Public Records of Brevard County by the Clerk of the Circuit Court for Brevard County, Florida. The County, at no cost to the Town, shall make arrangements to immediately record this Agreement and any amendments hereto, all as contemplated herein, and upon recordation, a recorded copy shall be forwarded to the Town in the manner in which notice is required to be given.

Section 13: Litigation

- 13.1 In the event litigation is filed against the Town which challenges: the Town's refusal to issue any development permit or certificate of occupancy because the property owner, developer, applicant or other person has failed to properly remit payment for transportation impact fees pursuant to the Transportation Impact Fee Ordinance, or in a timely manner, proper amount, or for any other reason; or this Agreement or Ordinance, within ten (10) days of service of the pleadings on the Town, the Town agrees to forward a copy of the pleadings to the County. Upon written request of the Town, the County shall be named as an indispensable party to such suit or failing such determination by a court, the County shall be named as a third party defendant to enable the County to defend this Agreement, the Ordinance, and the Transportation Impact Fee program. The County agrees that in any such action contemplated by the foregoing sentence, the Town may have its choice of legal counsel, both for trial and appellate purposes, all at the expense of the County. In the event that litigation is filed against the County, which challenges this Agreement or the Ordinance, or the Transportation Impact Fee program, within ten (10) days of service of the pleadings on the County, the County agrees to forward a copy of the pleadings to the Town. Upon written request of the County, the

Town shall be named as an indispensable party to such suit or failing such determination by a court, the Town shall be named as a third party defendant to enable the Town to defend this Agreement and join in the defense of the Ordinance and Transportation Impact Fee program. In the case of the event outlined in the immediate foregoing sentence in which the Town shall request to be joined, the County may, in its sole and absolute discretion, refuse indemnification of the Town as to its court costs and attorney's fees.

Section 14: Severability

14.1 If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from this Agreement without affecting the binding force of the remainder of the Agreement.

IN WITNESS WHEREOF, this Agreement has been fully executed on behalf of the County and Town by their duly authorized representatives on the respective dates below.

**BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA**



Robin Fisher, Chairman

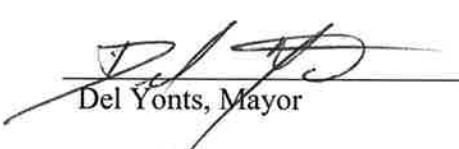
As approved by the Board of County Commissioners
On May 12, 2015.

ATTEST:



Scott Ellis, Clerk


TOWN OF GRANT-VALKARIA, FLORIDA




Del Yonts, Mayor

Date: April 8, 2015

ATTEST:



Susanne R. Krueger, Town Clerk



STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 12 day of May, 2015 by Robin Fisher, Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or produced _____ as identification and who did take an oath.

Tammy Lynn Etheridge
NOTARY PUBLIC - State of Florida



STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 8th day of April, 2015 by Del Yonts, Mayor of the Town of Grant-Valkaria, who is personally known to me or ~~produced~~ _____ as identification and who did take an oath.

Jessica Ann Williams
NOTARY PUBLIC - State of Florida

