

RESOLUTION 2000-24
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADOPTING AN INTERGOVERNMENTAL AGREEMENT PERTAINING TO
A REGIONAL ROAD IMPACT FEE PROGRAM

WHEREAS, the City is authorized under Article XX, Section 6 of the Colorado Constitution to adopt appropriate ordinances and regulations for the purpose of promoting and preserving the public health, safety and welfare of the citizens of the City, and has the full right of self government in local municipal matters including, without limitation, the power to regulate, as matter of purely local concern, the development of real property within the City; and

WHEREAS, the City Council has determined that future growth and new development in the City should contribute a proportionate share of the cost of providing the capital improvements necessary to mitigate the impacts of such growth and new development; and

WHEREAS, by adoption of Ordinance No. 51, 1996, the Council has adopted certain capital improvement expansion fees to help defray the capital cost of expanding public facilities within the City in order to accommodate new development in the City; and

WHEREAS, the Council recognizes that there is a regional road system in Larimer County which consists of inter-urban travel corridors and major corridors that connect urban areas to the Interstate Highway System; and

WHEREAS, Larimer County has conducted a multi-jurisdictional transportation study (the "Larimer County Road and Park Impact Fee Study") and a regional road capital improvement plan (the "Regional Road CIP") for its regional road system; and

WHEREAS, the Larimer County Road and Park Impact Fee Study projects that there will be a significant amount of new growth and development in the unincorporated areas of the County as well as the incorporated areas of all municipalities in the County (the "Region") over the next twenty (20) years; and

WHEREAS, the Larimer County Road and Park Impact Fee Study indicates that this new growth and development will increase the demand for capacity on the regional road system, within the Region; and

WHEREAS, Larimer County has adopted a level of service (D) as the minimum acceptable level of service on the regional road system, and the City Council concurs with these determinations; and

WHEREAS, the Larimer County Road and Park Impact Fee Study demonstrates that the revenue generated by existing fees imposed upon new growth and development in the Region will not be adequate to fund the needed road capital improvements necessary to accommodate the

anticipated growth and development in the Region if the adopted level of service is to be maintained;
and

WHEREAS, in order to address this problem, Larimer County and the City have, by intergovernmental agreement, established a policy that new land development activity should bear a proportionate share of the cost of providing the new road capital improvements needed to mitigate the impacts of new growth and development on the regional road system and maintain the desired level of service on such system; and

WHEREAS, the Larimer County Commissioners and the Council have determined that the imposition of a regional road impact fee is one of the preferred methods of regulating land development in the Region in order to ensure that new development bears a proportionate share of the costs of the new road capital improvements necessary to accommodate new development while at the same time maintaining the above-referenced level of service on the regional road system and promoting and protecting the public's health, safety and welfare; and

WHEREAS, this regional fee would assist in the implementation of, and be consistent with, the master plans of Larimer County and the City; and

WHEREAS, Larimer County and the City have the authority to cooperate in adopting regional fees for such purposes pursuant to the Colorado Constitution, the Colorado statutes and the Charter of the City of Fort Collins; and

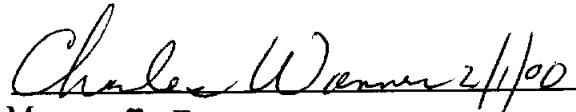
WHEREAS, it is the objective of Larimer County and the City to make the most efficient use of their powers by jointly implementing planning, zoning and subdivision requirements by the adoption of a regional road program for the provision of new road capital improvements in order to maintain the adopted level of service on those roads; and

WHEREAS, pursuant to Article XIV, Sections 18 (2)(a) and (b) of the Colorado Constitution; Sections 29-20-105 and 29-1-102, C.R.S.; and Article II, Section 16 of the Fort Collins City Charter, the City and Larimer County desire to enter in this Intergovernmental Agreement to implement joint planning, zoning and subdivision requirements by the adoption of a regional capital improvement expansion fee program for the purpose of providing road capital improvements for the regional road system; and

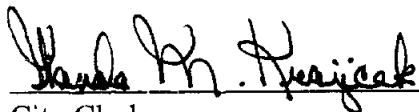
WHEREAS, pursuant to this Intergovernmental Agreement, the City and the County desire to designate that the responsibility for planning and administering this program shall be borne by the County.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Council hereby approves the Regional Road Impact Fee Intergovernmental Agreement in substantially the form shown on Exhibit "A" attached hereto and incorporated herein by this reference, subject to such modifications in form or substance as the Mayor, in consultation with the City Manager and the City Attorney, may deem necessary to effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the City Council held this 1st day of February, A.D. 2000.


Mayor Pro Tem

ATTEST:


City Clerk

**REGIONAL ROAD IMPACT FEE
INTERGOVERNMENTAL AGREEMENT**

This Regional Road Impact Fee Intergovernmental Agreement (hereinafter "Intergovernmental Agreement") is entered into, made, and enacted this ____ day of _____, 2000, by and between the Board of County Commissioners of Larimer County, Colorado (hereinafter referred to as "the County") and the Governing Body of the City of Fort Collins, Colorado, a Colorado municipal corporation (hereinafter the "City");

W I T N E S S E T H:

WHEREAS, the Region consists of the entirety of the unincorporated County and the incorporated area of all the municipalities in the county participating in this and similar Intergovernmental Agreements (hereinafter "Participating Local Governments"); and

WHEREAS, the County and Participating Local Governments recognize that there is a Regional Road System in the Region that consists of inter-urban travel corridors and major corridors that connect urban areas to the interstate highway system; and

WHEREAS, Larimer County has conducted a multi-jurisdictional transportation study (the Larimer County Transportation Plan) and prepared an impact fee study (the Larimer County Road and Park Impact Fee Study) and a Regional Road Capital Improvement Plan (hereinafter "the Regional Road CIP") for the Regional Road System, which is adopted as the Regional Road CIP by the Participating Local Governments; and

WHEREAS, the Larimer County Road and Park Impact Fee Study projects that there will be a significant amount of new growth and development in the Region over the next twenty (20) years; and

WHEREAS, the Larimer County Road and Park Impact Fee Study has determined that this new growth and development will increase the demand for capacity on the Regional Road System; and

WHEREAS, the County and Participating Local Governments agree that LOS "D" is the minimum acceptable level of service on the Regional Road System; and

WHEREAS, the Larimer County Road and Park Impact Fee Study demonstrates that the existing revenue generated by this new growth and development will not be adequate to fund the needed road capital improvements necessary to accommodate this new growth and development if the adopted LOS on the Regional Road System is to be maintained; and

WHEREAS, in order to address this problem, the County and Participating Local Governments have established a policy that new land development activity shall bear a proportionate share of the cost of the provision of new road capital improvements required by new growth and development on the Regional Road System; and

WHEREAS, the County and Participating Local Governments have determined that the imposition of a regional road impact fee is one of the preferred methods of regulating land development in the Region in order to ensure that new development bears a proportionate share of the costs of the road capital improvements necessary to accommodate new development while at the same time maintaining the adopted LOS on the Regional Road System and promoting and protecting the public health, safety and welfare; and

WHEREAS, a regional impact fee that contributes to this proportionate share would assist in the implementation and be consistent with the Master Plans of the County and Participating Local Governments and the Larimer County Transportation Plan; and

WHEREAS, the County and Participating Local Governments have the authority to adopt a regional road impact fee pursuant to the Colorado Constitution and the Colorado statutes; and

WHEREAS, it is the objective of the County and Participating Local Governments to make the most efficient use of their powers by jointly implementing planning, zoning, and subdivision requirements by the adoption of a regional road impact fee program for the provision of road capital improvements for the Regional Road System in order to maintain an adopted level of service on those roads; and

WHEREAS, pursuant to Art. XIV, Sec. 18(2)(a) and (b), Col. Const.; Secs. 29-20-105 and 29-1-102, C.R.S.; and Article II, Section 16 of the Fort Collins City Charter, the County and the City desire to enter into this Intergovernmental Agreement to implement joint planning, zoning, and subdivision requirements by the adoption of a regional road impact fee program for the purpose of providing road capital improvements for the Regional Road System in order to maintain an adopted level of service on those roads; and

WHEREAS, pursuant to this Intergovernmental Agreement, the County and City desire to designate this joint responsibility of planning for and administering this regional road impact fee program to Larimer County.

NOW, THEREFORE, pursuant to the provisions of Art. XIV, Sec. 18(2)(a) and (b), Col. Const., Secs. 29-20-105 and 29-1-102, C.R.S., and Article II, Section 16 of the Fort Collins City Charter, and in consideration of the mutual promises contained herein and for other good and valuable consideration, it is hereby agreed by and between the parties hereto as follows:

1. **Purpose.** The purpose of this Intergovernmental Agreement is to make the most efficient use of the powers of the County and the City to implement a regional road impact fee

program to ensure adequate road facilities are available on the Regional Road System to accommodate new growth and development.

2. **Agreement to jointly Exercise Powers.** The County and the City agree to jointly use their planning, zoning, and subdivision authority to plan for and implement a regional road impact fee program for the Region.
3. **Joint Responsibilities.** The City agrees and Larimer County accepts the general responsibility to plan for, implement and administer the regional road impact fee program for the Region. More specifically, Larimer County's responsibilities shall include the following:
 - a. **Planning Responsibilities/Preparation of Region's CIP.** To conduct a transportation study of the Region and prepare the Regional Road CIP. After its preparation, the Regional Road Impact Fee program shall not be effective within the jurisdiction of the City until the Regional Road CIP is approved by the City as its own Regional Road CIP.
 - b. **Implementation Responsibilities/Preparation of Regulation.** The preparation of a proposed Regional Road Impact Fee regulation to implement the Regional Road CIP and to ensure that new growth and development will bear a proportionate share of the cost of the provision of road capital improvements on the Regional Road System required by such development. After its preparation, the Regional Road Impact Fee regulation shall not be effective within the jurisdiction of the City until legislation implementing the same within the City is adopted by the City Council.
 - c. **Administrative Responsibilities of Program.** The administration of the regional road impact fee program, including appointment by the Board of County Commissioners of Larimer County of a Regional Road Impact Fee Administrator, who shall be responsible for the day-to-day administration of the regional road impact fee program in the County, with assistance from the Impact Fee Administrators from each of the Participating Local Governments. Specifically, the Regional Impact Fee Administrator shall be responsible for the following:
 - (i) Administration of independent fee calculation studies, credits, and refunds, with assistance from the Impact Fee Administrators of the Participating Local Governments.
 - (ii) Receipt of the regional road impact fees from the Participating Local Governments, who shall be responsible for collecting the regional road impact fees within their respective jurisdictions, and then transmitting them to the Regional Road Impact Fee Administrator, less an administrative fee not to exceed two (2) percent, on a quarterly basis; provided, however, that

all such regional road impact fee revenues shall be held in an interest bearing account by the Participating Local Governments for one (1) year from the date of collection of the same before being forwarded, together with accrued interest thereon, to the Regional Impact Fee Administrator. The Regional Road Impact Fee Administrator shall transfer these funds into an interest bearing Trust Fund.

- (iii) Administration of the expenditure of regional road impact fee funds in the Trust Fund. The Regional Impact Fee Administrator, with assistance of Impact Fee Administrators of Participating Local Governments, shall prepare an annual report and recommendations regarding the proposed expenditures of trust fund monies for Regional Roads, and submit the same to the City. After review of the recommendations, the City shall approve or modify the recommended expenditures of trust fund monies. Expenditures shall be limited to those road capital improvement projects included in the Regional Road CIP and approved for expenditure by all of the Participating Local Governments. If, within a period of three (3) consecutive years from the date that Regional Road Impact fee revenues are first forwarded to the Regional Road Impact Fee Administrator by the Participating Local Governments, said Participating Local Governments have been unable to agree upon a plan of expenditure for such funds, all monies theretofore transmitted to the Regional Road Impact Fee Administrator shall be returned to the Participating Local Governments, together with a proportionate share of the accrued interest on said funds, and all obligations of the parties under this Agreement shall cease. The Participating Local Governments shall refund said funds to the feepayers or to their successors in interest in those instances where developments subject to the fee have been sold by the feepayers.
- (iv) Any fees collected by Participating Local Governments under the authority of this Agreement shall be returned by the County to the feepayer or the feepayer's successor in interest (if the development subject to the fee has been sold by the feepayer) if the fees have not been spent within seven (7) years from the date the building permit for the development was issued, along with the interest earned on the fee. Fees shall be deemed to be spent on the basis of the first fee collected shall be the first fee spent. The refund shall be administered by the County's Regional Road Impact Fee Administrator.
- (v) Initiation of a review, every three (3) years, of the Regional Road Impact Fee Study, Regional Road CIP and the Regional Road Impact Fee Regulation of the County and the Participating Local Governments, to determine if any modifications need to be made to the program. This review will be conducted by the Regional Road Impact Fee Administrator, with the assistance of the Impact Fee Administrators of the Participating Local

Governments. It shall be submitted to the Board of County Commissioners and the Participating Local Governments. Before any modifications to the Regional Road Study take effect, they shall be approved by each of the Governing Bodies of the Participating Local Governments.

4. **Duration.** The duration of the Intergovernmental Agreement shall be for ten (10) years. It may be renewed by the parties pursuant to State and local law.

5. **Claims and Lawsuits.** In the event that the Regional Road Impact Fee to be imposed by the City under this Agreement is challenged by any party through the filing of a notice of claim with the City under the Colorado Governmental Immunity Act or the commencement of any litigation, the County and the City agree to pay their own costs and attorneys' fees related to such claim or litigation. However, the County further agrees, immediately upon receiving any notice from the City of the filing of such a notice of claim or the commencement of such litigation, to segregate and hold in a separate account the full amount of any fee revenues theretofore delivered to the County by the City which are, or may be, the subject of such notice of claim or litigation, provided that such fee revenues have not been expended or encumbered by the County, pursuant to a fully executed agreement between the County and a third party, for the purpose of designing, engineering or installing improvements for regional roads, or acquiring rights-of-way for such regional roads. Such amounts shall be held by the County and not expended until the dispute that is the subject of the notice of claim or litigation has been finally resolved, either by agreement or by a final decision of any court having jurisdiction over the matter, at which time said fee revenues shall be expended, to the extent they are sufficient, to satisfy any amount due to the claimant(s) or plaintiff(s) pursuant to the terms of any settlement agreement or final court decision. The City shall have the right, in its sole discretion, to settle any such claims or lawsuits, utilizing, if necessary in the City's judgment, the full amount of the funds held by the County under this provision.

6. **Termination.** The County and Participating Local Government shall each have the authority to terminate their participation in this Intergovernmental Agreement and the Regional Road Impact Fee Program if the other party materially fails to comply with the terms of this Agreement or materially modifies the Regional Road CIP and the Regional Road Impact Fee regulation within their jurisdiction without the consent of the terminating party. Following any such termination, the parties shall negotiate in good faith to agree upon the regional road improvements to be funded by any regional road impact fee revenues theretofore forwarded to the County by the City and remaining in the trust fund as of the date of termination. In the event that, within six (6) months from the date of termination, the parties have not been able to reach agreement with regard to any such proposed expenditures, the remaining amount of City funds in the trust fund shall be forthwith returned to the City, together with all accrued interest on said funds, and all other obligations of the parties under this Agreement shall cease.

Approved and adopted this _____ day of _____, 2000.

BOARD OF COMMISSIONERS
LARIMER COUNTY, COLORADO

By: _____
Chair

ATTEST:

Deputy and Clerk of the Board

CITY OF FORT COLLINS, COLORADO
a Colorado municipal corporation

By: _____
Mayor

ATTEST:

City Clerk