

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: March 6, 2017
RE: **Interlocal Agreement with Polk County for the Collection of County Impact Fees**

Attached for your consideration is an Interlocal Agreement with Polk County providing for the collection of County impact fees by the City. The collection agreement currently being utilized was originally entered into in 1989 and needs to be updated to reflect current law and practice.

Pursuant to the attached Interlocal Agreement, the City will collect County impact fees prior to the issuance of a building permit for capital facilities impact construction within the City of Lakeland. The City currently collects and will continue to collect under the attached Agreement County impact fees for transportation, correctional, emergency medical system and educational facilities. The City will remit the collected fees to the County on a monthly basis, retaining a charge equivalent to the City's actual costs in administering the program. The Agreement is for an initial term of three (3) years and will automatically renew for additional one-year terms unless either party provides at least sixty (60) days written notice of termination to the other party.

It is recommended that the City Commission approve the attached Interlocal Agreement with Polk County for the collection of County impact fees and authorize the appropriate City officials to execute the Agreement.

PCD

attachment

**INTERLOCAL AGREEMENT FOR COLLECTION OF
POLK COUNTY IMPACT FEES**

between

CITY OF LAKELAND, FLORIDA

and

POLK COUNTY, FLORIDA

This Interlocal Agreement (“Agreement”) is entered into as of the Effective Date (as defined in Section 12, below), by and between the City of Lakeland, a Florida municipal corporation (the “CITY”), and Polk County, a political subdivision of the State of Florida (the “COUNTY”), their respective successors and assigns.

W I T N E S S E T H

WHEREAS, the COUNTY imposed Impact Fees in 1989 to require growth to contribute its fair share of the costs of providing capital additions and improvements to the County Road System, the Emergency Medical System, and the County Correctional System; and

WHEREAS, the COUNTY, in 2003, adopted an ordinance imposing an Educational System Impact Fee which is collected countywide to provide capital additions and improvements for schools; and

WHEREAS, the COUNTY, in 2005, adopted an ordinance imposing Transportation Impact Fees to provide capital additions and improvements to the Transportation Network; and

WHEREAS, the COUNTY has subsequently amended, restated and consolidated its Impact Fee Ordinances by adopting Ordinance No. 07-018 (as subsequently amended and as may be further amended from time to time, the “Polk County Impact Fee Ordinance”); and

WHEREAS, pursuant to Section 2.01.C. of the Polk County Impact Fee Ordinance, if Capital Facilities Impact Construction is located within a City which has agreed to collect Impact Fees, the Impact Fees shall be paid directly to the City according to the terms of the interlocal agreement between the City and the County pertaining to the payment and collection of Impact Fees; and

WHEREAS, pursuant to the authority in Section 163.01, Florida Statutes (the Florida Interlocal Cooperation Act of 1969, also referred to herein as the “Cooperation Act”), at subsection 163.01(4), which provides that public agencies of the State of Florida may exercise jointly with any other public agency of the State of Florida any power, privilege, or authority which such agencies share in common, and which each might exercise separately, by contract in the form of an interlocal agreement, the CITY and the COUNTY, in 1989 entered into an interlocal agreement authorizing the CITY to collect COUNTY impact fees prior to issuance of a building permit for Capital Facilities Impact Construction subject to COUNTY Impact Fees within the City limits (the “Prior Interlocal Agreement”); and

WHEREAS, the Florida Legislature, in 2006, imposed statutory limitations on the imposition of impact fees and the administrative costs thereof through the enactment of Section 163.31801, Florida Statutes, the “Florida Impact Fee Act”; and

WHEREAS, it is necessary to revise and replace the Prior Interlocal Agreement relating to the collection of impact fees to ensure compliance with the Polk County Impact Fee Ordinance and with statutory mandates;

NOW, THEREFORE, in consideration of the promises, mutual covenants, conditions and payments hereinafter contained, the parties agree, stipulate and covenant as follows:

SECTION 1: Recitals

The above recitals are true and correct and incorporated herein.

SECTION 2: Authority

This Interlocal Agreement (hereinafter the “Agreement”) is entered into pursuant to the provisions of the Florida Interlocal Cooperation Act of 1969, Chapter 163, Florida Statutes, and Section 2.01(c) of the Polk County Impact Fee Ordinance.

SECTION 3: All Prior Agreements Superseded

The Parties agree that this Agreement sets forth the entire understanding between the Parties as to the subject matter contained herein, and that there are no promises or understandings between the Parties other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the City and the County pertaining to the matters stated herein, whether written or oral. Without in any way limiting the generality of the foregoing, this Agreement specifically supersedes and replaces the Prior Interlocal Agreement.

SECTION 4: Definitions

Capitalized terms used in this Agreement shall have the meanings ascribed in the Polk County Impact Fee Ordinance, unless a contrary definition is provided herein.

SECTION 5: CITY’s Obligations

(A) The CITY hereby agrees to assist and cooperate with the COUNTY in the collection of COUNTY Impact Fees which are imposed on Capital Facilities Impact Construction undertaken within the CITY limits including Impact Fees for Transportation, Correctional Facilities, the Emergency Medical System and the Educational System on and after the Effective Date of this Agreement. The CITY shall require that the Applicant pay to the CITY the applicable COUNTY

Impact Fees imposed by the Polk County Impact Fee Ordinance prior to the issuance of a Building Permit by the City for Capital Facilities Impact Construction. To facilitate that collection, the CITY shall prepare, on forms provided by the County or with CITY tracking software, a summary of the Impact Fees paid for each Capital Facilities Impact Construction, which summary shall contain the following:

1. The date paid;
2. The location of the property for which the Building Permit was issued;
3. The name and address of the Applicant;
4. The type of structure for which the Building Permit was issued;
5. The amount of the COUNTY Transportation Impact Fee paid;
6. The amount of the COUNTY Corrections Impact Fee paid;
7. The amount of the COUNTY Emergency Medical System Impact Fee paid;
8. The amount of the COUNTY Educational System Impact Fee paid.

(B) The CITY shall maintain the collected COUNTY Impact Fees separate and distinct from all other revenues and shall transfer such collected Impact Fees to the COUNTY no later than the 15th day of each month following collection.

SECTION 6: Administrative Costs

Pursuant to Section 163.31801(3)(c), Florida Statutes, the CITY shall be entitled to retain, as administrative charges, the actual costs incurred in the collection of COUNTY impact fees. No later than sixty (60) days from the Effective Date of this Agreement, the CITY shall provide to the COUNTY documentation to support the actual costs incurred by the CITY in the collection of COUNTY impact fees. Thereafter, the CITY shall review and update such costs on a biennial basis and shall provide documentation of those costs to the COUNTY. In no event shall the CITY's

administrative charges for the collection of COUNTY impact fees exceed the actual costs of such collection.

SECTION 7: COUNTY's Obligations

(A) The COUNTY shall provide to the CITY written notice of any change by the Board of County Commissioners in the amount of the Impact Fees and shall provide the CITY with a copy of any Resolution or Ordinance which alters the amount of the Impact Fees to be collected by the CITY. Pursuant to Section 163.31801(3)(d), Florida Statutes, the COUNTY shall publish a notice no less than ninety (90) days prior to the effective date of any such Resolution or Ordinance which increases Impact Fees.

(B) Periodically during the term of this Agreement, the COUNTY shall provide written reports of the collection and expenditure of Impact Fees, including current balances maintained in the applicable Trust Accounts, and shall provide a copy of such reports to the CITY.

SECTION 8: Term

This Agreement shall be for an initial term of three (3) years from the Effective Date of the Agreement. This initial term shall be automatically renewed for additional one-year terms unless one party delivers a written notice of termination to the other party, which notice of termination shall be delivered to the other party at least sixty (60) days prior to the effective date of the termination.

SECTION 9: Review

The CITY and the COUNTY shall each have the reciprocal right to review the records of the other as to the receipt, allocation and expenditure of Impact Fees, including records as to the issuance of Building Permits and Certificates of Occupancy. All such inspections shall be made upon reasonable notice and at reasonable times and places.

SECTION 13: Third-Party Rights

Nothing in this Agreement is intended, nor shall be construed, to confer any rights or benefits upon any party other than the City and the County.

SECTION 14: Severability

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

SECTION 15: Controlling Law / Members of the City and County Not Liable

All covenants, stipulations, obligations and agreements of the County and the City contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the County and the City, respectively, to the full extent authorized by the Cooperation Act and provided by the Constitution and the laws of the State of Florida. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the governing body or agent or employee of the City or the County in its, his, her or their individual capacity and neither the members of the governing body of the City or the County nor any official executing this Agreement shall be liable personally or shall be subject

to any accountability by reason of the execution by the City or the County of this Agreement or any act pertaining hereto.

SECTION 16: LIMITATION OF LIABILITY

IN NO EVENT, SHALL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

SECTION 17: Governing Law and Venue

This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the circuit courts of Polk County, Florida.

SECTION 18: Attorneys' Fees and Costs

Each party shall be responsible for its own legal and attorneys' fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Agreement, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

SECTION 19: Waiver

A waiver by either the County or the City of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or

breach.

SECTION 20: Amendment

This Agreement may not be modified, added to, superseded or otherwise altered unless such modifications, additions or other alterations are evidenced in writing signed by both the County and the City.

SECTION 21: Developer Contribution Credits / Separate Agreements

The County and the City acknowledge and agree that this Agreement shall not apply to or govern any Impact Fees credited or collected pursuant to Section 2.11 of the Polk County Impact Fee Ordinance providing for Developer Contribution Credits. The parties further acknowledge and agree that any such Impact Fee credits granted, and the collection of remaining fees due and the administrative costs related to such collection, shall be governed by a separate credit agreement entered into by and between the Applicant or Owner, the City, and the County in accordance with the terms and conditions of said Section 2.11.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates under each signature.

ATTEST:
Stacy M. Butterfield, Clerk

POLK COUNTY, a political subdivision
of the State of Florida

By: _____
Deputy Clerk

By: _____
Melony M. Bell, Chairman
Board of County Commissioners

Reviewed as to form and legal sufficiency:

County Attorney's Office Date

Date: _____

ATTEST:

CITY OF LAKELAND, a municipal corporation of
the State of Florida

Kelly S. Koos, City Clerk

By: _____
R. Howard Wiggs, Mayor

Reviewed as to form and correctness:

Date: _____

Timothy J. McCausland, City Attorney

Date: _____