

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: July 5, 2022

RE: **Interlocal Agreement with Polk County for Fort Fraser Trail Project**

Attached hereto for your consideration is a proposed Interlocal Agreement between the City and Polk County for the extension of the Fort Fraser Trail Project (Project). Polk County has agreed to design, permit, and manage the overall construction of the Project in consideration for the City's contribution of \$400,000 toward the total construction cost of the Project.

Specifically, Polk County and the City are seeking to extend the Fort Fraser Trail from the current northern terminus at SR 540 (Winter Lake Road) westward to CR 37B (Lakeland Highlands Road) and then northward to Glendale Street, where it will terminate and connect with the City's trails system.

Public Works already had a project in its Transportation Fund CIP to extend the sidewalk along the west side of Lakeland Highlands Road from north of the Lowe's entrance to the Polk Parkway. When Polk County identified the alignment of the extension of the Fort Fraser Trail, City staff placed its sidewalk project on hold. Since the County's alignment of the extension of the Fort Fraser Trail was consistent with the City's sidewalk project, Public Works staff is recommending that the City sidewalk project be cancelled and its funding be transferred to Polk County to assist in paying for the cost of constructing the extension of the Fort Fraser Trail.

The City already has \$200,000 appropriated in the current FY2022 budget. The County's engineering consultant analyzed the entrance to Lowe's and has estimated the cost of constructing the trail crossing of the entrance, which includes ensuring compliance with the Americans with Disabilities Act, will be in excess of \$400,000. City staff is recommending that the City contribute an additional \$200,000 in FY 2023, subject to final approval of the FY2023 budget by the City Commission, for a total contribution of \$400,000 for the construction of the Fort Fraser Trail extension. Polk County will be responsible for the remaining Project cost, which is estimated to be around \$3,900,000.

Pursuant to the Interlocal Agreement, the City will make a payment of \$400,000 to Polk County within sixty (60) calendar days of Polk County's issuance

of its Notice of Intent to award the construction contract for the Project, which is anticipated to occur in the Spring of 2023. Prior to the start of construction of the Project, either party may terminate the Agreement for any reason upon thirty (30) days prior written notice.

It is recommended that the City Commission approve this Interlocal Agreement with Polk County for the Fort Fraser Trail Project and authorize the appropriate City officials to execute all corresponding documents on behalf of the City.

Attachment

INTERLOCAL AGREEMENT BETWEEN
POLK COUNTY AND CITY OF LAKE LAND
FOR THE FORT FRASER TRAIL EXTENSION PROJECT

This AGREEMENT is made and entered into as of the Effective Date (as defined in Section 3.3) by and between the City of Lakeland, a municipal corporation of the State of Florida, whose address is 228 S Massachusetts Ave, Lakeland, Florida 33801 ("LAKELAND") and Polk County, a political subdivision of the State of Florida, whose address is 330 West Church Street, Bartow, Florida 33830 ("POLK COUNTY"). LAKELAND, and POLK COUNTY are referred to herein individually as a "Party" and collectively as the "Parties".

WITNESSETH

WHEREAS, Section 163.01, Florida Statutes, authorizes local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, POLK COUNTY and LAKELAND are authorized under Chapter 163, Florida Statutes, to enter into an Interlocal Agreement to make the most efficient use of their respective powers, resources, authorities and capabilities by enabling them to cooperate on the basis of mutual advantage and thereby provide the services provided for herein in a manner that will best utilize existing resources, powers and capabilities available to each of them; and

WHEREAS, POLK COUNTY and LAKELAND desire to extend Fort Fraser Trail beyond the current northern terminus at SR 540 (Winter Lake Road); and

WHEREAS, POLK COUNTY and LAKELAND have agreed to extend Fort Fraser Trail westward to CR 37B (Lakeland Highlands Road) and then northward to Glendale Street where it will terminate and connect with the LAKELAND trails system (the "Project"); and

WHEREAS, POLK COUNTY has agreed to design, permit, and manage the construction of the Project and LAKELAND has agreed to contribute \$400,000.00 towards the construction of the Project.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

ARTICLE I

RECITALS AND DEFINITIONS

- 1.1 **Recitals.** The foregoing recitals are incorporated herein by reference as if recited in full and serve as a factual stipulation upon which the Parties agree is the basis for this Agreement.
- 1.2 **Definitions.** The capitalized terms contained herein shall be defined as set forth in the above recitals or as specified in the following paragraphs.

ARTICLE II

AGREEMENT

- 2.1 **Project Description.** LAKELAND and POLK COUNTY agree that the scope of the Project is described as follows:
- (1) POLK COUNTY shall construct a new six (6) foot wide concrete sidewalk and eight (8) foot wide asphalt shared-use pathway along SR 540 (Winter Lake Road) starting at US 98 to just west of States Street.
 - (2) POLK COUNTY shall construct a new ten (10) foot wide asphalt shared-use pathway westward and running parallel with SR 570 (Polk Parkway) to connect with CR 37B (Lakeland Highlands Road) in the Polk County right-of-way just south of SR 570.
 - (3) Crossing over to the west side of Lakeland Highlands Road, POLK COUNTY shall construct a ten (10) foot wide shared-use pathway trail northward to Glendale Street. The termination point of Fort Fraser Trail will be located at Lakeland Highlands Road at Glendale Street.

The Project limits, as described above in this Section 2.1, is generally depicted in Exhibit "A" ("Project Map"), attached hereto.

- 2.2 **Project Funding.** LAKELAND has agreed to contribute Four Hundred Thousand Dollars and 00/100 (\$400,000.00) toward the total construction costs of the Project. POLK COUNTY shall fund the remaining balance of the total cost of the Project. LAKELAND shall make payment of Four Hundred Thousand Dollars and 00/100 (\$400,000.00) to POLK COUNTY within sixty (60) calendar days of POLK COUNTY's issuance of its Notice of Intent to award the construction contract for this Project.

ARTICLE III

MISCELLANEOUS PROVISIONS

- 3.1 **Notice.** Whenever a Party desires to give notice to any other Party, it must be given by

written notice delivered: (i) via registered or certified United States mail, postage prepaid with return receipt requested or (ii) via nationally recognized overnight delivery service, and addressed to the Party for whom it is intended at the place last specified by each Party. Notices hereunder may also be delivered by counsel. The place for giving notice shall remain such until it is changed by written notice delivered in compliance with the provisions of this Section. For the present, the Parties designate the following as the respective places for giving of notice:

3.1.1 Notices to POLK COUNTY shall be:

Chairperson
Polk County Board of County Commissioners
P.O. Box 9005
Bartow, Florida
33830

With a copy to:
County Attorney
Polk County Board of County Commissioners
P.O. Box 9005, Drawer AT01
Bartow, Florida 33830

Division Director
Polk County Roads and Drainage Division
P.O. Box 9005, Drawer GM01
Bartow, Florida 33830

3.1.2 Notices to LAKELAND shall be:

City Manager
City of Lakeland
228 S Massachusetts Ave.
Lakeland, FL 33801

With a copy to:

City Attorney
City of Lakeland
228 S Massachusetts Ave.
Lakeland, FL 33801

Director of Public Works
City of Lakeland
228 S Massachusetts Ave.
Lakeland, FL 33801

3.2 **Severability.** If any section, phrase, sentence or portion of this Agreement is, for any reason, held to be invalid by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

3.3 **Effective Date.** Pursuant to Section 163.01(11), Florida Statutes, this Agreement shall be effective upon filing the fully executed Agreement with the Clerk of the Circuit Court of POLK COUNTY. If this Agreement is not filed with the Clerk within ten (10) days after the Agreement is executed by both Parties, the Effective Date shall be ten (10) days after the last Party executes the Agreement.

3.4 **Days.** The term days in this Agreement shall mean calendar days unless otherwise so noted. If a date for performance falls on a Saturday, Sunday or legal State of Florida or federal holiday, the date for performance shall be extended until the next calendar day that is not a Saturday, Sunday or federal holiday.

3.5 **Default and Remedy.** If any Party materially defaults in its obligations under this Agreement and fails to cure the same within thirty (30) days after the date the Party receives written notice of the default from a non-defaulting Party, then the non-defaulting Party shall have the right to (i) immediately terminate this Agreement by delivering written notice to the materially defaulting Party (after expiration of the foregoing cure period), and (ii) pursue any and all remedies available in law, equity, and under this Agreement (after expiration of the foregoing cure period).

3.6 (1) **Liability.** Without waiving sovereign immunity pursuant to §768.28, Florida Statutes, each Party will indemnify the other from and against any and all claims, demands, causes of action, losses, damages, penalties and expenses, arising from or incurred because of any loss or damage sustained as a result of the indemnifying Party's failure to comply with the provisions of this Agreement, to the extent permissible by Florida law. Nothing herein shall be deemed a waiver, express or implied, of either Party's sovereign immunity or increase in the limits of liability pursuant to §768.28, Florida Statutes, regardless of whether any such obligations are based in tort, contract, statute, strict liability, negligence, product liability or otherwise.

(2) **Limitation of Liability.** IN NO EVENT, SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY 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 CONTRACT BY THE DEFAULTING PARTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

3.7 **Waiver.** A waiver by any Party 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 of this Agreement. The making or acceptance of a payment by any Party with the knowledge of any other Party's existing default or breach of the Agreement shall not waive such default or breach, or any subsequent default or breach of this Agreement, and shall not be construed as doing so.

3.8 **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.

3.9 **Modification or Extension.** This Agreement may only be modified or extended in time by a written amendment properly executed by the Parties. No oral modifications will be effective or binding.

3.10 **Integration.** This Agreement sets forth the entire agreement between the Parties with respect to its subject matter and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between the Parties pertaining to the construction of the Project, whether written or oral.

3.11 **Counter parts.** This Agreement may be executed in multiple counterparts each of which shall be an original, but which collectively shall form a single agreement.

3.12 **Governing Law and Venue.** This Agreement and the rights and obligations of the Parties hereunder shall be interpreted, governed by, construed under, and enforced in accordance with the applicable laws of the State of Florida, and the ordinances, rules and regulations of Polk County including, but not limited to the Polk County Comprehensive Plan, Land Development Code and Utility Code, and any amendments thereto in effect as of the Effective Date of this Agreement. The Parties hereby consent to the sole and exclusive jurisdiction and venue for any action relating to the construction, interpretation, or enforcement of this Agreement to be in or for the Tenth Judicial Circuit, in Polk County, Florida.

3.13 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of all successors and/or assigns of the Parties hereto.

3.14 **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

3.15 **Termination.** Prior to start of construction of the Project, any Party may terminate this Agreement, with or without cause, with thirty (30) days written notice to the other Parties. After the start of construction of the Project, this Agreement can only be terminated in accordance with Section 3.5 of this Agreement.

3.16 **Recordation.** POLK COUNTY shall record this Agreement in the public records of Polk

County. POLK COUNTY shall pay the initial costs to record this Agreement and any further costs to record subsequent changes or modifications to this Agreement. Any Party may request that a memorandum of this Agreement be recorded, provided that appropriate provisions are included for timely release of record of any such memorandum once this Agreement has expired.

(Continued on following pages with signatures)
(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties, through their duly authorized representatives, have made and executed this Agreement on the date indicated below.

CITY OF LAKELAND
CITY COMMISSIONERS

POLK COUNTY BOARD OF
COUNTY COMMISSIONERS

By: _____
H William Mutz, Mayor

By: _____
Martha Santiago, Chairperson

Date: _____

Date: _____

ATTEST:
City Clerk

ATTEST:
Stacy M. Butterfield, Clerk to the Board

By: _____
Kelly S. Koos, City Clerk

By: _____
Print Name: _____

Title: _____

(SEAL)

(SEAL)

Reviewed as to Form and Correctness

Reviewed as to Form and Legal Sufficiency

By: _____
Palmer C, Davis, City Attorney

By: _____
County Attorney's Office

Exhibit "A"
General Illustration of the Project

