

## MEMORANDUM

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** June 17, 2024

**RE: Interlocal Agreement Authorizing Polk County to Provide Potable Water Service Within the City of Lakeland's Utility Service Area – Proposed Parker Estates Subdivision**

Attached for your consideration is a proposed Interlocal Agreement between the City of Lakeland and Polk County permitting Polk County Utilities to provide water service on a permanent basis to the proposed Parker Estates Subdivision, located south of the City limits but within the City's water service territory. Parker Estates Subdivision, when completed, will consist of 23 single family residences.

The proposed development is at the southern boundary of the City's water service territory, with the nearest Lakeland potable water service lines located approximately 1.25 miles away from the development property. Based upon the current location of the City's existing potable water service lines, it would not be cost efficient for the City to extend its lines to serve this development. Polk County has both the capacity and the immediate ability to provide potable water service to the development by extending its existing water utility service lines from adjoining real property located east of the development property.

Under the Interlocal Agreement, the City of Lakeland would grant the County the perpetual, exclusive and irrevocable right to provide water service to the subject property.

It is recommended that the City Commission approve the attached Interlocal Agreement and authorize the appropriate City officials to execute the Agreement.

Attachment

**INTERLOCAL AGREEMENT GRANTING POLK COUNTY  
AN IRREVOCABLE LICENSE TO PROVIDE POTABLE WATER WITHIN THE CITY  
OF LAKELAND UTILITY SERVICE AREA**

**THIS INTERLOCAL AGREEMENT** (the “Agreement”) is made and entered into as of the Effective Date defined in Section 12 below, by and between Polk County (the “County”), a political subdivision of the State of Florida, and the City of Lakeland (“Lakeland”), Florida (each, a “Party;” together, the “Parties”);

**WHEREAS**, Section 163.01, Florida Statutes, the Florida Interlocal Cooperation Act of 1969, as amended, authorizes certain public agencies to enter into Interlocal Agreements for their mutual benefit; and

**WHEREAS**, acting pursuant to Section 125.01, Florida Statutes, the County provides potable water service to certain unincorporated areas of southeast Polk County through its Southeast Regional Utility Service Area system; and

**WHEREAS**, acting pursuant to Chapters 166 and 180, Florida Statutes, Lakeland provides potable water service to customers within the corporate limits of the municipality and within certain adjoining unincorporated areas which comprise its potable water utility service to include without limitation the single parcel of real property (individually and collectively, the “Development Property”) described and depicted on the attached Exhibit “A;” and

**WHEREAS**, the owners of the Development Property intend to create a residential development on the parcel which when completed will consist of an aggregate of twenty-three (23) new single family residences with associated infrastructure; and

**WHEREAS**, the nearest Lakeland potable water service lines are located approximately 1.25 miles (distance) away, from the Development Property; and

**WHEREAS**, based on the limited number of residential units to be served on the Development Property, and the current location of its existing potable water service lines, it would not be cost efficient for Lakeland to extend those lines to provide potable water service to the Development Property; and

**WHEREAS**, the County has both the capacity and the immediate ability to provide potable water service to the Development Property by extending its existing water utility service lines from adjoining real property located east of the Development Property; and

**WHEREAS**, Lakeland is agreeable to granting the County the perpetual, exclusive, and irrevocable right, power, authority, privilege, ability, and license to be the sole and exclusive provider of potable water service to the Development Property;

**NOW THEREFORE**, in consideration of the terms, covenants, and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree, as follows:

1. **Recitals.** The recitals stated above are true, correct, form an integral part of the Agreement, and are incorporated herein.

2. **Water Utility Services for the Development Property.**

a. Lakeland hereby grants the County the perpetual, exclusive, and irrevocable right, power, authority, privilege, ability, and license to be the sole and exclusive provider of potable water service to the Development Property commencing as of the Effective Date and continuing perpetually thereafter.

b. The County shall operate, and maintain the infrastructure necessary to provide potable water service to the Development Property in accordance with the Polk County Utilities Code (Polk County Ordinance 2010-081, as amended) and all Reference Manuals described therein as the same may be amended, updated, and revised in the future. Lakeland' policies, procedures, standards, specifications, and similar requirements shall not be applicable to the Development Property potable water service infrastructure.

c. The County shall be solely responsible for providing potable water service to the Development Property and solely entitled to establish, collect, and receive all rates, fees, charges, assessments, revenues, and other amounts due for establishing and providing the service. The County shall own all easements, facilities, structures, and improvements of any kind or nature whatsoever which are associated with providing potable water service to the Development Property. Lakeland shall have no right or obligation to plan, review, inspect, construct, install, repair, maintain, or replace the potable water infrastructure serving the Development Property or any portion thereof, to pay any costs associated therewith, or to establish, collect or receive any rates, fees, charges, assessments, revenues, or other amounts due for establishing and providing the service.

3. **No Utility Service Area Extensions.** Nothing in this Agreement extends or purports to extend the County's Southeast Regional Utility Service Area into Lakeland' utility service area, whether pursuant to a contract, statute, or any other claim of right. The right and authority granted to the County hereunder applies only to the Development Property and not to other areas where Lakeland is the authorized potable water service provider.

4. **Notices.** Whenever either Party desires or is required to give notice to the other, it must be given by written notice delivered: (i) in person, (ii) via registered or certified United States mail, postage prepaid with return receipt requested, or (iii) via nationally recognized overnight delivery service, and addressed to the Party for whom it is intended at the place last specified by each party. The place for giving notice shall remain such until it is changed by written notice delivered in compliance with the provisions of this Section 4. For the present, the Parties designate the following as their respective places for giving notice:

To the County: Utilities Director  
Polk County Utilities Division  
1011 Jim Keene Boulevard  
Winter Haven, Florida 33880

With a copy to: County Attorney  
County Attorney's Office  
330 W. Church Street  
Bartow, Florida 33830

To Lakeland: Utilities Director  
City of Lakeland Water Utilities  
501 E. Lemon Street  
Lakeland, Florida 33801

With a copy to: City Attorney  
City Attorney's Office  
228 S. Massachusetts Avenue  
Lakeland, Florida 33801

All notices shall be effective upon receipt or upon refusal to accept receipt.

5. **Default.** Subject to the mediation requirements of Section 6 below, upon any default of this Agreement, the non-defaulting Party shall have the right to seek injunctive relief for specific performance from the defaulting Party. The Parties hereby stipulate a default of this Agreement shall cause irreparable harm to the non-defaulting Party. Consequently, if a Party defaults in its Agreement obligations and a reviewing court finds the default has caused irreparable harm to the non-defaulting Party, the defaulting Party hereby consents to the court's entry of a permanent injunction against the defaulting Party requiring it to immediately correct its default and specifically perform its Agreement obligations, and enjoining it from any further default hereunder.

6. **Mediation.** If a dispute arises between the Parties arising out of or related to this Agreement which they cannot resolve, then unless it shall be unreasonable to do so or an emergency situation or necessity dictates otherwise, prior to commencing any legal action or proceeding the Parties will refer their dispute to non-binding mediation. The mediation will be conducted by a mediator mutually agreeable to both Parties who has experience in mediating disputes of a similar nature. The Parties will use a mediation procedure agreeable to the Parties and the mediator. The Parties will mediate the dispute in good faith, be bound by any resulting mediation agreement, equally share the costs of mediation, and timely pay the same. Mediation will commence within thirty (30) days after the date a Party requests mediation of a dispute, or if the agreed mediator is not available within that time period, then at the first opportunity the agreed mediator is available. A Party may not commence litigation of the dispute until (i) the mediator has declared the Parties are at an impasse, or (ii) one or both of the Parties have terminated the mediation. Among other matters the Parties intend this mediation process as an alternative to the

conflict resolution procedure described in the Florida Governmental Conflict Resolution Act, Florida Statutes, Chapter 164.

7. **Attorneys' Fees and Costs.** If there is any dispute between the Parties regarding or arising from this Agreement, or any action to interpret or enforce the Agreement or any part thereof, then the prevailing Party shall be entitled to recover its reasonable attorneys' fees, costs, and expenses associated with any such dispute or action from the non-prevailing party.

8. **Applicable Law.** This Agreement and its provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

9. **Venue; Waiver of Jury Trial.** Venue of all actions or proceedings pertaining to this Agreement shall be the Circuit Court in and for Polk County, Florida. Each Party waives the right to a jury trial. Each Party shall bear its own expense for any litigation resulting from this Agreement, which shall include without limitation attorney fees, costs, and expenses of litigation to include all appellate proceedings.

10. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all previous discussions, understandings, and agreements between the Parties relating to the subject matter of this Agreement.

12. **Effective Date.** The "Effective Date" of this Agreement will be the date the fully executed instrument is filed with the Clerk of the Circuit Court of Polk County in accordance with Section 163.01, Florida Statutes. The County shall be responsible for filing the Agreement with the Clerk.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;  
THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE  
WITH THE PARTIES' SIGNATURES**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date.

**ATTEST:**  
Stacy M. Butterfield, Clerk

**Polk County,**  
a political subdivision of the State of Florida

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Bill Braswell, Chair

Reviewed as to form and legal sufficiency:

By: \_\_\_\_\_  
County Attorney's Office

**ATTEST:**

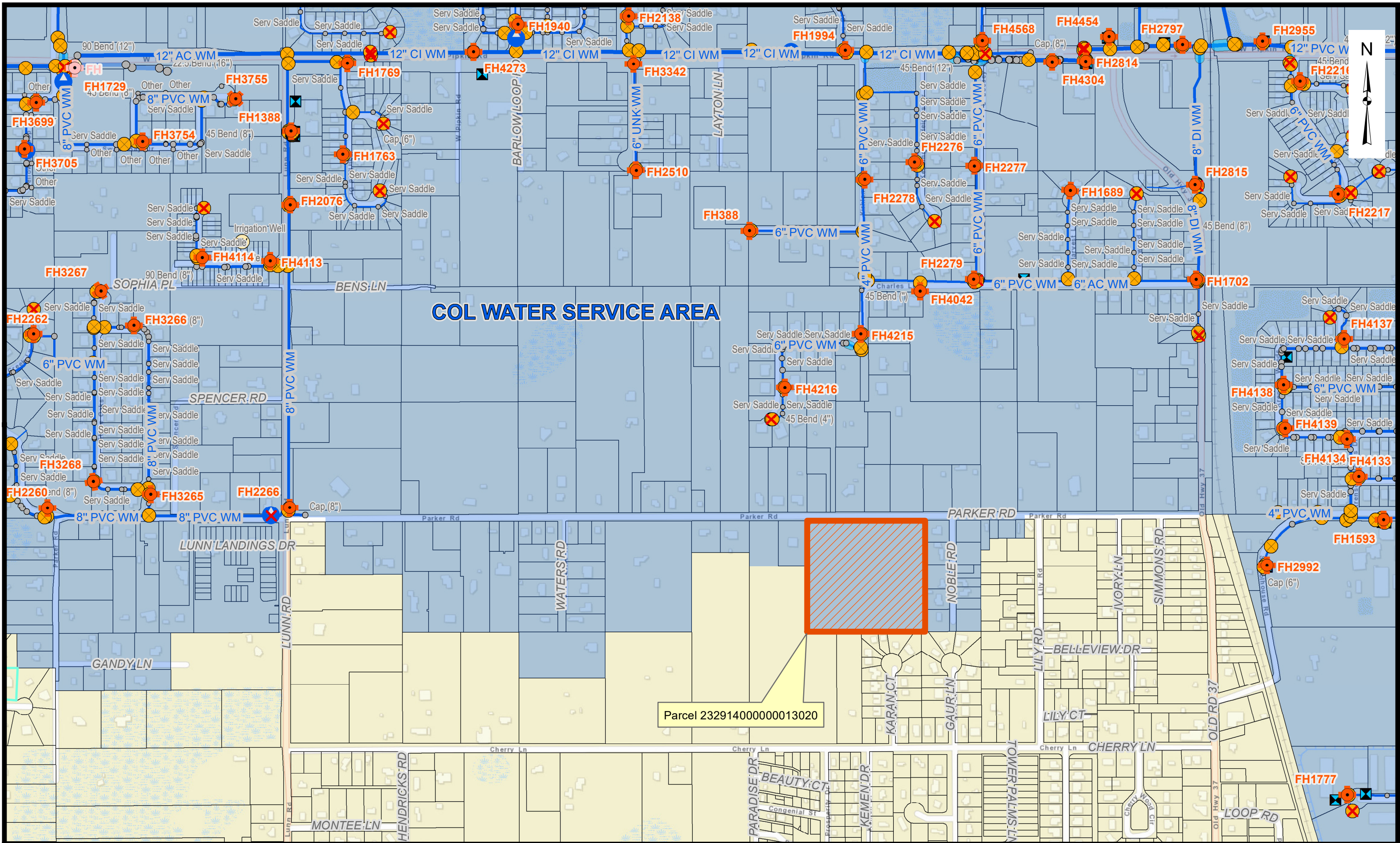
City of Lakeland, Florida

By: \_\_\_\_\_  
Kelly Koos, City Clerk

By: \_\_\_\_\_  
William Mutz, Mayor

Reviewed as to form and legal sufficiency:

By: \_\_\_\_\_  
City Counsel



The use of this data is being provided on an 'as is' basis for your convenience and may be subject to change without notice. While every reasonable effort has been made to assure the accuracy of the maps and data contained herein, the City of Lakeland makes no warranty, representation or guaranty as to the content, sequence, accuracy, timeliness, reliability or completeness of any of the data provided. The user of these applications should not rely on the data provided herein for any reason. The City of Lakeland explicitly disclaims any representations and warranties, express or implied, including without limitation, the implied warranties of merchantability and fitness for a particular purpose. In no event shall the City of Lakeland assume liability for any errors, omissions or inaccuracies in the information provided, regardless of how caused. The City of Lakeland shall not be liable for any decisions made or actions taken or not taken by the user of the applications in reliance upon any information or data furnished hereunder.