

AMENDED INTERLOCAL AGREEMENT

CFN 2019082593, OR BK 8418 PAGE 2350,
Recorded 04/22/2019 at 09:51 AM, Scott Ellis, Clerk of
Courts, Brevard County
Pgs:8

BETWEEN

BREVARD COUNTY, FLORIDA

AND THE

THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

PROVIDING FOR FUNDING OF NEW OR EXPANDED
PUBLIC EDUCATIONAL FACILITIES
WITH EDUCATIONAL FACILITIES IMPACT FEES

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 SCHOOL BOARD OF BREVARD COUNTY, FLORIDA, the governing body of the School District of Brevard County, Florida pursuant to Article IX, Section 4(b); Constitution of the State of Florida, hereinafter referred to as "School Board".

WHEREAS, the School District of Brevard County is a county-wide system that serves all unincorporated Brevard County and all incorporated municipalities within Brevard County; and

WHEREAS, Brevard County has authorized and received an independently prepared study that analyzed the fiscal impacts of residential development activity on the public primary and secondary educational system and calculated the maximum impact fee that could be imposed on residential development for primary and secondary educational facilities based on currently available data and analysis; and

WHEREAS, the Board of County Commissioners has adopted Ordinance 16-19, the Brevard County Educational Facilities Impact Fee Ordinance which has been incorporated into the Code of Ordinances of Brevard County, Florida as Chapter 62, Article V, Division 7, Sections 62-921 through 62-935;

WHEREAS, the parties are generally authorized to enter into this Interlocal Agreement pursuant to Section 163.01, Florida Statutes, and specifically as it relates to mutual benefits and efficiencies between school boards and local governments pursuant to Section 163.31777(2)(g), Florida Statutes; and

WHEREAS, in order to administer the Ordinance it is necessary that the County and School Board establish and clarify the duties, responsibilities and obligations of the respective parties.

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

Section 1: Incorporation of Recitals

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

Section 2: Obligations of the School Board

- 2.1 Establishment of Benefit District Accounts: The School Board shall establish an accounting procedure that allows the revenues, expenditures and interest earnings for each of the two Educational Facilities Impact Fee Benefit Districts created by the Educational Facilities Impact Fee Ordinance to be separately identified so as to ensure that funds collected in one benefit district are not expended in the other benefit district. Once the accounting procedure is in place, the School Board may deposit all educational facilities impact fee funds in an interest bearing, pooled account.
- 2.2 Expenditure of Educational Facilities Impact Fees: The School Board shall expend educational facilities impact fees received from the County and the interest accrued from those fees, exclusively for the purposes specified in Brevard County Ordinance No. 16-19, which purposes may include the construction of new or expanded public educational facilities and purchase of equipment that are included in the adopted Tentative District Educational Facilities Plan and that will be owned or leased and under the jurisdiction of the School Board. All facilities on which educational impact fees have been expended shall be used for such educational facilities that are reasonably available to and substantially benefit the residents of new residential development in the benefit district where the educational impact fees were collected. The School Board shall not expend educational facilities impact fees for the operation or maintenance of any public educational facility.
- 2.3 Expenditures Limited to Impact Fee Benefit District: The School Board shall expend educational facilities impact fees collected in a benefit district exclusively for new or expanded public educational facilities and equipment that will substantially benefit the residents of the benefit district from which the funds were collected
- 2.4 Funds Utilized For Debt Service: In the event that the School Board issues bonds or similar debt instruments payable from educational impact fees in order to provide advance funding for the construction of new or expanded public educational facilities and equipment that substantially benefit the residents of new residential development in a benefit district, the School Board may expend educational facilities impact fees from each of the substantially benefited Benefit District Accounts for the payment of debt service on such bonds or similar debt instruments provided that the impact fees withdrawn from a Benefit District Account are proportionate to the costs of providing the new educational facilities and equipment necessary to substantially benefit the residents of new development in the Benefit District from which the educational impact fee funds were collected, subject to applicable law.
- 2.5 Impact Fee Advisory Committee: In order to facilitate input from Brevard County and its incorporated municipalities with regard to the appropriation of educational impact fees collected within their respective jurisdictions, towards the development of new or expanded public educational improvement projects, the School Board, during the course

of updating the Tentative District Educational Facilities Plan, shall convene an Impact Fee Advisory Committee for each Benefit District.

- 2.5.1 Membership: The School Board, County and each municipality with jurisdiction over lands within the benefit district and an effective interlocal agreement with the County providing for municipal participation in the educational facilities impact fee program are entitled to appoint one (1) representative to the Impact Fee Advisory Committee. The representatives so appointed must be knowledgeable about residential development activity, the need for public educational facilities within the benefit district, and limitations on the use of impact fees. Representatives may include but are not limited to elected officials, City 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.
- 2.5.2 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 public educational facilities within the benefit district to accommodate projected increases in student populations anticipated to result from new residential development as well as projections of impact fee revenues available for appropriation during the time period covered by the Tentative District Educational Facilities Plan in order to make recommendations to the School Board regarding the use of available impact fees for eligible projects.
- 2.5.3 Advisory Committee Recommendations: The recommendations of the Impact Fee Advisory Committees regarding the appropriation of impact fees toward specific public educational improvement projects shall not be binding on the School Board, but the School Board shall regard the Impact Fee Advisory Committee's recommendations as highly persuasive and accord said recommendations great weight in their deliberations.
- 2.5.4 Notice of Meetings: On at least an annual basis, the School Board shall notify the municipalities and the County of the time, date and location of the Impact Fee Advisory Committee meeting for each benefit district.
- 2.6 Donation of Land and Developer Funded Improvements: In the event that the School Board is considering acceptance of an offer by a developer to donate land and/or fund the construction of an a public educational facility shown in the adopted Tentative District Educational Facilities Plan, the School Board shall advise the County of the offer and cooperate with the County in determining the amount of any impact fee credit that may be due.
- 2.7 Conflict of Interest: School Board covenants that no person who presently exercises any functions or responsibilities in connection with the provision of public educational facilities has any personal financial interest, direct or indirect, in the eligible educational facilities and capital improvements during this tenure which would conflict in any manner or degree with the performance of this Agreement, and that no person having any conflicting interest shall be employed or subcontracted. Any possible conflicting interest on the part of School Board or its employees shall be disclosed in writing to the County.

- 2.8 Annual Reports: School Board agrees to furnish to the County Manager by December 1 of each year, status reports identifying information through the end of the School Board's fiscal year. The status reports shall identify the cumulative receipt of educational facilities impact fees by facility, cumulative expenditures for construction of new facilities by facility, cumulative expenditures on debt service by facility, and cumulative interest earned on unexpended funds.

Section 3: Obligations of the County

- 3.1 Administration and Enforcement: It is the obligation of the County to administer all aspects of the ordinance up to the point that the funds are remitted to the School Board for appropriation to specific improvements and to make every reasonable effort to enforce the provisions of the Educational Facilities Impact Fee Ordinance, as it has been adopted and as it may be amended from time to time.
- 3.2 Remittance of Funds: Upon execution of this Agreement and the appropriation of funds to eligible projects in the Tentative District Educational Facilities Plan by the School Board, the County shall remit to the School Board all impact fee revenues and accrued interest that have been collected since the inception of the program less the administrative fee and any refunds that have been given and less any prior remittances. Such remittance shall be made as described below.
- 3.2.1 Remittances: Upon request by the School Board for the distribution of the educational facilities impact fees and approval by the Board of County Commissioners, the collected funds shall be remitted to the School Board within forty-five (45) days of such approval by the Board of County Commissioners.
- 3.2.2 Detail to Be Provided: The County shall provide sufficient detail in the remittance to allow the School Board to properly deposit funds in the correct Benefit District Account.
- 3.2.3 Administration Fee: The County is entitled to retain up to but not more than eight percent (8%) of the amount of educational facilities 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 attorney's 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 public educational facilities 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.
- 3.3 Notice of Charter School Request for Educational Facilities Impact Fee Funding: Upon receiving a request from a charter school for educational facilities impact fee funding, the County shall notify the School Board of said request and any public hearings considering such request. The School Board shall have up to forty-five (45) days from the date of the

County's notification to submit to the Board of County Commissioners a letter or report detailing the School Board's position as to whether the charter school's application contains sufficient evidence that the charter school is being created to mitigate the educational impact created by the development of new residential units. The School Board's submission under this provision is not binding on the Board of County Commissioners.

Section 4: Maintenance of Records

- 4.1 The School Board shall maintain complete and comprehensive records of all funds received from the County and all expenditures of said funds, identified by Benefit District, for a period of seven (7) years from receipt and expenditure to satisfy the refund provisions of Section 62-932 of the Educational Facilities Impact Fee Ordinance.
- 4.2 The County shall maintain complete and comprehensive records of all funds collected from residential development, 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.
- 4.3 The County and the School Board shall have the reciprocal right to review the records of the other as to receipt, allocation and expenditure of impact fees, including records as to bid awards and purchase orders. 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 5: Indemnification

- 5.1 To the extent allowed by law and subject to the provisions set forth in Section 768.28, Florida Statutes, each party is responsible for the negligent or wrongful acts or omissions of its own employees, agents or other representatives while acting within the scope of their employment or otherwise within their authorized capacity, arising from the activities encompassed by this Agreement. Nothing contained within this Agreement requires either party to indemnify the other party for any losses, damages or injuries caused by or otherwise arising from the negligent or wrongful act or omission of its employees, agents or representatives. Neither party, by execution of this Agreement, will be deemed to have waived its statutory right/defense of sovereign immunity, or to have increased its limits of liability under Section 768.28, Florida Statutes, as may be amended from time to time. Each party shall retain all rights, defenses, and remedies under Florida law in the event of any claims, suits or other disputes arising from its performance of the obligations under this Agreement. Nothing in this Agreement shall be interpreted to create any causes of action for any third parties not a party to this Agreement.

Section 6: Independent Contractor

- 6.1 The School Board is an independent contractor under this Agreement. Services provided by the School Board are subject to supervision by the School Board and employees or service providers shall not be deemed officers, employees, or agents of Brevard County.

- 6.2 Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of School Board, which shall not conflict with County, or state rules or regulations relating to the use of educational facilities impact fees.

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 School Board: Superintendent
School Board of Brevard County
2700 Judge Fran Jamieson Way
Viera, Florida 32940

Section 9: Amendments

- 9.1 This agreement may be amended by mutual agreement of the parties or the County may, by ordinance, amend this Agreement if required by state law in order to conform with state mandates, guidelines, directives, and objectives relating to the use of educational facilities 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. Such amendment will not affect specific activities commenced under this agreement prior to amendment, which were in compliance at the time of commencement. School Board shall be notified, where a public hearing or other notice is required by law, by individual written notice furnished pursuant to Section 8.1. After adoption of any required ordinance amendment, such adoption and filing with the Secretary of State shall constitute notification of an official amendment to this agreement. 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 Educational Facilities Impact Fee Ordinance becomes effective or on the day that this agreement has been approved and executed by both parties, whichever is later. 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 Educational Facilities Impact Fee Ordinance, this agreement shall remain in effect until all funds collected by the County under the provisions of the ordinance have been disbursed to the School Board and the School Board has notified the County that all disbursed funds have been expended on eligible improvements.
- 11.2 In the event that the School Board determines that the funds collected under the provisions of the Educational Facilities Impact Fee Ordinance are no longer needed by the School Board to provide needed public educational facilities, the School Board shall request that the County repeal the Ordinance and terminate this Agreement pursuant to Section 11.1 above.
- 11.3 In the event of termination, upon request by the County, copies of all finished or unfinished documents, data studies, surveys, drawings, maps, models, reports prepared, and any other like documents secured by School Board with Educational Facilities Impact Fee Trust Funds under this Agreement shall be provided to the County.

Section 12: Severability

- 12.1 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

Section 13: Governing Law

- 13.1 The validity, construction and enforcement of and the remedies under this agreement shall be governed in accordance with the laws of the State of Florida. Venue of any proceeding shall be in Brevard County, Florida, and any trial shall be non-jury.

Section 14: Attorney's Fees

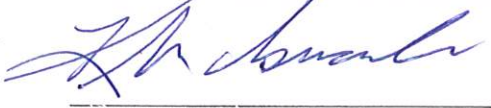
- 14.1 In the event any litigation arises out of this Agreement or under this Agreement, each party shall bear its own attorney's fees and costs.

Section 15: Counterparts

- 15.1 This agreement may be executed in several counterparts, each of which shall be deemed an original.


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

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



KRISTINE ISNARDI

ATTEST:




Scott Ellis, Clerk

As approved by the Board of County Commissioners on:

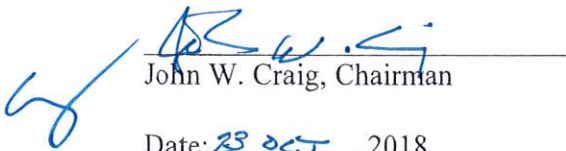
STATE OF FLORIDA
County OF BREVARD

The foregoing instrument was acknowledged before me this 22 day of Jan., 2019 by K. ISNARDI 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.




NOTARY PUBLIC - State of Florida
DEBORAH W. THOMAS

**SCHOOL BOARD OF
BREVARD COUNTY, FLORIDA**


John W. Craig, Chairman

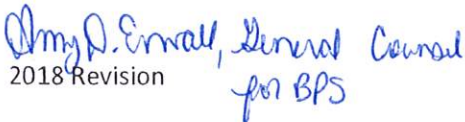
Date: 23 OCT, 2018

ATTEST:


Mark W. Mullins, Ed.D, Superintendent

STATE OF FLORIDA
County OF BREVARD

The foregoing instrument was acknowledged before me this 23rd day of October, 2018 by John W. Craig, Chairman of the School Board of Brevard County, Florida, who is personally known to me or produced _____ as identification and who did take an oath.

APPROVED AS TO FORM:

Amy D. Enwall, General Counsel
2018 Revision for BPS


NOTARY PUBLIC - State of Florida

