

Return recorded document to:
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Broward County Planning and
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115 South Andrews Avenue, Room 329K
Fort Lauderdale, FL 33301

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INTERLOCAL AGREEMENT RELATED TO
SCHOOL IMPACT FEE MONIES

This Interlocal Agreement ("Agreement") is made and entered into between Broward County, a political subdivision of the State of Florida, hereinafter referred to as "County," by and through its Board of County Commissioners, and The School Board of Broward County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "The School Board" (collectively referred to as the "Parties").

A. This Agreement is entered into pursuant to Section 163.01, Florida Statutes, also known as the "Florida Interlocal Cooperation Act of 1969."

B. Section 163.31801, Florida Statutes, the "Florida Impact Fee Act," recognizes impact fees as an important source of revenue for local governments to use in funding infrastructure necessitated by new growth.

C. The Florida Impact Fee Act requires that: (1) impact fees be reasonably connected to, or have a rational nexus with, the increased impact generated by the new residential construction; (2) impact fee revenues be specifically earmarked to acquire, construct, or improve capital facilities to benefit new users; and (3) impact fee revenues not be used to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential construction.

D. Pursuant to Section 11.01(B) of the Broward County Charter, County enacted the Broward County Land Development Code, Chapter 5, Article IX, of the Broward County Code of Ordinances ("Land Development Code"), applicable countywide, establishing processes and requirements for the issuance of permits for the development of land within Broward County.

E. On September 14, 2017, County approved a Third Amended and Restated Interlocal Agreement for Public School Facility Planning, Broward County, Florida ("ILA"), among County, The

School Board, and twenty-seven (27) municipalities ("Municipalities") in Broward County related to school concurrency.

F. Pursuant to the terms of the ILA, The School Board in coordination with the County and the Municipalities is required to cause an update of student generation rates associated with new residential development to be conducted at least every three (3) years.

G. Section 5-182 of the Land Development Code incorporates the results of updates provided by The School Board pursuant to the ILA to establish student generation rates and applicable school impact fees to be paid by developers of residential development to provide for the educational needs of the residents of the new dwelling units.

H. The Parties entered into that Agreement Relating to Educational Impact Fee Monies that was executed by County on December 1, 1982, and The School Board on October 7, 1982, that provides for County's collection and remission of school impact fee monies to The School Board ("1982 Agreement"), to be spent by The School Board to substantially benefit the residents of new development.

I. In furtherance of the 1982 Agreement, Section 5-182 of the Land Development Code provides for County's collection of school impact fee monies on behalf of The School Board, with said monies being deposited into a nonlapsing trust fund for the applicable planning areas, and remission of school impact fee monies collected to The School Board from time to time.

J. Sections 1013.02 and 1013.35, Florida Statutes, provide that The School Board must prepare an annual District Educational Facilities Plan ("DEFP") that includes long-range planning for establishing and maintaining educational facilities to provide for the public educational needs of students within Broward County.

K. The Parties are desirous of amending, restating, and superseding the 1982 Agreement in order to provide for County's continued collection of school impact fees and remission to The School Board for The School Board's expenditure to substantially benefit the residents of the developed area consistent with the provisions of the Land Development Code, as amended, the Florida Impact Fee Act, and The School Board's Five-Year DEFP, as such DEFP may be amended.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations herein, the Parties agree as follows:

1. The foregoing Recitals are true and correct and form a material part of this Agreement upon which the Parties have relied.

2. County Responsibilities.

- 2.1. At the time of building permit, County shall assess and collect school impact fees in accordance with Section 5-182 of the Land Development Code and Section 27-66 of the Broward County Code of Ordinances, as each may be amended.
- 2.2. At least every three (3) months, County shall remit to The School Board ninety-eight percent (98%) of school impact fee monies collected by County, as adjusted for any refunds as set forth in Section 2.3.1., below. County shall retain two percent (2%) of collected school impact fee monies to recoup administrative costs incurred in the collection of school impact fees pursuant to this Agreement.
- 2.3. County shall process applications from a fee title holder ("applicant") for refund of school impact fees, pursuant to Section 5-184 of the Land Development Code, as follows:
 - 2.3.1. For applications for refund pursuant to Section 5-184(b)(2)d)1) of the Land Development Code, where (i) no building permit application was filed within thirty (30) days after the approval authorized under Section 27-66 of the Broward County Code of Ordinances; (ii) the building permit application has expired or been withdrawn; or (iii) the building permit was issued and has expired, upon County's confirmation of (i), (ii), or (iii), with notification to The School Board, County shall refund school impact fee monies received to the applicant.
 - 2.3.2. For applications for refund pursuant to Section 5-184(b)(2)d)2) of the Land Development Code, where it is alleged that The School Board has not expended or encumbered the school impact fee monies that are in control of The School Board, consistent with Section 163.31801, Florida Statutes, the County shall forward the application to The School Board no later than fifteen (15) days after receipt of the application. "Expended or encumbered" is defined in Section 5-184(b)(2)d)2) of the Land Development Code.
- 2.4. With the quarterly remission of school impact fee monies, County shall provide The School Board with the following information for school impact fee monies collected and refunds provided consistent with Section 2.3:
 - 2.4.1. The name, number, site address, and planning area location information of each plat and address if known;
 - 2.4.2. The number of residential units within the approved plat or plat note amendment; and

2.4.3. The amount of school impact fee monies collected for each plat.

3. The School Board Responsibilities.

3.1. Consistent with the requirements of the Florida Impact Fee Act and the Land Development Code, as each may be amended, and applicable law, The School Board shall ensure that school impact fee monies are expended for the acquisition of school sites or the provision of facilities, as identified in The School Board's currently effective Five-Year DEFP, to substantially benefit the residents of the developed area as follows:

3.1.1. The School Board's expenditure of school impact fee monies shall be reasonably connected to, or have a rational nexus with, the benefits accruing to the new residential construction; and

3.1.2. The School Board shall not use school impact fee monies to pay new or existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential construction.

3.2. The School Board shall utilize school impact fee monies as follows:

3.2.1. Primarily, The School Board shall utilize school impact monies to provide needed school facilities including, but not limited to, acquiring new school sites, construction of new schools, classroom additions, addition to core capacities, and acquiring technology necessitated by the growth, at those schools identified in the School Capacity Availability Determination ("SCAD") Letter, issued by The School Board, as being impacted by the development proposed by the applicant;

3.2.2. If site constraints or other feasibility issues make it impracticable for The School Board to provide the needed school facilities at the affected schools as set forth in Section 3.2.1., as feasible, The School Board will reasonably provide the needed school facilities within the applicable planning area(s) that contain the primarily impacted schools, thus relieving overcrowding at the primarily impacted planning area(s);

3.2.3. If site constraints or other feasibility issues make it impracticable for The School Board to provide the needed school facilities within the primarily impacted planning area(s) containing the primarily impacted schools, as set forth in Section 3.2.2., then The School Board may provide the needed school facilities within the planning area(s) adjacent to the primarily impacted planning area(s) in a manner that ensures that the impact of the

proposed development continues to be reasonably mitigated and connected to, or have a rational nexus with, the expenditure of the collected impact fees and the benefits accruing to the new residential development; or

3.2.4. The School Board may leverage school impact fees to pay for existing and new debt service or for previously approved projects, provided there is a reasonable connection to, or a rational nexus with, the increased impact generated by the new residential development, consistent with the Florida Impact Fee Act.

3.3. The School Board shall furnish to County, at least annually, and no later than within three (3) months after the end of The School Board's fiscal year, a report specifying The School Board's receipts and expenditures, by site and planning area, of the monies described in Section 2 herein. At all reasonable times during regular business hours of The School Board, The School Board shall permit County to inspect the financial records and account books of The School Board relating to school impact fee monies.

3.4. For applications for refunds pursuant to Section 5-184(b)(2)d)2) of the Land Development Code that have been forwarded to The School Board by County pursuant to Section 2.3.2. above, The School Board shall process said applications and provide the applicant, with a copy to County, either: (i) reasonable documentation evidencing the expenditure or encumbrance of school impact fee monies that were paid for the applicant's property; or (ii) a refund of any unexpended and unencumbered school impact fee monies that were paid for the applicant's property.

4. Effective Date; Term. This Agreement shall become effective upon execution by the Parties and recordation in the public records of Broward County, consistent with Section 163.01, Florida Statutes, and will continue in full force and effect unless terminated pursuant to Section 7 herein.

5. Sovereign Immunity. Nothing herein is intended to serve as a waiver of sovereign immunity by either Party nor will anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The School Board and County are each a political subdivision as defined in Section 768.28, Florida Statutes. Each Party shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

6. Active Defense; Indemnification. The Parties agree that County is relying on updates performed by The School Board's agent(s) for the establishment of student generation rates and school impact fees in the Land Development Code and that County is collecting school impact fees and processing refund applications on behalf of The School Board.

Additionally, and to the extent permitted by law, The School Board shall indemnify and hold harmless County and all of County's officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, caused or alleged to be caused, in whole or in part, as a result of any intentional, reckless, or negligent act or omission of The School Board, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). In the event any Claim is brought against an Indemnified Party, The School Board shall, upon written notice from County, defend each Indemnified Party against each such Claim. The obligations of this Section 6 shall survive termination of this Agreement.

7. Termination. This Agreement may be terminated for cause by the governing Board of either Party if the Party in breach has not either (a) corrected the breach or (b) commenced reasonable efforts to correct the breach within sixty (60) calendar days after receipt of written notice from the aggrieved Party identifying the breach, or commenced reasonable efforts to correct the breach. This Agreement may also be terminated for convenience by the governing Board of either Party. Termination for convenience or cause shall be effective on the termination date stated in written notice provided by the terminating Party, which termination date shall be not less than ninety (90) calendar days after the date of such written notice.

7.1. This Agreement may be terminated for cause by County for reasons including, but not limited to, any of the following:

7.1.1. The School Board's failure to expend school impact fee monies consistent with the requirements of the Florida Impact Fee Act, the Land Development Code, as each may be amended, and applicable law;

7.1.2. The School Board's failure to provide report specifying The School Board's receipts and expenditures, by site and planning area, of the monies described in Section 2 herein; and

7.1.3. The School Board's failure to process school impact fee refund applications as set forth herein.

7.2. This Agreement may be terminated for cause by The School Board for County's failure to remit payment to The School Board on a quarterly basis, including all documentation set forth in Section 2.4.

7.3. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

7.4. In the event this Agreement is terminated, County shall be paid for any services properly performed under this Agreement through the effective date of termination specified in the written notice of termination. The School Board shall be entitled to any school impact fee monies collected by County through the effective date of termination specified in the written notice of termination. No later than thirty (30) calendar days after the termination date, County shall remit ninety-eight percent (98%) of school impact fee monies collected by County through the termination date.

7.5. In addition to any right of termination stated in this Agreement, County or The School Board shall be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity.

8. Notices. Any and all notices given or required under this Agreement must be in writing and may be delivered in person or by United States Mail, postage prepaid, first class and certified, return receipt requested, addressed as follows:

To County:

Director, Planning and Development Management Division
115 South Andrews Avenue, Room 329K
Fort Lauderdale, FL 33301

With copy to:

County Administrator
115 South Andrews Avenue, Suite 409
Fort Lauderdale, FL 33301

To The School Board:

Superintendent of Schools
The School Board of Broward County, Florida
600 S.E. Third Avenue, 10th floor
Fort Lauderdale, FL 33301

With copy to:

Chief Financial Officer
The School Board of Broward County, Florida
600 S.E. Third Avenue, 10th floor
Fort Lauderdale, FL 33301

9. Assignment. County will perform the services provided for in this Agreement exclusively and solely for The School Board. Neither Party will have the right to assign this Agreement.

10. Amendment; Modification. No modification, amendment, or alterations in the terms or conditions contained herein will be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

11. Third Party Beneficiaries. Neither The School Board or County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

12. Waiver. The failure of either Party to enforce any provision of this Agreement will not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach under this Agreement will not be deemed a waiver of any subsequent breach.

13. Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part will be deemed severed from this Agreement and the balance of this Agreement will remain in full force and effect.

14. Prior Agreements; Entire Agreement. It is understood and agreed that this Agreement supersedes and replaces the 1982 Agreement and incorporates and includes all prior negotiations, agreements, or understandings applicable to the 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 will be predicated upon any prior representations or agreements, whether oral or written.

15. Independent Contractor. County and The School Board are independent contractors under this Agreement. Services provided by each Party pursuant to this Agreement will be subject to the supervision of that Party. Neither Party nor its agents will act as officers, employees, or agents of the other Party. This Agreement will not constitute or make the Parties a partnership or joint venture.

16. Choice of Law; Waiver of Jury Trial. Any controversies or legal problems arising out of this transaction and any action involving the enforcement or interpretation of any rights hereunder must be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and will be governed by the laws of the state of Florida. **BY ENTERING INTO THIS AGREEMENT, COUNTY AND THE SCHOOL BOARD HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

17. Public Records. The Parties shall comply with all public records requirements of Chapter 119, Florida Statutes, as may be required by law.

IF EITHER PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO A PARTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE BROWARD COUNTY CUSTODIAN OF PUBLIC RECORDS, ALBERT CUMMINGS, (954) 357-8695, ACUMMINGS@BROWARD.ORG, BROWARD COUNTY ENVIRONMENTAL PROTECTION AND GROWTH MANAGEMENT DEPARTMENT, PLANNING AND DEVELOPMENT MANAGEMENT DIVISION, ONE NORTH UNIVERSITY DRIVE, SUITE 102A, PLANTATION, FLORIDA 33324; OR THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, (754) 321-1900, OR RECORDREQUEST@BROWARDSCHOOLS.COM.

18. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 23 of this Agreement, the provisions contained in Articles 1 through 23 shall prevail and be given effect.

19. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated.

20. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party.

21. Drafting. This Agreement has been negotiated and drafted by the Parties hereto and will not be more strictly construed against either Party because of such Party's preparation of this Agreement.

22. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same agreement.

23. Recording. This Agreement will be recorded in the Public Records of Broward County in accordance with the Florida Interlocal Cooperation Act of 1969.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, County and The School Board have executed this Interlocal Agreement Related to School Impact Fee Monies on the respective dates under each signature: Broward County, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 20____, and The School Board, signing by and through its _____, duly authorized to execute same by action of The School Board on the ____ day of _____, 20_____.

County

ATTEST:

Broward County, by and through
its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor
____ day of _____ 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By _____
Maite Azcoitia
Deputy County Attorney

INTERLOCAL AGREEMENT RELATED TO SCHOOL IMPACT FEE MONIES

The School Board

The School Board of Broward County, Florida

Attest:

By _____
Donna P. Korn, Chair

By _____
Robert C. Runcie, Superintendent of Schools

____ day of _____, 20__

Approved as to form and Legal Content

By _____
Barbara J. Myrick, General Counsel