

JOINT RESOLUTION NO. 06-171

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS, POLK COUNTY, FLORIDA, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA AND THE HARDEN/PARKWAY COMMUNITY REDEVELOPMENT AGENCY APPROVING THE EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN POLK COUNTY, FLORIDA AND THE HARDEN/PARKWAY COMMUNITY REDEVELOPMENT AGENCY; PROVIDING FOR THE HARDEN/PARKWAY COMMUNITY REDEVELOPMENT AGENCY TO REPAY CERTAIN FUNDS TO THE BOARD OF COUNTY COMMISSIONERS; CONTAINING CERTAIN OTHER DETAILS RELATED THERETO AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Harden/Parkway Community Redevelopment Agency (the "Agency") has the authority under the Part III of Chapter 163, Florida Statutes (the "Act") to plan, coordinate, and cause the redevelopment of areas determined to be "blighted areas" as defined in the Act and Polk County, a Political Subdivision of the State of Florida ("Polk County") is empowered under Chapter 163 Florida Statutes to be the final determinative authority regarding certain actions of Community Redevelopment Agencies within its jurisdiction; and

WHEREAS, the Agency previously made a determination that transportation blight currently exists in the area of South Lakeland near the intersection of Harden Boulevard and the Polk County Parkway (the "Blighted Area"); and

WHEREAS, both the County and the Agency have the authority pursuant to Part I of Chapter 163 to enter into an Interlocal Agreement in connection therewith; and

WHEREAS, the County previously adopted a resolution authorizing the issuance of Polk County, Florida Constitutional Fuel Tax Revenue Improvement and Refunding Bonds, Series 2006 in the aggregate principal amount of not to exceed \$45,000,000 to current refund a portion of the County's outstanding Constitutional Fuel Tax Revenue Refunding Bonds, Series 1996, to finance a portion of the cost of certain road and related improvements within Polk County; and

WHEREAS, \$26,000,000 of those funds will be utilized to fund the costs of the transportation improvements delineated in the Agency's Redevelopment Plan, in order to cure the existing transportation blight, and which the County will loan said funds to the Agency; and

WHEREAS, the Agency agrees to repay such loan to the County from the Incremental Revenues (as defined in the Act) and all investment earnings thereon less any administrative expenses authorized under Section 163.387(6)(a), Florida Statutes, as amended; and

WHEREAS, the County agrees to make certain funds available to timely repay the bonds in the event that the Agency cannot do so; and

WHEREAS, it is anticipated that the Agency will recognize substantial cost savings by entering into the Interlocal Agreement, dated November 8, 2006 and attached hereto as Exhibit "A", with the County;

NOW, THEREFORE, BE IT RESOLVED by the County and Agency that:

SECTION 1. Authority. This Resolution is adopted pursuant to the laws of the State of Florida, including, in particular Section 163.01, Florida Statutes, and the Act and other applicable provisions of law.

SECTION 2. Findings. The Agency hereby finds, determines and declares that borrowing the funds from the County pursuant to the terms of the Interlocal Agreement will have a substantial public benefit.

SECTION 3. Authorization of Interlocal Agreement. The form of the Interlocal Agreement attached hereto as Exhibit "A" is hereby approved by both entities/parties to this Joint Resolution. The Chairman or Vice Chairman of each entity is authorized in the name and on behalf of his/her entity pursuant to this Resolution to execute and deliver the Interlocal Agreement on behalf of the entity in substantially the form attached to this Resolution as Exhibit "A," with such changes, insertions and omissions as the officers signing such document may approve, the execution thereof to be conclusive evidence of such approval. The officers executing such Interlocal Agreement are further authorized to do all acts which may be required or may be advisable with respect or in any way related thereto, including, but not limited to, filing the Interlocal Agreement with the Clerk of the Circuit Court in and for Polk County in accordance with Section 163.01(11), Florida Statutes. The Chairman or Vice Chairman of each Agency is further authorized to take such further action and execute such further instruments as may be necessary or appropriate to fully effectuate the purpose and intention of this Resolution and the Interlocal Agreement.

SECTION 4. Effective Date. This Resolution shall take effect immediately upon its passage.

APPROVED AND ADOPTED by the Harden/ Parkway Community Redevelopment Agency, in open session this 8th day of November, 2006 and by the Board of County Commissioners, Polk County, Florida this 8th day of November, 2006.

ATTEST: Richard M. Weiss, Clerk



By: *Frida L. Wade*
Title: *Deputy Clerk*

HARDEN/PARKWAY COMMUNITY REDEVELOPMENT AGENCY

By: *Jack R Myers*
Title: _____

ATTEST:
RICHARD M. WEISS, Clerk

**BOARD OF COUNTY COMMISSIONERS
POLK COUNTY, FLORIDA**

By: *Frida L. Wade*
Deputy Clerk



By: *Jack R Myers*
Jack Myers, Chairman

EXHIBIT "A"

INTERLOCAL AGREEMENT

between

POLK COUNTY, FLORIDA

and

HARDEN/PARKWAY COMMUNITY REDEVELOPMENT AGENCY

DATED as of November 8, 2006

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT made and entered into as of the 8th day of November, 2006 by and between Polk County, Florida, a political subdivision of the State of Florida (the "County") and the Harden/ Parkway Community Redevelopment Agency (the "Agency"), a public body corporate and politic created, existing and operating under the Act (as hereinafter defined).

WITNESSETH:

WHEREAS, the Agency was formed by an Interlocal Agreement between the City of Lakeland (the "City"), a municipal corporation created pursuant to the laws of the State of Florida, and the County on January 21, 2004; and

WHEREAS, the County and the City previously adopted a resolution finding that transportation blight presently exists in the area of Polk County commonly referred to as "South Lakeland" near the intersection of Harden Boulevard and the Polk County Parkway; and

WHEREAS, the Agency has the authority under the Act to plan, coordinate, and cause the redevelopment of areas determined to be "blighted areas" as defined in the Act; and

WHEREAS, on November 8th, 2006 the County adopted a resolution authorizing the issuance of Polk County, Florida Constitutional Fuel Tax Revenue Improvement and Refunding Bonds, Series 2006 in the aggregate principal amount of not to exceed \$45,000,000 to current refund a portion of the County's outstanding Constitutional Fuel Tax Revenue Refunding Bonds, Series 1996, to finance a portion of the cost of certain road and related improvements within Polk County; and

WHEREAS, \$26,000,000 of those funds will be utilized to fund the costs of the transportation improvements delineated in the Agency's Redevelopment Plan, in order to cure the existing transportation blight, and which the County will loan said funds to the Agency; and

WHEREAS, the Agency agrees to repay such loan to the County from the Increment Revenues (as defined in the Act) and all investment earnings thereon less any administrative expenses authorized under Section 163.387(6)(a), Florida Statutes, as amended; and

WHEREAS, the County agrees to make certain funds available to timely repay the bonds in the event that the Agency cannot do so; and

WHEREAS, it is anticipated that the Agency will recognize substantial cost savings by entering into the Interlocal Agreement; and

WHEREAS, the County and the Agency desire, by the terms hereof, to provide for the loan of funds by the County to the Agency and the repayment thereof by the Agency.

NOW, THEREFORE, IN CONSIDERATION of the mutual benefits to flow to each of the parties hereto, and to the citizens of the State of Florida, and in consideration of the mutual covenants, promises and agreements herein contained, the County and the Agency agree as follows:

SECTION 1. Definitions.

All capitalized terms not otherwise defined herein shall have the meaning as given in the Loan Agreement (as defined below).

"Act" means Part III of Chapter 163, Florida Statutes.

"Business Day" shall have the meaning ascribed to that term by the Loan Agreement.

"Increment Revenues" means the amount calculated pursuant to Section 163.387(1), Florida Statutes, as amended, and appropriated no later than January 1 each year by each taxing authority (as defined in the Act) in connection with the redevelopment of the blighted areas for deposit into the Redevelopment Trust Fund. The term does not include "increment revenues" associated with any other "community redevelopment area," as those terms are defined in the Act.

"Interlocal Agreement" means this Interlocal Agreement between the County and the Agency, and any amendments, changes, and modifications thereto.

"Loan" shall have the meaning ascribed to it in Section 2 hereof.

"Loan Payment Date" shall refer to each of the dates set forth in the Debt Service Schedule of the Polk County, Florida Constitutional Fuel Tax Bonds, Series 2006.

"Pledged Revenues" means the Increment Revenues and all investment earnings thereon less any administrative expenses authorized under Section 163.387(6)(a), Florida Statutes, as amended.

"Redevelopment Trust Fund" means the Harden/Parkway Community Redevelopment Trust Fund established by the County pursuant to Ordinance No. 04-12 and adopted on March 3, 2004, in which all Increment Revenues and investment earnings thereon are to be deposited upon their receipt.

"SBA Rate" means, as of any date, the rate of return earned by the Local Government Surplus Funds Trust Fund created and established pursuant to Part IV, Chapter 218, Florida Statutes, as amended, for the most recent period for which such rate has been established.

SECTION 2. Amount and Terms of Loan. The County hereby agrees on the terms and conditions of this Interlocal Agreement to make a loan to the Agency, in the aggregate principal amount of \$26,000,000 (the "Loan"). The Agency does hereby promise to repay such Loan, in immediately available funds together with interest on the unpaid principal balance, as hereinafter provided, from the Pledged Revenues, in accordance with the schedule of Loan Payment Dates.

SECTION 3. Pledge. Until payment has been provided for as herein permitted, the payment of the principal of and interest on the Loan and advances made pursuant to Section 5 hereof shall be secured forthwith equally and ratably by an irrevocable lien on the Pledged Revenues prior and superior to all other liens or encumbrances thereon. The Agency does hereby irrevocably pledge the Pledged Revenues to the payment of the principal of and interest on the Loan and any advances made pursuant to Section 5 hereof.

The Pledged Revenues shall immediately be subject to the lien hereof, without physical delivery thereof or further act, and such lien shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Agency.

The Agency shall immediately deposit all Increment Revenues in the Trust Fund upon receipt.

SECTION 4. Payment Schedule. On each Loan Payment Date, until the termination of this Interlocal Agreement, the Agency shall pay or cause to be paid to the County, from amounts on deposit in the Redevelopment Trust Fund , other than amounts necessary for the payment of the Agency's administrative costs authorized pursuant to Section 163.387(6)(a), for the current fiscal year (which amounts shall be applied by the Agency solely to pay such expenses) a sum equal to the amount payable on each such date as principal of, interest on and all other costs or amounts owed by the County under the Polk County, Florida Constitutional Fuel Tax Bonds, Series 2006.

SECTION 5. Payment Deficits. The Agency shall immediately notify the County, as soon as it becomes aware that there are insufficient funds in the Redevelopment Trust Fund to pay the total amount due and payable on any Loan Payment Date. To the extent that any payment is made by the Agency in an amount which is less than the total amount then due and payable hereunder, the County shall be deemed to have loaned or advanced to the Agency such deficiency on the date that the County makes the payment of the bonds and the Agency agrees to reimburse the County to the extent of such advance with interest thereon at the SBA Rate, from the date advanced until paid, if payment of said interest is requested by the County. Any amounts advanced by the County shall become an additional obligation of the Agency hereunder, shall be payable as provided in herein, and shall be deemed a part of the obligation of the Agency. Interest on such amounts shall be calculated on the basis of a 360-day year for the actual number of days elapsed. To the extent funds are available, after making all required payments under Section 4 hereof and other than amounts necessary for the payment of the Agency's administrative costs authorized pursuant to Section 163.387(6)(a), for the current fiscal year (which amounts shall be applied by the Agency solely to pay such expenses), all such advances shall be repaid by the Agency to the County from Pledged Revenues, with the interest accrued thereon to the date of payment, on the next Loan Payment Date.

SECTION 6. Excess Increment Revenues On the last day of the fiscal year of the Agency, any funds which remain in the Redevelopment Trust Fund after the payment of expenses pursuant to Section 163.387(6)(a), Florida Statutes, as amended, for such year shall be paid to the County and used by the County in the following manner and in the following order of priority:

- (1) To the extent necessary, to reimburse the County for any amounts advanced pursuant to Section 5 hereof, along with interest thereon to the date of such payment;
- (2) To pay all of the outstanding principal balance of, interest on and any other costs, expenses or amounts owed by the County under the bonds as provided in the Loan Agreement, or to pre-pay a portion of the outstanding principal balance of the bonds in integral multiples of \$100,000;
- (3) Any remaining funds shall be transferred to the County and held in escrow for the benefit of the Agency and used at the sole discretion of the County for the purpose of reimbursing the County for advances made pursuant to Section 5 hereof, paying the next debt service payment on the bonds or pre-paying a portion of the outstanding principal balance of the bonds, or for funding a future debt service payment. Any funds held in escrow by the County pursuant to this subsection (3) shall be returned to the Agency and deposited in the Redevelopment Trust Fund and used pursuant to Section 163.387(7), Florida Statutes, as amended, upon payment in full of all amounts due and payable on the bonds, the Loan and any amounts advance pursuant to Section 5, hereof.

SECTION 7. Filing of Agreement. The County and the Agency shall file an executed copy of this Interlocal Agreement with the Clerk of the Circuit Court of Polk County in accordance with Florida Statutes §163.01(11), Florida Statutes.

SECTION 8. Severability. The invalidity, illegality, or unenforceability of any provision of this Interlocal Agreement, or the occurrence of any event rendering any portion or provision of this Interlocal Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Interlocal Agreement. Any void provision shall be deemed severed from the Interlocal Agreement and the balance of the Interlocal Agreement shall be construed and enforced as if the Interlocal Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Interlocal Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

SECTION 9. No Liability. No member, agent, officer, official, committee or committee member, or employee of the Agency or the County shall be liable for any omission, except gross negligence, or for any act of omission or commission by any other member, agent, officer, official, committee or committee member, or employee of the Agency or the County.

SECTION 10. Third-Party Beneficiary. This Interlocal Agreement is solely for the benefit of the County and Agency, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party. Nothing in this Interlocal Agreement, either express or implied, is intended or shall be construed to confer upon or give any person, corporation, or governmental entity or agency, other than the parties hereto, any right, remedy or claim under or by reason of this Interlocal Agreement or any provisions or conditions hereof.

SECTION 11. Jurisdiction; Venue; Waiver of Jury Trial. In the event that any action, suit or other proceeding is brought in connection with this Interlocal Agreement, the parties hereto hereby (i) irrevocably consent to the exercise of jurisdiction over them and, to the extent permitted by applicable laws, their property, by the United States District Court for the Middle District of Florida or the Circuit Court of Polk County, Florida, and (ii) irrevocably waive any objection they or any of them might now or hereafter have or assert to the venue of any such proceeding in any court described in clause (i) above.

THE AGENCY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS INTERLOCAL AGREEMENT AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE COUNTY TO ENTER INTO THIS INTERLOCAL AGREEMENT.

SECTION 12. Governing Law; Benefit. This Interlocal Agreement and all rights hereunder shall be governed by the laws of the State of Florida. This Interlocal Agreement shall bind and inure to the benefit of, and the terms "County" and "Agency", respectively, as used in this Interlocal Agreement shall include, the respective parties and their respective successors and assigns.

SECTION 13. Entire Agreement. This Interlocal 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 Interlocal Agreement.

SECTION 14. Amendment. The terms of this Interlocal Agreement may not be changed, altered, or modified in any way except in an instrument, in writing, signed by both parties hereto.

SECTION 15. Term. This Interlocal Agreement shall become effective upon the occurrence of all of (a) the execution of this Interlocal Agreement by the proper officers of the County and the Agency, (b) filing with the Clerk of the Circuit Court of Polk County, Florida, as required by Section 7 hereof, and (c) the issuance of the Polk

County, Florida Constitutional Fuel Tax Bonds, Series 2006. This Interlocal Agreement shall terminate on such date that the Loan shall be fully paid and advances made by the County pursuant to Section 5 hereof have been paid in full.

SECTION 16. Headings. The headings or captions of sections or paragraphs used in this Interlocal Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Interlocal Agreement.

IN WITNESS WHEREOF, the parties have set their hands and seals on the day, month and year above written.

ATTEST: Richard M. Weiss, Clerk

BOARD OF COUNTY COMMISSIONERS
POLK COUNTY, FLORIDA

By *Freda L. Wade*
Deputy Clerk



By *Jack R. Myers*
Jack Myers, Chairman

Approved as to form and legal sufficiency:

By *Jane J. Gibson 11/6/06*
County Attorney's Office

ATTEST: Richard M. Weiss, Clerk

HARDEN/PARKWAY COMMUNITY
REDEVELOPMENT AGENCY

By *Freda L. Wade*
Title: *Deputy Clerk*

By *Jack R. Myers*
Title: _____

2461409_v5