

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

ADD-ON

SUBJECT: Economic Development Agreement between Seminole County and Crystal Photonics Inc.

Economic Development

DEPARTMENT: Planning and Development **DIVISION:** Administration

AUTHORIZED BY: William McDermott Kevin Fall 7133
Don Fisher **CONTACT:** Kent Cichon **EXT.** 7126

Agenda Date <u>10/22/02</u>	Regular <input type="checkbox"/>	Consent <input checked="" type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
	Public Hearing – 1:30 <input type="checkbox"/>		Public Hearing – 7:00 <input type="checkbox"/>	

MOTION/RECOMMENDATION:

Approve and authorize Chairman to execute agreement between Crystal Photonics Inc. and Seminole County for the Phase III expansion of the Crystal Photonics Inc. business located at 5525 Benchmark Lane.

BACKGROUND:

Crystal Photonics Inc., located at 5525 Benchmark Lane in the Midway Commerce Park, has requested that the payment of County transportation impact fees associated with their approved expansion project, be deferred until the issuance of a Certificate of Occupancy (see attached letter). An economic development agreement between Seminole County and Crystal Photonics Inc. has been prepared that would enable the deferral of County transportation impact fees associated with the proposed expansion project.

The Seminole County Land Development Code presently provides the opportunity for the deferral of payment of County impact fees for economic development projects "deemed to have a valid public purpose" by the Board of County Commissioners. Furthermore, the Land Development Code, specifically Section 120.34(h), provides for the deferral of payment of impact fees of up to 180 days or until issuance of a Certificate of Occupancy, whichever is sooner, for projects that have been approved by the Board to receive this benefit.

The attached economic development agreement provides for the deferral of payment of County transportation impact fees for a period of one hundred eighty (180) days from the date that the County issues a building permit for the Crystal Photonics Inc. expansion project but in no event later than the date a Certificate of Occupancy is issued for the expansion project. The Economic Development and Planning and Development Departments support the request for deferral of payment and recommend approval by the Board of County Commissioners.

The Crystal Photonics Inc. Phase III expansion project includes the construction of a new 39,070 square foot facility with an estimated capital construction value of \$3,000,000 and a capital investment in equipment estimated at \$100,000,000.

Reviewed by:	
Co Atty: <u>[Signature]</u>	
DFS: _____	
Other: _____	
DCM: <u>[Signature]</u>	
CM: _____	
File No. <u>EDC01</u>	



Crystal Photonics, Inc.

October 7, 2002

Kevin Grace
County Manager
Seminole County Administration Center
1101 East First Street
Sanford, Florida 32771

**RE: REQUEST FOR THE DEFERMENT OF IMPACT FEES
FOR THE NEW PRODUCTION FACILITY
FOR CRYSTAL PHOTONICS, INC.
BUILDING PERMIT NO: 02-7051**

Dear Mr. Grace,

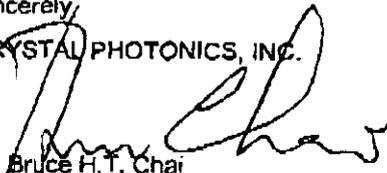
We are in the process of building a new 38,000 square foot facility to expand the production capacity of our company, Crystal Photonics, Inc. The impact fees for the project total \$58,969.51, and we are hereby requesting that these fees be deferred until the completion of the construction phase of the project, when we receive a Certificate of Occupancy for the new building.

We understand that the deferment of impact fees is discretionary, and that this policy is limited to developments that occur within certain targeted areas of Seminole County, and that it is directed toward projects that benefit the overall welfare and quality of life for the public. Crystal Photonics, Inc. is located in the Spring Hammock Commerce Center, which has been identified as an area that may qualify for consideration of fee deferment. Also, we feel that our fast-growing high tech business is working to further the established goals for the economic development of the region, helping to create a more diverse technology-based economic atmosphere that will be a benefit to Seminole County and to all of Central Florida.

With the rapid growth of our company over the past few years, we have invested a great deal of capital in the expansion of the research and production capabilities of our high-tech business. Any assistance that you can provide to us in our efforts to continue to grow our business in Seminole County would be greatly appreciated.

Thank you for your consideration.

Sincerely,
CRYSTAL PHOTONICS, INC.


Dr. Bruce H.T. Chai
President

CC: Bill McDermott

5525 Benchmark Lane • Sanford, FL 32773 • (407) 328-9111 • Fax (407) 328-9799

**ECONOMIC DEVELOPMENT AGREEMENT
CRYSTAL PHOTONICS, INC.**

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between **CRYSTAL PHOTONICS, INC.**, duly authorized to conduct business in the State of Florida, whose address is 5525 Benchmark Lane, Sanford, Florida 32773, hereinafter called the "COMPANY" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter called the "COUNTY".

W I T N E S S E T H:

WHEREAS, it is the policy of the COUNTY to aggressively stimulate growth in Seminole County by, among other things, either attracting new industries and businesses to Seminole County, or by encouraging the expansion and/or redevelopment of existing industries and businesses within Seminole County;

WHEREAS, the creation of new employment opportunities for residents of Seminole County and the increased tax revenues resulting from such industry or business expansion or relocation or redevelopment within Seminole County is beneficial to the local economy; and

WHEREAS, the COMPANY has proposed to build a new thirty-nine thousand seventy (39,070) square foot facility to expand the production capacity of the COMPANY; and

WHEREAS, the COMPANY is anticipating a capital investment of over ONE HUNDRED MILLION AND NO/100 DOLLARS (\$100,000,000.00) for the total expansion project including all planned equipment purchases; and

WHEREAS, the new job opportunities created and the capital investment made by the COMPANY will make the project economically viable

in terms of economic development; and

WHEREAS, Section 120.34(a) of the Seminole County Land Development Code provides for the deferred payment of impact fees in the event that the Seminole County Board of County Commissioners determines that there is a valid public purpose to allow deferral of the payment of fees required by the Code, such public purpose including, by way of example and not limitation, economic development or job growth; and

WHEREAS, the Seminole County Land Development Code further provides that the COUNTY and the COMPANY may enter into an agreement that provides for the deferred payment of road impact fees that would otherwise be due and payable; provided, however, that the maximum period of deferment shall be for a period of one hundred eighty (180) days from the date that the COUNTY issues a building permit for the project; provided, however, that in no event shall the payment of fees and other assessments be paid later than the issuance of a Certificate of Occupancy for the development for which the building permit was issued; and

WHEREAS, the COUNTY has determined that in order to enhance and preserve the health, education and welfare of the citizens of the COUNTY it is necessary, proper and desirable to enter into this Agreement with the COMPANY in order to enhance the economic development of Seminole County,

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained and other good and valuable considerations, the receipt and sufficiency of which hereby acknowledged, the parties do hereby covenant and agree as follows:

SECTION 1. RECITALS. The above recitals are true and correct and form a material part of this Agreement upon which the parties have relied.

SECTION 2. REPRESENTATIONS OF THE COMPANY. The COMPANY hereby represents and warrants to the COUNTY the following:

(a) The COMPANY is duly organized and validly existing under the laws of the State of Florida and is authorized to do and is doing business in the State of Florida.

(b) The COMPANY has the corporate power, authority and legal right to execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement by the COMPANY has been duly authorized by all necessary corporate and shareholder action.

SECTION 3. COVENANTS OF THE COMPANY. The COMPANY hereby covenants with the COUNTY to do the following:

(a) The COMPANY agrees to make certain capital investments as the developer of the COMPANY'S project located at 5525 Benchmark Lane in the Midway Commerce Park in accordance with all provisions of the Seminole County Land Development Code, except as otherwise provided herein.

(b) The COMPANY agrees to pay impact fees required under Chapter 120 of the Seminole County Land Development code no later than one hundred eighty (180) days from the date that the COUNTY issues a building permit for the project.

(c) Notwithstanding anything to the contrary in subsection (b) of this Section, impact fees required under Chapter 120 of the Seminole County Land Development Code shall be immediately due and payable upon

the issuance of a Certificate of Occupancy for the development for which the building permit was issued.

(d) The COMPANY agrees that construction of the COMPANY'S expansion project shall be completed and ready for issuance of a Certificate Of Occupancy within one (1) year of the issuance of the initial building permit from the COUNTY for the COMPANY'S expansion project.

SECTION 4. COVENANTS OF THE COUNTY. The COUNTY agrees to defer the payment of the COUNTY transportation impact fees associated with the COMPANY'S expansion project until one hundred eighty (180) days from the date that the COUNTY issues a building permit for the project, but in no event, later than the issuance of a Certificate of Occupancy for the COMPANY'S expansion project or any portion thereof.

SECTION 5. TERM. This Agreement shall become effective upon execution by the COUNTY and the COMPANY and shall remain in effect through close out of the Agreement pursuant to and consistent with its terms.

SECTION 6. FORCE MAJEURE. In the event any party hereunder fails to satisfy a requirement imposed in a timely manner, due to a hurricane, flood, tornado, or other Act of God or force majeure, then said party shall not be in default hereunder; provided, however, that performance shall recommence upon such event ceasing its effect.

SECTION 7. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors in interest, transferees and assigns of the parties.

SECTION 8. ASSIGNMENT. This Agreement shall not be assigned by either party without the prior written approval of the other.

SECTION 9. PUBLIC RECORDS LAW. CONSULTANT acknowledges COUNTY's obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, to release public records to members of the public upon request. CONSULTANT acknowledges that COUNTY is required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this Agreement.

Section 10. Notices.

(a) Whenever either party desires to give notice unto the other, notice may be sent to:

For COUNTY:

Seminole County Manager
Seminole County Services Building
1101 East First Street
Sanford, Florida 32771

With copies to:

Seminole County Planning and Development Director
Seminole County Services Building
1101 East First Street
Sanford, Florida 32771

For COMPANY:

Crystal Photonics, Inc.
5525 Benchmark Lane
Sanford, Florida 32773

Either of the parties may change, by written notice, as provided herein, the addresses or persons for receipt of notices.

SECTION 11. INDEMNITY AND INSURANCE.

(a) Each party to the Agreement is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof.

(b) To the extent allowed by law, each party to this Agreement shall indemnify, save and hold harmless the other party and all of its respective officers, agents and employees from and against all losses and all claims, demands, payments, suits, actions, recoveries and judgments of every nature and description whatsoever, including claims for property damage and claims for injury to or death of persons brought or recovered against the other party to this Agreement by reason of any act or omission of the responsible party, its respective officers, agents, subcontractors or employees, in the execution of the work relating to this Agreement.

(c) The parties further agree that nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available to such parties under the laws of the State of Florida, nor as a waiver of sovereign immunity of the COUNTY beyond the waiver provided for in Section 768.28, Florida Statutes.

(d) The COMPANY shall provide necessary workers compensation coverage and unemployment compensation for its employees.

SECTION 12. CONFLICT OF INTEREST.

(a) The COMPANY agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY or which would

violate or cause others to violate the provisions of *Part III, Chapter 112, Florida Statutes*, relating to ethics in government.

(b) The COMPANY hereby certifies that no officer, agent or employee of the COUNTY has any material interest (as defined in *Section 112.312(15), Florida Statutes*, as over 5%) either directly or indirectly, in the business of the COMPANY to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to *Section 216.347, Florida Statutes*, the COMPANY hereby agrees that monies received from the COUNTY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other State or Fed

SECTION 13. EQUAL OPPORTUNITY EMPLOYMENT. COMPANY agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and will take steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION 14. COMPLIANCE WITH LAWS AND REGULATIONS. In providing all services pursuant to this Agreement, the COMPANY shall abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services, including those now in

effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement, and shall entitle the COUNTY to terminate this Agreement immediately upon delivery of written notice of termination to the COMPANY.

SECTION 15. EMPLOYEE/COMPANY STATUS.

(a) Persons employed by the COMPANY in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the COUNTY'S officers and employees either by operation of law or by the COUNTY.

(b) It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of copartners between the parties, or as constituting the COMPANY including its officers, employees, and agents, the agent, representative, or employee of the COUNTY for any purpose, or in any manner, whatsoever. The COMPANY is to be and shall remain an independent COMPANY with respect to all services performed under this Agreement.

SECTION 16. NO THIRD-PARTY BENEFICIARIES. This Agreement is made for the sole benefit of the parties hereto and their respective successors and assigns, including any successor in interest to the COMPANY'S interest in the Project, and is not intended to and shall not benefit any third party. No third party shall have any rights hereunder or as a result of this Agreement or any right to enforce any provisions of this Agreement.

SECTION 17. CONTINGENT FEES/CONFLICTING EMPLOYMENT.

(a) The COMPANY covenants that it has employed and retained only bona fide employees working for the COMPANY and attorneys and consultants, to solicit or secure this Agreement. The COUNTY warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working for the COMPANY, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of making of this Agreement.

(b) The COMPANY agrees that at the time of execution of this Agreement it has no retainer or employment agreement, oral or written, with any third party relating to any matters which adversely affect any interest or position of the COUNTY. The COMPANY shall not accept during the terms of this Agreement any retainer or employment from a third party whose interests appear to be conflicting or inconsistent with those of the COUNTY.

SECTION 21. GOVERNING LAW/ATTORNEYS' FEES. This Agreement shall be construed and interpreted according to the laws of the State of Florida. In the event of litigation between the parties arising from or pertaining to this Agreement, the prevailing party shall be entitled to recover from the other, reasonable trial and appellate attorneys' fees and costs.

SECTION 22. CONSTRUCTION OF AGREEMENT. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both parties, COUNTY

and COMPANY, have contributed substantially and materially to the preparation hereof.

SECTION 23. CONSTITUTIONAL AND STATUTORY LIMITATION ON AUTHORITY OF THE COUNTY. The terms and conditions of this Agreement placed upon the COUNTY are applicable only to the extent they are within and consistent with the constitutional and statutory limitations on the authority of the COUNTY. Specifically, the parties acknowledge that the COUNTY is without authority to grant or pledge a security interest in any of the COUNTY'S revenue sources or property.

SECTION 21. EVENTS OF DEFAULT/REMEDIES. For purposes of this Agreement, "Event of Default" shall mean any of the following:

(a) Any representation or warranty made by the COMPANY herein or in any statement, invoice or certificate furnished to the COUNTY in connection with the performance of the Agreement proves to be untrue in a material respect as of the date of issuance or making thereof.

(b) The COMPANY shall materially breach any covenant contained in this Agreement.

(c) The COMPANY fails to provide to the COUNTY the written verification, satisfactory to the COUNTY, of its performance obligations herein.

SECTION 22 COUNTERPARTS. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

SECTION 23. HEADINGS. All sections and descriptive headings in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

SECTION 24. TIME. Time is of the essence in this Agreement.

SECTION 25. SEVERABILITY. If any provision, term or clause of this Agreement is determined to be invalid or unenforceable by a Court of competent jurisdiction, said determination shall not, in any way, effect the obligation of the parties as provided for or referred to herein and, to that end, the provisions of this Agreement shall be deemed severable. However, such invalidity or unenforceability shall preclude the continuing effect of this Agreement if a failure of consideration were to occur.

SECTION 26. ENTIRE AGREEMENT.

(a) This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and may not be modified or amended except by a written instrument equal in dignity herewith and executed by the parties to be bound thereby.

(b) No waiver or consent to any departure from any term, condition or provision of this Agreement shall be effective or binding upon any party hereto unless such waiver or consent is in writing, signed by an authorized officer of the party giving the same and delivered to the other party.

(c) The COMPANY agrees that no representations have been made by the COUNTY in order to induce the COMPANY to enter into this Agreement other than as expressly stated in this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

ATTEST:

CRYSTAL PHOTONICS, INC.

Secretary

By: _____
BRUCE H.T. CHAI, President

(CORPORATE SEAL)

Date: _____

ATTEST

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
DARYL G. MCLAIN, Chairman

Date: _____

For the use and reliance
of Seminole County only.
Approved as to form and
legal sufficiency

As authorized for execution by
the Board of County Commissioners
at their _____, 20____
regular meeting.

County Attorney

AC/lpk
10/10/02
eco dev agt-crystal photonics