

Meeting Date
May 12, 2015



AGENDA	
Section	Consent
Item No.	II.A.3

**AGENDA REPORT**  
**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

SUBJECT:	APPROVAL RE: TRANSPORTATION IMPACT FEE TECHNICAL ADVISORY COMMITTEE PROJECT FUNDING RECOMMENDATIONS (DISTRICTS 1 - 5)
DEPT/OFFICE:	PLANNING AND DEVELOPMENT DEPARTMENT

**Requested Action:**  
It is requested that the Board of County Commissioners approve the project funding recommendations as prepared by the Technical Advisory Committees for the North Mainland, Merritt Island/North Beaches, and the South Beaches Benefit Districts on April 21, 2015; authorize the Budget Office to execute any budget changes required to implement project appropriations; and authorize the Chairman to execute Disbursement Agreements with Titusville, Cocoa Beach, Indialantic, Indian Harbour Beach and Satellite Beach.

**Summary Explanation & Background:**  
On April 21, 2015 the Technical Advisory Committees for the North Mainland, Merritt Island/North Beaches, and the South Beaches Benefit Districts met and adopted project funding recommendations for consideration by the Board of County Commissioners. The Technical Advisory Committees consist of one representative from the County and each of the municipalities in the Benefit District.

**Fiscal Impact:** FY15 – Funding for all recommended appropriations is available from transportation impact fees that have already been collected and have been deposited in the North Mainland, Merritt Island/North Beaches, or South Beaches Transportation Impact Fee Trust Fund. The implementation of these appropriations will expend all funds remaining in the respective Trust Funds.

**Staff Contact:** Stephen M. Swanke  
(321) 633-2069

**Clerk to the Board instruction:**

**Exhibits Attached:**  
Summary of Project Funding Recommendations

**Contract /Agreement (If attached):** Reviewed by County Attorney Yes  No  PR

<b>County Manager</b>  Stockton Whitten	<b>Assistant County Manager</b>  Mel Scott, AICP	<b>Department Director / Extension</b>  Robin M. Sobrino, AICP 5-2069
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orig Steve  
copy SecFile



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

May 13, 2015

*file*

MEMORANDUM

TO: ~~Robin Sobrino~~, Planning and Development Director Attn: Stephen Swanke

RE: Item II.A.3., Approval for Transportation Impact Fee Technical Advisory Committee Project Funding Recommendations

The Board of County Commissioners, in regular session on May 12, 2015, approved the project funding recommendations as prepared by the Technical Advisory Committees for the North Mainland, Merritt Island/North Beaches, and the ~~South Beaches Benefit~~ Districts on April 21, 2015; authorized the Budget Office to execute any budget changes required to implement project appropriations; and authorized the Chairman to execute Disbursement Agreements with Titusville, Cocoa Beach, Indialantic, Indian Harbour Beach, and Satellite Beach. Enclosed is original copy of each Transportation Impact Fee Trust Fund Disbursement City Agreements.

**Upon execution of each City, please return the fully-executed copy of each Agreement to this office for inclusion in the official minutes.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

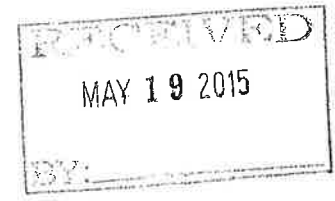
*Tammy Etheridge*

Tammy Etheridge, Deputy Clerk

/ds

Encls. (4)

cc: Budget  
Finance



## SUMMARY OF PROJECT FUNDING RECOMMENDATIONS

### North Mainland Benefit District

1. Return \$89,415.00 in unexpended funds from the Grissom Road Intersection Improvements project administered by Brevard County.
2. Return \$37,494.00 in unexpended funds from the U.S. 1 Sidewalk project from Fairglen Bridge to Broadway Boulevard administered by Brevard County.
3. Appropriate \$50,000.00 for design of a sidewalk on Fox Lake Road from the intersection of State Road 405 & Knox McRae to Fox Lake Park to be administered by Brevard County.
4. Appropriate \$743,168.59 for design and construction of a sidewalk on Carpenter Road from Longbow Circle to State Road 46 to be administered by Brevard County.
5. Appropriate \$110,000.00 for construction of a sidewalk on Wendy Lee Drive to be administered by Brevard County.
6. Appropriate \$100,000.00 for intersection improvements at Park Avenue & Harrison Street including a traffic signal upgrade to be administered by the City of Titusville.
7. Appropriate \$300,000.00 for design and construction of a Rail Trail Connection from the end of Rail Trail Phase 2 to the downtown Welcome Center to be administered by the City of Titusville.
8. Appropriate \$50,000.00 for construction of sidewalks along Park Avenue to be administered by the City of Titusville.

### Merritt Island/North Beaches Benefit District

1. Return \$47,267.00 in unexpended funds from the Fortenberry at Plumosa Intersection Improvements project administered by Brevard County.
2. Appropriate \$47,267.00 for the North Banana River Drive/Martin Boulevard Intersection Improvements project to be administered by Brevard County.
3. Appropriate \$189,343.56 for the Minuteman Corridor Complete Streets project to be administered by the City of Cocoa Beach.

### South Beaches Benefit District

1. Appropriate \$39,500.00 for design and construction of a sidewalk along the east side of Wavecrest Avenue from Fourteenth Avenue to State Road A1A to be administered by the Town of Indialantic.
2. Appropriate \$50,000.00 for design and construction of a sidewalk on Banana River Drive to be administered by the City of Indian Harbour Beach.
3. Appropriate \$50,000.00 for a Citywide Mobility Study to be administered by the City of Indian Harbour Beach.
4. Appropriate \$163,571.32 for the State Road A1A Pedestrian Improvements project to be administered by the City of Indian Harbour Beach.
5. Appropriate \$178,822.27 for the Roosevelt Avenue Complete Streets project to be administered by the City of Satellite Beach.

TRANSPORTATION IMPACT FEE TRUST FUND  
DISBURSEMENT AGREEMENT

Between

BREVARD COUNTY

and

TITUSVILLE, FLORIDA

for

2015 IMPROVEMENT PROJECTS

in the amount of \$450,000.00

PROVIDING FOR FUNDING AND ADMINISTRATION OF  
IMPACT FEE PROJECTS

This is an Agreement between: BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY," through its Board of County Commissioners,

and

TITUSVILLE, FLORIDA, a Florida municipal corporation, its successors and assigns, hereinafter referred to as "CITY".

WITNESSETH that, for and in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, COUNTY and CITY agree as follows:

ARTICLE I

DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 ASSURANCES: means those assurances made by CITY to COUNTY specifically set forth in this Agreement.
- 1.2 CITY: means and refers to the City of Titusville, Florida, a Florida municipal corporation.
- 1.3 COUNTY: means and refers to Brevard County, Florida, a political subdivision of the State of Florida.
- 1.4 DEPARTMENT: means the Finance Department of Brevard County, Florida.

- 1.5 DIVISION: means the Planning and Development Department of Brevard County, Florida.
- 1.6 IMPACT FEE PROGRAM OR PROGRAM: means and refers to the Transportation Impact Fee Program as incorporated into Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida.
- 1.7 INTERLOCAL AGREEMENT: means and refers to that agreement between Brevard County, Florida, and the City of Titusville, Florida, approved by the COUNTY on July 26, 2005 and by the CITY on August 23, 2005, providing for participation in the Brevard County Transportation Impact Fee Program.
- 1.8 PROGRAM INTEREST: means interest generated from TIFT funds after receipt by CITY.
- 1.9 PROJECT(S): means the project or projects set forth in Article III hereof, and Exhibit "A" entitled "Project Description".
- 1.10 TIFT FUNDS: means the Transportation Impact Fee Trust; the monies given to CITY pursuant to the terms of this Agreement.

## ARTICLE II

### PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida, incorporated herein by reference, provides for the imposition of the Transportation Impact Fee and sets forth the manner and amount for collection and use of funds.
- 2.2 Pursuant to interlocal agreement, incorporated herein by reference, the COUNTY and CITY have coordinated the collection of Transportation Impact Fees and participated in the process for project recommendations to the Board of County Commissioners of Brevard County, Florida.
- 2.3 Under Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida and interlocal agreement, COUNTY is administrator for the Program and COUNTY is mandated to comply with various statutes, rules and regulations as to the allocation of expenditure of funds.

- 2.4 COUNTY is desirous of disbursing TIFT Funds to CITY. However, as administrator for the Program, COUNTY desires to obtain the assurances from CITY and CITY so assures COUNTY, that CITY will comply with all state and local statutes, rules and regulations and applicable codes and regulations as made known to the CITY relating to the Project(s) and the Program, as a condition precedent to the release of such funds to CITY.

**ARTICLE III**

**PROJECT(S)**

CITY hereby agrees to provide and implement the following eligible Project(s):

- 1. Intersection improvements at Park Avenue and Harrison Street in Titusville, Florida that include a traffic signal upgrade in the amount of \$100,000.00.
- 2. Design and construction of a Rail Trail Connection from the end of Rail Trail – Phase II to the Downtown Welcome Center in Titusville, Florida in the amount of \$300,00.00.
- 3. Construction of sidewalks along Park Avenue where gaps in sidewalks exist in the amount of \$50,000.00.

From North Mainland TIFT Fund.

Such Project(s) is(are) more specifically described and set forth in Exhibit "A", attached hereto and by this reference made a part hereof.

**ARTICLE IV**

**FUNDING AND METHOD OF PAYMENT**

- 4.1 The amount payable by COUNTY under this Agreement shall be \$450,000.00.
- 4.2 Following execution of this Agreement, the Planning and Development Director or designee shall provide written notice to Department for the disbursement of TIFT Funds in the amount of \$450,000.00.

**ARTICLE V**

**RECORDS**

- 5.1 The COUNTY and the CITY 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.

- 5.2 If CITY has awarded a contract to an independent contractor to perform Project(s) services, CITY shall submit to COUNTY, if requested, a certified copy of the contractor's invoices stating the services rendered and the date the services were rendered specifically identifying TIFT Funds used.
- 5.3 CITY agrees to furnish to the Planning and Development Department Director, status reports on November 1 of each year identifying the interest accrued, the expenditures to date and the project progress.

## ARTICLE VI

### ASSURANCES

- 6.1 CITY hereby agrees to comply with all applicable state and local laws, ordinances, and codes and regulations, applicable to the expenditure of the TIFT Funds to the extent that any such laws, ordinances, codes and regulations are specifically directed to the CITY's attention in writing by the COUNTY.
- 6.2 CITY hereby agrees to maintain books, records and documents in accordance with standard accounting procedures and practices of the CITY which sufficiently and properly reflect all expenditures of funds provided by COUNTY under this Agreement.
- 6.3 CITY agrees to expend TIFT Funds allocated to the Project(s) by the expiration date in Article VIII. All TIFT Funds not expended or encumbered within the term of this Agreement shall be returned to the custody and control of COUNTY. An administrative extension, if requested prior to expiration, may be granted by the Planning and Development Department Director for a period not to exceed one hundred eighty (180) days if just cause is shown. This section shall not require the CITY to return to the COUNTY custody or control of any TIFT Funds which have been contractually committed for expenditure by the CITY within a six-year time frame from the date of impact fee payment, but are yet unpaid, or funds the CITY's use of which is an issue in any pending litigation involving the CITY.
- 6.4 CITY agrees to complete each project identified in this agreement. In the event TIFT Funds are not sufficient, the CITY may submit to the COUNTY a request for additional revenue from the TIFT Funds.
- 6.5 CITY hereby agrees that if it has directly and knowingly caused any funds to be expended in violation of the Agreement, it shall be responsible to refund such monies in full to COUNTY.
- 6.6 CITY agrees to return to the Department the unexpended TIFT Funds no later than sixty (60) days following the expiration date in Article VIII or within sixty (60) days following an administrative extension under Section 6.4, if applicable, along with a completed Form B, attached hereto and by this reference made a part hereof. An administrative extension for the return of funds, if requested prior to the sixty (60) day expiration period, may be granted by the Planning and Development Department Director for a period not to exceed sixty (60) days if just cause is shown.

- 6.7 Program interest generated as a result of receipt of TIFT Funds may be retained by CITY provided that this interest shall be added to TIFT Funds committed to the Project(s) by the CITY and used in conjunction with the original allocation to further the eligible project objective. Expenditure of program interest is subject to the terms of this Agreement with Brevard County. Any remaining TIFT funds, including the amount of interest generated in a contract period if not expended for the approved Project(s) shall be returned to COUNTY and shall be placed back in TIFT account for benefit of North Mainland within the time periods provided in Section 6.6.
- 6.8 CITY hereby agrees and understands that all funding authorization through a TIFT Fund shall be used only for eligible activities specifically outlined in this Agreement. Revenues shall not be utilized for correcting deficiencies. They shall be utilized to fund the future capacity components for transportation facilities identified in Exhibit "A". All expenditures shall be consistent with the Interlocal Agreement signed August 23, 2005.
- 6.9 CITY hereby agrees to submit to the Planning and Development Department within sixty (60) days of the completion of each Project(s), as set out in Article III, a complete financial accounting of all its Project(s) activities, as provided on Exhibit "B", attached hereto and by reference made a part hereof.

**ARTICLE VII**

**INDEMNIFICATION CLAUSE**

CITY, to the extent allowed by law, will at all times hereafter indemnify and hold harmless, COUNTY, its officers, agents and employees, against any and all claims, losses, liabilities, or expenditures of any kind, including court costs and expenses, accruing or resulting from any or all suits or damages of any kind resulting from injuries or damages sustained by any person or persons, corporation or property, by virtue of the CITY's failure to perform any obligation or undertaking of the CITY as set forth in this Agreement. The foregoing indemnification does not waive any defense of sovereign immunity and shall not waive the damage limits set forth in Section 768.28 Florida Statutes, nor shall it be construed to constitute an agreement by the City to indemnify any other party for such other party's negligent, willful, or intentional acts or omissions.

**ARTICLE VIII**

**TERM OF AGREEMENT**

This agreement shall commence on the day the Division Director provides written Notice to Department for the disbursement of TIFT Funds and shall remain in effect until September 30, 2020.

**ARTICLE IX**

**TERMINATION**

- 9.1 If, through any cause, CITY fails to commence work on the project, or fails to fulfill in timely and proper manner its obligations under this Agreement, or if CITY shall violate any of the covenants, agreements, or stipulations of this Agreement, COUNTY shall thereupon have the right to terminate this Agreement and may require the return of funds expended or committed for expenditure in violation of this agreement by giving written notice to CITY of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of termination. If just cause is shown prior to termination, the Planning and Development Department Director may specify in writing the actions that must be taken by CITY and a reasonable date for compliance; as a condition to avoid termination. In no event can the Agreement date be extended beyond the periods provided in this Agreement without amendment to the Agreement executed with the same formality and of equal dignity herewith.
- 9.2 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 CITY with TIFT Funds under this Agreement shall be provided to COUNTY.
- 9.3 In the best interests of the program and in order to better serve the people in the impact fee districts and fulfill the purposes of the Act, either party may terminate this Agreement upon giving thirty (30) days notice in writing of its intent to terminate, stating its reasons for doing so. In the event CITY or COUNTY terminates the Agreement, CITY shall refund COUNTY, all unexpended and unencumbered TIFT Funds received and interest accrued therefrom. In the event that this Agreement is terminated by either party and the amount of unexpended and unencumbered funds and the accrued interest that is refunded to the COUNTY is less than \$634,780.50 the CITY acknowledges its consent to appropriate sufficient transportation impact fees collected within the corporate limits of the CITY towards a project selected by the COUNTY regardless of whether the selected project is located within the CITY or not to alleviate any shortfall.
- 9.4 The parties hereby agree that the following events are sufficient cause for termination of the Agreement. Such events include, but are not limited to:
  - a. Improper use of TIFT Funds;
  - b. Failure to comply with the terms of this Agreement.

**ARTICLE X**

**INDEPENDENT CONTRACTOR**

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

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 CITY, which shall not conflict with COUNTY, or state rules or regulations relating to the use of TIFT Funds.

**ARTICLE XI**

**ALL PRIOR DISBURSEMENT AGREEMENTS SUPERSEDED**

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. This agreement does not supersede the Interlocal Agreement between Brevard County and the City of Titusville approved by the County on July 26, 2005 and by the City on August 23, 2005.

**ARTICLE XII**

**NOTICES**

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: Director  
Planning and Development Department  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

FOR CITY: City Manager  
City of Titusville  
Post Office Box 2806  
Titusville, FL 32781

**ARTICLE XIII**

**AMENDMENTS**

COUNTY may amend this Agreement, if required by legislation, to conform to mandates in state guidelines, directives, and objectives relating to the use of TIFT Funds. 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. CITY shall be notified pursuant to ARTICLE XII and such notification shall constitute an official amendment. 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.

**ARTICLE XIV**

**CONFLICT OF INTEREST**

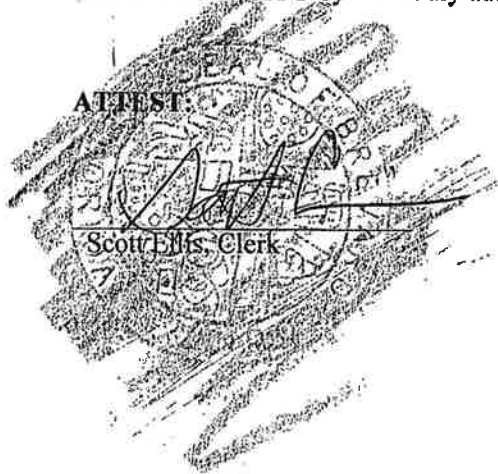
CITY covenants that no person who presently exercises any functions or responsibilities in connection with the Project(s) has any personal financial interest, direct or indirect, in the Project(s) during this tenure which would conflict in any manner or degree with the performance of this Agreement, and that no person having any conflicting interest shall be employed or subcontracted. Any possible conflicting interest on the part of CITY or its employees shall be disclosed in writing to the Planning and Development Department.

**ARTICLE XV**

**SEVERABILITY**

If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from this Agreement without affecting the binding force of the remainder of the Agreement.

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



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

By [Signature]  
Robin Fisher, Chairman

As approved by the Board of County Commissioners  
on May 12, 2015.

**ATTEST:**

Wanda F. Wells  
Wanda F. Wells, MMC City Clerk

**CITY OF TITUSVILLE, FLORIDA**

By [Signature]  
James H. Tulley, Jr., Mayor

Date: 7-21, 2015



STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 5 day of August, 2015 by Robin Fisher, 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.

Deborah W. Thomas  
NOTARY PUBLIC - State of Florida  
My commission expires:



DEBORAH W. THOMAS  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# EE208892  
Expires 6/10/2016

STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of July, 2015 by James H. Tulley, Jr., Mayor of the City of Titusville, Florida, who is personally known to me or produced n/a as identification and who did take an oath.

Debra S. Denman  
NOTARY PUBLIC - State of Florida  
My commission expires: Aug. 4, 2016



**EXHIBIT "A"**

**PROJECT(S) DESCRIPTION**

1. Intersection improvements at Park Avenue and Harrison Street in Titusville, Florida that include a traffic signal upgrade in the amount of \$100,000.00. Anticipated engineering services include, but are not limited to: design survey, development of ADA compliant construction plans, preparation of bid packages, construction surveying, contract administration, preparation of as-built survey, and construction management.
2. Design and construction of a Rail Trail Connection from the end of Rail Trail – Phase II to the Downtown Welcome Center in Titusville, Florida in the amount of \$300,00.00. Anticipated engineering services include, but are not limited to: design survey, development of ADA compliant construction plans, development of landscape/landscape adjustment plans, preparation of bid packages, construction surveying, contract administration, preparation of as-built survey, and construction management. Anticipated construction services include but are not limited to: trimming and removing trees as necessary; moving of shrubs, landscape material, existing irrigation systems and other utilities, and re-sodding as necessary; demolition, removal and replacement of driveway aprons as necessary; demolition, grading, compaction, forming, placing and finishing the Rail Trail Extension and constructing detectable warning devices, driveway aprons, and curbs as needed.
3. Construction of sidewalks along Park Avenue where gaps in sidewalks exist in the amount of \$50,000.00. Anticipated engineering services include, but are not limited to: design survey, development of ADA compliant construction plans, development of landscape/landscape adjustment plans, preparation of bid packages, construction surveying, contract administration, preparation of as-built survey, and construction management. Anticipated construction services include but are not limited to: trimming and removing trees as necessary; moving of shrubs, landscape material, existing irrigation systems and other utilities, and re-sodding as necessary; demolition, removal and replacement of driveway aprons as necessary; demolition, grading, compaction, forming, placing and finishing the concrete sidewalks and constructing detectable warning devices, driveway aprons, and curbs as needed.

From North Mainland TIFT Fund.

Project Name: Park Avenue Phase 1 Improvements  
 From North Mainland TIF-1 Fund

FINAL ACCOUNTING FOR PROJECT

EXHIBIT "B"

Date	Activity	Check #	Impact Fee Deposit	Project Expense	Program Interest*	Unexpended Funds
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Totals

\* Based on SBA Interest Rate applicable to each month.



STATE OF FLORIDA, COUNTY OF BREVARD  
 I HEREBY CERTIFY that the above and foregoing is a  
 true copy of the original filed in this office.  
 SCOTT ELLIS, Clerk Circuit and County Court  
 Dated 08/14/2015 By *[Signature]* D.C.



**Planning & Development Department**

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

TO: Tammy Etheridge, Deputy Clerk  
Clerk to the Board of County Commissioners

FROM: Stephen M. Swanke, Program Manager  
Planning & Development Department *SMS*

DATE: August 14, 2015

SUBJECT: Transportation Impact Fee Disbursement Agreement

I am returning a recorded copy of the Transportation Impact Fee Disbursement Agreement between Brevard County and the City of Titusville for your records. This agreement was approved by the Board on May 12, 2015 as Item II.A.3

enclosure

TRANSPORTATION IMPACT FEE TRUST FUND  
DISBURSEMENT AGREEMENT

Between

BREVARD COUNTY

and

TITUSVILLE, FLORIDA

for

2015 IMPROVEMENT PROJECTS

in the amount of \$450,000.00

PROVIDING FOR FUNDING AND ADMINISTRATION OF  
IMPACT FEE PROJECTS

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and

TITUSVILLE, FLORIDA, a Florida municipal corporation, its successors and assigns, hereinafter referred to as "CITY".

WITNESSETH that, for and in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, COUNTY and CITY agree as follows:

**ARTICLE I**

**DEFINITIONS AND IDENTIFICATIONS**

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are agreed upon by the parties.

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- 1.10 TIFT FUNDS: means the Transportation Impact Fee Trust; the monies given to CITY pursuant to the terms of this Agreement.

## ARTICLE II

### PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

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- 2.2 Pursuant to interlocal agreement, incorporated herein by reference, the COUNTY and CITY have coordinated the collection of Transportation Impact Fees and participated in the process for project recommendations to the Board of County Commissioners of Brevard County, Florida.
- 2.3 Under Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida and interlocal agreement, COUNTY is administrator for the Program and COUNTY is mandated to comply with various statutes, rules and regulations as to the allocation of expenditure of funds.

- 2.4 COUNTY is desirous of disbursing TIFT Funds to CITY. However, as administrator for the Program, COUNTY desires to obtain the assurances from CITY and CITY so assures COUNTY, that CITY will comply with all state and local statutes, rules and regulations and applicable codes and regulations as made known to the CITY relating to the Project(s) and the Program, as a condition precedent to the release of such funds to CITY.

### **ARTICLE III**

#### **PROJECT(S)**

CITY hereby agrees to provide and implement the following eligible Project(s):

1. Intersection improvements at Park Avenue and Harrison Street in Titusville, Florida that include a traffic signal upgrade in the amount of \$100,000.00.
2. Design and construction of a Rail Trail Connection from the end of Rail Trail – Phase II to the Downtown Welcome Center in Titusville, Florida in the amount of \$300,00.00.
3. Construction of sidewalks along Park Avenue where gaps in sidewalks exist in the amount of \$50,000.00.

From North Mainland TIFT Fund.

Such Project(s) is(are) more specifically described and set forth in Exhibit "A", attached hereto and by this reference made a part hereof.

### **ARTICLE IV**

#### **FUNDING AND METHOD OF PAYMENT**

- 4.1 The amount payable by COUNTY under this Agreement shall be \$450,000.00.
- 4.2 Following execution of this Agreement, the Planning and Development Director or designee shall provide written notice to Department for the disbursement of TIFT Funds in the amount of \$450,000.00.

### **ARTICLE V**

#### **RECORDS**

- 5.1 The COUNTY and the CITY 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.

- 5.2 If CITY has awarded a contract to an independent contractor to perform Project(s) services, CITY shall submit to COUNTY, if requested, a certified copy of the contractor's invoices stating the services rendered and the date the services were rendered specifically identifying TIFT Funds used.
- 5.3 CITY agrees to furnish to the Planning and Development Department Director, status reports on November 1 of each year identifying the interest accrued, the expenditures to date and the project progress.

## ARTICLE VI

### ASSURANCES

- 6.1 CITY hereby agrees to comply with all applicable state and local laws, ordinances, and codes and regulations, applicable to the expenditure of the TIFT Funds to the extent that any such laws, ordinances, codes and regulations are specifically directed to the CITY's attention in writing by the COUNTY.
- 6.2 CITY hereby agrees to maintain books, records and documents in accordance with standard accounting procedures and practices of the CITY which sufficiently and properly reflect all expenditures of funds provided by COUNTY under this Agreement.
- 6.3 CITY agrees to expend TIFT Funds allocated to the Project(s) by the expiration date in Article VIII. All TIFT Funds not expended or encumbered within the term of this Agreement shall be returned to the custody and control of COUNTY. An administrative extension, if requested prior to expiration, may be granted by the Planning and Development Department Director for a period not to exceed one hundred eighty (180) days if just cause is shown. This section shall not require the CITY to return to the COUNTY custody or control of any TIFT Funds which have been contractually committed for expenditure by the CITY within a six-year time frame from the date of impact fee payment, but are yet unpaid, or funds the CITY's use of which is an issue in any pending litigation involving the CITY.
- 6.4 CITY agrees to complete each project identified in this agreement. In the event TIFT Funds are not sufficient, the CITY may submit to the COUNTY a request for additional revenue from the TIFT Funds.
- 6.5 CITY hereby agrees that if it has directly and knowingly caused any funds to be expended in violation of the Agreement, it shall be responsible to refund such monies in full to COUNTY.
- 6.6 CITY agrees to return to the Department the unexpended TIFT Funds no later than sixty (60) days following the expiration date in Article VIII or within sixty (60) days following an administrative extension under Section 6.4, if applicable, along with a completed Form B, attached hereto and by this reference made a part hereof. An administrative extension for the return of funds, if requested prior to the sixty (60) day expiration period, may be granted by the Planning and Development Department Director for a period not to exceed sixty (60) days if just cause is shown.

- 6.7 Program interest generated as a result of receipt of TIFT Funds may be retained by CITY provided that this interest shall be added to TIFT Funds committed to the Project(s) by the CITY and used in conjunction with the original allocation to further the eligible project objective. Expenditure of program interest is subject to the terms of this Agreement with Brevard County. Any remaining TIFT funds, including the amount of interest generated in a contract period if not expended for the approved Project(s) shall be returned to COUNTY and shall be placed back in TIFT account for benefit of North Mainland within the time periods provided in Section 6.6.
- 6.8 CITY hereby agrees and understands that all funding authorization through a TIFT Fund shall be used only for eligible activities specifically outlined in this Agreement. Revenues shall not be utilized for correcting deficiencies. They shall be utilized to fund the future capacity components for transportation facilities identified in Exhibit "A". All expenditures shall be consistent with the Interlocal Agreement signed August 23, 2005.
- 6.9 CITY hereby agrees to submit to the Planning and Development Department within sixty (60) days of the completion of each Project(s), as set out in Article III, a complete financial accounting of all its Project(s) activities, as provided on Exhibit "B", attached hereto and by reference made a part hereof.

## **ARTICLE VII**

### **INDEMNIFICATION CLAUSE**

CITY, to the extent allowed by law, will at all times hereafter indemnify and hold harmless, COUNTY, its officers, agents and employees, against any and all claims, losses, liabilities, or expenditures of any kind, including court costs and expenses, accruing or resulting from any or all suits or damages of any kind resulting from injuries or damages sustained by any person or persons, corporation or property, by virtue of the CITY's failure to perform any obligation or undertaking of the CITY as set forth in this Agreement. The foregoing indemnification does not waive any defense of sovereign immunity and shall not waive the damage limits set forth in Section 768.28 Florida Statutes, nor shall it be construed to constitute an agreement by the City to indemnify any other party for such other party's negligent, willful, or intentional acts or omissions.

## **ARTICLE VIII**

### **TERM OF AGREEMENT**

This agreement shall commence on the day the Division Director provides written Notice to Department for the disbursement of TIFT Funds and shall remain in effect until September 30, 2020.

## **ARTICLE IX**

### **TERMINATION**

- 9.1 If, through any cause, CITY fails to commence work on the project, or fails to fulfill in timely and proper manner its obligations under this Agreement, or if CITY shall violate any of the covenants, agreements, or stipulations of this Agreement, COUNTY shall thereupon have the right to terminate this Agreement and may require the return of funds expended or committed for expenditure in violation of this agreement by giving written notice to CITY of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of termination. If just cause is shown prior to termination, the Planning and Development Department Director may specify in writing the actions that must be taken by CITY and a reasonable date for compliance; as a condition to avoid termination. In no event can the Agreement date be extended beyond the periods provided in this Agreement without amendment to the Agreement executed with the same formality and of equal dignity herewith.
- 9.2 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 CITY with TIFT Funds under this Agreement shall be provided to COUNTY.
- 9.3 In the best interests of the program and in order to better serve the people in the impact fee districts and fulfill the purposes of the Act, either party may terminate this Agreement upon giving thirty (30) days notice in writing of its intent to terminate, stating its reasons for doing so. In the event CITY or COUNTY terminates the Agreement, CITY shall refund COUNTY, all unexpended and unencumbered TIFT Funds received and interest accrued therefrom. In the event that this Agreement is terminated by either party and the amount of unexpended and unencumbered funds and the accrued interest that is refunded to the COUNTY is less than \$634,780.50 the CITY acknowledges its consent to appropriate sufficient transportation impact fees collected within the corporate limits of the CITY towards a project selected by the COUNTY regardless of whether the selected project is located within the CITY or not to alleviate any shortfall.
- 9.4 The parties hereby agree that the following events are sufficient cause for termination of the Agreement. Such events include, but are not limited to:
  - a. Improper use of TIFT Funds;
  - b. Failure to comply with the terms of this Agreement.

**ARTICLE X**

**INDEPENDENT CONTRACTOR**

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

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 CITY, which shall not conflict with COUNTY, or state rules or regulations relating to the use of TIFT Funds.

**ARTICLE XI**

**ALL PRIOR DISBURSEMENT AGREEMENTS SUPERSEDED**

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. This agreement does not supersede the Interlocal Agreement between Brevard County and the City of Titusville approved by the County on July 26, 2005 and by the City on August 23, 2005.

**ARTICLE XII**

**NOTICES**

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:            Director  
                                 Planning and Development Department  
                                 2725 Judge Fran Jamieson Way  
                                 Viera, FL 32940

FOR CITY:                City Manager  
                                 City of Titusville  
                                 Post Office Box 2806  
                                 Titusville, FL 32781

### **ARTICLE XIII**

#### **AMENDMENTS**

COUNTY may amend this Agreement, if required by legislation, to conform to mandates in state guidelines, directives, and objectives relating to the use of TIFT Funds. 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. CITY shall be notified pursuant to ARTICLE XII and such notification shall constitute an official amendment. 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.

### **ARTICLE XIV**

#### **CONFLICT OF INTEREST**

CITY covenants that no person who presently exercises any functions or responsibilities in connection with the Project(s) has any personal financial interest, direct or indirect, in the Project(s) 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 CITY or its employees shall be disclosed in writing to the Planning and Development Department.

### **ARTICLE XV**

#### **SEVERABILITY**

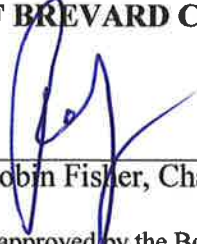
If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from this Agreement without affecting the binding force of the remainder of the Agreement.

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

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk

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

By   
\_\_\_\_\_  
Robin Fisher, Chairman

As approved by the Board of County Commissioners  
on May 12, 2015.

ATTEST:

  
\_\_\_\_\_  
Wanda F. Wells, MMC City Clerk

**CITY OF TITUSVILLE, FLORIDA**


By   
\_\_\_\_\_  
James H. Tulley, Jr., Mayor

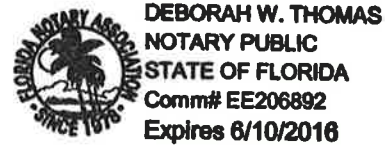
Date: 7-27, 2015



STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 5 day of August, 2015 by Robin Fisher, 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  
My commission expires:



STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of July, 2015 by James H. Tulley, Jr., Mayor of the City of Titusville, Florida, who is personally known to me or produced n/a \_\_\_\_\_ as identification and who did take an oath.

  
NOTARY PUBLIC - State of Florida  
My commission expires: Aug. 4, 2016



## EXHIBIT "A"

### PROJECT(S) DESCRIPTION

1. Intersection improvements at Park Avenue and Harrison Street in Titusville, Florida that include a traffic signal upgrade in the amount of \$100,000.00. Anticipated engineering services include, but are not limited to: design survey, development of ADA compliant construction plans, preparation of bid packages, construction surveying, contract administration, preparation of as-built survey, and construction management.
2. Design and construction of a Rail Trail Connection from the end of Rail Trail – Phase II to the Downtown Welcome Center in Titusville, Florida in the amount of \$300,00.00. Anticipated engineering services include, but are not limited to: design survey, development of ADA compliant construction plans, development of landscape/landscape adjustment plans, preparation of bid packages, construction surveying, contract administration, preparation of as-built survey, and construction management. Anticipated construction services include but are not limited to: trimming and removing trees as necessary; moving of shrubs, landscape material, existing irrigation systems and other utilities, and re-sodding as necessary; demolition, removal and replacement of driveway aprons as necessary; demolition, grading, compaction, forming, placing and finishing the Rail Trail Extension and constructing detectable warning devices, driveway aprons, and curbs as needed.
3. Construction of sidewalks along Park Avenue where gaps in sidewalks exist in the amount of \$50,000.00. Anticipated engineering services include, but are not limited to: design survey, development of ADA compliant construction plans, development of landscape/landscape adjustment plans, preparation of bid packages, construction surveying, contract administration, preparation of as-built survey, and construction management. Anticipated construction services include but are not limited to: trimming and removing trees as necessary; moving of shrubs, landscape material, existing irrigation systems and other utilities, and re-sodding as necessary; demolition, removal and replacement of driveway aprons as necessary; demolition, grading, compaction, forming, placing and finishing the concrete sidewalks and constructing detectable warning devices, driveway aprons, and curbs as needed.

From North Mainland TIFT Fund.

**EXHIBIT "B"**

**FINAL ACCOUNTING FOR PROJECT**

Project Name: Park Avenue Phase 1 Improvements  
From North Mainland TIF Fund

Date	Activity	Check #	Impact Fee Deposit	Project Expense	Program Interest*	Unexpended Funds
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Totals

\* Based on SBA Interest Rate applicable to each month.

TRANSPORTATION IMPACT FEE TRUST FUND  
DISBURSEMENT AGREEMENT

Between

BREVARD COUNTY

and

INDIAN HARBOUR BEACH, FLORIDA

for

2015 IMPROVEMENT PROJECTS

in the amount of \$263,571.32

PROVIDING FOR FUNDING AND ADMINISTRATION OF  
IMPACT FEE PROJECTS

This is an Agreement between: BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY," through its Board of County Commissioners,

and

INDIAN HARBOUR BEACH, FLORIDA, a Florida municipal corporation, its successors and assigns, hereinafter referred to as "CITY".

WITNESSETH that, for and in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, COUNTY and CITY agree as follows:

**ARTICLE I**

**DEFINITIONS AND IDENTIFICATIONS**

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 ASSURANCES: means those assurances made by CITY to COUNTY specifically set forth in this Agreement.
- 1.2 CITY: means and refers to the City of Indian Harbour Beach, Florida, a Florida municipal corporation.
- 1.3 COUNTY: means and refers to Brevard County, Florida, a political subdivision of the State of Florida.
- 1.4 DEPARTMENT: means the Finance Department of Brevard County, Florida.

- 1.5 DIVISION: means the Planning and Zoning Office of Brevard County, Florida.
- 1.6 IMPACT FEE PROGRAM OR PROGRAM: means Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida.
- 1.7 INTERLOCAL AGREEMENT: means and refers to that agreement between Brevard County, Florida, and the City of Indian Harbour Beach, Florida, dated December 5, 1989, providing for participation in the Brevard County Transportation Impact Fee Program.
- 1.8 PROGRAM INTEREST: means interest generated from TIFT funds after receipt by CITY.
- 1.9 PROJECT(S): means the project or projects set forth in Article III hereof, and Exhibit "A" entitled "Project Description".
- 1.10 TIFT FUNDS: means the Transportation Impact Fee Trust; the monies given to CITY pursuant to the terms of this Agreement.

## ARTICLE II

### PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida, incorporated herein by reference, provides for the imposition of the Transportation Impact Fee and sets forth the manner and amount for collection and use of funds.
- 2.2 Pursuant to interlocal agreement dated December 5, 1989, incorporated herein by reference, the COUNTY and CITY have coordinated the collection of Transportation Impact Fees and participated in the process for project recommendations to the Board of County Commissioners of Brevard County, Florida.
- 2.3 Under Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida and interlocal agreement, COUNTY is administrator for the Program and COUNTY is mandated to comply with various statutes, rules and regulations as to the allocation of expenditure of funds.

- 2.4 COUNTY is desirous of disbursing TIFT Funds to CITY. However, as administrator for the Program, COUNTY desires to obtain the assurances from CITY and CITY so assures COUNTY, that CITY will comply with all state and local statutes, rules and regulations and applicable codes and regulations as made known to the CITY relating to the Project(s) and the Program, as a condition precedent to the release of such funds to CITY.

### **ARTICLE III**

#### **PROJECT(S)**

CITY hereby agrees to provide and implement the following eligible Project(s):

1. Construction of a concrete sidewalk along Banana River Drive between South Patrick Drive and Oars and Paddles Park in Indian Harbour Beach, Florida in the amount of \$50,000.00
2. Procurement of consulting services to conduct a citywide mobility study in Indian Harbour Beach, Florida in the amount of \$50,000.00.
3. Design, engineering and construction of pedestrian improvements along State Road A1A between Volunteer Way and Wallace Avenue in Indian Harbour Beach, Florida in the amount of \$163,571.32.

From South Beaches TIFT Fund.

Such Project(s) is(are) more specifically described and set forth in Exhibit "A", attached hereto and by this reference made a part hereof.

### **ARTICLE IV**

#### **FUNDING AND METHOD OF PAYMENT**

- 4.1 The amount payable by COUNTY under this Agreement shall be \$263,571.32
- 4.2 Following execution of this Agreement, the Planning and Development Department Director or designee shall provide written notice to Department for the disbursement of TIFT Funds.

## ARTICLE V

### RECORDS

- 5.1 The COUNTY and the CITY 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.
- 5.2 If CITY has awarded a contract to an independent contractor to perform Project(s) services, CITY shall submit to COUNTY, if requested, a certified copy of the contractor's invoices stating the services rendered and the date the services were rendered specifically identifying TIFT Funds used.
- 5.3 CITY agrees to furnish to the Planning and Zoning Office Director, status reports on November 1 of each year identifying the interest accrued, the expenditures to date and the project progress.

## ARTICLE VI

### ASSURANCES

- 6.1 CITY hereby agrees to comply with all applicable state and local laws, ordinances, and codes and regulations. Any conflict or inconsistency between state or local guidelines and regulations and this Agreement shall be resolved in favor of the more restrictive regulations.
- 6.2 CITY hereby gives COUNTY, through its authorized representative, access to and the right to examine all records, books, papers, or documents relating to the Project(s).
- 6.3 CITY hereby agrees to maintain books, records and documents in accordance with standard accounting procedures and practices of the CITY which sufficiently and properly reflect all expenditures of funds provided by COUNTY under this Agreement.
- 6.4 CITY agrees to expend TIFT funds allocated to the Project(s) by the expiration date in Article VIII. All TIFT funds not expended within the term of this Agreement shall be returned to the custody and control of the COUNTY. An administrative extension, if requested prior to expiration, may be granted by the Planning and Zoning Office Director for a period not to exceed one hundred eighty (180) days if just cause is shown.
- 6.5 CITY agrees to complete each project identified in this agreement. In the event TIFT Funds are not sufficient, the CITY may submit to the COUNTY a request for additional revenue from the TIFT Funds. However, if additional revenue is not provided pursuant to that request, the CITY agrees to utilize its independent resources to complete the project.

- 6.6 CITY hereby agrees that if it has directly and knowingly caused any funds to be expended in violation of the Agreement, it shall be responsible to refund such monies in full to COUNTY.
- 6.7 CITY agrees to return to the Department the unexpended TIFT Funds no later than sixty (60) days following the expiration date in Article VIII or within sixty (60) days following an administrative extension under Section 6.4, if applicable, along with a completed Form B, attached hereto and by this reference made a part hereof. An administrative extension for the return of funds, if requested prior to the sixty (60) day expiration period, may be granted by the Planning and Zoning Office Director for a period not to exceed sixty (60) days if just cause is shown.
- 6.8 Program interest generated as a result of receipt of TIFT Funds may be retained by CITY provided that this interest shall be added to TIFT Funds committed to the Project(s) by the CITY and used in conjunction with the original allocation to further the eligible project objective. Expenditure of program interest is subject to the terms of this Agreement with Brevard County. Any remaining TIFT funds, including the amount of interest generated in a contract period if not expended for the approved Project(s) shall be returned to COUNTY and shall be placed back in TIFT account for benefit of District 4 within the time periods provided in Section 6.7.
- 6.9 CITY hereby agrees and understands that all funding authorization through a TIFT Fund shall be used only for eligible activities specifically outlined in this Agreement. Revenues shall not be utilized for correcting deficiencies. They shall be utilized to fund the future capacity components for transportation facilities identified in Exhibit "A".
- 6.10 CITY hereby agrees to submit to the Planning and Zoning Office within sixty (60) days of the completion of each Project(s), as set out in Article III, a complete financial accounting of all its Project(s) activities, as provided on Exhibit "B", attached hereto and by reference made a part hereof.

## **ARTICLE VII**

### **INDEMNIFICATION CLAUSE**

CITY, to the extent allowed by law, will at all times hereafter indemnify and hold harmless, COUNTY, its officers, agents and employees, against any and all claims, losses, liabilities, or expenditures of any kind, including court costs and expenses, accruing or resulting from any or all suits or damages of any kind resulting from injuries or damages sustained by any person or persons, corporation or property, by virtue of the CITY's willful failure to perform any obligation or undertaking of the CITY as set forth in this Agreement.

## **ARTICLE VIII**

### **TERM OF AGREEMENT**

This agreement shall commence on the day the Division Director provides written Notice to Department for the disbursement of TIFT Funds and shall terminate on September 30, 2018.

## ARTICLE IX

### TERMINATION

- 9.1 If, through any cause, CITY fails to commence work on the project, or fails to fulfill in timely and proper manner its obligations under this Agreement, or if CITY shall violate any of the covenants, agreements, or stipulations of this Agreement, COUNTY shall thereupon have the right to terminate this Agreement and may require the return of funds expended or committed for expenditure in violation of this agreement by giving written notice to CITY of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of termination. If just cause is shown prior to termination, the Planning and Zoning Office Director may specify in writing the actions that must be taken by CITY and a reasonable date for compliance; as a condition to avoid termination. In no event can the Agreement date be extended beyond the periods provided in this Agreement without amendment to the Agreement executed with the same formality and of equal dignity herewith.
- 9.2 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 CITY with TIFT Funds under this Agreement shall be provided to COUNTY.
- 9.3 In the best interests of the program and in order to better serve the people in the impact fee districts and fulfill the purposes of the Act, either party may terminate this Agreement upon giving thirty (30) days notice in writing of its intent to terminate, stating its reasons for doing so. In the event CITY or COUNTY terminates the Agreement, CITY shall refund COUNTY, all unexpended and unencumbered TIFT Funds received and interest accrued therefrom.
- 9.4 The parties hereby agree that the following events are sufficient cause for termination of the Agreement. Such events include, but are not limited to:
- a. Improper use of TIFT Funds;
  - b. Failure to comply with the terms of this Agreement.

## ARTICLE X

### INDEPENDENT CONTRACTOR

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

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 CITY, which shall not conflict with COUNTY, or state rules or regulations relating to the use of TIFT Funds.

**ARTICLE XI**

**ALL PRIOR DISBURSEMENT AGREEMENTS SUPERSEDED**

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. This agreement does not supersede Interlocal Agreement signed on December 5, 1989.

**ARTICLE XII**

**NOTICES**

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:        Director  
                          Planning and Zoning Office  
                          2725 Judge Fran Jamieson Way  
                          Viera, Florida 32940

FOR CITY:            City Manager  
                          City of Indian Harbour Beach  
                          2055 South Patrick Drive  
                          Indian Harbour Beach, FL 32937

**ARTICLE XIII**

**AMENDMENTS**

COUNTY may amend this Agreement, if required by legislation, to conform with mandates in state guidelines, directives, and objectives relating to the use of TIFT Funds. 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. CITY shall be notified pursuant to ARTICLE XII and such notification shall constitute an official amendment. 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.

**ARTICLE XIV**

**CONFLICT OF INTEREST**

CITY covenants that no person who presently exercises any functions or responsibilities in connection with the Project(s) has any personal financial interest, direct or indirect, in the Project(s) 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 CITY or its employees shall be disclosed in writing to the Division.

**ARTICLE XV**

**SEVERABILITY**

If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from this Agreement without affecting the binding force of the remainder of the Agreement.

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

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk

**BREVARD COUNTY BOARD OF  
COUNTY COMMISSIONERS**

  
\_\_\_\_\_  
Robin Fisher, Chairman

As approved by the Board of County Commissioners  
on May 12, 2015.

**CITY OF INDIAN HARBOUR BEACH, FLORIDA**

ATTEST:

  
\_\_\_\_\_  
Deborah Maliska, City Clerk

  
\_\_\_\_\_  
Mark Ryan, City Manager

Date: JUNE 10, 2015

STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 15th day of May, 2015 by Robin Fisher, 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.

Tammy Lynn Etheridge  
NOTARY PUBLIC - State of Florida



STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 12 day of June, 2015 by Gene Newberry, Sr., Mayor of the City of Indian Harbour Beach, Florida, who is personally known to me or produced \_\_\_\_\_ as identification and who did take an oath.

Samantha Anderson Turner  
NOTARY PUBLIC - State of Florida



## EXHIBIT "A"

### PROJECT(S) DESCRIPTION

The first project to be funded by this Disbursement Agreement is the construction of a sidewalk along Banana River Drive from South Patrick Drive to Oars and Paddles Park in Indian Harbour Beach. The anticipated scope of work for this project includes: trimming, relocation, removal and/or replacement of trees, shrubs, sod and/or other landscape materials; relocation, removal and/or replacement of existing irrigation systems; demolition, removal and replacement of driveways as necessary; and grading, compaction, forming, placing and finishing of 6 inch thick concrete sidewalk, and constructing new concrete A.D.A. compliant handicapped ramps and enhanced crosswalks as needed.

The second project to be funded by this Disbursement Agreement is the procurement of consulting services to conduct a citywide mobility study for the City of Indian Harbour Beach to identify alternative transportation strategies.

The third project to be funded by this Disbursement Agreement is for the engineering and construction of pedestrian improvements on State Road A1A between Volunteer Way and Wallace Avenue. Anticipated engineering services include, but are not limited to: design survey, development of ADA compliant construction plans, development of landscape/landscape adjustment plans, preparation of bid packages, construction surveying, contract administration, preparation of as-built survey, and construction management. Anticipated construction services include but are not limited to: trimming and removing trees as necessary; moving of shrubs, landscape material, existing irrigation systems and other utilities, and re-sodding as necessary; demolition, removal and replacement of driveway aprons as necessary; demolition, grading, compaction, forming, placing and finishing concrete median and sidewalk improvements; and constructing detectable warning devices, driveway aprons, and curbs as needed

From South Beaches TIFT Fund.

**EXHIBIT "B"**

**FINAL ACCOUNTING FOR PROJECT**

Project Name: Yuma Drive Sidewalk Project  
From South Beaches TIFT Fund

Date	Activity	Check #	Impact Fee Deposit	Project Expense	Program Interest*	Unexpended Funds
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Totals

\* Based on SBA Interest Rate applicable to each month.

TRANSPORTATION IMPACT FEE TRUST FUND  
DISBURSEMENT AGREEMENT

Between

BREVARD COUNTY

and

SATELLITE BEACH, FLORIDA

for

ROOSEVELT AVENUE COMPLETE STREETS IMPROVEMENTS

in the amount of \$178,822.27

PROVIDING FOR FUNDING AND ADMINISTRATION OF  
IMPACT FEE PROJECTS

This is an Agreement between: BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY," through its Board of County Commissioners,

and

SATELLITE BEACH, FLORIDA, a Florida municipal corporation, its successors and assigns, hereinafter referred to as "CITY".

WITNESSETH that, for and in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, COUNTY and CITY agree as follows:

**ARTICLE I**

**DEFINITIONS AND IDENTIFICATIONS**

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 ASSURANCES: means those assurances made by CITY to COUNTY specifically set forth in this Agreement.
- 1.2 CITY: means and refers to the City of Satellite Beach, Florida, a Florida municipal corporation.
- 1.3 COUNTY: means and refers to Brevard County, Florida, a political subdivision of the State of Florida.
- 1.4 DEPARTMENT: means the Finance Department of Brevard County, Florida.

- 1.5 DIVISION: means the Planning and Development Department of Brevard County, Florida.
- 1.6 IMPACT FEE PROGRAM OR PROGRAM: means Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida.
- 1.7 INTERLOCAL AGREEMENT: means and refers to that agreement between Brevard County, Florida, and the City of Satellite Beach, Florida, dated February 20, 1990, providing for participation in the Brevard County Transportation Impact Fee Program.
- 1.8 PROGRAM INTEREST: means interest generated from TIFT funds after receipt by CITY.
- 1.9 PROJECT(S): means the project or projects set forth in Article III hereof, and Exhibit "A" entitled "Project Description".
- 1.10 TIFT FUNDS: means the Transportation Impact Fee Trust; the monies given to CITY pursuant to the terms of this Agreement.

## ARTICLE II

### PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida, incorporated herein by reference, provides for the imposition of the Transportation Impact Fee and sets forth the manner and amount for collection and use of funds.
- 2.2 Pursuant to interlocal agreement dated February 20, 1990, incorporated herein by reference, the COUNTY and CITY have coordinated the collection of Transportation Impact Fees and participated in the process for project recommendations to the Board of County Commissioners of Brevard County, Florida.
- 2.3 Under Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida and interlocal agreement, COUNTY is administrator for the Program and COUNTY is mandated to comply with various statutes, rules and regulations as to the allocation of expenditure of funds.
- 2.4 COUNTY is desirous of disbursing TIFT Funds to CITY. However, as administrator for the Program, COUNTY desires to obtain the assurances from CITY and CITY so assures

COUNTY, that CITY will comply with all state and local statutes, rules and regulations and applicable codes and regulations as made known to the CITY relating to the Project(s) and the Program, as a condition precedent to the release of such funds to CITY.

### **ARTICLE III**

#### **PROJECT(S)**

CITY hereby agrees to provide and implement the following eligible Project(s):

This project includes design, engineering and construction of Complete Streets Improvements on Roosevelt Avenue between South Patrick Drive and State Road A1A.

From South Beaches TIFT Fund.

Such Project(s) is(are) more specifically described and set forth in Exhibit "A", attached hereto and by this reference made a part hereof.

### **ARTICLE IV**

#### **FUNDING AND METHOD OF PAYMENT**

- 4.1 The amount payable by COUNTY under this Agreement shall be \$178,822.27
- 4.2 Following execution of this Agreement, the Planning and Development Department Director or designee shall provide written notice to Department for the disbursement of TIFT Funds.

### **ARTICLE V**

#### **RECORDS**

- 5.1 The COUNTY and the CITY 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.

- 5.2 If CITY has awarded a contract to an independent contractor to perform Project(s) services, CITY shall submit to COUNTY, if requested, a certified copy of the contractor's invoices stating the services rendered and the date the services were rendered specifically identifying TIFT Funds used.
- 5.3 CITY agrees to furnish to the Planning and Development Department Director, status reports on November 1 of each year identifying the interest accrued, the expenditures to date and the project progress.

## ARTICLE VI

### ASSURANCES

- 6.1 CITY hereby agrees to comply with all applicable state and local laws, ordinances, and codes and regulations. Any conflict or inconsistency between state or local guidelines and regulations and this Agreement shall be resolved in favor of the more restrictive regulations.
- 6.2 CITY hereby gives COUNTY, through its authorized representative, access to and the right to examine all records, books, papers, or documents relating to the Project(s).
- 6.3 CITY hereby agrees to maintain books, records and documents in accordance with standard accounting procedures and practices of the CITY which sufficiently and properly reflect all expenditures of funds provided by COUNTY under this Agreement.
- 6.4 CITY agrees to expend TIFT funds allocated to the Project(s) by the expiration date in Article VIII. All TIFT funds not expended within the term of this Agreement shall be returned to the custody and control of the COUNTY. An administrative extension, if requested prior to expiration, may be granted by the Planning and Development Department Director for a period not to exceed one hundred eighty (180) days if just cause is shown.
- 6.5 CITY agrees to complete each project identified in this agreement. In the event TIFT Funds are not sufficient, the CITY may submit to the COUNTY a request for additional revenue from the TIFT Funds. However, if additional revenue is not provided pursuant to that request, the CITY agrees to utilize its independent resources to complete the project.
- 6.6 CITY hereby agrees that if it has directly and knowingly caused any funds to be expended in violation of the Agreement, it shall be responsible to refund such monies in full to COUNTY.
- 6.7 CITY agrees to return to the Department the unexpended TIFT Funds no later than sixty (60) days following the expiration date in Article VIII or within sixty (60) days following an administrative extension under Section 6.4, if applicable, along with a completed Form B, attached hereto and by this reference made a part hereof. An administrative extension for the return of funds, if requested prior to the sixty (60) day expiration period, may be granted by the Planning and Development Department Director for a period not to exceed sixty (60) days if just cause is shown.
- 6.8 CITY may retain program interest generated as a result of receipt of TIFT Funds provided that this interest shall be added to TIFT Funds committed to the Project(s) by

the CITY and used in conjunction with the original allocation to further the eligible project objective. Expenditure of program interest is subject to the terms of this Agreement with Brevard County. Any remaining TIFT funds, including the amount of interest generated in a contract period if not expended for the approved Project(s) shall be returned to COUNTY and shall be placed back in TIFT account for benefit of South Beaches within the time periods provided in Section 6.7.

- 6.9 CITY hereby agrees and understands that all funding authorization through a TIFT Fund shall be used only for eligible activities specifically outlined in this Agreement. Revenues shall not be utilized for correcting deficiencies. They shall be utilized to fund the future capacity components for transportation facilities identified in Exhibit "A".
- 6.10 CITY hereby agrees to submit to the Planning and Development Department within sixty (60) days of the completion of each Project(s), as set out in Article III, a complete financial accounting of all its Project(s) activities, as provided on Exhibit "B", attached hereto and by reference made a part hereof.

**ARTICLE VII**

INDEMNIFICATION CLAUSE

CITY, to the extent allowed by law, will at all times hereafter indemnify and hold harmless, COUNTY, its officers, agents and employees, against any and all claims, losses, liabilities, or expenditures of any kind, including court costs and expenses, accruing or resulting from any or all suits or damages of any kind resulting from injuries or damages sustained by any person or persons, corporation or property, by virtue of the CITY's failure to perform any obligation or undertaking of the CITY as set forth in this Agreement.

**ARTICLE VIII**

TERM OF AGREEMENT

This agreement shall commence on the day the Division Director provides written Notice to Department for the disbursement of TIFT Funds and shall terminate on September 30, 2018.

**ARTICLE IX**

TERMINATION

- 9.1 If, through any cause, CITY fails to commence work on the project, or fails to fulfill in timely and proper manner its obligations under this Agreement, or if CITY shall violate any of the covenants, agreements, or stipulations of this Agreement, COUNTY shall thereupon have the right to terminate this Agreement and may require the return of funds expended or committed for expenditure in violation of this agreement by giving written notice to CITY of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of termination. If just cause is shown prior to termination, the Planning and Development Department Director may specify in writing the actions that must be taken by CITY and a reasonable date for compliance; as a

- condition to avoid termination. In no event can the Agreement date be extended beyond the periods provided in this Agreement without amendment to the Agreement executed with the same formality and of equal dignity herewith.
- 9.2 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 CITY with TIFT Funds under this Agreement shall be provided to COUNTY.
- 9.3 In the best interests of the program and in order to better serve the people in the impact fee districts and fulfill the purposes of the Act, either party may terminate this Agreement upon giving thirty (30) days notice in writing of its intent to terminate, stating its reasons for doing so. In the event CITY or COUNTY terminates the Agreement, CITY shall refund COUNTY, all unexpended and unencumbered TIFT Funds received and interest accrued therefrom.
- 9.4 The parties hereby agree that the following events are sufficient cause for termination of the Agreement. Such events include, but are not limited to:
- a. Improper use of TIFT Funds;
  - b. Failure to comply with the terms of this Agreement.

## **ARTICLE X**

### **INDEPENDENT CONTRACTOR**

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

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 CITY, which shall not conflict with COUNTY, or state rules or regulations relating to the use of TIFT Funds.

## **ARTICLE XI**

### **ALL PRIOR DISBURSEMENT AGREEMENTS SUPERSEDED**

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. This agreement does not supersede Interlocal Agreement signed on February 20, 1990.

## **ARTICLE XII**

### **NOTICES**

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:           Department Director  
                              Planning and Development Department  
                              2725 Judge Fran Jamieson Way, Suite A114  
                              Viera, Florida 32940

FOR CITY:               City Manager  
                              City of Satellite Beach  
                              565 Cassia Boulevard  
                              Satellite Beach, FL 32937

## **ARTICLE XIII**

### **AMENDMENTS**

COUNTY may amend this Agreement, if required by legislation, to conform with mandates in state guidelines, directives, and objectives relating to the use of TIFT Funds. 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. CITY shall be notified pursuant to ARTICLE XII and such notification shall constitute an official amendment. 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.

**ARTICLE XIV**

**CONFLICT OF INTEREST**

CITY covenants that no person who presently exercises any functions or responsibilities in connection with the Project(s) has any personal financial interest, direct or indirect, in the Project(s) 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 CITY or its employees shall be disclosed in writing to the Division.

**ARTICLE XV**

**SEVERABILITY**

If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from this Agreement without affecting the binding force of the remainder of the Agreement.

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

**ATTEST:**

  
\_\_\_\_\_  
Scott Ellis, Clerk

**BREVARD COUNTY BOARD OF  
COUNTY COMMISSIONERS**


  
\_\_\_\_\_  
Robin Fisher, Chairman

As approved by the Board of County Commissioners  
on May 12, 2015.

**ATTEST:**

  
\_\_\_\_\_  
Leonor Olexa, CMC, City Clerk

**CITY OF SATELLITE BEACH, FLORIDA**

  
\_\_\_\_\_  
~~Frank Catino, Mayor~~ Dominick Montanaro, Vice-Mayor

Date: May 27, 2015

STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of May, 2015 by Robin Fisher, 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.

Tammy Lynn Etheridge  
NOTARY PUBLIC - State of Florida



STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of May, 2015 by ~~Frank Catino~~, Mayor of the City of Satellite Beach, Florida, who is personally known to me or produced ↑ \_\_\_\_\_ as identification and who did take an oath. Dominick Montanaro, Vice-Mayor



Leonor M. Olexa  
NOTARY PUBLIC - State of Florida

## EXHIBIT "A"

### PROJECT(S) DESCRIPTION

The project to be funded by this Disbursement Agreement is the design, engineering and construction of Complete Streets Improvements from SR513/South Patrick Drive to State Road A1A. The anticipated scope of work includes: design, engineering and construction of a ten foot wide shared use path on the north side of Roosevelt Avenue from South Patrick Drive to Pineapple Street and a ten foot wide shared use path on the south side of Roosevelt Avenue from Pineapple Street to State Road A1A. The scope also includes design, engineering and construction of a five foot wide sidewalk along the south side of Roosevelt Avenue from South Patrick to Pineapple Street and along the north side of Roosevelt Avenue from Pineapple Street to State Road A1A. The scope may include trimming and removing trees as necessary; moving of shrubs, landscape material, restoration and repair of existing irrigation systems, and re-sodding as necessary; demolition, removal and replacement of driveways as necessary; demolition, grading, compaction, forming, placing and finishing concrete sidewalk; and constructing new concrete A.D.A. compliant handicapped ramps and enhanced crosswalks as needed.

From South Beaches TIFT Fund.

**EXHIBIT "B"**

**FINAL ACCOUNTING FOR PROJECT**

Project Name: Roosevelt Avenue Complete Streets Improvements  
From South Beaches TIFT Fund

Date	Activity	Check #	Impact Fee Deposit	Project Expense	Program Interest*	Unexpended Funds
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Totals

\* Based on SBA Interest Rate applicable to each month.

TRANSPORTATION IMPACT FEE TRUST FUND  
DISBURSEMENT AGREEMENT

Between

BREVARD COUNTY

and

INDIALANTIC, FLORIDA

for the

WAVECREST AVENUE SIDEWALK EXTENSION, PHASE II

in the amount of \$39,500.00

PROVIDING FOR FUNDING AND ADMINISTRATION OF  
IMPACT FEE PROJECTS

This is an Agreement between: BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY," through its Board of County Commissioners,

and

INDIALANTIC, FLORIDA, a Florida municipal corporation, its successors and assigns, hereinafter referred to as "TOWN".

WITNESSETH that, for and in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, COUNTY and TOWN agree as follows:

**ARTICLE I**

**DEFINITIONS AND IDENTIFICATIONS**

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 ASSURANCES: means those assurances made by TOWN to COUNTY specifically set forth in this Agreement.
- 1.2 TOWN: means and refers to the Town of Indialantic, Florida, a Florida municipal corporation.
- 1.3 COUNTY: means and refers to Brevard County, Florida, a political subdivision of the State of Florida.
- 1.4 DEPARTMENT: means the Finance Department of Brevard County, Florida.

- 1.5 DIVISION: means the Planning and Development Department of Brevard County, Florida.
- 1.6 IMPACT FEE PROGRAM OR PROGRAM: means Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida.
- 1.7 INTERLOCAL AGREEMENT: means and refers to that agreement between Brevard County, Florida, and the Town of Indialantic, Florida, dated June 29, 1989, providing for participation in the Brevard County Transportation Impact Fee Program.
- 1.8 PROGRAM INTEREST: means interest generated from TIFT funds after receipt by TOWN.
- 1.9 PROJECT(S): means the project or projects set forth in Article III hereof, and Exhibit "A" entitled "Project Description".
- 1.10 TIFT FUNDS: means the Transportation Impact Fee Trust; the monies given to TOWN pursuant to the terms of this Agreement.

## ARTICLE II

### PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida, incorporated herein by reference, provides for the imposition of the Transportation Impact Fee and sets forth the manner and amount for collection and use of funds.
- 2.2 Pursuant to interlocal agreement dated February 20, 1990, incorporated herein by reference, the COUNTY and TOWN have coordinated the collection of Transportation Impact Fees and participated in the process for project recommendations to the Board of County Commissioners of Brevard County, Florida.
- 2.3 Under Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida and interlocal agreement, COUNTY is administrator for the Program and COUNTY is mandated to comply with various statutes, rules and regulations as to the allocation of expenditure of funds.
- 2.4 COUNTY is desirous of disbursing TIFT Funds to TOWN. However, as administrator for the Program, COUNTY desires to obtain the assurances from TOWN and TOWN so

assures COUNTY, that TOWN will comply with all state and local statutes, rules and regulations and applicable codes and regulations as made known to the TOWN relating to the Project(s) and the Program, as a condition precedent to the release of such funds to TOWN.

### **ARTICLE III**

#### **PROJECT(S)**

TOWN hereby agrees to provide and implement the following eligible Project(s):

1. The construction of a concrete sidewalk along Wavecrest Avenue between Fourteenth Avenue and State Road A1A in Indialantic, Florida.

From South Beaches TIFT Fund.

Such Project(s) is(are) more specifically described and set forth in Exhibit "A", attached hereto and by this reference made a part hereof.

### **ARTICLE IV**

#### **FUNDING AND METHOD OF PAYMENT**

- 4.1 The amount payable by COUNTY under this Agreement shall be \$39,500.00
- 4.2 Following execution of this Agreement, the Planning and Development Department Director or designee shall provide written notice to Department for the disbursement of TIFT Funds.

### **ARTICLE V**

#### **RECORDS**

- 5.1 The COUNTY and the TOWN 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.
- 5.2 If TOWN has awarded a contract to an independent contractor to perform Project(s) services, TOWN shall submit to COUNTY, if requested, a certified copy of the contractor's invoices stating the services rendered and the date the services were rendered specifically identifying TIFT Funds used.

- 5.3 TOWN agrees to furnish to the Planning and Development Department Director, status reports on November 1 of each year identifying the interest accrued, the expenditures to date and the project progress.

## ARTICLE VI

### ASSURANCES

- 6.1 TOWN hereby agrees to comply with all applicable state and local laws, ordinances, and codes and regulations. Any conflict or inconsistency between state or local guidelines and regulations and this Agreement shall be resolved in favor of the more restrictive regulations.
- 6.2 TOWN hereby gives COUNTY, through its authorized representative, access to and the right to examine all records, books, papers, or documents relating to the Project(s).
- 6.3 TOWN hereby agrees to maintain books, records and documents in accordance with standard accounting procedures and practices of the TOWN, which sufficiently and properly reflect all expenditures of funds provided by COUNTY under this Agreement.
- 6.4 TOWN agrees to expend TIFT funds allocated to the Project(s) by the expiration date in Article VIII. All TIFT funds not expended within the term of this Agreement shall be returned to the custody and control of the COUNTY. An administrative extension, if requested prior to expiration, may be granted by the Planning and Development Department Director for a period not to exceed one hundred eighty (180) days if just cause is shown.
- 6.5 TOWN agrees to complete each project identified in this agreement. In the event TIFT Funds are not sufficient, the TOWN may submit to the COUNTY a request for additional revenue from the TIFT Funds. However, if additional revenue is not provided pursuant to that request, the TOWN agrees to utilize its independent resources to complete the project.
- 6.6 TOWN hereby agrees that if it has directly and knowingly caused any funds to be expended in violation of the Agreement, it shall be responsible to refund such monies in full to COUNTY.
- 6.7 TOWN agrees to return to the Department the unexpended TIFT Funds no later than sixty (60) days following the expiration date in Article VIII or within sixty (60) days following an administrative extension under Section 6.4, if applicable, along with a completed Form B, attached hereto and by this reference made a part hereof. An administrative extension for the return of funds, if requested prior to the sixty (60) day expiration period, may be granted by the Planning and Development Department Director for a period not to exceed sixty (60) days if just cause is shown.
- 6.8 TOWN may retain program interest generated as a result of receipt of TIFT Funds provided that this interest shall be added to TIFT Funds committed to the Project(s) by the TOWN and used in conjunction with the original allocation to further the eligible project objective. Expenditure of program interest is subject to the terms of this Agreement with Brevard County. Any remaining TIFT funds, including the amount of interest generated in a contract period if not expended for the approved Project(s) shall be

returned to COUNTY and shall be placed back in TIFT account for the South Beaches Benefit District within the time periods provided in Section 6.7.

- 6.9 TOWN hereby agrees and understands that all funding authorization through a TIFT Fund shall be used only for eligible activities specifically outlined in this Agreement. Revenues shall not be utilized for correcting deficiencies. They shall be utilized to fund the future capacity components for transportation facilities identified in Exhibit "A".
- 6.10 TOWN hereby agrees to submit to the Planning and Development Department within sixty (60) days of the completion of each Project(s), as set out in Article III, a complete financial accounting of all its Project(s) activities, as provided on Exhibit "B", attached hereto and by reference made a part hereof.

## **ARTICLE VII**

### **INDEMNIFICATION CLAUSE**

TOWN, to the extent allowed by law, will at all times hereafter indemnify and hold harmless, COUNTY, its officers, agents and employees, against any and all claims, losses, liabilities, or expenditures of any kind, including court costs and expenses, accruing or resulting from any or all suits or damages of any kind resulting from injuries or damages sustained by any person or persons, corporation or property, by virtue of the TOWN's failure to perform any obligation or undertaking of the TOWN as set forth in this Agreement.

## **ARTICLE VIII**

### **TERM OF AGREEMENT**

This agreement shall commence on the day the Division Director provides written Notice to Department for the disbursement of TIFT Funds and shall terminate on September 30, 2018.

## **ARTICLE IX**

### **TERMINATION**

- 9.1 If, through any cause, TOWN fails to commence work on the project, or fails to fulfill in timely and proper manner its obligations under this Agreement, or if TOWN shall violate any of the covenants, agreements, or stipulations of this Agreement, COUNTY shall thereupon have the right to terminate this Agreement and may require the return of funds expended or committed for expenditure in violation of this agreement by giving written notice to TOWN of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of termination. If just cause is shown prior to termination, the Planning and Development Department Director may specify in writing the actions that must be taken by TOWN and a reasonable date for compliance; as a condition to avoid termination. In no event can the Agreement date be extended beyond the periods provided in this Agreement without amendment to the Agreement executed with the same formality and of equal dignity herewith.

- 9.2 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 TOWN with TIFT Funds under this Agreement shall be provided to COUNTY.
- 9.3 In the best interests of the program and in order to better serve the people in the impact fee districts and fulfill the purposes of the Act, either party may terminate this Agreement upon giving thirty (30) days notice in writing of its intent to terminate, stating its reasons for doing so. In the event TOWN or COUNTY terminates the Agreement, TOWN shall refund COUNTY, all unexpended and unencumbered TIFT Funds received and interest accrued therefrom.
- 9.4 The parties hereby agree that the following events are sufficient cause for termination of the Agreement. Such events include, but are not limited to:
- a. Improper use of TIFT Funds;
  - b. Failure to comply with the terms of this Agreement.

## **ARTICLE X**

### **INDEPENDENT CONTRACTOR**

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

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 TOWN, which shall not conflict with COUNTY, or state rules or regulations relating to the use of TIFT Funds.

## **ARTICLE XI**

### **ALL PRIOR DISBURSEMENT AGREEMENTS SUPERSEDED**

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. This agreement does not supersede Interlocal Agreement signed on June 29, 1989.

## ARTICLE XII

### NOTICES

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:        Director  
                         Planning and Development Department  
                         2725 Judge Fran Jamieson Way  
                         Viera, Florida 32940

FOR TOWN:         Town Manager  
                         Town of Indialantic  
                         216 Fifth Avenue  
                         Indialantic, FL 32903

## ARTICLE XIII

### AMENDMENTS

COUNTY may amend this Agreement, if required by legislation, to conform with mandates in state guidelines, directives, and objectives relating to the use of TIFT Funds. 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. TOWN shall be notified pursuant to ARTICLE XII and such notification shall constitute an official amendment. 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.

## ARTICLE XIV

### CONFLICT OF INTEREST

TOWN covenants that no person who presently exercises any functions or responsibilities in connection with the Project(s) has any personal financial interest, direct or indirect, in the Project(s) 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 TOWN or its employees shall be disclosed in writing to the Division.

**ARTICLE XV**

**SEVERABILITY**

If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from this Agreement without affecting the binding force of the remainder of the Agreement.

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

**ATTEST:**

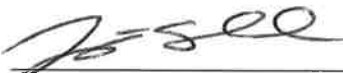
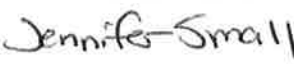
  
\_\_\_\_\_  
Scott Ellis, Clerk

**BREVARD COUNTY BOARD OF  
COUNTY COMMISSIONERS**

  
\_\_\_\_\_  
Robin Fisher, Chairman

As approved by the Board of County Commissioners  
on May 12, 2015.

**ATTEST:**

  
\_\_\_\_\_  
Laura Eaton, CMC, Town Clerk  
  
  
Jennifer Small  
Deputy Town Clerk

**TOWN OF INDIALANTIC, FLORIDA**

  
\_\_\_\_\_  
Christopher W. Chinault, Town Manager

Date: June 10, 2015

STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of May, 2015 by Robin Fisher, 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.

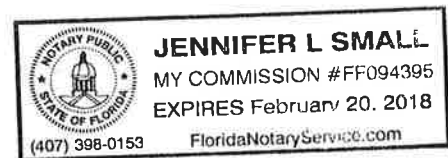
Tammy Lynn Etheridge  
NOTARY PUBLIC - State of Florida



STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 11 day of June, 2015 by Christopher W. Chinault, Town Manager of the Town of Indialantic, Florida, who is personally known to me or produced personally known as identification and who did take an oath.

J. S. Sell  
NOTARY PUBLIC - State of Florida



## EXHIBIT "A"

### PROJECT(S) DESCRIPTION

The project to be funded by this Disbursement Agreement is the construction of a concrete sidewalk along Wavecrest Avenue between Fourteenth Avenue and State Road A1A in Indialantic, Florida.

The anticipated scope of work for sidewalk construction includes engineering and construction services. Anticipated engineering services include, but are not limited to: design survey, development of ADA compliant construction plans, development of landscape/landscape adjustment plans, preparation of bid packages, construction surveying, contract administration, preparation of as-built survey, and construction management. Anticipated construction services include but are not limited to: trimming and removing trees as necessary; moving of shrubs, landscape material, existing irrigation systems and other utilities, and resodding as necessary; demolition, removal and replacement of driveway aprons as necessary; demolition, grading, compaction, forming, placing and finishing approximately 820 linear feet of 5 foot wide by 6 inch thick concrete sidewalk; and constructing detectable warning devices, driveway aprons, and curbs as needed.

From South Beaches TIFT Fund.

**EXHIBIT "B"**

**FINAL ACCOUNTING FOR PROJECT**

Project Name: Indialantic Sidewalk Projects  
From South Beaches TIFT Fund

Date	Activity	Check #	Impact Fee Deposit	Project Expense	Program Interest*	Unexpended Funds
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Totals

\* Based on SBA Interest Rate applicable to each month.

TRANSPORTATION IMPACT FEE TRUST FUND  
DISBURSEMENT AGREEMENT

Between

BREVARD COUNTY

and

COCOA BEACH, FLORIDA

for construction of a

COMPLETE STREETS IMPROVEMENTS ON MINUTEMAN CAUSEWAY

in the amount of \$189,343.56

PROVIDING FOR FUNDING AND ADMINISTRATION OF  
IMPACT FEE PROJECTS

This is an Agreement between: BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY," through its Board of County Commissioners,

and

COCOA BEACH, FLORIDA, a Florida municipal corporation, its successors and assigns, hereinafter referred to as "CITY".

WITNESSETH that, for and in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, COUNTY and CITY agree as follows:

**ARTICLE I**

**DEFINITIONS AND IDENTIFICATIONS**

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 ASSURANCES: means those assurances made by CITY to COUNTY specifically set forth in this Agreement.
- 1.2 CITY: means and refers to the City of Cocoa Beach, Florida, a Florida municipal corporation.
- 1.3 COUNTY: means and refers to Brevard County, Florida, a political subdivision of the State of Florida.
- 1.4 DEPARTMENT: means the Finance Department of Brevard County, Florida.

- 1.5 DIVISION: means the Planning and Development Department of Brevard County, Florida.
- 1.6 IMPACT FEE PROGRAM OR PROGRAM: means Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida.
- 1.7 INTERLOCAL AGREEMENT: means and refers to that agreement between Brevard County, Florida, and the City of Cocoa Beach, Florida, providing for participation in the Brevard County Transportation Impact Fee Program.
- 1.8 PROGRAM INTEREST: means interest generated from TIFT funds after receipt by CITY.
- 1.9 PROJECT(S): means the project or projects set forth in Article III hereof, and Exhibit "A" entitled "Project Description".
- 1.10 TIFT FUNDS: means the Transportation Impact Fee Trust; the monies given to CITY pursuant to the terms of this Agreement.

## ARTICLE II

### PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida, incorporated herein by reference, provides for the imposition of the Transportation Impact Fee and sets forth the manner and amount for collection and use of funds.
- 2.2 Pursuant to interlocal agreement dated March 6, 1990, incorporated herein by reference, the COUNTY and CITY have coordinated the collection of Transportation Impact Fees and participated in the process for project recommendations to the Board of County Commissioners of Brevard County, Florida.
- 2.3 Under Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida and interlocal agreement, COUNTY is administrator for the Program and COUNTY is mandated to comply with various statutes, rules and regulations as to the allocation of expenditure of funds.
- 2.4 COUNTY is desirous of disbursing TIFT Funds to CITY. However, as administrator for the Program, COUNTY desires to obtain the assurances from CITY and CITY so assures

COUNTY, that CITY will comply with all state and local statutes, rules and regulations and applicable codes and regulations as made known to the CITY relating to the Project(s) and the Program, as a condition precedent to the release of such funds to CITY.

### **ARTICLE III**

#### **PROJECT(S)**

CITY hereby agrees to provide and implement the following eligible Project(s):

This project includes the design, engineering and construction of Complete Streets Improvements on Minuteman Causeway between Cedar Avenue and the beach in Cocoa Beach, Florida.

From Merritt Island/North Beaches TIFT Fund.

Such Project(s) is(are) more specifically described and set forth in Exhibit "A", attached hereto and by this reference made a part hereof.

### **ARTICLE IV**

#### **FUNDING AND METHOD OF PAYMENT**

- 4.1 The amount payable by COUNTY under this Agreement shall be \$189,343.56.
- 4.2 Following execution of this Agreement, the Planning and Development Department Director or designee shall provide written notice to Department for the disbursement of TIFT Funds in the amount of \$189,343.56.

### **ARTICLE V**

#### **RECORDS**

- 5.1 The COUNTY and the CITY 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.
- 5.2 If CITY has awarded a contract to an independent contractor to perform Project(s) services, CITY shall submit to COUNTY, if requested, a certified copy of the contractor's

invoices stating the services rendered and the date the services were rendered specifically identifying TIFT Funds used.

- 5.3 CITY agrees to furnish to the Planning and Development Department Director, status reports on November 1 of each year identifying the interest accrued, the expenditures to date and the project progress.

## ARTICLE VI

### ASSURANCES

- 6.1 CITY hereby agrees to comply with all applicable state and local laws, ordinances, and codes and regulations. Any conflict or inconsistency between state or local guidelines and regulations and this Agreement shall be resolved in favor of the more restrictive regulations.
- 6.2 CITY hereby gives COUNTY, through its authorized representative, access to and the right to examine all records, books, papers, or documents relating to the Project(s).
- 6.3 CITY hereby agrees to maintain books, records and documents in accordance with standard accounting procedures and practices of the CITY which sufficiently and properly reflect all expenditures of funds provided by COUNTY under this Agreement.
- 6.4 CITY agrees to expend TIFT funds allocated to the Project(s) by the expiration date in Article VIII. All TIFT funds not expended within the term of this Agreement shall be returned to the custody and control of the COUNTY. An administrative extension, if requested prior to expiration, may be granted by the Planning and Development Department Director for a period not to exceed one hundred eighty (180) days if just cause is shown.
- 6.5 CITY agrees to complete each project identified in this agreement. In the event TIFT Funds are not sufficient, the CITY may submit to the COUNTY a request for additional revenue from the TIFT Funds. However, if additional revenue is not provided pursuant to that request, the CITY agrees to utilize its independent resources to complete the project.
- 6.6 CITY hereby agrees that if it has directly and knowingly caused any funds to be expended in violation of the Agreement, it shall be responsible to refund such monies in full to COUNTY.
- 6.7 CITY agrees to return to the Department the unexpended TIFT Funds no later than sixty (60) days following the expiration date in Article VIII or within sixty (60) days following an administrative extension under Section 6.4, if applicable, along with a completed Form B, attached hereto and by this reference made a part hereof. An administrative extension for the return of funds, if requested prior to the sixty (60) day expiration period, may be granted by the Planning and Development Department Director for a period not to exceed sixty (60) days if just cause is shown.
- 6.8 Program interest generated as a result of receipt of TIFT Funds may be retained by CITY provided that this interest shall be added to TIFT Funds committed to the Project(s) by the CITY and used in conjunction with the original allocation to further the eligible project objective. Expenditure of program interest is subject to the terms of this

Agreement with Brevard County. Any remaining TIFT funds, including the amount of interest generated in a contract period if not expended for the approved Project(s) shall be returned to COUNTY and shall be placed back in TIFT account for benefit of the Merritt Island/North Beaches Benefit District within the time periods provided in Section 6.7.

- 6.9 CITY hereby agrees and understands that all funding authorization through a TIFT Fund shall be used only for eligible activities specifically outlined in this Agreement. Revenues shall not be utilized for correcting deficiencies. They shall be utilized to fund the future capacity components for transportation facilities identified in Exhibit "A".
- 6.10 CITY hereby agrees to submit to the Planning and Development Department within sixty (60) days of the completion of each Project(s), as set out in Article III, a complete financial accounting of all its Project(s) activities, as provided on Exhibit "B", attached hereto and by reference made a part hereof.

## **ARTICLE VII**

### **INDEMNIFICATION CLAUSE**

CITY, to the extent allowed by law, will at all times hereafter indemnify and hold harmless, COUNTY, its officers, agents and employees, against any and all claims, losses, liabilities, or expenditures of any kind, including court costs and expenses, accruing or resulting from any or all suits or damages of any kind resulting from injuries or damages sustained by any person or persons, corporation or property, by virtue of the CITY's willful failure to perform any obligation or undertaking of the CITY as set forth in this Agreement.

## **ARTICLE VIII**

### **TERM OF AGREEMENT**

This agreement shall commence on the day the Division Director provides written Notice to Department for the disbursement of TIFT Funds and shall terminate on September 30, 2018.

## **ARTICLE IX**

### **TERMINATION**

- 9.1 If, through any cause, CITY fails to commence work on the project, or fails to fulfill in timely and proper manner its obligations under this Agreement, or if CITY shall violate any of the covenants, agreements, or stipulations of this Agreement, COUNTY shall thereupon have the right to terminate this Agreement and may require the return of funds expended or committed for expenditure in violation of this agreement by giving written notice to CITY of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of termination. If just cause is shown prior to termination, the Planning and Development Department Director may specify in writing the actions that must be taken by CITY and a reasonable date for compliance; as a condition to avoid termination. In no event can the Agreement date be extended beyond

the periods provided in this Agreement without amendment to the Agreement executed with the same formality and of equal dignity herewith.

- 9.2 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 CITY with TIFT Funds under this Agreement shall be provided to COUNTY.
- 9.3 In the best interests of the program and in order to better serve the people in the impact fee districts and fulfill the purposes of the Act, either party may terminate this Agreement upon giving thirty (30) days notice in writing of its intent to terminate, stating its reasons for doing so. In the event CITY or COUNTY terminates the Agreement, CITY shall refund COUNTY, all unexpended and unencumbered TIFT Funds received and interest accrued therefrom.
- 9.4 The parties hereby agree that the following events are sufficient cause for termination of the Agreement. Such events include, but are not limited to:
  - a. Improper use of TIFT Funds;
  - b. Failure to comply with the terms of this Agreement.

## **ARTICLE X**

### **INDEPENDENT CONTRACTOR**

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

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 CITY, which shall not conflict with COUNTY, or state rules or regulations relating to the use of TIFT Funds.

## **ARTICLE XI**

### **ALL PRIOR DISBURSEMENT AGREEMENTS SUPERSEDED**

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.

## ARTICLE XII

### NOTICES

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:        Director  
                         Planning and Development Department  
                         2725 Judge Fran Jamieson Way  
                         Viera, Florida 32940

FOR CITY:            City Manager  
                         City of Cocoa Beach  
                         Post Office Box 322430  
                         Cocoa Beach, Florida 32932-2430

## ARTICLE XIII

### AMENDMENTS

COUNTY may amend this Agreement, if required by legislation, to conform with mandates in state guidelines, directives, and objectives relating to the use of TIFT Funds. 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. CITY shall be notified pursuant to ARTICLE XII and such notification shall constitute an official amendment. 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.

## ARTICLE XIV

### CONFLICT OF INTEREST

CITY covenants that no person who presently exercises any functions or responsibilities in connection with the Project(s) has any personal financial interest, direct or indirect, in the Project(s) 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 CITY or its employees shall be disclosed in writing to the Division.


**ARTICLE XV**

**SEVERABILITY**

If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from this Agreement without affecting the binding force of the remainder of the Agreement.

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

**ATTEST:**


  
\_\_\_\_\_  
Scott Ellis, Clerk

**BREVARD COUNTY BOARD OF  
COUNTY COMMISSIONERS**

  
\_\_\_\_\_  
Robin Fisher, Chairman

As approved by the Board of County Commissioners  
on May 12, 2015. \_\_\_\_\_

**ATTEST:**

  
\_\_\_\_\_  
Loredana Kalaghychy, CMC, City Clerk

**CITY OF COCOA BEACH, FLORIDA**

  
\_\_\_\_\_  
Dave Ketterstrom, Mayor

Date: June 4, 2015

STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of May, 2015 by Robin Fisher, 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.

Tammy Lynn Etheridge  
NOTARY PUBLIC - State of Florida



STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of June, 2015 by Dave Netterstrom, Mayor of the City of Cocoa Beach, Florida, who is personally known to me or produced \_\_\_\_\_ as identification and who did take an oath.

Loredana Kalaghchy  
NOTARY PUBLIC - State of Florida



## **EXHIBIT "A"**

### **PROJECT(S) DESCRIPTION**

This project includes the design, engineering and construction of the Minuteman Corridor Streetscape and Stormwater Improvement Project in the City of Cocoa Beach, Florida.

Work includes installation of pavers on sidewalks and pedestrian intersections, creating pervious paver on-street parking, installation of underground rain tanks, creation of coastal landscape urban planters and street trees and placement of ample benches in the shade along this linear corridor. Street lighting will include electrical outlets for street festivals and events, and have banner capability for holidays and festivities. Decorative bike racks are sited along the corridor to encourage alternative transit to Downtown Cocoa Beach. A pedestrian friendly beach plaza between Atlantic Av (A1A) and the beach will include street art, shaded benches, coastal landscape with bollard lighting and sea turtle friendly amber planter wall bench lighting at the access to the beach.

The estimated construction time to complete the "complete streets" tasks along the Minuteman Corridor is twelve (12) months.

The estimated total project cost is \$3,883,518.

From Merritt Island/North Beaches TIFT Fund.

**EXHIBIT "B"**

**FINAL ACCOUNTING FOR PROJECT**

Project Name: Minuteman Causeway Complete Streets Improvements  
From Merritt Island/North Beaches TIFT Fund

Date	Activity	Check #	Impact Fee Deposit	Project Expense	Program Interest*	Unexpended Funds
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Totals

\* Based on SBA Interest Rate applicable to each month.