



AGENDA REPORT
February 26, 2019

**Approval Re: Second Amendment to Transportation Impact Fee
Disbursement Agreement with Indian Harbour Beach**

SUBJECT:

Approval Re: Second Amendment to the 2015-16 Sidewalk Improvements Project with the City of Indian Harbour Beach

FISCAL IMPACT:

Approval of this request will not have any fiscal impact to Brevard County. All transportation impact fee funds provided for in this disbursement agreement have already been disbursed.

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board of County Commissioners consider approval of this amendment to the transportation impact fee disbursement agreement with the City of Indian Harbour Beach which provides impact fee funding for several sidewalk improvement projects within the City. If approved it is requested that the Chair be authorized to execute the agreement on behalf of the County.

SUMMARY EXPLANATION and BACKGROUND:

On May 12, 2015 the Board of County Commissioners approved the original transportation impact fee disbursement agreement with the City of Indian Harbour Beach in the amount of \$263,571.32. On October 4, 2016 the Board of County Commissioners approved the First Amendment to this Agreement which had the effect of removing one project from the approved list and redistributing the funding to the remaining two projects. The Second Amendment to this Agreement, currently presented for approval by the Board of County Commissioners, will add a third project to the list of approved projects but will not provide any additional funding. The new project is for the design, engineering and construction of pedestrian improvements along State Road A1A in the City of Indian Harbour Beach. The termination date of the Agreement will also be extended until September 30, 2022 and the specified funding amounts for individual projects will be removed to allow the funds available to be used in any proportion to be used to complete the listed projects.

CLERK TO THE BOARD INSTRUCTIONS:

Execute the Second Amendment to the 2015/2016 Sidewalk Improvement Projects Agreement on behalf of Brevard County and return the original document to Planning & Development for recording.

ATTACHMENTS:

Description

- ▯ **Second Amendment to TIFT Agreement**



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

February 27, 2019

MEMORANDUM

TO: Tad Calkins, Planning and Development Director

RE: Item F.4., Second Amendment to Transportation Impact Fee Disbursement Agreement with City of Indian Harbour Beach

The Board of County Commissioners, in regular session on February 26, 2019, approved and authorized the Chair to execute Second Amendment to Transportation Impact Fee Disbursement Agreement with City of Indian Harbour Beach, which provides impact fee funding for several sidewalk improvement projects within the City. Enclosed is the fully-executed Second Amendment to Transportation Impact Fee Disbursement Agreement.

Upon recordation, please return a fully-executed copy of the Second Amendment to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

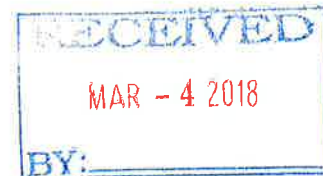
BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

Encl. (1)

cc: Contracts Administration






Planning & Development Department

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

Inter-Office Memo

TO: Tammy Rowe, Deputy Clerk

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

DATE: April 23, 2019

SUBJECT: Transportation Impact Fee Disbursement Agreement with Indian Harbour Beach

I am returning the enclosed agreement for inclusion in the Official Minutes

Enclosure as noted:

**SECOND AMENDMENT TO THE
TRANSPORTATION IMPACT FEE TRUST FUND
DISBURSEMENT AGREEMENT**

Between

BREVARD COUNTY

and

INDIAN HARBOUR BEACH, FLORIDA

for

2015 / 2016 SIDEWALK 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 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 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) to the extent that funds allow:

1. Construction of a concrete sidewalk along Banana River Drive between South Patrick Drive and Oars and Paddles Park in Indian Harbour Beach, Florida.
2. Design, engineering and construction of pedestrian improvements along Cheyenne Drive, Yuma Drive and Wimico Drive in Indian Harbour Beach, Florida
3. Design, engineering and construction of pedestrian improvements along State Road A1A in Indian Harbour Beach, 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 CITY acknowledges receipt of prior payments of \$263,571.32 which represent funds originally appropriated pursuant to the Transportation Impact Fee Trust Fund Disbursement Agreement executed by COUNTY on May 12, 2016 and by CITY on June 10, 2016 in the amount of \$263,571.32.
- 4.2 No additional funds are due pursuant to this amended agreement.

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, 2022.

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 Development Department
 2725 Judge Fran Jamieson Way, Suite A114
 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**



Kristine Isnardi, Chair

As approved by the Board of County Commissioners
February 26, 2019

CITY OF INDIAN HARBOUR BEACH, FLORIDA

ATTEST:


Sue Frank, MMC, City Clerk


Mark Ryan, City Manager

Date: January 23, 2019

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 26 day of FEBRUARY, 2019 by Kristine Isnardi, Chair 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



STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 23 day of January, 2019 by Mark Ryan, City Manager of the City of Indian Harbour Beach, Florida, who is personally known to me or produced personally known as identification and who did take an oath.


NOTARY PUBLIC - State of Florida

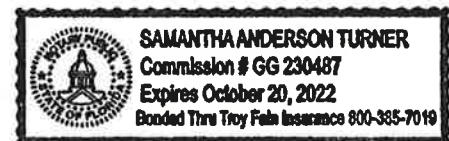


EXHIBIT "A"

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 for the engineering and construction of pedestrian improvements on: (1) Cheyenne Drive between Marion Street and Yuma Drive; (2) Yuma Drive between Cheyenne Drive and Sioux Drive; and (3) Wimico Drive between Banana River Drive and Jamaica Boulevard. 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.

The third project to be funded by this Disbursement Agreement is for the engineering and construction of pedestrian improvements on: State Road A1A in Indian Harbour Beach, Florida. 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: 2015/2016 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.