



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

F.9.

8/25/2020

### Subject:

Approval RE: Transportation Impact Fee Technical Advisory Committee for the South Mainland Benefit District Project Funding Recommendations (Districts 3, 4 and 5).

### Fiscal Impact:

FY19/20: The transportation impact fees that will fund these project recommendations were collected prior to the start of this fiscal year and are currently budgeted as Reserves for Capital Outlay in the amount of \$3,728,926. If approved, \$12,000.00 in Reserves will be re-budgeted as Grants and Aid to be disbursed to the Town of Malabar and \$100,000.00 in Reserves will be re-budgeted as an intra-fund transfer to Fund 1232 for project administration by Brevard County Public Works.

### Dept/Office:

Planning and Development Department

### Requested Action:

It is requested that the Board of County Commissioners consider approval of the project funding recommendations in the amount of \$112,000.00 as prepared by the Technical Advisory Committee for the South Mainland Benefit District on August 10, 2020; and if approved, authorize the Chair to execute the Transportation Impact Fee Disbursement Agreement with the Town of Malabar; and authorize the Budget Office to execute any budget change requests necessary for implementing these appropriations.

### Summary Explanation and Background:

The Technical Advisory Committee for the South Mainland Benefit District met on August 10, 2020 and unanimously adopted the project funding recommendations itemized below. The Technical Advisory Committee for the South Mainland Benefit District consists of one representative from the Town of Grant-Valkaria, Town of Malabar, City of West Melbourne and Brevard County.

#### Project Funding Recommendations:

1. Appropriate \$12,000.00 to hard surface Hunter Lane for its entire length north of Atz Road to be administered by the Town of Malabar;
2. Appropriate \$100,000.00 for a median acceleration taper at Carriage Gate Drive to be administered by Brevard County.

### Clerk to the Board Instructions:

Upon approval and execution of the Transportation Impact Fee Disbursement Agreement with the Town of Malabar, Planning and Development will provide the original document to the Clerk for execution on behalf of Brevard County. The fully executed original should be returned to Planning and Development for recording in

the Public Records.



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

August 26, 2020

**M E M O R A N D U M**

**TO:** Tad Calkins, Planning and Development Director

**RE:** Item F.9., Approval of Transportation Impact Fee Technical Advisory Committee for the South Mainland Benefit District Project Funding Recommendations


The Board of County Commissioners, in regular session on August 25, 2020, approved the project funding recommendations in the amount of \$112,000 as prepared by the Technical Advisory Committee for the South Mainland Benefit District on August 10, 2020; authorized the Chair to execute the Transportation Impact Fee Disbursement Agreement with the Town of Malabar; and authorized the Budget Office to execute any Budget Change Requests necessary for implementing these appropriations.

**Upon the execution of the Transportation Impact Fee Disbursement Agreement with the Town of Malabar, please provide this office with the recorded original document.**

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK



Kimberly Powell, Clerk to the Board

/sm

cc: Budget  
Finance

**TRANSPORTATION IMPACT FEE TRUST FUND  
DISBURSEMENT AGREEMENT  
BETWEEN  
BREVARD COUNTY, FLORIDA  
and  
TOWN OF MALABAR, FLORIDA**

This Agreement is by and between **BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY," through its Board of County Commissioners and **TOWN OF MALABAR, FLORIDA**, a Florida municipal corporation, hereinafter referred to as "TOWN".

**WHEREAS**, Chapter 62, Article V, Division 4, Sections 62-801 through 62-818 of the Brevard County Code of Laws and Ordinances as may be amended provides for the imposition of the Transportation Impact Fee and sets forth the manner and amount for collection and use of funds; and

**WHEREAS**, pursuant to interlocal agreement dated April 16, 1991, incorporated herein by this 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; and

**WHEREAS**, under Chapter 62, Article V, Division 4, Sections 62-801 through 62-818 of the Brevard County Code of Laws and Ordinances 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; and

**WHEREAS**, COUNTY is desirous of disbursing TIFT Funds to TOWN and 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 relating to the Project(s) and the Program, as a condition precedent to the release of such funds to TOWN.

**NOW THEREFORE**, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

**ARTICLE 1. RECITALS.**

- 1.1 The recitals set forth hereinabove are true and correct in all respects and are incorporated herein by reference as if set forth herein verbatim.

**ARTICLE 2. DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the meanings set forth below:

- 2.1 **ASSURANCES:** means those assurances made by TOWN to COUNTY specifically set forth in this Agreement.

CFN 2021001604, OR BK 8971 PAGE 2366,  
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Clerk of Courts, Brevard County  
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- 2.2 **IMPACT FEE PROGRAM OR PROGRAM:** means the Transportation Impact Fee Program as contained in Chapter 62, Article V, Division 4, Sections 62-801 through 62-818 of the Brevard County Code of Ordinances of Brevard County, Florida, as may be amended.
- 2.3 **INTERLOCAL AGREEMENT:** means the Agreement between Brevard County, Florida, and the Town of Malabar, Florida, dated April 16, 1991, providing for participation in the Brevard County Transportation Impact Fee Program.
- 2.4 **PROGRAM INTEREST:** means the interest generated from TIFT funds after receipt by TOWN.
- 2.5 **PROJECT(S):** means the project or projects set forth in Article 3 hereof, and Exhibit "A" entitled "Project Description".
- 2.6 **TIFT FUNDS:** means the Transportation Impact Fee Trust and the monies given to TOWN pursuant to the terms of this Agreement.

**ARTICLE 3. PROJECT(S).** TOWN hereby agrees to provide and implement the following eligible Project(s):

- 3.1 Hard surface paving improvements on unimproved Hunter Lane for its' entire length north of Atz Road in the Town of Malabar at a cost of \$12,000.00. The Project(s) is (are) more specifically described and set forth in Exhibit "A", attached hereto and by this reference made a part hereof. Payment shall be made from the South Mainland TIFT Fund.

#### **ARTICLE 4. FUNDING AND METHOD OF PAYMENT.**

- 4.1 The amount payable by COUNTY under this Agreement shall be \$12,000.00.
- 4.2 Following the execution of this Agreement, the COUNTY Planning and Development Department Director or designee shall provide written notice to the COUNTY Finance Department for the disbursement of TIFT Funds in the amount of \$12,000.00.

#### **ARTICLE 5. 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 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.
- 5.3 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.
- 5.4 TOWN agrees to furnish to the COUNTY 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 6. ASSURANCES.**

- 6.1 TOWN hereby agrees to comply with all state and local laws, ordinances, and codes and regulations applicable to the expenditure of the TIFT Funds. 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 agrees to expend TIFT Funds allocated to the Project(s) by the expiration date in Article 8. An administrative extension, if requested prior to expiration, may be granted by the COUNTY Planning and Development Department Director for a period not to exceed one hundred eighty days if just cause is shown.
- 6.3 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 project.
- 6.4 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.
- 6.5 TOWN agrees to return to the Department the unexpended TIFT Funds no later than sixty days following the expiration date in Article 8 or within sixty days following the expiration of an administrative extension under Section 6.2, if applicable, along with a completed Form B, attached hereto and by this reference made a part hereof. This section shall not require the TOWN to return to the COUNTY custody or control of any TIFT Funds which have been contractually committed for expenditure by the TOWN within a six-year time frame from the date of impact fee payment, but are yet unpaid, or funds the TOWN's use of

which is an issue in any pending litigation involving the TOWN. An administrative extension for the return of funds, if requested prior to the sixty-day expiration period, may be granted by the COUNTY Planning and Development Department Director for a period not to exceed sixty days, if just cause is shown.

- 6.6 Program interest generated as a result of receipt of TIFT Funds may be retained by TOWN, 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 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 South Mainland within the time periods provided in Section 6.6.
- 6.7 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. Revenues 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 dated April 16, 1991.
- 6.8 TOWN hereby agrees to submit to the COUNTY Planning and Development Department within sixty (60) days of the completion of each Project(s), as set out in Article 3, 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 7. INDEMNIFICATION.**

- 7.1 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 performance under this Agreement or the Town's failure to perform any obligation or undertaking as set forth in this Agreement. The TOWN acknowledges that specific consideration has been given for this indemnity provision.

#### **ARTICLE 8. TERM OF AGREEMENT.**

- 8.1 This Agreement shall commence on the day the COUNTY Planning and Development Director provides written Notice to COUNTY Finance Department for the disbursement of TIFT Funds and shall terminate on September 30, 2024.



## **ARTICLE 9. 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 days before the effective date of termination. If just cause is shown prior to termination, the COUNTY 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 term be extended beyond the periods provided in this Agreement without amendment to the Agreement executed by both parties.
- 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 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.

## **ARTICLE 10. INDEPENDENT CONTRACTOR.**

- 10.1 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.
- 10.2 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 11. ALL PRIOR DISBURSEMENT AGREEMENTS SUPERSEDED.**

- 11.1 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 dated April 16, 1991 as amended from time to time.

## **ARTICLE 12. NOTICES.**

- 12.1 Notice under this Agreement shall 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 article.

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

**TOWN:** Town Manager  
Town of Malabar  
2725 Malabar Road  
Malabar, Florida 32905

## **ARTICLE 13. AMENDMENTS.**

- 13.1 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 12 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 14. CONFLICT OF INTEREST.**

- 14.1 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 Planning and Development Department.

#### **ARTICLE 15. SEVERABILITY.**

- 15.1 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.

#### **ARTICLE 16. GOVERNING LAW.**

- 16.1 This Agreement shall be deemed to have been executed and entered into within the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

#### **ARTICLE 17. VENUE.**

- 17.1 Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

#### **ARTICLE 18. ATTORNEY'S FEES.**


- 18.1 In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the last day written below.

ATTEST:

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

BREVARD COUNTY BOARD OF  
COUNTY COMMISSIONERS

  
\_\_\_\_\_  
Bryan Andrew Lober, Chair

As approved by the Board of County Commissioners  
on August 25, 2020.

ATTEST:

  
\_\_\_\_\_  
Debby Franklin, Town Clerk/Treasurer

TOWN OF MALABAR, FLORIDA

  
\_\_\_\_\_  
Patrick T. Reilly, Mayor

Date: October 19, 2020



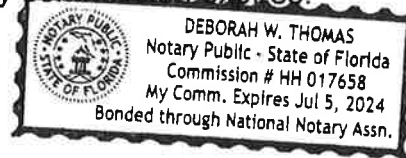
STATE OF FLORIDA     §  
COUNTY OF BREVARD   §

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization this 22 day of December 2020 by Bryan Andrew Lober, 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.

Deborah W. Thomas

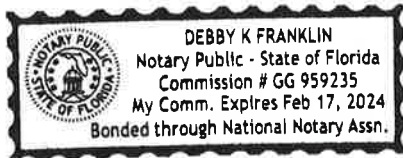
NOTARY PUBLIC - State of Florida

My commission expires:



STATE OF FLORIDA     §  
COUNTY OF BREVARD   §

The foregoing instrument was acknowledged before me by means of ☒ physical presence or [ ] online notarization this 19 day of October 2020 by Patrick T. Reilly, Mayor of the Town of Malabar, Florida, who is personally known to me or produced N/A as identification and who did take an oath.



Debby K. Franklin

NOTARY PUBLIC - State of Florida

My commission expires: