

Meeting Date
August 18, 2015



AGENDA	
Section	Consent
Item No.	II.A.2

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

SUBJECT:	APPROVAL RE: TRANSPORTATION IMPACT FEE DISBURSEMENT AGREEMENT EXPIRATION DATE EXTENSION (DISTRICTS 2)
DEPT/OFFICE:	PLANNING AND DEVELOPMENT DEPARTMENT

Requested Action:

It is requested that the Board of County Commissioners approve an extension to the expiration date of the transportation impact fee disbursement agreement with the City of Cape Canaveral for the North Atlantic Avenue Streetscape Improvements project and authorize the Chairman to execute the amended disbursement agreement.

Summary Explanation & Background:

On December 13, 2011 the Board of County Commissioners approved the appropriation of \$868,732.89 for the North Atlantic Avenue Streetscape Improvements project and entered into a transportation impact fee disbursement agreement with the City of Cape Canaveral for administration of the project. The expiration date in the agreement is September 30, 2015.

Due to circumstances beyond its control, the City of Cape Canaveral is unable to complete this project by the agreement's expiration date and has requested a one year extension until September 30, 2016 to complete the project.

**Fiscal Impact:** FY15 – There will be no additional fiscal impact associated with extending the expiration date of the transportation impact fee disbursement agreement.

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

Clerk to the Board instruction:

Exhibits Attached:

Letter from the City of Cape Canaveral

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

County Manager  Stockton Whitten	Assistant County Manager  	Department Director / Extension   Robin M. Sobrino, AICP 5-2069
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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

August 19, 2015

MEMORANDUM

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

RE: Item II.A.2., Approval of Transportation Impact Fee Disbursement Agreement Expiration Date Extension

The Board of County Commissioners, in regular session on August 18, 2015, approved Transportation Impact Fee Disbursement Agreement expiration date extension to September 30, 2016, with the City of Cape Canaveral for the North Atlantic Avenue Streetscape Improvements Project; and authorized the Chairman to execute the amended Disbursement Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Etheridge*

Tammy Etheridge, Deputy Clerk

AUG 25 2015

FIRST AMENDMENT TO THE  
TRANSPORTATION IMPACT FEE TRUST FUND  
DISBURSEMENT AGREEMENT

Between

BREVARD COUNTY

and

CAPE CANAVERAL, FLORIDA

for construction of a

COMPLETE STREETS IMPROVEMENTS ON NORTH ATLANTIC AVENUE

in the amount of \$868,732.89

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

CAPE CANAVERAL, 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 Cape Canaveral, 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 Cape Canaveral, Florida, dated March 6, 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 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 North Atlantic Avenue between State Road A1A and George King Boulevard in Cape Canaveral, 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 \$868,732.89. The City acknowledges receipt of a prior payment in the amount of \$868,732.89 approved by the County on December 13, 2011.
- 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 \$868,732.89. No additional funds shall be disbursed.~~

### 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, ~~2015~~ 2016.

## **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 March 6, 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:        Director  
                          Planning and Development Department  
                          2725 Judge Fran Jamieson Way  
                          Viera, Florida 32940

FOR CITY:            City Manager  
                          City of Cape Canaveral  
                          Post Office Box 326  
                          Cape Canaveral, Florida 32920

**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 August 18, 2015 as Item. II. A. 3.

**ATTEST:**

\_\_\_\_\_  
Angela M. Apperson, MMC City Clerk

**CITY OF CAPE CANAVERAL, FLORIDA**

\_\_\_\_\_  
Rocky Randels, Mayor

Date: \_\_\_\_\_, 2015

STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 10 day of Sept., 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



**DEBORAH W. THOMAS**  
**NOTARY PUBLIC**  
**STATE OF FLORIDA**  
**Comm# EE206892**  
**Expires 6/10/2016**

STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by Rocky Randels, Mayor of the City of Cape Canaveral, Florida, who is personally known to me or produced \_\_\_\_\_ as identification and who did take an oath.

\_\_\_\_\_  
NOTARY PUBLIC - State of Florida

## EXHIBIT "A"

### PROJECT(S) DESCRIPTION

This project includes the design, engineering and construction of the North Atlantic Avenue Streetscape Project in the City of Cape Canaveral, Florida.

The proposed scope of work includes but is not limited to the right-of-way acquisition, purchase of professional engineering and design services, related permitting and administrative expenses, and construction services and materials for the completion of “complete streets” tasks along North Atlantic Avenue from SR A1A northward to Port Canaveral (near George King Boulevard). Some of these tasks include the following:

- Construct an 8-foot wide pedway along the western side of the roadway
- Construct a 5-foot wide sidewalk on the eastern side of the roadway
- Construct a storm water system (exfiltration piping) beneath the pedway for the northern 75% of the roadway
- Install solar-powered and/or LED lighting (improved safety)
- Plant native vegetation “islands” along the roadway
- Install pedestrian benches and trash receptacles along the sidewalks
- Bus stops, utilizing prefabricated bus stop shelters
- Decorative pavement treatment at crosswalks and intersections

Completion of these “complete streets” tasks will also meet several major objectives of the City’s Vision Statement including that the City will be a “bike-able and walk-able ..... and sustainable coastal community that embraces the beach and riverside as its main amenities.”

Land use in the area is a mix of residential and commercial. The southern portion of the streetscape project area consists mainly of commercial facilities (i.e., auto mechanic shops, strip malls, etc.). The northern portion of the project area consists mainly of large, multi-family buildings (i.e., condominiums and townhomes).

North Atlantic Avenue is a heavily-travelled roadway with significant truck and automobile traffic. With the exception of State Road A1A, North Atlantic Avenue (approx. 1.1 miles in length) is the most-travelled north-south roadway within the City.

The estimated construction time to complete the “complete streets” tasks along North Atlantic Avenue is eighteen (18) months.

From Merritt Island/North Beaches TIFT Fund.

**EXHIBIT "B"**

**FINAL ACCOUNTING FOR PROJECT**

Project Name: North Atlantic Ave. Complete Streets Improvements  
From Merritt Island/North Beaches 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.



# City of Cape Canaveral

## Public Works Department

August 3, 2015

Mr. Stephen M. Swanke  
Program Manager  
Brevard County Planning and Development Department  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

**RE: TRANSPORTATION IMPACT FEE AGREEMENT EXTENSION**

Dear Mr. Swanke,

On December 13, 2011, the Board of Brevard County Commissioners approved the appropriation of \$868,732.89 to the City of Cape Canaveral (City) and entered into a Transportation Impact Fee Trust Fund Disbursement Agreement. These appropriations were earmarked for the North Atlantic Avenue Streetscape Improvements (Project).

Due to this being a FDOT Local Agency Program (LAP) Project, there were some delays in getting this Project out to bid. The first bid package was advertised on February 20, 2015, the City only received one (1) bid at the March 24, 2015 opening. The sole bid received was substantially over budget. After adjusting the scope of work, a re-bid was advertised on July 2, 2015. The re-bid opening is August 4, 2015.

Per Article VI. 6.4 of the Transportation Impact Fee Trust Fund Disbursement Agreement, the City must expend the full amount of \$868,732.89 before the termination of the Disbursement Agreement, which is September 30, 2015. The City has not yet spent approximately \$422,000.00 of the original disbursement amount. The City is requesting a one (1) year administrative extension to the Disbursement Agreement due to the unknown date of when the winning bidder may be able to mobilize, start construction and complete the Project.

Please let me know if you need any additional information to grant this request. Thank you.

Sincerely,

Lonnie Dunn  
Public Works Services/IM Superintendent

cc: David L. Greene, City Manager  
Joyce Muse, Public Works Services Director  
John DeLeo, Administrative/Financial Services Director  
Jeff Ratliff, Public Works Services Deputy Director

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BOARD OF COUNTY COMMISSIONERS

Planning & Development Department  
2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940

## Inter-Office Memo

TO: Tammy Etheridge, Deputy Clerk

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

DATE: September 1, 2015

SUBJECT: Revised Transportation Impact Fee Disbursement Agreement

On August 18, 2015 the Board of County Commissioners approved Item II.A.2 which is an extension to the expiration date for the Transportation Impact Fee Disbursement Agreement with the City of Cape Canaveral for the North Atlantic Complete Streets project. I have enclosed a copy of the revised agreement for execution on behalf of the County. Please return the executed document to me and I will have it executed by Cape Canaveral and will record it in the public records. After that I will return the recorded agreement to your office for inclusion in the Official Minutes.

Thanks for your assistance.

enclosure