

| |
|--------------------------|
| Meeting Date |
| December 19, 2017 |



| AGENDA | |
|----------|----------------|
| Section | Consent |
| Item No. | II.A.2. |

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

| | |
|--------------|---|
| SUBJECT: | APPROVAL RE: TRANSPORTATION IMPACT FEE TECHNICAL ADVISORY COMMITTEE PROJECT FUNDING RECOMMENDATIONS (DISTRICTS 3 & 5) |
| DEPT/OFFICE: | PLANNING & DEVELOPMENT DEPARTMENT |

Requested Action:

It is requested that the Board of County Commissioners approve the project funding recommendation as prepared by the Technical Advisory Committee for the South Mainland Benefit District on November 15, 2017; authorize the Chairman to execute Transportation Impact Fee Disbursement Agreements with the Town of Grant/Valkaria and Town of Malabar; and authorize the Budget Office to execute any budget changes required to implement project appropriations.

Summary Explanation & Background:

On November 15, 2017 the Technical Advisory Committee for the South Mainland Benefit District met and adopted the following recommendations:

- (1) Appropriate \$100,000.00 in funds collected in the City of West Melbourne for a feasibility study to determine if a sidewalk can be constructed along Milwaukee Street between Minton Road and Arizona Street to be administered by Brevard County Public Works;
- (2) Appropriate an additional \$61,650.34 for the Grant/Valkaria Multi-Purpose Trail project to be administered by the Town of Grant/Valkaria;
- (3) Appropriate \$13,478.88 for the Eva Lane Paving Improvements Project between Hall Road and State Road 514 to be administered by the Town of Malabar;
- (4) Reserve \$51,126.85 for future projects in unincorporated Brevard County;
- (5) Reserve \$119,021.12 for future projects in the City of West Melbourne.

The Technical Advisory Committee consists of one representative from the County, Grant/Valkaria, Malabar and West Melbourne.

Fiscal Impact: FY17/18 – These funds have already been collected and are held in the Transportation Impact Fee Trust Fund for the South Mainland Benefit District (Fund 1213). They are currently budgeted as Capital Reserves.

Staff Contact: Stephen M. Swanke
 (321) 633-2069, extension 52739

Clerk to the Board instruction: Execute Transportation Impact Fee Disbursement Agreements with Grant/Valkaria and Malabar and return them to Planning and Development for recording.

Exhibits Attached:

| | | | | | | | | |
|---|----------------------------------|-----------------------------|-----|---|----|---|----|--------------------------|
| Contract /Agreement (If attached): | | Reviewed by County Attorney | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | PR | <input type="checkbox"/> |
| County Manager | Assistant County Manager | John Denninghoff | |  | | Department Director / Extension | | |
| Frank Abbate | Interim Assistant County Manager | Jim Liesenfelt | | | | Tad Calkins Planning & Development Department Ext. 5-2069  | | |



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

December 20, 2017

M E M O R A N D U M

TO: Tad Calkins, Planning and Development Director Attn: Stephen Swanke

RE: Item II.A.2., Approval of Transportation Impact Fee Technical Advisory Committee Project Funding Recommendations

The Board of County Commissioners, in regular session on December 19, 2017, approved the project funding recommendations as prepared by the Technical Advisory Committee for the South Mainland Benefit District on November 15, 2017; executed Transportation Impact Fee Disbursement Agreements with Town of Grant/Valkaria and Town of Malabar; and authorized the Budget Office to execute any budget changes required to implement project appropriations. Enclosed are fully-executed Agreements with Town of Grant/Valkaria and Town of Malabar.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encls. (2)

cc: Contracts Administration
Finance
Budget



Planning & Development Department

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

TO: Tammy Rowe, Deputy Clerk

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

A handwritten signature in blue ink, appearing to read 'SMS', located to the right of the 'FROM' line.

DATE: March 20, 2018

SUBJECT: Return of Executed & Recorded Documents

I am returning the attached Transportation Impact Fee Disbursement Agreements for inclusion in the Official Minutes. Please contact me if you have any questions.

FIRST AMENDMENT TO THE
TRANSPORTATION IMPACT FEE TRUST FUND
DISBURSEMENT AGREEMENT

Between

BREVARD COUNTY

and

GRANT/VALKARIA, FLORIDA

for the

2015 ROAD PAVING IMPROVEMENTS

in the amount of \$586,650.34

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

GRANT/VALKARIA, 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 Grant/Valkaria, 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 Grant/Valkaria, Florida, dated May 12, 2015, 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 May 12, 2015, 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. Design and construction of an eight foot wide, six inch thick, concrete multipurpose trail from Mulberry Land east to Cypress Creek Drive, as funds permit, in the Town of Grant/Valkaria, Florida.

From South 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 \$586,650.34 which represents \$525,000.00 appropriated by the Board of County Commissioners on December 15, 2015 and \$61,650.34 appropriated by the Board of County Commissioners on December 19, 2017 pursuant to this amendment. The Town acknowledges receipt of a prior payment in the amount of \$525,000.00 which represents funds originally appropriated for paving improvements in the Town of Grant/Valkaria pursuant to the Transportation Impact Fee Disbursement Agreement executed by COUNTY on December 15, 2015 and TOWN on March 1, 2016 in the amount of \$525,000.00 prior to this amendment. The additional amount payable by COUNTY under this First Amendment shall be \$61,650.34.
- 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 \$61,650.34.

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, 2020.

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 approved by the Board of County Commissioners on May 12, 2015 nor the agreement relating to design and construction of an eight foot wide, six inch thick, concrete multipurpose trail from Mulberry Land east to Cypress Creek Drive, as funds permit, in the Town of Grant/Valkaria, Florida.

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 Administrator
 Town of Grant/Valkaria
 P. O. Box 766
 Grant/Valkaria, FL 32949

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

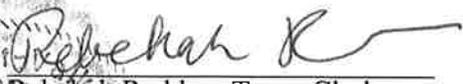
**BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS**



Rita Pritchett, Chairman

As approved by the Board of County Commissioners
on December 19, 2017.

ATTEST:



Rebekah Raddon, Town Clerk

TOWN OF GRANT/VALKARIA, FLORIDA



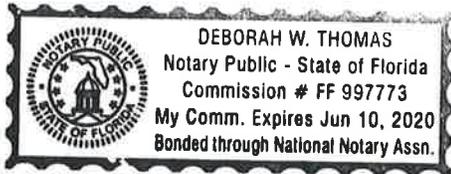
Del Yonts, Mayor

Date: Nov. 16, 2017



STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 19 day of December, 2017 by Rita Pritchett, 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 Thomas
NOTARY PUBLIC - State of Florida

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 16th day of November, 2017 by Del Yonts, Mayor of the Town of Grant/Valkaria, Florida, who is personally known to me or produced _____ as identification and who did take an oath.

Rebekah Raddon
NOTARY PUBLIC - State of Florida



EXHIBIT "A"

PROJECT(S) DESCRIPTION

The project to be funded by this Disbursement Agreement is for the design and construction of an eight foot wide, six inch thick, concrete multipurpose trail from Mulberry Lane east to Cypress Creek Drive in the Town of Grant/Valkaria as funds permit. Design of the entire trail will be completed and construction of a portion of the trail will be completed as remaining funds permit.

The anticipated scope of work for sidewalk construction includes design and construction services. Anticipated design 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 approximately 7200 linear feet of 8 foot wide by 6 inch thick concrete sidewalk; and constructing detectable warning devices, driveway aprons, and curbs as needed.

From South Mainland TIFT Fund.

EXHIBIT "B"

FINAL ACCOUNTING FOR PROJECT

Project Name: Grant/Valkaria Multi-Purpose Trail Project
From South Mainland TIFT Fund

| <u>Date</u> | <u>Activity</u> | <u>Check #</u> | <u>Impact Fee Deposit</u> | <u>Project Expense</u> | <u>Program Interest*</u> | <u>Unexpended Funds</u> |
|-------------|-----------------|----------------|-------------------------------|----------------------------|------------------------------|-----------------------------|
|-------------|-----------------|----------------|-------------------------------|----------------------------|------------------------------|-----------------------------|

Totals

* Based on SBA Interest Rate applicable to each month.

TRANSPORTATION IMPACT FEE TRUST FUND
DISBURSEMENT AGREEMENT

Between

BREVARD COUNTY

and

MALABAR, FLORIDA

for

PUBLIC TRANSPORTATION FACILITIES

in the amount of \$13,478.88

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

MALABAR, 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 Malabar, 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 Clerk of Courts 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 adopted by Chapter 62, Article V, Division 4, Sections 62-801 through 62-818 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 Malabar, Florida, dated April 16, 1991, 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 62-818 of the Brevard County Code of Laws and Ordinances, 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 April 16, 1991, 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 62-818 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.

- 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. Paving improvements on unimproved Eva Lane between Hall Road and State Road 514 in the Town of Malabar at a cost of \$13,478.88.

From South 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 \$13,478.88.
- 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 \$13,478.88.

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, applicable to the expenditure of the TIFT Funds to the extent that any such laws, ordinances, codes and regulations are specifically directed to the TOWN's attention in writing by the COUNTY.
- 6.2 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.
- 6.3 TOWN 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 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.
- 6.4 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.
- 6.5 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.

- 6.6 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.
- 6.7 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 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 South Mainland within the time periods provided in Section 6.6.
- 6.8 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". All expenditures shall be consistent with the Interlocal Agreement signed April 16, 1991.
- 6.9 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. The TOWN acknowledges that specific consideration has been given for this indemnity provision.

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, 2020.

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 April 16, 1991 as amended from time to time.

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 TOWN: Town Administrator
 Town of Malabar
 2725 Malabar Road
 Malabar, Florida 32905

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 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 TOWN by their duly authorized representatives on the respective dates below.

ATTEST:





Scott Ellis, Clerk

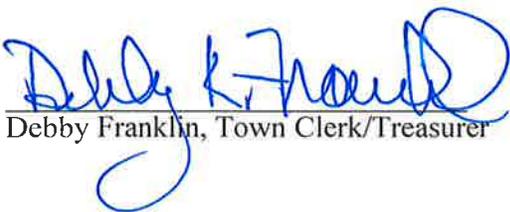
**BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS**



Rita Pritchett, Chairman

As approved by the Board of County Commissioners
on December 19, 2017.

ATTEST:



Debby Franklin, Town Clerk/Treasurer

TOWN OF MALABAR, FLORIDA

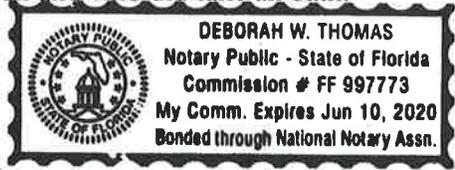


Patrick T. Reilly, Mayor

Date: 11/16, 2017

STATE OF FLORIDA §
COUNTY OF BREVARD §

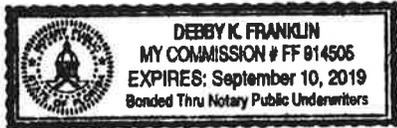
The foregoing instrument was acknowledged before me this 19 day of December, 2017 by Rita Pritchett, Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or produced _____ as identification and who did take an oath.



Deborah W. Thomas
NOTARY PUBLIC - State of Florida
My commission expires: 6/10/20

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 16 day of Nov, 2017 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: 9/10/19

EXHIBIT "A"

PROJECT(S) DESCRIPTION

The project to be funded by this disbursement agreement is:

Paving improvements on unimproved Eva Lane between Hall Road and State Road 514 in the Town of Malabar at a cost of \$13,478.88.

From South Mainland TIFT Fund.

EXHIBIT "B"

FINAL ACCOUNTING FOR PROJECT

Project Name: Eva Lane Paving Improvements
From South Mainland TIFT Fund

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

Totals

* Based on SBA Interest Rate applicable to each month.