

**TRANSPORTATION IMPACT FEE TRUST FUND
DISBURSEMENT AGREEMENT
BETWEEN
BREVARD COUNTY, FLORIDA
and
CITY OF COCOA, 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 **CITY OF COCOA, FLORIDA**, a Florida municipal corporation, hereinafter referred to as "CITY".

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 February 12, 1991, incorporated herein by this 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; 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 CITY and 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 relating to the Project(s) and the Program, as a condition precedent to the release of such funds to CITY.

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 CITY to COUNTY specifically set forth in this Agreement.

- 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 and refers to that agreement between Brevard County, Florida, and the City of Cocoa, Florida, dated February 12, 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 CITY.
- 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 CITY pursuant to the terms of this Agreement.

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

- 3.1 Design of pedestrian improvements and associated stormwater improvements along Aurora Street from State Road 520 to Jackson Street in the City of Cocoa at a cost of \$50,000.00. 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 Central Mainland TIFT Fund.

ARTICLE 4. FUNDING AND METHOD OF PAYMENT.

- 4.1 The amount payable by COUNTY under this Agreement shall be \$50,000.00.
- 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 \$50,000.00.

ARTICLE 5. 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 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.
- 5.3 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.
- 5.4 CITY 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 CITY 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 CITY 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 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 project.
- 6.4 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.
- 6.5 CITY 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 CITY to return to the COUNTY custody or control of any TIFT Funds which have been contractually

committed for expenditure by the CITY within a six-year time frame from the date of impact fee payment, but are yet unpaid, or funds the CITY's use of which is an issue in any pending litigation involving the CITY. 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 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 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 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. 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 February 12, 1991.
- 6.8 CITY 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 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 performance under this Agreement or the CITY's failure to perform any obligation or undertaking as set forth in this Agreement. The CITY 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, 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 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 CITY 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 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 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.

ARTICLE 10. INDEPENDENT CONTRACTOR.

- 10.1 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.
- 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 CITY, 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 February 12, 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

CITY: City Manager
City of Cocoa
65 Stone Street
Cocoa, Florida 32922

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

ARTICLE 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:

**BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS**

Scott Ellis, Clerk

Bryan Andrew Lober, Chair

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

ATTEST:

CITY OF COCOA, FLORIDA

Carie Shealy, City Clerk

Jake Williams, Jr., Mayor

Date: _____, 2020

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me by means of [☐] physical presence or [☐] online notarization this _____ day of _____, 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.

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 _____ day of _____, 2020 by Jake Williams, Jr., Mayor of the City of Cocoa, Florida, who is personally known to me or produced _____ as identification and who did take an oath.

NOTARY PUBLIC - State of Florida
My commission expires:

EXHIBIT "A"

PROJECT(S) DESCRIPTION

This project encompasses all engineering related design work necessary to construct pedestrian improvements along Aurora Street from State Road 520 to Jackson Street and specifically includes the design of all necessary stormwater improvements to implement the pedestrian improvements.

From Central Mainland TIFT Fund.

EXHIBIT "B"

FINAL ACCOUNTING FOR PROJECT

Project Name: Aurora Street Pedestrian Improvements
From Central Mainland TIFT Fund

Date	Activity	Check #	Impact Fee Deposit	Project Expense	Program Interest	Unexpended funds
00/00/00						
Totals						

* Based on SBA Interest Rate applicable to each month.