

TRANSPORTATION IMPACT FEE TRUST FUND
DISBURSEMENT AGREEMENT

Between

BREVARD COUNTY

and the

SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

for

MINTON ROAD INTERSECTION IMPROVEMENTS

in the amount of \$189,592.47

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

DISTRICT SCHOOL BOARD OF BREVARD COUNTY, FLORIDA, the governing body of the School District of Brevard County, Florida pursuant to Article IX, Section 4(b); Constitution of the State of Florida, hereinafter referred to as "SCHOOL BOARD".

WITNESSETH that, for and in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, COUNTY and SCHOOL BOARD 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 SCHOOL BOARD to COUNTY specifically set forth in this Agreement.
- 1.2 SCHOOL BOARD: means and refers to the School Board of Brevard County, Florida.
- 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 Zoning Office of Brevard County, Florida.
- 1.6 IMPACT FEE PROGRAM OR PROGRAM: means and refers to the Transportation Impact Fee Program as incorporated into Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida.
- 1.7 PROGRAM INTEREST: means interest generated from TIFT funds after receipt by SCHOOL BOARD.
- 1.8 PROJECT(S): means the project or projects set forth in Article III hereof, and Exhibit "A" entitled "Project Description".
- 1.9 TIFT FUNDS: means the Transportation Impact Fee Trust; the monies given to SCHOOL BOARD 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 Under Chapter 62, Article V, Division 4, Sections 62-801 through 62-819 of the Code of Ordinances of Brevard County, Florida, 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.
- 2.3 COUNTY is desirous of disbursing TIFT Funds to SCHOOL BOARD. However, as administrator for the Program, COUNTY desires to obtain the assurances from SCHOOL BOARD and SCHOOL BOARD so assures COUNTY, that SCHOOL BOARD will comply with all state and local statutes, rules and regulations and applicable codes and regulations as made known to the SCHOOL BOARD relating to the Project(s) and the Program, as a condition precedent to the release of such funds to SCHOOL BOARD.
- 2.4

ARTICLE III

PROJECT(S)

SCHOOL BOARD hereby agrees to provide and implement the following eligible Project(s):

Construction of improvements to the intersection of Minton Road and Wingate Boulevard in West Melbourne, 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 \$189,592.47.
- 4.2 Following execution of this Agreement, the Planning and Zoning Office Director or designee shall provide written notice to Department for the disbursement of TIFT Funds in the amount of \$189,592.47.

ARTICLE V

RECORDS

- 5.1 The COUNTY and the SCHOOL BOARD 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 SCHOOL BOARD has awarded a contract to an independent contractor to perform Project(s) services, SCHOOL BOARD 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 SCHOOL BOARD agrees to furnish to the Planning and Zoning Office Director, status reports on November 1 of each year identifying the interest accrued, the expenditures to date and the project progress.

ARTICLE VI

ASSURANCES

- 6.1 SCHOOL BOARD 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 SCHOOL BOARD's attention in writing by the COUNTY.
- 6.2 SCHOOL BOARD hereby agrees to maintain books, records and documents in accordance with standard accounting procedures and practices of the SCHOOL BOARD which sufficiently and properly reflect all expenditures of funds provided by COUNTY under this Agreement.
- 6.3 SCHOOL BOARD 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 Zoning Office Director for a period not to exceed one hundred eighty (180) days if just cause is shown. This section shall not require the SCHOOL BOARD to return to the COUNTY custody or control of any TIFT Funds which have been contractually committed for expenditure by the SCHOOL BOARD within a six-year time frame from the date of impact fee payment, but are yet unpaid, or funds the SCHOOL BOARD's use of which is an issue in any pending litigation involving the SCHOOL BOARD.
- 6.4 SCHOOL BOARD agrees to complete each project identified in this agreement. In the event TIFT Funds are not sufficient, the SCHOOL BOARD may submit to the COUNTY a request for additional revenue from the TIFT Funds.
- 6.5 SCHOOL BOARD 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 SCHOOL BOARD agrees to return to the Department the unexpended TIFT Funds no later than sixty (60) days following the expiration date in Article VIII or within sixty (60) days following an administrative extension under Section 6.4, if applicable, along with a completed Form B, attached hereto and by this reference made a part hereof. An administrative extension for the return of funds, if requested prior to the sixty (60) day expiration period, may be granted by the Planning and Zoning Office Director for a period not to exceed sixty (60) days if just cause is shown.
- 6.7 Program interest generated as a result of receipt of TIFT Funds may be retained by SCHOOL BOARD provided that this interest shall be added to TIFT Funds committed to the Project(s) by the SCHOOL BOARD 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 North Mainland within the time periods provided in Section 6.6.
- 6.8 SCHOOL BOARD 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".

- 6.9 SCHOOL BOARD hereby agrees to submit to the Planning and Zoning Office within sixty (60) days of the completion of each Project(s), as set out in Article III, a complete financial accounting of all its Project(s) activities, as provided on Exhibit "B", attached hereto and by reference made a part hereof.

ARTICLE VII

INDEMNIFICATION CLAUSE

SCHOOL BOARD, 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 SCHOOL BOARD's failure to perform any obligation or undertaking of the SCHOOL BOARD as set forth in this Agreement. The foregoing indemnification does not waive any defense of sovereign immunity and shall not waive the damage limits set forth in Section 768.28 Florida Statutes, nor shall it be construed to constitute an agreement by the SCHOOL BOARD to indemnify any other party for such other part's negligent, willful, or intentional acts or omissions.

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 remain in effect until September 30, 2008.

ARTICLE IX

TERMINATION

- 9.1 If, through any cause, SCHOOL BOARD fails to commence work on the project, or fails to fulfill in timely and proper manner its obligations under this Agreement, or if SCHOOL BOARD 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 SCHOOL BOARD of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of termination. If just cause is shown prior to termination, the Planning and Zoning Office Director may specify in writing the actions that must be taken by SCHOOL BOARD 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 SCHOOL BOARD 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 SCHOOL BOARD or COUNTY terminates the Agreement, SCHOOL BOARD 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

SCHOOL BOARD is an independent contractor under this Agreement. Services provided by SCHOOL BOARD are subject to supervision by SCHOOL BOARD 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 SCHOOL BOARD, 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.

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: County Manager
Board of County Commissioners
2725 Judge Fran Jamieson Way
Viera, FL 32940

FOR SCHOOL BOARD: Superintendent
School Board of Brevard County
2700 Judge Fran Jamieson Way
Viera, FL 32940

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. SCHOOL BOARD 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

SCHOOL BOARD 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 SCHOOL BOARD or its employees shall be disclosed in writing to the Planning and Zoning Office.

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 SCHOOL BOARD by their duly authorized representatives on the respective dates below.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

Scott Ellis, Clerk

By _____
Truman Scarborough, Chairman

**Reviewed for legal form and
content:** *[Signature]*

(Assistant) County Attorney

As approved by the Board of County Commissioners
on April 24, 2007.

ATTEST:

SCHOOL BOARD OF BREVARD COUNTY

Richard A. DiPatri, Ed. D.
Superintendent

By _____
Janice Kershaw, Chairman

Date: _____, 2008

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this _____ day of _____, 2008 by Truman Scarborough, 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
My commission expires:

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this _____ day of _____, 2008 by Janice Kershaw, Chairman of the School Board of Brevard County, 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

The project to be funded by this Disbursement Agreement is for construction of roadway and traffic signalization improvements at the intersection of Minton Road and Wingate Blvd and roadway improvements along Wingate Blvd. in West Melbourne, Florida.

The scope of work for this Agreement includes:

- Minton Southbound – Add a second left turn lane.
- Minton Northbound – Add a dedicated right turn lane.
- Wingate Westbound – Add an additional lane for 1580 feet. As a result the right turn lane for Minton northbound is 700 feet long and the left turn lane for Minton southbound is 600 feet long, and a center through, right & left turn lane is provided. A right turn lane is also provided for School T.
- Wingate Eastbound – The left turn lane for Meadowlane Elementary is extended to 720 feet and a left turn lane is provided for the School T and Central Middle School.
- Intersection signal light system is upgraded to provide control of the additional lanes.

From South Mainland TIFT Fund.

EXHIBIT "B"

FINAL ACCOUNTING FOR PROJECT

Project Name: Minton Road / Wingate Blvd. Intersection 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.