

**IMPACT FEE CREDIT AND REIMBURSEMENT AGREEMENT**  
**for**  
**ERIE ROAD AND U.S. 301 IMPROVEMENT PROJECT**

**THIS IMPACT FEE CREDIT AND REIMBURSEMENT AGREEMENT** (“Agreement”) is made and entered into as of \_\_\_\_, 2020, by and between **MANATEE COUNTY**, a political subdivision of the State of Florida (“Manatee County” or “County”), and **BENDERSON DEVELOPMENT COMPANY, LLC**, a Florida limited liability company, whose address is 7978 Cooper Creek Boulevard, University Parkway, Florida 34239 (“Landowner”).

**WHEREAS**, ~~County and~~ Landowner has~~ve~~ designed [WC1]an improvement to the intersection of U.S. 301 and Erie Road, north along Erie Road to a point of connection at the northerly boundary of Landowner’s parcel; and

**WHEREAS**, the Florida Department of Transportation (“FDOT”) also has an improvement planned to the intersection of U.S. 301 and Erie Road; and

**WHEREAS**, County and Landowner desire to integrate the improvements planned by them with the improvements planned by FDOT; and

**WHEREAS**, Landowner and its affiliates have planned improvements to nearby property that require payment of transportation impact fees to the County at a future date; and

**WHEREAS**, A portion of the improvements planned by the County and Landowner are impact fee creditable if undertaken by Landowner; and

**WHEREAS**, County has requested Landowner to undertake impact fee creditable work on the public roadways outside of the improvements planned by FDOT and to prepay excess impact fees to the County for a portion of the work to pass through to FDOT in a participation agreement between County and FDOT; and

**WHEREAS**, County has also requested landowner to undertake improvements planned by them which are at the County’s discretion and which will be paid as reimbursable by the County to Landowner; and

**WHEREAS**, the parties desire to memorialize their agreement in writing, all as more fully set forth in this Agreement,

**NOW, THEREFORE**, in consideration of the mutual obligations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. That the above recitals are true and correct and are hereby incorporated herein.

2. Landowner's Work. The Final Design and Final Scope of the FDOT, County and Landowner Improvements is generally shown on the site plan attached to this Agreement as Exhibit "A". The Landowner Improvements are depicted on the site plan as either Landowner's Improvements (which are roadway improvements to be undertaken by Landowner which are not impact fee creditable or reimbursable by the County), Landowner's Creditable Improvements (which are improvements to be undertaken by Landowner which are impact fee creditable by the County as benefiting the County's transportation system), or Landowner's Reimbursable Improvements (which are improvements to be undertaken by Landowner on a reimbursable basis by the County). Landowner shall provide and furnish all services necessary for Landowner's Improvements, Landowner's Creditable Improvements and Landowner's Reimbursable Improvements pursuant to the Construction Plans (collectively, "Landowner's Work") incorporated by reference in this Agreement as Exhibit "B."

- (a) No substantial deviations from Landowner's Work shall be incorporated into the design and engineering without the prior written consent of the County.
- (b) Landowner has engaged in a competitive process to determine its primary construction contractor, with award to the low responsive, responsible bidder), where the number of qualified bids was at least three (3). If the County objects in writing to the proposed award of the contract within twenty (20) days, the County and the Landowner shall have thirty (30) additional days to resolve the objection. If, at the end of the additional thirty (30) days, the County and the Landowner are unable to resolve the objection, this Agreement shall terminate, and the County shall, within forty-five (45) days of the date of termination, reimburse the Landowner for actual costs incurred for the Landowner's Creditable Improvements and Landowner's Reimbursable Improvements.
- (c) During construction, Landowner shall prepare and maintain complete and accurate books of account and records as to all costs, which books of account and records shall be kept and maintained in accordance with generally accepted industry standards, consistently applied, and the Landowner shall promptly supply to the County detailed documentation of actual costs as the costs are incurred, including pay requests, cancelled

checks, and other documentation reasonably deemed necessary by the County, upon written request by the County.

(d) Upon completion of construction of Landowner's Work, the Landowner's engineer of record shall prepare and provide to the County the certification of completed construction and the as-built record drawings.

3. County Reimbursement. The County shall reimburse the Landowner for the actual costs incurred (including costs incurred prior to the effective date of this Agreement) on a per-invoice basis, over and above those costs paid by the Landowner for the Landowner's Reimbursable Improvements, subject to the following conditions:

(a) The County's obligation to reimburse the Landowner shall not exceed the sum of \$892,966 [INSERT] comprised of all of the Bid Prices and services included in **Exhibit "C"**. ~~Will need to amend the agreement~~ The Landowner shall notify the County prior to incurring any costs in excess of such amount. Upon receipt of such notice, the County shall have the option of (i) within forty-five (45) days of receipt of the aforesaid notice, approving (by motion of the Board of County Commissioners) an increase in the maximum obligation of the County, or (ii) terminating this Agreement and, within forty-five (45) days of the date of termination, reimbursing the Landowner for actual costs incurred, subject to the invoice requirements set forth in Subsection 3(b) hereof. In the event the County does not exercise the option to increase its maximum obligation within forty-five (45) days pursuant to option (i) above, the County shall be deemed to have elected to terminate this Agreement pursuant to option (ii) above.

(b) ~~As part of~~ In addition to the reimbursement amount above, the County has agreed to reimburse Landowner its reasonable costs of managing the Landowner's Creditable Improvements and Landowner's Reimbursable Improvements and of incorporating them into the Project, in an amount not to exceed \$25,000.00.

(c) The Landowner will submit to the Deputy Director of Engineering Services, Public Works Department (the "County Representative") an invoice for payments made by the Landowner for services through the 25<sup>th</sup> day of the preceding month by the first day of the month. Such invoices shall (i) identify all Costs funded by the Landowner for which reimbursement is requested; and (ii) include detailed invoices and documentation acceptable to Manatee County, to include pay requests, canceled checks, wire transfer instructions and other verification reasonably necessary to identify all Costs incurred and funded by Landowner. The invoice will include the percentage of the completed work performed. The invoice will include documentation of completion and acceptance by the County of such services. The invoice will also include proof of payment to the contractors who provided the services. The initial invoice submitted by the Landowner shall also provide the same information set forth above to document the expenditure of the Landowner

Contribution on actual costs of design, permitting and construction of the Improvements.

- (d) The County shall reimburse the Landowner for payments made for services rendered in accordance with this Agreement in an aggregate amount not to exceed the amount set forth in Paragraph 3(a) above, less a ten percent (10%) retainage amount which will be paid with the final payment due hereunder following acceptance of construction by the County. Notwithstanding the foregoing, should the Landowner provide for adequate retainage with respect to its construction contractor, the County shall not withhold retainage from the reimbursement payments to Landowner provided herein. Adequate retainage for the purposes of this Agreement shall be a minimum of ten percent (10%) until the work is fifty percent (50%) complete, and a minimum of five percent (5%) thereafter. For example, if the Landowner receives a \$10,000.00 draw request from the contractor, and pays the contractor \$9,000.00 while withholding 10% as retainage, the County would reimburse the Landowner for the full \$9,000.00 paid to the contractor. The County shall process and pay invoices in accordance with the Local Government Prompt Payment Act (Sections 218.70-218.74, Florida Statutes), which generally requires payment for non-disputed amounts within twenty-five (25) business days of submittal. On or before the end of such twenty-five (25) day period, the County Representative shall advise Landowner of any amount in dispute. Payment for any undisputed amount shall be made, and all unpaid disputed amounts shall be handled, in accordance with the Local Government Prompt Payment Act.
- (e) Acceptance of construction by the County will not be unreasonably withheld or delayed. The County shall not reimburse the Landowner for any expenditures not related to, consistent with, or otherwise incurred in connection with the Landowner's Reimbursable Improvements pursuant to this Agreement.
4. Impact Fees: Landowner specifically agrees that, except as expressly provided in this Section 4, there will be no impact fee credits requested or provided to the Landowner for the Improvements constructed pursuant to this Agreement, and that the builders within the Project will pay all impact fees otherwise associated with buildings within the Project. Notwithstanding the foregoing, the County Engineer has determined that the Landowner's Creditable Improvements provide a non-site related improvement to the County's transportation system and therefore Landowner is eligible to receive a multimodal transportation impact fee credit equal to the actual costs incurred by Landowner on the Landowner's Creditable Improvements (which amount is estimated to be \$1,958,587). Landowner shall also receive a multimodal transportation impact fee credit equal to the amount of a fair market appraisal of any right-of-way donated to and accepted by the County in connection with the Project. The County Engineer has also determined that Landowner's contribution of \$1,009,769~~[INSERT AMOUNT]~~, which amount shall be forwarded by County to FDOT for <sup>[wc2]</sup>the FDOT improvements, shall also be

impact fee creditable (hereinafter, "Landowner's FDOT Contribution"). Landowner shall pay Landowner's FDOT Contribution to the County within 30 days of execution of this Agreement, which shall occur at least 30 days prior to FDOT bidding the project. After the date of Landowner's contribution of \$1,009,769 to the County, any transportation impact fee payments made by Landowner, it's affiliates, agents or tenants within the Manatee County northeast road impact fee benefit district shall be reimbursable to Landowner upon a corresponding debit against Landowner's impact fee credit account.

[TM3]

[WC4]

[WC5]

5. No General Obligation. The obligations of the County set forth herein shall not be construed to be or constitute general obligations, debts or liabilities of the County or the State of Florida or any political subdivision thereof within the meaning of the Constitution and laws of the State of Florida, or to result in a pledge of or lien upon any revenues of the County. The obligation of the County to reimburse Developer hereunder is subject to the discretion of the Boards of County Commissioners to budget legally available funds in amounts sufficient to fund the Cost of the Utility Improvements.

6. County's Remedies. Should Developer fail to promptly complete construction of the Improvements, then Manatee County shall have the right to complete the Improvements.

~~6. County's Remedies. Should Developer fail to promptly complete construction of the Utility Improvements within the time periods provided in Paragraph 2 or any time extension approved in writing by Manatee County, then Manatee County shall have the right to complete the improvements.~~ [TM6]

7. Indemnity. Developer shall indemnify, defend, save and hold harmless Manatee County, its officers, agents and employees, from and against all suits, actions, claims, demands, costs, penalties, fines or liability of any nature to the extent arising out of, because of, or due to any negligent act of omission or commission of Developer, their consultants, contractors, officers, agents or employees, in the performance of this Agreement. Neither Developer, or its, consultants, contractors, nor any of their officers, agents or employees, will be liable under this paragraph for damages arising out of injury or damage to persons or property directly caused or resulting from the overt actions and/or negligence of Manatee County, its officers, agents or employees.

8. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue for any dispute shall be located in a civil court of competent jurisdiction of Manatee County, Florida.

9. Severability; Partial Invalidity. The provisions of this Agreement are declared by the parties to be severable. If any part of this Agreement shall be determined

to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect, provided that the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.

10. Integration. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the 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 herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no 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.

11. Designation of Representatives; Notices. The parties hereby designate the persons set forth the below as their agents and each party agrees that its agents shall be responsible for the administration of this Agreement and shall be duly authorized to perform and request all acts necessary for the administration and performance of this Agreement. Every notice, request or other communication provided for in this Agreement, if in writing, shall be deemed to have been given or served at the time that the same is received, if hand delivered, or at the time the same shall be deposited in the United States mail, postage prepaid, addressed to the parties and signed by the designated representatives and addressed as provided below, until either party provides written notice of a different agent or address:

<u>If to the County:</u>	With a copy to:
Manatee County	Chairman of County Commissioners
C/O Cheri Coryea, County Administrator	Manatee County
Post Office Box 1000	Board of County Commissioners
Bradenton, Florida 34206	Post Office Box 1000
	Bradenton, Florida 34206

If to Benderson Development Company, LLC	with a copy to:
Attn: Todd M. Mathes	
7978 Cooper Creek Boulevard	
University Park, Florida 34201	

12. No Development Rights Conferred. The parties understand, acknowledge and agree that no approval is given hereby for any development of the Project. Nothing contained in this Agreement shall (i) create any development rights in favor of Developer; (ii) create, or otherwise acknowledge the existence of, any vested development rights by reason of estoppel, detrimental reliance, or otherwise; or (iii) authorize, permit, or otherwise allow any construction and/or development of or on any other property unless separately approved by the Board of County Commissioners pursuant to County Ordinances. All land use authorizations, development and construction rights and authorizations, shall be obtained upon proper application and in compliance with all standards and requirements of the Manatee County Comprehensive Plan, the Manatee County Land Development Code, any approved general development plan, preliminary or final site plan, and all conditions or stipulations thereto.

13. No Assignment. Developer shall not be authorized to assign this Agreement, or any portion hereof, without the prior written consent of Manatee County, which consent may be withheld in Manatee County's solely exercised discretion; provided, however, the County specifically understands that the rights obtained by the Developer under the County land use approvals of the Project may be assigned to a subsequent developer or assignee of all or a portion of the Property and/or Project without the County's consent.

14. Disclaimer of Third-Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and no right or cause for action shall accrue, to by reason hereof, or for the benefit of any third party not a party hereto.

15. Force Majeure. No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Agreement if such failure is caused directly by hurricane, tornado, fire, earthquake, civil commotion or failure or disruption of utility services, or other like cause beyond the reasonable control of the party obliged to perform.

16. Ambiguities. Both parties have been allowed equal input regarding the terms and wording of this Agreement and have had the benefit of consultation with legal counsel prior to its execution, such that all language herein shall be construed equally against the parties, and no language shall be construed strictly against its drafter.

17. Headings. The headings or captions of sections or paragraphs used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

18. Modifications and Amendments; Waivers.

(a) This Agreement may be amended only pursuant to an instrument in writing that has been jointly executed by the parties hereto and duly authorized and approved by the Board of County Commissioners of the County and by Developer.

(b) Neither this Agreement nor any portion of it may be modified or waived orally. However, each party (through its governing body or properly authorized officer) shall have the right, but not the obligation, to waive, on a case-by-case basis, any right or condition herein reserved or intended for the benefit or protection of such party without being deemed or considered to have waived such right or condition for any other case, situation, or circumstance and without being deemed or considered to have waived any other right or condition. No such waiver shall be effective unless made in writing with an express and specific statement of the intent of such governing body or officer to provide such waiver.

IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the date set forth above.

(Signatures on following page)

(Signature page to Amendment)

WITNESS

Benderson Development Company, LLC

\_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Angelina "Angel" Colonnese  
Clerk of the Circuit Court  
And Comptroller

MANATEE COUNTY, FLORIDA

By: Board of County Commissioners

By: \_\_\_\_\_

Deputy Clerk

By: \_\_\_\_\_

Chairperson

Date: \_\_\_\_\_