

**EDGEWATER RIVER OAKS**  
**PROPORTIONATE FAIR SHARE AGREEMENT**

THIS PROPORTIONATE FAIR SHARE AGREEMENT (the “Agreement”) is entered into by and between the following entities: **TMBTR OF FLORIDA, LLC**, a Florida limited liability company, whose mailing address is 4900 N. Scottsdale Road, Suite 2000, Scottsdale, AZ 85251; **THE CITY OF EDGEWATER**, a Florida municipal corporation, whose address is 104 North Riverside Drive, Edgewater, Florida 32132; and the **COUNTY OF VOLUSIA**, a political subdivision of the State of Florida ("County"), whose mailing address is 123 West Indiana Avenue, DeLand, Florida 32720.

WHEREAS, the real property subject to this Agreement is comprised of 18.214± acres of land located at the southeast corner of South Ridgewood Avenue and Jones Fish Camp Road in Edgewater, Volusia County, Florida, with Parcel Identification Number(s) 853810000280; 853810000252; 853810000260; 853810000270; 853810000160; 853810000150; 853810000130; 853810000010; 853711000061 and as further described in **Exhibit A**, attached hereto and incorporated herein (the “Property”); and

WHEREAS, the site plan process for the Property will allow the Edgewater River Oaks project to be developed (“Project”); and

WHEREAS, this Agreement is specific to that portion of the Project being developed as multi-family residential housing, described above as the Property; and

WHEREAS, in connection with the site plan review for the Project, a traffic impact analysis ("TIA"), dated June 2024 of the existing road network in the vicinity of the Project was performed by Developer’s traffic consultant in order to determine the availability of roadway capacity to serve the Project; and

WHEREAS, the results of the TIA indicate that there is insufficient roadway capacity in the vicinity of the Property without the anticipated additional traffic impacts of the Project; and

WHEREAS, Florida Statutes § 163.3180(5)(h) (2023) authorizes payment of proportionate fair share mitigation funds as an alternative to demonstrating traffic concurrency in certain circumstances; and

WHEREAS, the TIA identifies certain traffic impacts in the area of the Project ("Impact Area"); and

WHEREAS, Traffic & Mobility Consultants in a written memorandum calculated the amount of the proportionate fair share for the total buildout of the necessary offsite traffic improvements required for the Project, including specifically for the multi-family portion of the Project, which is based upon a maximum buildout of 196 build-to-rent multi-

family dwelling units (“Build-to-Rent”).

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and with the intent to be legally bound and to bind their successors and assigns, the Developer, County, and City do hereby agree as follows:

1. Recitals. The recitals set forth above are true and correct, form a material part of this Agreement, and are incorporated herein by reference.
2. Proportionate Fair Share. For purposes of this Agreement, the calculated “Proportionate Fair Share” for the Build-to-Rent portion of the Property shall be TWO HUNDRED TWENTY-NINE THOUSAND SEVEN HUNDRED SIXTY-ONE AND 53/100 DOLLARS (\$229,761.53), as more particularly described in Exhibit B, attached hereto and incorporated herein (the “Proportionate Fair Share”). Developer shall satisfy the Proportionate Fair Share obligation through payment of the sum of the Proportionate Fair Share (“PFS Payment”). The entire amount of the Proportionate Fair Share shall be paid to the City within thirty (30) days of execution of this Agreement by all Parties. If Developer does not pay the Proportionate Fair Share within one (1) year of the date of the execution of this Agreement by all parties hereto, then the Proportionate Fair Share shall be revised based on the applicable Florida Department of Transportation published inflationary rate. Once Developer has paid the Proportionate Fair Share, Developer agrees to waive the right to request a return of the Proportionate Fair Share payment.
3. City’s Application of Proportionate Fair Share. The parties intend that the City will apply the Proportionate Fair Share funds received for the purpose of installing improvements in the Impact Area. Developer acknowledges that it has no right to direct or claim a right to direct the application of the Proportionate Fair Share to making any specific public roadway infrastructure improvements.
4. Impact Fee Credits. Subsequent to payment of funds, Developer shall be entitled to City road impact fee credits in an amount equal to the portion of the PFS Payment applied to roadway segment improvements. In addition, Developer shall be entitled to County thoroughfare road impact fee credits against and in an amount equal to the portion of the PFS Payment transferred to the County for intersection improvements. County Impact fee credits shall be issued as detailed in **Exhibit C.**
5. Developer Acknowledgement/Waiver. Developer acknowledges that the payment of the Proportionate Fair Share does not release the Developer from payment of any other City development or building related fees including other impact fees, or such other City fees as may be prescribed by law.
6. Effective Date. The effective date this Agreement shall be the last date upon which

all parties hereto cause this Agreement to be executed as indicated below their respective signatures.

7. Binding Nature of this Agreement. This Agreement shall inure to the benefit of the parties hereto and the subject property, and shall be binding upon any person, firm, or corporation that may become a subsequent owner, successor in interest or assign, directly or indirectly, of the subject property or any portion thereof.
8. Venue. In the event of any claim, action, litigation or proceeding under this Agreement, venue shall be in Volusia County, State of Florida.
9. Recordation. This Agreement will be recorded in the Public Records of Volusia County, Florida, at Developer's expense.
10. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The electronic (i.e., facsimile or email) transmittal of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on behalf of the respective entities, their successors and assigns.

**Signed, sealed and delivered in the presence of: THE CITY OF EDGEWATER,  
FLORIDA, a Florida municipal  
corporation**

\_\_\_\_\_  
**Witness 1**

\_\_\_\_\_  
**Print Name of Witness 1**

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

**Diezel DePew, Mayor**

**Attest:** \_\_\_\_\_

\_\_\_\_\_  
**Witness 2**

\_\_\_\_\_  
**Print Name of Witness 2**

**Bonnie Zlotnik, CMC, City  
Clerk**

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

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2024 by Diezel DePew and Bonnie Zlotnik, CMC, Mayor and City Clerk, respectively, of The City of Edgewater, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

\_\_\_\_\_  
Notary Public

Printed Name:  
\_\_\_\_\_

Commission No. \_\_\_\_\_

Approved as to form by:

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

**Aaron Wolfe, City Attorney**

ATTEST:

VOLUSIA COUNTY COUNCIL

\_\_\_\_\_  
George Recktenwald  
County Manager

\_\_\_\_\_  
Jeffrey S. Brower  
Chair

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by George Recktenwald and Jeffrey S. Brower, as County Manager and Chair, Volusia County Council, respectively, on behalf of the County of Volusia, and who are personally known to me.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA  
Type or Print Name:

\_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Approved as to form by:

By: \_\_\_\_\_  
Thomas "Russ" Brown, III, Sr. Asst. County Attorney

Signed, sealed and delivered in the presence of:

**TM BTR OF FLORIDA, LLC, a Florida  
limited liability company**

\_\_\_\_\_  
Witness 1

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

\_\_\_\_\_  
Print Name of Witness 1

\_\_\_\_\_  
Witness 2

\_\_\_\_\_  
Print Name of Witness 2

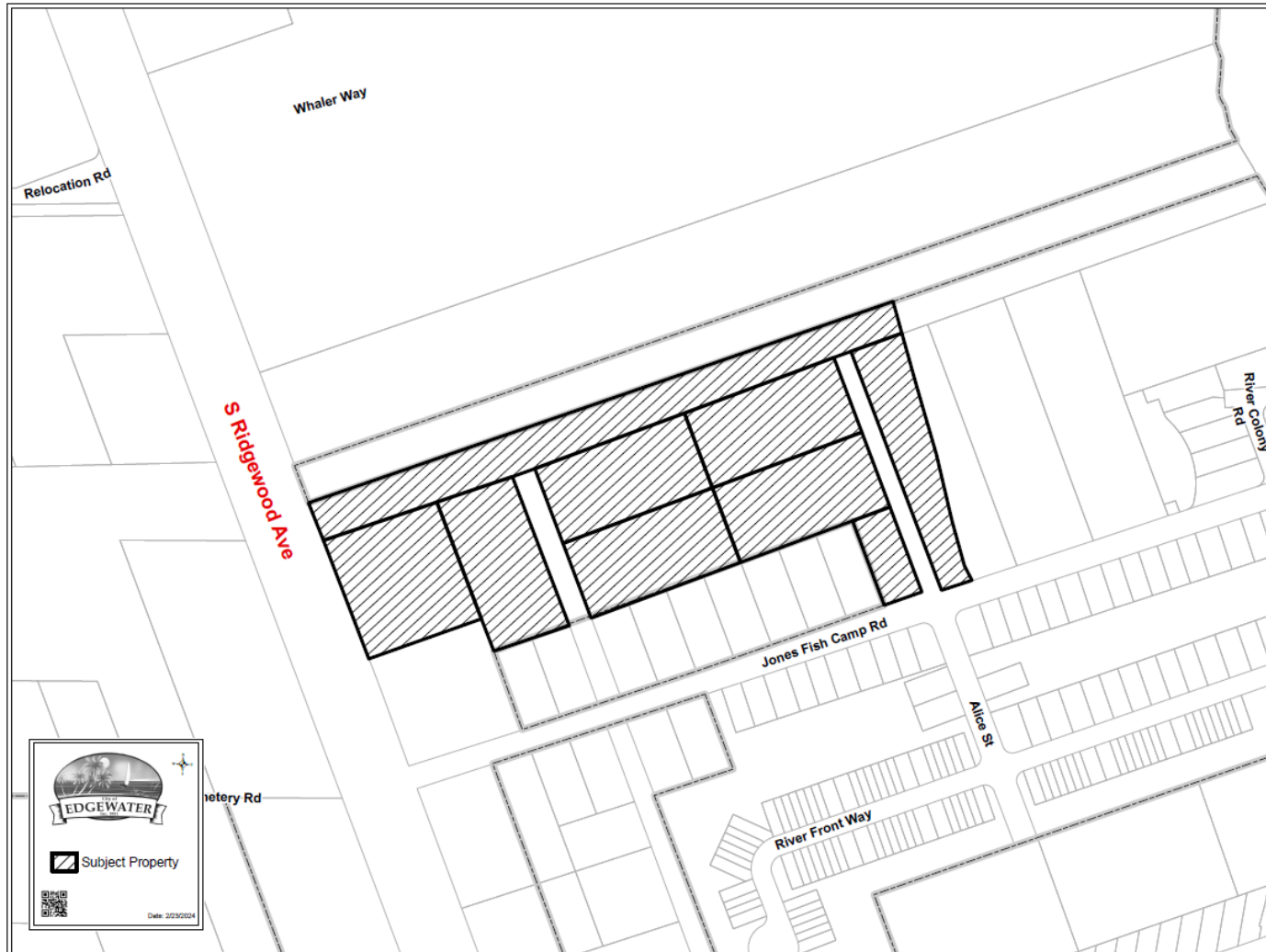
STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or  
☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_ 2024, by \_\_\_\_\_, as  
\_\_\_\_\_ of **TM BTR OF FLORIDA, LLC, a Florida limited liability company**.  
He/she is [ ] personally known to me or [ ] produced as identification and did not take an  
oath.

Notary Public \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Commission No. \_\_\_\_\_

Exhibit A

The Property



**Exhibit B**

**Proportionate Fair Share Calculation**

**Total Proportionate Share**

	<b>Build-to-Rent</b>	<b>Mixed Use</b>	<b>Dollar General</b>	<b>Background</b>
<b>Roadway</b>	\$ 175,642.39	\$ 3,088,293.02	\$ 16,434.38	\$ 495,941.51
<b>Signal</b>	\$ 10,066.40	\$ 94,238.59	\$ 6,853.72	\$ 18,419.36
<b>Intersection Lanes*</b>	\$ 21,974.53	\$ 303,248.45	\$ 31,311.63	\$ 55,425.56
<b>Driveway Lanes**</b>	-	-	\$ 136,892.03	-
<b>Off-Site Queue***</b>	\$22,078.23	\$127,098.99	-	-
<b>Total</b>	\$ 229,761.53	\$ 3,612,879.05	\$ 191,491.75	\$ 569,786.43
			<b>Total</b>	<b>\$ 4,603,918.77</b>

\* Added turn lanes are for the WB right and the NB right movements

\*\* Limited to the Dollar General and Riverfront Estates (Back'g) properties; study property driveways are not impact fee creditable

\*\*\*Off-site turn lane contributions were limited to the study properties' impact (nearby developments off Jones Fish Camp Rd not included)



## Exhibit C

### Impact Fee Credit Instructions

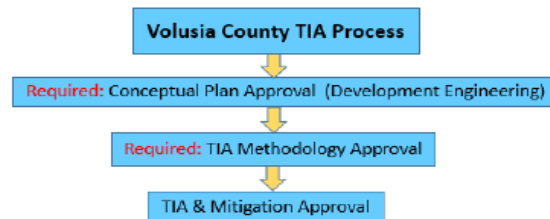


#### **TRAFFIC IMPACT ANALYSIS, PROPORTIONATE FAIR SHARE PAYMENT & COUNTY TRANSPORTATION IMPACT FEE CREDIT PROCESSES**

As of October 1, 2021, Volusia County Traffic Engineering and Development Engineering established the following processes for Use Permit TIA reviews, PFS payments and agreements, and Impact Fee crediting:

#### **TRAFFIC IMPACT ANALYSIS (TIA)**

The following steps must be followed in *sequential order* to submit TIA methodologies & TIAs to Traffic Engineering:



##### **1) Preliminary Conceptual Plan Coordination: (Allow 1 Week Minimum)**

- Conceptual plan approval is required *prior* to the review of the TIA methodology and must be coordinated through the Use Permit process. A Use Permit Application is required to initiate this process. Please contact Land Development staff at (386) 736-5942 if you require information regarding the permit process, application, fees, etc. For further conceptual plan coordination, please contact Joe Spiller of Development Engineering ([jspiller@volusia.org](mailto:jspiller@volusia.org) or 386-736-5967 x 12466).
- Use Permits are ultimately permits for construction. The TIA methodology and conceptual plan approvals are prerequisites for construction plan approval. <https://www.volusia.org/services/growth-and-resource-management/planning-and-development/land-development/applications-and-forms.html>

##### **2) TIA Methodology Review and Approval: (Allow 1-2 Weeks Minimum)**

- TIA methodologies must be submitted through the Use Permit application process and must follow the River to Sea TPO Guidelines. <https://www.r2ctpo.org/planning-studies/tia-guidelines/>
- Development Engineering will send Traffic Engineering's comments to the applicant or applicant's authorized agent, which is typically the Engineer of Record for the proposed development. Traffic Engineering shall identify additional contacts and addresses to be copied regarding the TIA methodology.
- The TIA Methodology approval by Traffic Engineering, valid for 6 months, will be issued once all county comments have been addressed as well as the final methodology is provided. The TIA must be submitted before the methodology expires.

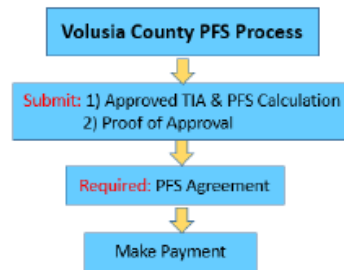
##### **3) TIA Review and Approval: (Allow 2-3 Weeks Minimum)**

- All TIAs must have an approved methodology. No TIAs will be reviewed without one.
- All TIAs must be submitted through the Use Permit Process. The following items are required -- Incomplete TIA packages will not be reviewed:
  1. TIA PDF containing PFS calculation if applicable
  2. TIA Computer Input Files (Synchro, HCS, Model Distribution Files; etc.)\*\*
  3. Completed TIA Checklist
  4. PFS Calculation (if required)
  5. Response to All Reviewer Comments

*\*\*Please be sure the developer submits the computer input files. These are frequently omitted, which causes TIA review delay.*
- Development Engineering will send TIA comments to the applicant or applicant's authorized agent which is typically the Engineer of Record for the proposed development. Traffic Engineering shall identify additional contacts and addresses to be copied regarding the TIA review.
- If mitigation is required, Traffic Engineering will request a PFS calculation when the TIA has minimal Level of Service analyses comments. Such calculation must be included in the TIA document. Premature PFS calculations will not be reviewed.
- The TIA approval by Traffic Engineering will be issued once all county comments have been addressed and the final TIA, which shall contain the approved PFS calculation (if applicable), is provided.
- PFS mitigation discussions and coordination should be completed prior to starting the PFS payment process. Please contact Tadd Kasbeer, County Engineer at 386-736-5978 x 12177.

## PROPORTIONATE FAIR SHARE (PFS) AGREEMENTS & PAYMENTS

All steps are required to be followed in *sequential order* to be able to make a PFS payment to Volusia County:



1. **First, Submit the Approved TIA and/or PFS Calculation for Validation.** To enter into a PFS Agreement and pay PFS to Volusia County, the project's TIA or technical memorandum will be used to review the proposed PFS calculation and amount for consistency and accuracy regarding construction costs, segment and intersection PFS calculation application, and critical/near-critical road mitigation.

Please Email the following to Melissa Winsett ([mwinsett@volusia.org](mailto:mwinsett@volusia.org)) of Traffic Engineering:

For Developments that Required a TIA – 2 Required Items:

- Local Jurisdiction\*-Approved TIA PDF that includes the PFS calculation
- Proof of TIA/PFS Approval from Local Jurisdiction\* – Dated Correspondence with official's name, signature, contact info

For Developments requiring PFS Payment but weren't required to complete TIAs – 2 Required Items:

- Local Jurisdiction\*- Approved Technical Memorandum\*\* & PFS calculation
- Proof of Tech Memo/PFS Approval from Local Jurisdiction\* – Dated Correspondence with official's name, signature, contact info

*\* Local Jurisdiction: The local government that is officially reviewing and approving the project – typically a city.*

*\*\*Technical Memorandum: Document that identifies a project's trip generation and distribution onto roadway segments that has insufficient capacity and require mitigation to obtain approval.*

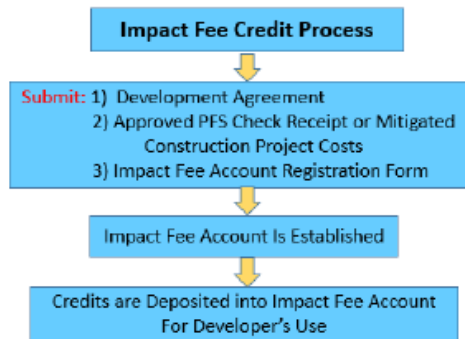
Upon satisfactory confirmation, Traffic Engineering will notify the respective city and County Attorney's Office that the PFS Amount has been validated. The approved PFS amount is valid for one year. Expired PFS will require resubmission to Traffic Engineering.

2. **Second, the Developer Must Enter Into a PFS Legal Agreement (Allow 4-6 Weeks Minimum for County Council Approval):**
  - Once Traffic Engineering Validates the PFS Amount, the developer may coordinate a PFS agreement with the County Attorney's office. Please contact Russ Brown ([rbrown@volusia.org](mailto:rbrown@volusia.org) or 386-736-5950 x12947).
  - Note: All Parent Tract TIAs must pursue "Master PFS Agreements" in lieu of separate PFS agreements for each lot or parcel with in the parent tract or PUD.
3. **Third, the Developer Must Provide the PFS Payment to Volusia County:**
  - Once the PFS Agreement has been Fully Executed, the PFS Payment can be made.
  - The developer must submit the following two items to Kristen Vieira ([kvieira@volusia.org](mailto:kvieira@volusia.org) or 386-736-5967 x 12177)
    - 1) Final Executed County PFS Agreement or Master Agreement:
    - 2) PFS check with same amount outlined in the PFS Agreement: Checks can be addressed to: "County of Volusia." In return, a receipt will be provided. PFS checks should be sent to the address below:

Attn: Kristen Vieira  
Volusia County Engineering  
123 West Indiana Avenue, Room 402  
Deland, FL 32720-4262

## IMPACT FEE CREDITS

The following steps are required to be able to obtain impact fee credits for PFS payment or construction mitigation improvement:



### 1. Establish an Impact Fee Credit Account:

- After the PFS payment is made or constructed improvements are complete, contact Engineering & Construction to establish an impact fee credit account and obtain credits. Contact: Scott Carraro ([scarraro@volusia.org](mailto:scarraro@volusia.org), (386) 736-5967 x12287). Please allow 5-7 business days.
  - For Impact Fee Credits related to PFS Payments, please submit the following supporting documentation to Engineering and Construction:
    - Copy of the project's recorded development agreement
    - Copy of your PFS check and receipt.
    - Completed Volusia County Impact Fee Account Registration form\*\* attached. Registration forms require original signatures. Copies or PDF's will not be accepted.
    - .
  - For Impact fee credits related to Constructed Improvements, please submit the following to Engineering & Construction:
    - Copy of the project's recorded development agreement.
    - Actual costs incurred such as executed construction contracts or contractor invoices. Engineers' estimates are not accepted. An itemized tabulation delineating eligible costs is required when contracts or invoices include ineligible items. Note: Eligible costs include design, permitting, right-of-way (if applicable), and construction & CEI.
    - Completed Volusia County Impact Fee Account Registration form\*\*, attached. Registration forms require original signatures. Copies or PDF's will not be accepted.

**\*\*Note:** Your Transportation Impact Fee Credit Account is like a bank account. The "List of Person(s) authorized to sign for this account", on the form, will be the people authorized to make withdrawals from your Transportation Impact Fee Credit Account.

### 2. Allow Staff to Process Information and Make Deposit:

- The submittal will be reviewed by county engineering staff and additional information may be requested of the applicant.
- Engineering & Construction will deliver the original executed Registration Form to County Growth and Resource Management (GRM). Contact: Beth Branton ([bbranton@volusia.org](mailto:bbranton@volusia.org), (386) 736-5924, ext. 12097).
- GRM will not accept executed forms from anyone other than Engineering & Construction.
- GRM will establish the Transportation Impact Fee Credit Account and send the applicant an email with instructions on how to pay County Transportation Impact Fees with credits, or if desired, transfer your credits. Please be aware that the county auditor completes audits our transportation impact fee credit files.

**For questions regarding the following, please call:**

- **Impact Fee Credit Registration** - Scott Carraro at (386) 736-5967, ext. 12287, [scarraro@volusia](mailto:scarraro@volusia)
- **Impact Fees or Impact Fee Credit Account balance** - Beth Branton at (386) 736-5924, ext. 12097, [bbranton@volusia.org](mailto:bbranton@volusia.org).
- **PFS Agreements**, please contact Russ Brown at 386-736-5950 x12947, [rbrown@volusia.org](mailto:rbrown@volusia.org)
- **PFS payments**, please contact Kristen Vieira at 386-736-5968, ext. 12177, [kvieira@volusia.org](mailto:kvieira@volusia.org)
- **PFS calculations**, please contact Melissa Winsett at 386-736-5968, ext. 12322, [mwinsett@volusia.org](mailto:mwinsett@volusia.org)



## VOLUSIA COUNTY IMPACT FEE ACCOUNT REGISTRATION

Growth and Resource Management Department  
Permit Center [www.volusia.org/permitcenter](http://www.volusia.org/permitcenter)  
123 West Indiana Avenue, Room 203  
DeLand, FL 32720-4604

TELEPHONE: DeLand (386) 738-5924, ext. 2087  
Daytona Beach (386) 257-6000, ext. 2087  
New Smyrna Beach (386) 423-3300, ext. 2087  
FAX: (386) 943-7096 E-MAIL: [permitctr@co.volusia.fl.us](mailto:permitctr@co.volusia.fl.us)

Collection Zone \_\_\_\_\_ I P Account Number \_\_\_\_\_

NOTE: Credit must be applied to projects within the above zone

### PLEASE PRINT OR TYPE

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

#### APPLICANT/PROPERTY OWNER:

Name \_\_\_\_\_ E-Mail Address \_\_\_\_\_  
Business Name \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
( ) ( )  
Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

Answer the following questions on the subject property:

1. Physical Address:

City:

The correct numeric street address for the site must be furnished. If unsure, contact the City or County where the project is located for the correct address.

2. Property Tax Parcel Number(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. List of Person(s) authorized to sign for this account:

Printed Name _____	Signature _____
Printed Name _____	Signature _____
Printed Name _____	Signature _____

Signature of Applicant/Property Owner: \_\_\_\_\_

#### THIS AREA TO BE COMPLETED BY VOLUSIA COUNTY PERSONNEL

Total credits to be awarded: \$ \_\_\_\_\_

Proportionate Fair Share Payment: Yes \_\_\_ No \_\_\_

Additional Details: \_\_\_\_\_

\_\_\_\_\_  
Approved by (signature)

Tadd Kasbeer, P.E., County Engineer  
Title

\_\_\_\_\_  
Date