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**AGENDA ITEM
ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS**

Deadline for Submission - Wednesday 9 a.m. – Thirteen Days Prior to BCC Meeting

11/5/2024

BCC MEETING DATE

TO: Joy Andrews, County Administrator **DATE:** October 8, 2024

FROM: Jan Trantham, Senior Transportation Planner **PHONE:** 904 209-0611

SUBJECT OR TITLE: IFA 2024-06 Impact Fee Agreement for Brinkhoff Charter School

AGENDA TYPE: Consent Agenda, Contract, Resolution

BACKGROUND INFORMATION:

The proposed Road Impact Fee Credit Agreement with Red Apple at Brinkhoff, LLC seeks to establish road impact fee credit for the Brinkhoff Charter School for contribution of funds for intersection improvements at SR 207/Brinkoff Rd to be constructed by the County The intersection improvement contribution is \$374,000.00, which amount is determined to be the project's proportionate share. The impact fee credit will be awarded after the IFA is approved and recorded, as payment has been received.

1. IS FUNDING REQUIRED? No **2. IF YES, INDICATE IF BUDGETED.** No
IF FUNDING IS REQUIRED, MANDATORY OMB REVIEW IS REQUIRED:
INDICATE FUNDING SOURCE:

SUGGESTED MOTION/RECOMMENDATION/ACTION:

Motion to adopt Resolution 2024-_____, authorizing the County Administrator, or designee, to execute the Impact Fee Credit Agreement with Red Apple at Brinkhoff, LLC establishing a total road impact fee credit of \$374,000.00.

For Administration Use Only:
Legal: Kealey West 10/21/2024 **OMB:** ARM 10/21/2024 **Admin:** Brad Bradley 10/24/2024

RESOLUTION NO. 2024-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN IMPACT FEE CREDIT AGREEMENT WITH RED APPLE AT BRINKHOFF, LLC.

WHEREAS, Red Apple at Brinkhoff, LLC (“**Developer**”) is the owner and developer of certain lands zoned Open Rural (“**OR**”), pursuant to St. Johns County Ordinance No. 2024-32, and proposed for development of an early learning center and K-8 charter school commonly known as the Brinkhoff Charter School and Early Learning Center (“**Project**”).

WHEREAS, the Developer is providing a proportionate share payment in the amount of Three Hundred Seventy-Four Thousand and No/100 Dollars (\$374,000.00) (the “**Proportionate Share Payment**”) for the intersection design and permitting through the Florida Department of Transportation (“**FDOT**”) for improvements at the State Road (“**SR**”) 207/Brinkhoff Road intersection, including signalization, to be constructed by the County, which is recognized as meeting the requirements for road facilities impact fee credits (“**Road Facilities Impact Fee Credits**”).

WHEREAS, St. Johns County Ordinance No. 87-57, as amended, St. Johns County Road Facilities Impact Fee Ordinance (“**Road Impact Fee Ordinance**”), allows for Road Facilities Impact Fee Credits to be granted by the Board of County Commissioners for any cash contributions or property dedicated and other contributions made to St. Johns County as identified within the Amended Impact Fee Credit Agreement attached hereto and incorporated herein by this reference.

WHEREAS, in accordance with the Road Impact Fee Ordinance, Developer is entitled to certain impact fee credits for certain dedications.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida that:

Section 1. The County Administrator is hereby authorized to approve and execute a, Impact Fee Credit Agreement with Red Apple at Brinkhoff, LLC, substantially in the form of that which is attached hereto and incorporated herein by reference for those dedications identified within the Road Impact Fee Ordinance and the Impact Fee Credit Agreement which are eligible for impact fee credits.

Section 2. Upon acceptance by the County Administrator, the Clerk is instructed to record the agreement in the Official Records of St. Johns County, Florida.

Section 3. To the extent that there are typographical or administrative errors that do not change the tone, tenor or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida
this ___ day of _____, 2024.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

Sarah Arnold, Chair

Attest: **BRANDON J. PATTY, CLERK OF
THE CIRCUIT COURT & COMPTROLLER**

By: _____
Deputy Clerk

Rendition Date: _____

IMPACT FEE CREDIT AGREEMENT
Road Facilities Impact Fees

THIS IMPACT FEE CREDIT AGREEMENT (the “**Agreement**”) is made this _____ day of _____, 2024 by and between the **BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA** (“**County**”), and **RED APPLE AT BRINKHOFF, LLC**, a Florida limited liability company (“**Applicant**”).

RECITALS:

- A. The Applicant is the owner of that certain real property located in unincorporated St. Johns County, Florida described in **Exhibit “A”** attached hereto and incorporated herein by this reference (the “**Property**”).
- B. The Property is zoned Open Rural (“**OR**”), pursuant to St. Johns County Ordinance No. 2024-32, and is proposed for development of an early learning center and K-8 charter school commonly known as the Brinkhoff Charter School and Early Learning Center (“**Project**”).
- C. Pursuant to St. Johns County Ordinance No. 87-57 , as amended (“**Road Facilities Impact Fee Ordinance**”), the County requires any person who seeks to develop land within St. Johns County, as evidenced by such person’s application for a building permit or certificate of occupancy (“**Feepayer**”), to pay a Road Facilities impact fee (“**Road Facilities Impact Fee**”), so as to assure that such new development bears a proportional share of the cost of capital expenses necessary to provide roads within St. Johns County.
- D. Section 13 of the Road Facilities Impact Fee Ordinance allows impact fee credits to be granted for certain dedications and/or improvements (“**Road Facilities Impact Fee Credits**”).
- E. Applicant is providing a proportionate share payment in the amount of Three Hundred Seventy-Four Thousand and No/100 Dollars (\$374,000.00) (the “**Proportionate Share Payment**”) for the intersection design and permitting through the Florida Department of Transportation (“**FDOT**”) for improvements at the State Road (“**SR**”) 207/Brinkhoff Road intersection, including signalization, to be constructed by the County, which is recognized as meeting the requirements for Road Facilities Impact Fee Credits.
- F. Pursuant to the terms of the Road Facilities Impact Fee Ordinance, County and Applicant desire to set forth their agreement related to the Proportionate Share Payment and a procedure for the application and treatment of such Road Facilities Impact Fee Credits.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The above stated Recitals are incorporated herein as Findings of Facts.
2. The total Road Facilities Impact Fee Credits for the Project will be equal to the Proportionate Share Payment of Three Hundred Seventy-Four Thousand and No/100 Dollars (\$374,000.00). The Applicant shall make the Proportionate Share Payment to the County prior to obtaining a building permit for the first building on the Property. This shall constitute fulfillment of the Applicant's transportation proportionate share and concurrency obligations for the Property.
3. From and after the date thereof, all Feepayers applying for building permits or certificates of occupancy in connection with any construction in the Project shall pay the amount due under the Road Facilities Impact Fee Ordinance directly to Applicant. Applicant shall be fully responsible for notifying all Feepayers of this requirement and shall ensure that such payments are directly paid to Applicant. Then, for so long as the total Road Facilities Impact Fee Credits for which Applicant has issued vouchers under this Agreement is less than the total Road Facilities Impact Fee Credits authorized by this Agreement, Applicant shall issue to such Feepayer a voucher evidencing full payment of Road Facilities Impact Fees in connection with such Feepayer's application for a building permit or certificate of occupancy. The voucher issued by Applicant shall contain a statement setting forth the amount of Road Facilities Impact Fee paid. Upon presentation of such voucher by the Feepayer, the County shall issue a receipt to the Feepayer and shall deduct the amount of such voucher from the Road Impact Fee Credit Account. The Voucher Form is attached hereto as **Exhibit "B"**.
4. In the event that Applicant determines to sell all or part of the Property, Applicant may sell, transfer, assign or convey any of its interest in part of the Road Facilities Impact Fee Credits to such purchaser, transferee, assignee or grantee for use within the Property for such consideration as Applicant, in its sole discretion, determines. In such event, Applicant shall execute and deliver to the County a copy of the instrument selling, transferring, assigning or granting the Road Facilities Impact Fee Credits so sold, transferred, assigned or granted and the remaining amount of Road Facilities Impact Fee Credits, if any, shall remain vested in Applicant. The Parties agree that no impact fee credit may be used or applied to development outside the Property without the specific approval of the County, and that such approval may be denied based on factors including, but not limited to the relationship of the dedication and/or improvements to the particular development to which credits are transferred. Applicant agrees it will not seek to transfer/assign/sell credits to vacant lands associated with St. Johns County permit COMM 2021-01, described as a 27-acre mixed-use commercial development with a grocery store, retail development, futures commercial outparcels and associated infrastructure. Applicant acknowledges that only one impact fee credit account may exist at any given time for the Property.

5. On or before January 31 of each year, so long as there remains any Road Facilities Impact Fee Credits, Applicant shall prepare and deliver to the County Growth Management Department an annual report setting forth the amount of Road Facilities Impact fee payments made by the Fee payers applying for building permits or certificates of occupancy within the Project and the remaining balance of Road Facilities Impact Fee Credits.
6. At such time as the Road Facilities Impact Fee Credits provided for hereunder have been exhausted, Applicant or the Fee payer seeking building permits or certificates of occupancy within the Project shall pay the County the Road Facilities Impact Fees as are then due and payable under the Road Facilities Impact Fee Ordinance in effect at that time. Until such time, any Fee payer within the project shall be instructed by the County to pay its Road Impact Fees directly to Applicant.
7. Miscellaneous Provisions
 - a. This Agreement shall be construed and governed in accordance with the laws of the State of Florida. All parties to this Agreement have participated fully in the negotiation and preparation hereof and, accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto. All parties agree particularly that this Agreement is bound by the terms of the County's Road Facilities Impact Fee Ordinance and other applicable ordinances. Any and all applicable terms of those Ordinances are to be considered incorporated herein by reference. If there is any inconsistency found between this Agreement and such Ordinances or applicable law, those Ordinances or law shall prevail and be applicable.
 - b. The Parties agree that Road Facilities Impact Fee Ordinance Section 13 limits the total amount of impact fee credits given to an amount not greater than the total amount of impact fees due for the Project. The parties further agree that they will not challenge in any judicial proceeding and will accept the interpretation of the County Attorney's Office that the Road Facilities Impact Fee Credits identified or granted by this Agreement are limited to the amount of Impact Fees which are due or become due within the Development.
 - c. In construing the Agreement, the singular shall be held to include the plural, and the plural shall include the singular, the use of any gender shall include every other and all gender and captions and paragraph headings shall be disregarded.
 - d. All of the exhibits attached to this Agreement are incorporated in and made a part of this Agreement.
 - e. The Agreement, and any Exhibits and/or addendum made a part hereof, constitute the entire Agreement and understanding of the parties and shall not be modified or amended except by written agreement duly executed by

the parties hereto.

- f. This Agreement is made for the sole benefit and protection of the parties and no other persons shall have any right of action hereunder. This Agreement shall be binding upon the parties and their respective successors and permitted assigns.
- g. All covenants, agreements, representation and warranties made herein shall be deemed to have material and relied on by each party to this Agreement.
- h. This agreement is recognized as being subject to the laws of Florida and the Ordinances of St. Johns County, Florida and therefore all applicable provisions thereof are incorporated herein and if any provision hereof is inconsistent with such provisions, such provision shall apply.
- i. The Applicant must be a feepayer as referenced in the applicable impact fee ordinance to receive impact fee credits under this ordinance.
- j. Nothing in this Agreement shall act to allow an entity to receive impact fees credits for contributions provided by a government entity including, but not limited to, a Community Development District.
- k. Nothing in this Agreement shall be deemed to require the County to continue to levy or collect Impact Fees, or, if levied, to levy them for any certain amount.
- l. Any notices or reports required by this Agreement shall be sent to the following:

For the County: County Administrator
St. Johns County
500 San Sebastian View
St. Augustine, Florida 32084

With Copy to: County Attorney
St. Johns County
500 San Sebastian View
St. Augustine, Florida 32084

For the Applicant: Red Apple at Brinkhoff, LLC
800 Corporate Drive, Suite 124
Ft. Lauderdale, Florida 33334

With Copy to: Summit Construction Management Group, LLC
3603 Beachwood Court
Jacksonville, Florida 32224

With Copy to: Rogers Towers, P.A.
100 Whetstone Place, Suite 200
St. Augustine, Florida 32086

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the date set forth above.

Witness: **Applicant: Red Apple at Brinkhoff, LLC**, a Florida limited liability company

By: _____

Name: _____

Name: _____

Its: _____

Name: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of (check one) physical presence or online notarization, this ____ day of _____, 202_, by _____, as _____ of Red Apple at Brinkhoff, LLC, a Florida limited liability company, on behalf of the company, who is (check one) is personally known to me or has produced a valid driver's license as identification.

Print Name: _____

Notary Public

My Commission Expires: _____

Commission Number: _____

Witness:

St. Johns County, Florida

Name: _____

Name: _____

By: _____

Name: Joy Andrews,
County Administrator

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me by means of (check one)
 physical presence or online notarization, this ____ day of _____, 202_, by Joy Andrews, as County Administrator of St. Johns County, Florida, and is authorized to execute this Agreement on behalf of St. Johns County, Florida, on behalf of the County, who is (check one)
 is personally known to me or has produced a valid driver's license as identification.

Print Name: _____

Notary Public

My Commission Expires: _____

Commission Number: _____

EXHIBIT "A"

Legal Description of Property

PARCEL 1:

A PORTION OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 3, TOWNSHIP 8 SOUTH, RANGE 29 EAST, SAINT JOHNS COUNTY, FLORIDA, LYING SOUTHERLY OF BRINKHOFF ROAD AS NOW ESTABLISHED FOR A 66 FOOT RIGHT-OF-WAY, AND WESTERLY OF THE FORMER BILLINGS FARM AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 3, SAID POINT BEING ON THE NORTH RIGHT-OF-WAY LINE OF BRINKHOFF ROAD AT THE END OF SAID ROAD; THENCE SOUTH 00°54'43" EAST ALONG THE EAST LINE OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 3, 66.04 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 00°54'43" EAST ALONG LAST SAID LINE, 484.50 FEET; THENCE NORTH 88°30'44" EAST, PARALLEL WITH SAID BRINKHOFF ROAD, 476.17 FEET; THENCE NORTH 07°11'20" WEST, 486.89 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID BRINKHOFF ROAD; THENCE SOUTH 88°30'44" WEST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE 422.93 FEET TO THE POINT OF BEGINNING.

Together With:

PARCEL 2:

PART OF THE NE 1/4 OF THE SE 1/4, BEING PART OF JASON BILLINGS HOMESITE, AS SHOWN IN DEED BOOK 94, PAGE 193, AND MORE PARTICULARLY DESCRIBED AS: FIVE (5) ACRES OF LAND IN THE NE 1/4 OF THE SE 1/4 OF SECTION 3, TOWNSHIP 8 SOUTH, RANGE 29 EAST, KNOWN AS JASON BILLINGS HOMESITE AND BOUNDED ON THE NORTH BY LANDS OF OSCAR BILLINGS, AND ON THE SOUTH, EAST AND WEST BY LANDS OF M.E. CUNNINGHAM. LESS AND EXCEPT THAT PROPERTY DEEDED IN OFFICIAL RECORDS BOOK 1450, PAGE 685.

Exhibit "B"

(Sample Impact Fee Voucher)

Voucher # _____

ST. JOHNS COUNTY IMPACT FEE VOUCHER

(Brinkhoff Charter School)

Name and address of Applicant/Grantor: **Red Apple at Brinkhoff, LLC**

Name and address of Grantee: _____

Legal description of subject property: _____

4. Subdivision or Master Development Plan name: **Brinkhoff Charter School**

The undersigned Applicant/Grantor confirms that it has received from _____

on _____, 20____ funds sufficient for the following impact fees required under the applicable St. Johns County Impact Fee Ordinance, as amended, as indicated below.

Applicant/Grantor gives notice to St. Johns County, Florida that the following sums should be deducted from the applicable Road Facilities Impact Fee Credit account of the Applicant/Grantor.

Road Impact Fees, Ordinance #87-57 in the amount of \$ _____

Applicant/Grantor:

By: _____

Name: _____

Its: _____