

UTILITY REIMBURSEMENT AGREEMENT

THIS UTILITY REIMBURSEMENT AGREEMENT (“Agreement”) is made and entered into, as of December 14, 2021 by and between **MANATEE COUNTY**, a political subdivision of the State of Florida (“Manatee County” or “County”) and **MANATEE COUNTY HABITAT FOR HUMANITY, INC.**, a Florida not-for-profit organization, whose address is 1901 Manatee Ave. W., 2nd Floor, Bradenton (“Developer”).

RECITALS

A. Developer is the owner of certain real property located at 32nd Avenue East, Bradenton, located in Manatee County, Florida, legally described in **Exhibit “A”**, attached hereto and incorporated herein (the “Property”); and

B. The Developer has submitted to County plans for a residential development on the Property which is identified as Poling Gardens (the “Project”); and

C. The Developer desires to connect the Project to the County utilities for the benefit of the Project; and

D. The County has treated the development of the Project as an affordable housing project in the meaning of Manatee County’s Land Development Code Section 545, and Developer has entered into a Land Use Restriction Agreement with the County, dated April 6, 2021, to develop a portion of the Project as qualified affordable housing; and

E. Policy 6.1.3.3 of the Manatee County Comprehensive Plan encourages the use of government incentives to aid in the development of affordable housing; and

F. Pursuant to Article XIV of Chapter 2-29 of the Manatee County Code of Ordinances, Southwest County Improvement Trust Fund (SWTIF) monies can be used to undertake and carry out redevelopment which may include the installation, construction, or reconstruction of utilities within the Southwest District; and

G. The Southwest District Strategic Plan approved by the Board of County Commissioners in January 2019 encourages the use of the SWTIF monies to attract private investment, increase the tax base, and increase connectivity and infrastructure capacity that will facilitate the development of affordable housing; and

H. Subject to receiving reimbursement from the County as provided herein, the Developer is willing to construct certain utility improvements (the “Utility Improvements”), more particularly described herein, and depicted in the Utility Improvements Construction Plans, attached hereto as **Exhibit “B”** and incorporated herein by reference (the “Scope of Work”); and

I. Pursuant to the County's request, the Utility Improvements depicted in the Scope of Work will exceed the capacity required by the proposed Project; and

J. Policy 6.1.3.3. of the Manatee County Comprehensive Plan authorizes the County to provide government incentives, contributions and technical assistance to the private sector and community based non-profit organizations to aid in the development of affordable housing; and

K. As provided herein, the County hereby agrees to reimburse Developer for the actual costs of the Utility Improvements and acknowledges those funds to be paid to the Developer; and

L. The Developer and the County have reviewed the Cost Estimate, attached hereto as **Exhibit "C"** and incorporated herein by reference (the "Estimate"), and enter into this Agreement with the understanding that such Estimate is an accurate estimate of the actual costs of the Utility Improvements as set forth herein; and

M. The parties desire to memorialize their agreement in writing, all as more fully set forth herein.

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

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein.

2. Developer's Obligations. The Developer shall provide and furnish all services necessary for the Utility Improvements, pursuant to the Scope of Work and subject to the following conditions:

- (a) The Developer shall design, engineer, permit and construct the Utility Improvements in accordance with the Scope of Work attached hereto as **Exhibit "B"**. The Utility Improvements shall consist of the following:

All infrastructure to support the development of new housing, including all utility and road infrastructure necessary for the development (e.g., water, wastewater, stormwater, sidewalks, landscaping) as described in Exhibit C.

No substantial deviations from the Scope of Work or the above Utility Improvements shall be incorporated into the design and engineering without the prior written consent of the County. Such services include, without implied limitation, engineering investigation, surveys, geotechnical testing,

preliminary and final design services, preparation of working drawings, and quantity and cost estimates. Developer has retained an engineer of record, WR COOK ENGINEERING, INC., which engineer is acceptable to County, who shall sign, seal, and date the certification of completed construction and as-built record drawings pertaining to the Utility Improvements.

- (b) The final construction drawings and specifications approved in connection with the Utility Improvements and all other construction requirements reflected by such Utility Improvements shall be known and referred to as the "Final Scope" for purposes of this Agreement.
- (c) Within ninety (90) days following receipt of all required permits, the Developer shall commence construction of the Utility Improvements. The Developer shall complete the all engineering investigations, surveys, geotechnical testing, preliminary and final design services, quantities and cost estimates, specifications, bidding and construction of the Utility Improvements within a reasonable time following commencement thereof (not to exceed 365 days).
- (d) The Developer has engaged in a competitive process in determining its primary construction contractor, GATOR GRADING AND PAVING (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 the twenty (20) days, the County and the Developer shall have thirty (30) additional days to resolve the objection. If, at the end of the additional thirty (30) days, the County and the Developer 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 Developer for actual costs incurred, subject to the invoice requirements set forth in Section 3 hereof.
- (e) During construction, the Developer 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 Developer 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.
- (f) Upon completion of construction of the Utility Improvements, the Developer'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 Developer shall fund the actual costs of the Utility Improvements. Subject to its review and approval of the Construction Certification

and the Cost Certification, the County shall reimburse the Developer for an amount not to exceed two hundred thousand and No/100 Dollars (\$200,000) of the actual costs of the Utility Improvements (the "County Reimbursement"), subject to the following conditions:

(a) The County's obligation to reimburse the Developer shall not exceed the sum of two hundred thousand and No/100 Dollars (\$200,000). The Developer 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 Developer for actual costs incurred, subject to the invoice requirements set forth in this Section 3. 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) The Developer will submit to the Redevelopment and Economic Opportunity Department (the "County Representative") an invoice for payments made by the Developer for services through the 25th day of the preceding month by the first day of the month. Such invoices shall (i) identify all Costs funded by Developer 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 Developer. The invoice will include the percentage of the completed work performed. The invoice will include documentation of completion and will require acceptance by the County (signed by County Engineer or Public Works Director) of such services. The invoice will also include proof of payment to the contractors who provided the services.

(c) The County shall reimburse the Developer for the Costs incurred in accordance with this Agreement, less a ten percent (10%) retainage amount which will be paid with the final payment due hereunder following acceptance of construction by the County. 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 Developer 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.

(d) Acceptance of construction by the County shall not be

unreasonably withheld or delayed. The County shall not reimburse the Developer for any expenditures not related to, consistent with, or otherwise incurred in connection with this Agreement.

(e) The County shall issue the reimbursement only after all other funding sources have been expended by the Developer.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. Designation of Representatives; Notices. The parties hereby designate the persons set for 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:

If to the County:	With a copy to:
Manatee County	County Attorney
C/O Redevelopment and Economic Opportunity Director	Manatee County
Post Office Box 1000	Board of County Commissioners
Bradenton, Florida 34206	Post Office Box 1000
	Bradenton, Florida 34206

If to Manatee County Habitat for Humanity, Inc.	with a copy to:
Attn: Diana Shoemaker	William C. Robinson, Jr.
1901 Manatee Ave. W., 2nd Floor	Blalock Walters
Bradenton, FL 34205	802 11th Street West
	Bradenton, FL 34205

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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 hereunto set their hands and seals the day and year set forth below.


MANATEE COUNTY HABITAT FOR HUMANITY, INC.

a Florida not-for-profit organization


By: 
Diana Shoemaker, CEO

Date: 12-3-2021

WITNESSES:



(Signature)
Print Name: Kerry Collins



(Signature)
Print Name: Angelique H. Moldauer

MANATEE COUNTY, a political subdivision of the State of Florida

By its Board of County Commissioners

By: 
County Administrator 12/14/21

EXHIBIT "A"
LEGAL DESCRIPTION

THE SOUTH 396 FEET OF THE WEST ½ OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 1, TOWNSHIP 35 SOUTH, RANGE 17 EAST, MANATEE COUNTY, FLORIDA, TOGETHER WITH EASEMENT OVER THE NORTH 5 FEET OF LOT 6, AND THE SOUTH 5 FEET OF LOT 7, BLOCK A, BAUMER SUBDIVISION, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 160, RECORDED IN OFFICIAL RECORDS BOOK 2203, PAGE 1531 OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

AND

LOT 7, BLOCK "A", BAUMER SUBDIVISION, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 2, PAGE 160, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

EXHIBIT "B"

The construction drawings shall be submitted to and approved by the Manatee County Department of Building and Development Services and the Manatee County Department of Public Works through the permitting process. The final version will be submitted with the final request for funding.

EXHIBIT "C"

See attached estimate of costs.



DATE: 10/13/2021

PROJECT: Poling Garden

Manatee Habitat For Humanity

Attn: Bruce Winter

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	MOB	1	LS	51,640.00	\$ 51,640.00
2	MOT	1	LS	2,950.00	\$ 2,950.00
3	Erosion Control Silt Fence	1,720	LF	2.50	\$ 4,300.00
4	Clearing & Grubbing	1	LS	123,765.00	\$ 123,765.00
5	Temporary Washdown Area	1	EA	4,347.00	\$ 4,347.00
6	Construction Layout & As-Builts	1	LS	46,154.00	\$ 46,154.00
7	Excavate / Grade	1	LS	24,333.00	\$ 24,333.00
8	Off-Site Import (Trk Yds)	18,434	TKYD	16.20	\$ 298,630.80
9	Final Dress	1	LS	14,240.00	\$ 14,240.00
10	Quality Testing	1	LS	11,475.00	\$ 11,475.00
11	Sodding Bahia Grass	12,700	SY	4.15	\$ 52,705.00
12	Removal Ex. Asphalt & Overlay	435	SY	20.20	\$ 8,787.00
13	6" Stab Subgrade LBR 40	2,159	SY	5.45	\$ 11,766.55
14	6" Shell Base LBR 100	2,036	SY	12.45	\$ 25,348.20
15	1 3/4" Type S-III Asphalt	2,036	SY	17.45	\$ 35,528.20
16	Signs/Striping	1	LS	4,175.00	\$ 4,175.00
17	Type "D" Curb	760	LF	32.05	\$ 24,358.00
18	Retention Area curb	970	LF	38.50	\$ 37,345.00
19	4" Sidewalk 6.5 ft. W/Footer	470	SY	103.75	\$ 48,762.50
20	Truncated Mats handicap ramps	2	EA	1,089.00	\$ 2,178.00
21	Flumes	3	EA	1,635.00	\$ 4,905.00
22	12" x 6" Tee	1	EA	1,145.00	\$ 1,145.00
23	18" RCP	165	LF	55.60	\$ 9,174.00
24	30" RCP	214	LF	104.30	\$ 22,320.20
25	42" RCP	966	LF	187.05	\$ 180,690.30
26	12" x 18" ERCP	180	LF	64.90	\$ 11,682.00
27	24" x 38" ERCP	50	LF	171.00	\$ 8,550.00
28	6" Schedule 40	154	LF	34.35	\$ 5,289.90
29	12" ADS	267	LF	43.20	\$ 11,534.40
30	6" Perforated Underdrain with Media	1,109	LF	48.40	\$ 53,675.60
31	U/D Clean Out	15	EA	1,245.00	\$ 18,675.00
32	Control Structure	3	EA	7,498.00	\$ 22,494.00
33	Type D Inlet	5	EA	4,252.00	\$ 21,260.00
34	Type F Inlet	1	EA	3,830.00	\$ 3,830.00

35 Type H Inlet	2 EA	5,974.00	\$	11,948.00
36 Throat Inlets 5 x 5	8 EA	5,978.00	\$	47,824.00
37 Throat Inlets 6 x 6	2 EA	7,940.00	\$	15,880.00
38 Storm Drain Testing	1,575 LF	6.95	\$	10,946.25
39 Temp WM Jumper	1 EA	4,518.00	\$	4,518.00
40 Connect to existing 4" A/C WM	1 EA	4,521.00	\$	4,521.00
41 4" PVC C900 DR18 W/ Fittings	540 LF	49.05	\$	26,487.00
42 4" DIP	100 LF	54.00	\$	5,400.00
43 4" Gate valve	1 EA	1,705.00	\$	1,705.00
44 Fire Hydrant Assembly	1 EA	6,806.00	\$	6,806.00
45 Single short water Service	16 EA	1,096.00	\$	17,536.00
46 Chlorination/Bac Tees Testing	1 LS	2,299.00	\$	2,299.00
47 Tie into Ex. Sanitary MH incl Spray Lining	1 LS	11,121.00	\$	11,121.00
48 8" PVC SDR 26 San Sewer 0'-6'	518 LF	38.00	\$	19,684.00
49 San Manholes 4'-6'	6 EA	3,166.00	\$	18,996.00
50 San Manholes 6'-8'	1 EA	3,940.00	\$	3,940.00
51 Single San. Sewer Service	2 EA	1,394.00	\$	2,788.00
52 Double San. Sewer Service	7 EA	2,083.00	\$	14,581.00
53 San Sewer Testing	1 LS	5,593.00	\$	5,593.00
54 Florida Trench Safety Act	1 LS	2,575.00	\$	2,575.00
55 Best Management Prctices	1 LS	8,334.00	\$	8,334.00
Total			\$	1,451,495.90

Notes:

- 1 Due to the volatility of "materials" this quote is valid for 15 days.
- 2 No permits, Fees, bonds, rem/repl of unsuitable material or tree replacement included.
- 3 Our estimated time for beginning construction of this project would run into the middle of next year.
- 4 No cleaning of existing storm drain systems included in this quote.
- 5 Stakeout of storm drain construction off-site based on cad file.

Respectfully submitted:



Julie Bauer
Estimator

Accepted By:

Name: _____

Title: _____

Date: _____

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B. The Developer has submitted to County plans for a residential development on the Property which is identified as Poling Gardens (the "Project"); and

C. The Developer desires to connect the Project to the County's wastewater collection/conveyance system for the benefit of the Project; and

D. The County has treated the development of the Project as an affordable housing project in the meaning of Manatee County's Land Development Code Section 545, and Developer has entered into a Land Use Restriction Agreement with the County, dated April 6, 2021, to develop a portion of the Project as qualified affordable housing; and

E. Policy 6.1.3.3 of the Manatee County Comprehensive Plan encourages the use of government incentives to aid in the development of affordable housing; and

F. Pursuant to Article XIV of Chapter 2-29 of the Manatee County Code of Ordinances, Southwest County Improvement Trust Fund (SWTIF) monies can be used to undertake and carry out redevelopment which may include the installation, construction, or reconstruction of utilities within the Southwest District; and

G. The Southwest District Strategic Plan approved by the Board of County Commissioners in January 2019 encourages the use of the SWTIF monies to attract private investment, increase the tax base, and increase connectivity and infrastructure capacity that will facilitate the development of affordable housing; and

H. Subject to receiving reimbursement from the County as provided herein, the Developer is willing to construct certain utility improvements (the "Utility Improvements"), more particularly described herein, and depicted in the Utility Improvements Construction Plans, attached hereto as **Exhibit "B"** and incorporated herein by reference (the "Scope of Work"); and

I. Pursuant to the County's request, the Utility Improvements depicted in the Scope of Work will exceed the capacity required by the proposed Project; and

J. Policy 9.2.3.3. of the Manatee County Comprehensive Plan authorizes the County to pay for the cost of additional materials necessary for construction of any component of the wastewater collection/conveyance system where a development is required to increase system capacity greater than that required by a proposed project; and

K. As provided herein, the County hereby agrees to reimburse Developer for the actual costs of the Utility Improvements and acknowledges those funds to be paid to the Developer; and

L. The Developer and the County have reviewed the Cost Estimate, attached hereto as **Exhibit "C"** and incorporated herein by reference (the "Estimate"), and enter into this Agreement with the understanding that such Estimate is an accurate estimate of the actual costs of the Utility Improvements as set forth herein; and

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(a) The Developer shall design, engineer, permit and construct the Utility Improvements in accordance with the Scope of Work attached hereto as **Exhibit "B"**. The Utility Improvements shall consist of the following:

Replacement of waterline pipe along 31st Avenue East; cutting and replacement of driveways on the west side of 31st Avenue East; associated ties and taps; installation of a fire hydrant.

No substantial deviations from the Scope of Work or the above Utility Improvements shall be incorporated into the design and engineering without the prior written consent of the County. Such services include, without implied limitation, engineering investigation, surveys, geotechnical testing,

preliminary and final design services, preparation of working drawings, and quantity and cost estimates. Developer has retained an engineer of record, WR COOK ENGINEERING, INC., which engineer is acceptable to County, who shall sign, seal, and date the certification of completed construction and as-built record drawings pertaining to the Utility Improvements.

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- (d) The Developer has engaged in a competitive process in determining its primary construction contractor, GATOR GRADING AND PAVING (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 the twenty (20) days, the County and the Developer shall have thirty (30) additional days to resolve the objection. If, at the end of the additional thirty (30) days, the County and the Developer 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 Developer for actual costs incurred, subject to the invoice requirements set forth in Section 3 hereof.
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(c) The County shall reimburse the Developer for the Costs incurred in accordance with this Agreement, less a ten percent (10%) retainage amount which will be paid with the final payment due hereunder following acceptance of construction by the County. 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 Developer 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.

(d) Acceptance of construction by the County shall not be

unreasonably withheld or delayed. The County shall not reimburse the Developer for any expenditures not related to, consistent with, or otherwise incurred in connection with this Agreement.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. Designation of Representatives; Notices. The parties hereby designate the persons set for 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:

If to the County:	With a copy to:
Manatee County	County Attorney
C/O Redevelopment and Economic Opportunity Director	Manatee County
Post Office Box 1000	Board of County Commissioners
Bradenton, Florida 34206	Post Office Box 1000
	Bradenton, Florida 34206

If to Manatee County Habitat for Humanity, Inc.	With a copy to:
Attn: Diana Shoemaker	William C. Robinson, Jr.
1901 Manatee Ave. W., 2nd Floor	Blalock Walters
Bradenton, FL 34205	802 11th Street West
	Bradenton, FL 34205

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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 hereunto set their hands and seals the day and year set forth below.


MANATEE COUNTY HABITAT FOR HUMANITY, INC.

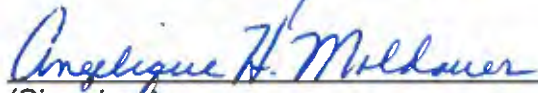
a Florida not-for-profit organization

By: 
Diana Shoemaker, CEO

Date: 12-3-2021

WITNESSES:


(Signature)
Print Name: Kerry Collins


(Signature)
Print Name: Angelique H. Moldauer

MANATEE COUNTY, a political subdivision of the State of Florida

By its Board of County Commissioners

By: 
County Administrator 12/14/21

EXHIBIT "A"

CONSTRUCTION SHALL COMMENCE IN THE RIGHT OF WAY AS NECESSARY TO INSTALL UTILITIES IMPROVEMENTS AS DESCRIBED IN THE SCOPE OF WORK AND APPROVED BY MANATEE COUNTY BUILDING AND DEVELOPMENT SERVICES DEPARTMENT AND PUBLIC WORKS DEPARTMENT BETWEEN 9TH STREET EAST AND THE PROJECT SITE DESCRIBED AS:

THE SOUTH 396 FEET OF THE WEST $\frac{1}{2}$ OF THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 35 SOUTH, RANGE 17 EAST, MANATEE COUNTY, FLORIDA, TOGETHER WITH EASEMENT OVER THE NORTH 5 FEET OF LOT 6, AND THE SOUTH 5 FEET OF LOT 7, BLOCK A, BAUMER SUBDIVISION, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 160, RECORDED IN OFFICIAL RECORDS BOOK 2203, PAGE 1531 OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

AND

LOT 7, BLOCK "A", BAUMER SUBDIVISION, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 2, PAGE 160, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

EXHIBIT "B"

The construction drawings shall be submitted to and approved by the Manatee County Department of Building and Development Services and the Manatee County Department of Public Works through the permitting process. The final version will be submitted with the final request for funding.

EXHIBIT "C"

See attached estimate of costs.



DATE: 10/15/2021

PROJECT:
31st AVE. E. Waterline

Manatee Habitat For Humanity

Attn: Bruce Winter

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	MOB	1	LS	6,985.00	\$6,985.00
2	Site Preparation	1	LS	3,410.00	\$3,410.00
3	MOT	1	LS	1,725.00	\$1,725.00
4	Protection of Utilities, structures & trees	1	LS	5,845.00	\$5,845.00
5	Erosion Control	900	LF	3.65	\$3,285.00
6	8" Waterline Pipe W/restrained joints	790	LF	76.55	\$60,474.50
7	Fire Hydrant Assembly	1	EA	6,930.00	\$6,930.00
8	Con. to Ex. 8" Dia. Waterline	1	LS	21,323.00	\$21,323.00
9	Con. to Proposed 4" Dia. Waterline	1	LS	1,956.00	\$1,956.00
10	Pavement Restoration 31st Ave E	1	LS	13,050.00	\$13,050.00
11	Driveway Restoration	8	EA	2,931.00	\$23,448.00
12	Video Recording of Site	1	LS	845.00	\$845.00
13	Sod	1100	SY	4.40	\$4,840.00
14	Quality control Testing	1	LS	1,080.00	\$1,080.00
15	Construction Stakeout & Record Drawing	1	LS	7,145.00	\$7,145.00
16	Florida Trench safety Act	1	LS	165.00	\$165.00
17	Best Management Practices	1	LS	2,530.00	\$2,530.00
18	Location of Ex. Water & Sewer Services	1	LS	3,260.00	\$3,260.00
19	Water Service Relocation	7	EA	1,326.00	\$9,282.00
20	Sewer Services Relocation	7	EA	1,520.00	\$10,640.00
					\$188,218.50

Notes:

- 1 Due to the volatility of "materials" this quote is valid for 15 days.
- 2 No permits, Fees, bonds, rem/repl of unsuitable material or tree replacement included.
- 3 Our estimated time for beginning construction of this project would run into the middle of next year.
- 4 Water Service includes: connecting to ex. Meter box. No work past the meter.

Respectfully submitted:



Julie Bauer
Estimator

Accepted By:

Name: _____

Title: _____

Date: _____

2704 105th Street E., Palmetto, FL Phone: (941) 751-3900 Fax: (941) 751-3949



Board of County Commissioners December 14, 2021 - Regular Meeting

SUBJECT

EXECUTION OF UTILITY REIMBURSEMENT AGREEMENTS FOR POLING GARDENS

Category

CONSENT AGENDA

Briefings

All

Contact and/or Presenter Information

Denise Thomas, Community Development Manager, Redevelopment and Economic Opportunity Department, ext. 3474

Jamie Schindewolf, Redevelopment Coordinator, Redevelopment and Economic Opportunity Department, ext. 3854

Action Requested

Authorization for the County Administrator to execute two (2) Utility Reimbursement Agreements (one for on-site improvements and one for off-site improvements) between Manatee County and Manatee County Habitat for Humanity, for the Poling Gardens development located at the eastern terminus of 32nd Avenue East (Parcel ID #4717000006).

Enabling/Regulating Authority

Ordinance No. 14-28 establishing the Southwest County Improvement Trust Fund

Background Discussion

Poling Gardens is a 16-unit single family housing development by Manatee Habitat for Humanity. The units are a combination of six attached single-family residences and ten single-family residences. It is located at the eastern terminus of 32nd Avenue East (Parcel ID #4717000006) in a residential neighborhood adjacent to two schools, Rowlett Magnet Elementary School and Southeast High School. This area is designated as a RECAP area (Racially and Ethnically concentrated Area of Poverty). In 2019, Manatee Habitat submitted a CDBG request to complete the infrastructure on the 2.89 acres and funds were awarded. On July 23, 2019 (Resolution R-19-096) the Board of County Commissioners approved \$780,000 in CDBG

funding. On July 27, 2021 (Resolution R-21-117) the Board of County Commissioners awarded Habitat an additional \$478,913 in CDBG funds, for a total of \$1,258,913, to help offset the anticipated increase in infrastructure cost which had become evident during the recent building boom. However, additional infrastructure needs became apparent. The developer has requested additional assistance through the Southwest TIF for improvements that will benefit both the project and the existing neighborhood.

On January 22, 2018, Manatee County Habitat for Humanity, Inc., the developer of Poling Gardens, was granted Affordable Housing Designation by Manatee County for the Livable Manatee Incentive program. Per program procedures, all 16 of the proposed units are eligible for the incentive. On December 5, 2019, the Board of County Commissioners approved PDR-19-04(Z)(P) to rezone the site to Planned Development – Residential (PD-R). With this rezoning, the Board also approved a 16-Unit Residential Development for the property. On July 27, 2020, the Preliminary Plat and Final Site Plan for the site were approved by Building and Development Services. On April 6, 2021, the Manatee County Board of County Commissioners executed the Land Use Restriction Agreement between Manatee County and Manatee County Habitat for Humanity, Inc. The agreement is for up to \$500,000 to pay for impact and facility improvement fees.

During the planning and engineering phases of site planning, the developer learned that the surrounding residential area uses drainage ditches along property lines to manage the substantial amounts of storm water. Since there are no storm water control boxes or piping to remove the water from the roadway surfaces, most of the water along 32 Avenue East flows downhill towards the Poling Gardens property. Further compounding this issue, most of the surface drainage ditches have been grown over and blocked by trees. These stormwater management needs have led to substantial additional costs. To address the needs, Habitat purchased an additional lot adjacent to the property on which water could be retained and piped to the surrounding drainage ditches and storm water drains. A TIF funding agreement has been prepared to provide reimbursement for a portion of this work not covered by CDBG funds in an amount not to exceed \$200,000.

Working with the Public Utilities Department, the developer was informed that additional offsite work would need to be completed as part of the project. The substandard water piping along 31st Avenue East leading into the Poling Gardens community needs to be replaced along with tie-ins to supply water to the adjacent homes. An addition of another fire hydrant is also planned for better coverage for the neighborhood. A TIF funding agreement has been prepared to provide reimbursement for these installations in an amount not to exceed \$200,000.

Goal 4 of the Southwest District Strategic Plan, approved by the Board of County Commissioners in January of 2019, is to “increase connectivity and add infrastructure capacity” to the Southwest District. The plan states, “infrastructure capacity (water and sewer) to accommodate additional density will be evaluated as private development projects are proposed,” indicating that funds will be available to fill gaps that hinder project development.

In addition, the use of these funds to facilitate the creation of much needed affordable housing units is a key objective in the Plan.

The Southwest District Strategic Plan encourages the use of the SWTIF monies to attract private investment, increase the tax base, and increase connectivity and infrastructure capacity that will facilitate the development of affordable housing. Therefore, the request at hand is to enter into a Utility Reimbursement Agreement between the County and the Developer/Owner for the construction of utility improvements, with the SWTIF reserves as the funding source for the reimbursement.

The total reimbursement of the infrastructure costs for both on and off-site will not exceed \$400,000.

Attorney Review

Not Reviewed (Utilizes exact document or procedure approved within the last 18 months)

Instructions to Board Records

Please provide an original executed copy of each of the TIF Reimbursement Agreements to Denise Thomas, Redevelopment and Economic Opportunity Department (denise.thomas@mymanatee.org). **Distributed 12/20/21, RT**

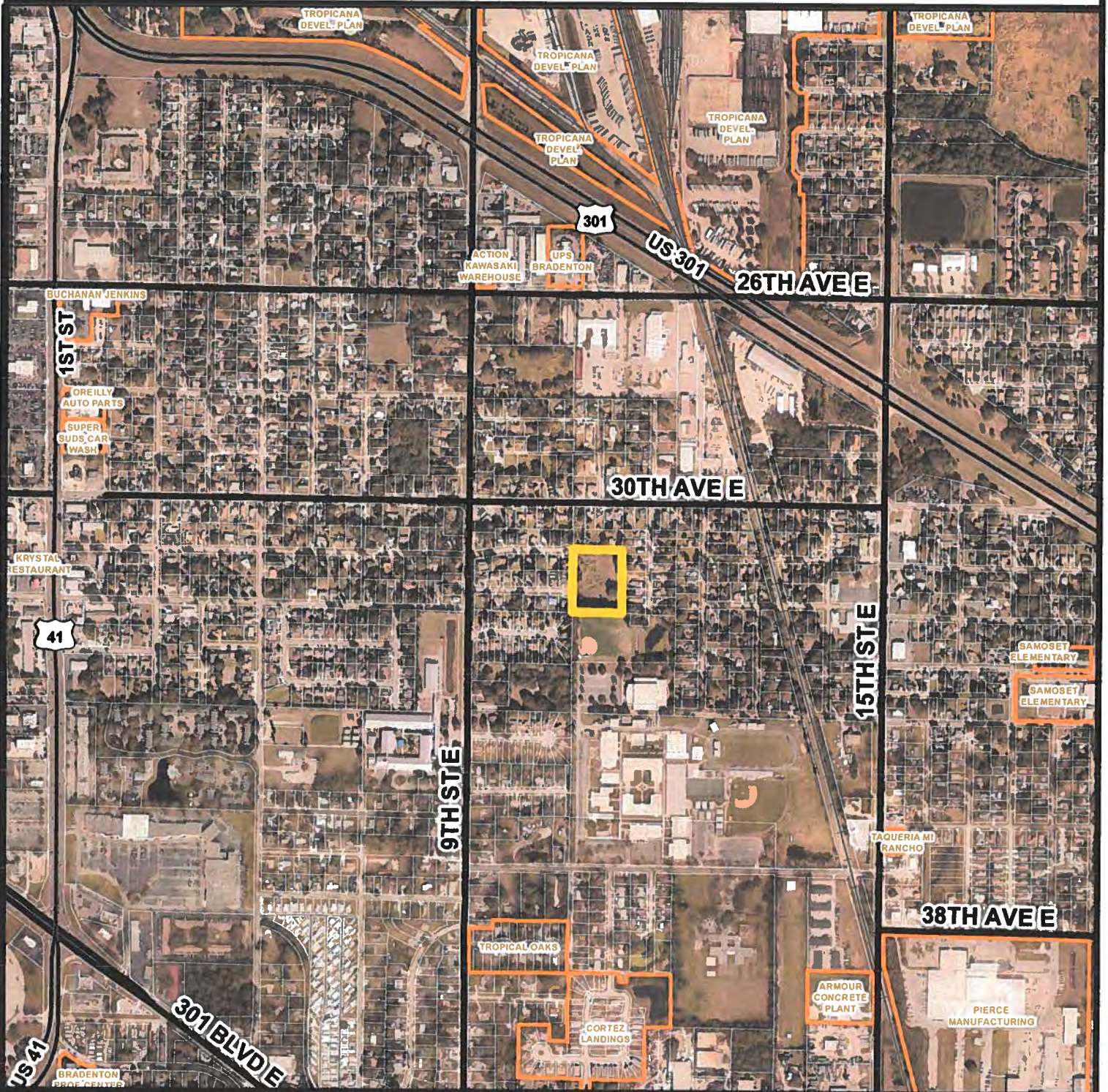
Cost and Funds Source Account Number and Name

A future budget amendment will move funds from the SWTIF Reserves to allocate funding for this project.

Amount and Frequency of Recurring Costs

N/A

AERIAL



Parcel ID #(s) 471700006

Project Name: Poling Garden
 Project #: PDR-19-04 (Z)(P)
 Accela #: PLN1812-0045

S/T/R: Sec 01 Twn 35S Rng 17E
 Acreage: 2.96
 Existing Zoning: RSF-6
 Existing FLU: RES-9
 Overlays: NONE
 Special Areas: NONE

CHH: NONE
 Watershed: NONE
 Drainage Basin: MANATEE RIVER BL DAM
 Commissioner: Reggie Bellamy

Manatee County
 Staff Report Map

Map Prepared 2/14/2019

1 inch = 875 feet

