




Interoffice Memorandum

AGENDA ITEM

June 21, 2019

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Chairman 
Roadway Agreement Committee

SUBJECT: July 16, 2019 – Consent Item
Proportionate Share Agreement For Orlando Montessori Bilingual School
Dean Road and Lake Underhill

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Orlando Montessori Bilingual School Dean Road and Lake Underhill ("Agreement") by and between Orlando Montessori Bilingual Academy, Inc. and Orange County for a proportionate share payment in the amount of \$122,110. Pursuant to Section 163.3180(5)(h), Florida Statutes, an applicant may mitigate capacity deficiencies by entering into a Proportionate Share Agreement and contributing a proportionate share payment. The Proportionate Share Payment is due within 90 days of the effective date of this Agreement.

The Agreement provides for the mitigation of road impacts for two deficient trips on the road segment of Dean Road from Curry Ford Road to Lake Underhill Road in the amount of \$22,932 per trip, two deficient trips on the road segment of Lake Underhill Road from Madeira Avenue to Dean Road in the amount of \$21,372 per trip, and two deficient trips on the road segment of Lake Underhill Road from Dean Road to Rouse Road in the amount of \$16,751 per trip.

The Roadway Agreement Committee approved the Proportionate Share Agreement on June 19, 2019. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

If you have any questions, please feel free to contact me at 407-836-5393.

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Orlando Montessori Bilingual School Dean Road and Lake Underhill by and between Orlando Montessori Bilingual Academy, Inc. and Orange County for a proportionate share payment in the amount of \$122,110. District 4

JVW/HEGB/fb
Attachment

BCC Mtg. Date: July 16, 2019

This instrument prepared by
and after recording return to:

Kyle Shasteen, E.I.
Bowman Consulting
4450 West Eau Gallie Boulevard
Melbourne, Florida 32934

Parcel ID Number(s): 29-22-31-0000-00-033

PROPORTIONATE SHARE AGREEMENT FOR

Orlando Montessori Bilingual School

Dean Road and Lake Underhill Road

This Proportionate Share Agreement (the "Agreement"), effective as of the latest date of execution (the "**Effective Date**"), is made and entered into by and between Orlando Montessori Bilingual Academy, Inc., a Florida Profit Corporation ("**Owner**"), whose principal place of business is 61 South Dean Road, Orlando, FL 32825, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida ("**County**"), whose address is P.O. Box 1393, Orlando, FL 32802-1393.

WHEREAS, Owner is the owner of fee simple title to certain real property, as generally depicted on Exhibit "A" and more particularly described on Exhibit "B," both of which exhibits are attached hereto and incorporated herein by this reference (the "**Property**"); and

WHEREAS, the Property is located in County Commission District 4, within the County's Urban Service Area, and the proceeds of the PS Payment, as defined herein, will be allocated to Dean Road and Lake Underhill Road; and

WHEREAS, Owner intends to develop the Property as an 8,056 Sq. Ft. Elementary School and 5,072 Sq. Ft. Daycare Facility, referred to and known as Orlando Montessori Bilingual School (the "**Project**"); and

WHEREAS, Owner received a letter from County dated May 29, 2019, stating that Owner's Capacity Encumbrance Letter ("**CEL**") application #19-03-017 for the Project was denied; and

WHEREAS, the Project will generate two (2) deficient PM Peak Hour trips (the "**Excess Trips 1**") for the deficient roadway segment on Dean Road from Curry Ford Road to Lake Underhill Road (the "**Deficient Segment 1**"), and zero (0) PM Peak Hour trips were available on Deficient Segment 1 on the date the CEL was denied, as further described in Exhibit "C" attached hereto and incorporated herein; and

WHEREAS, the Project will generate two (2) deficient PM Peak Hour trips (the “**Excess Trips 2**”) for the deficient roadway segment on Lake Underhill Road from Madeira Avenue to Dean Road (the “**Deficient Segment 2**”), and zero (0) PM Peak Hour trips were available on Deficient Segment 2 on the date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated herein; and

WHEREAS, the Project will generate two (2) deficient PM Peak Hour trips (the “**Excess Trips 3**”) for the deficient roadway segment on Lake Underhill Road from Dean Road to Rouse Road (the “**Deficient Segment 3**”), and zero (0) PM Peak Hour trips were available on Deficient Segment 3 on the date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated herein; and

WHEREAS the Excess Trips 1, Excess Trips 2 and Excess Trips 3 shall be referred to herein collectively as the Excess Trips; and

WHEREAS, the Deficient Segment 1, Deficient Segment 2 and Deficient Segment 3 shall be referred to herein collectively as the Deficient Segments; and

WHEREAS, the Excess Trips will cause the Deficient Segments to operate below adopted Level of Service standards; therefore, pursuant to Section 163.3180(5)(h), Florida Statutes, as amended, the Owner shall provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, Owner and County have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trips on the Deficient Segments through the current anticipated Project buildout is One hundred twenty two thousand one hundred ten and 00/100 Dollars (\$122,110.00) (the “**PS Payment**”); and

WHEREAS, County and Owner desire to set forth certain terms, conditions, and agreements between them as to the development of the Property into the Project.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration exchanged by and between Owner and County, the receipt and sufficiency of which are hereby acknowledged, the parties hereto stipulate and agree as follows:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. PS Payment; CEL Calculation of PS Payment: The amount of the PS Payment for the Deficient Segments, as described in Exhibit “C,” totals One hundred twenty two thousand one hundred ten and 00/100 Dollars (\$122,110.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owner and County agree that the Excess Trips constitute the Project’s impact on the aforementioned Deficient Segments based upon (i) Owner’s Traffic Study titled “Orlando Montessori Bilingual Academy” prepared by TR Transportation Consultants, Inc., dated May 10, 2019 for Bowman Consulting (the “**Traffic Study**”), which is incorporated herein by this reference, and (ii) upon the calculations described in Exhibit “C.” The Traffic Study was accepted by the Orange County Transportation

Planning Division on May 17, 2019 and is on file and available for inspection with that division (CMS # 2019017). Owner and County further acknowledge and agree that the PS Payment as set forth above shall be the final and binding calculation of the amount the Owner is required to pay through the buildout of the currently approved Project as proportionate share mitigation for impacts of the Project upon roadways within Orange County's jurisdiction, notwithstanding any subsequent variance in the actual cost of improvement to the Deficient Segments or actual traffic impacts created by the Project; provided, however, that if Owner subsequently increases the number of units and/or square footage, as applicable, of the Project, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Section 2(d) below. Owner and County further acknowledge and agree that the calculation of, and agreement regarding, the amount of the PS Payment constitute material inducements for the parties to enter into this Agreement.

(a) *Timing of PS Payment, Issuance of CEL.* Within ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of One hundred twenty two thousand one hundred ten and 00/100 Dollars (\$122,110.00) as the PS Payment. The check shall be made payable to "Orange County Board of County Commissioners" and shall be delivered to the Fiscal and Operational Support Division of the Planning, Environmental, and Development Services Department. Within twenty-one (21) days following its receipt of the PS Payment, if the Property's future land use designation and zoning are consistent with the Project's proposed development, County shall issue a CEL sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Segments. Within the time frame provided in the CEL, the Owner must reserve the encumbered trips by obtaining a Capacity Reservation Certificate as provided in Section 30-591 of the Orange County Code, as may be amended. An amount equal to the PS Payment shall be applied toward the amount of the initial capacity reservation payment (and any subsequent reservation payment(s), if the initial reservation payment does not exceed the amount of the PS Payment) as further set forth in Section 3 below. In the event Owner has not paid the PS Payment within ninety (90) days of the Effective Date, one extension of ninety (90) days may be granted by the manager of County's Transportation Planning Division. In the event Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, this Agreement shall become null and void.

(b) *Project Development.* Recordation of a subdivision plat or approval of a commercial site plan for the Project shall not be permitted prior to the issuance of a Capacity Reservation Certificate as contemplated in subparagraph 2(b) above.

(c) *Increase in Project Trips.* Any change to the Project which increases the unit count and/or square footage, as applicable, may result in an increase in trips on the Deficient Segments or other segments within the transportation impact area, as defined by County. Owner understands and agrees that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owner is precluded from asserting any such vesting. In addition, Owner understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to become null and void, and/or may require application for and execution of an additional Proportionate Share Agreement, along with any other required documentation, for the number of increased trips.

(d) *Satisfaction of Transportation Improvement Requirements.* County hereby acknowledges and agrees that upon Owner's payment of the PS Payment as required herein, and absent any change in the Project increasing the number of trips as set forth in subparagraph 2(d) above, Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic impacts of the Project on all roads affected by the Project within County's jurisdiction through buildout of the Project. Owner shall be entitled to fully and completely develop the Project, without regard to whether the improvements to the Deficient Segments are actually constructed. Provided, however, Owner shall be required to obtain a Capacity Reservation Certificate prior to the expiration of Owner's Capacity Encumbrance Letter and shall be required to maintain the validity of the Capacity Reservation Certificate in accordance with its terms. Nothing herein shall be construed to exempt Owner from meeting the requirements of all other applicable laws, regulations, and/or Orange County Code provisions or from making the required payment of transportation impact fees applicable to the Project, subject to credits as set forth in Section 3 below.

Section 3. Transportation Impact Fee Credits. County and Owner agree that Owner shall be entitled to receive transportation impact fee credits on a dollar for dollar basis in an amount up to but not exceeding the PS Payment in accordance with Section 163.3180, Florida Statutes, and as specifically described in Exhibit "C." County further agrees that such credits may be applied on a dollar for dollar basis against capacity reservation fees at such time as capacity reservation fees may be required to be paid by Owner in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall Owner receive credits in excess of the PS Payment and in the event the PS Payment exceeds either the applicable transportation impact fees or capacity reservation fees, as the case may be, Owner shall not be entitled to a refund for the amount of the PS Payment in excess of such transportation impact fees or capacity reservation fees.

Section 4. No Refund. The PS Payment (including any capacity reservation fees paid with the PS Payment) is non-refundable.

Section 5. Notice. With the exception of the timing of the PS Payment as set forth in Section 2(b) hereof, the parties acknowledge and agree that no party shall be considered in default for failure to perform under this Agreement until such party has received written notice specifying the nature of such default or failure to perform and said party fails to cure said default or fails to perform within thirty (30) days of receipt of written notice. Any notice delivered with respect to this Agreement shall be in writing and be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

As to Owner: Orlando Montessori Bilingual Academy, Inc.
61 South Dean Road
Orlando, Florida 32825

With copy to: Kyle Shasteen, E.I.
Bowman Consulting
4450 West Eau Gallie Boulevard
Melbourne, Florida 32934

As to County: Orange County Administrator
P. O. Box 1393
Orlando, Florida 32802-1393

With copy to: Orange County
Planning, Environmental, and Development Services Department
Manager, Fiscal and Operational Support Division
201 South Rosalind Avenue, 2nd Floor
Orlando, Florida 32801

Orange County
Planning, Environmental, and Development Services Department
Manager, Transportation Planning Division
4200 South John Young Parkway, 2nd Floor
Orlando, Florida 32839

Orange County
Planning, Environmental, and Development Services Department
Manager, Planning Division
201 South Rosalind Avenue, 2nd Floor
Orlando, Florida 32801

Section 6. Covenants Running with the Property. This Agreement shall be binding and shall inure to the benefit and burden of the heirs, legal representatives, successors, and assigns of the parties, and shall be a covenant running with the Property and be binding upon the successors and assigns of the Owner and upon any person, firm, corporation, or entity who may become the successor in interest to the Property.

Section 7. Recordation of Agreement. The parties hereto agree that this Agreement shall be recorded in the Public Records of Orange County, Florida, at Owner's expense, within ten (10) business days after the Effective Date.

Section 8. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and in accordance with the Orange County Code.

Section 9. Specific Performance. County and Owner shall each have the right to enforce the terms and conditions of this Agreement only by an action for specific performance. Venue for any action(s) initiated under or in connection with this Agreement shall lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

Section 10. Attorney Fees. In the event either party hereto brings an action or proceeding including any counterclaim, cross-claim, or third party claim, against the other party arising out of this Agreement, each party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney and legal fees.

Section 11. Construction of Agreement; Severability. Captions of the Sections and Subsections of this Agreement are for convenience and reference only; any words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder or substantially increase the burden of any party hereunder, shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

Section 12. Amendments. No amendment, modification, or other change(s) to this Agreement shall be binding upon the parties unless in writing and formally executed by all of the parties.

Section 13. Counterparts. This Agreement may be executed in up to three (3) counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[Signatures appear on following pages]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.

“COUNTY”



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Bryan Brooks*
for Jerry L. Demings
Orange County Mayor

Date: *16 July 2017*

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Craig A. Stopyra*
for Deputy Clerk

Print Name: *Craig A. Stopyra*

WITNESSES:

[Signature]

Print Name: Lucelis Torres

[Signature]

Print Name: Sharan Maldonado

“OWNER”

Orlando Montessori Bilingual Academy, Inc.,
a Florida Profit Corporation

By: [Signature]

Print Name: Shirah Ortiz

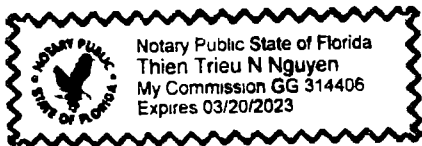
Title: CEO

Date: 6/20/19

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Shirah Ortiz, as OWNER of Orlando Montessori Bilingual Academy, Inc., a Florida Profit Corporation, a Female, who is known by me to be the person described herein and who executed the foregoing, this 20th day of June, 2019. He/~~she~~ is personally known to me or has produced Personally known (type of identification) as identification and ~~did~~ did not (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 20th day of June, 2019.



[Signature]

NOTARY PUBLIC

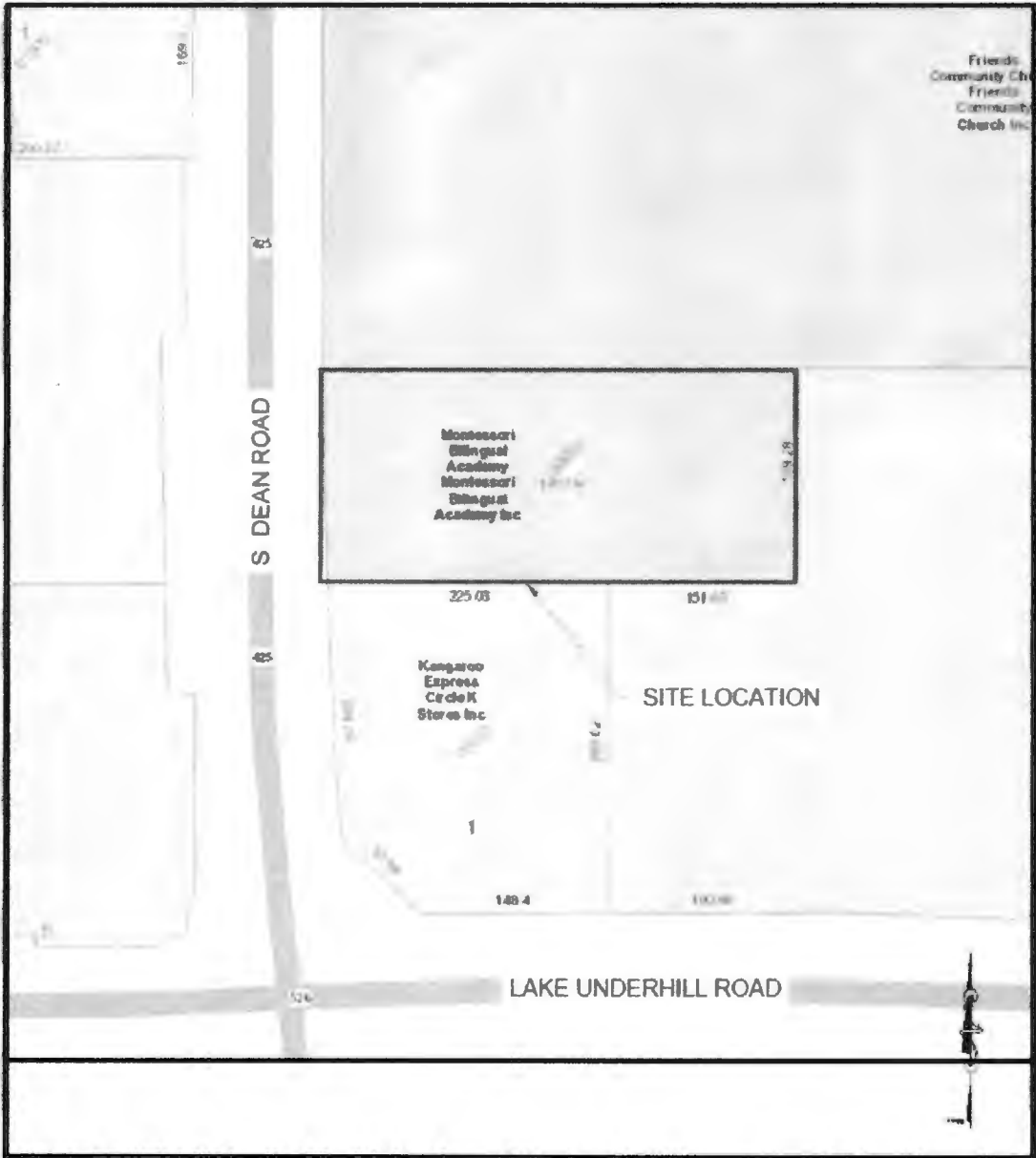
Print Name: Thien Nguyen

My Commission Expires: 3/20/23

Exhibit A

“Orlando Montessori Bilingual School”

Project Location Map



Bowman CONSULTING	LOCATION MAP Scale: NTS	
	MONTESSORI BILINGUAL ACADEMY	
4450 W. Eau Gallie Blvd Suite 232 Melbourne, FL 32934	Phone: (321) 255-5434 Fax: (321) 255-7751 www.bowmanconsulting.com	61 S. DEAN ROAD ORLANDO, FL 32825
<small>© Bowman Consulting Group, LLC</small>		

Exhibit "B"

"Orlando Montessori Bilingual School"

Parcel ID: 29-22-31-0000-00-033

Legal Description:

THE EAST 400 FEET OF THE WEST 430 FEET OF THE NORTH 1/3 OF THE SOUTH 3/8 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 22 SOUTH, RANGE 31 EAST, ORANGE COUNTY FLORIDA, THEREOF LESS THE WEST 27 FEET THEREOF FOR ROAD RIGHT-OF-WAY.

Exhibit "C"
(Page 1 of 3)
"Orlando Montessori Bilingual School"

DEFICIENT SEGMENT #1
Log of Project Contributions
Dean Rd (Curry Ford Rd to Lake Underhill Rd)

Roadway Improvement Project Information										
Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost / Trip
Dean Rd	Curry Ford Rd	Lake Underhill Rd	2.11	E	880	Widen from 2 to 4 lanes	2000	1120	\$5,683,576	\$22,932

County Share of Improvement									
Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Backlogged Trips	Improved Generalized Capacity	Capacity Increase	County (Backlog) Responsibility
Dean Rd	Curry Ford Rd	Lake Underhill Rd	2.11	E	880	258	2000	1120	\$5,916,356

Developer Share of Improvement											
Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Capacity Increase	Backlogged Trips	Capacity Increase for New Development	Remaining Project Cost	Cost / Trip
Dean Rd	Curry Ford Rd	Lake Underhill Rd	2.11	E	880	2000	1120	258	862	\$19,767,183	\$22,932

Updated: 6/19/19

Log of Project Contributions				
	Date	Project	Project Trips / Prop Share	
Existing	Jun-18	Existing plus Committed	217 / \$4,714,976	
	Mar-16	Curry Ford Wawa	7 / \$152,096	
	Jun-16	Econ Place II Medical Center	8 / \$173,824	
	Jul-16	Econ Trails Townhomes D Nichols	2 / \$43,456	
	Jan-18	Dean Road Storage	1 / \$21,728	
	Jan-18	Aldi Supermarket	7 / \$152,096	
	Jun-18	Curry Ford Car Wash	2 / \$44,676	
	Mar-19	Pituck Property	12 / \$268,056	
	Apr-19	Gentry Park Phase 2	1 / \$22,932	
	Apr-19	River Run	1 / \$22,932	
			Backlogged Totals:	258 / \$5,570,908
	Proposed	May-19	Orlando Bilingual Montessori School	2 / \$45,864
		Totals:	260 / \$5,616,772	

Exhibit "C"

(Page 2 of 3)

"Orlando Montessori Bilingual School"

DEFICIENT SEGMENT #2
Log of Project Contributions
Lake Underhill Rd (Madeira Ave to Dean Rd)

Roadway Improvement Project Information

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost / Trip
Lake Underhill Rd	Madeira Ave	Dean Rd	1.30	E	880	Widen from 2 to 4 lanes	2000	1120	\$21,883,953	\$21,372

County Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Backlogged Trips	Improved Generalized Capacity	Capacity Increase	County (Backlog) Responsibility
Lake Underhill Rd	Madeira Ave	Dean Rd	1.30	E	880	96	2000	1120	\$2,051,712

Developer Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Capacity Increase	Backlogged Trips	Capacity Increase for New Development	Remaining Project Cost	Cost / Trip
Lake Underhill Rd	Madeira Ave	Dean Rd	1.30	E	880	2000	1120	96	1024	\$21,883,953	\$21,372

Updated: 6/19/19

Log of Project Contributions

Date	Project	Project Trips	Prop Share
Existing Jan-18	Existing plus Committed	80	\$1,705,760
Apr-18	Verona Subdivision	3	\$64,116
Jan-18	Dean Road Storage	1	\$21,372
Mar-19	Plunk Property	3	\$64,116
Apr-19	River Run	9	\$192,348
			\$0
	Backlogged Totals:	96	\$2,051,712
Proposed May-19	Orlando Bilingual Montesson School	2	\$42,744
			\$0
			\$0
			\$0
			\$0
	Totals:	98	\$2,094,456

Exhibit "C"

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"Orlando Montessori Bilingual School"

DEFICIENT SEGMENT #3
Log of Project Contributions
Lake Underhill Rd (Dean Rd to Rouse Rd)

Roadway Improvement Project Information

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost / Trip
Lake Underhill Rd	Dean Rd	Rouse Rd	1.45	E	880	Widen from 2 to 4 lanes	2000	1120	\$16,751,000	\$16,751

County Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Backlogged Trips	Improved Generalized Capacity	Capacity Increase	County (Backlog) Responsibility
Lake Underhill Rd	Dean Rd	Rouse Rd	1.45	E	880	132	2000	1120	\$2,211,019

Developer Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Capacity Increase	Backlogged Trips	Capacity Increase for New Development	Remaining Project Cost	Cost / Trip
Lake Underhill Rd	Dean Rd	Rouse Rd	1.45	E	880	2000	1120	132	988	\$16,549,143	\$16,751

Updated: 6/19/19

Log of Project Contributions

	Date	Project	Project Trips	Prop Share	
Existing	Jan-18	Existing Plus Committed	83	\$1,292,942	
	May-14	Eastmar Commons	29	\$461,751	
	May-17	Verona Subdivision	2	\$33,502	
	Feb-18	Dean Road Storage	1	\$16,751	
	Apr-18	Amazing Explorers Academy	9	\$150,759	
	Oct-18	Lake Underhill Self Storage	2	\$33,502	
	Mar-19	Plunk Property	3	\$50,253	
	Apr-19	River Run	3	\$50,253	
			Backlogged Totals:	132	\$1,979,207
	Proposed	May-19	Orlando Bilingual Montessori School	2	\$33,502
				\$0	
				\$0	
				\$0	
				\$0	
		Totals:	134	\$2,012,709	