



Interoffice Memorandum

February 7, 2024

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

FROM: Joseph C. Kunkel, P.E., Director, Public Works Department

CONTACT PERSON: Jon V. Weiss, P.E., Chairman
Roadway Agreement Committee
PHONE NUMBER: (407) 836-5393

SUBJECT: **March 5, 2024 – Consent Item**
Proportionate Share Agreement for Tyson Ranch PD
AKA Tyson Ranch MFU
Boggy Creek Road

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Tyson Ranch PD AKA Tyson Ranch MFU Boggy Creek Road ("Agreement") by and among Boggy Creek Commercial, LLC, Orlando Airport Property, LLC, and Orange County for a proportionate share payment in the amount of \$1,273,970. 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 follows the recommendation of the Roadway Agreement Committee providing for the mitigation of road impacts for 58 deficient trips on the road segment of Boggy Creek Road from Central Florida Greenway to Osceola County Line in the amount of \$21,965 per trip.

The Roadway Agreement Committee recommended approval on February 7, 2024. 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 Tyson Ranch PD AKA Tyson Ranch MFU Boggy Creek Road by and among Boggy Creek Commercial, LLC, Orlando Airport Property, LLC, and Orange County for a proportionate share payment in the amount of \$1,273,970. District 4.

JCK/JVW/nc

Attachments

BCC Mtg. Date: March 5, 2024

This instrument prepared by
and after recording return to:

Mohammed Abdallah, PE, PTOE
Traffic & Mobility Consultants LLC
3101 Maguire Boulevard, Suite 265
Orlando, Florida 32803

Parcel ID Numbers:
33-24-30-8540-02-000
33-24-30-0000-00-035

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

**PROPORTIONATE SHARE AGREEMENT FOR
TYSON RANCH PD AKA TYSON RANCH MFU**

BOGGY CREEK 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 among BOGGY CREEK COMMERCIAL, LLC, a Florida limited liability company (“**Owner 1**”), with a principal place of business at 529 Versailles Drive, Suite 200, Maitland, Florida 32751, and ORLANDO AIRPORT PROPERTY, LLC, a Florida limited liability company (“**Owner 2**”), with a principal place of business at 529 Versailles Drive, Suite 200, Maitland, Florida 32751 and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), with its principal address at P.O. Box 1393, Orlando, Florida 32802-1393. Owners and County may sometimes be referred to herein individually as “**Party**” and collectively as “**Parties**”.

WHEREAS, Owners hold 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, and the proceeds of the PS Payment, as defined herein, will be allocated to Boggy Creek Road; and

WHEREAS, Owners intend to develop the Property as 307 multifamily dwelling units (apartments), referred to and known as “Tyson Ranch PD”, also known as “Tyson Ranch MFU”, (the “**Project**”); and

WHEREAS, Owners received a letter from County dated January 22, 2024, stating that Owners' Capacity Encumbrance Letter ("CEL") application #CEL-23-03-029 for the Project was denied; and

WHEREAS, the Project will generate fifty-eight (58) deficient PM Peak Hour trips (the "Excess Trips") for the deficient roadway segment on Boggy Creek Road from Central Florida Greenway to Osceola County Line (the "Deficient Segment"), and zero (0) PM Peak Hour trips were available on the Deficient Segment on the date the CEL was denied, as further described in Exhibit "C" attached hereto and incorporated herein; and

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

WHEREAS, Owners and County have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trips on the Deficient Segment through the current anticipated Project buildout is One Million Two Hundred Seventy-Three Thousand Nine Hundred Seventy and 00/100 Dollars (\$1,273,970.00) (the "PS Payment"); and

WHEREAS, County and Owners 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 Owners and County, the receipt and sufficiency of which are hereby acknowledged, the Parties 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.

(a) *Calculation of PS Payment:* The amount of the PS Payment for the Deficient Segment, as described in Exhibit "C", totals One Million Two Hundred Seventy-Three Thousand Nine Hundred Seventy and 00/100 Dollars (\$1,273,970.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes, as may be amended. Owners and County agree that the Excess Trips will constitute the Project's impact on the aforementioned Deficient Segment based upon (i) Owners' Traffic Study titled "TYSON RANCH PD - BONNEMAISON APARTMENTS" prepared by Traffic & Mobility Consultants LLC, dated January 2024 for ORLANDO AIRPORT PROPERTY, LLC (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 January 10, 2024 and is on file and available for inspection with that division (CMS #2023029).

Owners 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 Owners are required to pay through the buildout of the currently approved Project as proportionate share mitigation for impacts of the Project upon roadways within County's jurisdiction, notwithstanding any subsequent variance in the actual cost of any improvement(s) to the Deficient Segment or actual traffic /travel impacts created by the Project; provided, however, that if Owners modify the Project's development program and/or 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 Subsection 2(d) below. Owners 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.

(b) *Timing of PS Payment, Issuance of CEL.* Not later than ninety (90) days following the Effective Date, Owners shall deliver a check to County in the amount of One Million Two Hundred Seventy-Three Thousand Nine Hundred Seventy and 00/100 Dollars (\$1,273,970.00) 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 Segment. Within the time frame provided in the CEL, Owners 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 Owners have not paid the PS Payment within ninety (90) days after the Effective Date, one extension of ninety (90) additional days may be granted by the manager of County's Transportation Planning Division. In the event Owners have not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, this Agreement shall become null and void.

(c) *Project Development.* Recordation of a subdivision plat and/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.

(d) *Increase in Project Trips.* Any change or modification to the Project that increases the unit count and/or square footage, as applicable, may result in an increase in trips on the Deficient Segment or other segments within the transportation impact area, as defined by County. Owners understand and agree that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owners are precluded from asserting any such vesting.

In addition, Owners understand and agree 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.

(e) *Satisfaction of Transportation Improvement Requirements.* County hereby acknowledges and agrees that upon Owners' payment of the PS Payment as required herein, and absent any change or modification to the Project as set forth in Subsection 2(d) above, Owners 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. Owners shall be entitled to fully and completely develop the Project, without regard to whether improvements to the Deficient Segment are actually constructed; provided, however, Owners 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. Additionally, nothing herein shall be construed to exempt Owners from meeting the requirements of all other applicable laws, rules, regulations, and/or Orange County Code provisions or from making the required payment of transportation and other impact fees applicable to the Project, subject to any credits as set forth in Section 3 below. For avoidance of doubt, nothing herein is intended to, nor shall, constitute prepayment of any densities and/or intensities of development or of any development program.

Section 3. *Transportation Impact Fee Credits.* County and Owners agree that Owners shall be entitled to receive transportation impact fee credits, applicable only toward development of the Project on the Property, 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, as may be amended, 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 Owners in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall Owners 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, Owners 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. For avoidance of doubt, nothing herein is intended to, nor shall, constitute prepayment of any densities and/or intensities of development or of any development program.

Section 4. *No Refund.* The PS Payment (including any capacity reservation fees paid with the PS Payment) is non-refundable and cannot be transferred or applied to another project or property.

Section 5. *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 1: Boggy Creek Commercial, LLC
529 Versailles Drive, Suite 200
Maitland, Florida 32751

As to Owner 2: Orlando Airport Property, LLC
529 Versailles Drive, Suite 200
Maitland, Florida 32751

With copy to: Robert Harrell
5300 S Orange Avenue
Orlando, Florida 32809

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 upon 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 Owners and upon any person, firm, corporation, or entity who may become a successor in interest to the Property.

Section 7. Recordation of Agreement. Owners shall record an original of this Agreement in the Public Records of Orange County, Florida, at no expense to County, not later than thirty (30) 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 Owners 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. 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, in accordance with Section 5, 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.

Section 10. Attorney Fees. In the event either Party 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.

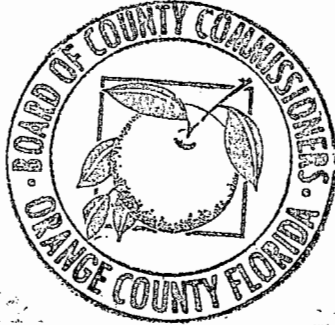
Section 13. Termination. In the event either (i) Owners have not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, as contemplated in Subsection 2(b), or (ii) Owners have timely paid the PS Payment to County and the Project has been constructed on the Property and completed, pursuant to a County building permit, this Agreement shall automatically terminate and thereafter be null and void for all purposes.

Section 14. Counterparts. This Agreement may be executed in up to three (3) counterparts, each of which shall be deemed to be an original and both 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: 5 March 2024

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

By: Jennifer Lara-Klimetz
for Deputy Clerk

Print Name: Jennifer Lara-Klimetz

WITNESSES:

Regina Smith
Signature of Witness

Print Name: Regina Smith

Mailing Address: 11254 Lore Way
Orlando, FL 32832

A. Langenbach
Signature of Witness

Print Name: A. Langenbach

Mailing Address: 8500 Ridgewood Av. #503
CAPE CANAVERAL, FL 32920

"OWNER 1"

BOGGY CREEK COMMERCIAL, LLC, a
Florida limited liability company

By: Robert Harrell

Print Name: Robert Harrell

Title: Manager

STATE OF: FLORIDA

COUNTY OF: ORANGE

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or ☐ online notarization, this 24 day of January, 2024, by Robert Harrell, as
Manager of BOGGY CREEK COMMERCIAL, LLC, a Florida limited liability company, on
behalf of such company, who ☒ is personally known to me or ☐ has produced
as identification.

(Notary Stamp)



Adrienne Langenbach
Signature of Notary Public
Print Name: Adrienne Langenbach
Notary Public, State of: FLORIDA
Commission Expires: 03.22.2026
(mm/dd/yyyy)

WITNESSES:

Regina Smith
Signature of Witness

Print Name: Regina Smith

Mailing Address: 11254 Lore Way
Orlando, FL 32832

A. Langenbach
Signature of Witness

Print Name: A. Langenbach

Mailing Address: 8500 Ridgewood Av. #503
Cape Canaveral, FL 32920

"OWNER 2"

ORLANDO AIRPORT PROPERTY, LLC, a
Florida limited liability company

By: Robert Harrell manager

Print Name: Robert Harrell

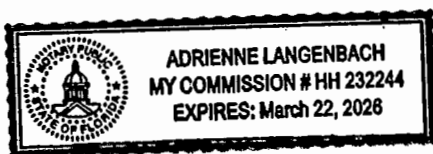
Title: Manager

STATE OF: FLORIDA

COUNTY OF: Orange

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or ☐ online notarization, this 24 day of January, 2024, by Robert Harrell, as
Manager of ORLANDO AIRPORT PROPERTY, LLC, a Florida limited liability company, on
behalf of such company, who ☒ is personally known to me or ☐ has produced
_____ as identification.

(Notary Stamp)



Adrienne Langenbach
Signature of Notary Public
Print Name: Adrienne Langenbach
Notary Public, State of: FLORIDA
Commission Expires: 03-22-2026
(mm/dd/yyyy)

Exhibit "B"

"TYSON RANCH PD AKA TYSON RANCH MFU"

Parcel IDs: 33-24-30-8540-02-000 and 33-24-30-0000-00-035

Legal Description:

Parcel 33-24-30-8540-02-000:

Lot 2, Tyson Ranch, according to the plat thereof as recorded in Plat Book 106, Page 94, of the Public Records of Orange County.

And

Parcel 33-24-30-0000-00-035:

FROM THE NORTHEAST CORNER OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 33, TOWNSHIP 24 SOUTH, RANGE 30 EAST, ORANGE COUNTY, FLORIDA, RUN SOUTH $00^{\circ}56'30''$ EAST ALONG THE EAST LINE OF SAID SOUTHEAST $\frac{1}{4}$ 509.12 FEET TO THE POINT OF BEGINNING; RUN THENCE NORTH $89^{\circ}43'00''$ WEST PARALLEL TO AND 509.0 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHEAST $\frac{1}{4}$ 660.15 FEET, THENCE SOUTH $00^{\circ}56'30''$ EAST 660.00 FEET, THENCE SOUTH $89^{\circ}43'00''$ EAST 660.15 FEET TO THE EAST LINE OF SAID SOUTHEAST $\frac{1}{4}$, THENCE NORTH $00^{\circ}56'30''$ WEST 660.0 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THOSE LANDS DESCRIBED IN THAT CERTAIN WARRANTY DEED IN FAVOR OF ORANGE COUNTY RECORDED IN OFFICIAL RECORDS INSTRUMENT NO. 20180190215, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

SUBJECT TO RIGHT OF WAY OVER THE EAST 30 FEET AS SET OUT IN INSTRUMENT RECORDED FEBRUARY 10, 1930 IN DEED BOOK 402, PAGE 397, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

Exhibit "C"

"TYSON RANCH PD AKA TYSON RANCH MFU"

DEFICIENT SEGMENT

Log of Project Contributions
Boggy Creek Road (Central Florida Greenway to Osceola County Line)

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
Boggy Creek Rd	Central Florida Greenway Osceola County Line	1.46	E	880	Widen from 2 to 4 lanes	2000	1120	\$24,599,861	\$21,965

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
Boggy Creek Rd	Central Florida Greenway Osceola County Line	1.46	E	880	370	2000	1120	\$8,126,740

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
Boggy Creek Rd	Central Florida Greenway Osceola County Line	1.46	E	880	2000	1120	370	750	\$16,473,121	\$21,965

Updated: 1/10/24

Log of Project Contributions

Date	Project	Project Trips	Prop Share
Existing			
Nov-20	Existing plus Committed	139	\$2,327,694
Apr-21	Tyson Ranch Townhomes	52	\$963,196
Jun-22	Tyson Ranch Self Storage	3	\$57,765
Aug-22	Tapestry Nona	32	\$616,160
Jan-23	Nona West Phase 2	39	\$856,635
May-23	Bennette Place	78	\$1,713,270
Aug-23	Ginn Prop PD /Greenway Oaks	27	\$593,055
	Backlogged Totals:	370	\$7,127,775
Proposed			
Jan-24	Tyson Ranch MFU	58	\$1,273,970
			\$0
			\$0
			\$0
			\$0
	Totals:	428	\$8,401,745