

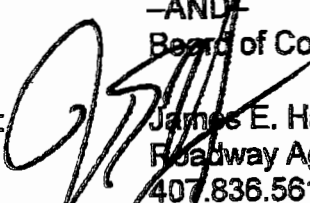


Interoffice Memorandum

AGENDA ITEM

November 26, 2018

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

FROM:  James E. Harrison, Esq., P.E., Chairman
Roadway Agreement Committee
407.836.5610

SUBJECT: December 18, 2018 – Consent Item
Proportionate Share Agreement For Curry Ford Car Wash
Dean Road: From Curry Ford Road to Lake Underhill Road

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Curry Ford Car Wash ("Agreement") by and between Curry Ford Car Wash LLC and Orange County for a proportionate share payment in the amount of \$44,676. 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 two deficient trips on the road segment of Dean Road from Curry Ford Road to Lake Underhill Road in the amount of \$22,338 per trip.

The Roadway Agreement Committee approved the Proportionate Share Agreement on August 1, 2018. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Curry Ford Car Wash Dean Road by and between Curry Ford Car Wash LLC and Orange County for a proportionate share payment in the amount of \$44,676. District 4

JEH/HEGB:am
Attachment

BCC Mtg. Date: December 18, 2018

This instrument prepared by
and after recording return to:

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

Parcel ID Numbers:
07-23-31-0000-00-001
07-23-31-0000-00-016

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

**PROPORTIONATE SHARE AGREEMENT FOR
CURRY FORD CAR WASH**

DEAN 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 CURRY FORD CAR WASH LLC, a Florida limited liability company ("**Owner**"), whose address is 940 Centre Circle, Suite 304, Altamonte Springs, Florida, 32714, 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, and the proceeds of the PS Payment, as defined herein, will be allocated to Dean Road; and

WHEREAS, Owner intends to develop the Property as 4,160 square foot car wash, referred to and known as Curry Ford Car Wash (the "**Project**"); and

WHEREAS, Owner received a letter from County dated June 7, 2018, stating that Owner's Capacity Encumbrance Letter ("**CEL**") application #CEL-18-03-029 for the Project was denied; and

WHEREAS, the Project will generate two (2) deficient PM Peak Hour trips (the "**Excess Trips**") for the deficient roadway segment on Dean Road from Curry Ford Road to Lake Underhill Road (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, 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 Segment through the current anticipated Project buildout is Forty-Four Thousand Six Hundred Seventy-Six and 00/100 Dollars (\$44,676.00) (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.

(a) **Calculation of PS Payment:** The amount of the PS Payment for the Deficient Segment, as described in Exhibit “C,” totals Forty-Four Thousand Six Hundred Seventy-Six and 00/100 Dollars (\$44,676.00). 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 Segment based upon (i) Owner’s Traffic Study titled “CURRY FORD CAR WASH” prepared by TRAFFIC & MOBILITY CONSULTANTS LLC, dated June 7, 2018 (the “Traffic Study”) for CURRY FORD CAR WASH LLC (the “Applicant”), 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 June 7, 2018, and is on file and available for inspection with that division (CMS #2018029). 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 Segment 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.

(b) **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 Forty-Four Thousand Six Hundred Seventy-Six and 00/100 Dollars (\$44,676.00) 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 Community, 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 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.

(c) *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.

(d) *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 Segment 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.

(e) *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 Segment 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: Robert Stephenson
Curry Ford Car Wash LLC
940 Centre Circle, Suite 3014
Altamonte Springs, Florida 32714

With copy to: Mohammed N. Abdallah, PE
Traffic & Mobility Consultants LLC
3101 Maguire Boulevard, Suite 265
Orlando, Florida 32803

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

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

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

Orange County Community, 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.

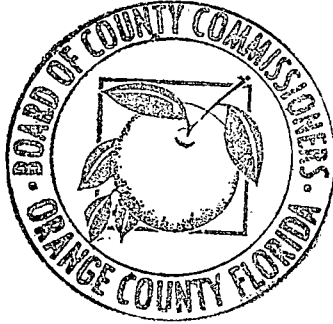
Section 12. Amendments. No amendment, modification, or other change(s) to this Agreement shall be binding upon the parties unless in writing and formally executed by all of the parties.

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]

Proportionate Share Agreement, Curry Ford Car Wash
Curry Ford Car Wash LLC for Dean Road, 2018

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: *Jerry L. Demings*

Jerry L. Demings

Orange County Mayor

Date: 12.18.18

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

By: *Katie Smith*
Deputy Clerk

Print Name: **Katie Smith**

WITNESSES:

[Signature]

Print Name: CHRIS MARTINEZ

[Signature]

Print Name: Gen P. Summitt

"OWNER"

CURRY FORD CAR WASH LLC, a Florida
limited liability company

By: [Signature]

Print Name: ROBERT STEPHENSON

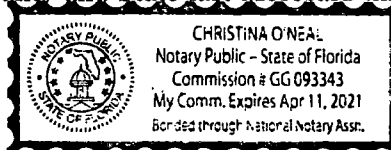
Title: Manager

Date: 11-14-18

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by ROBERT STEPHENSON, as Manager of CURRY FORD CAR WASH LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 14 day of November, 2018. He/she is personally known to me or has produced _____ (type of identification) as identification and did (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 14 day of November, 2018.



[Signature]

NOTARY PUBLIC

Print Name: Christina O'Neal

My Commission Expires: April 11, 2021

Exhibit "A"
"CURRY FORD CAR WASH"

Project Location Map

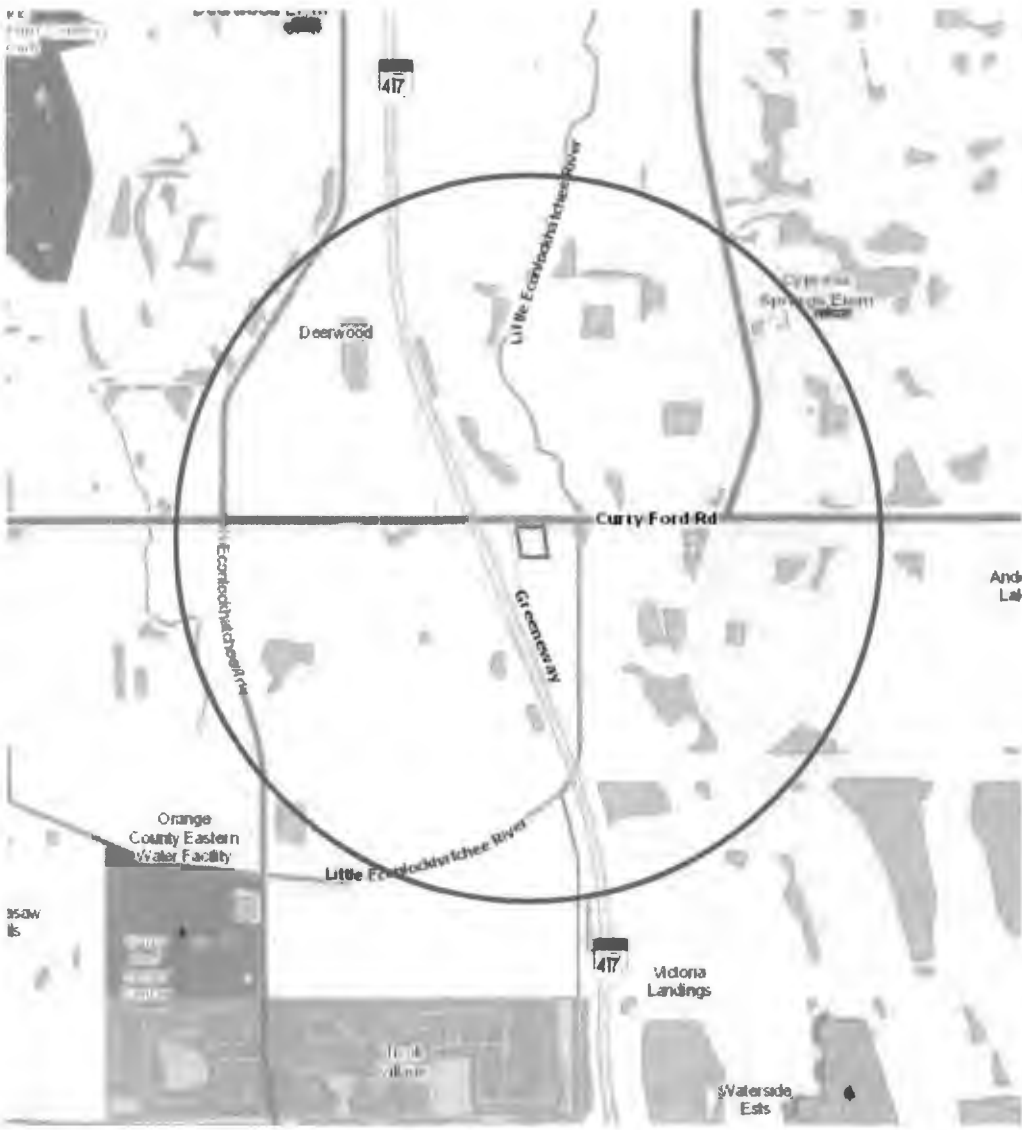


Exhibit "B"

"CURRY FORD CAR WASH"

Parcel ID: 07-23-31-0000-00-001 and 07-23-31-0000-00-016

Legal Description:

The North 410.50 feet of the East 695.50 feet of the Northeast 1/4 of Section 7, Township 23 South, Range 31 East, Orange County, Florida. LESS that part conveyed for right of way of Curry Ford Road in Official Records Book 3107, Page 786, and State Road Plat Book 1, Page 70, of State Road S-425 as recorded in Orange County, Florida; and less that part conveyed to Orlando Orange County Expressway Authority as recorded in Official Records Book 4014, Page 3695 and Orange County as recorded in Official Records Book 6077, Page 108, of the Public Records of Orange County, Florida.

Exhibit "C"

"CURRY FORD CAR WASH"

**Log of Project Contributions
 Dean Road (Curry Ford Road to Lake Underhill Road)**

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 Road (2 to 4 Lanes)	2000	1120	\$22,338	\$22,338

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	248	2000	1120	\$5,539,767

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	248	872	\$19,478,536	\$22,338

Log of Project Contributions				
	Date	Project	Project Trips	Prop Share
Existing	Jun-18	Existing plus Committed	223	\$4,981,374
	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
	Feb-18	Dean Road Storage	1	\$21,728
	Feb-18	Aldi Supermarket	1	\$152,096
	Backlogged Totals:			248
Proposed	Jun-18	Curry Ford Car Wash	2	\$44,676
				\$0
				\$0
				\$0
				\$0
Totals:			250	\$5,569,250