

This instrument prepared by  
and after recording return to:

M. Rebecca Wilson, Esq.  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
P. O. Box 2809  
Orlando, Florida 32802

Parcel ID Number: 10-22-31-0000-00-007

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**PROPORTIONATE SHARE AGREEMENT FOR  
THE VERVE STUDENT HOUSING**

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**ALAFAYA TRAIL**

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 FAIRWINDS CREDIT UNION, a Florida state-chartered credit union, (“**Owner**”), with its principal place of business at 3087 North Alafaya Trail, Orlando, Florida 32826, 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. Owner and County may sometimes be referred to herein individually as “**Party**” and collectively as “**Parties**.”

WHEREAS, Owner holds 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 5, and the proceeds of the PS Payment, as defined herein, will be allocated to Alafaya Trail, and

WHEREAS, Owner intends to develop the Property as a 626 student housing bedrooms, referred to and known as The Verve Student Housing (the “**Project**”); and

WHEREAS, Owner received a letter from County dated May 10, 2024, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #24-04-029 for the Project was denied; and

WHEREAS, the Project will generate 25 deficient PM Peak Hour trips (the “**Excess Trips 1**”) for the deficient roadway segment on Alafaya Trail from Science Drive to Colonial Drive (the “**Deficient Segment 1**”), and Zero (0) PM Peak Hour trips were available on the 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 41 deficient PM Peak Hour trips (the “**Excess Trips 2**”) for the deficient roadway segment on Alafaya Trail from University Boulevard to Science Drive (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 Excess Trips 1 and Excess Trips 2 shall be referred to herein collectively as the Excess Trips; and

WHEREAS, the Deficient Segment 1 and Deficient Segment 2 shall be referred to herein collectively as the Deficient Segments; 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, Owner has offered to provide 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 One Million Four Hundred Eighteen Thousand Nine Hundred Fourteen and No/100 Dollars (\$1,418,914.00) (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 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 Segments, as described in Exhibit "C", totals One Million Four Hundred Eighteen Thousand Nine Hundred Fourteen and No/100 Dollars (\$1,418,914.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes, as may be amended. Owner and County agree that the Excess Trips will constitute the Project's impact on the aforementioned Deficient Segments based upon (i) Owner's Traffic Study titled "Verve Orlando Student Housing Transportation Impact Analysis and Concurrency Analysis" prepared by Kimley-Horn, dated May 2024, for Aventon Companies (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 10, 2024, and is on file and available for inspection with that division (CMS #2024029). 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 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 Owner modifies 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. 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.* Not later than ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of One Million Four Hundred Eighteen Thousand Nine Hundred Fourteen and No/100 Dollars (\$1,418,914.00) 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, 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 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 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 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. 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 or modification to the Project as set forth in Subsection 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 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. Additionally, nothing herein shall be construed to exempt Owner 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 Owner agree that Owner shall be entitled to receive credit for transportation impact fees due, 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 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. 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: Fairwinds Credit Union  
3087 North Alafaya Trail  
Orlando, Florida 32826  
Attention: Jennifer Parshall

With copy to: M. Rebecca Wilson, Esq.  
Lowndes  
215 North Eola Drive  
Orlando, Florida 32801

With copy to: Subtext Acquisitions, LLC  
3000 Locust Street  
St. Louis, Missouri 63103  
Attention: Bethany Rooney

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, 2<sup>nd</sup> Floor  
Orlando, Florida 32801

Orange County Public Works 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 Owner and upon any person, firm, corporation, or entity who may become a successor in interest to the Property.

**Section 7. Recordation of Agreement.** Owner 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 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. 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) Owner has 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) Owner has 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 two (2) 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: \_\_\_\_\_  
Jerry L. Demings  
Orange County Mayor

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Deputy Clerk

Print Name: \_\_\_\_\_

WITNESSES:

[Signature]  
Signature of Witness

Print Name: Karishma Singh

Mailing Address: 135 W Central Blvd  
Suite 1270 Orlando FL 32801

Katrina Wade  
Signature of Witness

Print Name: Katie Wade

Mailing Address: 135 W Central Blvd  
Suite 1270 Orlando, FL 32801

"OWNER"

FAIRWINDS CREDIT UNION,  
a Florida state-chartered credit union

By: [Signature]

Print Name: Philip [P.T.] Scheer

Title: SEVP/COO

STATE OF: FLORIDA  
COUNTY OF: ORANGE

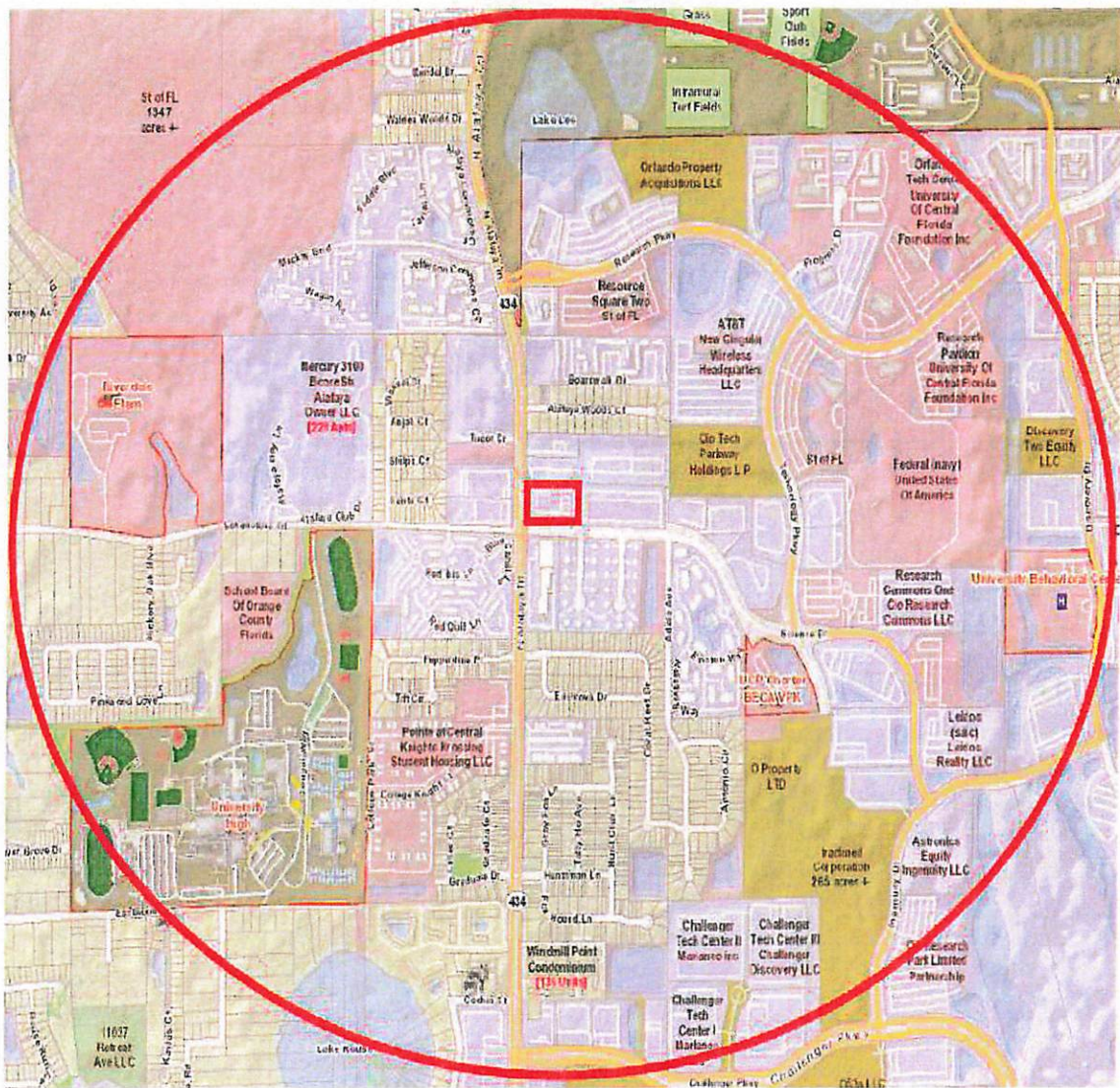
The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29 day of MAY, 2024, by PHILIP [P.T.] SCHEER, as SEVP/COO of **FAIRWINDS CREDIT UNION**, a Florida state-chartered credit union, on behalf of such credit union, who ☒ is personally known to me or ☐ has produced \_\_\_\_\_ as identification.

(Notary Stamp)



Katie Wade  
Signature of Notary Public  
Print Name: KATIE WADE  
Notary Public, State of: FLORIDA  
Commission Expires: 04/11/2027  
(mm/dd/yyyy)

**Exhibit “A”**  
**“THE VERVE STUDENT HOUSING”**  
**Project Location Map**



**Exhibit "B"**

**"THE VERVE STUDENT HOUSING"**

Parcel ID: 10-22-31-0000-00-007

**Legal Description:**

The Land referred to herein below is situated in the County of Orange, State of Florida, and is described as follows:

COMMENCE AT THE SOUTHEAST CORNER OF THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA; THENCE N. 87°55'56" W., ALONG THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 10, 786.32'; THENCE N. 02°04'04" E., 47.01' TO THE NORTHERLY RIGHT-OF-WAY LINE OF SCIENCE DRIVE AND THE POINT OF BEGINNING; THENCE N. 87°55'56" W., ALONG SAID RIGHT-OF-WAY LINE, 462.80'; THENCE N. 44°03'36" W., ALONG SAID RIGHT-OF-WAY LINE, 14.42' TO THE EASTERLY RIGHT-OF-WAY LINE OF ALAFAYA TRAIL; THENCE N. 00°11'17" W., ALONG SAID RIGHT-OF-WAY LINE, 274.25'; THENCE S. 88°19'29" E., 484.00'; THENCE S. 02°04'04" W., 287.35' TO THE POINT OF BEGINNING.

Exhibit "C"

"THE VERVE STUDENT HOUSING"

DEFICIENT SEGMENT [#1]

Log of Project Contributions

Log of Project Contributions  
Alafaya Trail (Science Dr to Colonial Dr)

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
Alafaya Trail	Science Dr Colonial Dr	1.12	E	3020	Widen from 6 to 8 lanes	4040	1020	\$23,215,600	\$22,761

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
Alafaya Trail	Science Dr Colonial Dr	1.12	E	3020	246	4040	1020	\$5,599,078

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
Alafaya Trail	Science Dr Colonial Dr	1.12	E	3020	4040	1020	246	774	\$17,616,612	\$22,761

Updated: 5/16/24

Log of Project Contributions

Date	Project	Project Trips	Project Share
Feb-19	Existing plus Committed	158	\$4,691,652
Mar-20	Chabad at UCF	4	\$118,776
May-20	Waterford Lakes Multifamily	6	\$178,164
Jul-20	Bail and Fast Food at East 50	1	\$29,694
Sep-20	Union at Collegiate Village- East	4	\$118,776
Sep-20	Union at Collegiate Village- West	7	\$207,858
Feb-21	Chase bank at Waterford Lakes	1	\$31,205
Apr-21	Waterford Lakes Golf	3	\$37,714
May-21	Science Drive Student Housing	18	\$226,279
Feb-22	Carl Black Chevrolet	5	\$64,745
May-22	1737 N. Alafaya Trail	6	\$80,244
May-22	Waterford Oaks	12	\$160,488
Sep-22	Portlo's Waterford Lakes	9	\$120,306
Mar-23	Starbucks Coffee Shop at Alafaya	4	\$53,490
Aug-23	Fifty South Student Housing	8	\$108,992
	<b>Backlogged Totals:</b>	<b>246</b>	<b>\$6,226,449</b>
May-24	The Verve Student Housing	25	\$569,025
			\$0
			\$0
	<b>Totals:</b>	<b>271</b>	<b>\$6,795,474</b>

Existing

## “THE VERVE STUDENT HOUSING”

### DEFICIENT SEGMENT [#2]

#### Log of Project Contributions

#### Log of Project Contributions Alafaya Trail (University Blvd to Science Dr)

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
Alafaya Trail	University Blvd Science Dr	1.02	E	3020	Widen from 6 to 8 lanes	4040	1020	\$21,142,861	\$20,729
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	
Alafaya Trail	University Blvd Science Dr	1.02	E	3020	67	4040	1020	\$1,366,790	
Developer Share of Improvement									
Planned Improvement Roadway(s)	Limits of Improvement (From - To)	Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Backlogged Trips	Capacity Increase	Remaining Project Cost	Cost / Trip
Alafaya Trail	University Blvd Science Dr	1.02	E	3020	4040	67	953	\$19,754,365	\$20,729
Updated 6/18/24									
Log of Project Contributions									
Date	Project	Project Trips	Prop Share						
Existing									
May-21	Existing plus Committed	36	\$462,640						
May-21	Science Drive student Housing	14	\$170,520						
May-22	Collegiate Village Retail	8	\$97,440						
Aug-23	Fifty South Student Housing	7	\$85,230						
	<b>Backlogged Totals:</b>	<b>67</b>	<b>\$118,660</b>						
May-24	The Verve Student Housing	41	\$349,689						
			\$0						
			\$0						
			\$0						
	<b>Totals:</b>	<b>108</b>	<b>\$1,665,949</b>						