



Legislation Text

File #: 24-1161, **Version:** 1

Interoffice Memorandum

DATE: July 24, 2024

TO: Mayor Jerry L. Demings and County Commissioners

THROUGH: N/A

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

CONTACT: Jon V. Weiss, P.E., Chairman

PHONE: (407) 836-5393

DIVISION: Roadway Agreement Committee

ACTION REQUESTED:

Approval and execution of Proportionate Share Agreement for Wise Colonial PD / Commercial Carwash E. Colonial Drive Colonial Drive by and between K2 Colonial Dr LLC and Orange County for a proportionate share payment in the amount of \$143,680. District 5. **(Roadway Agreement Committee)**

PROJECT: N/A

PURPOSE:

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Wise Colonial PD / Commercial Carwash E. Colonial Drive Colonial Drive ("Agreement") by and between K2 Colonial Dr LLC and Orange County for a proportionate share payment in the amount of \$143,680. 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 Colonial Drive from Forsyth Road to Goldenrod Road in the amount \$10,365 per trip and five deficient trips on the road segment of Colonial Drive from Semoran Boulevard to Forsyth Road in the amount of \$24,590 per trip.

The Roadway Agreement Committee recommended approval on July 17, 2024. The Specific Project

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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.

BUDGET: N/A

BCC Mtg. Date: August 13, 2024

This instrument prepared by
and after recording return to:

John Herbert, IV
American Civil Engineering Co.
207 N. Moss Road #211
Winter Springs, Florida 32708

Parcel ID Number: 22-22-30-2285-02-000

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

**PROPORTIONATE SHARE AGREEMENT FOR
WISE COLONIAL PD / COMMERCIAL CARWASH E. COLONIAL DRIVE**

COLONIAL DRIVE

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 K2 Colonial Dr LLC, a Florida limited liability company (“**Owner**”), with its principal place of business at 1156 Oaks Boulevard, Winter Park Florida 32789, 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 Colonial Drive; and

WHEREAS, Owner intends to develop the Property as a 4,497 square feet, referred to and known as Wise Colonial PD / Commercial Carwash E. Colonial Drive (the “**Project**”); and

WHEREAS, Owner received a letter from County dated July 10, 2024, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #CEL-24-05-038 for the Project was denied; and

WHEREAS, the Project will generate two deficient PM Peak Hour trips (the “**Excess Trips 1**”) for the deficient roadway segment on Colonial Drive from Forsyth Road to Goldenrod Road (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 five deficient PM Peak Hour trips (the “**Excess Trips 2**”) for the deficient roadway segment on Colonial Drive from Semoran Boulevard to Forsyth Road (the “**Deficient Segment 2**”), and zero 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 Segments 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 Segments through the current anticipated Project buildout is One Hundred Forty-Three Thousand six hundred eighty dollars and 00/100 Dollars (\$143,680.00) (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”, One Hundred Forty-Three Thousand six hundred eighty dollars and 00/100 Dollars (\$143,680.00). 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 "Traffic Impact Analysis," the in-house study that was prepared by Orange County's Transportation Planning Division, dated May 14, 2024, for Wise Colonial PD / Commercial Carwash E. Colonial Drive (the "Traffic Study"), which is incorporated herein by this reference, and (ii) upon the calculations described in Exhibit "C." The Traffic Study is on file and available for inspection with that division (CMS #2024038). 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 Segments 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 Hundred Forty-Three Thousand six hundred eighty dollars and 00/100 Dollars (\$143,680.00) 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, 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, 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 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.

(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 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. 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 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: K2 Colonial Dr LLC
1156 Oaks Boulevard
Winter Park, Florida 32789

With copy to: John Herbert, IV
American Civil Engineering Co.
207 N. Moss Road #211
Winter Springs, Florida 32708

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 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 actions 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 changes to this Agreement shall be binding upon the parties unless in writing and formally executed by all of the parties.

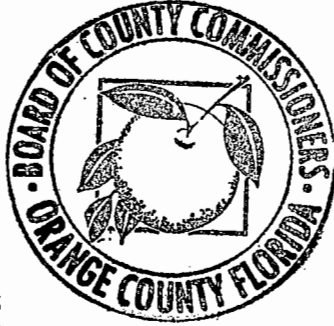
Section 13. Termination. In the event either (i) Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, as contemplated in Subsection 2(b), or (ii) Owner has timely paid the PS Payment to County and the Project has been constructed on the Property and 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: *B. W. Demings*
for Jerry L. Demings
Orange County Mayor

Date: *13 August 2024*

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

By: *Jennifer Lara Kinney*
for Deputy Clerk

Print Name: *Jennifer Lara Kinney*

WITNESSES:

Jeff Leber
Signature of Witness

Print Name: Jeff Leber

Mailing Address: 1001 Old Cassat

Rd St. 208 Berwyn PA 19132

[Signature]
Signature of Witness

Print Name: Valgh Schill

Mailing Address: 1001 Old Cassat

Rd Suite 208 Berwyn PA 19132

"OWNER"

K2 Colonial Dr LLC, a Florida limited liability company

By: [Signature]

Print Name: Jackson Kirby

Title: Manager

STATE OF: FL
COUNTY OF: Orange

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 5 day of July, 2024 by Jackson Kirby, as Manager of K2 Colonial Dr LLC, a Florida limited liability company, on behalf of such company, who is personally known to me or has produced Driver license as identification.

(Notary Stamp)



[Signature]
Signature of Notary Public
Print Name: Sepanta Masoodi
Notary Public, State of: FL
Commission Expires: Nov 16, 2027
(mm/dd/yyyy)

Exhibit "A"

"Wise Colonial PD / Commercial Carwash E. Colonial Drive"

Project Location Map



VICINITY MAP

N.T.S.

Exhibit “B”

“Wise Colonial PD / Commercial Carwash E. Colonial Drive”

Parcel ID:22-22-30-2285-02-000

Legal Description:

Lot 2 of the Plat of East Colonial Apartments, as recorded in plat book 107, page 15 of Public Records of Orange County, Florida. +/- 2.27 acres

Together with those easement rights arising under that certain Reciprocal Easement and Restrictive Use Agreement by and between CRP/CDP East Colonial Owner, LLC, a Delaware limited liability company, and CDP E. Colonial Commercial Owner, LLC, a Florida limited liability company recorded October 30, 2020, in Official Records Instrument No. 20200567202, as amended by that certain First Amendment to Reciprocal Easement and Restrictive Use Agreement recorded on April 6, 2022, in Official Records Instrument No. 20220223891.

Exhibit "C"

"Wise Colonial PD / Commercial Carwash E. Colonial Drive"

DEFICIENT SEGMENT 1

Log of Project Contributions
 Colonial Dr (Forsyth Rd to Goldenrod 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
Colonial Dr	Forsyth Rd - Goldenrod Rd	0.51	E	3020	Adding 2 lanes	4040	1020	10,571,430	\$10,365

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
Colonial Dr	Forsyth Rd - Goldenrod Rd	0.51	E	3020	25	4040	1020	\$259,104

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
Colonial Dr	Forsyth Rd - Goldenrod Rd	0.51	E	3020	4040	1020	25	995	\$10,312,327	\$10,365

Updated: 5/8/24

Log of Project Contributions

Date	Project	Project Trips	Prop Share
Existing			
Jan-23	Existing plus Committed	1	\$0,000
Feb-23	Housing Moss Apartments	14	\$65,268
Sep-23	Waters Car Wash	4	\$24,160
Feb-24	Perce of Mind	4	\$41,160
May-24	Autocare	2	\$20,730
	Backlogged Trips:	26	\$177,910
Proposed			
May-24	Wise Colonial PD Car Wash	2	\$20,730
			\$0
			\$0
			\$0
			\$0
	Totals:	27	\$198,630

Exhibit "C"

"Wise Colonial PD / Commercial Carwash E. Colonial Drive"

DEFICIENT SEGMENT 2

**Log of Project Contributions
 Colonial Dr (Semoran Blvd to Forsyth 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	
Colonial Dr	Semoran Blvd - Forsyth Rd	1.21	E	3020	Adding 2 lanes	4040	1020	75,081,237	\$24,590	
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		
Colonial Dr	Semoran Blvd - Forsyth Rd	1.21	E	3020	27	4040	1020	\$63,915		
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
Colonial Dr	Semoran Blvd - Forsyth Rd	1.21	E	3020	4040	1020	27	693	\$24,417,322	\$24,590

Updated: 6/24/24

Log of Project Contributions				
Date	Project	Project Trips	Prop Share	
Existing	Existing plus Committed	15	\$216,735	
May-23	Semoran Car Wash	2	\$28,898	
Sep-28	Waters Car Wash	2	\$28,898	
Feb-24	Pete of Mead	2	\$49,180	
May-24	Autzone	6	\$167,540	
	Backlogged Totals:	27	\$471,251	
Proposed	Wise Colonial PD Car Wash	5	\$122,950	
			\$0	
			\$0	
			\$0	
			\$0	
	Totals:	32	\$694,201	