



Interoffice Memorandum

May 17, 2024

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

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

A handwritten signature in black ink, appearing to read "Joseph C. Kunkel".

**CONTACT PERSON: Dale V. Mudrak, P.E., Manager
Development Engineering Division
PHONE NUMBER: (407) 836-7974**

**SUBJ: Escrow Agreement – Forsyth Intersection Signal at Costco
Permit #22-E-196,
Addendum to May 21, 2024 Consent Agenda**

Orange County Code, Section 21-202 requires a developer to submit to Orange County an irrevocable letter of credit or other assurance of completion which is deemed acceptable by the County Attorney prior to issuance of a right-of-way utilization permit to improve or construct a County roadway.

3825 Forsyth, LLC as the developer, Orange County, and the Orange County Comptroller in its capacity as the escrow agent, propose this agreement to allow a deposit of escrowed funds in the amount of \$701,423 in lieu of an irrevocable letter of credit to be held by the Orange County Comptroller's Office as the escrow agent. The agreement requires that funds be deposited within five days of the effective date of the escrow agreement.

Pursuant to Orange County Resolution No. 2023-14, the County Mayor or his/her designee is authorized to accept or amend cash escrows to provide surety for the completion of permitted work pursuant to right-of-way utilization permits.

The County Attorney's Office and the Orange County Comptroller's Office have reviewed the escrow agreement and find it acceptable as to form and content. The Mayor has also signed the agreement as authorized by Resolution No. 2023-14; however, this agreement still requires the County Comptroller's attestation and signature as escrow agent in order to be fully executed. Development Engineering Division staff recommends approval.

Action Requested: Approval of Escrow Agreement 3825 Forsyth LLC by and among 3825 Forsyth, LLC, Orange County, and Orange County Comptroller in its capacity as escrow agent to accept escrowed funds in lieu of an irrevocable letter of credit. District 5.

JCK/DVM/jb

Attachment(s)

BCC Mtg. Date: May 21, 2024

This instrument prepared by:

Juli Simas James, Esq.
Shutts & Bowen LLP
300 South Orange Avenue
Suite 1600
Orlando, FL 32812

Tax ID No(s): 03-22-30-0000-00-083

ESCROW AGREEMENT
(3825 FORSYTH, LLC)

THIS ESCROW AGREEMENT (“Escrow Agreement”) is made and entered into as of the date of latest execution (“Effective Date”), by and among **3825 Forsyth, LLC**, a Delaware limited liability company (“Owner”); **Orange County**, a charter county and political subdivision of the State of Florida (“County”) (Owner and County, together, shall be referred to herein as the “Principals”); and the **Orange County Comptroller**, in its capacity as Escrow Agent (“Escrow Agent”), with all parties’ mailing addresses as noted in Section 12, hereinbelow.

W I T N E S E T H:

WHEREAS, Owner is the owner in fee simple of certain real property located in Orange County, Florida (the “Property”), as more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference; and

WHEREAS, as a condition to Owner’s development of the Property, the County requires Owner to install or caused to be installed an offsite traffic signal in accordance with those certain Construction Plans for Forsyth Intersection Signal at Costco approved by Orange County on June 8, 2023 (the “Approved Plans”) under Orange County Permit No. 22-E-196 and in accordance with Orange County Code (the “Offsite Improvements”);

WHEREAS, the County also requires Owner to provide adequate security to ensure the completion of the Offsite Improvements, and pursuant to County Resolution No. 2023-14, Owner may post such security in the form of a cash escrow; and

WHEREAS, County has consented to accept the Escrowed Funds (as defined below) to be held by Escrow Agent in accordance with the terms and provisions of this Escrow Agreement; and

WHEREAS, Escrow Agent has agreed to serve as Escrow Agent in accordance with this Escrow Agreement; and

WHEREAS, the Principals desire that Escrow Agent shall hold and release the Escrowed Funds subject to the terms and conditions set forth in this Escrow Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto represent, warrant, covenant, and agree as follows:

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

2. **Establishment of Escrow Relationship; Acceptance by Escrow Agent.** The Principals hereby retain Escrow Agent, at no cost to them, to serve solely in its capacity as escrow agent with respect to the Escrowed Funds and Escrow Agent hereby accepts such retention.

3. **Escrowed Funds.** No later than five (5) business days after the Effective Date, Owner shall deliver funds in the amount of \$701,423.00 (the "Escrowed Funds") to Escrow Agent to ensure completion of the Offsite Improvements in accordance with the Approved Plans, County Permit No. 22-E-196, and County Code (collectively, the "County Requirements"). Within five (5) business days of receipt, Escrow Agent shall place the Escrowed Funds into an escrow account (the "Escrow Account") to be held, administered, distributed, and released as provided for herein. Escrow Agent shall acknowledge receipt of the Escrowed Funds by providing notice, either in writing or by electronic mail, to each of the Principals within five (5) business days after receipt of the Escrowed Funds.

4. **County Claim(s) on Escrowed Funds.** County may use all or a portion of the Escrowed Funds, as it deems necessary, in the following circumstances and subject to the following conditions:

A. In the event Owner has not completed the Offsite Improvements in accordance with County Requirements, then County shall submit written notification to Owner describing such noncompliant status with reasonable particularity, so that Owner may cure such noncompliant state (the "Noncompliance Notification"). Within thirty (30) days (unless a longer period is agreed upon by the parties) following receipt of a Noncompliance Notification, Owner shall cure, or cause to be cured, such matter(s) referenced in the Noncompliance Notification. In the event Owner fails to resolve the matter(s) described in the Noncompliance Notification to County's not unreasonably withheld satisfaction within the prescribed period of time, then upon ten (10) business days prior written notice by County to Owner, County may withdraw all or a portion, as it deems necessary, of the Escrowed Funds upon presentation to the Escrow Agent of a statement signed by the Orange County Mayor or a duly authorized representative stating (i) Owner has received a Noncompliance Notification and has failed to cure the matter(s) contained in such Noncompliance Notification within the prescribed period of time following receipt thereof; (ii) the subject draw request is required due to Owner's failure to complete the installation of the Offsite Improvements in accordance with County Requirements; and (iii) County will complete or cause to be completed the installation of the Offsite Improvements. Any funds not used by County shall be placed back in the Escrow Account or released as provided in Section 5 hereinbelow, as applicable.

B. In the event County finds that there are noncompliant Owner obligations with respect to the Offsite Improvements and that such noncompliant items pose a risk of danger to the health, safety, and/or welfare of the people of Orange County, Florida, as determined by County in the County's commercially reasonable discretion, then County shall have the right to use the Escrowed Funds as set forth herein. Where feasible, as determined solely by County, Owner shall be given a Noncompliance Notification and ten

(10) days to cure such noncompliant condition; provided, however, such Noncompliance Notification shall not be required if County determines such noncompliant condition poses an imminent danger to the health, safety, and /or welfare of the people of Orange County, Florida. If Owner does not cure such noncompliant condition to County's not unreasonably withheld satisfaction, or if County deems it not feasible to give Owner a Noncompliance Notification, County may withdraw all or a portion, as it deems necessary, of the Escrowed Funds upon presentation to the Escrow Agent of a statement signed by the Orange County Mayor or a duly authorized representative stating (i) that there is a noncompliant condition threatening the health, safety, and/or welfare of the people of Orange County; (ii) the subject draw request is required to correct the noncompliance; and (iii) County will complete, or cause to be completed, the installation of the Offsite Improvements in accordance with County Requirements. Any funds not used by County shall be placed back in the Escrow Account or released as provided in Section 5 hereinbelow, as applicable.

C. Use of the Escrowed Funds shall include withdrawal and use by County of all or a portion of the Escrowed Funds in order to complete or cause to be completed, or retaining all or a portion of the Escrowed Funds with the Escrow Agent as security for, the installation of the Offsite Improvements in accordance with County Requirements, by either Owner or its successor in interest. The choice to withdraw and use the Escrowed Funds is solely in County's discretion. Should County choose to use the Escrowed Funds to complete the installation of the Offsite Improvements in accordance with County Requirements, it will do so only to the extent the Escrowed Funds are sufficient to complete that task (unless the County chooses to incur the additional cost to complete the task or complete a portion of the task) and shall in no case, assume any liability for, nor any obligation to, complete the Owner's obligations.

5. **Term and Termination.** Unless terminated earlier as provided for in this Section, the term of this Escrow Agreement shall commence upon the Effective Date and shall terminate upon the four hundred fifty-sixth (456th) day from that date. This Escrow Agreement may be terminated earlier as follows:

(a) the delivery of all of the Escrowed Funds to the County pursuant to Section 4 hereof; or

(b) the delivery of the balance of the Escrowed Funds to Owner within forty-five (45) days of County's confirmation that Owner has completed the Offsite Improvements in accordance with County Requirements.

(c) Upon Escrow Agent's resignation as Escrow Agent, which Escrow Agent may do at any time upon giving written notice to Owner and County of its desire to so resign; provided, however, that resignation of Escrow Agent shall take effect no earlier than thirty (30) business days after the giving of notice of resignation or ten (10) days after Owner and County have provided Escrow Agent with written notice of their selection for a successor escrow agent, whichever is later. The parties shall cooperate to ensure the Escrowed Funds are conveyed to a successor escrow agent.

Notwithstanding the foregoing, if any portion of the Escrowed Funds is subject to any active or pending draw request(s), this Agreement shall not terminate until disbursement of such draw request. In the event the Escrowed Funds, or any portion thereof, are returned to Owner, such funds shall be disbursed to Owner within a reasonable period, but in any case no later than forty-five (45) days after said 456 day term.

6. **Indemnification of Escrow Agent; Sovereign Immunity.** It is agreed that the duties of the Escrow Agent are purely ministerial in nature and shall be expressly limited to the matters herein for which Escrow Agent is expressly obligated. Owner and County hereby indemnify Escrow Agent and agree to hold Escrow Agent harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits, or proceedings at law or in equity, and any other expenses, fees, or charges of any character or nature, which Escrow Agent may incur or with which Escrow Agent may be threatened directly or indirectly arising from or in any way connected with this Escrow Agreement, except in the case of gross negligence or willful misconduct of Escrow Agent. In connection therewith, the Principals indemnify Escrow Agent against any and all reasonable expenses, including reasonable attorney fees (pre-litigation, litigation, and appellate) and the cost of defending or prosecuting any action, suit, or proceeding or resisting any claim, whether or not litigation is instituted. Nothing contained herein is intended as, nor shall constitute, a waiver by County of its sovereign immunity protections pursuant to Section 768.28, Florida Statutes.

7. **No Constructive Knowledge.** Escrow Agent shall not be deemed to have knowledge of any matter or thing unless and until Escrow Agent has actually received written notice of such matter or thing, and then shall only be required to act on that knowledge in its capacity as Escrow Agent as further described herein. Escrow Agent shall not be charged with any constructive knowledge whatsoever.

8. **Capacity of Escrow Agent.** It is expressly understood and agreed by the parties that the Escrow Agent shall not act under this Escrow Agreement in any capacity as Clerk to the Board of County Commissioners, but rather in Escrow Agent's capacity as an independent constitutional officer.

9. **No Obligation to Overdraw.** Notwithstanding any provision of this Escrow Agreement to the contrary, Escrow Agent shall not be required to make payment of an amount in excess of the balance in the Escrow Account.

10. **No Obligation to Pay Interest.** Notwithstanding any provision of this Escrow Agreement to the contrary, Escrow Agent shall not be required to make any interest payment on any balance in the Escrow Account.

11. **No Liability for Owner Obligations.** The execution of this Escrow Agreement does not relieve Owner of its obligation to complete, to the County's not unreasonably withheld satisfaction, the Offsite Improvements or obligate County or Escrow Agent to undertake or complete the Offsite Improvements and does not imply or require that either the County or the Escrow Agent assume any liability for the Owner obligations or any other responsibility of the Owner. This provision shall survive the termination of this Escrow Agreement.

12. **Notices.** All notices, consents, approvals, waivers, and elections which any party shall be required or shall desire to make or give under this Escrow Agreement shall be in writing and shall be sufficiently made or given (i) when mailed by certified mail, postage prepaid, return receipt requested, (ii) by hand delivery to the named individuals representing the party to be notified, or (iii) by private parcel delivery services, or facsimile transmission for which receipt is provided to the notifying party. Notices, including notice of change of address, shall be addressed or transmitted to the addresses set forth below or such other address that a party may designate in the manner prescribed herein:

As to Owner 3825 Forsyth, LLC
3347 Michelson Drive
Suite 200
Irvine, CA 92612
Tel.: (312) 651-3961
Email: Dave Poquette, Senior Vice President

With a copy to: Seyfarth Shaw LLP
Attn: Richard Mendelson, Esquire
601 South Figueroa Street
Suite 3300
Los Angeles, CA 90017-5793
Tel.: (213) 270-9619
Email: rmendelson@seyfarth.com

As to County: County Administrator
201 S. Rosalind Avenue
P.O. Box 1393
Orlando, FL 32802-1393
Tel.: (407) 836-7366
Fac: (407) 836-7399
Email: countyadmin@ocfl.net

With a copy to: Orange County Public Works Department
Attention: Director
4200 S. John Young Parkway
Orlando, FL 32839
Tel.: (407) 836-7900
Fax: (407) 836-7716

And Orange County Attorney's Office
Attention: County Attorney
201 S. Rosalind Ave.
Orlando, FL 32801
Tel.: (407) 836-7320

As to Escrow Agent: Orange County Comptroller

201 S. Rosalind Avenue
P.O. Box 38
Orlando, FL 32802-0038
Attn: Director of Finance and Accounting
Tel.: (407) 836-5715
Fac.: (407) 836-5753
Email: laurie.bauer@occompt.com

Notices, consents, approvals, waivers, and elections given or made as aforesaid shall be deemed to have been given and received on the date of the mailing, delivery, or transmission thereof as aforesaid.

13. **Governing Law and Venue.** This Escrow Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of the State of Florida, without regard to choice of law rules. Venue for any action arising out of or in connection with this Escrow Agreement shall lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

14. **Entire Agreement, Modification.** This Escrow Agreement contains the entire understanding and agreement between the parties relating to the subject matter hereof, and all prior or extrinsic agreements, understandings, representations and statements, oral or written, concerning the subject matter hereof are merged herein and/or superseded hereby. There are no other agreements, written or oral, between the parties with respect to the subject matter hereof except those contained in this Escrow Agreement. Neither Escrow Agent nor the Principals shall be bound by any modification, cancellation, or rescission of this Escrow Agreement unless in writing and signed by Escrow Agent and Principals.

15. **Waiver.** The failure of either Principal to insist in any one or more cases upon the strict performance of any one of the terms, covenants, conditions, or provisions of this Escrow Agreement shall not be construed as a waiver or a relinquishment of such Principal's right to insist on strict performance of any such term, covenant, condition, or provision in the future.

16. **Binding Agreement.** This Escrow Agreement shall be binding upon Principals and Escrow Agent and their respective successors and assigns.

17. **Telecopy Execution.** A facsimile, telecopy, or other reproduction of this Escrow Agreement may be executed by the parties (in counterparts or otherwise) and, when so executed, shall be considered valid, binding, and effective for all purposes. At the request of any party, the parties hereto agree to execute an original of this Escrow Agreement, as well as any facsimile, telecopy, or other reproduction.

18. **Counterparts.** This Escrow Agreement may be executed in up to three identical counterparts, each of which, when executed, shall be deemed an original, and all of which shall, collectively, constitute one and the same agreement.

19. **Time.** Time is of the essence in connection with this Escrow Agreement and each provision hereof.

20. **Captions; Days.** The captions contained in this Escrow Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Escrow Agreement or the intent of any provision contained herein. Each reference to “day” or “days” herein shall mean calendar days unless otherwise stated.

21. **Construction.** All parties to this Escrow Agreement having participated fully and equally in the negotiation and preparation hereof, the fact that one of the parties to this Escrow Agreement, or its attorney, may be deemed to have drafted or structured any provision of this Escrow Agreement shall not be considered in construing or interpreting any particular provision of this Escrow Agreement, either in favor of or against such party.

22. **Settlement of Dispute.** In the event Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrowed Funds, Escrow Agent shall, at its option, either: (a) tender the Escrowed Funds into the registry of the appropriate court; or (b) disburse the Escrowed Funds in accordance with the court’s ultimate disposition of the case. In the event Escrow Agent tenders the Escrowed Funds into the registry of the appropriate court and files an action of interpleader naming Principals and any affected third parties of whom Escrow Agent has received actual notice, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith. The Principals agree that Escrow Agent shall not be liable to any party or person whomsoever for the misdelivery to Owner and County or otherwise of any monies except where such misdelivery shall be due to willful misconduct, gross negligence, or breach of trust by Escrow Agent.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement or caused this Escrow Agreement to be executed and delivered by their duly authorized officers on the date(s) noted below.

ATTEST:

COUNTY:

Phil Diamond, CPA, County Comptroller, as
Clerk of the Board of County Commissioners

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jennifer Fox-Kimty*
Deputy Clerk

By: *Jerry L. Demings*

Jerry L. Demings
Orange County Mayor



Execution Date: May 1, 2024

Owner:

3825 FORSYTH, LLC,
a Delaware limited liability company

Signed, sealed, and delivered
in the presence of:

By: 3825 Forsyth Holding, LLC,
a Delaware limited liability company

Rachel Colton
Name: Rachel Colton
Address: 3347 Michelson Dr., Ste 200
Irvine, CA, 92612

By: [Signature]

Printed Name: Mike Memoly

Title: _____

Execution Date: April 11, 2024

[Signature]
Name: Farah Roberts
Address: 3347 Michelson Dr, Ste 200
Irvine, CA, 92612

STATE OF FLORIDA
COUNTY OF _____

(see attached)

The foregoing instrument was acknowledged before me, a Notary Public, by means of physical presence or online notarization this ___ day of April, 2024, by _____, as _____ of _____, a _____, on behalf of said _____, who is personally known to me or has produced (type of identification) _____ as identification.

Notary Public
Printed Name _____
My Commission Expires: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange

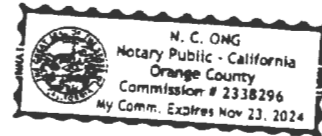
On April 11, 2024 before me, N. C. Ong, a Notary Public
(insert name and title of the officer)

personally appeared Mike Memoly,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.


I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



Signed, sealed, and delivered
in the presence of:

Attest: 
Print Name: Ruby Muñiz
Title: Executive Assistant

Attest: Craig Stoppa
Print Name: Craig Stoppa
Title: Minutes Supervisor

ESCROW AGENT:

ORANGE COUNTY COMPTROLLER

By: 
Phil Diamond, CPA
County Comptroller

Execution Date: MAY 22 2024, 2024

EXHIBIT "A"

Legal Description of Property

PARCEL 1

From the Northwest corner of the South 3/4 of the East 1/2 of the Southeast 1/4 of Section 3, Township 22 South, Range 30 East, Orange County, Florida, run South 89°43'10" East 30 feet; thence South 0°24'20" West 577.75 feet for a Point of Beginning, said point being on the East R/W line of Forsyth Road; run thence South 89°43'10" East 887.46 feet; thence North 0°24'20" East 151.50 feet to a point 8.0 feet Southerly of the centerline of a railroad spur tract; thence South 89°43'10" East 75.48 feet to the P.C. of a curve concave Northwesterly having a radius of 366.10 feet; thence Northeasterly along the arc of said curve through a central angle of 69°16'56", a distance of 442.69 feet to a point on the East line of Section 3, Township 22 South, Range 30 East; thence South 89°43'10" East 100.00 feet; thence South 00°36'34" West, parallel with the East line of said Section 3, a distance of 389.49 feet; thence South 89°43'10" East 440.03 feet to the West R/W line of the Crane Strand Drainage Canal; thence South 0°36'34" West 730.00 feet; thence North 89°43'10" West 1839.94 feet to the East R/W line of Forsyth Road; thence North 0°24'20" East 730.00 feet to the Point of Beginning.

LESS AND EXCEPT therefrom that portion conveyed to Orange County, Florida by virtue of the Special Warranty Deed recorded November 11, 1999 in Official Records Book 5880, Page 1559, Public Records of Orange County, Florida, being more particularly described as follows:

A parcel of land lying in Section 3, Township 22 South, Range 30 East, being a portion of lands described in Official Records Book 2323, Page 733, Public Records of Orange County, Florida and being more particularly described as follows:

Commence at the Southwest corner of the Southeast quarter of the Southeast quarter of said Section 3, for a point of reference; thence run North 00°37'59" West, along the West line of said Southeast Quarter of the Southeast Quarter, 679.02 feet; thence run North 89°14'45" East, 30.00 feet to the East right-of-way line of Forsyth Road, as recorded in Official Records Book 2323, Page 733, said Public Records and the Point of Beginning; thence run North 00°37'59" West, along said East right-of-way line, 730.56 feet; thence run North 89°14'59" East, 3.36 feet; thence run South 00°36'50" East, 195.16 feet; thence run South 02°45'37" East, 467.21 feet; thence run South 00°36'50" East, 68.47 feet to the North line of "Commerce Square, Phase I" according to the plat thereof as recorded in Plat Book 6, Page 27, Public Records of Orange County, Florida; thence run South 89°14'45" West, along said North line, 20.62 feet to the Point of Beginning.

PARCEL 2

Commence at the West 1/4 corner of Section 2, Township 22 South, Range 30 East, Orange County, Florida; run thence South 00°36'34" West along the West line of said Section 2 a distance of 207.75 feet for a Point of Beginning, said point being on the southerly R/W line of Crane Strand Drainage Canal; thence run along the Southerly and West R/W line of said canal the following courses and distances: South 59°52'43" East 499.65 feet to the P.C. of a curve concave Southwest and having a radius of 207.27 feet; thence along the arc of said curve through a central angle of 60°29'17" 218.82 feet to the P.T.; thence South 00°36'34" West 602.41 feet; thence departing said R/W run North 89°43'10" West 440.03 feet; thence North 00°36'34" East 389.49 feet; thence North 89°43'10" West 100.00 feet to said West line of Section 2; thence North 00°36'34" East along said West line 642.52 feet to the Point of Beginning.

