



Interoffice Memorandum

AGENDA ITEM

August 31, 2020

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

FROM: Jon V. Weiss, P.E., Director
Planning, Environmental, and Development
Services Department

**CONTACT PERSON: Scott Skraban, MPA, Concurrency Management Official
Concurrency Management Office
407-836-5363**

SUBJECT: September 22, 2020 – Consent Item
School Concurrency Mitigation Agreement OC-19-096
San Marino I Parcel ID#: 09-23-29-0000-00-017, 09-23-29-0000-00-042, 10-23-29-0000-00-004

On September 16, 2008, the Board amended Chapter 30, Orange County Code (the "Code"), to include the legislative requirements of school concurrency. The provisions in the Code are based on statutory requirements and on the terms of the First Amended and Restated Interlocal Agreement for Public School Facility Planning and Implementation of School Concurrency entered into by the County, The School Board of Orange County (the "School Board") and municipalities within the County (June 10, 2008, as amended from time to time, the "Interlocal Agreement"). Section 30-622 of the Code requires applicants to submit proposed school proportionate share mitigation agreements to the Concurrency Management Official, following negotiation with the School Board and the County Attorney's Office, for review and recommendation to the Board.

The subject School Concurrency Mitigation Agreement (the "Mitigation Agreement") is among the County, the School Board, and EGRE San Marino, LLC, a Florida limited liability company. The project consists of 60 multi-family residential units located between Lemon Tree Lane and South Texas Avenue in District 6. The Mitigation Agreement is necessary because the project affects certain area high school(s), which currently operate below the adopted level of service standard.

Page Two

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School Concurrency Mitigation Agreement OC-19-096

San Marino I Parcel ID#: 09-23-29-0000-00-017, 09-23-29-0000-00-042, 10-23-29-0000-00-004

Pursuant to Section 30-622 of the Code, if there is insufficient available school capacity within a Concurrency Service Area to meet the demand created by the proposed residential development, and the applicant and the School Board have agreed upon mitigation to satisfy the school concurrency requirements for the proposed residential development, then the applicant, School Board, and County must memorialize the terms of the mitigation in an agreement. In accordance with the formula set forth in Section 30-622(4)(b)9 of the Code, the School Board has calculated the proportionate share mitigation payment to be \$113,623.

Pursuant to Section 163.3180, Florida Statutes, the applicant is entitled to impact fee credits on a dollar for dollar basis at fair market value for any proportionate share mitigation paid pursuant to the Agreement. Therefore, the School Board has included provisions in the Mitigation Agreement allowing for a School Impact Fee Credit account. This Agreement also requires payment of Capacity Reservation Fees prior to issuance of building permits for this project.

The School Board approved this agreement on August 20, 2020.

ACTON REQUESTED: Approval and execution of School Concurrency Mitigation Agreement OC-19-096 Project Name: San Marino I Parcel ID#: 09-23-29-0000-00-017, 09-23-29-0000-00-042, 10-23-29-0000-00-004 by The School Board of Orange County, Florida, Orange County, Florida, and EGRE San Marino, LLC for a proportionate share mitigation payment in the amount of \$113,623. District 6

JVW/SS:mu
Attachments

BCC Mtg. Date: September 22, 2020

After recording return to:

Steven Thorp, AICP
Orange County Public Schools
6501 Magic Way, Building 200
Orlando, Florida 32809

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

**SCHOOL CONCURRENCY
MITIGATION AGREEMENT**

OC-19-096

Project Name: San Marino I

Parcel ID#: 09-23-29-0000-00-017, 09-23-29-0000-00-042, 10-23-29-0000-00-004

THIS SCHOOL CONCURRENCY MITIGATION AGREEMENT (“Agreement”), is entered into by THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA a body corporate and political subdivision of the State of Florida, (“School Board”); ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, (“County” or “Applicable Local Government”) and EGRE San Marino, LLC, a Florida Limited Liability Company, whose address is 1500 Weston Road, Suite 202, Weston, FL 33326 (the “Applicant”), collectively referred to herein as the “Parties.”

RECITALS:

WHEREAS, the School Board, Orange County, and the municipalities within Orange County have entered into that certain “First Amended and Restated Interlocal Agreement For Public School Facility Planning and Implementation of Concurrency” (the “Interlocal Agreement”), and

WHEREAS, pursuant to Section 18.6 of the Interlocal Agreement, an applicant submitting a School Concurrency Determination Application for approval of a Site Plan that will generate additional students in a School Concurrency Service Area in which there is insufficient Available School Capacity to accommodate the anticipated additional students must enter into a Proportionate Share Mitigation Agreement to prevent school overcrowding attributable to the anticipated additional students generated by the Residential Development as specified in the Interlocal Agreement;

WHEREAS, an Applicant must submit the School Concurrency Determination Application along with a Development Analysis which identifies the proposed location of the Residential Development, the number of Residential Units that will be created, a phasing schedule (if

applicable), a map demonstrating land use and zoning classifications for the Applicant's property, as well as all other information required pursuant to Section 18.5 of the Interlocal Agreement, to the County; and

WHEREAS, Applicant is the fee simple owner, or authorized agent of the owner, of that certain tract of land located in County Commission District 6 in Orange County, Florida, as more particularly described on **Exhibit "A,"** attached hereto and incorporated herein by reference (the "Property"), the location of which is illustrated by a map attached hereto as **Exhibit "B,"** and incorporated herein by reference; and

WHEREAS, the Applicant has submitted a School Concurrency Determination Application and Development Analysis to the County (CEL-19-10-075) in connection with a proposal to obtain approval for a Site Plan in order to develop sixty (60) Multi-Family Residential Units on the Property (the "Project") and the County has forwarded the School Concurrency Determination Application and Development Analysis to the School Board; and

WHEREAS, the School Board has reviewed and evaluated the Applicant's School Concurrency Determination Application and Development Analysis as required by Section 18.6 of the Interlocal Agreement, and has determined that based on the current adopted Level of Service standards for the School Concurrency Service Areas within which the Property is located and the anticipated new School Capacity that will be available in the first three (3) years of the current District Facilities Work Program to serve the proposed Residential Development, there is insufficient Available School Capacity at the high school level to serve the new Multi-Family Residential Units within the School Concurrency Service Areas for the Project or within adjacent School Concurrency Service Areas as determined by an Adjacency Review; and

WHEREAS, approving the School Concurrency Determination Application without requiring Proportionate Share Mitigation for the impacts of the proposed new Residential Units will either create or worsen school overcrowding in the applicable School Concurrency Service Areas; and

WHEREAS, the Applicant has agreed to enter into this Agreement with the School Board and County to provide Proportionate Share Mitigation proportionate to the demand for Public School Facilities to be created by the Project, as more particularly set forth herein.

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

1. **INCORPORATION OF RECITALS.** The foregoing recitals are true and correct and are hereby incorporated into this Agreement by reference as if fully set forth herein.
2. **DEFINITION OF MATERIAL TERMS.** Any capitalized terms used herein but not defined shall have the meaning attributed to such term in the Interlocal Agreement.
3. **LEGALLY BINDING COMMITMENT.** This Agreement constitutes a legally binding commitment by the Applicant to mitigate for the impacts of the new Residential Units for which the Applicant is seeking approval pursuant to the School Concurrency Determination

Application and is intended to satisfy the requirements of Florida law and the Orange County Code.

4. **PROPORTIONATE SHARE MITIGATION.** The Parties hereby agree that the Applicant shall provide Proportionate Share Mitigation in order to meet the demand for School Capacity created by the Project and to provide additional capacity for 4 high school students, as follows, in accordance with Section 19.2 of the Interlocal Agreement:

Payment in the amount of ONE HUNDRED THIRTEEN THOUSAND SIX HUNDRED TWENTY-THREE AND 00/100 DOLLARS (\$113,623.00) to cover the Proportionate Share Mitigation associated with providing the necessary capacity to complete the Project (the "Proportionate Share") to the School Board. Such payment shall be due and payable prior to the time the plat or, if a plat is not required, a vertical Building Permit for the Property is approved and has been calculated in accordance with the formula found in Section 19.2 of the Interlocal Agreement. To the extent the Applicant's proposed Residential Development is subject to a Capacity Enhancement Agreement, any capacity enhancement mitigation paid pursuant to such agreement was applied as a credit to the Proportionate Share Mitigation required for the Project. Such credit was subtracted from the total Proportionate Share Mitigation required pursuant to the Interlocal Agreement and is reflected in the Proportionate Share required in this Section 4.

5. **USE OF PROPORTIONATE SHARE.** The School Board shall direct the Proportionate Share to a School Capacity improvement identified in the capital improvement schedule in the five (5) year district work plan of the School Board's District Facilities Work Program which satisfies the demands from the proposed Residential Development. If such a School Capacity improvement does not exist in the District Facilities Work Program, the School Board may, in its sole discretion, add a School Capacity improvement to its District Facilities Work Program to mitigate the impacts from the Project, as provided in Section 19.6 of the Interlocal Agreement.

6. **IMPACT FEE CREDIT.** The Proportionate Share paid pursuant to this Agreement shall be credited against the School Impact Fee on a dollar for dollar basis at fair market value.

Upon payment of the Proportionate Share, the School Board shall notify the County of the amount received pursuant to Section 4 of this Agreement, and shall request a School Impact Fee credit account in such amount. Applicant shall not be entitled to a credit or refund for any portion of the Proportionate Share Mitigation in excess of the Impact Fee Credit Amount.

7. **ISSUANCE OF SCHOOL CONCURRENCY RECOMMENDATION.** Upon final execution of this Agreement by all Parties hereto, the School Board shall issue a School Concurrence Recommendation documenting that School Capacity will be available for the Project. This recommendation may be used by the County to issue a Capacity Encumbrance Letter in accordance with Section 18.7 of the Interlocal Agreement.

8. **SCHOOL CAPACITY ENCUMBRANCE AND RESERVATION.** Within twenty-one (21) days of the Effective Date of this Agreement (as defined in Section 24 below),

and upon payment of any applicable administrative fees, County shall issue to the Applicant a Capacity Encumbrance Letter sufficient to encumber school capacity for the Project.

At such time as Applicant has paid the Proportionate Share and paid the applicable installment(s) of the School Capacity Reservation Fee described in Section 9 below, School Capacity shall be reserved for the total units in the Project as reflected on the application; provided, however, the Applicant shall be required to apply for and obtain a School Capacity Reservation Certificate ("SCRC") prior to the expiration of the Capacity Encumbrance Letter and provided further if the Applicant fails to make any of the required School Capacity Reservation Fee payments described in Paragraph 9 below or if this Agreement is terminated, such reserved School Capacity shall lapse and be returned to the applicable capacity bank. Applicant may utilize funds available in any School Impact Fee Credit account set up as a result of this Agreement to pay said School Capacity Reservation Fees.

9. CAPACITY RESERVATION FEE. In order to reserve capacity for the total units in the Project and in order to receive a SCRC, prior to expiration of Applicant's Capacity Encumbrance Letter, Applicant shall be required to pay a School Capacity Reservation Fee for the Project in accordance with Section 30-599 of the Orange County Code which School Capacity Reservation Fee may be paid with any School Impact Fee Credit account set up as a result of this Agreement. As of the date of this Agreement, the total School Capacity Reservation Fees for the Project are estimated to be THREE HUNDRED FIFTY-FIVE THOUSAND ONE HUNDRED FORTY AND 00/100 DOLLARS (\$355,140.00) and are anticipated to be paid in accordance with the schedule below. However, Applicant shall be obligated to pay the School Capacity Reservation Fees at the rates in effect at the time Applicant applies for the SCRC for the Project and in accordance with the schedule contained within the SCRC at the time of issuance.

- a. Prior to plat approval and upon application for a SCRC:
\$ 118,380.00; and
- b. 12 months from date of SCRC:
\$ 118,380.00; and
- c. 24 months from date of SCRC:
\$ 118,380.00 (the remaining balance of the SCRC fees).

Notwithstanding the schedule provided by this Section, Applicant may prepay any or all of the School Capacity Reservation Fees in advance. School Capacity Reservation Fees paid pursuant to this Agreement shall be credited towards School Impact Fees as provided in Section 30-599 of the County Code. In the event Applicant has an established pre-paid School Impact Fee Credit Account, the School Capacity Reservation Fees may be paid from such School Impact Fee Credit Account.

10. TERMINATION. This Agreement shall terminate and Applicant shall forfeit any administrative fees paid, as well as any capacity encumbered or reserved under the following circumstances, unless the County and the School Board agree to an extension of the Applicant's Certificate of School Concurrency:

a. The Applicable Local Government does not approve the Site Plan within one hundred eighty (180) days from approval of the Site Plan by the County's Development Review Committee or, if approval by the Board of County Commissioners is not required, within one hundred eighty (180) days from final submittal of a legally sufficient application. In such event, all Proportionate Share Mitigation paid by the Applicant shall be refunded to the Applicant by the School Board.

b. The Applicant fails to proceed in good faith in a diligent and timely manner and secure at least one Building Permit for a unit other than a model home within three (3) years of recording of the plat or, if a plat is not required, within three (3) years of final approval of the Site Plan. In such case, this Agreement shall be terminated and any encumbered or reserved school capacity shall be returned to its applicable capacity bank. The Applicant will not be entitled to a refund of any portion of the Proportionate Share Mitigation paid under this Agreement, and will only be entitled to receive a 90% refund of the Capacity Reservation Fee assuming all other applicable conditions are met.

11. COVENANTS RUNNING WITH THE LAND. This Agreement shall be binding, and shall inure to the benefit 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.

12. NOTICES. 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:

School Board: School Board of Orange County, Florida
Attn: Superintendent
445 West Amelia Street
Orlando, Florida 32801

With a Copy to: Orange County Public Schools
Attn: Facilities Planning Department
6501 Magic Way, Building 200
Orlando, Florida 32809

Owner/Applicant: EGRE San Marino, LLC
1955 Harrison Street, Suite 200
Hollywood, FL 33020

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

13. CAPTIONS AND PARAGRAPH HEADINGS. Captions and paragraph headings contained in this Agreement are for convenience and reference only. They in no way define, describe, extend or limit the scope or intent of this Agreement.

14. NO WAIVER. No waiver of any provision of this Agreement shall be effective unless it is in writing, and signed by the party against whom it is asserted. Any such written waiver shall only be applicable to the specific instance to which it relates, and shall not be deemed to be a continuing or future waiver.

15. EXHIBITS. All Exhibits attached hereto are a part of this Agreement and are fully incorporated herein by this reference.

16. AMENDMENTS. No modification, amendment, or alteration to the terms or conditions contained herein shall be binding upon the parties hereto unless in writing and executed by all the Parties to this Agreement.

17. ASSIGNMENT, TRANSFER OF RIGHTS. The Applicant may assign its rights, obligations and responsibilities under this Agreement to a third-party purchaser of all or any part of fee simple title to the Property; provided, however, that any such assignment shall be in writing and shall require the prior written consent of all of the Parties hereto, which consent shall not be unreasonably withheld, conditioned, or delayed. Such consent may be conditioned upon the receipt by the other parties hereto of the written agreement of the assignee to comply with conditions and procedures to aid in the monitoring and enforcement of the assignee's performance of the Applicant's obligations with regard to Proportionate Share Mitigation under this Agreement. The assignor under such assignment shall furnish the Parties with a copy of the written assignment within ten (10) days of the date of execution of same.

18. COUNTERPARTS. This Agreement may be signed in counterparts, each of which may be deemed an original, and all of which together constitute one and the same agreement.

19. RECORDING OF THIS AGREEMENT. The School Board agrees to record this Agreement, at Applicant's expense, within fourteen (14) days after the Effective Date, in the Public Records of Orange County, Florida.

20. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement among the Parties with respect to the subject matter addressed herein, and it supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, among the Parties.

21. SEVERABILITY. If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision will be stricken from the Agreement, and the balance of the Agreement will remain in full force and effect as long as doing so would not affect the overall purpose or intent of the Agreement.

22. 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 and venue for any action to enforce the provisions of this Agreement shall be in the Ninth Judicial Circuit Court in and for Orange County, Florida.

23. **ATTORNEY'S FEES.** In the event any party hereto brings an action or proceeding, including any counterclaim, cross-claim, or third party claim, against any other party hereto arising out of this Agreement, each party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney fees.

24. **EFFECTIVE DATE.** The effective date of this Agreement shall be the date when the last one of the parties has properly executed this Agreement as determined by the date set forth immediately below their respective signatures (the "Effective Date").

Signatures on Following Page

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives on the dates set forth below each signature:

“SCHOOL BOARD”

Signed and sealed in the presence of:

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA, a body corporate and political subdivision of the State of Florida

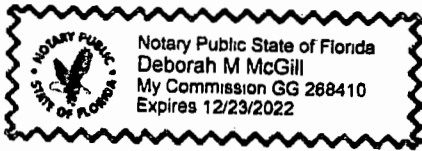
Print Name: Arabia Henley
Print Name: Marilin Gutierrez

By: Teresa Jacobs, Chair

Date: August 20, 2020

STATE OF FLORIDA)
) s.s.:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization, this 20th day of August, 2020 by Teresa Jacobs, Chair, Chairman of The School Board of Orange County, Florida, a body corporate and political subdivision of the State of Florida, on behalf of The School Board, who is personally known to me or had produced (type of identification) as identification.



AFFIX NOTARY STAMP

Deborah M. McGill
NOTARY PUBLIC OF FLORIDA
Print Name: Deborah M. McGill
Commission No.:
Expires:

[ADDITIONAL SIGNATURE PAGES TO FOLLOW]

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA, a body corporate and political subdivision of the State of Florida

Signed and sealed in the presence of:

Marieliz Pagan
Print Name: Marieliz Pagan

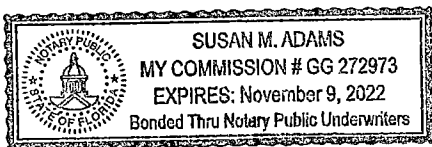
Marim Cuatrecasas
Print Name: Marim Cuatrecasas

Attest: [Signature]
Barbara M. Jenkins, Ed.D., as its Superintendent

Dated: August 20, 2020

STATE OF FLORIDA)
) s.s.:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this 20th day of August, 2020, by Barbara M. Jenkins, Ed.D. as Superintendent of The School Board of Orange County, Florida, a body corporate and political subdivision of the State of Florida, on behalf of The School Board, who is personally known to me or has produced _____ (type of identification) as identification.



AFFIX NOTARY STAMP

[Signature]
NOTARY PUBLIC OF FLORIDA
Print Name: Susan M. Adams
Commission No.: _____
Expires: _____

Reviewed and approved by Orange County Public School's Chief Facilities Officer

[Signature]
John T. Morris
Chief Facilities Officer

Date: August 19, 2020

Approved as to form and legality by legal counsel to The School Board of Orange County, Florida, exclusively for its use and reliance.

[Signature]
Christopher J. Wilson, Esq.

Date: 8/13, 2020

“APPLICANT”

Signed and sealed in the presence of:

EGRE San Marino, LLC, a Florida Limited Liability Company

Yaikel Anido
Print Name: Yaikel Anido

By: *Roberto De Jesus*

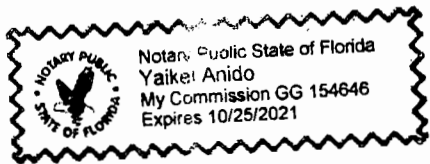
Fernando Rivera
Print Name: Fernando Rivera

Print Name: Roberto De Jesus
Title: Manager

Date: 07/24/2020

STATE OF FLORIDA)
 Broward) s.s.:
COUNTY OF ~~ORANGE~~)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 24 day of July, 2020 by Roberto de Jesus as Manager of EGRE San Marino, LLC, on behalf of the organization. He/she is personally known to me or has produced _____ (type of identification) as identification.



AFFIX NOTARY STAMP

Yaikel Anido
NOTARY PUBLIC OF FLORIDA
Print Name: Yaikel Anido
Commission No.: GG 154646
Expires: 10/25/2021

"COUNTY"

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Raymond B. Bivona*

for Jerry L. Demings
Orange County Mayor

Date: SEP 22 2020

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

By: *Phil Diamond*

Deputy Clerk



Exhibit "A" – Legal Description of Project

PARCELS 1 AND 3:

Being a portion of Sections 9 and 10, Township 23 South, Range 29 East, Orange County, Florida, described as follows:

Beginning at the Northeast corner of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 9; thence South $89^{\circ}55'58''$ West 100.00 feet, thence North $00^{\circ}11'03''$ East 305.00 feet; thence North $89^{\circ}40'22''$ East 400.28 feet to the Westerly right-of-way of Texas Avenue 60.00 feet wide; said point being on a curve concave Southeasterly; thence along the arc of said curve having a radius of 128.82 feet through a central angle of $23^{\circ}56'54''$ a distance of 53.86 feet; thence South $03^{\circ}42'24''$ East 127.46 feet to the P.C. of a curve concave Southwesterly; thence along the arc of said curve having a radius of 162.50 feet through a central angle of $17^{\circ}48'46''$ a distance of 50.52 feet to the point of tangency; thence South $14^{\circ}06'22''$ West 77.72 feet, thence South $89^{\circ}40'22''$ West 278.31 feet to the Point of Beginning.

PARCEL 2:

Commence at the Southeast corner of the Northeast $\frac{1}{7}$ of the Southeast $\frac{1}{4}$ of Section 9, Township 23 South, Range 29 East, Orange County, Florida; thence run South $89^{\circ}55'58''$ West along the South line of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 9, 100.00 feet, thence run North $00^{\circ}11'03''$ East, 58.01 feet to the Point of Beginning; thence run North $43^{\circ}13'10''$ West, 154.36 feet; thence run North $43^{\circ}26'20''$ East, 154.77 feet; thence run South $00^{\circ}11'03''$ West, 224.86 feet to the Point of Beginning.

Exhibit "B" – Location Map



OC
PS | **Orange County Public Schools**

Jurisdiction: Orange County
School Board Dist.: # 5
Parcel ID: 10-23-29-0000-00-004
09-23-29-0000-00-017; -042
Acreage: +/- 3.04 ac

Schools
ES: Catalina
MS: Memorial
HS: Oak Ridge

OC-19-096
San Marino I