




Interoffice Memorandum

AGENDA ITEM

April 30, 2020

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

FROM: Jon V. Weiss, P.E., Chairman 
Roadway Agreement Committee
(407) 836-5393

SUBJECT: May 19, 2020 – Consent Item
Proportionate Share Agreement For Jaguar Land Rover South Orlando

The Roadway Agreement Committee (RAC) has reviewed a Proportionate Share Agreement For Jaguar Land Rover South Orlando ("Agreement") by and between TT of Orlando, Inc. and Orange County for a proportionate share payment in the amount of \$247,199. 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 RAC providing for the mitigation of road impacts for seven deficient trips on the road segments of Orange Blossom Trail from Taft Vineland Road to Landstreet Road in the amount of \$26,777 per trip, and five deficient trips on the road segment of Taft Vineland Road from Orange Blossom Trail to General Boulevard in the amount of \$11,952 per trip.

RAC recommended approval the Agreement on April 23, 2020. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Jaguar Land Rover South Orlando by and between TT of Orlando, Inc. and Orange County for a proportionate share payment in the amount of \$247,199. District 4

JVW/HEGB/fb
Attachment

BCC Mtg. Date: May 19, 2020

This instrument prepared by
and after recording return to:

Spring Engineering, Inc.
3014 US Highway 19
Holiday, FL 34691

Parcel ID Number: 10-24-29-0201-01-000

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

PROPORTIONATE SHARE AGREEMENT FOR JAGUAR LAND ROVER SOUTH ORLANDO

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 TT of Orlando, Inc. a Florida Corporation (“**Owner**”), whose principal place of business is 4249 Millenia Blvd., Orlando, FL 32839, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), whose address is P.O. Box 1393, Orlando, FL 32802-1393.

WHEREAS, Owner is the owner of fee simple title to certain real property, as generally depicted on Exhibit “A” and more particularly described on Exhibit “B,” both of which exhibits are attached hereto and incorporated herein by this reference (the “**Property**”); and

WHEREAS, the Property is located in County Commission District 4, within the County’s Urban Service Area, and the proceeds of the PS Payment, as defined herein, will be allocated to Orange Blossom Trail and Taft Vineland Road; and

WHEREAS, Owner intends to develop the Property as a 48,411 Sq. Ft. Auto Dealership and 1,512 Sq. Ft. Carwash, referred to and known as Jaguar Land Rover South Orlando (the “**Project**”); and

WHEREAS, Owner received a letter from County dated February 26, 2020, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application number CEL-19-11-098 for the Project was denied; and

WHEREAS, the Project will generate 7 deficient PM Peak Hour trips (the “**Excess Trips 1**”) for the deficient roadway segment on Orange Blossom Trail from Landstreet Road to Taft Vineland Road (the “**Deficient Segment 1**”), and zero PM Peak Hour trips were available on 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 5 deficient PM Peak Hour trips (the “**Excess Trips 2**”) for the deficient roadway segment on Taft Vineland Road from Orange Blossom Trail to General Boulevard (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, the Owner shall provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, Owner and County have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trips on the Deficient Segments through the current anticipated Project buildout is two hundred forty seven thousand one hundred ninety nine and 00/100 Dollars (\$247,199.00) (the “**PS Payment**”); and

WHEREAS, County and Owner desire to set forth certain terms, conditions, and agreements between them as to the development of the Property into the Project.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration exchanged by and between Owner and County, the receipt and sufficiency of which are hereby acknowledged, the parties hereto stipulate and agree as follows:

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

Section 2. PS Payment; CEL.

(a) **Calculation of PS Payment:** The amount of the PS Payment for the Deficient Segments, as described in Exhibit “C,” totals two hundred forty seven thousand one hundred ninety nine and 00/100 Dollars (\$247,199.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owner and County agree that the Excess Trips will constitute the Project’s impact on the aforementioned Deficient Segments based upon (i) Owner’s Traffic Study titled “JLR Dealership” prepared by Traffic Impact Group, dated September 19, 2019, for TT of Orlando, Inc. (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 February 25, 2020, and is on file and available for inspection with that division (CMS #2019-098). Owner and County further acknowledge and agree that the PS Payment as set forth above shall be the final and binding calculation of the amount the Owner is required to pay through the buildout of the currently approved Project as proportionate share mitigation for impacts of the Project upon roadways within Orange County’s jurisdiction, notwithstanding any subsequent variance in the actual cost of improvement to the Deficient Segments or actual traffic impacts created by the Project; provided, however, that if Owner subsequently increases the number of units and/or square footage, as applicable, of the Project, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Section 2(d) below. Owner and County further acknowledge and agree that the calculation of, and agreement regarding, the amount of the PS Payment constitute material inducements for the parties to enter into this Agreement.

(b) *Timing of PS Payment, Issuance of CEL.* Within ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of two hundred forty seven thousand one hundred ninety nine and 00/100 Dollars (\$247,199.00) 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, the Owner must reserve the encumbered trips by obtaining a Capacity Reservation Certificate as provided in Section 30-591 of the Orange County Code, as may be amended. An amount equal to the PS Payment shall be applied toward the amount of the initial capacity reservation payment (and any subsequent reservation payment(s), if the initial reservation payment does not exceed the amount of the PS Payment) as further set forth in Section 3 below. In the event Owner has not paid the PS Payment within ninety (90) days of the Effective Date, one extension of ninety (90) days may be granted by the manager of County's Transportation Planning Division. In the event Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, this Agreement shall become null and void.

(c) *Project Development.* Recordation of a subdivision plat or approval of a commercial site plan for the Project shall not be permitted prior to the issuance of a Capacity Reservation Certificate as contemplated in subparagraph 2(b) above.

(d) *Increase in Project Trips.* Any change to the Project which increases the unit count and/or square footage, as applicable, may result in an increase in trips on the Deficient 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 in the Project increasing the number of trips as set forth in subparagraph 2(d) above, Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic impacts of the Project on all roads affected by the Project within County's jurisdiction through buildout of the Project. Owner shall be entitled to fully and completely develop the Project, without regard to whether the improvements to the Deficient 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, regulations, and/or Orange County Code provisions or from making the required payment of transportation impact fees applicable to the Project, subject to credits as set forth in Section 3 below.

Section 3. Transportation Impact Fee Credits. County and Owner agree that Owner shall be entitled to receive transportation impact fee credits on a dollar for dollar basis in an amount up to but not exceeding the PS Payment in accordance with Section 163.3180, Florida Statutes, and as specifically described in Exhibit "C." County further agrees that such credits may be applied on a dollar for dollar basis against capacity reservation fees at such time as capacity reservation fees may be required to be paid by Owner in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall Owner receive credits in excess of the PS Payment and in the event the PS Payment exceeds either the applicable transportation impact fees or capacity reservation fees, as the case may be, Owner shall not be entitled to a refund for the amount of the PS Payment in excess of such transportation impact fees or capacity reservation fees.

Section 4. No Refund. The PS Payment (including any capacity reservation fees paid with the PS Payment) is non-refundable.

Section 5. Notice. With the exception of the timing of the PS Payment as set forth in Section 2(b) hereof, the parties acknowledge and agree that no party shall be considered in default for failure to perform under this Agreement until such party has received written notice specifying the nature of such default or failure to perform and said party fails to cure said default or fails to perform within thirty (30) days of receipt of written notice. Any notice delivered with respect to this Agreement shall be in writing and be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

As to Owner: TT of Orlando, Inc.
505 S. Flagler Drive, Suite 1400
West Palm Beach, FL 33401

With copy to: Spring Engineering, Inc.
3014 US Highway 19
Holiday, FL 34691

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
Planning, Environmental, and Development Services 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 and shall inure to the benefit and burden of the heirs, legal representatives, successors, and assigns of the parties, and shall be a covenant running with the Property and be binding upon the successors and assigns of the Owner and upon any person, firm, corporation, or entity who may become the successor in interest to the Property.

Section 7. Recordation of Agreement. The parties hereto agree that this Agreement shall be recorded in the Public Records of Orange County, Florida, at Owner's expense, within ten (10) business days after the Effective Date.

Section 8. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and in accordance with the Orange County Code.

Section 9. Specific Performance. County and Owner shall each have the right to enforce the terms and conditions of this Agreement only by an action for specific performance. Venue for any action(s) initiated under or in connection with this Agreement shall lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

Section 10. Attorney Fees. In the event either party hereto brings an action or proceeding including any counterclaim, cross-claim, or third party claim, against the other party arising out of this Agreement, each party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney and legal fees.

Section 11. Construction of Agreement; Severability. Captions of the Sections and Subsections of this Agreement are for convenience and reference only; any words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction,

or meaning of the provisions of this Agreement. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder or substantially increase the burden of any party hereunder, shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

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

Section 13. 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 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 three (3) counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[Signatures appear on following pages]

Proportionate Share Agreement, Jaguar Land Rover South Orlando
TT of Orlando, Inc. for Orange Blossom Trail and Taft-Vineland Road, 2020

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*

for Jerry L. Demings
Orange County Mayor

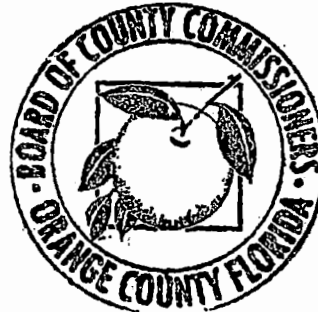
Date: MAY 19 2020

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

By: *Katie Smith*

Deputy Clerk

Print Name: Katie Smith



WITNESSES:

[Signature]
Print Name: Jerry Kuenzel

[Signature]
Print Name: Franklin Bernard

"OWNER"

TT of Orlando, Inc., a Florida Corporation

By: [Signature]

Print Name: Peter Wilson, President

Title: President

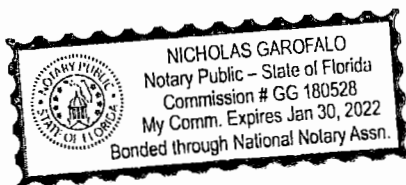
Date: 4/23/20

STATE OF: FLORIDA
COUNTY OF: ORANGE

The foregoing instrument was acknowledged ☒ in person before me or ___ by online notarization by Peter Wilson, as President of TT Orlando, Inc., a Florida Corporation, who is known by me to be the person described herein and who executed the foregoing, this 23 day of 4/23, 2020. S/he is personally known to me or has produced DL as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 23 day of APRIL, 2020

(Notary Stamp)

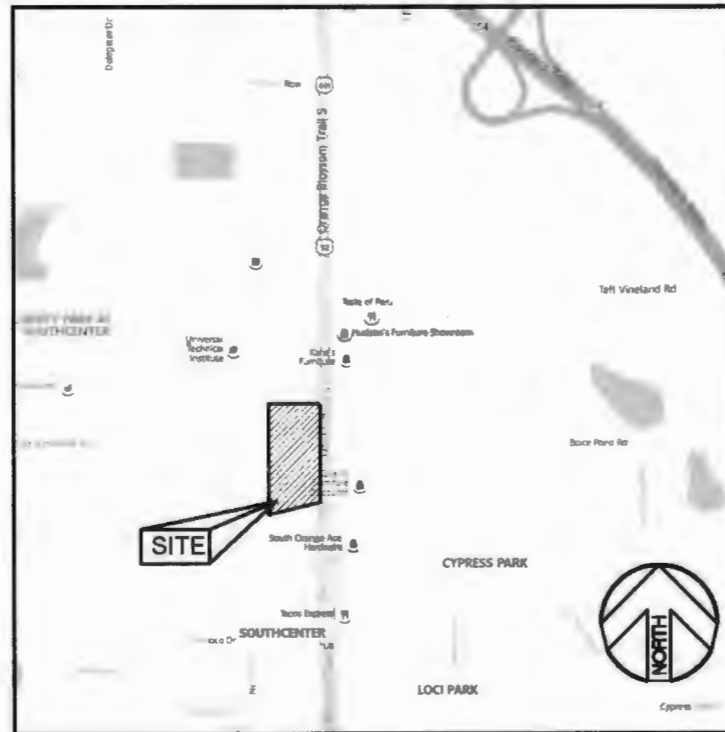


[Signature]
Signature of Notary Public
Print Name: NICK GAROFALO
Notary Public, State of: FLORIDA
Commission Expires: 1-30-22

Exhibit A

“Jaguar Land Rover South Orlando”

Location Map:



SECTION 10, TOWNSHIP 24 SOUTH, RANGE 29 EAST

PARCEL ID NO:
10-24-29-0201-01-000

Exhibit "B"

"Jaguar Land Rover South Orlando"

Parcel ID: 10-24-29-0201-01-000

Legal Description:

Parcel 1 (Fee Simple Estate)

Lot 1, Best American Business Park, according to the Plat thereof, as recorded in Plat Book 67, page 88, Public Records of Orange County, Florida.

Less and Except that portion thereof described as follows:

Commence at the Northeast corner of said lot 1 as a point of reference, said point lying on the West right of way line of South Orange Blossom Trail (State Road No. 500); thence run the following three courses and distances along said West line: South 00 degrees 01 minutes 40 seconds East, 14.94 feet; South 89 degrees 57 minutes 08 seconds East, 10.00 feet; South 00 degrees 01 minutes 40 seconds East, 500.54 feet to the point of beginning; thence run South 00 degrees 01 minutes 40 seconds East, continuing along said West right of way line, 255.72 feet to South line of aforementioned lot 1; thence run South 76 degrees 28 minutes 00 seconds West, along said South line, 421.66 feet to a line 410.00 feet west of a parallel with the aforesaid West right of way line of South Orange Blossom Trail; Thence run North 00 degrees 01 minutes 40 seconds West, along said parallel line, 354.20 feet; thence run north 89 degrees 58 minutes 20 seconds East, 410.00 feet to the point of beginning.

Together with:

Parcel 5 (fee simple estate)

A portion of lot 1, Best American Business Park, according to the Plat thereof, as recorded in Plat Book 67, page 88 Public Records of Orange County, Florida, being described as follows:

Commence at the Northeast corner of said lot 1 as a point of reference, said point of reference lying on the West right of way line of South Orange Blossom Trail (state Road No. 500); thence run the following three courses and distances along the West line; south 00 degrees 01 minutes 40 seconds East, 14.94 feet; South 89 degrees 57 minutes 08 seconds East, 10.00 feet; south 00 degrees 01 minutes 40 seconds East, 500.54 feet to the point of beginning; thence run South 00 degrees 01 minutes 40 seconds East, continuing along said West right of way line, 255.72 feet to the South line of aforementioned lot 1' thence run South 76 degrees 28 minutes 00 seconds West along said South line 421.66 feet t a line 410.00 feet West of and parallel with the aforesaid West right of way line of South Orange Blossom Trail; thence run North 00 degrees 01 minutes 40 seconds West, along said parallel line, 354.20 feet; thence run North 89 degrees 58 minutes 20 Seconds East 410.00 feet to the point of beginning parcel 6 (non-exclusive easement estate).

A non-exclusive easement for canal crossing as set forth in canal crossing easement executed by Valencia Water Control District, a Political Subdivision of the State of Florida in favor of Best American Property Investment, LLC, a Florida Limited Liability Company and Morgado Investment, LLC, a Florida Limited Liability Company, recorded March 26, 2013 in Official

Proportionate Share Agreement, Jaguar Land Rover South Orlando
TT of Orlando, Inc. for Orange Blossom Trail and Taft-Vineland Road, 2020

Records Book 10543, page 3051, Public Records of Orange County, Florida; as modified by that certain agreement regarding canal crossing easement recorded July 18, 2014 in Official Records Book 10775, page 9328.

336.236 square feet of

7.719 acres more or less

There are no apparent wetlands, conservation areas, lakes irrigation canals or ditches lying on the subject property.

Exhibit "C"

"Jaguar Land Rover South Orlando"

DEFICIENT SEGMENT 1
 (1 of 2)

Log of Project Contributions
 Orange Blossom Trail (Taft Vineland Rd to Landstreet 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
Orange Blossom Trail	Taft Vineland Rd Landstreet Rd	1.01	E	3020	Widen from 6 to 8 lanes	4040	1020	\$27,312,436	\$26,777
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	
Orange Blossom Trail	Taft Vineland Rd Landstreet Rd	1.01	E	3020	555	4040	1020	\$14,861,178	
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
Orange Blossom Trail	Taft Vineland Rd Landstreet Rd	1.01	E	3020	4040	555	1020	\$12,451,258	\$26,777
Updated: 2/28/20									
Log of Project Contributions									
Date	Project	Project Trips	Prop Share						
Existing	Sep-19 Existing plus Committed	555	\$14,861,235						
	Oct-19 Sam's Trail Plaza Taco Bell DP								
Proposed		Backlogged Totals:	\$14,861,235						
	Feb-20 Jaguar Land Rover South Orlando	7	\$187,439						
			\$0						
			\$0						
			\$0						
	Totals:	562	\$15,048,674						

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
	Orange Blount Trail	General Blvd								
Taft Viewland Rd			0.90	E	880	Widen from 2 to 4 lanes	3000	1120	\$13,365	\$11.96C

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Bundlogged Trips	Improved Generalized Capacity	Capacity Increase	County (Backlog) Responsibility
	Orange Blossom Trail	General Blvd							
West Vineland Rd			0.00	E	880	268	2000	1120	\$3,303,030

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
Taft Vineland Rd	General Blvd Change Station +/-	0.69	E	860	2000	1120	268	862	\$10,182,768	\$11,692

[illegible]