



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

F.4

9/15/2020

### Subject:

Approval Re: Proportionate Fair Share Mitigation Agreement with Jijoco LLC (District 2)

### Fiscal Impact:

FY20/21: Jijoco LLC will make the required \$72,230.39 Proportionate Fair Share Mitigation payment prior to being issued a building permit for any vertical construction of the project. The transportation impact fee credit will be applied to the transportation impact fees that are due for the development prior to being issued a certificate of occupancy.

### Dept/Office:

Planning and Development Department

### Requested Action:

It is requested that the Board of County Commissioners consider approval of this Proportionate Fair Share Mitigation Agreement with Jijoco LLC and, if approved, authorize the Chair to execute the agreement on behalf of Brevard County.

### Summary Explanation and Background:

Jijoco LLC plans to develop a commercial project on South Courtenay Parkway. However, there is not enough remaining roadway capacity on the segment of South Courtenay that the developer needs to access. Traffic concurrency prevents them from proceeding until additional capacity becomes available. The Public Works Department has developed a capital improvement project to increase roadway capacity on South Courtenay that will be funded with transportation impact fees. Jijoco LLC will make a \$72,230.39 Proportionate Fair Share Mitigation payment that will be used to mitigate the impacts of the additional traffic generated by the new development. Jijoco LLC will receive a \$72,230.39 transportation impact fee credit as required by Florida Statute.

### Clerk to the Board Instructions:

Return the fully executed agreement to Planning and Development so that it can be recorded in the public records. Following recording, we will return the recorded Agreement to the Clerk to the Board for inclusion in the official minutes.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001

Fax: (321) 264-6972

Kimberly.Powell@brevardclerk.us

September 16, 2020

**M E M O R A N D U M**

**TO:** Tad Calkins, Planning and Development Director

**RE:** Item F.4., Approval for Proportionate Fair Share Mitigation Agreement with JiJoCo, LLC

The Board of County Commissioners, in regular session on September 15, 2020, approved the Proportionate Fair Share Mitigation Agreement with JiJoCo, LLC; and authorized the Chair to execute the Agreement on behalf of Brevard County. Enclosed is a fully-executed Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Kimberly Powell, Clerk to the Board

/sm

Encl. (1)

cc: Finance  
Budget

After recording return to:  
James Buchanan  
2821 N Indian River Dr  
Cocoa, FL 32922

**TRANSPORTATION IMPACT FEE PROPORTIONATE FAIR SHARE MITIGATION  
AGREEMENT**

**THIS AGREEMENT**, entered into this \_\_\_\_ day of August, 2020 by and between Brevard County, Florida, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida, 32940, (hereinafter referred to as "County"), and JiJoCo LLC, a Florida limited liability company, whose address is 2821 N Indian River Dr, Cocoa, FL 32922 (hereinafter referred to as "Developer"), is based on the following premises.

**RECITALS:**

**WHEREAS**, Developer is the owner of that certain property located on the west side of South Courtenay Parkway in Merritt Island consisting of 2.06 acres of vacant land (parcel id 24-36-35-52-\*-1.01) and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("Property");

**WHEREAS**, Developer has prepared a site plan (Exhibit "B") to construct two commercial buildings on the Property ("Project"); and

**WHEREAS**, Developer previously retained Lassiter Transportation Group, Inc. ("Lassiter") to perform a traffic study to determine the projected impact of the Project on the surrounding road network, the results of which were reported in that certain Courtenay Parkway Mixed Use Development Traffic Impact Study dated July, 2019 (the "Traffic Impact Study") which was subsequently reviewed by the County; and

**WHEREAS**, pursuant to section 163.3180, F.S., the County previously enacted Ordinance 2006-60 which was codified as Chapter 62, Article IV, Division 2, Code of Ordinances of Brevard County, Florida and which provides a method by which a developer may vest development against transportation concurrency by paying, in cash or via in-kind contributions, such developer's proportionate fair share of the cost of providing transportation network improvements necessary to mitigate a projected transportation capacity deficiency; and

**WHEREAS**, Chapter 62, Article IV, Division 2, Code of Ordinances of Brevard County, known as the "Brevard County Proportionate Fair-Share Program for Transportation," (Proportionate Fair Share Ordinance) applies to property within the county; and

**WHEREAS**, Chapter 62, Land Development Regulations, Article V, Impact Fees, Division 4, Transportation, of the Code of Ordinances of Brevard County, Florida,

commonly known as the "Brevard County Transportation Impact Fee Ordinance," is also applicable within the county and sets forth a schedule of impact fees assessable against the development of property; and

**WHEREAS**, section 163.3180(5)(h)2.e, F.S., provides that a developer who has paid his proportionate fair share of transportation mitigation costs shall receive credit, on a dollar-for-dollar basis, for impact fees and other transportation concurrency mitigation requirements paid or payable in the future; and,

**WHEREAS**, Developer wishes to avail itself of the provisions of the Proportionate Fair Share Ordinance and section 163.3180(5)(h), F.S. in order to determine: (1) its proportionate fair share; (2) the terms by which payment thereof shall be made; and, (3) the terms by which transportation impact fee credits shall be awarded; and

**WHEREAS**, upon review of the Traffic Impact Study the Developer's Transportation Consultant, Lassiter Transportation Group, Inc., concluded that the Project's proportionate fair share cost of traffic mitigation to address the Project's impacts on the surrounding road network is SEVENTY-TWO THOUSAND TWO HUNDRED THIRTY DOLLARS AND THIRTY-NINE CENTS (\$72,230.39), and County and Developer have agreed with such conclusion.

**NOW, THEREFORE**, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties hereto agree as follows:

- 1. Recitals.** The foregoing recitals are hereby ratified and approved and made a part of this Agreement.
- 2. Proportionate Fair Share.** The proportionate fair share mitigation contribution from the Developer shall be Seventy-Two Thousand Two Hundred Thirty Dollars and Thirty-Nine Cents (\$72,230.39) (the "Proportionate Fair Share") which shall be paid in a single, lump-sum payment on or before issuance of the first building permit for vertical construction of a commercial building on the Property.
- 3. Vesting.** The parties hereto recognize that the Property is within the jurisdiction of the County and that the County has jurisdiction over the Property for permitting purposes other than state, federal or regional permitting requirements. The Parties hereby acknowledge that, so long as Developer pays the Proportionate Fair Share and obtains a building permit within one year of the effective date of this Agreement the Project shall be fully vested against transportation concurrency for a period of ten (10) years from the Effective Date of this Agreement as provided in paragraph 7 below. The County acknowledges that it shall treat the Project as already existing and shall not issue building permits for other projects which would utilize or consume any of the trips vested for the Project. The County shall not be prohibited from issuing building permits for other projects to the extent that there is capacity available to serve such projects after taking into account the trips generated by the Project, existing trips, and

otherwise committed trips, or to the extent that such other projects have entered into their own proportionate share agreements. To assist in addressing the capacity issue, the County shall include the trips to be vested herein as existing trips when conducting any future traffic concurrency analysis for the term of this Agreement.

- 4. Impact Fee Credits.** Credit will be awarded as a credit against transportation impact fees assessed to the Project in accordance with section 163.3180(5)(h)2.e, Florida Statutes, and the Proportionate Fair Share Ordinance. Based on the anticipated costs of the planned improvements, Developer's contribution, and the ratio to all planned improvements in the impact fee benefit district, Developer shall be awarded a dollar-for-dollar transportation impact fee credit for each dollar of proportionate fair share payment made by Developer pursuant to this Agreement.
- 5. Transferability of Impact Fee Credit.** Pursuant to Section 163.31801 (8), Florida Statutes, as amended and in effect as of July 1, 2020, transportation impact fee credits awarded pursuant to this Agreement are assignable and transferable at any time after establishment from one development or parcel to any other that is within the same impact fee zone or impact fee district or that is within an adjoining impact fee zone or impact fee district within the same local government jurisdiction and receives benefits from the improvement or contribution that generated the credits..
- 6. Use of Developer's Proportionate Share Payments.** Developer consents to the appropriation of the proportionate fair-share mitigation contribution as may be subsequently allocated or agreed by the County consistent with any legal requirements regarding the same.
- 7. Recording, Effective Date and Duration.** Within fourteen (14) days after this Agreement has been executed by all parties hereto, the County, or at the County's request the Developer, shall record this Agreement with the clerk of the circuit court of Brevard County. Said recording, whether done by the County or Developer, shall be at the Developer's sole cost and expense. This Agreement shall become effective when it has been so recorded in the Public Records of Brevard County, Florida (the "Effective Date"). Unless terminated earlier by either party as provided herein, this Agreement shall remain in effect for a period of ten (10) years. The duration of this Agreement may be extended by mutual agreement of the parties in writing.
- 8. Notices.** All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or dispatched by certified mail, postage prepaid, return receipt requested. Notice required to be given shall be addressed as follows:

If to Developer: JiJoCo LLC  
ATTN: James Buchanan  
2821 N Indian River Dr  
Cocoa FL 32922  
e)  
p) 321-266-2671

If to County: Brevard County Manager  
Attn: Frank Abbate  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
Telephone: 321-633-2001

With a copy to: Brevard County Public Works Department  
Attn: John Denninghoff  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
Telephone: 321 617-7202  
Email:

And a copy to: Brevard County Attorney's Office  
Attn: Abigail Forrester Jorandby  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
Telephone: 321 633-2090  
Email:

**9. Miscellaneous.** The execution of this Agreement has been duly authorized by the appropriate body of each of the parties hereto. Each party has complied with all the applicable requirements of law and has full power and authority, to comply with the terms and conditions of this Agreement. The venue of any litigation arising out of this Agreement shall be Brevard County, Florida and any trial shall be non-jury. The exhibit attached hereto and incorporated by reference herein is by such attachment and incorporation made a part of this Agreement for all purposes. The fact that one of the parties to this Agreement may be deemed to have drafted or structured the provisions of this Agreement, whether in whole or in part, shall not be considered in construing or interpreting any particular provision hereof, whether in favor of or against such party. The terms and conditions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns, and no right or cause of action shall accrue upon or result by reason hereof or for the benefit of any third party not a formal party hereto. Nothing in this Agreement whether express or implied, is intended or shall be construed to confer upon any person other than the parties hereto any right, remedy, or claim under or by

reason of this Agreement or any of the provisions hereof. This Agreement may not be changed, amended, or modified in any respect whatsoever, nor may any covenant, condition, agreement, requirement, provision, or obligation contained herein be waived, except in writing signed by all of the parties hereto. Failure to enforce any provision of this Agreement by any party shall not be considered a waiver of the right to later enforce that or any provision of this Agreement.

**10. Attorneys' Fees.** Should any litigation arise between the parties each party shall bear its own attorneys' fees and costs.

**11. Captions.** Headings of a particular paragraph of this Agreement are inserted only for convenience and are in no way to be construed as part of the agreement or as a limitation of the scope of the paragraphs to which they refer.

**12. Severability.** If any part of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way. If any party's execution of this Agreement is deemed invalid for any particular purpose, the sections for which the execution is valid shall remain in full force and effect.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY—SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Signed, sealed and delivered

In the presence of:

[Signature]  
Witness 1

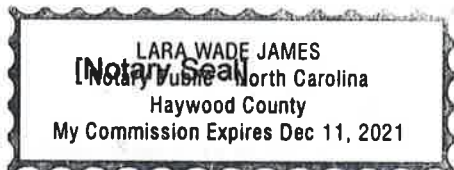
Chelsea Smith  
Print Name of Witness 1

[Signature]  
Witness 2

Jill Remokitis  
Print Name of Witness 2

STATE OF North Carolina  
COUNTY OF Haywood

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 2nd day of September, 2020 by James Buchanan, Managing Member of JiJoCo, LLC, a Florida Limited Liability Company. He is personally known to me or has produced Florida Drivers License as identification.



[Signature]  
Notary Public  
Lara Wade James  
Name typed, printed or stamped  
My Commission Expires: 12-11-2021

ATTEST:

[Signature]  
Scott Ellis, Clerk  
(SEAL)

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA, a  
political subdivision of the State of Florida

[Signature]  
Bryan Andrew Lober, Chair  
As approved by the Board on 9/15/2020



**EXHIBIT "A"**

(Legal description)

The Easterly 300 feet of the following described property: Lots 1, 2 and 3 of the Plat of E.W. Moore & F.C. Cantine Subdivision, as recorded in Plat Book 1, Page 63, Public Records of Brevard County, Florida, lying Easterly of the County Road known as South Tropical Trail, and lying Westerly of the County Road known as South Courtenay Parkway, a 100.00 foot right of way as shown in Survey Book 1, Page 90, of said Public Records of Brevard County, Florida.