

21. Consideration of opening the Lipscomb Street Widening project utilizing Transportation Impact Fee funds (Project 24PW04 - \$270,216).



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, City Manager

**THRU:** Valentino Perez, Public Works Director

**DATE:** May 16, 2024

**RE:** Consideration of using TIF Funds to open project 24PW04 Lipscomb Street Widening

### SUMMARY:

On July 6, 2023, the City Council adopted Ordinance 2023-21 for the Final Development Plan for a Planned Unit Development (PUD) known as Lipscomb Street Townhomes which proposed 202 multifamily townhomes. The project would generate an estimated total Transportation Impact Fee (TIF) of \$579,463.26. As part of the project mitigation from the traffic impact study, the project was conditioned to provide their Proportionate Fair Share (PFS) of transportation improvements for the 4 lane widening of Lipscomb Street and Palm Bay Road. On January 4, 2024, City Council approved the cost allocation agreement with the Lipscomb Townhome developer Pulte Home Company, LLC. for their proportional fair share for the widening of Lipscomb St and Palm Bay Road totaling \$270,462.26 which would be payable to the City prior to Final Plat. The PFS for the Lipscomb Street widening was \$222,810.33 and for Palm Bay Road widening was \$47,406.39.

The Public Works Department would like to begin engineering design of the Lipscomb Street Widening project and requests opening a project using the funds provided per the Cost Allocation Agreement.

### REQUESTING DEPARTMENTS:

Public Works

### FISCAL IMPACT:

Upon Council approval, a new project request form will be submitted to the Finance Department with a Budget Adjustment requesting the transfer of \$270,216 from 196-0000-392-1001 to 196-7050-541-6502/24PW04.

Honorable Mayor and Members of the City Council

Legislative Memorandum

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**STAFF RECOMMENDATION:**

Request for Consideration of using TIF Funds to open project 24PW04 Lipscomb Street Widening.

**ATTACHMENTS:**

1. Pulte Home Company Cost Allocation Agreement

After Recording Return to:  
City of Palm Bay  
Attn: City Clerk  
120 Malabar Road SE  
Palm Bay, Florida 32907

## **PULTE HOME COMPANY, LLC TRANSPORTATION IMPROVEMENT COST ALLOCATION AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into by and between Pulte Home Company, LLC, a foreign limited liability company ("Owner"), the record title property owner whose mailing address is 4901 Vineland Road, Suite 460, Orlando, Florida 32811, and the CITY OF PALM BAY, a Florida municipal corporation ("City") whose mailing address is 120 Malabar Road SE, Palm Bay, Florida 32907.

WHEREAS, Owner is the fee simple owner of that certain real property being approximately 24.56+/- acres in size, located in the City of Palm Bay along the east side of Lipscomb Street north of its intersection with Palm Bay Road, legally described to wit in Exhibit A attached hereto and incorporated herein;

WHEREAS, the City adopted the Lassiter Transportation Group ("LTG") Traffic Impact Study, dated October 2022, which provides the total buildout development will consist of a maximum of Two Hundred Two (202) townhome units, along with other amenities ("Project");

WHEREAS, the LTG Traffic Impact Study provided total trips, utilized by the City to calculate a proportionate fair share ("PFS") traffic analysis, attached hereto and incorporated herein as Exhibit B, dated November 15, 2023, for the total buildout of the Project offsite traffic improvements based upon a maximum buildout of 202 townhome units at Two Hundred Seventy Thousand Two Hundred Sixteen and 42/100 (\$270,216.42) Dollars;

WHEREAS, Owner agrees to place on deposit with the City cash funds to be used by the City for the improvements on Lipscomb Street and Palm Bay Road ("Improvements").

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. *Recitals.* The recitals set forth above are true and correct, form a material part of this Agreement, and are incorporated herein by reference.
2. *City Improvements.* For the purposes of this Agreement, the amount of \$270,216.42 ("Developer Funding") shall be paid to the City prior to the City's approval of a Final Plat for any phase associated with the Project. The City shall program the Developer Funding for the purposes of constructing the Improvements described in Table 1 below:

**PULTE HOME COMPANY, LLC TRANSPORTATION IMPROVEMENT  
COST ALLOCATION AGREEMENT**

**TABLE 1 – ROAD IMPROVEMENTS**

Item	Location	Improvement	Proportionate Share Cost
1	Lipscomb Street from Palm Bay Road to Tarpon Way	Widening to 4 lanes divided	\$222,810.03
2	Palm Bay Road from Robert J. Conlan Blvd. to US 1	Widening to 4 lanes divided	47,406.39
		<b>Lipscomb Street PUD total proportionate fair share (PFS) cost</b>	<b>\$270,216.42</b>

- 2.1 Owner shall be entitled to City traffic impact fee credits, as prescribed in Section 171.31, Palm Bay Code of Ordinances, against the payment made as required by Paragraph 2 above.
- 2.2 Pursuant to Section 163.31801(5)(a), Florida Statutes, Owner shall receive a credit on a dollar-for-dollar basis for impact fees and other transportation concurrency mitigation requirements paid or payable in the future for the Project.
- 2.3 No additional traffic related obligations will be required from Developer to the City except as provided in this Agreement.
3. *Owner Acknowledgement/Waiver.* Owner acknowledges that it has no right to direct or claim a right to direct the application of Developer Funding to making any specific public roadway infrastructure improvements.
4. *Timing.* The parties agree that construction of the thoroughfare road improvements shall be constructed as determined by the City. Once payment is made to the City, Owner waives the right to request a return of the Developer Funds.
5. *Assignment of Impact Fee Credits by the Owner.* Any impact fee credits granted to Owner shall be freely assignable by the Owner, its successors or assigns, without limitation on the number of such credits that may be assigned and transferred from one entity to the next or the number of times such credits may be transferred. Any such assignment of impact fee credits shall be evidenced in writing and signed by the Assignee or holder of the impact fee credits and a copy of such assignment shall be provided to the City. The Parties agree that no impact fee credit may be used or applied to development outside the Project and no credit shall be greater than the fee imposed for the land development.
6. *Effective Date.* The effective date of this Agreement shall be the last date upon which all parties hereto cause this Agreement to be executed as indicated below their respective signatures.

**PULTE HOME COMPANY, LLC TRANSPORTATION IMPROVEMENT  
COST ALLOCATION AGREEMENT**

7. *Binding Nature of this Agreement.* This Agreement shall inure to the benefit of the parties hereto and the subject property, and shall be binding upon any person, firm, or corporation that may become a subsequent owner, successor in interest or assign, directly or indirectly, of the subject property or any portion thereof.
8. *Governing Law and Venue.* This Agreement shall be constructed and governed in accordance with the laws of the State of Florida and the ordinances of the City. In the event of any claim, action, litigation or proceeding under this Agreement, venue shall be in Brevard County, State of Florida.
9. *Recordation.* This Agreement will be recorded in the Public Records of Brevard County, Florida, at Owner's expense.
10. *Notice.* Any notice or demand that must or may be given or made in connection with this Agreement must be in writing and delivered by personal delivery or mailed by certified or registered mail, return receipt requested, and addressed to the Parties as follows:

AS TO CITY:                   Growth Management Director  
City of Palm Bay  
120 Malabar Road SE  
Palm Bay, Florida 32907

With a copy to:           City Attorney  
City of Palm Bay  
120 Malabar Road SE  
Palm Bay, Florida 32907

AS TO OWNER:           Pulte Home Company, LLC  
4901 Vineland Road, Suite 460  
Orlando, Florida 32811

11. *Indemnification.* The Owner shall indemnify and hold harmless the City and their respective officers, employees, and agents, from and against all claims, damages, injuries, liability, losses and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from the Owner's construction of improvements or performance of operations under this Agreement.
12. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The electronic (i.e., facsimile or email) transmittal of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on behalf of the respective entities, their successors and assigns.

ATTEST:

CITY OF PALM BAY, a Florida municipal corporation,

\_\_\_\_\_  
Terese Jones, City Clerk

\_\_\_\_\_  
J. Robert Medina, Mayor

Witnesses:

Pulte Home Company, LLC, a Florida limited liability company,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Maleia STORUM  
Print Name

\_\_\_\_\_  
Aaron Struckmeyer  
Print Name

\_\_\_\_\_  
Signature

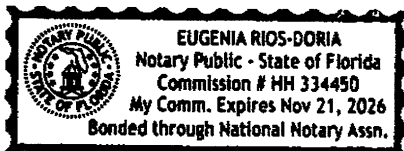
\_\_\_\_\_  
DIRECTOR - LAW DEPARTMENT  
Title

\_\_\_\_\_  
Kimberly Clayton  
Print Name

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ☒ physical presence OR ☐ online notarization, this 5<sup>th</sup> day of JANUARY, 2024, by Aaron Struckmeyer, who is ☒ personally known to me OR ☐ who has produced \_\_\_\_\_ as identification.



\_\_\_\_\_  
Notary Public

After Recording Return to:  
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Attn: City Clerk  
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City of Palm Bay  
120 Malabar Road SE  
Palm Bay, Florida 32907

With a copy to:           City Attorney  
City of Palm Bay  
120 Malabar Road SE  
Palm Bay, Florida 32907

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\_\_\_\_\_  
Terese Jones, City Clerk

\_\_\_\_\_  
J. Robert Medina, Mayor

Witnesses:

Pulte Home Company, LLC, a Florida limited liability company,

Mallie P. Hurn  
Signature

[Signature]  
Signature

Maleia Storum  
Print Name

Aaron Struckmeyer  
Print Name

Kyle G. Clegg  
Signature

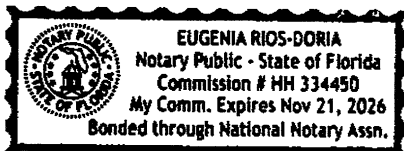
DIRECTOR - LAND DEVELOPMENT  
Title

Kimberly Clayton  
Print Name

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ☒ physical presence OR ☐ online notarization, this 5<sup>th</sup> day of JANUARY, 2024, by Aaron Struckmeyer, who is ☒ personally known to me OR ☐ who has produced \_\_\_\_\_ as identification.



[Signature]  
Notary Public

**PULTE HOME COMPANY, LLC TRANSPORTATION IMPROVEMENT  
COST ALLOCATION AGREEMENT**

**EXHIBIT A**

*Legal Description*

**DESCRIPTION OF LIPSCOMB STREET PUD**

TRACTS 3 AND 4 , PALM BAY COLONY SECTION TWO, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 24 , PAGE 38, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

**AND**

TRACTS 5 AND 6, PALM BAY COLONY SECTION THREE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 24 , PAGE 39, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

CONTAINING 24.56 ACRES, MORE OR LESS (TOTAL).

**PULTE HOME COMPANY, LLC TRANSPORTATION IMPROVEMENT  
COST ALLOCATION AGREEMENT**

**EXHIBIT B**

*Technical Memorandum  
Proportionate Fair Share Cost and Calculations*

FINANCE

JAN 17 2024

ADMINISTRATION



## PUBLIC WORKS DEPARTMENT

### Proportionate Fair Share (PFS) Traffic Analysis for Lipscomb Townhomes (FD23-00002)

By Frank Watanabe, City Engineer

December 19, 2023

Based on the October 2022 traffic study by LTG for the Lipscomb Townhomes, the study identified two street segments of Lipscomb Street and Palm Bay Road to be deficient for the 2024 background condition. Below is Table 14 from the traffic study showing the 2024 build-out condition with the number of project trips on the two street segments to be widen from 2 to 4 travel lanes. The traffic study incorrectly identified Palm Bay Road to be widen from 2 to 6 lanes from RJ Conlan to US 1. The future widening of Palm Bay Rd would only be 4 lanes. This memorandum is to document the build out year proportionate fair share for the street widening of the following:

1. Lipscomb Street from Palm Bay Road to Tarpon Way
2. Palm Bay Road from RJ Conlan to US 1

Table 14  
2024 Build-Out P.M. Peak-Hour Two-Way LOS - Roadway Segments  
Lipscomb Street Townhomes

Roadway	Segment	Station ID	Jurisdiction	Classification	No. of Lanes	Adopted LOS	Current MBV <sup>a</sup>	Peak-Hour Two-Way Capacity at Adopted LOS	Existing PM Peak-Hour Two-Way Volume	2024 Background Traffic	Project Distribution	Project Trips	2024 Build-Out Traffic	WC Ratio	Build-Out PM Volume Exceed Adopted LOS?
Cleamont St	Port Malabar Blvd	Palm Bay Rd	Palm Bay	Urban Minor Arterial	4	C	37900	3411	1120	1,233	4.59%	5	1,238	0.36	No
Lipscomb St	Palm Bay Rd	Tarpon Way	Palm Bay	Urban Minor Arterial	4	C	14,500	4,305	806	942	31.4%	47	909	0.76	No
	Tarpon Way	Pirate Ln	Melbourne	Urban Minor Arterial	2	D	14,800	1,332	906	942	58.16%	68	1,011	0.76	No
	Pirate Ln	Commerce Park Dr	Melbourne	Urban Minor Arterial	2	D	17,700	1,585	1,021	1,062	31.83%	38	1,100	0.69	No
	Commerce Park Dr	Florida Ave	Melbourne	Urban Minor Arterial	2	D	17,700	1,585	919	956	30.76%	37	993	0.62	No
Robert J Conlan Blvd	Florida Ave	University Blvd	Melbourne	Urban Minor Arterial	2	D	14,800	1,332	798	828	25.68%	31	859	0.64	No
	Palm Bay Rd	Commerce Park Dr	Palm Bay	Urban Principal Arterial-Other	4	C	39,800	3,582	1,100	1,290	1.07%	1	1,290	0.35	No
Babcock St	Commerce Park Dr	US 1	Palm Bay	Urban Principal Arterial-Other	4	C	39,800	3,582	1,072	1,201	1.07%	1	1,202	0.34	No
	Palm Bay Rd	Eber Blvd	FDOT	Urban Principal Arterial-Other	4	D	41,790	3,761	2,461	2,609	0.57%	1	2,610	0.69	No
Palm Bay Rd	Eber Blvd	Florida Ave	FDOT	Urban Principal Arterial-Other	4	D	41,790	3,761	2,540	2,592	9.27%	11	2,703	0.72	No
	Florida Ave	University Blvd	FDOT	Urban Principal Arterial-Other	4	D	41,790	3,761	2,685	2,846	10.34%	12	2,858	0.76	No
	Revera Dr	Babcock St	Brevard County	Urban Principal Arterial-Other	6	D	59,900	5,361	2,879	3,109	17.06%	20	3,129	0.58	No
	Babcock St	Knecht Rd	Brevard County	Urban Principal Arterial-Other	6	D	59,900	5,361	2,853	3,042	26.74%	32	3,074	0.57	No
	Knecht Rd	Lipscomb St	Brevard County	Urban Principal Arterial-Other	6	D	59,900	5,361	2,857	2,842	28.37%	35	2,877	0.53	No
	Lipscomb St	Trouman Blvd	Brevard County	Urban Principal Arterial-Other	6	D	59,900	5,361	1,507	1,655	5.09%	6	1,661	0.31	No
	Trouman Blvd	Robert J Conlan Blvd	Brevard County	Urban Principal Arterial-Other	6	D	59,900	5,361	1,824	2,031	5.09%	6	2,037	0.38	No
	Robert J Conlan Blvd	US 1	Palm Bay	Urban Principal Arterial-Other	6	C	73,300	8,207	1,326	2,408	4.5%	5	1,411	0.67	No
Pirate Ln	Babcock St	Lipscomb St	Melbourne	Urban Minor Arterial	2	D	14,800	1,332	601	625	26.17%	31	656	0.49	No
Florida Ave	Babcock St	Lipscomb St	Melbourne	Urban Minor Arterial	2	D	14,800	1,332	487	506	4.76%	6	512	0.38	No
University Blvd	Babcock St	US 1	Brevard County	Urban Major Collector	4	E	33800	3042	771	817	0.74%	1	818	0.27	No

Per FS Chapter 163.3180 on Proportionate Fair Share (PFS) which states projects to contribute its fair share to needed streets improvements that are greater than the deficiency based on the number of project trips added to the roadway. The calculation shown below for the Lipscomb Townhome PFS for the two street widenings. Using the latest FDOT cost per mile for widen 2 lanes the cost is **\$4,122,294.78 + 15% contingency future + 15% design + 15% CEI = \$6,162,830.68**. The second table shown is the calculation and the cost for PFS for each roadway.

Based on the above calculations, the Lipscomb Townhome proportionate fair share contribution should not exceed the total impact fees owed by the development, this would be a cost-neutral to the developer while enabling the city to program a more-substantial widening project, in conjunction with other impact fee revenue sources and/or public funding, to better benefit mobility within this region of the city.





Table 1

Street	Segment Start	Segment End	FDOT cost per mile 2lanes, with 15% Design, 15% CEI and 15% Contingency	Length (Miles)	Project Trips	% PFS = project trips divided by buildout capacity – existing 2 lanes	PFS cost
Lipscomb	Palm Bay	Tarpon	\$6,162,830.68	0.5	47	47/1310-660 =7.23%	\$222,810.03
Palm Bay	RJ Conlan	US 1	\$6,162,830.68	1.0	5	5/1310-660 =0.77%	\$47,406.39
Total PFS							\$270,216.42

Local Traffic Impact Fee = 202 Multifamily x \$2,868.63/unit =\$579,463.26 > \$270,216.42

**Finding:**

The proposed Lipscomb Townhome with the 228 multifamily units will contribute proportionate fair share based on the build out 2024 year of project trips to the widen of Lipscomb Street and Palm Bay Road from 2 to 4 travel lanes.

FINANCE

JAN 17 2024

ADMINISTRATION