

ALACHUA COUNTY MULTI-MODAL TRANSPORTATION MITIGATION AGREEMENT

This Multi-Modal Transportation Mitigation Agreement (hereinafter “Agreement”) is made and entered into this ____ day of _____, 20____ (“Effective Date”) by and between Alachua County, a charter county and political subdivision of the State of Florida (hereinafter “County”), and Blackwater Construction Services, LLC (hereinafter “Developer”).

WITNESSETH

WHEREAS, the applicant is the developer of an approximately 0.492 acre parcel of land identified as Tax Parcel Number(s) 06233-014-000 and located at 3403 NW 97th Blvd as set forth in the legal description attached hereto as Exhibit “A” (“Property”); and

WHEREAS, the Developer has applied for final development plan approval to develop a Construction Services Office, to be known as Blackwater Construction (“Development”) on the Property; and

WHEREAS, the Board of County Commissioners has established by ordinance a multimodal transportation mitigation program in Section 407.125.3, Alachua County Unified Land Development Code (“ULDC”), as required by and in a manner consistent with Section 163.3180, Florida Statutes; and

WHEREAS, the Developer has made proper application for use of multi-modal transportation mitigation to address transportation impacts in accordance with Section 407.125.3, ULDC, the Project is consistent with the Comprehensive Plan and ULDC, and the Developer has demonstrated that all conditions contained in Chapter 407, Article XII, ULDC, have been met in order for Developer and County to enter into this multi-modal transportation mitigation agreement; and

WHEREAS, the Developer has voluntarily chosen to satisfy transportation concurrency requirements through contribution of multimodal transportation mitigation consistent with the methodology found in Ordinance 11-03 adopted by the Board of County Commissioners; and

WHEREAS, the County has agreed to accept the mitigation the Developer has proposed to offset the impacts on the transportation system caused by the Developer’s proposed development; and

WHEREAS, the implementation of the agreement is authorized by Chapter 163, Florida Statutes, the County’s Comprehensive Plan (as amended by the Mobility Plan), and Chapter 407 Article XII, ULDC.

NOW, THEREFORE, in consideration of the promises, mutual covenants, and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement agree as follows:

Section 1. Recitals. The above recitals are true and correct and form a part of this Agreement.

Section 2. Purpose. The Purpose of this Agreement is:

- a. To grant to any owner of the Property transportation concurrency as provided for a Final Certificate of Level of Service Compliance (CLSC) as required for the construction of the Project, subject to compliance by Developer with the terms and conditions of this Agreement and the CLSC; and
- b. To recognize payment of the multimodal transportation mitigation by Developer as providing significant benefit to the impacted transportation system in the area of the Property.
- c. To fulfill the Developer's obligation to pay multimodal transportation mitigation.

Section 3. Development Identification. The proposed Development is known as the Blackwater Construction Offices and is located at 3403 NW 97th Blvd, which is identified as Alachua County Tax Parcel number(s) 06233-014-000.

The Development is a Construction Company Offices.

Section 4. Multimodal Transportation Mitigation. The methodology used to calculate an Applicant's Multi-Modal Transportation Mitigation shall be as follows:

The target funding level divided by the growth in vehicle miles of travel times the vehicle miles of travel for the proposed use.

OR

$$VMT_g = VMT_f - VMT_b$$

$$Tcfl = Cc - Cr$$

$$Ttofl = Toc - Cr$$

$$VMT_r = \left(\frac{Tcfl + Ttofl}{VMT_g} \right)$$

$$VMT_p = (Tg \times Atl \times 0.5) \times (1 - \%CC) \times (\%NT)$$

$$\text{Multi-modal Transportation Mitigation} = VMT_r \times VMT_p$$

Where:

Vehicle Miles of Travel Growth (VMT_g) = The projected total of vehicle miles traveled in the horizon year (VMT_f) minus the base year (VMT_b) vehicle miles of travel.

Target Capital Funding Level (Tcfl) = The total cost of transportation capital (Cc) for projects consistent with the Capital Improvements Element. Cost shall include all capital infrastructure construction costs, along with cost for design, right-of-way, planning, engineering, maintenance of traffic, utility relocation, inspection, contingencies, project management, stormwater facilities, turn lanes, traffic control devices, bicycle and pedestrian facilities, transit vehicles, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred.

Target Transit Operations Funding Level (Ttofl) = The total cost of transit operations (Toc) consistent with the Capital Improvements Element.

Committed Revenue (Cr) = The total committed revenue to fund transportation capital and transit operations.

Vehicle Miles of Travel Rate (VMTr) = Target Funding Level for transportation capital and transit operations divided by Vehicle Miles of Travel Growth

Vehicle Miles of Travel Proposed (VMTp) = The projected vehicle miles of travel for a specific land use

(Tg) = Trip Generation Rate

(AtL) = Average Trip Length

(CC) = Community Capture

(NT) = New Trips

For the purposes of determining Multi-Modal Transportation Mitigation obligations, Alachua County shall determine mobility improvement costs, including transit, based upon the actual cost of the improvement utilizing the latest available data. Mobility improvements, including transit should be consistent with projects identified in the Capital Improvements Element.

Section 5. Certificate of Level of Service Compliance. In consideration for payment of the Multimodal Transportation Mitigation, Developer shall receive a Final Certificate of Level of Service Compliance (“CLSC”), subject to the following condition:

- a. Developer has elected to either utilize the Multimodal Transportation Mitigation schedule to determine the payment due or the applicant has completed an alternative Multimodal Transportation Mitigation study and the findings of the alternative study have been accepted and approved by Alachua County.
- b. Developer, if applicable, has requested Multi-Modal Transportation Mitigation credit, has provided all required documentation and has agreed to either a value of the credit or the process to be utilized to determine the value of the credit.

The details for any proposed dedication or infrastructure project for which credit is requested shall be provided in this agreement.

- c. Developer agrees that any requested change to a development order may be subject to additional Multimodal Transportation Mitigation to the extent the change generates additional traffic that would require mitigation.

Section 6. Multimodal Transportation Mitigation Payment. Alachua County shall maintain a multimodal transportation mitigation contribution schedule in its building division office's and on the County website consistent with Ordinance 11-03.

- a. Recognizing the "time value of money," Alachua County offers the following reductions in payment amount:
 - 1. Payment concurrent with Development Plan Approval = 15% reduction
 - 2. Payment concurrent with Building Permit Application = 7.5% reduction
 - 3. Payment concurrent with Final Building Inspection = 0% reduction
- b. Developer is responsible for payment of the multi-modal transportation mitigation. Developer may receive credit for the payment of all or a portion of the MMTM by a person who applies for and pays all or a portion of the Developer's MMTM calculated pursuant to Section 4 herein.
- c. Developer expressly agrees to pay the multimodal transportation mitigation payment set forth in Section 4.0, above within 10 days of the County's request for payment. County shall not request payment until after a request for final inspection has been submitted, or at such a time concurrent with the appropriate approval when a discount is requested per Section 6(a)1 and 6(a)2 above.
- d. This agreement does not constitute Final Development Plan approval or any intent by Alachua County to guarantee approval of the Final Development Plan application. If County denies the application for Final Development Plan, this agreement shall be null and void.

Section 7. Impact of Development. The Developer agrees that the conveyances and commitments pursuant to this Agreement are necessary to reduce the impacts of the Development and meet the "essential nexus" and "rough proportionality" requirements established by the United States Supreme Court in the cases of *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*.

Section 8. Vesting for Concurrency Purposes. Upon completion of the payment described in Section 6, the, Project shall be deemed vested for concurrency

purposes as defined in Chapter 163, F.S. and Chapter 407, Article XII of the ULDC.

- Section 9. Governing Law.** The Agreement and the rights and obligations created hereunder shall be interpreted, construed and enforced in accordance with the laws the State of Florida. If any litigation should be brought in connection with this Agreement, venue shall lie in Alachua County, Florida. The parties waive trial by jury.
- Section 10. Attorneys' Fees and Costs.** The parties hereto agree that in the event it becomes necessary for either party to defend or institute legal proceedings as a result of the failure of either party to comply with the terms and provisions of this Agreement, each party in such litigation shall bear its own costs and expenses incurred and expended in connection therewith including, but not limited to, reasonable attorneys' fees and court costs through all trial and appellate levels.
- Section 11. Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- Section 12. Agreement.** This Agreement contains the entire agreement between the parties. No rights, duties or obligations of the parties shall be created unless specifically set forth in this Agreement.
- Section 13. Amendment.** No modification or amendment of this Agreement shall be of any legal force or effect unless it is in writing and executed by both parties, and meets the requirements of the Comprehensive Plan, ULDC, and County Code.
- Section 14. Assignment.** This Agreement may not be assigned without the prior written consent of the other party, and all the terms and conditions set forth herein shall inure to the benefit of and shall bind all future assignees and successors.
- Section 15. Annexation.** This Agreement is not intended to be, and indeed is not, a "development agreement" within the meaning of Sections 163.3220-163.3242, Florida Statutes. The parties shall not be deprived of their rights and obligations, and this agreement shall not be terminated, modified, or affected by operation of a municipal annexation of any portion of the Property.
- Section 16. Waiver.** Failure to enforce any provision of this Agreement by either party shall not be considered a waiver of the right to later enforce that or any provision of this Agreement.

Section 17. Further Documentation. The parties agree that at any time following a request therefore by the other party, each shall execute and deliver to the other party such further documents and instruments in form and substance reasonably necessary to confirm or effectuate the obligations of either party hereunder and the consummation of the transactions contemplated hereby.

Section 18. Notices. Any notice, request, demand, instruction or other communication to be given to either party under this Agreement shall be in writing and shall be hand delivered, sent by Federal Express or a comparable overnight mail service, or by U.S. Registered or Certified Mail, return receipt requested, postage prepaid, to County and to Developer at their respective addresses below:

As to County:

Ramon Gavarrete, P.E.
County Engineer
5620 NW 120th Lane
Gainesville, FL 32653

And with a copy to:

Missy Daniels, AICP
Director, Growth Management
10 S.W. 2nd Avenue
Gainesville, FL 32601

As to Developer:

Derek Dykes, President
Blackwater Construction Services, LLC
3715 NW 97th Blvd Suite B
Gainesville, FL 32606

Section 19. Construction of Agreement. Captions of the Sections and Subsections of this Agreement are for convenience and reference only, and the 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.

Section 20. Effective Date. The effective date of this Agreement (the “Effective Date”) 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.

Section 21. Counterparts. This Agreement may be executed by the parties in any number of counterparts, each of which shall be deemed to be an original, and all of which shall be deemed to be one and the same Agreement.

(signatures start on next page)

DEVELOPER:

Blackwater Construction Services, LLC

By: [Signature]
Derek Dykes, President

Witness #1 for the Developer:

Witness #2 for the Developer:

[Signature]
Signature

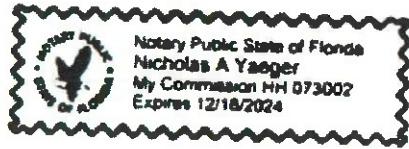
[Signature]
Signature

Casey Willis
Printed Name

Jamie C. Stitz
Printed Name

STATE OF FLORIDA
COUNTY OF FL

The foregoing document was acknowledged before me this 7 day of
APRIL, 2022, by DEREK DYKES as
PRESIDENT of BLACKWATER CONSTRUCTION who is personally known to me
or has produced _____ as identification.



[Signature]
Notary Public, State of Florida

NICHOLAS YAEGER
Printed Name

Commission Number: HH 073002

Commission expires: 12/16/2024

(signatures continued on next page)

ALACHUA COUNTY:

**BOARD OF COUNTY COMMISSIONERS
ALACHUA COUNTY, FLORIDA**

By: _____
Marihelen Wheeler, Chair

ATTEST

J.K. "Jess" Irby, Esq., Clerk

APPROVED AS TO FORM

County Attorney

(SEAL)

EXHIBIT "A"

Legal Description

Best Food Commercial Complex, Parcel 3 - Revised

A portion of Section 30, Township 9 South, Range 19 East, Alachua County, Florida; being more particularly described as follows:

Commence at the southwest corner of Section 29, Township 9 South, Range 19 East and run thence North 89°23'21" East, along the south boundary of said Section 29, a distance of 490.08 feet; thence North 01°08'19" West, 50.00 feet to the southeast corner of Haufler Brother's Estates, Unit No. 1 as per plat thereof recorded in Plat Book "G", page 69 of the Public Records of Alachua County, Florida; thence continue North 01°08'19" West, along the east boundary of Haufler Brother's Estates, Unit No. 1, a distance of 1605.43 feet to a point on the southwesterly right of way line of Interstate Highway No. 75 (SR No. 93-300' R/W at said point); thence North 41°22'13" West, along said southwesterly right of way line, 205.87 feet; thence continue North 41°22'13" West, along said southwesterly right-of-way line, 1814.86 feet; thence North 43°32'58" West, along said southwesterly right-of-way line, 957.03 feet; thence South 89°20'37" West, along the south boundary of that certain parcel of land as described in Official Records Book 1285, page 763 et seq., of said Public Records, 1291.51 feet to a point on the northeasterly right-of-way line of that certain right-of-way parcel of N. W. 97th Court as described in Official Records Book 1572, page 2314 of said Public Records; thence South 55°55'34" East, along said northeasterly right-of-way line, 85.91 feet to the end of said right-of-way parcel (O.R. 1572, pg. 2314) and the beginning of a curve, concave southwesterly, having a radius of 430.00 feet; thence southeasterly, along the arc of said curve, through a central angle of 20°22'04", an arc distance of 152.86 feet to the POINT OF BEGINNING, said arc being subtended by a chord, having a bearing and distance of South 45°44'32" East, 152.06 feet; thence continue southeasterly, along the arc of said curve, through a central angle of 15°56'52", an arc distance of 119.69 feet, said arc being subtended by a chord, having a bearing and distance of South 27°35'04" East, 119.30 feet; thence North 89°20'37" East, parallel with said south boundary (O.R. 1285, pg. 763), 151.34 feet; thence North 00°39'23" West, 120.67 feet; thence South 89°20'37" West, parallel with said south boundary (O.R. 1285, pg. 763), 184.87 feet; thence South 54°26'30" West, 25.00 feet to the POINT OF BEGINNING.

Containing 21,431 square feet or 0.492 of an acre, more or less.