

# **WALK ON**

# **County Attorney**

**SUBJECT: Board Consideration and Approval of a Settlement Agreement Between Ocala Trophy, Ltc. and Marion County (Budget Impact - Neutral; estimated \$52,000)**

The attached walk-on item is requesting Board approval of a settlement agreement between Ocala Trophy, Ltc, and Marion County, to resolve the dispute and establish a revised performance schedule for the County's obligation under the Road Re-Alignment, Contribution and Construction Agreement.



# Marion County

## Board of County Commissioners

### Walk-on Agenda

McPherson Governmental Campus  
601 SE 25th Ave.  
Ocala, FL 34471  
Phone: 352-438-2323  
Fax: 352-438-2324

District 1 – Craig Curry, Commissioner  
District 2 – Kathy Bryant, Vice-Chair  
District 3 – Matthew McClain, Commissioner  
District 4 – Carl Zalak, III, Commissioner  
District 5 – Michelle Stone, Chair

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**Tuesday, September 17, 2024**

**9:00 AM**

**McPherson Governmental  
Campus Auditorium**

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**8.1.** Walk On - Board Consideration and Approval of a Settlement Agreement Between Ocala Trophy, Ltc. and Marion County (Budget Impact - Neutral; estimated \$52,000)



# Marion County

## Board of County Commissioners

### Agenda Item

File No.: 2024-16612

Agenda Date: 9/17/2024

Agenda No.: 8.1.

**SUBJECT:**

**Walk On - Board Consideration and Approval of a Settlement Agreement Between Ocala Trophy, Ltc. and Marion County (Budget Impact - Neutral; estimated \$52,000)**

**INITIATOR:**

Matthew G. Minter, County Attorney

**DEPARTMENT:**

Attorney

**DESCRIPTION/BACKGROUND:**

On September 9, 2022, the County, the City of Ocala (Ocala) and Ocala Trophy, Ltc. (OTL) entered into a Road Re-Alignment, Contribution and Construction (RACC) Agreement which among other things provided for a property swap between Ocala and OTL, and OTL's dedication of certain right of way and easements to the Marion County (County), for the County's construction of a new road facility, **SW 40th Avenue, Phase 1**, between SW 43rd Street Road and SW 66th Street.

Under the RACC Agreement, the County was to commence construction of the road project by September 30, 2023. The County has not yet commenced construction of the road project, and is thus out of compliance with the RACC Agreement, giving OTL a right to bring suit against the County to enforce the Agreement.

The County Engineer and the County Attorney have been in discussions with counsel for OTL and the parties have developed the attached Settlement Agreement to resolve this dispute and establish a revised performance schedule for the County's obligations under the RACC Agreement. The Settlement Agreement calls for the County to construct a Temporary Access Road to the OTL property by February 4, 2025, and to complete the road project by July 1, 2026.

The County agrees to reimburse OTL for its reasonable engineering fees and attorney's fees incurred in evaluating and developing this Settlement Agreement. Failure of the County to meet the new schedule will expose the County to liquidated damages of \$300/ day until project completion. It is the opinion of the County Engineer and County Attorney that this is a cooperative and reasonable resolution of this dispute. We recommend approval of the Settlement Agreement.

**BUDGET/IMPACT:**

Neutral; estimated \$52,000

**RECOMMENDED ACTION:**

Motion to Approve Settlement Agreement.

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024 (the "Effective Date"), between Ocala Trophy, Ltd., a Florida limited partnership ("OTL"), and Marion County, a political subdivision of the State of Florida ("County") (individually a "Party" or collectively the "Parties").

### **RECITALS**

A. OTL, the County, and the City of Ocala, a Florida municipal corporation ("City"), entered into that certain Road Realignment, Contribution, and Construction Agreement dated September 9, 2022 (the "RACC Agreement").

B. The RACC Agreement outlined the County's construction of a new road facility, known as SW 40th Avenue, Phase 1, which will extend from an intersection with SW 43rd Street Road southerly to an intersection with SW 66th Street, as described more fully therein (the "Road Project").

C. Among other things, the Agreement provided that the County would begin construction of the Road Project on or before September 30, 2023.

D. The County defaulted under the terms of the RACC Agreement by failing to timely initiate construction of the Road Project during the County fiscal year ending September 30, 2023. Among other things, such default has led to delays in the pending sale and development of OTL's property described on Exhibit "A" attached hereto and incorporated herein (the "OTL Property").

E. As of the Effective Date, the County has still failed to initiate construction of the Road Project.

F. OTL provided notice of the default by, *inter alia*, that certain Notice of Default dated May 7, 2024.

G. Following the default, the Parties have engaged in negotiations and have reached resolution to the dispute between the Parties.

**NOW THEREFORE**, in consideration of the promises and covenants contained in this agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, agree as follows:

### **TERMS AND CONDITIONS**

1. Recitals; Defined Terms. The Recitals set forth above are true and correct and are incorporated herein by this reference.

2. Purpose. The Parties understand and agree that the terms of this Agreement are for the purpose of settling a dispute between the Parties, and no statement made in the Agreement is to be construed as an admission of any kind or nature.

3. **Settlement Terms.** As long as the County is not in default under the terms of this Agreement or the RACC, and subject to the County's fulfillment of its obligations set forth in this Agreement, OTL shall not commence any legal action against the County or exercise any of OTL's other rights and remedies at law, or in equity. In consideration of this forbearance, the Parties agree to the following conditions:

- a. The County agrees to construct a temporary access road ("**Access Road**") to facilitate the development and use of the OTL Property prior to completion of the Road Project. Unless otherwise agreed in writing by OTL, the Access Road shall follow the alignment generally depicted in Exhibit "B," attached hereto and incorporated herein, and meet the following minimum specifications: (i) the Access Road shall consist of a minimum 20 foot-wide public road that extends approximately 600 feet from a point within the existing paved portion of SW 40<sup>th</sup> Avenue and ending at a point that aligns with, and allows for connection to, the proposed north entrance of the development planned for the OTL Property as shown on Exhibit "B;" (ii) constructed to a stabilized condition for the passage of vehicular traffic (including construction traffic) with a minimum 1.5 inches of asphalt and 8 inches of limerock; (ii) and the Access Road shall be constructed so as to provide for a full entrance (as opposed to a directional entrance) to the development planned for the OTL Property. OTL understands that when the remainder of the Road Project is completed, the entrance provided to the OTL Property by the Access Road will be converted to a directional entrance in accordance with the construction plans for the Road Project.
- b. The County shall keep and maintain the Access Road and any Alternate Access Road (defined below) in good condition and repair.
- c. The County shall cause a traffic signal to be installed at the intersection of SW 43<sup>rd</sup> Street Road and SW 40<sup>th</sup>/49<sup>th</sup> Avenue by August 1, 2025, in accordance with those certain SW 40<sup>th</sup>/49<sup>th</sup> Avenue Improvements – Phase 1 Signalization Plans prepared by LTG Engineering & Planning, under LTG Project No. 5000, and digitally signed and sealed as of July 1, 2024.
- d. The County shall cause construction of the Access Road to be completed and open for use by the public by February 4, 2025. Upon reasonable request by OTL, the County shall provide OTL with updates of the expected start date of construction of the Access Road. Once constructed, the County shall cause the Access Road to remain in place until such time as it is replaced either (1) by another temporary roadway that connects the OTL Property to SW 66<sup>th</sup> Street and is of similar or better quality, design and functionality as the Access Road ("**Alternate Access Road**"), or (2) by the permanent roadway contemplated by the Road Project. In any case, once the Access Road is constructed, the OTL Property shall continue to have legal and physical access to either SW 43<sup>rd</sup> Street Road to the north, or SW 66<sup>th</sup> Street to the south, and the County agrees not to unreasonably interrupt such access.

- e. The County shall cause the remainder of the Road Project (as described in the RACC Agreement) to commence construction, as evidenced by issuance of a notice to proceed by the County, no later than 90 days after construction contract award, and to be completed and open for public use by July 1, 2026, subject to reasonable extension (not to exceed sixty days without OTL's written approval) due to natural disaster, acts of war, or other reasons approved by OTL representatives. OTL understands the Road Project will be constructed in phases as the necessary right-of-way becomes available, and those phases will be determined by the contractor based on its ability to secure permits, subject to the overall completion date of July 1, 2026.
- f. If, as of December 2, 2024, the County lacks any right-of-way or easements necessary for completion of the Road Project, the County agrees to use best efforts to acquire such right-of-way or easements by eminent domain by June 2, 2025.
- g. The County acknowledges and agrees that no additional property is required from OTL for the Road Project, beyond the land and easements that OTL previously conveyed to the County.
- h. The County shall reimburse OTL for all reasonable engineering-related fees incurred by OTL for its engineer to review and opine on the solution to install the Access Road, and for all reasonable attorneys' fees and costs incurred in connection with the negotiation and preparation of this Agreement. Said reimbursement shall occur within thirty (30) days following the later of the Effective Date and the County's receipt of a written request therefor from OTL accompanied by reasonable supporting documentation of such costs incurred by OTL.

4. Reaffirmation of the RACC Agreement. The Parties agree that all terms, conditions, and provisions of the RACC Agreement shall continue in full force and effect and remain unaffected and unchanged except as expressly and specifically modified by this Agreement. The RACC Agreement is hereby ratified, affirmed, and acknowledged as enforceable and operative in all respects by the Parties. The Parties reaffirm each of the representations, warranties, covenants, and agreements of Parties set forth in the RACC Agreement. The County agrees to comply with the terms of the RACC Agreement except as expressly and specifically modified by this Agreement.

5. Liquidated Damages; Default. In the event the County does not satisfy any of the agreed-upon deadlines set forth in Sections 3.c., 3.d., 3.e, or 3.f. above, the County shall be required to pay to OTL, as liquidated damages, the amount of \$300 for each day past the agreed-upon deadline that such condition or requirement is not satisfied. The Parties acknowledge and agree that \$300 per day is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy and that such liquidated damages are not a penalty. Further with respect to a default by the County under this Agreement relative to the Access Road, OTL shall also have the option to exercise self-help and construct and/or maintain the Access Road itself (or to cause the Access Road to be constructed and/or maintained). If OTL elects to construct and/or maintain the Access Road itself (or to cause the Access Road to be constructed and/or maintained),

the County shall reimburse OTL for such costs within thirty (30) days following written request therefor from OTL accompanied by reasonable supporting documentation of such costs incurred by OTL. Mention of any particular remedy herein shall not preclude OTL from, and OTL shall have in addition to any particular remedy mentioned herein, all other remedies available to it in law or in equity, including the right of specific performance.

6. Binding Effect. This Agreement is binding upon and shall inure to the benefit of the Parties and their successors and assigns.

7. Paragraph Headings. The headings are for convenience purposes only and do not vary the content or scope of the Agreement.

8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter provided in the Agreement and supersedes any prior agreements, commitments, representations, undertakings or understandings between the Parties, whether written or oral.

9. Amendment. Any amendment to this Agreement shall be in writing, executed by all Parties.

10. Construction. Each Party acknowledges that the Parties participated equally in the drafting of this Agreement and therefore, no court construing this Agreement shall construe it more stringently against one Party than the other.

11. Execution and Counterparts. To facilitate execution, the Parties agree that this Agreement may be executed in as many counterparts as may be required and it is sufficient that the signature of one person on behalf of each Party, with authority to bind the Party, sign each counterpart document. Each person executing this Agreement on behalf of an entity represents that he or she has full authority and legal power to do so and to bind the entity on whose behalf he or she has executed this Agreement. A telecopy or electronic transmission of an executed counterpart of this Agreement shall be considered an original executed counterpart for all purposes.

12. Notices. Regardless of whether expressly specified, any notice given or served upon a Party in connection with this Agreement must be in writing, and will be deemed delivered and received: (i) when received; (ii) when delivered by hand delivery; (iii) when sent via e-mail solely to the extent a recipient has provided an email address below; (iv) when sent by telecopy (fax); (v) within three (3) days when delivered by United States Mail, postage prepaid, registered or certified mail, return receipt requested; or (vi) within the next business day when delivered by a national courier service such as Federal Express for delivery no later than the next business day; and addressed to the Party as provided below. Any Party may change its contact information for the purpose of this notice paragraph by giving written notice of the change to the other Party as provided above in this paragraph. Each Party's counsel is expressly permitted to execute and deliver notices for the Parties they represent:

**To OTL:**

Ocala Trophy, Ltd.

PO Box 740485  
Boynton Beach, FL 33474-0485

**With A Copy To:**

Ocala Trophy, Ltd.  
c/o Richard Voehringer  
8913 Aubrey Lane  
Boynton Beach, FL 33472-5102

**With A Copy To:**

Akerman LLP  
c/o Chris Roper  
420 South Orange Avenue, Suite 1200  
Orlando, FL 32801

**To Marion County:**

Marion County, Florida  
Attn: Mounir Bouyounes, P.E.,  
County Administrator  
601 SE 25th Avenue  
Ocala, FL 34471

**With A Copy To:**

Office of the County Engineer  
Attn: Steven Cohoon, P.E., County Engineer  
412 SE 25th Avenue  
Ocala, FL 34471

**With A Copy To:**

Marion County, Florida  
c/o Matthew Minter  
County Attorney, Marion County  
601 SE 25th Avenue  
Ocala, FL 34471

13. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, only the invalid provision will be stricken, the remainder of this Agreement shall be enforced to the greatest extent permitted by law.

14. Jury Waiver. Each Party, and the Party's successors or assigns, voluntarily, intentionally, irrevocably, and forever waives the right it may have to a trial by jury for any litigation in connection with this Agreement.

15. Enforcement. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. In the event that a Party breaches the terms of this Agreement and fails to cure the breach after being provided written notice pursuant to this Agreement, the non-breaching Party shall be entitled to seek injunctive relief to prevent breaches and specifically enforce the terms and provision of this Agreement in a court of competent jurisdiction in Marion County, Florida.

16. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Florida.

17. Time of the Essence. Time is of the essence in this Agreement.

*[Signatures on following page]*

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**OCALA TROPHY, LTD.,**  
a Florida limited partnership

By: **New Millennium Operating Corp.**  
a Florida corporation, General Partner

By: \_\_\_\_\_  
Richard C. Voehringer, as its Vice President

Title: \_\_\_\_\_

**MARION COUNTY,**  
a political subdivision of the State of Florida

By: \_\_\_\_\_  
Michelle Stone, Chairman

ATTEST:

By: \_\_\_\_\_  
Gregory C. Harrell, Clerk of Court

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Matthew G. Minter, County Attorney

**Exhibit "A"**  
OTL Property

BEGINNING AT THE NE CORNER OF SECTION 3, TOWNSHIP 16 SOUTH, RANGE 21 EAST, MARION COUNTY FLORIDA; THENCE S.00°20'31"W., ALONG THE EAST BOUNDARY OF SAID SECTION 3, A DISTANCE OF 1426.48 FEET TO THE NORTH BOUNDARY OF PARCEL 1 AS DESCRIBED IN OFFICIAL RECORDS BOOK 6076, PAGE 578, PUBLIC RECORDS OF MARION COUNTY FLORIDA; THENCE N.89°40'26"W. ALONG SAID NORTH BOUNDARY, 331.01 FEET TO THE EAST BOUNDARY OF PROPOSED DRAINAGE RETENTION AREA 4; THENCE CONTINUE ALONG SAID NORTH BOUNDARY N89°40'26"W 258.71 FEET TO A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 535.00 FEET, CENTRAL ANGLE OF 12°51'23" AND CHORD BEARING AND DISTANCE OF S50°24'05"W 119.79 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE AND SAID NORTH BOUNDARY, AN ARC DISTANCE OF 120.05 FEET TO THE PROPOSED EAST RIGHT OF WAY LINE OF SW 40TH AVENUE, BEING A NON-TANGENT INTERSECTION WITH A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 2060.00 FEET, CENTRAL ANGLE OF 13°33'15" AND CHORD BEARING AND DISTANCE OF N13°59'40"E 486.19 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE AND SAID PROPOSED RIGHT OF WAY LINE AN ARC DISTANCE OF 487.32 FEET TO THE NORTH BOUNDARY OF AFORESAID PROPOSED DRAINAGE RETENTION AREA 4; THENCE CONTINUE NORTHERLY ALONG SAID PROPOSED RIGHT OF WAY LINE, BEING A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 2060.00 FEET, CENTRAL ANGLE OF 20°55'05" AND CHORD BEARING AND DISTANCE OF N03°14'30"W 747.91 FEET, ALONG SAID CURVE AN ARC DISTANCE OF 752.08 FEET TO A POINT OF TANGENCY; THENCE CONTINUE ALONG SAID PROPOSED RIGHT OF WAY LINE N.13°42'02"W. 287.16 FEET TO A POINT OF CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 2063.24 FEET, CENTRAL ANGLE OF 0°13'42" AND CHORD BEARING AND DISTANCE OF N13°35'11"W 8.22 FEET; THENCE NORTHERLY ALONG SAID CURVE AND SAID PROPOSED RIGHT OF WAY LINE AN ARC DISTANCE OF 8.22 FEET TO THE MONUMENTED SOUTH BOUNDARY OF EXECUTIVE PARK AS RECORDED IN PLAT BOOK "T", PAGES 11 THROUGH 13 INCLUSIVE, PUBLIC RECORDS OF MARION COUNTY FLORIDA; THENCE S.89°31'32"E. ALONG SAID SOUTH BOUNDARY, 569.74 FEET TO A COUNTY MONUMENT MARKING THE SE CORNER OF SAID EXECUTIVE PARK AND THE SE CORNER OF SECTION 34, TOWNSHIP 15 SOUTH, RANGE 21 EAST, MARION COUNTY FLORIDA; THENCE S.89°21'45"E. 115.47 FEET TO THE POINT OF BEGINNING.

Also known as Marion County Parcel 23877-000-00

**Exhibit "B"**  
Depiction of Access Road

(See Attached)