

RESOLUTION NO. 87-178

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION TO CONSTRUCT A PEDESTRIAN OVERPASS AT VILLAGES OF VILANO LOCATED ON A-1-A.

WHEREAS, St. Johns County Ordinance Number 85-26 rezoned lands of Vilano Venture Inc. to Planned Unit Development; and

WHEREAS, Section 7(b) of Ordinance Number 85-26 states the applicant shall "construct a public walk-over across Highway A-1-A from said parking area to the beach, according to County standards subject to Department of Transportation approval;" and

WHEREAS, on June 10, 1986, the Board of County Commissioners of St. Johns County, Florida agreed that due to the requirement of the Department of Transportation that the developer post a \$50,000 cash bond, the County proposed to guarantee maintenance of the overpass, and in the event it is sold, the buyer would be required to post a cash bond. If the overpass is ever abandoned, the County would pay to have it removed.

NOW THEREFORE BE IT RESOLVED, by the Board of County Commissioners of St. Johns County, Florida, this 8th day of September, 1987, that the County Administrator is hereby authorized to execute a Memorandum of Agreement with the State of Florida Department of Transportation to construct a pedestrian overpass.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: Phyllis L. Lydon
Chairman

ATTEST: CARL "BUD" MARKEL, CLERK

By: Cheryl Kent
Deputy Clerk

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 19_____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, a component agency of the State of Florida, hereinafter called the "Department", and ST. JOHNS COUNTY BOARD OF COMMISSIONERS, of P.O. Drawer 349 (4020 Lewis Speedway), St. Augustine, Florida 32085-0349, hereinafter called the "County";

W I T N E S S E T H:

WHEREAS, the Department holds title to and maintains a certain right of way known as A1A (State Road Number) located in St. Johns County, Florida, and

WHEREAS, the County desires to construct, operate and maintain a Pedestrian Overpass facility on that portion of State Road A1A at the following location: 24th Street, North Beach, St. Johns County, St. Augustine, Florida and

WHEREAS, the County desires to construct, maintain and/or replace said facility at its own expense in accordance with the requirements of the Department on a perpetual basis subject to the conditions of this agreement;

NOW, THEREFORE, in consideration of the premises, mutual benefits and the covenants contained herein, the parties agree as follows:

1. The County agrees to construct at its own expense a

<u>Pedestrian</u>	<u>Overpass</u>
<u>Vehicular-Pedestrian/Vehicular-Pedestrian</u>	<u>Overpass/Underpass</u>

facility in accordance with the plans attached and marked Exhibit "A", at the above described location and further agrees to construct, operate, maintain and replace, if necessary, said facility at its own expense on a perpetual basis subject to the provisions of this agreement.

2. The County further agrees to construct, operate, maintain and replace said facility at the direction of the Department's Secretary of Transportation. Said directions shall be made by the Department in writing. It is understood that all activities pursuant to this Agreement will require adherence to the Department's Manual on Traffic Control and Safety Practices for Street and Highway Construction, Maintenance and Utility Operations.

3. The County further covenants and agrees that prior to the execution of this Agreement by the Department, the County will provide the Department with a surety bond in the amount of \$50,000.00, which surety bond is to guarantee the removal of the facility in the event the facility is not maintained by the County in sound and safe conditions as determined by the Department; and, further, upon such removal, said bond will guarantee the restoration of the roadway to the requirements and specifications of the Department.

Said surety bond shall provide for the rights of the surety to cancel and withdraw from liability ninety (90) days after written notice to the Department and upon the happening of that condition, the County shall, within sixty (60) days after said notice provide a substitute surety or in the alternate within no more than ninety (90) days after said notice, the County shall cause the facility to be demolished and the highway restored to its condition prior to the work designated herein. For failure to comply with the provisions of this paragraph, County agrees that liquidated damages for demolition of the facility and restoration of the highway shall be \$50,000.00 along with any legal costs and attorney fees involved in recovery of said sum, not as a penalty but as substitute performance, which sums County shall be responsible for.

In addition, the County will provide insurance protection on a continuing basis against all damages, claims or injuries that may occur by reason of the construction, maintenance, operation or removal of the facility, and against any loss, damage, cost of expense arising in any manner as it relates to the exercise of the County of the rights and privileges afforded under this Agreement. Said insurance will name the Department as co-insured on the policy and have the following limits of liability:

- (a) \$1,000,000 for any of the above listed damages resulting from each accident.
- (b) \$1,000,000 for any of the above listed damages resulting from each accident to more than one person.

Said insurance and surety bond shall be made by a company or companies authorized to do business in the State of Florida and through a local authorized Florida resident agent.

St. Johns County will secure and keep in force or accept responsibility to ascertain that such is done by the land owner, the minimum insurance as provided in the Memorandum of Agreement.

To the extent allowed by Florida law, St. Johns County will hold the Department of Transportation and State of Florida harmless from any liability or exposure resulting from failure to maintain insurance in force as provided in the Agreement.

4. To the extent allowed by Florida law, the County agrees to indemnify, defend, save harmless and exonerate the Department of and from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the breach of the Agreement by the County, its agents or employees, or due to any act or occurrence of omission or omission of the County, its agents or employees pertaining to the subject matter of this Agreement. It is specifically understood and agreed that this indemnification agreement does not cover or indemnify the Department for its sole negligence, intentional or wrongful acts, or breach of contract.

5. Notification must be given to the Department's District Maintenance Engineer forty-eight (48) hours minimum before construction of the facility.

6. If the County divests itself of title to the real property from which and to which the above described facility extends, then the agreement shall become null and void and the County shall be required to remove said facility as herein provided. In the alternative, if the County will cause any subsequent purchasers of such real property to assume the benefits and obligations of this contract by written agreement with the Department, then such facility may remain.

7. The County further covenants and agrees to have the facility inspected as required by the Department. The inspection shall be performed in such a manner that the frequency shall not exceed a two (2) year period and shall be performed by an individual meeting the qualifications as set forth in Chapter 14-48, Rules Manual, Florida Department of Transportation or as subsequently amended. A written inspection report, in conformance with the guidelines contained in Chapter 14-48.11, Rules Manual, Florida Department of Transportation, will be submitted to the Department's District Maintenance Engineer within thirty (30) days of said inspection. In the alternative, the County may elect to contract with the Department to perform said inspections.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

WITNESS:

As to the Department

WITNESS:

As to the County

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
Director of

ST. JOHNS COUNTY

By: _____
County Administrator

carried 5/0, approving the use of the pier area by the Jaycees for July 4, 1986 activities as outlined in their letter dated May 30, 1986, as long as the County receives a statement from Lou Oakes that it is agreeable for the Jaycees to sell their beer and cokes; also must have a statement from Lou Oakes that if the county waives the 400 foot rule for surfing that it will not interfere with his fishing and that there is an understanding between the Jaycees and Oakes of who will be responsible for clean-up following the July 4th activities and that the Jaycees will check with their insurance carrier to show the county as co-insured for that event.

(06/10/86 - 5 - 3.1260)

County Engineer Charles Space reported concerning the confiscation of the bond for Cunningham Creek; requested approval to spend the money and authorizing staff to take care of repairing the ditch in Cunningham Creek with this money; motion by Bailey, seconded by Waldron, carried 5/0, approving the request.

(06/10/86 - 5 - 3.1373)

Space requested the release of \$35,736.35 from the escrowed monies for the construction of roads in the Villages of Solana Subdivision; the roads had been approved; motion by Waldron, seconded by Hartley, carried 5/0, approving said request.

(06/10/86 - 5 - 3.1400)

Space requested authorization for the chairman to sign two change orders to the Connelly & Wicker Contract for actual design for construction for Century Boulevard and Lewis Point; motion by Waldron, seconded by Bailey, carried 5/0, approving request.

(06/10/86 - 5 - 3.1465)

Space reported concerning the construction of the crossover of A-1-A at Villages of Vilano by the Department of Transportation (DOT); has a copy of the contract between the developers of the Villages of Vilano and the Department of Transportation; requires a \$50,000 cash bond; has met with DOT and they have agreed to consider a proposal by the county whereby the county guarantees maintenance of the overpass, and guarantees that if it is sold the buyer will be required to post a cash bond as a condition to the sale, and if the overpass is ever abandoned, that the county will have to pay the cost of having it removed; if these conditions are submitted to DOT, it is hoped that they will waive the requirement for a \$50,000 cash bond; requested that he be authorized to develop a contract between the Department of Transportation and the County to assure them of the maintenance of the crossover. The Board agreed.

(06/10/86 - 5 - 3.1542)

Space requested scheduling a public hearing on a paving petition for Jeffersen and Jackson; total cost of paving will be \$55,000; motion by Waldron, seconded by Bailey, carried 5/0, scheduling public hearing for July 22, 1986, at 10:00 o'clock a.m.

(06/10/86 - 5 - 3.1714)

Space reported concerning Fruit Cove Forest; said the drainage in there is bad; intends to start immediately on receiving easements for drainage; the septic tanks are a problem; will do this with maintenance funds and should be finished by the next meeting. Bailey commended Space for doing this project.

(06/10/86 - 5 - 3.1781)

Space requested placement of an advertisement to receive petitions to participate in the cost sharing for paving; deadline to receive petitions for the next bid package to be August 1, 1986; subsequently (7.0000), motion by Bailey, seconded by Waldron, carried 4/0, with Lydon having left the meeting, approving request.

The meeting thereupon recessed and reconvened with Brubaker, Bailey, Hartley, Waldron, Lydon, Sisco, and Kent present.

Also present were Director of Administrative Services David Halstead and Planning Coordinator Jerry Napier.

(06/10/86 - 5 - 3.1838)

Motion by Lydon, seconded by Hartley, carried 5/0, approving the consent agenda minus item #2 (see page 10) and #8 a & b (see page 2); 1) payment of the following bills:

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W I T N E S S E T H:

WHEREAS, the Department holds title to and maintains a certain right of way known as AlA (State Road Number) located in St. Johns County, Florida, and

WHEREAS, the County desires to construct, operate and maintain a Pedestrian Overpass facility on that portion of State Road AlA at the following location: 24th Street, North Beach, St. Johns County, St. Augustine, Florida and

WHEREAS, the County desires to construct, maintain and/or replace said facility at its own expense in accordance with the requirements of the Department on a perpetual basis subject to the conditions of this agreement;

NOW, THEREFORE, in consideration of the premises, mutual benefits and the covenants contained herein, the parties agree as follows:

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Pedestrian Overpass
Vehicular-Pedestrian/Vehicular-Pedestrian Overpass/Underpass

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Said surety bond shall provide for the rights of the surety to cancel and withdraw from liability ninety (90) days after written notice to the Department and upon the happening of that condition, the County shall, within sixty (60) days after said notice provide a substitute surety or in the alternate within no more than ninety (90) days after said notice, the County shall cause the facility to be demolished and the highway restored to its condition prior to the work designated herein. For failure to comply with the provisions of this paragraph, County agrees that liquidated damages for demolition of the facility and restoration of the highway shall be \$50,000.00 along with any legal costs and attorney fees involved in recovery of said sum, not as a penalty but as substitute performance, which sums County shall be responsible for.

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4. The County agrees to indemnify, defend, save harmless and exonerate the Department of and from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the breach of the Agreement by the County, its agents or employees, or due to any act or occurrence of omission or omission of the County, its agents or employees. It is specifically understood and agreed that this indemnification agreement does not cover or indemnify the Department for its sole negligence, intentional or wrongful acts, or breach of contract.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

WITNESS:

As to the Department

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
Director of

WITNESS:

Norma G. Pique
NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires Jan. 15, 1989

As to the County

ST. JOHNS COUNTY

By: _____
County Administrator