

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS AND REQUIREMENTS OF A REVISED INTERLOCAL AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA AND THE MARSHALL CREEK COMMUNITY DEVELOPMENT DISTRICT REGARDING THE CONSTRUCTION OF CERTAIN ROADWAY IMPROVEMENTS WITHIN THE FLORIDA EAST COAST RAILWAY RIGHT-OF-WAY AT INTERNATIONAL GOLF PARKWAY, AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY.

WHEREAS, the Marshall Creek Community Development District (District) and St. Johns County (County) filed an application for a permit with the Florida Department of Transportation for the construction of certain roadway improvements within the Florida East Coast Railroad right-of-way at International Golf Parkway; and

WHEREAS, the construction of these improvements requires a new License Agreement between St. Johns County and the Florida East Coast Railway, L.L.C.; and

WHEREAS, this new Licensing Agreement specifies that St. Johns County is responsible for constructing the roadway improvements; and

WHEREAS, it is the intent of the County and the District that construction of these improvements be accomplished by and at the expense of the District; and

WHEREAS, the Interlocal Agreement (attached and incorporated as Exhibit "A") between the District and the County for construction of certain roadway improvements within Florida East Coast Railway right-of-way at International Golf Parkway establishes the rights, duties, and responsibilities of all parties; and

WHEREAS, the County has reviewed the terms, provisions, conditions, and requirements of the Agreement; and

WHEREAS, the County has determined that accepting the terms of the Agreement, and entering into said Agreement will serve the interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above Recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

Section 2. The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of a revised Interlocal Agreement between the Marshall Creek Community Development District and St. Johns County, associated with the construction of certain roadway improvements within the Florida East Coast Railway


right-of-way at International Golf Parkway and authorizing the County Administrator to execute the Agreement on behalf of the County.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 26th day of June, 2007.

BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA

BY: 
Ben Rich, Chairman

ATTEST: Cheryl Strickland, Clerk

BY: 
Deputy Clerk

RENDITION DATE 6/28/07

**INTERLOCAL AGREEMENT BETWEEN
ST. JOHNS COUNTY, FLORIDA, AND THE
MARSHALL CREEK COMMUNITY DEVELOPMENT DISTRICT
REGARDING THE CONSTRUCTION OF
CERTAIN ROADWAY IMPROVEMENTS WITHIN THE
PROPOSED INTERNATIONAL GOLF PARKWAY ALIGNMENT**

THIS INTERLOCAL AGREEMENT (the "Interlocal Agreement"), dated as of the _____ day of _____, 2007, is entered into by and between:

Board of County Commissioners of St. Johns County, Florida, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32084 ("County"); and

Marshall Creek Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located in St. Johns County, Florida, whose address is 475 W. Town Place, Suite 100, St. Augustine, Florida 32092 ("District").

RECITALS:

WHEREAS, the District was established by an ordinance of the County Commission of St. Johns County, Florida for the purpose of planning, financing, constructing, installing, operating, and/or maintaining certain infrastructure; and

WHEREAS, on the _____ day of _____, 2007, the District entered into a Construction Contract with _____ (the "Contractor"), for the construction of various utility and roadway improvements within the right-of-way of proposed International Golf Parkway (the "Project"), which contract will be administered by the District's Engineer, England-Thims & Miller, Inc. (the "Engineer"). A true and correct copy of the Standard Form of Agreement Between Owner and Contractor (the "Construction Contract"), without attachments, is attached hereto as **Exhibit A**; and

WHEREAS, consistent with the County's approved Development Order for the Marshall Creek Development of Regional Impact ("Development Order"), the Project presently contemplates the construction of certain improvements to International Golf Parkway which include impacts to the Florida East Coast ("FEC") rail crossing ("FEC Site"); and

WHEREAS, the District has already levied special assessments on benefited lands within the Marshall Creek DRI and does not intend to levy any additional special assessments to fund the Project or any obligations arising out of this Agreement; and

WHEREAS, the County has entered into a license agreement with the FEC which requires certain costs be paid by the County and which is attached here as Exhibit B (the "License"); and

WHEREAS, the District desires to ensure that any costs to the County arising out of the District's Project under the License are paid by the District at no cost to the County; and

WHEREAS, it is in the mutual interest of the County and the District to establish intergovernmental relations that encourage, promote and improve the coordination, overall effectiveness and efficiency of governmental activities and services within the boundaries of the District; and

WHEREAS, Chapter 163, Part I, Florida Statutes (2006), known as the "Florida Interlocal Cooperation Act of 1969," (the "Cooperation Act") permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, the County and the District find this Interlocal Agreement to be desirable and permissible to the exercise of their powers, duties and purposes authorized by law.

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the District agree as follows:

ARTICLE I: INTRODUCTION

Section 1.01. Authority. This Interlocal Agreement is entered into pursuant to the authority set forth in the Cooperation Act, the District Act, Chapter 125, Florida Statutes, and other applicable laws.

Section 1.02. Recitals and Exhibits. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Interlocal Agreement. All exhibits identified herein are hereby incorporated by reference to the same extent as if fully set forth herein.

Section 1.03. Authority to Contract. The execution of this Interlocal Agreement has been duly authorized by the appropriate body or official(s) of the County and the District, each party has complied with all applicable requirements of law, and each party has full power and authority to comply with the terms and provisions of this instrument.

Section 1.04. Definitions. The following terms when used in capitalized form herein shall have the respective meaning indicated below unless the context shall clearly indicate otherwise:

"Cooperation Act" means Chapter 163 Part I, Florida Statutes (2006), known and referred to as the Florida Interlocal Cooperation Act of 1969, and any amendments thereto.

"District Act" means Chapter 190, Florida Statutes (2006) and any amendments thereto.

ARTICLE II: COUNTY AND DISTRICT POWERS

Section 2.01. County Powers. All powers inherent to the County shall in no way be affected or abridged by operation of this agreement.

Section 2.02. District Powers. Unless otherwise expressly provided in this section, the County agrees that the District shall retain all powers, rights, obligations and responsibilities granted or imposed by the District Act, as amended, including but not limited to, the general powers set forth in § 190.011 and 190.012(1), Florida Statutes (2006).

ARTICLE III: RESPONSIBILITIES OF DISTRICT AND COUNTY

Section 3.01. Division of Work/Payment of Costs. It is expressly understood that the FEC will perform construction, repair, and/or maintenance within the FEC rail site. The FEC will invoice the County for any construction, repair, and/or maintenance performed by FEC within the FEC rail site. Thereafter, the County will invoice the District for any construction, repair, and/or maintenance performed by the FEC. Additionally, the District shall pay the County directly for all other costs accruing to the County under the License. To the extent necessary, the County will then pay any other party required under the License, or this Agreement.

Section 3.02. Insurance and Waiver of Subrogation.

- (A) *Insurance.* The District shall provide the County documentary proof that the County is named as an additional insured under the Construction Contract. The District shall ensure that such insurance remains in full force and effect during construction of the Project and thereafter as provided in said policies. The intent is that the County be provided the same protections in said policies as that accorded to the District. Subject to the County's reservation to represent itself at its own expense in the event of a claim or dispute, adjustment and settlement of any loss with the insurers shall be conducted by the District, and the District shall account to the County for the proceeds of such insurance that is applicable to the County's Items of Work. The District further agrees and covenants that the District shall be responsible for an shall provide for the satisfaction of any claims or work necessary to ensure the continued operation and use of the FEC Site to the reasonable satisfaction of its owner.
- (B) *Waiver of Subrogation.* The District and the County waive all rights against each other and any of their agents and employees, each of the other, for all losses and damages caused by any of the perils covered by the policies of insurance obtained pursuant to Section 5.04 of the Supplementary General Conditions of the Construction Contract, except such rights as they have to proceeds of such insurance held by either the District or the Contractor pursuant to the Construction Contract.

ARTICLE IV: MISCELLANEOUS PROVISIONS

Section 4.01. Limitations on Governmental Liability. Nothing in this Interlocal Agreement shall be deemed a waiver of immunity limits of liability or sovereign immunity of either the County or the District, pursuant to Chapter 768, Florida Statutes (2006) or under any other State or Federal law, and any amendment thereto. Nothing in this Interlocal Agreement shall inure to the benefit of any third party for the purpose of allowing any claim, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

Section 4.02. Negotiation at Arm's Length. This Interlocal Agreement has been negotiated fully between the parties as an arm's length transaction and with the assistance of legal counsel. Both parties participated fully in the preparation of this Interlocal Agreement. In the case of a dispute concerning the interpretation of any provision of this Interlocal Agreement, both parties are deemed to have drafted, chosen, and selected the language, and the language in question will not be interpreted or construed against either party.

Section 4.03. Notices. Any notices required or allowed to be delivered shall be in writing and be deemed to be delivered when: (i) hand delivered to the official hereinafter designated, or (ii) upon receipt of such notice when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith.

If to the County: St. Johns County
 2740 Industry Center Rd.
 St. Augustine, Florida 32084
 Attn: Darrell Locklear, PE

If to the District: Marshall Creek Community Development District
 475 W. Town Place, Suite 100
 St. Augustine, Florida 32092
 Attn: District Manager

With Copies to: Hopping Green & Sams, P.A.
 123 S. Calhoun Street
 Tallahassee, Florida 32301
 Attn: Jonathan T. Johnson

Section 4.04. Default. Each of the parties hereto shall give the other party written notice of any default hereunder and shall allow the defaulting party 30 days from receipt of such notice to cure any such defaults and to thereafter notify the other parties of the actual cure of any such defaults. The parties agree to act in good faith in determining the reasonable amount of time necessary to cure any breach. If the breach is not cured within a reasonable time period, the County and the District shall comply with the procedures set forth in Chapter 164, Florida Statutes (2006) and any amendments thereto.

Section 4.05. Other Agreements. Nothing in this Agreement shall be construed as superseding, altering or amending the conditions and terms of any other agreement between the parties hereto.

Section 4.06. Assignment or Transfer. Neither party may assign or transfer its rights or obligations under this Interlocal Agreement without the prior written consent of the other party.

Section 4.07. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the County, the District, and their respective successors.

Section 4.08. Amendment. This Interlocal Agreement shall constitute the entire agreement between the parties and may be modified in writing only by mutual agreement and execution by both parties.

Section 4.09. Filing. The County Attorney is hereby authorized and directed, after approval of this Interlocal Agreement by the respective governing bodies of the County and the District and the execution thereof by the duly qualified and authorized officers of each of the parties hereto, to cause this Interlocal Agreement to be filed with the Clerk of the Circuit Court of St. Johns County, Florida, in accordance with the requirements of Section 163.01(11) of the Cooperation Act.

Section 4.10. Applicable Law and Venue. This Interlocal Agreement and the provisions contained herein shall be governed by and construed in accordance with the laws of the State of Florida. In any action, in equity or law, with respect to the enforcement or interpretation of this Interlocal Agreement, venue shall be in St. Johns County, Florida.

Section 4.11. Severability. If any part of this Interlocal Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable part shall be deemed severable and the remaining parts of this Interlocal Agreement shall continue in full force and effect provided that the rights and obligations of the parties are not materially prejudiced and the intentions of the parties can continue to be effected.

Section 4.12. Entire Agreement. This instrument and its exhibits constitute the entire agreement between the parties and supersede all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement. Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendment.

Section 4.13. Effective Date. This Interlocal Agreement shall become effective upon the date of execution by the authorized representatives of both parties, however, the Tunnels and Improvements may not be commenced until the District receives all necessary permits and approvals from the County and any other agency having jurisdiction over the necessary permits and approvals.

Section 4.14. Termination. With the exception of the circumstances outlined in Section 3.03, hereby incorporated in this Section, this Agreement can only be terminated upon written consent of both parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto, by and through the undersigned, have entered into this Interlocal Agreement on the date and year first above written.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: _____
Ben Rich, Chairman

ATTEST: Cheryl Strickland, Clerk

Approved as to legal sufficiency:

By: _____
Deputy Clerk

By: _____
County Attorney's Office Date

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**MARSHALL CREEK COMMUNITY
DEVELOPMENT DISTRICT**

ATTEST:

Name: _____
Title: _____

Name: _____
Title: **Secretary/Assistant Secretary**

STATE OF FLORIDA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by _____ as the _____ of the Board of Supervisors for the Marshall Creek Community Development District, and who has acknowledged that s/he executed the same on behalf of the Marshall Creek Community Development District and was authorized to do so. S/He is personally known to me or has produced _____ as identification.

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of Florida

STATE OF FLORIDA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by _____ as Secretary/Assistant Secretary for the Marshall Creek Community Development District, and who has acknowledged that s/he executed the same on behalf of the Marshall Creek Community Development District and was authorized to do so. S/He is personally known to me or has produced _____ as identification.

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of Florida