

RESOLUTION NO. 2019 - 37

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF A CONSTRUCTION AGREEMENT BETWEEN THE COUNTY AND THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA; AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE CONSTRUCTION AGREEMENT ON BEHALF OF THE COUNTY; AMENDING THE FISCAL YEAR 2019 TRANSPORTATION TRUST FUND BUDGET TO RECEIVE UNANTICIPATED REVENUE; AND AUTHORIZING EXPENDITURE OF THE UNANTICIPATED REVENUE BY THE ST. JOHNS COUNTY PUBLIC WORKS DEPARTMENT.**

**WHEREAS**, the School Board for St. Johns County, Florida ("School Board") owns and operates Allen D. Nease High School ("Nease") at 10550 Ray Road, Ponte Vedra, FL 32081; and

**WHEREAS**, Ray Road is a right-of-way owned by St. Johns County ("County") and part of the County Road System; and

**WHEREAS**, Ray Road serves principally as a primary access for Nease staff, students, and visitors, in addition to sole access for other residential, commercial, and industrial users; and

**WHEREAS**, an ongoing increase in traffic, primarily as a result of the new construction and reconstruction of Nease to accommodate student population growth, has caused inconvenience to, and safety concerns for, staff, students, and visitors accessing Nease via Ray Road, in addition to other users of Ray Road and U.S. Highway 1; and

**WHEREAS**, the School Board and the County have identified certain improvements to Ray Road, including widening of the roadway surface and creation of turn lanes at the access points for Nease, as well as improvements or modifications to related drainage facilities ("Turn Lane Improvements") that may ease the traffic concerns identified by the School Board and the County, for all of which Nease is the primary cause and beneficiary; and

**WHEREAS**, the County has reviewed the Turn Lane Improvements and determined that, while not included as a County capital improvement project, upon identification of an appropriate funding source, design and construction of the Turn Lane Improvements would be in the public interest; and

**WHEREAS**, the County and the School Board agree that a reasonable estimate for the project, including design and construction, would be and shall be \$1,000,000; and

**WHEREAS**, certain fuel tax refunds are available to the School Board, pursuant to section 206.41(4)(e)2., Florida Statutes, for the purpose of the Turn Lane Improvements under these circumstances; and

**WHEREAS**, in order to facilitate the completion of the Turn Lane Improvements to relieve the traffic concerns identified by the School Board and the County, the County and the School Board have agreed to an arrangement whereby the County will design and construct the Turn Lane

Improvements in a collaborative process with the School Board, the School Board will prefund the work with a payment to the County in the amount of \$1,000,000, and, if the costs and expenses required to complete the work exceed that amount and the School Board approves payment of such additional costs, the School Board will reimburse the County for such additional costs; and

**WHEREAS**, the County and the School Board wish to enter into a written Construction Agreement, attached hereto, in order to formally memorialize the above arrangement; and

**WHEREAS**, the County and the School Board have determined that the funding, design, and construction of the Turn Lane Improvements serve a public purpose; and

**WHEREAS**, in Fiscal Year 2019, the County budgeted for certain road construction and capital improvement projects as approved by the Board of County Commissioners in the Fiscal Year 2019 Budget; and

**WHEREAS**, the County, when preparing its budget for Fiscal Year 2019, did not anticipate receiving funds from the School Board for the Turn Lane Improvements; and

**WHEREAS**, the School Board has agreed to pay the County \$1,000,000 for the Turn Lane Improvements; and

**WHEREAS**, recognizing and appropriating the \$1,000,000 to the Transportation Trust Fund and authorizing its expenditure by the Public Works Department will allow payment of expenses associated with the design and construction of the Turn Lane Improvements.

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of St. Johns County, Florida, that:

Section 1. The above recitals are hereby adopted as findings of fact and incorporated herein.

Section 2. The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of the Construction Agreement between the St. Johns County and the School Board of St. Johns County, Florida, and authorizes the County Administrator, or designee, to execute the Construction Agreement on behalf of the County, in substantially the same form and format as attached.

Section 3. The Board of County Commissioners recognizes and appropriates unanticipated revenue in the amount of \$1,000,000 into the Traffic & Transportation, Transportation Trust Fund.

Section 4. To the extent there are typographical errors that do not substantively change the tone, tenor, or concept of this resolution, this resolution may be revised without subsequent approval by the Board of County Commissioners.

Section 5. The Clerk of Courts of St. Johns County is instructed to file the Construction Agreement in the public records of St. Johns County.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, State of Florida, this 5 day of February, 2019.

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

By: Paul M. Waldron  
Paul M. Waldron, Chair

ATTEST:

By: Hunter S. Conrad  
Hunter S. Conrad, Clerk

RENDITION DATE 2/7/19



## CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into by and between ST. JOHNS COUNTY, a political subdivision of the state of Florida ("County"), whose address is 500 San Sebastian View, St. Augustine, Florida 32084, and the SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA, a unit of local government charged with operating the public schools of St. Johns County ("School Board"), whose address is 40 Orange Street, St. Augustine, Florida 32084.

### RECITALS

WHEREAS, the School Board owns and operates Allen D. Nease High School ("Nease High School" or "Nease"), located at 10550 Ray Road, Ponte Vedra, FL 32081; and

WHEREAS, Ray Road is a County-owned right-of-way and part of the County Road System; and

WHEREAS, Ray Road serves principally as a primary access for Nease staff, students, and visitors, in addition to sole access for other residential, commercial, and industrial users; and

WHEREAS, an ongoing increase in traffic, primarily as a result of the new construction and reconstruction of Nease to accommodate student population growth, which traffic increase has caused inconvenience to, and safety concerns for, staff, students, and visitors accessing Nease via Ray Road, in addition to other users of Ray Road and U.S. Highway 1; and

WHEREAS, the School Board and the County identified certain improvements to Ray Road, including widening of the roadway surface and creation of turn lanes at the access points for Nease, as well as improvements or modifications to related drainage facilities ("Turn Lane Improvements") that may ease the traffic concerns identified by the School Board and the County, for all of which Nease is the primary cause and beneficiary; and

WHEREAS, the County has reviewed the Turn Lane Improvements and determined that, while not included as a County capital improvement project, upon identification of an appropriate funding source, design and construction of the Turn Lane Improvements would be in the public interest; and

WHEREAS, the County has preliminarily estimated the costs and expenses for the construction of the Turn Lane Improvements to total \$887,398.84, as reflected in the attached Exhibit A ("Preliminary Cost Estimate"); and

WHEREAS, the County and the School Board agree that any funding for the Turn Lane Improvements must include reasonable, negotiated for, design costs as well, which are impossible to quantify exactly in advance, but which may be reasonably estimated at approximately \$100,000.00 ("Estimated Design Costs") (together, the Preliminary Cost Estimate and the Estimated Design Costs constitute the "Project Estimate"); and

WHEREAS, the County and the School Board agree that a reasonable Project Estimate, including Estimated Design Costs, would be and shall be \$1,000,000.00; and

WHEREAS, certain fuel tax refunds are available to the School Board, pursuant to section 206.41(4)(e)2., Florida Statutes, for the purpose of the Turn Lane Improvements under these circumstances; and

WHEREAS, in order to facilitate the completion of the Turn Lane Improvements to relieve the traffic concerns identified by the School Board and the County, the County and the School Board have agreed to an arrangement whereby the County will design and construct the Turn Lane Improvements in a collaborative process with the School Board, the School Board will prefund the work with a payment to the County in the amount of the Project Estimate, and, if the costs and expenses required to complete the work exceed that amount ("Additional Costs") and the School Board approves the Additional Costs, the School Board will reimburse the County for such Additional Costs; and

WHEREAS, the County and the School Board wish to enter into this Agreement in order to formally memorialize the above arrangement; and

WHEREAS, the County and the School Board have determined that the funding, design, and construction of the Turn Lane Improvements serve a public purpose.

NOW, THEREFORE, in consideration of the mutual obligations set forth below and other good and valuable consideration, the sufficiency of which is mutually acknowledged, the County and School Board agree:

1. Recitals. The above recitals are true and correct and incorporated by reference into this Agreement as findings of fact.

2. School Board Obligations. The School Board shall unconditionally fund all costs and expenses associated with the design and construction of the Turn Lane Improvements up to the amount of the Project Estimate. No later than thirty (30) days after the effective date of this Agreement, the School Board shall pay the County a sum equal to the Project Estimate. The School Board shall only be unconditionally obligated to pay the County for the costs and expenses for the work incurred by the County up to the Project Estimate. The School Board shall promptly process and issue payment of invoices submitted by the County for Additional Costs pursuant to subsection 3.b, below, if and to the extent authorized by the School Board or, if duly authorized, the Superintendent or the designee of the Superintendent.

3. County Obligations.

a. Design and Construction of the Turn Lane Improvements. Upon receipt of the payment by the School Board of the Project Estimate, the County shall commence the design and construction, or have designed and constructed, the Turn Lane Improvement. The County shall provide for all design, project management, construction management, inspection, obtaining and coordination of permits, and contract close-out for the construction of the Turn Lane Improvements. The design and construction of the Turn Lane Improvements, including the design and construction schedules, shall be at the County's direction and approval, but with good faith coordination with the School Board, including but not limited to twice monthly status conferences between the County and the School Board operations staff, and subject to all applicable federal,

state, and local laws or regulations. The County shall notify the School Board upon approval of a design for the Turn Lane Improvements and advise the School Board within twenty-eight (28) days before the date of commencement of construction of the Turn Lane Improvements.

b. Reimbursement. The County shall promptly notify the School Board when the total amount of the costs and expenses incurred by the County has reached the Project Estimate. Approval by the School Board must occur prior to any Additional Costs being incurred. For the remainder of the Additional Costs in excess of the Project Estimate, the County shall periodically submit estimates ("Periodic Estimate" or "Periodic Estimates") to the School Board for review and good faith determination of the School Board's agreement to reimburse said Additional Costs based on the Periodic Estimates received from the County. Only after and to the extent the School Board agrees to pay any specific Periodic Estimate for Additional Costs, and the School Board and County agree to a final sum for that specific Periodic Estimate (the "Agreed Sum"), will the County authorize the work related to that Periodic Estimate, and the School Board be thereafter obligated to fund the Agreed Sum for the Periodic Estimate upon the County's submission of invoices for School Board reimbursement. The School Board covenants to expedite review and processing of any such Periodic Estimates for approval of Additional Costs.

c. Refund of Excess Funds. If, upon completion of construction and approval of the Turn Lane Improvements, the final costs and expenses incurred by the County total less than the Project Estimate, the County shall refund the School Board an amount equal to the Project Estimate less the final, actual cost and expenses.

4. Availability of Funds.

a. The County's performance under this Agreement is contingent upon the appropriation of sufficient funds for that purpose by the Board of County Commissioners. Pursuant to the requirements of section 129.07, Florida Statutes, funds expended by the County under this Agreement shall not exceed the amount appropriated in the County's budget for that purpose. Nothing in this Agreement shall create any obligation on the part of the Board to appropriate funds for the County's performance under this Agreement in any given fiscal year.

b. The School Board is limited to use of fuel tax refund, as set forth in section 206.41(4)(e)2, Florida Statutes, and no other source for payment of the Project Estimate or the Additional Costs under this Agreement.

5. Notice. All notices to the County shall be delivered either by hand (receipt of delivery required) or by certified mail to:

County Administrator  
500 San Sebastian View  
St. Augustine, FL 32084

Copy: Office of the County Attorney  
500 San Sebastian View  
St. Augustine, FL 32084

All notices to the School Board shall be delivered either by hand (receipt of delivery required) or by certified mail to:

St. Johns County School District Superintendent  
40 Orange Street  
St. Augustine, FL 32084

Copy: St. Johns County School Board Attorney  
Sidney F. Ansbacher  
Upchurch, Bailey and Upchurch, P.A.  
P.O. Box 3007  
St. Augustine, FL 32085-3007

All other correspondence not classified as notices may be delivered, disseminated, or submitted by any means acceptable to both parties, specifically including facsimile, email, or text messaging.

6. Assignment. This Agreement may be assigned, in whole or in part, by either party only upon the written consent of the other, which consent shall not be unreasonably withheld.

7. Compliance with All Federal, State, and Local Laws. The parties shall comply will all applicable requirements of federal, state, and local law in their performance of this Agreement. To the extent that any party must obtain any permit, license, or approval in order to perform its obligations under this Agreement, that party shall be responsible for obtaining such permit, license, or approval at its own expense.

8. Third Party Beneficiaries. This Agreement does not confer or infer third party beneficiary status or interest to any other person or entity.

9. Relationship of the Parties. This Agreement shall not be construed to create any agency relationship, partnership, association, or joint venture between the County and the School Board.

10. Force Majeure. The County shall not be held in default, breach, violation, or noncompliance with the terms, provisions, conditions, or requirements of this Agreement, nor suffer any enforcement or penalty relating thereto (including revocation, cancellation, or termination of this Agreement) where such noncompliance or alleged default, breach, or violation occurred and/or was caused by circumstances beyond the County's control, including without limitation acts of God, fire, flood, natural disasters, or otherwise; provided, however, the County shall use its best efforts to overcome such force majeure event.

11. Non-Waiver. The failure of either party to insist upon the strict performance or compliance with any provision of this Agreement shall not constitute a waiver or relinquishment of such provision on any subsequent occasion, and all such provisions shall remain in effect unless waived or relinquished in writing.

12. Governing Law and Venue. This Agreement shall be governed in accordance with the laws of the state of Florida. Venue for any action related to this Agreement shall lie exclusively in St. Johns County, Florida.

13. Dispute Resolution. If a dispute arises with respect to any right or duty arising under this Agreement, the parties agree to meet to pursue resolution through negotiation or other appropriate dispute resolution process, including but not limited to that established in chapter 164, Florida Statutes, before resorting to litigation.

14. Severability. If any part of this Agreement, or the application thereof, is declared illegal, void, unconstitutional, invalid, or otherwise unenforceable for any reason, such part shall be severable, and the remaining portions of the Agreement shall remain in effect.

15. Entire Agreement. The parties acknowledge that this Agreement, together with all exhibits and documents incorporated herein, contains the complete agreement and understanding between the parties. No representations or promises have been made except those that are specifically provided herein. This Agreement supersedes all prior and contemporaneous agreements, understandings, representations, and warranties, whether oral or written, relating to the subject matter of this Agreement. Any amendment to this Agreement shall be in writing and executed by a duly authorized representative of each party.

16. Section Headings. All section and descriptive headings in this Agreement are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this Agreement or any of its provisions.

17. Authority to Execute. This Agreement is entered into pursuant to the Florida Interlocal Cooperation Act of 1969, section 163.01, Florida Statutes, and the constitutional and statutory powers of the County and the School Board. Each party covenants that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

18. Counterparts. This Agreement may be executed in any number of counterparts, including facsimile, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

19. Access to Records. The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes) and other applicable State or Federal law. Access to such public records may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

20. Effective Date. This Agreement shall become effective upon filing a copy executed by both parties with the Clerk of the Circuit Court of St. Johns County.



COUNTY

Signed, witnessed, executed and acknowledged on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

WITNESS:

ST. JOHNS COUNTY, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Michael D. Wanchick  
County Administrator

ATTEST: Hunter S. Conrad, Clerk

Approved as to legal sufficiency:

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
County Attorney

SCHOOL BOARD

Signed, witnessed, executed and acknowledged on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

WITNESS:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

SCHOOL BOARD OF ST. JOHNS  
COUNTY, FLORIDA, a unit of local  
government charged with operating the public  
schools of St. Johns County

By: \_\_\_\_\_  
Kelly Barrera, Chair

ATTEST:

By: \_\_\_\_\_  
Tim Forson, Superintendent of Schools

# EXHIBIT

A

**Ray Road Improvements - St. Johns County**

**PRELIMINARY COST ESTIMATE**

12/11/2018

FDOT PAY ITEM#	DESCRIPTION	UNIT	QUANTITY	COST	TOTAL
<b>Roadwork</b>					
110-1-1	CLEARING AND GRUBBING	AC	0.8	\$14,000.00	\$11,158.00
120-6	EMBANKMENT	CY	1,136.2	\$20.00	\$22,724.00
160-4	TYPE B STABILIZATION	SY	1,679.2	\$12.00	\$20,150.40
286-1	TURNOUT CONSTRUCTION	SY	536.4	\$24.15	\$12,954.06
285-706	OPTIONAL BASE GROUP 6	SY	1,513.0	\$37.14	\$56,192.82
327-70-1	MILLING EXIST. ASPHALT PAVT. 1" AVG DEPTH	SY	2,529.0	\$3.50	\$8,851.61
334-1-13	SUPERPAVE ASPHALTIC CONC (TRAFFIC C)(1.5")	TN	375.0	\$148.80	\$55,800.00
337-7-81	ASPHALT CONC FRICTION COURSE, FC-9.5, (PG 76-22)(1")	TN	220.5	\$187.15	\$41,266.58
425-1-521	INLETS, DT BOT, TYPE C, <10'	EA	3.0	\$8,000.00	\$24,000.00
425-2-71	MANHOLES, J-7, <10'	EA	1.0	\$9,641.88	\$9,641.88
430-175-242	PIPE CULVERT, OPT MATERIAL, OTHER SHAPE - ELIP/ARCH, 42"S/CD	LF	880.0	\$220.00	\$193,600.00
570-1-2	PERFORMANCE TURF, SOD	SY	2,165.0	\$4.40	\$9,526.00
700-1-11	SINGLE POST SIGN, F&I, <12 SF	AS	4.0	\$392.39	\$1,569.56
700-1-60	REMOVE SINGLE POST SIGN	AS	4.0	\$15.23	\$60.92
711-11-124	THERMOPLASTIC, STANDARD, WHITE, SOLID, 18" FOR DIAGONAL OR CHEVRON	LF	245.0	\$3.77	\$923.65
711-11-125	THERMOPLASTIC, STANDARD, WHITE, SOLID, 24" FOR STOP LINE AND CROSSWALK	LF	153.0	\$9.45	\$1,445.85
711-14-170	THERMOPLASTIC, PREFORMED, WHITE, ARROW	EA	8.0	\$128.25	\$1,026.00
711-16-101	THERMOPLASTIC, STANDARD, WHITE, SOLID, 6"	GM	0.6	\$7,485.72	\$4,491.43
711-16-201	THERMOPLASTIC, STANDARD, YELLOW, SOLID, 6"	GM	0.4	\$7,485.76	\$2,694.87
104-10-3	SEDIMENT BARRIER	LF	849.0	\$1.49	\$1,265.01
	SITE DEWATERING				\$20,000.00
	NPDES				\$10,000.00
	<b>Total</b>				<b>\$509,342.64</b>
<b>Utility Work</b>					
1050-11-224	UTILITY PIPE, F&I,PVC,WATER/SEWER,8-19.9"	LF	808.0	\$100.00	\$80,800.00
1050-16-004	UTILITY PIPE,REMOVE & DISPOSE,8-19.9"	LF	10.0	\$30.00	\$300.00
1050-18-004	UTILITY PIPE,PLUG & OUT OF SERV,8-19.9"	LF	760.0	\$35.00	\$26,600.00
1055-11-214	UTILITY FITTING, F&I,PVC,ELBOW,8.0-19.9"	EA	2.0	\$800.00	\$1,600.00
1055-11-224	UTILITY FITTING, F&I,PVC,TEE,8.0-19.9"	EA	1.0	\$800.00	\$800.00
1055-11-454	UTILITY FITTING,F&I,DI/CI,CAP/PLG,8-19.9"	EA	2.0	\$800.00	\$1,600.00
1080-11-403	UTIL FIXT,F&I,8-19.9",TAPPNG SADDL/SLEEVE	EA	2.0	\$5,000.00	\$10,000.00
1080-11-404	UTIL FIXT,F&I,8-19.9",VALVE ASSEMBLY	EA	4.0	\$3,000.00	\$12,000.00
	<b>Total</b>				<b>\$133,700.00</b>
	<b>MOT (10%)</b>				<b>\$64,304.26</b>
	<b>Mobilization (10%)</b>				<b>\$64,304.26</b>
	<b>Contingency (15%)</b>				<b>\$115,747.67</b>
	<b>Final Total</b>				<b>\$887,398.84</b>