

RESOLUTION NO. 2022- 339

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING A LOCALLY FUNDED AGREEMENT ("AGREEMENT") BETWEEN ST. JOHNS COUNTY ("COUNTY") AND FLORIDA DEPARTMENT OF TRANSPORTATION ("FDOT") ALLOWING A TRANSFER OF FUNDS FOR THE CONSTRUCTION OF INTERSECTION IMPROVEMENTS ON STATE ROAD A1A AT MARSH LANDING FROM GATE GAS STATION TO PROFESSIONAL DRIVE ("IMPROVEMENT").

**RECITALS**

**WHEREAS**, the County will allocate three hundred thousand dollars (\$300,000.00) to assist in funding the construction of the improvement; and

**WHEREAS**, the source of the funding to be transferred is from the County's fiscal year 2022 budget; and

**WHEREAS**, the parties have agreed that FDOT is to construct the improvement; and

**WHEREAS**, the improvements are to take place on State Road A1A at Marsh Landing from Gate Gas Station to Professional Drive; and

**WHEREAS**, FDOT is the owner of the State Road A1A right-of-way.

**WHEREAS**, FDOT has programmed approximately \$1.9 million for construction in its fiscal year 2025 on FDOT's 5 year work program.

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

**Section 1.** The above recitals are incorporated into the body of this resolution and are adopted as findings of fact.

**Section 2.** The Board of County Commissioners approves the use of the two funding sources identified by FDOT financial project number 449841-1-32,52-01, and any other agreements necessary for the construction of the project.

**Section 3.** To the extent that there are typographical or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 20 day of September, 2022.

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

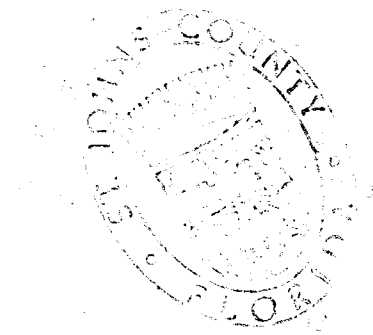
**Attest: Brandon J. Patty, Clerk of the Circuit Court and Comptroller**

Pam Halterman  
Deputy Clerk

**By:**

Henry Dean  
Henry Dean, Chair

Rendition Date 9/22/22



**Financial Project ID: 449841-1-32,52-01**

SR A1A @ Marsh Landing from Gate Gas Station to Professional Drive

**LOCALLY FUNDED AGREEMENT (Lump Sum)**

This Locally Funded Agreement ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and the St. Johns County ("Participant").

**-RECITALS-**

1. It is in the mutual best interest of the parties to facilitate a transportation project associated with Financial Project Number 449841-1-32,52-01 ("Project") in St. Johns County, Florida, which will, as part of the Project scope, construct intersection improvements on State Road A1A ("SR A1A") at Marsh Landing from Gate Gas Station to Professional Drive ("Improvements"), as shown in red in **Exhibit "A"**; and
2. The Department is fee simple owner of SR A1A, and the Project is located on or within the SR A1A right of way ("Department Property"); and
3. The Participant has agreed to allocate funds of Three Hundred Thousand Dollars (\$300,000.00) to help fund the Improvements, as more particularly described in **Exhibit "B"**; and
4. A copy of the Participant's letter of intent authorizing funding for the Project is attached as **Exhibit "C"**;

**NOW, THEREFORE**, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound, acknowledge and agree as follows:

**1. RECITALS & EXHIBITS**

The above recitals and attached exhibits are specifically incorporated by reference and made part of this Agreement.

**2. EFFECTIVE DATE**

The "Effective Date" of this Agreement shall be the date the last of the parties to be charged executes this Agreement.

**3. E-VERIFY**

The Participant (A) shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Participant during the term of the contract; and (B) shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

**4. FINANCIAL PROVISIONS**

A. The Participant's funding obligation pursuant to this Agreement shall be in the amount **Three Hundred Thousand Dollars (\$300,000.00)** ("Participant Funds").

B. The Participant Funds shall be paid to the Department in a lump sum payment pursuant and via the Project Number 449841-1-52-01. The Participant shall remit the Participant Funds during the fiscal year 2022-2023 at least fourteen (14) calendar days prior to the Department's advertising the Project for bid and no later than **November 1, 2022**. The Department may utilize this contribution for payment of the costs of the project.

In the event actual cost of the Project is less than the Participant Funds, the excess monies will be applied to any other phase of the Project, within the sole discretion of the Department.

Payment of funds pursuant to this Agreement will be made directly to the Department for deposit.

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SR A1A @ Marsh Landing from Gate Gas Station to Professional Drive

C. Contact Persons:

Participant:

St. Johns County

Phong Nguyen, Division Manager Transportation Development

4040 Lewis Speedway

St. Augustine, FL 32084

Federal Employer ID # (FEIN): F596000825003

Department:

Attention: Kim Evans, District Local Programs Administrator

Florida Department of Transportation – District 2 – Program Management

1109 South Marion Avenue

Lake City, Florida 32025

Phone: 386-961-7402

[Kimberly.evans@dot.state.fl.us](mailto:Kimberly.evans@dot.state.fl.us)

**5. NOTICE**

All notices, communications and determinations between the parties and those required to be given under this Agreement, including, without limitation, any change to a party's notification address, shall be in writing and shall be sufficient if delivered by registered or certified mail to the parties at the addresses provided in the Financial Provisions section of this Agreement.

**6. MODIFICATION OF AGREEMENT**

A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

**7. INDEMNIFICATION**

A. The Participant shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the Participant's performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The Participant's duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract.

B. The Participant shall notify the Department in writing immediately upon becoming aware of any Liabilities. The Participant's obligation to defend, indemnify and hold the Department harmless from any Liabilities, or at the Department's option to participate and associate with the Department in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the Department's written notice of claim for indemnification to the Participant. The Participant's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

**8. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY**

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving either party's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Florida Statutes, as the same may be amended from time to time. The limit of the Department's liability for breach of this Agreement shall be identical to the limitations of liability for tort actions set forth in §768.28(5), Florida Statutes.

**9. GOVERNING LAW**

This Agreement shall be governed in all respect by the laws of the State of Florida.

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**10. INITIAL DETERMINATION OF DISPUTES**

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of this Agreement.

**11. VENUE AND JURISDICTION**

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of the Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The Participant and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

**12. JURY TRIAL**

The parties hereby waive right to trial by jury of any dispute concerning the validity, interpretation, performance or breach of this Agreement.

**13. ASSIGNMENT**

The Participant shall not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the Department's District Secretary or his/her designee. The Department has the sole discretion and authority to grant or deny proposed assignments of this Agreement, with or without cause. Nothing in this Agreement shall prevent the Participant from delegating its duties under the Agreement, but such delegation shall not release the Participant from its obligation to perform the Agreement.

**14. THIRD PARTY BENEFICIARIES**

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for in the Agreement.

**15. VOLUNTARY EXECUTION OF AGREEMENT**

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in the Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of the Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of the Agreement and executes the Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of the Agreement.

**16. ENTIRE AGREEMENT**

This instrument contains the entire understanding of the parties and no representations or promises have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants, and warranties with respect to the subject matter of this Agreement are waived and superseded by this Agreement.

**17. EXECUTION OF DOCUMENTS**

The parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the Agreement and shall do all other acts to effectuate the Agreement.

**18. SUFFICIENCY OF CONSIDERATION**

By their signature below, the parties acknowledge the receipt, adequacy and sufficiency of consideration provided in the Agreement and forever waive the right to object to or otherwise challenge the same.

**19. WAIVER**

The failure of either party to insist on the strict performance or compliance with any term or provision of the Agreement on one or more occasions shall not constitute a waiver or relinquishment of the rights provided

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SR A1A @ Marsh Landing from Gate Gas Station to Professional Drive

in this Agreement and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

**20. INTERPRETATION**

No term or provision of the Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

**21. CAPTIONS**

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of the Agreement, or any provision hereof.

**22. SEVERANCE**

If any section, paragraph, clause or provision of the Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of the Agreement shall remain in full force and effect and the parties shall be bound by the same so long as principle purposes of the Agreement remain enforceable.

**23. COMPUTATION OF TIME**

In computing any period of time prescribed in the Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

**24. MODIFICATION OF AGREEMENT**

A modification or waiver of any of the provisions of the Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

**25. TERM OF AGREEMENT**

This Agreement shall continue in effect and be binding on the parties until the construction of the Project is completed. The Department shall not be obligated or liable hereunder to any party other than the Participant.

**26. WARRANTY**

The Participant warrants that it has not employed or obtained any company or person, other than bona fide employees of the Participant to solicit or secure this Agreement and the Participant has not paid or agreed to pay any company, corporation, individual or firm, other than a bona fide employee employed by the Participant. For breach or violation of this provision, the Department shall have the right to terminate the Agreement without liability.

**27. PUBLIC RECORDS**

Agency shall comply with Chapter 119, Florida Statutes. Specifically, the Agency shall:

A. Keep and maintain public records that ordinarily and necessarily would be required by the Department to perform this Agreement.

B. Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of the Agreement if Agency does not transfer the records to the Department.

D. Upon completion of this Agreement, transfer, at no cost, to the Department all public records in possession of Agency or keep and maintain public records required by the Department to perform this Agreement. If Agency transfers all public records to the public Agency upon completion of this Agreement, Agency shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Agency keep and maintain public records upon completion of this

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Agreement, Agency shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

Failure by Agency to act in accordance with Chapter 119 and the foregoing shall be grounds for immediate unilateral cancellation of this Agreement by the Department. Agency shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of Agency and shall promptly provide the Department a copy of Agency's response to each such request.

**IF THE CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S/CONTRACTOR'S/VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

District 2  
386-758-3727  
D2prcustodian@ dot.State.FL.us  
Florida Department of Transportation  
District 2 - Office of General Counsel  
1109 South Marion Avenue, MS 2009  
Lake City, FL 32025

**28. ANNUAL APPROPRIATION / FUNDING**

Pursuant to §339.135(6)(a), Florida Statutes, the Department's obligation to fund construction of the Improvement is contingent upon annual appropriation by the Florida Legislature. This Agreement may be terminated by the Department without liability to the Participant if sufficient funds are not appropriated to the Department. The provisions of §339.135(6)(a), Florida Statutes, are set forth herein verbatim and made part of this Agreement, to wit:

"The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

**IN WITNESS WHEREOF**, intending to be legally bound, the parties hereby execute this Agreement consisting of nine (9) pages.

***SIGNATURES ON FOLLOWING PAGE***

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SR A1A @ Marsh Landing from Gate Gas Station to Professional Drive

**STATE OF FLORIDA, DEPARTMENT  
OF TRANSPORTATION**

**ATTEST:**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**FDOT Legal Review:**

By: \_\_\_\_\_

Office of the General Counsel  
Florida Department of Transportation

**ATTEST:**

**ST. JOHNS COUNTY**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Legal Review:**

By: \_\_\_\_\_

Legal Counsel for Participant

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**Financial Project ID: 449841-1-32,52-01**

**SR A1A @ Marsh Landing from Gate Gas Station to Professional Drive**

**EXHIBIT "A"**

**PROJECT DESCRIPTION AND RESPONSIBILITIES**

**PROJECT LOCATION: SR A1A @ Marsh Landing from Gate Gas Station to Professional Drive**



**PROJECT DESCRIPTION:** Intersection Improvements at SR A1A @ Marsh Landing from Gate Gas Station to Professional Drive

**Financial Project ID: 449841-1-32,52-01**

**SR A1A @ Marsh Landing from Gate Gas Station to Professional Drive**

**EXHIBIT "B"**

**PROJECT BUDGET**

**PARTICIPANT'S PARTICIPATION AMOUNT:**

**\$ 300,000**

**FUNDS ARE DUE FOR DEPOSIT ON OR BY November 1, 2022**

**EXHIBIT "C"**

**PARTICIPANT'S Letter of Intention**



**St. Johns County Board of County Commissioners**

Transportation Development Division

September 17, 2021

James M. Knight, P.E.  
Urban Planning and Modal Administrator  
Florida Department of Transportation District 2  
2198 Edison Avenue  
Jacksonville FL 32204

Mr. Knight,

This is to inform you of the St Johns County's intention to allocate funding for intersection improvements on SR A1A at Marsh Landing to Marlins in the amount of \$300,000 in FY 22/23. The funding is subject to approval by the St Johns Board of County Commissioners.

Thank you in advance for a collaborative effort and your attention in this matter. Should you have any questions, please feel free to call me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Phong Nguyen".

Phong Nguyen  
Division Manager  
Transportation Development

cc: Joy Andrews, Deputy County Administrator  
Forrest Cotton, Growth Management Director  
Greg Caldwell, Public Works Director