

# City of South Daytona

## Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3014



### MEMORANDUM

To: James L. Gillis Jr., City Manager

From: Becky Witte, Deputy City Clerk

Re: Consideration of approving Resolution 2023-36, a Local Funding Agreement (447019-2-32-01) with the Florida Department of Transportation for the design of a wider sidewalk with a physical separation from the roadway on the northside of Reed Canal Road

Date: November 28, 2023

There is an existing sidewalk along the north side of Reed Canal Road that is narrow and lacks separation from the roadway which makes it dangerous to traverse. Several years ago, city staff submitted a project to the River to Sea Transportation Planning Organization (R2CTPO) for possible grant funding which calls for the replacement of this narrow sidewalk with a wider one that includes a physical separation, either a curb or decorative bollard system, from the adjacent roadway to make it safer. The R2CTPO has decided that this project holds merit and that if the sidewalk was made safer, more pedestrians would use it. As a result, they have decided to partner with the Florida Department of Transportation (FDOT) and assist in funding the design of this project.

The project calls for the replacement of the sidewalk along the north side of Reed Canal Road from South Ridgewood Avenue to Nova Road. The proposed sidewalk will be made as wide as possible (at least six feet) given the limited right of way. In addition to the installation of a physical separation between the proposed sidewalk and roadway, project attributes also include the installation of decoration railing, retention walls and enhanced pedestrian crossings at the entrance to Reed Canal Park and at the intersections of Sauls Street, Lantern Drive and Oak Lea Drive with patterned pavement and command activated beacon signage.

Attached is the proposed agreement with the FDOT for the design of this project. The FDOT has requested that the city utilize their consultant, Dewberry, to complete the design. The design cost is estimated to be \$434,468 with the city being responsible for 10% of that cost or \$43,447. As staff knew that this grant was forthcoming, we were able to include it in this year's budget back in October.

To make this sidewalk safer and more accessible for everyone to use, staff is recommending that the City Council approve the Local Funding Agreement (447019-2-32-01) with the FDOT as written. If approved, the design will begin in February 2024 and is anticipated to be completed in December 2024.

**RESOLUTION NO. 2023-36**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA, APPROVING A FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) LOCAL FUNDING AGREEMENT FOR THE DESIGN OF THE REED CANAL ROAD SIDEWALK PROJECT FROM NOVA ROAD TO US 1; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND ASSOCIATED DOCUMENTS RELATED TO THE PROJECT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the State of Florida Department of Transportation and City of South Daytona desire to undertake the Design services for the project described as: "Reed Canal Road Sidewalk Project From Nova Road To US 1", said project being known as Financial Project Number (FPN) 447019-2-32-01; and

**WHEREAS**, the City Council of the South Daytona determines this project is in the best interest of the citizens of South Daytona.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA:**

**Section 1.** James L. Gillis, Jr., City Manager of the City of South Daytona is hereby authorized to make, execute, and deliver to the State of Florida Department of Transportation the Local Funding Agreement and associated documents and fees for the aforementioned project, FPN 447019-2-32-01.

**THIS RESOLUTION APPROVED ON FIRST AND ONLY READING** this 12<sup>th</sup> day of December 2023 by the City Council of the City of South Daytona, Florida.

**CITY OF SOUTH DAYTONA, FLORIDA**

\_\_\_\_\_  
William C. Hall, Mayor

ATTEST: \_\_\_\_\_  
James L. Gillis Jr, City Manager

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Wade C. Vose, City Attorney

<b>Agency: City of South Daytona</b> <b>Vendor No: F596000430001</b>	<b>Fund: LF</b> <b>Contract Amount: \$43,447.00</b>	<b>Financial Project No.:</b> <b>447019-2-32-01</b>
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**LOCALLY FUNDED AGREEMENT  
BETWEEN  
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
THE CITY OF SOUTH DAYTONA**

This **AGREEMENT**, made and entered into \_\_\_\_\_,  
by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter  
referred to as the “DEPARTMENT”) and the City of South Daytona (hereinafter referred to as  
the “LOCAL GOVERNMENT”),

**WITNESSETH:**

WHEREAS, the Parties have been granted specific legislative authority to enter into this  
Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution, a copy of which is attached  
hereto, as Exhibit “B”, and made apart hereof, has authorized its officers to execute this  
Agreement on its behalf; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Adopted Five Year  
Work Program, to undertake the Design services for the project described as: “Reed Canal  
Road Sidewalk Project From Nova Road To US 1”, said project being known as Financial  
Project Number (FPN) 447019-2-32-01, hereinafter referred to as the “Project”; and

WHEREAS, the Project is not revenue producing and is contained in the Adopted Work  
Program; and

WHEREAS, the implementation of the Project is in the interests of both the  
DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious,  
and economical for the LOCAL GOVERNMENT to provide a portion of the funds for the Design  
services of the Project in Fiscal Year 2023/2024, said portion of the Project being known as  
FPN 447019-2-32-01, and said costs hereinafter referred to as the “Federal-Aid Funding  
Shortfall” and

WHEREAS, in order to maintain uniformity throughout the Project and to provide for the  
Federal-Aid Funding Shortfall in a cost-effective manner, the LOCAL GOVERNMENT desires to  
provide funding to the DEPARTMENT to be used for the Federal-Aid Funding Shortfall, as  
described in “Exhibit A”.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the LOCAL GOVERNMENT. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interests of the public.

2. The DEPARTMENT shall undertake and complete the Design services for the Project using the Federal-Aid Funding Shortfall described in Exhibit "A".

3. The DEPARTMENT shall perform the Design services for the Project. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The LOCAL GOVERNMENT shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement. The LOCAL GOVERNMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. Contribution by the LOCAL GOVERNMENT of the funds for the Design phase of the Project shall be made as follows:

(A) The LOCAL GOVERNMENT and the DEPARTMENT agree to share the cost for Design services of the Project. The LOCAL GOVERNMENT agrees to provide the Federal-Aid Funding Shortfall for the Design services and the DEPARTMENT agrees to provide the remaining federal funds for the federal participating share of the Design services, up to **\$391,021.00 (Three Hundred Ninety-One Thousand Twenty-One Dollars and No/100).**

(B) The share of the LOCAL GOVERNMENT shall be, at a minimum, the stated percentage of the actual Federal-Aid Funding Shortfall for the project. However, in the event the federal government fails to provide an amount which is equal to the anticipated federal participating share, the LOCAL GOVERNMENT shall be responsible for 100% of the funds required to make up the shortfall, including cost overruns and/or supplemental agreements not paid by federal funds. The DEPARTMENT is only responsible for the stated federal participating share as described in paragraph 4(A). The Project is off the "State Highway System", therefore, in accordance with Section

339.08(1), F.S., State funding cannot be used for payments of non-participating costs on this Project.

(C) Should such shortfalls occur, due to a determination that said costs are non-participating, the LOCAL GOVERNMENT agrees to provide, without delay adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the shortfall. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent there is a shortfall; however, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation of the Federal-Aid Funding Shortfall during the project and on final accounting, as provided herein below.

(D) The estimated total cost as set forth in the DEPARTMENT'S adopted work program for this Project is **\$43,447.00.00 (Forty-Three Thousand Four Hundred Forty-Seven Dollars and No/100)**. The estimated LOCAL GOVERNMENT share for 100% of the funding shortfall portion of the project is **\$43,447.00.00 (Forty-Three Thousand Four Hundred Forty-Seven Dollars and No/100)**.

(E) The LOCAL GOVERNMENT agrees that it will, on or before but no later than **January 15, 2024**, furnish the DEPARTMENT an advance deposit in the amount of **\$43,447.00.00 (Forty-Three Thousand Four Hundred Forty-Seven Dollars and No/100)**. The deposit shall be the total estimated Federal-Aid Funding Shortfall.

(F) If the Federal-Aid Funding Shortfall costs are in excess of the advance deposit amount, the LOCAL GOVERNMENT will provide, without delay, an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT, so that the total deposit is equal to the Federal-Aid Funding Shortfall. The DEPARTMENT will notify the LOCAL GOVERNMENT as soon as it becomes apparent the Federal-Aid Funding Shortfall costs are in excess of the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below. If the LOCAL GOVERNMENT cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT's project manager indicating when the deposit will be made. The LOCAL GOVERNMENT understands the request and approval of the additional time could delay the project, and additional costs may be incurred due to delay of the project.

(G) If the Federal-Aid Funding Shortfall costs are less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit

exceeds the LOCAL GOVERNMENT's share of the Federal-Aid Funding Shortfall costs if such refund is requested by the LOCAL GOVERNMENT in writing.

(H) Should project modifications occur that increase the Federal-Aid Funding Shortfall costs, the LOCAL GOVERNMENT will be notified by the District accordingly. The LOCAL GOVERNMENT agrees to provide, without delay, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the Federal-Aid Funding Shortfall Costs. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent the Federal-Aid Funding Shortfall Costs will overrun the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below.

(I) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three-hundred and sixty (360) calendar days of final payment to the Consultant. All project cost records and accounts shall be subject to audit by a representative of the LOCAL GOVERNMENT for a period of three (3) years after final close out of the project. The LOCAL GOVERNMENT will be notified of the final cost. The parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the LOCAL GOVERNMENT. If the final accounting is not performed within three-hundred and sixty (360) calendar days, the LOCAL GOVERNMENT is not relieved from its obligation to pay.

(J) In the event said final accounting of total project costs is greater than the total deposits to date, the LOCAL GOVERNMENT will pay the additional amount within forty (40) calendar days from the date of the invoice. The LOCAL GOVERNMENT agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes (F.S.), on any invoice not paid within the forty (40) calendar days until the invoice is paid.

(K) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached escrow agreement between LOCAL GOVERNMENT, DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury.

(L) Contact Persons:

**DEPARTMENT**

District 5 Local Programs  
719 South Woodland Boulevard, M.S. 4-520  
DeLand, Florida 32720  
(386) 943-5153  
[D5-LocalPrograms@dot.state.fl.us](mailto:D5-LocalPrograms@dot.state.fl.us)

**LOCAL GOVERNMENT**

James L. Gillis, Jr.  
City Manager  
City of South Daytona  
1672 South Ridgewood Avenue  
South Daytona, Florida 32119  
(386) 322-3014  
[lgillis@southdaytona.org](mailto:lgillis@southdaytona.org)

5. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The LOCAL GOVERNMENT may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT.

6. In the event this Agreement is in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

"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 one (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 \$25,000.00 and which have a term for a period of more than one (1) year."

7. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

8. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

9. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

10. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

- (A) The LOCAL GOVERNMENT 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 LOCAL GOVERNMENT during the term of the contract; and
- (B) The LOCAL GOVERNMENT shall expressly require any contractors and 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 contractor/subcontractor during the contract term.

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IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement on \_\_\_\_\_, and the DEPARTMENT has executed this Agreement on \_\_\_\_\_.

**CITY OF SOUTH DAYTONA**

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Name: James L. Gillis, Jr.  
Title: City Manager

By: \_\_\_\_\_  
Name: C. Jack Adkins  
Title: Director of Transportation Development

Attest:

Attest:

\_\_\_\_\_  
Deputy City Clerk

\_\_\_\_\_  
Executive Secretary

Legal Review:

Legal Review:

\_\_\_\_\_  
LOCAL GOVERNMENT Attorney  
Wade C. Vose, City Attorney

\_\_\_\_\_  
DEPARTMENT Attorney

Financial Provisions Approval by  
Department of Comptroller on:

October 5, 2020

## **EXHIBIT “A”**

### **SCOPE OF SERVICES**

Project scope includes removal and replacement of sidewalk along north side of Reed Canal Road between State Road 5A and US 1/SR 5, milling and resurfacing with overbuild to achieve longitudinal grade correction, curb removal and replacement within limits of grade correction, and guardrail resetting and replacement. Rectangular Rapid Flashing Beacons (RRFBs) are proposed at the entrance to Reed Canal Park, Sauls Street, Lantern Drive, and Oak Lee Drive. The project will also review and incorporate drainage improvements.

The City (LOCAL GOVERNMENT) shall be responsible for the preparation and submittal of a technical memorandum providing the supporting documentation, as well as any independent reports needed, for all items on the Type 1 Categorical Exclusion (CE) Checklist. The City (LOCAL GOVERNMENT) shall not be responsible for filling out the actual form. FDOT (DEPARTMENT) will prepare the checklist using the supplied information. All Principal Investigators for the archaeological, historical, and architectural sections of the Type 1 CE shall meet the minimum requirements stated in the Florida Administrative Code (Chapter 1A-46) and the Code of Federal Regulations, 36 C.F.R. 61.

All pedestrian improvements that are designed shall meet the Americans with Disabilities Act (ADA) guidelines. No on-system work is anticipated. All proposed improvements shall be within the City of South Daytona (LOCAL GOVERNMENT) Right of Way.

The LOCAL GOVERNMENT will be responsible for providing funds for any Federal-Aid Funding Shortfalls or Non-Participating Costs including the initial amount of **\$43,447.00**.

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**EXHIBIT “B”**

**RESOLUTION**

The Resolution, or other official authorization, authorizing entry into this Agreement is attached and incorporated into this Agreement.