

RESOLUTION NO. 24-R-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, FLORIDA, PURSUANT TO ARTICLE X, SECTION 6, FLORIDA CONSTITUTION, AND CHAPTERS 73, 74, 127, and 337 FLORIDA STATUTES (2023), AUTHORIZING APPROPRIATE OFFICERS OR AGENTS OF THE COUNTY TO ACQUIRE CERTAIN INTERESTS IN REAL PROPERTY BY GIFT, PURCHASE, OR EMINENT DOMAIN FOR RIGHT OF WAY FOR THE SW 49th AVENUE S PHASE ROAD IMPROVEMENT PROJECT IN MARION COUNTY, FLORIDA; MAKING FINDINGS OF FACT FOR PUBLIC PURPOSE AND NECESSITY; AND PROVIDING AN EFFECTIVE DATE.

OWNERS: ACTDT Brown, LLC
Vacant Parcel on
SW 49th Court, 34473

TAX IDENTIFICATION NUMBER: 8009-1185-02

PROJECT PARCEL NUMBER: 42 AL

Fee Simple Whole Take

Fee Simple Partial Right of Way

Temporary Construction Easement

WHEREAS, Art. X, Sec. 6, Florida Constitution, provides general restrictions on the government's exercise of its power of eminent domain, including, but not limited to, the provision that no private property shall be taken except for a public purpose and with full compensation therefore paid to each owner or secured by deposit in the registry of the court and available to the owner; and

WHEREAS, Section 127.01, Fla. Stat. (2023), subsection (1)(a) provides that each county of the state is delegated authority to exercise the right and power of eminent domain; that is, the right to appropriate property, except state or federal, for any county purpose; and

WHEREAS, Section 127.02, Fla. Stat. (2023) provides that the board of county commissioners may not exercise its power of eminent domain unless the board adopts a resolution authorizing the acquisition of a property, real or personal, by eminent domain for any county use or purpose designated in such resolution, subject to the limitations set forth in Sections 73.013 and 73.014, Fla. Stat. (2023); and

WHEREAS, Section 127.01, Fla. Stat. (2023), subsection (1)(b) further provides that each county is further authorized to exercise the eminent domain power granted to the Department of Transportation by s. 337.27(1), the transportation corridor protection provisions of Section 337.273, Fla. Stat. (2023) and the right of entry onto property pursuant to Section 337.274, Fla. Stat. (2023); and

WHEREAS, Section 337.27, Fla. Stat. (2023), subsection (1) grants the Department of Transportation the power of eminent domain to condemn all necessary lands and property, including rights of access, air, view, and light, whether public or private, for the purpose of securing and utilizing transportation rights-of-way, including, but not limited to, any lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access is impaired due to the construction of a facility, and replacement rights-of-way for relocated rail and utility facilities; for existing, proposed, or anticipated transportation facilities on the State Highway System or State Park Road System; or in a transportation corridor designated by the department; or for the purpose of screening, relocation, removal, or disposal of junkyards and scrap metal processing facilities. The department shall also have the power to condemn any material and property for such purposes; and

WHEREAS, Section 337.273, Fla. Stat. (2023) provides in part at subsection (1)(c) that the designation and management of transportation corridors and the planning and development of transportation facilities within transportation corridors will substantially assist in allowing government to alleviate traffic congestion and transportation facility overcrowding, aid in the development of an effective transportation system that is coordinated with land use planning, assist in planning for future growth, enable compliance with concurrency requirements, and alleviate the heretofore described health, safety, and welfare liabilities to the public; and

WHEREAS, the Project that is the subject of this Resolution is the SW 49th AVENUE S PHASE ROAD IMPROVEMENT PROJECT described in the Preliminary Engineering Report originally prepared by Kimley-Horn and Associates, Inc. on January 22, 2018 and approved by the Marion County Board of County Commissioners on February 6, 2018 and has been listed on the approved Transportation Improvement Program adopted by Marion County; and

WHEREAS, the Board of County Commissioners, as part of its approval of the foregoing Preliminary Engineering Report, considered alternative designs and routes, cost, safety, environmental factors, and long term area planning in concluding that the acquisition of the specific property interests identified herein is necessary and in the best interests of the public, and that all conditions precedent to the acquisition of such property interests have been, or will be met, prior to commencement of the filing of an action in eminent domain with respect to such property interests; and

WHEREAS, Section 337.274, Fla. Stat. (2023), provides that the Department of Transportation and its authorized agents and employees are authorized to enter upon any lands, waters, and premises, upon giving reasonable notice to the landowner, for the purpose of making surveys, soundings, drillings, appraisals, environmental assessments, archeological assessments, and examinations necessary to perform its duties and functions; and any such entry shall not be deemed a trespass or an entry that would constitute a taking in an eminent domain proceeding. The department shall make reimbursement for any actual damages to such lands, water, and premises as a result of such activities; and

WHEREAS, Ch. 73, Fla. Stat. (2023) provides general substantive and procedural requirements and limitations on a county's exercise of the power of eminent domain; and

WHEREAS, Section 73.015, Fla. Stat. (2023), subsection (1), provides requirements for pre-suit negotiation with the fee owner of the property to be acquired by eminent domain; and

WHEREAS, Section 73.015, Fla. Stat. (2023), subsection (2) provides requirements for notification of business owners, including lessees, who operate a business located on the property to be acquired; and

WHEREAS, Chapter 74, Fla. Stat. (2023) provides authority and procedures for counties to take possession and title of parcels or property interests acquired by eminent domain in advance of entry of final judgment; and

WHEREAS, the Board of County Commissioners of Marion County (hereafter, "Board") is undertaking a project for the construction of roadway and related improvements for the SW 49th AVENUE S PHASE ROAD IMPROVEMENT PROJECT in Marion County, Florida (hereafter, "**Project**"); and

WHEREAS, the Project may include the undertaking or making some or all of the following improvements, construction or related activities: construction of new roads for vehicular traffic, reconfiguring intersections, bike lanes, sidewalks, drainage swales, embankments, driveways and culverts, drainage retention areas and other stormwater drainage or retention facilities, intersection improvements; landscaping; relocating or reconstruction of power and traffic signal poles and traffic signal equipment; and improved utilities,

WHEREAS, the Board has determined that it is in the best interests of the citizens of Marion County and for the safe and efficient movement of vehicular and pedestrian traffic, to construct the Project in Marion County, Florida, without limitation, by performing, undertaking or making, some or all of the following improvements, construction of new roads for vehicular traffic, reconfiguring intersections, bike lanes, sidewalks, drainage swales, embankments, driveways and culverts, drainage retention areas and other stormwater drainage or retention facilities, intersection improvements; landscaping;

relocating or reconstruction of power and traffic signal poles and traffic signal equipment; and improved utilities, and

WHEREAS, the Project is and has been listed on the approved Transportation Improvement Program adopted by the Board of County Commissioners; and

WHEREAS, the Project will develop a portion of SW 49th Avenue and will alleviate traffic congestion on other facilities, and connect to other major collector and arterial roads.

WHEREAS, the County Engineer has caused to be designed the Project, compiled construction plans for the Project, and has determined the area and location of properties necessary for final construction of the Project and to accommodate anticipated right-of-way requirements in the reasonably foreseeable future. The County has determined the necessity to acquire the property interest of Fee Simple Right of Way (hereinafter, "the property interest") from **Project Parcel No. 42 AL** described in **Exhibit "A"** attached hereto and incorporated herein by reference, in order to construct the Project as designed; and

WHEREAS, the Board hereby finds and determines that all conditions precedent to acquiring the property interests described and identified in **Exhibit "A"** have been met by Marion County. Specifically, before approving the acquisition of the property interests described herein, the Board has considered and weighed, where applicable, factors of safety, benefits to the public, costs, availability of alternatives, long range area planning and environmental factors, as well as any other relevant factors. The Board further finds that the required notifications to appropriate state and local agencies have been made. The Board further finds that all necessary governmental permits have been obtained or there is a reasonable probability that such permits will be obtained.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, FLORIDA, as follows:

Section 1. **Adoption.** The Board hereby adopts the facts contained in the foregoing WHEREAS Clauses and the same are made a part of this Resolution.

Section 2. **Construction Plans.** The County has surveyed and located its line or area of construction, and developed construction plans reflecting the property interest to be acquired from **Project Parcel No. 42 AL** described in **Exhibit "A"** hereof required for the Project, which plans and maps have been reviewed by the Board and are approved for use (as they now exist or as hereafter updated, revised or corrected as set forth below), and such plans and maps may be filed with the Clerk of the Circuit Court in and for Marion County, Florida, together with a certified copy of this Resolution. (The information, if any, in the attached **Exhibit "A"** as to the name of the property owner, the property's tax identification number, and the legal description of the property interest to be acquired from **Project Parcel No. 42 AL** is for information purposes only. Such

information may be corrected or updated by the County Attorney or County Engineer or his or her designee.

Section 3. **Public Purpose and Necessity.** The Board hereby finds and determines that the road improvement Project described herein is for a public purpose and the condemnation of the property interest to be acquired from **Project Parcel No. 42 AL** is necessary for the construction of such Project.

Section 4. **Description of Property.** The Board further authorizes the County Surveyor or Project surveyor and County Attorney to correct minor errors or scrivener's errors to the description of the property interest to be acquired from **Project Parcel No. 42 AL** if any, with regard to the condemnation proceeding authorized herein without further action of this Board.

Section 5. **Purchase of Property.** The Office of the County Engineer is authorized to acquire the property interests described in Project Parcel No. 4AR by gift, purchase, or condemnation. In furtherance thereof, the Office of the County Engineer is authorized to make a binding offer to the property owner or his or her representative to acquire such property interests in an amount not to exceed 120% of the current full compensation appraised value of such interests including any severance damages as determined by the county's engaged real estate appraiser in an up-to date appraisal, and business damages, and business damages, if any, without further authorization from the Board. Should the County purchase the property interest to be acquired from **Project Parcel No. 42 AL**, prior to the commencement of condemnation proceedings, or prior to acquiring title to said Parcel in the condemnation proceedings, the County Attorney is authorized to omit or dismiss said parcel so acquired from the condemnation proceedings.

Section 6. The County, its officers, employees and attorneys, are hereby authorized and directed, if necessary, to institute and prosecute such actions as may be proper for the acquisition of the fee simple title in **Project Parcel No. 42 AL** by eminent domain proceedings pursuant to Chapters 73 and 76, Florida Statutes.

Section 7. **Authority of County Engineer Regarding Construction Plans.** The County Engineer or her designee is authorized to have the construction plans updated, revised or corrected, and to utilize such plans in the condemnation action, including binding the Board to said plans, updates, revisions or corrections, without further action of the Board.

Section 8. **Interest to Be Acquired.** Pursuant to Section 127.01, Fla. Stat. (2023), subsection (1)(a), the fee simple absolute title to all property so taken and acquired shall vest in the county unless the county seeks to condemn a lesser particular right or estate in such property. In this case, the Board hereby determines that the property interest to be acquired from **Project Parcel No. 42 AL** is Fee Simple Right of

Way and the Board authorizes the acquisition of such interest by the acquisition of said Parcel.

Section 9. **Acquisition in Advance of Final Judgment.** The Board hereby authorizes the County Attorney to take possession and title of the takings from **Project Parcel No. 42 AL** in advance of the entry of final judgment, including by filing a declaration of taking pursuant to Section 74.031, Florida Statutes.

Section 10. **Directions to Clerk of Circuit Court.** The Clerk of the Circuit Court of Marion County, Florida, is directed to accept for deposit any and all funds delivered by the County with respect to the acquisition of the property interest from **Project Parcel No. 42 AL** and costs and expenses related thereto in the Registry of the Circuit Court for the Fifth Judicial Circuit in and for Marion County, Florida, as required by law in condemnation proceedings.

Section 11. **Effective Date.** This Resolution shall take effect immediately upon adoption.

DULY RESOLVED this _____ day of _____, 2024.

BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA

MICHELLE STONE, CHAIR

ATTEST:

GREGORY C. HARRELL, CLERK

P.I.D.# 8009-1185-02

Lot 2, Block 1185 of Marion Oaks Unit Nine, as Plat thereof recorded in Plat Book "O" pages 164 through 193 of the Public Records of Marion County, Florida.

EXHIBIT "A"