

RESOLUTION NO. 94-71

WHEREAS, the Board of County Commissioners of St. Johns County, Florida, is very much concerned with the economic development within the County; and

WHEREAS, the Tree of Life is proposing to build a new corporate headquarters as well as a new warehousing and distribution center; and

WHEREAS, the Tree of Life has a date of September 1st to move into its facilities; and

WHEREAS, the Board of County Commissioners of St. Johns County, Florida, has requested the County Administrator to seek an Economic Development Transportation Fund Grant in the amount of \$2 million; and

WHEREAS, the Grant has been award to St. Johns County, Florida.

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

Section 1. The Board of County Commissioners of St. Johns County, Florida, authorize the County Administrator to sign a Grant Agreement with the State of Florida, Department of Commerce, Division of Economic Development, on the Board's behalf. Said Grant Agreement shall be substantially in the form attached herein.

Section 2. The Board of County Commissioners of St. Johns County, Florida, authorize the County Administrator to seek and obtain engineering design services for the project.

Section 3. The Board of County Commissioners of St. Johns County, Florida, authorize the County Administrator to spend up to \$360,000 for the Design and Construction of St. Augustine Industrial Park Road, a road off of SR-207 to the Tree of Life facility.

PASSED AND ADOPTED this 12th day of April, 1994, by the Board of County Commissioners of St. Johns County, Florida.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

By: Allan Roberts  
Chairman - Allan Roberts

ATTEST: CARL "BUD" MARKEL, CLERK

By: Wynne Carter  
Deputy Clerk



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1. The Project is described as follows:

To widen State Road 207 to four lanes west from I-95 for a distance of approximately .5 miles, and to construct a three lane access road from State Road 207 to the company's site - a distance of approximately 2,250 linear feet.

and is in connection with the expansion of facilities by the following company:

TREE OF LIFE, INC.

2. The term of this Agreement shall commence upon execution and continue through September 30, 1998, unless earlier terminated as provided herein.

3. Once this Agreement is executed by the Department, upon written request from the County, the Department will transfer funds to the County to be applied toward direct Project costs. Such transfer will occur on no more than a quarterly basis, consistent with project needs.

4. Funds transferred to the County by the Department upon execution of this Agreement shall be invested by the County until their actual expenditure, in such income or revenue producing investments as authorized by law for other County funds. All income, interest or other revenues obtained from such investment shall be considered Department funds. The income, interest or other revenues shall be remitted on a semi-annual basis within fifteen (15) days of the close of the months

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June and December, regardless of the month in which funds were received. Upon completion of the project, all remaining income, interest, or other revenues shall be returned to the Department.

5. No release of Project funds made available by the Department shall be made prior to satisfaction of the following:

a. Before any funds made available by the Department pursuant to this Agreement are requested by the County, the County shall agree by resolution to accept future maintenance and other attendant costs occurring after completion of the Project for the portion of the Project on the County system and forward said resolution to the Department.

b. Before any funds made available by the Department pursuant to this Agreement are requested by the County, the County shall certify to the Department that the business entity referred to in paragraph 1 above has secured the necessary permits including but not limited to building permits and initiated construction of the facilities referenced therein. If the County fails to provide such certification to the Department within 180 days after contract execution, the Department may, at its discretion, terminate this Agreement. In the event of such termination, a return of funds in accordance with paragraph 14 below shall be promptly accomplished by the County.

c. No request of funds made available by the Department pursuant to this Agreement shall be made by the County

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prior to verification of invoices, statements or other related documents being duly submitted to the County for pre-audit and approval by the County.

d. Before any funds made available by the Department pursuant to this Agreement are released to the County, the County shall certify that its adopted local government comprehensive plan is in compliance with Chapter 163, Part II, Florida Statute, and that any amendments to the adopted plan related to the transportation projects or business facility have been determined by the Department of Community Affairs to be in compliance with Chapter 163, Part II, Florida Statute.

6. Before any funds made available by the Department pursuant to this Agreement are released to the County, the County shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way has been obtained and meets the definition of right-of-way set forth in Section 334.03(18), Florida Statutes.

7. Funds made available by the Department pursuant to this Agreement shall be expended solely for the purpose of the Project. No such funds shall be used for the purchase of any capital equipment, landscaping, mitigation planting, water and sewer lines, for any legal action against the Department, or for the administration of the project fund or costs associated with preparation of the application.

a. Funds may not be used for the purpose of

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lobbying the legislature or a state agency per Section 216.347, Florida Statutes.

8. As an inducement to the transfer of funds referred to in paragraph 3 above, the County grants the assurances that, if initiated, the Project will be carried through to its completion and will not require the expenditure of any additional funds from the Department. The County shall be liable for all cost overruns on the Project.

9. The County agrees to design and construct the Project in accordance with standards promulgated by the Florida Department of Transportation (DOT) in accordance with Section 336.045 Florida Statutes, and to provide certification of same to the Department upon completion of the Project. Such certification shall be provided by a professional engineer registered in Florida who shall certify that all design and construction for the Project is in substantial conformance with the standards established by DOT pursuant to Section 336.045, Florida Statutes.

10. Prior to the Department's release of any requested funds, the County shall provide the Department with written notification of its intent to:

a. Award the construction of the transportation project to the lowest and best bidder in accordance with applicable state and federal statutes and rules and regulations. The County shall then submit a copy of the bid tally sheet(s) and awarded bid contract, or

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b. Construct the transportation project utilizing existing County employees, if the County can complete said project within the time frame in paragraph 13.

11. The County is encouraged to utilize "minority business enterprises," as defined in Section 288.703, Florida Statutes, as subcontractors or sub-vendors when permitted under this Agreement and to report to the Department all such usage.

a. VENDOR'S RIGHTS. Vendors providing goods and services to an agency should be aware of the following time frames. Upon receipt, an agency has five (5) working days to inspect and approve the goods and services, unless the bid specifications, purchase order or contract specifies otherwise. An agency has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date of the invoice is received or the goods or services are received, inspected or approved. If a payment is not available within 40 days, a separate interest penalty of .0333 percent per day will be due and payable, in addition to the invoice amount, to the vendor. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than one (1) dollar will not be enforced unless the vendor requests payment. Invoices which have to be returned to a vendor because of vendor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the agency. A Vendor

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Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment (s) from a state agency. The Vendor Ombudsman may be contacted at (904) 488-2924 or by calling the State Comptroller's Hotline, 1-800/848-3792.

12. The County further agrees:

a. To maintain books, records, documents and other evidence according to generally accepted governmental accounting principles, procedures and practices which sufficiently and properly reflect all costs of any nature incurred by the County in the performance of this Agreement and to retain said books, records, documents and other evidence for a period of three (3) years after termination of this Agreement.

b. That aforesaid records, books, documents and other evidence shall be subject at all times to inspection, review or audit by State personnel of the Office of Auditor General, Office of Comptroller and other State personnel authorized by the Department.

c. To include these aforementioned audit and recordkeeping requirements in contracts and subcontracts thereto entered into by the County with any party for work required in the performance of this Agreement.

d. That three (3) months after the date of execution of this agreement and every three (3) months thereafter, it will provide the Department with a report



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containing a detail of work completed according to the project schedule; a description of any change orders executed; and a budget summary detailing planned expenditures versus actual expenditures; and identification of minority business enterprises used as contractors and subcontractors.

e. That upon termination, it will provide the Department with a certification that the Project has been completed in compliance with the terms and conditions of this Agreement. Further, to provide a report which shall specify (i) the total funds transferred to the County by the Department pursuant to this Agreement; (ii) the total income, interest or other revenues obtained from the investment of said funds; (iii) the total direct Project costs paid from funds made available by the Department pursuant to this Agreement; and (iv) the balance of any unexpended Project funds; (v) the actual amount of the company's capital investment and (vi) the actual number of permanent full-time jobs created by the company.

f. That two (2) years after the company has completed the construction associated with this transportation project, the County will provide the Department with the actual number of new permanent full-time jobs created by the company.

g. To provide copies to the Department of all audit reports made pursuant to Sections 11.45, 125.01(1)(x) and 218.33, Florida Statutes, encompassing any and all Project records and documents made during the term of this Agreement. Said audit reports shall be forwarded by the County to the

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Department upon their completion.

h. The County shall act as an independent contractor and not as an employee of the Department in the performance of this Agreement. The County covenants and agrees that it will indemnify, and hold harmless the Department and all of the Department's officers, agents, and employees from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by the County during the performance of the contract, whether direct or indirect, and whether to any person or property to which the Department, or said parties may be subject to, except that neither the County nor any of its sub-contractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of the Department or any of its officers, agents or employees.

13. Unless terminated earlier, the construction of the transportation project shall commence by September 30, 1994 and be completed on or before September 30, 1996. The Department shall have the immediate option to terminate this Agreement should the County fail to meet either of the above required dates.

14. Upon termination or expiration of this Agreement in any manner, any funds made available by the Department pursuant to this Agreement, that remain unexpended at that time shall be returned to the Department, and investment earnings, realized pursuant to paragraph 4 above, shall also be

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returned to the Department.

15. Any Project funds made available by the Department pursuant to this Agreement which are determined by the Department to have been improperly expended by the County in violation of this Agreement or other applicable law or regulation shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications required or permitted to be filed by the County shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.

16. This Agreement may be terminated by the Department in the event the County fails to perform or honor the requirements and provisions of this Agreement, upon no less than 24 hours notice in writing delivered by certified mail, return receipt requested, or in person with proof of delivery. In the event of such termination, a return of funds in accordance with paragraphs 14 and 15 above shall be promptly accomplished by the County.

17. In the event the County desires to modify any of the terms and conditions of this Agreement, the County shall make such request for modification in writing to the Department at anytime during the term of this Agreement. However, where the request for modification relates to changes in the project commencement and/or project completion dates, such request must be received by the Department prior to the expiration of the requested date change.

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If the request for modification of the commencement or completion date is made after the expiration of the requested date change, the Department shall have the option to terminate this Agreement prior to the end of the term as stated in paragraph 2 above.

18. By the execution hereof, the parties covenant that the provisions of this Agreement have been duly approved and signatories hereto are duly authorized.

19. This Agreement is executed in duplicate originals.

IN WITNESS WHEREOF, the parties hereto have caused their hands and seals to be set to this eleven (11) page Agreement the day and year first above written by their respective officials thereunto duly authorized.

STATE OF FLORIDA  
DEPARTMENT OF COMMERCE  
DIVISION OF ECONOMIC DEVELOPMENT

COUNTY COMMISSION  
COUNTY OF ST. JOHNS, FLORIDA

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_