

RESOLUTION NO. 2008- 144

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS OF A HOLD HARMLESS AGREEMENT BETWEEN ST. JOHNS COUNTY AND CITY OF ST. AUGUSTINE BEACH AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY.

RECITALS

WHEREAS, the County right-of-way of 16th Street is located with the limits of the City of St. Augustine Beach; and

WHEREAS, the City of St. Augustine Beach ("City") has requested permission to install and maintain certain landscape related improvements within the County right-of-way of 16th Street; and

WHEREAS, adoption of this Resolution will allow the City to install and maintain the improvements within the right-of-way and the City has executed a Hold Harmless Agreement, attached hereto as Exhibit "A", incorporated by reference and made a part hereof, to indemnify and hold the County harmless from damages and expenses which may be incurred as a direct or indirect result of such installation, maintenance or construction of the improvements.

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

Section 1. The above recitals are incorporated by reference into the body of this Resolution as findings of fact.

Section 2. The Board of County Commissioners of St. Johns County hereby approves the terms of the Hold Harmless Agreement and authorizes the County Administrator to execute said Agreement.

Section 3. The Clerk is instructed to record the original Hold Harmless Agreement in the Official Records of St. Johns County, Florida.

PASSED AND ADOPTED this 27th day of May, 2008.

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

By *Thomas G. Manuel*
Thomas G. Manuel, Chairman

ATTEST: Cheryl Strickland, Clerk
Pam Halteman
Deputy Clerk

RENDITION DATE 5/29/08

Exhibit "A" to Resolution

HOLD HARMLESS AGREEMENT

This Agreement is made and entered into this ____ day of _____, 2008, by and between:

St. Johns County, Florida, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32095 ("County"); and

City of St. Augustine Beach, Florida, a municipal corporation, whose address is 2200 A1A South, St. Augustine, Florida 32080 ("City")

Recitals

WHEREAS, the City will install certain landscape related improvements which are required to be located within lands which have been conveyed to the County as rights-of-way known as 16th Street located in St. Johns County, Florida, being more particularly described as the west 400 feet of the south 20 feet of 16th Street lying east of Old Beach Road ("County's Right-of-Way"); and

WHEREAS, the improvements which are and may be constructed within the County's Right-of-Way include landscaping and other related improvements (collectively the "Right-of-Way Improvements"); and

WHEREAS, upon completion of the construction of the Right-of-Way Improvements, the City shall have the responsibility for their maintenance, repair and replacement; and

WHEREAS, the County has agreed to allow the Right-of-Way Improvements to be installed, constructed or maintained within the County's Right-of-Way only if the City agrees to indemnify and hold the County harmless, to the extent permitted by Florida law, from damages and expenses which may be incurred as a direct or indirect result of such installation, maintenance or construction of the Right-of-Way Improvements and certain other conditions.

NOW, THEREFORE, based upon good and valuable consideration and mutual covenants of the parties, the receipt of which and sufficiency of which is hereby acknowledged, the City and the County agree as follows:

Section 1. Recitals. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Agreement.

Section 2. Right-of-Way Utilization. The City may place, construct and/or maintain or cause to be placed, constructed and/or maintained the Right-of-Way Improvements in the Right-of-Way under the terms and conditions contained herein. The

cost of maintenance, repair or replacement of any Right-of-Way Improvements shall be paid by the City.

Section 3. Indemnification. To the extent permitted by Florida law, the City agrees to protect, defend, indemnify and hold the County, its tenants, elected officials, officers, employees and agents, free and unharmed from and against any, and all, third party (including employees of the City and its contractors and subcontractors) claims, liability, losses and /or cause of action, which may arise from any negligent act or omission of the City staff, employees or agents (including court costs and reasonable attorneys' fees) associated with or connected with the use of the County's right-of-way by the City, and its contractors, including ingress and egress thereto.

Section 4. Covenant with Land. This Agreement shall touch and concern the land and shall be a covenant running with the fee interest underlying the County's Right-of-Way, whether in existence on the date hereto or constructed in the future.

Section 5. Sovereign Immunity. The County agrees that nothing in this Agreement shall constitute or be considered as a waiver of the City's limitation or liability contained in Section 768.28 Florida Statutes, or obligate the City to hold the County harmless in excess of that permitted by Florida law.

Section 6. Severability. If any word, phrase, sentence, part, subsection, section or other portion of this Agreement, or any application thereof, to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion or the proscribed application thereof, shall be severable, and the remaining portion of this Agreement, and all applications thereof, not having been declared void, unconstitutional or invalid shall remain in full force and effect.

Section 7. Governing Law and Venue. This Agreement shall be constructed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

Section 8. Procedure for Achieving Assignment. In light of the scope and rationale for this Agreement, neither the County, nor the City may assign, transfer and/or sell any of the rights noted in this Agreement without the express written approval of the other party. Should either County or the City, assign, transfer or sell any the rights of the Agreement without such prior express written approval of the other party, then such action on the part of either the County or the City, shall result in the automatic termination of this Agreement, without further notice or action required on the part of the other party.

Section 9. Amendments to Agreement. Both the County and the City acknowledge that this Agreement constitutes the complete agreement and understating of both parties. Both the County and the City acknowledge that any amendments to this

Agreement shall be in writing and shall be executed by duly authorized representatives of both the County and the City.

Section 10. Access to Records. The access to, disclosure, non-disclosure or exemption of records, data, documents and materials associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes).

IN WITNESS WHEREOF, the County and the City have caused these presents to be executed on the day and year first written above.

Signed, sealed and delivered
in our presence as Witnesses:

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

(sign) _____
(print) _____

By: _____
Its _____

(sign) _____
(print) _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____ as _____ of St. Johns County, Florida, a political subdivision of the State of Florida, on behalf of the County, who is personally known to me or has produced _____ as identification.

Notary Public
My Commission Expires: _____

Signed, sealed and delivered
in our presence as Witnesses:

City of St. Augustine Beach,
Florida

(sign) _____
(print) _____

By: _____
Its _____

(sign) _____
(print) _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____ as _____ of City of St. Augustine Beach, Florida, on behalf of the City, who is personally known to me or has produced _____ as identification.

Notary Public
My Commission Expires: _____