

RESOLUTION NO. 2010-277

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF AN ADOPT-A-PARK AGREEMENT BETWEEN PONTE VEDRA BEACH PARK AT LIBRARY BOULEVARD, INC. AND ST. JOHNS COUNTY, FLORIDA, AND AUTHORIZING THE COUNTY ADMINISTRATOR OR DESIGNEE TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY

WHEREAS, in June of 2003, **Ponte Vedra Beach Park At Library Boulevard, Inc. ("PVBPALBI")**, a not-for-profit corporation entitled to do business in the State of Florida, was established for the purpose of raising funds for the completion of Bird Island Park ("Park") and supplemental funding for continued maintenance of the Park and community education programs to held within the Park; and

WHEREAS, the Park represents Florida's four (4) ecosystems including coastal dunes, an upland hammock, a freshwater marsh, a pond and rookery; and

WHEREAS, the Park, which is approximately 4.2 acres, includes a hiking trail, art sculptures, mazes, reflecting and viewing areas, and

WHEREAS, the Park allows visitors to observe, learn and enjoy native plants and wildlife; and

WHEREAS, on November 22, 2004, St. Johns County, a political subdivision of the State of Florida ("**County**") and **PVBPALBI** entered into a five (5) year agreement governing their individual responsibilities and obligations during design, development and construction of the Park; and

WHEREAS, on March 8, 2010, the **County** and **PVBPALBI** (collectively "Parties") mutually agreed to extend the duration of the five (5) year agreement until June 1, 2010 to allow for completion of the Park; and

WHEREAS, initial construction of the Park is complete; and

WHEREAS, it is the Parties' desire to maintain this intergenerational, passive Park for the community at-large, where children and adults will enjoy being outdoors in a natural environment; and

WHEREAS, this Agreement governs on-going maintenance of the Park and, among other things, sets forth the duration; the terms and provisions; and the Parties' individual duties and obligations.

WHEREAS, the **County** has determined that by entering into this Agreement with **PVBPALBI**, a public purpose is served.

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 into the body of this Resolution and such Recitals are adopted as findings of fact.
- Section 2. The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of the Adopt-A-Park Agreement between St. Johns County, Florida, and Ponte Vedra Beach Park At Library Boulevard, Inc., governing on-going maintenance of Bird Island Park, and authorizes the County Administrator to execute the Agreement on behalf of St. Johns County.
- Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, and/or context of this Agreement, then this Agreement may be revised without the subsequent approval of the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 7th day of December, 2010.

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

By: _____

Chair

ATTEST: Cheryl Strickland, Clerk

By: Ram Halterman
Deputy Clerk

RENDITION DATE 12/15/10



**ADOPT-A-PARK AGREEMENT
BETWEEN ST. JOHNS COUNTY FLORIDA
AND PONTE VEDRA BEACH PARK AT LIBRARY
BOULEVARD, INCORPORATED**

THIS AGREEMENT ("Agreement") between **St. Johns County, Florida**, a political subdivision of the State of Florida, by and through its **Board of County Commissioners** ("**County**"), and **Ponte Vedra Beach Park At Library Boulevard, Incorporated** ("**PVBPALBI**"), a not-for-profit corporation entitled to do business in the State of Florida, is entered into on the _____ day of _____, 2010.

RECITALS

WHEREAS, in June 2003, **PVBPALBI** was formed and established for the purpose of raising funds for the design, development and creation of a park on certain undeveloped land situated behind the Ponte Vedra Beach Library, which is located in St. Johns **County** ("**Park**"); and

WHEREAS, in November 2004, the **County** and **PVBPALBI** (collectively "the Parties") expressed their mutual desire to create an intergenerational, passive park for the community at-large, where children and adults could observe, learn and enjoy being outdoors in a natural environment; and

WHEREAS, the Board of **County** Commissioners ("**Board**"), reviewed the scope, conceptional design and purpose of the proposed Park and found that the creation of such a park served a public purpose; and

WHEREAS, on November 22, 2004, the Parties entered into a five (5) year agreement governing their individual responsibilities and obligations during design, development and construction of the Park; and

WHEREAS, on March 8, 2010, the Parties mutually agreed to extend the duration of the five (5) year agreement until June 1, 2010 to allow for completion of the Park; and

WHEREAS, initial construction of the Park is complete; and

WHEREAS, this Agreement governs on-going maintenance of the Park and, among other things, sets forth the duration; the terms and provisions; and the Parties' individual duties and obligations.

NOW THEREFORE, the **County** and **PVBPALBI** hereby mutually enter into this Agreement under the terms and conditions set forth below:

Section I. Effect of Recitals.

The above Recitals are incorporated by reference into the body of this Agreement, and such Recitals are adopted as findings of fact.

Section II. Duration.

The duration of this Agreement runs from the _____ day of _____, 2010 through the _____ day of _____, 2015. **PVBPALBI** may request up to a five (5) year extension of this Agreement by submitting a written request to the **County** Administrator by no later than the _____ day of _____, 2015. Pursuant to **PVBPALBI's** written request for an extension of this Agreement, the **County** may approve the request for a period of up to, but no longer than, five (5) years.

Section III. Public Purpose.

The **County** recognizes that by entering into this Agreement with **PVBPALBI**, a public purpose is served, and the Parties' mutual interests are served in the following ways:

1. Residents and visitors of the **County** will receive an informative, educational experience by visiting the Park.
2. The **County**, along with **PVBPALBI**, seeks to provide an aesthetically pleasing and intergenerational experience for persons availing themselves of the Park.

Section IV. Duties/Obligations.

1. **PVBPALBI** shall raise funds and/or engage in fundraising activities in accordance with all applicable local, State and federal provisions governing fundraising activities by a United States Internal Revenue Code, Section 501(c)(3), not-for-profit corporation, whether for a specific or a general purpose.
2. **PVBPALBI** shall raise funds and/or engage in fundraising activities in a manner consistent with its Articles of Incorporation and By-laws.
3. **PVBPALBI** shall provide to the **County** a quarterly report of funds raised and fundraising activities.
4. **PVBPALBI** shall obtain express approval by the **County** prior to conducting any additional construction and prior to installing any additional features in the Park.
5. The **County** shall provide routine maintenance of the Park including but not limited to weekly mowing, weeding, lawn debris removal, trash pick-up and bi-monthly pressure washing of the boardwalk. Any maintenance beyond routine maintenance of the Park shall be deemed an extraordinary maintenance project.
6. The **County** shall coordinate with **PVBPALBI** to develop an annual estimated budget for extraordinary maintenance projects of the Park. Such budget will identify budget items to be paid by **PVBPALBI** through fund raising efforts and contributions.
7. The **County's** cost for on-going routine maintenance of the Park will be determined based upon the St. Johns Parks and Recreation Department's usual

and customary routine maintenance costs for a standard park located in St. Johns **County** and the budget will be incorporated into the Parks and Recreation Department's operating budget. Any funds exceeding such usual and customary routine maintenance costs required to maintain the Park shall be contributed by **PVBPALBI**. The Parties shall identify and develop the annual estimated budget for such extraordinary maintenance projects during the County's annual budget process for the next fiscal year. Contributed funds from PVBPALBI will be due at the start of the fiscal year. Projects, however, may also be approved by the Board during the fiscal year. Contributed funds will be due upon the Board's approval of the maintenance project.

8. The **County** shall maintain a separate project account in Department #0080 for the purpose of receiving and expending funds donated by **PVBPALBI** for the express purpose of maintaining the Park. The account shall exclude any interest earnings.
9. The **County** Parks and Receptions Department shall provide to **PVBPALBI** a quarterly donated funds project expenditure report.
10. At the end of each fiscal year, or upon completion of identified annual extraordinary maintenance projects, whichever occurs sooner, the **County** shall return to **PVBPALBI** any unexpended donated funds..

Section V. Title and Control.

Title and control of the real property on which the Park is located shall remain with the **County**. Title and control of any materials, services and/or items purchased (by either the **County** or by **PVBPALBI**) with donated funds and used for the express purpose of maintaining the Park shall remain with the **County**. Title and control of any personal property, including but not limited to unattached furniture, materials, fixtures, and stationary structures placed on in the Park shall remain with the **County** immediately upon placement in the Park.

Section VI. Relationship of the Parties.

PVBPALBI is, and shall be, in the performance of all fundraising activities and activities under this Agreement, a separate independent entity, and not an employee, agent, official, or servant of the **County**. As such, neither **PVBPALBI**, nor any employees, agents, officers, contractors nor sub-contractors of **PVBPALBI** are eligible for any benefits afforded employees, or officials of the **County**. **PVBPALBI** shall exercise control over the means and manner in it performs this Agreement. **PVBPALBI** does not have the power or authority to bind (legally or equitably), in any manner whatsoever the **County** in any promise, agreement or representation other than as specifically provided for in this Agreement.

Section VII. No Liability on the Part of the County.

In addition and supplemental to any other provisions contained in this Agreement, **PVBPALBI** specifically acknowledges and agrees that the **County** shall have no liability to **PVBPALBI** with respect to any activities associated with maintenance of the Park, **provided that** nothing in this Section shall limit or replace any liability the **County** would otherwise have under applicable law for activities taking place on land owned by the **County**.

Section VIII. Indemnification.

To the extent permitted by law, the **PVBPALBI** shall indemnify, and hold harmless the **County**, its officials, agents, servants and employees from, and against, any, and all, claims, liabilities, which may arise from any negligent act or omission on the part of the **PVBPALBI**, or its agents or representatives, to the extent that such negligent act or omission is connected with the Duties and Obligations detailed in this Agreement.

Section IX. No Commitment of County Funds.

While the **County**, in accordance with standards outlined elsewhere in this Agreement, will make all reasonable efforts to provide funds needed to maintain the Park; the **County** makes no express commitment to provide such funds in any given County fiscal year. Moreover, it is expressly noted that the **PVBPALBI** cannot demand that the **County** provide any such funds in any given County fiscal year.

Section X. Assignments.

In light of the nature and rationale for this Agreement, **PVBPALBI** may not add, transfer or sell any rights arising from this Agreement without express consent and written approval by the **County**. In the event **PVBPALBI** assigns, transfers or sells any rights arising from this Agreement without such express consent and written approval, this Agreement shall terminate absent any further notice or action by the **County**.

Section XI. Termination of this Agreement.

This Agreement may be terminated by the **County** for cause for the following reasons:

1. Failure by **PVBPALBI** to maintain its status as an exempt organization under Section 501(c)(3) of the Internal Revenue Code; or
2. Assignment by **PVBPALBI** of this Agreement without prior express consent and written approval by the **County**; or
3. Failure by **PVBPALBI** to comply with any obligation noted in this Agreement.

Except for assignment of this Agreement as set forth above, prior to termination for cause, the **County** shall provide written notice to **PVBPALBI** of the specific violation of this Agreement or circumstance that provides justification and/or grounds for such termination. Such written notice shall further indicate the **County's** intent to terminate this Agreement thirty (30) days from the date of the notice of termination, unless

PVBPALBI cures the violation or circumstance or unless **PVBPALBI** satisfactorily demonstrates to the **County** that the violation or circumstance is inapplicable as applied to **PVBPALBI**.

This Agreement may be terminated by **PVBPALBI** for cause for the following reasons:

1. Failure by the **County** to maintain the donated funds in a separate **County** project account; or
2. Failure by the **County** to use **PVBPALBI** donated funds for the express purpose of maintaining the Park in accordance with standards set forth in this Agreement.

This Agreement may be terminated without cause upon either the **County** or **PVBPALBI** providing at least thirty (30) days advanced, written notice to the other party of such termination without cause. Consistent with other provisions in this Agreement, the **County** shall return to **PVBPALBI** any unexpended donated funds.

Section XII. Complete Agreement; Amendments to this Agreement.

The **County** and **PVBPALBI** acknowledge that this Agreement, along with any attachments and incorporated exhibits or documents, constitutes the Parties' complete agreement of understanding. Any changes, modifications, revisions, extensions, renewals or other amendments to this Agreement by the **County** and by **PVBPALBI** shall be in writing, and shall be executed by duly authorized representatives of both the **County**, and **PVBPALBI**.

Section XIII. Access to Records.

The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials associated with this Agreement, shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State or Federal law. Access to such public records may not be blocked, thwarted and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

Section XIV. Review of Records.

As a condition of entering into this Agreement, and to ensure compliance, especially as it relates to any applicable law, rule, regulation and/or policy, **PVBPALBI** authorizes the **County** to examine, review and inspect the records of **PVBPALBI** in order to determine whether compliance has been achieved with respect to the terms, conditions, provisions, rights and responsibilities noted in this Agreement. It is specifically noted and understood that **PVBPALBI** is under no duty to provide access to documentation not related to this Agreement, and/or otherwise protected by applicable Local, State or Federal law.

Section XV. Headings.

All sections and descriptive headings of sections noted in this Agreement are inserted for the convenience of the Parties only, and shall not affect and/or control the interpretation of this Agreement.

Section XVI. 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 portions of this Agreement, and all applications thereof not having been declared void, unconstitutional or invalid shall remain in full force and effect.

Section XVII. Compliance with Local, State, and Federal Rules, Regulations, and Laws.

Both the **County** and **PVBPALBI** shall abide by, and comply with, all applicable laws, rules, regulations, orders, and policies of the local, State, and Federal governments.

Section XVIII. Governing Law and Venue.

This Agreement shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal arising under this Agreement shall be in **St. Johns County, Florida**.

Section XIX. Notices.

All Official Notices to the **County** shall be delivered either by hand (receipt of delivery required), or by certified mail to:

**County Administrator
500 San Sebastian View
St. Augustine, FL 32084**

All Official Notices to the **PVBPALBI** shall be delivered either by hand (receipt of delivery required), or by certified mail to:

**Suzanne Egelin
1050 A1A North
Ponte Vedra Beach, FL 32082**

All other correspondence, not classified as Official Notices, may be delivered, disseminated, and/or submitted by any means acceptable to both parties, specifically including, faxing, e-mailing, or text messaging.

Section XX. Survival.

It is explicitly noted that the following provisions of this Agreement, to the extent necessary, shall survive any suspension, termination, cancellation, revocation, and/or non-renewal of this Agreement, and therefore shall be both applicable and enforceable beyond any suspension, termination, cancellation, revocation, and/or non-renewal: (1) Section III; (2) Section V; (3) Section VI; (4) Section VII; (5) Section VIII; (6) Section IX; (7) Section X; (8) Section XIII; (9) Section XIV; (10) Section XVII; (11) Section XVIII; and (12) Section XIX.

IN WITNESS WHEREOF, the parties have set their hands and seals as of this _____ day of _____, 2010.

ST. JOHNS COUNTY

PVBPALBI

By: _____

By: _____

ATTEST:

WITNESS:

Cheryl Strickland, Clerk of Courts

Deputy Clerk