

RESOLUTION NO. 2013- 103

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING ISSUANCE OF A PERMISSIVE USE AGREEMENT ALLOWING A PROPERTY OWNER TO CONDUCTION ROUTINE MAINTENANCE WITHIN AN UNOPENED RIGHT-OF-WAY, AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY.

RECITALS

WHEREAS, St. Johns County ("the County") does not typically enter upon unopened right-of-ways to conduct routine maintenance such as to remove fallen trees, to pick up debris or to trim brush; and

WHEREAS, the County, to the extent that it has any ownership interest in such right of ways, and subject to the terms and conditions contained in a Permissive Use Agreement, may grant County residents permission to enter these unopened right of ways for the limited purpose of conducting routine maintenance such as removing fallen trees and debris and trimming brush; and

WHEREAS, a property owner along an unopened right-of-way of Oak Street has requested permission to enter upon the property to remove a fallen tree and trim brush as needed; and

WHEREAS, entering into an agreement to allow for routine maintenance of the unopened right of way described above subject to the terms and conditions contained in the proposed Permissive Use Agreement attached hereto and incorporated herein would serve a public purpose.

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 material terms and conditions contained in the Permissive Use Agreement attached hereto and incorporated herein, and authorizes the County Administrator to execute an agreement in substantially the same format on behalf of the County.

Section 3. The Clerk is instructed to file the original, executed Permissive Use Agreement in the public records of St. Johns County, Florida.

Section 4. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida this 7 day of May, 2013.

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

By: _____

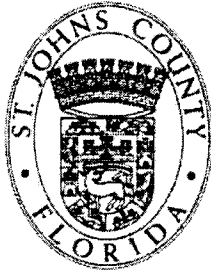
John H. Morris
John H. Morris, Chair

ATTEST: Cheryl Strickland, Clerk

By: *Pam Halterman*
Deputy Clerk



RENDITION DATE 5/9/13



PERMISSIVE USE AGREEMENT

THIS PERMISSIVE USE AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 2013, by and between **St. Johns County**, a political subdivision of the State of Florida, whose mailing address is 500 San Sebastian View, St. Augustine, Florida 32084, hereinafter referred to as "COUNTY", and **Robert Urda**, whose mailing address is 214 Third Street, St. Augustine, Florida 32084.

For and in consideration of the mutual promises contained herein, and the sum of One Dollar (\$1.00) cash in hand paid by Robert Urda to the COUNTY, receipt of which is hereby acknowledged, and further consideration as herein provided, the COUNTY and Robert Urda agree as follows:

Article 1. Use.

The COUNTY, to the extent that the County possesses any ownership interest and subject to the conditions herein expressed, does hereby grant to Robert Urda the non-exclusive privilege and license to enter upon the property location described in Exhibit A ("Property"), attached hereto and incorporated herein, for the purpose of removing now fallen trees and underbrush; trimming tree branches; and cutting down trees no larger than 4" in diameter. The non-exclusive privilege and license herein granted is to be exercised in accordance with all applicable local, state and federal laws together with all rules, regulations and directives governing such use.

Article 2. Duration.

This Agreement shall be effective upon the date of full execution by the parties hereto ("Effective Date"). This Agreement may be terminated upon the County providing at least thirty (30) days advance notice to Robert Urda of such notice of termination. Such notification shall indicate that the County intends to terminate this Agreement thirty (30) days from the date of notification, unless a date greater than thirty (30) days is specified.

Article 3. Restriction.

A. The non-exclusive privilege and license granted in this Agreement shall be exercised solely by Robert Urda (inclusive of his officers, agents, invitees, guests, servants and/or employees) at the subject Property described herein and upon no other property unless prior written consent is provided by the COUNTY.

B. No rights or property interests are granted to or created in Robert Urda by this Agreement except as otherwise provided herein. The non-exclusive privilege and

license granted by the COUNTY under the terms, conditions and provision of this Agreement is granted only as an accommodation to Robert Urda.

Article 4. Assignment.

Robert Urda shall not assign, transfer, sell or otherwise convey any right, license or privilege noted in this Agreement, or associated with this Agreement, without prior written approval by the COUNTY. Should Robert Urda assign, transfer, sell, and/or otherwise convey any of the rights, licenses or privileges of this Agreement, without such prior written approval by the COUNTY, then such action on the part of Robert Urda shall result in the automatic termination of this Agreement and revocation of all privileges and licenses contained herein without further notice or action required on the part of the COUNTY.

Article 5. Indemnification.

Robert Urda hereby agrees to indemnify, defend and hold harmless the COUNTY, its officers, agents and employees, from and against all claims of whatever nature arising from or associated with any act, omission or negligence attributable to Robert Urda arising from any accident, injury or damage whatsoever caused to any person or to the property (real and/or personal) of any person during the term of this Agreement occurring on or about the property where such accident, damage or injury results or is claimed to have resulted from any act or omission on the part of Robert Urda, or his officers, agents invitees, guests, servants and/or employees. This indemnity and hold harmless agreement shall include indemnity against all costs and expenses, including reasonable attorney fees incurred in or in connection with any such claim or proceeding brought thereon and the defense thereof.

Article 6. Environmental.

Robert Urda shall not install, use, generate, store, locate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit, or dispose of Hazardous Substances in, upon, under, over or from the subject property in violation of any federal, state, or local law, statute, regulation, ordinance, rule, code, or order relating to human health or the environment ("Environmental Regulation"). Hazardous Substance means (i) any substance defined as a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or under Florida law including, but not limited to, regulations promulgated by the Florida Department of Environmental Protection; (ii) petroleum, petroleum products and by products, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas; and (iii) any other substance or material now or in the future deemed to be hazardous, dangerous, toxic, or a pollutant or contaminant under any Environmental Regulation. Robert Urda shall indemnify, defend and hold harmless the COUNTY, its officers, agents and employees from and against any claim, damage or expense arising out of Robert Urda's breach of this obligation.

Article 7. Permits and Licenses.

To the extent that Robert Urda is required by local, state and/or federal authority to secure and maintain any permits, certifications, licenses or approvals associated with the privilege and license granted in this Agreement, then Robert Urda shall be responsible for securing and maintaining such permit, certification, license or approval at his sole expense.

Article 8. Entire Agreement and Amendment.

It is expressly understood and agreed that this Agreement sets forth all the covenants, agreements, terms and conditions between the parties and that there are no other oral or written agreements between them. It is further understood that no subsequent amendments, alterations or additions to this Agreement shall be binding upon the parties hereto unless reduced to writing and executed by duly authorized representatives of each party.

Article 9. 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 action arising under this Agreement shall be in St. Johns County, Florida.

Article 10. Severability.

If any word, phrase, sentence, part, subsection, section or other portion of this Agreement is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, subsection or other portion shall be severable and the remaining portions of this Agreement not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

IN WITNESS WHEREOF, authorized representatives of the COUNTY, and CONTRACTOR have executed this Contract on the day and year below noted.

COUNTY

Robert Urda

Signature – County Representative

Signature

Printed Name & Title

Date of Execution

Date of Execution

Legal Review by:

Assistant County Attorney

EXHIBIT A

Property Legal Description

The East half (E1/2) of an unopened portion of Oak Street lying between Lot 16, Block 4 and Lot 2, Block 5, North Beach Subdivision, as recorded in Map Book 3, page 28, of the public records of St. Johns County, Florida.