

RESOLUTION NO. 2015- 131

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF A MULTI-USE TRAIL PLANNING STUDY REIMBURSEMENT AGREEMENT BETWEEN ST. JOHNS COUNTY AND THE FLORIDA DEPARTMENT OF TRANSPORTATION AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF ST. JOHNS COUNTY.

WHEREAS, St. Johns County and the Florida Department of Transportation desire to enter into Multi-Use Trail Planning Study Reimbursement Agreement ( FPN: 435791-1-18-01); and

WHEREAS, the County has reviewed the terms, provisions, conditions, and requirements of the Multi-Use Trail Planning Study Reimbursement Agreement ( FPN: 435791-1-18-01); and

WHEREAS, the County has determined that the terms of the Multi-Use Trail Planning Study Reimbursement Agreement will serve the best interests of the County.

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 and such Recitals are adopted as findings of fact.

Section 2. The County Administrator, or designee, is hereby authorized to execute the Multi-Use Trail Planning Study Reimbursement Agreement ( FPN: 435791-1-18) - with the State of Florida Department of Transportation.

Section 3. 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 5<sup>th</sup> day of, May 2015.

BOARD OF COUNTY COMMISSIONERS OF  
ST. JOHNS COUNTY, FLORIDA

Attest:

Pam Halterman  
Deputy Clerk

By:

Priscilla L Bennett, Chair

RENDITION DATE 5/7/15



**REIMBURSEMENT AGREEMENT**

**THIS REIMBURSEMENT AGREEMENT** ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department"), and St. Johns County, Florida ("Agency").

**-RECITALS-**

1. The parties mutually agree that it is in their best interest for the Agency to conduct a planning study regarding the need for the construction of a multi-use trail from St. Augustine to Ponte Vedra, St. Johns County, Florida ("Planning Study"), as more particularly described in **Exhibit "A" (Scope of Services)**; and
2. The Department shall fund the Planning Study; and
3. The Department's ability to fund the Planning Study is wholly contingent on appropriation of funds to the Department; and
4. The Agency shall conduct the Planning Study; and
5. The Agency, by Ordinance/Resolution No. \_\_\_\_\_, a copy of which is attached and incorporated herein by reference, has authorized its officers to execute this Agreement on its behalf; and

**NOW THEREFORE**, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound, acknowledge and agree as follows:

**ATTACHMENTS:** Exhibit(s) **A, B** are attached and made a part of this Agreement.

**1. RECITALS AND EXHIBITS**

The above recitals and attached **Exhibits** are specifically incorporated by reference and made part of this Agreement.

**2. EFFECTIVE DATE**

The effective date of this Agreement shall be the date the last of the parties to be charged executes the Agreement.

**3. TERM**

The Agency shall complete the Planning Study on or before **December 31, 2016**. If the Agency does not complete the Planning Study within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this agreement. Expiration of this agreement will be considered termination of the Planning Study. The cost of any work performed after the expiration date of this agreement will not be reimbursed by the Department."

**4. E-VERIFY**

The Agency (A) shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the contract; and (B) shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

**5. COMPLIANCE**

The Agency shall perform the Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions hereof and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards, specifications and permits, as the same may be constituted and amended from time to time,

including, without limitation, those of the Department, Water Management District with requisite jurisdiction, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard and local governmental entities ("Governmental Law").

## **6. PERMITS**

In the performance of the Agreement the Agency may be required to obtain one or more Department permits which may include copies of the Agreement as an exhibit. Notwithstanding the inclusion or incorporation of the Agreement as part of any such Department permits, the Agreement shall remain separate and apart from such permits and shall not be merged into the same absent the prior written express consent of the Department. Should any term or provision of the Agreement conflict with any term, provision or requirement of any Department permit, the terms and provisions of the Agreement shall control unless specifically noted otherwise in any such Department permit. For purposes of this Agreement, the term "permit" shall also include the Department's Construction Agreement which may be required for permanent improvements installed within the Department's right-of-way.

## **7. PLANNING STUDY FUNDING AND AUDITS**

A. The Department's maximum participation shall match the Agency's expenditures up to an amount not to exceed **One hundred fifty thousand dollars (\$150,000.00)** "Maximum Participation Amount". The Agency agrees to bear all expenses in excess of the Department's maximum participation of **One hundred fifty thousand dollars (\$150,000.00)** as outlined in **Exhibit "B" (Schedule of Funding)** and any deficits involved.

The Agency shall submit one invoice plus supporting documentation (via Email) required by the Department to the Project Manager for approval and processing quarterly.

1. The Agency shall submit all invoices to Kim Evans, District Local Programs Administrator, MS 2014, 1109 South Marion Avenue, Lake City, Florida 32025 for payment to the Department immediately upon receipt.

2. The Parties agree that at such time as the Department has expended its Maximum Participation Amount, the Agency shall bear all expenses in excess of the Maximum Participation Amount from that point forward.

B. Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit. Specifically the Agency shall be required to comply as follows:

**RECORDS RETENTION:** The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of at least five (5) years from the date the audit report is issued, and shall allow the Department, or its designee, CFO, or Auditor General access to such records upon request. The Agency shall ensure that audit working papers are made available to the Department, or its designee, CFO, or Auditor General upon request for a period of at least five (5) years from the date the audit report is issued, unless extended in writing by the Department.

## **8. VENDOR'S RIGHTS**

A. Agencies providing goods and services ("Deliverables") to the Department should be aware of the following time frames. Upon receipt, the Department has twenty (20) working days to inspect and approve the Deliverables, unless the Agreement specifies otherwise. The Department 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 the invoice is received or the goods or services are received, inspected and approved.

B. If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to an Agency because of Agency 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 Department.

C. A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for contractor/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

#### **9. PLACEMENT ON CONVICTED VENDOR LIST**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

#### **10. COMPLETION OF THE PLANNING STUDY**

A. If the Agency abandons or, before completion, discontinues the Planning Study, or for any other reason, the commencement, prosecution, or timely completion of the Planning Study by the Agency is rendered improbable, infeasible, impossible, or illegal, the Department will, by written notice to the Agency, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or the Department may terminate any or all of its obligations under this Agreement.

B. Upon final payment to the contractor for the entire Planning Study, the Agency shall, within one hundred eighty (180) days, furnish the Department with two (2) copies of its final and complete billing of all cost incurred in connection with the work performed hereunder, such statement to follow as closely as possible the order of items contained in the job estimate. The final billing shall show the description and site of the Planning Study; the date on which the first work was performed or the date on which the earliest items of billed expense was incurred; the date on which the last work was performed or the last item of billed expense was incurred; and the location where records and accounts billed can be audited. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred includes the Agency's general accounting records and the Planning Study records, together with supporting documents and records, or the contractor and all subcontractors performing work on the Planning Study, and all other records of the contractor and subcontractors considered necessary by the Department for a proper audit of costs.

#### **11. CONTRACTING WITH THIRD PARTIES**

Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract with any third party with respect to the Planning Study or obligate itself in any manner requiring the disbursement of Department funds without the prior written approval of the Department. Failure to obtain such prior written approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves the right to review the qualifications of any contractor and to approve or disapprove the employment of the same.

#### **12. PUBLIC RECORDS**

A. The Agency shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the Agency in conjunction with this Agreement. Specifically, the Agency shall:

(1) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the Agency; and

(2) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in chapter 119, Florida Statutes, or as otherwise provided by law; and

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

(4) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Agency upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

B. The Agency shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of the Agency and shall promptly provide the Department a copy of the Agency's response to each such request. Failure by the Agency to grant such public access shall be grounds for immediate termination of this Agreement by the Department.

### **13. COMPLIANCE WITH ENVIRONMENTAL REGULATIONS**

Execution of this Reimbursement Agreement constitutes a certification by the Agency that the Planning Study will be conducted in conformance with all applicable environmental regulations including the securing of any applicable permits. The Agency will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the Department for any loss incurred as a result of such non-compliance.

### **14. INDEMNIFICATION**

A. The Agency shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the Agency's acts or omissions ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The Agency's duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for the Department's negligence, intentional or wrongful acts, omissions or breach of contract.

B. The Agency shall notify the Department in writing immediately upon becoming aware of any Liabilities. The Agency's obligation to defend, indemnify and hold the Department harmless from any Liabilities, or at the Department's option to participate and associate with the Department in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the Department's written notice of claim for indemnification to the City. The Agency's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

### **15. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY**

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving either party's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Florida Statutes, as the same may be amended from time to time. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's limits of liability set forth in sections 376.305 and 337.27(4), Fla. Stat. (2014).

### **16. GOVERNING LAW**

This Agreement shall be governed in all respect by the laws of the State of Florida.

### **17. INITIAL DETERMINATION OF DISPUTES**

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of the Agreement.

### **18. VENUE AND JURISDICTION**

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of the Agreement that are not resolved to the mutual satisfaction of the parties by the

Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The Agency and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

**19. JURY TRIAL**

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of the Agreement, including, without limitation, damages allegedly flowing therefrom.

**20. ASSIGNMENT**

The Agency shall not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the Department's District Secretary or his/her designee. The Department has the sole discretion and authority to grant or deny proposed assignments of this Agreement, with or without cause. Nothing herein shall prevent the Agency from delegating its duties hereunder, but such delegation shall not release the Agency from its obligation to perform the Agreement.

**21. THIRD PARTY BENEFICIARIES**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

**22. VOLUNTARY EXECUTION OF AGREEMENT**

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in the Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of the Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of the Agreement and executes the Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of the Agreement.

**23. ENTIRE AGREEMENT**

This instrument, together with any exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of the Agreement, and any part hereof, are waived, merged herein and superseded hereby.

**24. EXECUTION OF DOCUMENTS**

The parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the Agreement and shall do all other acts to effectuate the Agreement.

**25. SUFFICIENCY OF CONSIDERATION**

By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in the Agreement and forever waive the right to object to or otherwise challenge the same.

**26. WAIVER**

The failure of either party to insist on the strict performance or compliance with any term or provision of the Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

**27. INTERPRETATION**

No term or provision of the Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

**28. CAPTIONS**

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of the Agreement, or any provision hereof.

**29. SEVERANCE**

If any section, paragraph, clause or provision of the Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of the Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of the Agreement remain enforceable.

**30. COMPUTATION OF TIME**

In computing any period of time prescribed in the Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

**31. MODIFICATION OF AGREEMENT**

A modification or waiver of any of the provisions of the Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

**32. ANNUAL APPROPRIATION / FUNDING**

Pursuant to §339.135(6)(a), Florida Statutes, the Department's obligation to fund construction of the Improvement is contingent upon annual appropriation by the Florida Legislature. This Agreement may be terminated by the Department without liability to the Agency if sufficient funds are not appropriated to the Department. The provisions of §339.135(6)(a), Florida Statutes, are set forth herein verbatim and made part of this Agreement, to wit:

"The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."



Financial Project No.: **435791-1-18-01**

IN WITNESS WHEREOF, the Agency has caused this Agreement, consisting of nine (9) pages, to be executed in its behalf this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the \_\_\_\_\_ County Board of County Commissioners, authorized to enter into and execute same by Ordinance/Resolution Number \_\_\_\_\_ of the Board on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and the Department has executed this Agreement through its District Secretary for District Two, Florida Department of Transportation, this \_\_\_\_\_ day of \_\_\_\_\_,

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

ATTEST: \_\_\_\_\_ (SEAL)  
CLERK

BY: \_\_\_\_\_  
CHAIRMAN, BOARD OF  
COUNTY COMMISSIONERS

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**

ATTEST: \_\_\_\_\_ (SEAL)  
EXECUTIVE SECRETARY

BY: \_\_\_\_\_  
DISTRICT SECRETARY  
DISTRICT TWO

Legal Review:

\_\_\_\_\_

Availability of Funds  
Approval:

\_\_\_\_\_

(Date)

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**EXHIBIT A  
SCOPE OF SERVICES**

This exhibit forms an integral part of that certain Reimbursement Agreement between the State of Florida Department of Transportation and the, Florida, dated \_\_\_\_\_.

**PLANNING STUDY LOCATION:**

The Planning Study will be conducted in St. Johns County, Florida.

**PLANNING STUDY DESCRIPTION:**

The Planning Study will consist of a planning study to determine the need for the construction of a multi-use trail from St. Augustine to Ponte Vedra, St. Johns County, Florida.

**AGENCY RESPONSIBILITIES:**

The Agency shall complete the Planning Study on or before **December 31, 2016**.

The Agency is required to provide a final copy of the Planning Study once the Study is completed.

**SPECIAL CONSIDERATIONS BY DEPARTMENT:**

The following conditions would warrant an administrative action by the Department which may result in termination and closure of the grant award:

- No invoice activity for 6 months, or
- No contract activity for 18 months.

The Honorable Rachael Bennett, Chair St. Johns County BOCC 500 San Sebastian View St. Augustine, Florida 32084	STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION	Financial Project ID: 435791-1-18-01
	REIMBURSEMENT AGREEMENT SCHEDULE OF FUNDING EXHIBIT B	Contract Number:

**PLANNING STUDY DESCRIPTION**

Name: Multi Use Trail Planning Study

Termini: from St. Augustine to Ponte Vedra

Description of Work: a planning study to determine the need for the construction of a multi-use trail from St. Augustine to Ponte Vedra

TYPE OF WORK By Fiscal Year	(1) TOTAL PLANNING STUDY	(2) AGENCY FUNDS	(3) STATE & FEDERAL FUNDS
<b>Design</b>			
<u>2008-2009</u>	_____	_____	_____
<u>2009-2010</u>	_____	_____	_____
<u>2010-2011</u>	_____	_____	_____
Total Design Cost	_____	_____	_____
<b>Right of Way</b>			
<u>2008-2009</u>	_____	_____	_____
<u>2009-2010</u>	_____	_____	_____
<u>2010-2011</u>	_____	_____	_____
Total Right of Way Cost	_____	_____	_____
<b>Construction</b>			
<u>2009-2010</u>	_____	_____	_____
<u>2010-2011</u>	_____	_____	_____
<u>2011-2012</u>	_____	_____	_____
<u>2013-2014</u>	_____	_____	_____
<u>2014-2015</u>	_____	_____	_____
Total Construction Costs	\$ 150,000.00	_____	\$ 150,000.00
	_____	_____	_____
	\$ 150,000.00	_____	\$ 150,000.00
<b>Construction Engineering and Inspection</b>			
<u>2013-2014</u>	_____	_____	_____
<u>2014-2015</u>	_____	_____	_____
<u>2015-2016</u>	_____	_____	_____
<u>2016-2017</u>	_____	_____	_____
Total Construction Costs	_____	_____	_____
<b>Total Cost of Planning Study</b>	_____	_____	_____
	\$ 150,000.00	_____	\$ 150,000.00

The Department's fiscal year begins on July 1. For this Planning Study, funds are not projected to be available until after July 1st each fiscal year. The Department will notify the Agency, in writing, when funds are available.