

RESOLUTION NO. 2022- 38

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF AN AGREEMENT BETWEEN ST. JOHNS COUNTY AND ST. JOHNS COUNTY PARKS FOUNDATION, INC. PROVIDING ONE-TIME FUNDING TO THE FOUNDATION IN THE AMOUNT OF \$120,000; AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF ST. JOHNS COUNTY.

RECITALS

WHEREAS, St. Johns County Parks Foundation, Inc. ("Foundation") is a nonprofit agency with a mission to preserve, protect and enhance parks and recreational facilities within the geographical boundaries of the County by providing leadership in communication, funding, and advocacy; and

WHEREAS, the Foundation solicits, receives, and accepts contributions, gifts, grants, devises, and bequests for the primary purpose of supporting, contributing to and cooperating with the County for the benefit of St. Johns County Parks and Recreation Department; and

WHEREAS, the Foundation has requested funding from the County in the amount of one hundred twenty thousand dollars (\$120,000.00) for the purposes of startup and for the hiring of an executive director to direct and support the Foundation's fundraising efforts; and

WHEREAS, the County has determined that providing the requested funding to the Foundation as a one-time allocation will 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 by reference into the body of this Resolution, and such Recitals are adopted as finds of fact.

Section 2. The Board of County Commissioners of St. Johns County, Florida hereby approves the terms, conditions, provisions, and requirements of the Agreement between St. Johns County, Florida and the St. Johns County Parks Foundation, Inc., and authorizes the County Administrator, or designee, to execute the Agreement on behalf of the County in substantially the form and format as attached.

Section 3. The Clerk is instructed to file the Agreement in the public records of St. Johns County.

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

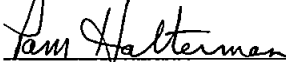
without subsequent approval by the Board of County Commissioners.

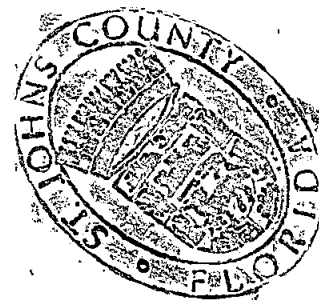
PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 1st day of February, 2022.

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

By: 
Henry Dean, Chair

ATTEST: Brandon J. Patty
Clerk of the Circuit Court and Comptroller

By: 
Deputy Clerk



RENDITION DATE 2/3/22

AGREEMENT

THIS AGREEMENT ("Agreement") is entered this ___ day of _____, 2022, by and between St. Johns County, a political subdivision of the State of Florida ("County"), whose address is 500 San Sebastian View, St. Augustine, Florida 32084, and St. Johns County Parks Foundation, Inc., ("Foundation"), a not-for-profit corporation organized and existing under the laws of the State of Florida, whose address is 780 N. Ponce de Leon Blvd., St. Augustine, Florida 32084 (collectively, the County and Foundation are sometimes referred to as the "Parties" and, individually, sometimes referred to as a "Party").

RECITALS

WHEREAS, the Foundation is a nonprofit agency with a mission to preserve, protect and enhance parks and recreational facilities within the geographical boundaries of the County by providing leadership in communication, funding, and advocacy; and

WHEREAS, the Foundation solicits, receives, and accepts contributions, gifts, grants, devises, and bequests for the primary purpose of supporting, contributing to and cooperating with the County for the benefit of St. Johns County Parks and Recreation Department; and

WHEREAS, the Foundation has requested funding from the County in the amount of one hundred twenty thousand dollars (\$120,000.00) for the purposes of startup and for the hiring of an executive director to direct and support the Foundation's fundraising efforts; and

WHEREAS, the County has determined that providing the requested funding to the Foundation as a one-time allocation will serve a public purpose.

NOW THEREFORE, in consideration of the provisions set forth below and other good and valuable consideration as provided herein, the receipt and sufficiency of which is mutually acknowledged, the County and the Foundation agree as follows:

1. **Incorporation of Recitals.** The above recitals are incorporated into the body of this Agreement and are adopted as findings of fact.
2. **Duration of Agreement.** This Agreement shall be effective upon the latter execution by the Parties (the "Effective Date") and shall terminate on September 30, 2022.
3. **Obligations of the County.** The County agrees to provide funding to the Foundation in the amount of one hundred twenty thousand dollars (\$120,000.00) ("Grant"). Payment shall be made in a lump sum within fourteen (14) days of the Effective Date of this Agreement.
4. **Obligations of the Foundation.** In consideration for the County providing funding to the Foundation as provided in Section 3, above, the Foundation agrees that it shall:

- a. Support the mission of the County's Park and Recreation Department;
- b. Establish and maintain a collaborative relationship with the County with the goal of accomplishing fundraising projects and encouraging contributions and donations;
- c. Maintain proper accounting books and records under a system of accounts and financial controls that is consistent with the Generally Accepted Accounting Principles of the United States for non-profit organizations ("GAAP");
- d. Obtain and maintain all required qualifications to solicit and accept philanthropic contributions under applicable state and federal law;
- e. Conform to standards of best practice and ethics common to all non-profit organizations, as well as applicable local, state, and federal laws and regulations; and
- f. Ensure that its Articles of Incorporation and Bylaws are consistent with the terms of this Agreement.

If the Foundation fails to comply with the requirements of this section, the County may, at its sole option, disallow any or all of the funding provided under this Agreement as provided in Section 6, below.

5. Retention, Auditing, and Review of Records. In addition to any requirements of GAAP, the Foundation shall retain all supporting documentation, statistical records, and any other records necessary to document Foundation expenditures associated with the Grant during the term of this Agreement (the "Records") for five (5) years from the termination or expiration of this Agreement. If any litigation, claim, negotiation, audit, or other action involving the Records is initiated prior to the expiration of the five-year period, the Records shall be retained for one (1) year after the final resolution of the action.

The Foundation authorizes the County to review, inspect, and/or audit Foundation books and records for compliance of this Agreement. The Foundation is under no duty to provide access to documentation not related to this Agreement or that is otherwise protected by local, state, or federal law.

Any audit required under this section shall be submitted to the County no later than one hundred eighty (180) days following the end of the applicable Foundation fiscal year, along with any proposed corrective action plan, if applicable. Failure by the Foundation to submit the audit within the required may result in the disallowance of grant funds by the County as provided in Section 6, below. In addition, the County may, at its option terminate this Agreement.

6. **Disallowance of Funds.** If the Foundation fails to comply with one or more of the material requirements of this Agreement or if, as a result of review, inspection, or audit, the Foundation cannot provide documentation of Foundation expenses associated with the Grant ("Grant Expenses"), or it is determined that Grant Expenses, or any part thereof, were unallowable, the County may, at its sole option, disallow any or all of the funding provided under this Agreement. The Foundation shall refund all disallowed funds to the County. Disallowed funds shall be refunded to the County within thirty (30) days of the Foundation's receipt of written notice from the County regarding the overpayment or noncompliance ("Notice"). If the Foundation does not timely refund the disallowed funds, the County may charge interest in the amount of one percent (1%) per month compounded on the outstanding balance beginning forty (40) days after the date of Notice.

7. **No Commitment of County Funds.** This Agreement is neither a general obligation of the County nor is the Agreement backed by the full faith and credit of the County. Although the County will make all reasonable efforts to provide grant funds, the County makes no express commitment to provide such funds in any given County fiscal year. Pursuant to the requirements of Section 129.07, Florida Statutes, payment of the Grant is subject to specific annual appropriations by the St. Johns County Board of County Commissioners sufficient to pay the Grant during that County fiscal year. Further, the Foundation cannot demand that the County appropriate or provide any such grant funds in any given County fiscal year.

8. **Notices.** All official notices to the County shall be delivered either by hand (receipt of delivery required) or by certified mail to:

Ryan Kane, Director
St. Johns County Parks & Recreation Department
2175 Mizell Road
St. Augustine, FL 32080

Copy to: St. Johns County Attorney's Office
500 San Sebastian View
St. Augustine, FL 32084

All official notices to the Foundation shall be delivered either by hand (receipt of delivery required) or by certified mail to:

Robin Robbins
St. Johns County Parks Foundation, Inc.
780 N. Ponce de Leon Blvd.
St. Augustine, FL 32084

Copy to: Sidney F. Ansbacher
Upchurch, Bailey, & Upchurch, P.A.
P.O. Box 3007
St. Augustine, FL 32085-3007

All other correspondence not classified as notices may be delivered, disseminated, or submitted by any means acceptable to both Parties, including faxing or emailing; provided, however, that it is expressly acknowledged by both Parties that text messaging is not an acceptable means of correspondence under this Agreement.

9. **Relationship of the County and the Foundation.** This Agreement shall not be construed to create any agency relationship, partnership, association, or joint venture between the County and the Foundation. Except as specifically provided for in this Agreement, the Foundation is not authorized to act on behalf of the County or to bind the County in any manner whatsoever in any promise, agreement, or representation. Without limiting the foregoing, the Foundation is not a Direct Support Organization to the County, whether under statute or common law.

10. **No Third Party Beneficiaries.** Both the County and the Foundation expressly agree that nothing in this Agreement shall be construed to confer or infer third party beneficiary status or interest to any other person or entity, including but not limited to the officers, directors, members, employees, or agents of the Foundation.

11. **Use of County Logo.** Pursuant to St. Johns County Ordinance 1992-2 and St. Johns County Administrative Policy 101.3, the Foundation may not manufacture, display, or otherwise use the St. Johns County Seal/Logo or any facsimile or reproduction thereof without the express written approval of the Board of County Commissioners.

12. **Compliance with Applicable Laws and Regulations.** Both the Foundation and the County shall comply with all applicable local, state, and federal laws and regulations in their performance under this Agreement. Failure by the Foundation to abide by all applicable local, state, and federal laws and regulations may result in the disallowance of grant funds by the County as provided in Section 6, above.

13. **Non-Discrimination.** The Foundation shall comply with the following Equal Opportunity Statement:

No person shall, on the grounds of race, creed, color, handicap, national origin, sex, age, political affiliation, or beliefs be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole, or in part, with funds made available by St. Johns County.

14. **No Conflict of Interest.** The Foundation represents and warrants to the County that it has not employed or retained any elected official, officer, or employee of the County in order to secure this Agreement. Moreover, the Foundation represents and warrants to the County that it has not paid, offered to pay, or agreed to pay any fee, commission, percentage, brokerage, or gift of any kind contingent upon or in connection with securing and executing this Agreement.

15. **Non-lobbying.** The Foundation agrees that no Grant funds, or any funds received from the County under this Agreement may be used to lobby any organization, entity, person, or governmental unit in a manner inconsistent with the scope of this Agreement.

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

In accordance with Florida law, to the extent that the Foundation's performance under this Agreement constitutes an act on behalf of the County, the Foundation shall comply with all requirements of Florida's public records law. Specifically, if the Foundation is expressly authorized, and acts on behalf of the County under this Agreement, the Foundation shall:

i. Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services;

ii. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost as provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

iii. Ensure that public records related to this Agreement that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable law for the duration of this Agreement and following completion of this Agreement if the Foundation does not transfer the records to the County; and

iv. Upon completion of this Agreement, transfer, at no cost, to the County all public records in possession of the Foundation or keep and maintain public records required by the County to perform the Services. If the Foundation transfers all public records to the County upon completion of this Agreement, the Foundation shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure

requirements. If the Foundation keeps and maintains public records upon completion of this Agreement, the Foundation shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the County's information technology systems.

Failure by the Foundation to comply with the requirements of this section shall be grounds for immediate, unilateral termination of this Agreement by the County.

IF THE FOUNDATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

500 San Sebastian View

St. Augustine, FL 32084

(904) 209-0805

publicrecords@sjcfl.us

17. **Effect of Failure to Insist on Strict Compliance.** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision on any subsequent occasion.

18. **Indemnification.** The Foundation shall indemnify, defend, and hold the County, as well as the County's employees and agents (collectively, the "County Parties") in both the County Parties' respective individual and official capacities harmless from any liabilities, claims, damages, and expenses, including attorney's fees and litigation costs, arising directly or indirectly out of any negligent, reckless, or intentional act or omission of the Foundation, or any of the Foundation's officers, employees, or agents (collectively, the "Foundation Parties") in connection with this Agreement. This provision shall survive the termination or expiration of this Agreement.

19. **Insurance.** The Foundation shall provide insurance coverage in, at a minimum, the amounts set forth in Exhibit A hereto, the contents of which are incorporated into this Agreement.

20. **Assignment.** In light of the scope and rationale for this Agreement, neither Party may assign or transfer any of the rights associated with this Agreement without the express written consent of the other Party. Should either Party attempt to assign or transfer any of the rights

associated with this Agreement without such written consent, this Agreement shall automatically terminate without further notice or action required on the part of the other Party.

21. **Amendments.** Both Parties acknowledge that this Agreement constitutes the complete understanding between the Parties. Any modification to this Agreement shall be in writing and executed by the duly authorized representatives of each Party.

22. **Governing Law and Venue.** This Agreement shall be construed according to the laws of Florida. Venue for any administrative or legal action arising in connection with this Agreement shall lie exclusively in St. Johns County, Florida.

23. **Severability.** If any portion of this Agreement, or the application thereof to any person or circumstance, is determined by a court of competent jurisdiction to be void, invalid, or otherwise unenforceable for any reason, such portion or application shall be severable. The remaining portions of this Agreement, and all applications thereof, not having been declared void, invalid, or otherwise unenforceable, shall remain in effect.

24. **Merger.** This Agreement, together with all exhibits and documents incorporated herein, constitutes the complete and entire agreement and understanding between the Parties as to the matters addressed herein. No representations have been made except those that are specifically provided herein. This Agreement supersedes all prior and contemporaneous agreements, understandings, representations, and warranties, whether oral or written, relating to the subject matter of this Agreement. Any amendment to this Agreement shall be in writing and executed by a duly authorized representative of each Party.

25. **Authority to Execute.** Each Party covenants to the other Party that the covenanting Party has lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the Party's authorized representative.

26. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute the same agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year below written:

ST. JOHNS COUNTY

By: _____
Hunter S. Conrad, County Administrator

Date: _____

Legal Review as to Sufficiency:

Senior Assistant County Attorney

Date: _____

ATTEST: Brandon J. Patty
Clerk of the Circuit Court & Comptroller

Deputy Clerk

**ST. JOHNS COUNTY PARKS
FOUNDATION, INC.**

By: Robin S. Robbins

Print Name: Robin S. Robbins

Title: President

Date: 1/4/22

EXHIBIT A

Insurance Requirements

The Foundation shall not commence work under this Agreement until it has obtained all insurance required herein and such insurance has been approved by the County. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Foundation shall furnish proof of insurance to the County prior to the commencement of operations. The Certificate(s) shall clearly indicate the Foundation has obtained insurance of the type, amount, and classification as required by contract and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County. Certificates shall specifically include the County as Additional Insured for all lines of coverage except Workers' Compensation and Professional Liability. A copy of the endorsement must accompany the Certificate. Compliance with the foregoing requirements shall not relieve the Foundation of its liability and obligations under this Agreement.

Certificate Holder Address: St. Johns County, a political subdivision of the State of Florida
500 San Sebastian View
St. Augustine, FL 32084

The Foundation shall maintain during the life of this Agreement, Comprehensive General Liability Insurance with a limit of liability of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, to protect the Foundation from claims for damages from bodily injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the Foundation or by anyone directly employed by or contracting with the Foundation. Such Comprehensive General Liability Insurance shall include Additional Insured endorsement & Waiver of Transfer of Rights of Recovery endorsement.

The Foundation shall maintain during the life of this Agreement, Professional Liability or Errors and Omissions Insurance with a limit of liability of not less than \$1,000,000.

The Foundation shall maintain during the life of this Agreement, Comprehensive Automobile Liability Insurance coverage with a per accident limit of not less than \$300,000 per occurrence for all owned, non-owned and hired vehicles, whether such operations be by the Foundation or by anyone directly or indirectly employed by the Foundation.

The Foundation shall maintain during the life of this Agreement, adequate Workers' Compensation Insurance in at least such amounts as are required by law for all of its employees.