

RESOLUTION NO. 2018-218

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF AN OPERATIONS AND MANAGEMENT AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA AND THE STETSON KENNEDY FOUNDATION, AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE ON BEHALF OF ST. JOHNS COUNTY, FLORIDA THE BELUTHAHATCHEE PARK OPERATIONS AND MANAGEMENT AGREEMENT

WHEREAS, St. Johns County, Florida (County) currently owns, operates, and maintains real property located at 1523 and 1533 State Road 13, Fruit Cove, Florida, more definitely described on an attached and incorporated map, and an attached and incorporated legal description (Beluthahatchee Park); and

WHEREAS, the Board of County Commissioners of St. Johns County Florida (Board) has determined that Beluthahatchee Park should be used as a heritage and environmental public park; and

WHEREAS, the STETSON KENNEDY FOUNDATION has expressed an interest to manage and operate Beluthahatchee Park, for the purpose of facilitating the activities outlined in the approved Management Plan, including but not limited to resourced based education, folklore and history education, interpretation and preservation of the home site of author Stetson Kennedy, listed in the Florida Site Master Files as SJ 4963, and other appropriate events and activities; and

WHEREAS, a Beluthahatchee Park Operations and Management Agreement has been developed to set forth the obligations of both the County, and STETSON KENNEDY FOUNDATION; and

WHEREAS, the County has reviewed the terms, provisions, conditions, and requirements of Beluthahatchee Park Operations and Management Agreement (attached hereto, and incorporated here in); and

WHEREAS, the County has determined that approving the Beluthahatchee Park Operations and Management Agreement will serve the 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 hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

Section 2. The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of the Beluthahatchee Park Operations and Maintenance Agreement between St. Johns County, Florida and the Stetson Kennedy Foundation, and authorizes the County Administrator or designee, to execute on behalf of St. Johns County, the Beluthahatchee Park Operations and Management Agreement.

Section 3. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised, without subsequent approval of the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida,
this 18 Day of September, 2018.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

Attest: Hunter S. Conrad, Clerk

Pam Halteman
Deputy Clerk

By:

Paul M. Waldron
Vice-Chair

RENDITION DATE 9/20/18



**BELUTHAHATCHEE PARK
OPERATIONS AND MANAGEMENT AGREEMENT**

THIS OPERATIONS AND MANAGEMENT AGREEMENT ("Agreement") dated this _____ day of _____, 20____, between **St. Johns County, Florida ("County")**, political subdivision of the State of Florida, located at 500 San Sebastian View, St. Augustine, Florida, 32084, and the **Stetson Kennedy Foundation**, a Florida not-for-profit corporation, located at 1519 State Road 13, Fruit Cove, Florida 32259.

RECITALS

WHEREAS, the **County** currently owns, operates, and maintains real property located at 1523 and 1533 State Road 13, Fruit Cove, Florida, more definitely described on a map, attached hereto, and incorporated as Exhibit A, and a legal description, attached hereto, and incorporated as Exhibit B; and

WHEREAS, the **Board of County Commissioners of St. Johns County, Florida ("Board")** has determined that the real property located at 1523 and 1533 State Road 13, Fruit Cove, Florida was acquired with Florida Communities Trust funding award #05-034-FF5 and is subject to the guidelines of an approved management plan; and

WHEREAS, for purposes of this **Agreement** the real property located at 1523 and 1533 State Road 13, Fruit Cove, Florida, should hereafter be referred to as Beluthahatchee Park; and

WHEREAS, it is expected that the **STETSON KENNEDY FOUNDATION**

WHEREAS, the **STETSON KENNEDY FOUNDATION** has expressed an interest to manage and operate Beluthahatchee Park for the purpose of furthering the activities outlined in the approved Management Plan, including but not limited to resourced based education, folklore and history education, interpretation and preservation of the homesite of author Stetson Kennedy, listed in the Florida Site Master Files as SJ 4963, and facilitating other appropriate events and activities; and

WHEREAS, the **County** has determined that entering into this **Agreement** will serve the collective interests of the residents of the **County**.

NOW THEREFORE, the parties hereto, for and in consideration of the mutual covenants and conditions hereinafter expressed, do hereby agree as follows:

Section 1. Effect of Recitals. The above Recitals are incorporated into the body of this **Agreement**, and said Recitals are adopted as Findings of Fact.

Section 2. Duration of Agreement. The duration of this **Agreement** runs from _____, 20____ through, and including _____, 20____. The **STETSON KENNEDY FOUNDATION** may request a five-year extension to this **Agreement** by submitting a written request to the **County Administrator**, within 30 days of its anniversary. Should the **Board** wish to extend this **Agreement**, the **Board** may do so, by approving an extension to this **Agreement**.

Section 3. 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 prescribed 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 4. Governing Law and Venue. This Agreement shall be construed according to the laws of the State of Florida. Venue for any State administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida. Venue for any Federal administrative and/or legal action arising under this Agreement shall be in the closest district office for a Federal administrative action, or the United States District Court, Middle District of Florida, for a Federal legal action.

Section 5. Procedure for Achieving Assignment; Effect of Not Following Procedure. In light of the scope and rationale for this Agreement, neither the County, nor the STETSON KENNEDY FOUNDATION, 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 the County, or the STETSON KENNEDY FOUNDATION assign, transfer, or sell any of the rights noted in this Agreement without such prior express approval of the other party, then such action on the party of either the County, or the STETSON KENNEDY FOUNDATION, may result in the termination of this Agreement at the discretion of the non-breaching/non-offending party. Termination shall occur upon written notification to the breaching/offending party in writing within 30 days of discovery of the break of the Agreement.

Section 6. Amendments to this Agreement. Both the County and the STETSON KENNEDY FOUNDATION acknowledge that this Agreement constitutes the complete agreement and understanding of the parties.

Further, both the COUNTY and STETSON KENNEDY FOUNDATION acknowledge that any change, amendment, modification, revision, or extension of this Agreement (other than termination as noted elsewhere in this Agreement shall be in writing, and shall be executed by duly authorized representatives of both the County, and STETSON KENNEDY FOUNDATION.

Section 7. Force Majeure. Neither party shall be held in non-compliance with the terms, conditions, provisions, and requirements of this Agreement, nor suffer any enforcement or penalty relating thereto (including termination, cancellation, or revocation of this Agreement) where such non-compliance or alleged default occurred and/or was caused by a strike, riot, war, earthquake, flood, tsunami, severe rainstorm, hurricane, or other act of nature, or other event that is reasonably beyond either party's ability to participate and/or control.

Section 8. Grant of Operations and Management. The County hereby grants to the STETSON KENNEDY FOUNDATION, and the STETSON KENNEDY FOUNDATION hereby accepts from the County, the joint right and duty to manage and operate Beluthahatchee Park. The STETSON KENNEDY FOUNDATION shall operate and maintain Beluthahatchee Park in the manner described, detailed, and noted in this Agreement.

It is understood that the County retains priority of use of Beluthahatchee Park, in order to address, handle, and/or facilitate emergency situations. In an emergency situation, defined by the activation of the County's Emergency Operations Center, the County may displace a previously scheduled event Beluthahatchee Park. If the County unilaterally exercises its priority of use of Beluthahatchee Park in an emergency situation, and displaces a previously scheduled STETSON KENNEDY FOUNDATION event, then the County shall reasonably attempt to find an acceptable alternate site for the previously scheduled STETSON KENNEDY FOUNDATION event.

Section 9. Maintenance of Beluthahatchee Park. For the duration of this Agreement, the STETSON KENNEDY FOUNDATION shall be jointly responsible for maintaining Beluthahatchee Park in a clean and safe condition. All solid waste shall be removed and/or disposed of in receptacles approved by and provided by the County, or in a method that is approved by the County. Such waste removal shall not exceed the standard contract of the St. Johns County Recreation and Parks Department for pick-up.

The County stipulates that up and until the STETSON KENNEDY FOUNDATION executes the lease and assumes management of the facility, any pre-existing hazardous materials or potentially hazardous materials are not the responsibility of the STETSON KENNEDY FOUNDATION and that the County shall bear all costs associated with the removal and clean up of said hazardous or potentially hazardous materials.

To the extent that the production and/or creation of hazardous waste is approved by the County (as *hazardous waste* is defined by Federal or State law, rule, or regulation), or hazardous waste is introduced onto Beluthahatchee Park by the STETSON KENNEDY FOUNDATION, the County may elect to supervise the removal and disposal of hazardous waste, or contract with another party, in order to remove and dispose of such hazardous waste. The STETSON KENNEDY FOUNDATION shall be responsible for any costs, and/or expenses associated with the removal and disposal of such hazardous waste. This provision shall survive any expiration and/or termination of this Agreement.

At the end of the term of this Agreement, or at the time the STETSON KENNEDY FOUNDATION no longer jointly maintains Beluthahatchee Park with the County, the County shall inspect Beluthahatchee Park, in order to determine whether the STETSON KENNEDY FOUNDATION has kept the facility in a clean and safe condition. If the County determines that further clean-up by the STETSON KENNEDY FOUNDATION is required, then the County will notify the STETSON KENNEDY FOUNDATION of such further required clean-up, and provide the STETSON KENNEDY FOUNDATION with up to thirty (30) days to handle such further clean-up. Failure by the STETSON KENNEDY FOUNDATION to maintain Beluthahatchee Park in a clean and safe condition may result in the County having to expend funds in order to clean-up, or repair Beluthahatchee Park after the expiration of this Agreement. If such a case occurs, then the STETSON KENNEDY FOUNDATION shall re-imburse the County for the full and reasonable cost of such clean-up and/or repairs.

10. Permits and Licenses. To the extent that the STETSON KENNEDY FOUNDATION needs permits and licenses in order to manage or operate Beluthahatchee Park, or facilitate authorized activities, at Beluthahatchee Park, then the STETSON KENNEDY FOUNDATION shall be responsible for obtaining and maintaining at STETSON KENNEDY FOUNDATION's expense, any, and all, permits, licenses, and approvals required by Federal, State, and/or County law rule, regulation, or ordinance. Specifically, STETSON KENNEDY FOUNDATION shall be required to secure, obtain, and maintain for the duration of this Agreement, any, and all, State permits, licenses that are required for, or associated with events on the premises.

11. Termination of Agreement.

This Agreement may be terminated with cause upon ninety (90) days advance written notice to the other party of such notice of termination. Termination for cause shall be for one of the following reasons:

1) insolvency or bankruptcy of STETSON KENNEDY FOUNDATION; 2) failure of STETSON KENNEDY FOUNDATION to maintain any necessary and/or required permits and/or licenses; 3) failure of STETSON KENNEDY FOUNDATION to maintain any necessary and/or required insurance; 4) failure of the County to meet its obligations and responsibilities as noted in this Agreement; 5) failure to maintain a corporate structure or permissible operating entity as required by State law. Such written notification shall indicate the exact cause(s) for termination of this Agreement.

This Agreement may be terminated without cause upon either the County, or the STETSON KENNEDY FOUNDATION giving at least three hundred sixty (360) days advance written notice to the other party of such notice of termination.

Regardless of the method of termination (with or without cause), the STETSON KENNEDY FOUNDATION may, at its discretion, keep, retrieve, remove any, and/or all, improvements and equipment constructed or installed by the STETSON KENNEDY FOUNDATION, if such removal can be accomplished without damaging Beluthahatchee Park. The STETSON KENNEDY FOUNDATION may, at its discretion, also offer for sale, such improvements and equipment to the County. In the event the STETSON KENNEDY FOUNDATION decides to offer for sale its improvements and equipment to the

County, fair market value shall be determined by mutually agreed upon appraisers/experts. The party wishing to terminate this Agreement shall incur the expense created by the appraisers/experts.

Consistent with other provisions of this Agreement, the STETSON KENNEDY FOUNDATION will be compensated for any services and/or expenses that are authorized under this Agreement, or authorized in writing by the County Administrator, or his/her designee. Such compensation will be for services and/or expenses that are performed and/or accrued up to the date of the notice of termination. Thereafter, the County will only pay for services and/or expenses that are pre-approved by the County Administrator, or his/her designee.

Section 12. Public Purpose. The Board recognizes that by entering into this Agreement with the STETSON KENNEDY FOUNDATION, a public purpose is served, and the interests of both the County, and the STETSON KENNEDY FOUNDATION are served in the following ways:

- a) the County's labor costs will be reduced, in that STETSON KENNEDY FOUNDATION volunteers will manage and operate Beluthahatchee Park;
- b) the County will be able to meet the goals of the approved FCT Management Plan through the programs and activities offered by the Stetson Kennedy Foundation.

Section 13. STETSON KENNEDY FOUNDATION Responsibilities/Obligations. Under this Agreement, the STETSON KENNEDY FOUNDATION shall have the following responsibilities/obligations:

- a) co-manage and schedule use of Beluthahatchee Park and such scheduling is consistent with the County's policies associated with access to public facilities;
- b) payment of a *privilege to manage fee*, of \$1.00 (one dollar) per year, payable to the County, payable no later than March 1, of each calendar year that this Agreement (including any Amendment and/or extension that this Agreement) is in force, and effect;
- c) maintain insurance as noted elsewhere in this Agreement;
- d) require all reservations of Beluthahatchee Park sign a waiver of liability in favor of the County;
- e) accept responsibility for minor maintenance and repair so long as the amount does not exceed \$100.00 per occurrence, and cleanup of Beluthahatchee Park in the event that users do not clean up after themselves;
- f) request in writing, and secure the approval of the County prior to undertaking any alterations or improvements to Beluthahatchee Park;
- g) prohibit the consumption of alcoholic beverages and illegal narcotic substances at Beluthahatchee Park in accord with County policy;
- h) post the public hours of use, and monthly closure schedules, including closures due to holidays and inclement weather;
- i) manage and operate Beluthahatchee Park in a safe and efficient manner that supports the activities of all user groups;
- j) agree to utilize and expend excess funds generated through events hosted at the Beluthahatchee Park for the betterment of the facility and the promotion of the facility as a venue in St. Johns County;
- k) Submit to the County, any fee schedule for the use of the Beluthahatchee Park (including any fees associated with an individual event);
- l) STETSON KENNEDY FOUNDATION will provide a minimum of 12 educational programs per the calendar year to fulfill the obligations of the approved FCT Management Plan.

Section 14. County Responsibilities/Obligations. Under this Agreement, the County shall have the following responsibilities/obligations:

- a) co-manage and schedule use of Beluthahatchee Park and such scheduling is consistent with the County's policies associated with access to public facilities;

- b) Fees/ Revenue associated with the use of the facility are subject to the BCC Fee schedule, and will be retained to offset the annual maintenance cost of the site;
- c) maintain liability insurance for Beluthahatchee Park, to the extent permitted, under the County's self-insurance;
- d) provide for the payment of the electric utility bill;
- e) provide on-going property and building maintenance for the following: 1) water systems; 2) buildings; 3) electrical system; 4) landscape, including grass cutting; and 5) dock;
- f) ensure that the Hart House is cleaned twice a month; any additional cleaning will be at the expense of the STETSON KENNEDY FOUNDATION;
- g) provide the necessary personnel, in order to provide for above-noted maintenance;
- h) ensure that Beluthahatchee Park adheres to, and complies with, all applicable local, State, and Federal rules and regulations, including those related to the Americans with Disabilities Act (ADA);
- i) conduct periodic performance reviews/evaluations, in order to determine the level of compliance by STETSON KENNEDY FOUNDATION, with respect to this Agreement.

Section 15. Review of Records. As a condition of receiving any, or all, of the amount s/fees noted in this Agreement, the STETSON KENNEDY FOUNDATION authorizes the County to examine, review, inspect, and/or audit the STETSON KENNEDY FOUNDATION's books and records, 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 that the STETSON KENNEDY FOUNDATION is under no duty to provide access to documentation, not related to this Agreement that are otherwise protected by County, State or Federal law.

Section 16. Insurance. The STETSON KENNEDY FOUNDATION shall have, and maintain, for the duration of this Agreement (including any extensions of this Agreement) any, and all, insurance coverage, (including automobile liability insurance if vehicles are used, in order to provide services, and workers' compensation, and professional liability insurance) if required by State law or County policy, in at least the minimum amounts required by the County's Risk Manager. The STETSON KENNEDY FOUNDATION shall have the County named as an additional insured. Failure to maintain any, and/or all, required insurance may result in the termination of this Agreement, provided that the procedures outlined in section 11 are complied with.

Section 17. Indemnification. To the extent permitted by law, the STETSON KENNEDY FOUNDATION shall indemnify and hold harmless the County, its officials, agents, servants, and employees from, and against, any, and all, claims, liabilities, losses, and/or causes of action which may arise from any negligent act or omission on the part of the STETSON KENNEDY FOUNDATION, to the extent that such negligent act or omission is connected with the services provided pursuant to this Agreement.

To the extent permitted by law, the COUNTY shall indemnify and hold harmless the STETSON KENNEDY FOUNDATION, its agents, servants, and employees from, and against, any, and all, claims, liabilities, losses, and/or causes for action which may arise from any negligent act or omission on the part of the COUNTY, to the extent that such negligent act or omission is connected with the services provided pursuant to this Agreement.

Section 18. 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).

Section 19. No Commitment of County Funds. While the County will make all reasonable efforts, in order to provide funds needed to maintain, repair, and improve the Equestrian Complex, the County makes no express commitment to provide such funds in any given County Fiscal year. Moreover,

it is expressly noted that the **STETSON KENNEDY FOUNDATION** cannot demand that the **County** provide such funds in any given **County Fiscal Year**.

Section 20. No Third Party Beneficiaries. Both the **County** and the **STETSON KENNEDY FOUNDATION** explicitly agree, and this **Agreement** explicitly states that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

Section 21. Notice All notices, and other correspondence to the **County** shall be delivered, either by hand (receipt of delivery is necessary), or by U.S. Mail to:

County Administrator
500 San Sebastian View
St. Augustine, Florida 32084

With a Copy To:

County Recreation and Parks Director
2175 Mizell Road
St. Augustine, Florida 32080

All notices, and other correspondence to the **STETSON KENNEDY FOUNDATION** shall be delivered, either by hand (receipt of delivery is necessary), or by U.S. Mail to:

Chairman
Stetson Kennedy Foundation
1519 State Road 13
Fruit Cove, Florida 32259

IN WITNESS WHEREOF, the parties have hereunto executed this **Agreement** on the day and year below written.

**ST. JOHNS COUNTY,
FLORIDA**

STETSON KENNEDY FOUNDATION

BY: _____

BY: _____

Print: _____

DATE: _____

DATE: _____

**ATTEST: CHERYL STRICKLAND,
CLERK OF COURTS**

BY: _____
Deputy Clerk

WITNESS:

WITNESS:

Print: _____

Print:
_____+