

RESOLUTION NO. 2018-

384

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS OF A LICENSE AGREEMENT BETWEEN ST. JOHNS COUNTY AND PV GREENWAY ALLIANCE, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION, ALLOWING ACCESS ACROSS A PORTION OF CANAL BOULEVARD; AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE LICENSE AGREEMENT ON BEHALF OF THE COUNTY.

RECITALS

WHEREAS, PV Greenway Alliance, Inc., a Florida not-for-profit corporation, (“Alliance”) seeks to construct a multi- purpose platform, with handrails, 40-feet by 50-feet in area, that will be open to the public, to be located over the Intracoastal Waterway (“ICW”) (the “Project”) at the western terminus of the platted right-of-way for Canal Boulevard (the “County Property”); and

WHEREAS, Alliance intends that the Project will be incorporated in the proposed multi-use recreational Ponte Vedra Greenway trail system; and

WHEREAS, a portion of the Project is located within the right-of-way for the ICW and requires authorization by the U.S. Army Corps of Engineers; and

WHEREAS, a portion of the Project will be adjacent to the County Property and requires authorization by Right-of-Way Permit issued by the County for construction and maintenance, as well as authorization to allow public ingress and egress; and

WHEREAS, the Project will be owned and maintained by Alliance; and

WHEREAS, Alliance has requested a License Agreement with St. Johns County, attached hereto as Exhibit “A”, incorporated by reference and made a part hereof, setting forth terms and conditions to allow the Project to move forward.

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 and conditions contained in the License Agreement attached hereto and incorporated herein.

Section 3. The Board of County Commissioners authorizes the County Administrator, or designee, to execute a License Agreement in substantially the same form and format as attached hereto on behalf of the County.

Section 4. The Clerk is instructed to record the original License Agreement in the public records of St. Johns County, Florida.

Section 5. 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 10 day of November, 2018.

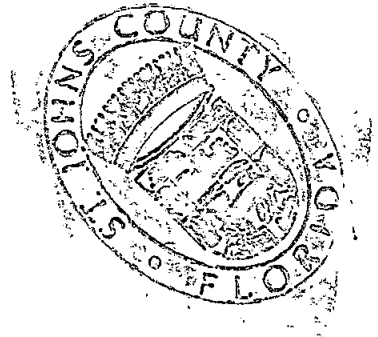
**BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA**

By: Henry Dean
Henry Dean, Chair

ATTEST: Hunter S. Conrad, Clerk

By: Amy Halterman
Deputy Clerk

RENDITION DATE 11/8/18



**LICENSE AGREEMENT BETWEEN ST. JOHNS COUNTY
AND
PV GREENWAY ALLIANCE, INC.**

THIS LICENSE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2018, by and between ST. JOHNS COUNTY, a political subdivision of the State of Florida ("County"), and PV GREENWAY ALLIANCE, INC., a not-for-profit corporation established under applicable provisions of laws of the State of Florida ("Alliance").

WITNESSETH:

WHEREAS, Alliance seeks to construct a multi-purpose platform, with handrails, 40-feet by 50-feet in area, that will be open to the public, to be located over the Intracoastal Waterway ("ICW") (the "Project") at the western terminus of the platted right-of-way for Canal Boulevard (the "County Property"), as more specifically shown on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, Alliance intends that the Project will be incorporated in the proposed multi-use recreational Ponte Vedra Greenway trail system; and

WHEREAS, a portion of the Project is located within the right-of-way for the ICW and requires authorization by the U.S. Army Corps of Engineers; and

WHEREAS, a portion of the Project will be adjacent to the County Property and requires authorization by Right-of-Way Permit issued by the County for construction and maintenance, as well as authorization to allow public ingress and egress; and

WHEREAS, Alliance has secured all applicable federal and state permits, licenses and approvals for the Project; and

WHEREAS, subject to Alliance securing Right-of-Way Permit approval by the County, the County agrees to allow construction/installation of and access to the Project within or adjacent to the County Property in the areas depicted in Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the Project will be owned and maintained by Alliance; and

WHEREAS, the parties hereto seek to enter into this Agreement to detail their respective duties and obligations associated with completion and ongoing maintenance and use of the Project.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration as provided for herein, the parties hereto now desire to enter into this Agreement and submit to the following terms:

Section 1. Incorporation of Recitals. The recitals stated above are true and correct and by this reference are incorporated as a material part of this Agreement, and said recitals are adopted as findings of fact.

Section 2. License. Subject to the following terms and conditions, the County hereby grants to Alliance, its successors and assigns, contractors, invitees, and licensees, and Alliance hereby accepts a non-exclusive license to enter onto the County Property to construct, maintain, repair, access and use the Project and, further, the County grants authorization for the public to have access to the Project on and across the County Property:

a. Alliance shall be the owner of the Project for all purposes, provided it is constructed and maintained for public use.

b. To the extent required by all applicable local, state and federal regulations, at its sole cost and expense, the Alliance shall secure and maintain all permits, licenses and approvals necessary to construct, maintain and operate the Project.

c. The Alliance shall submit a Right-of-Way Permit request to the County with construction plans signed and sealed by a Professional Engineer registered in the State of Florida, for portions of the Project proposed to be located on the County Property. The request shall be submitted to the St. Johns County Engineering Division for review to ensure compliance with all County permitting requirements applicable to County right-of-way improvements prior to construction and installation of the Project.

d. Upon the County's approval of the Right-of-Way Permit, which shall not be unreasonably withheld, the terms and conditions contained therein shall be incorporated into and made part of this Agreement. No deviations between the work authorized by the permit and the work as completed in constructing the Project shall be authorized, unless the County provides prior written approval, as may be required under County regulations. Failure to obtain the Right-of-Way Permit approval prior to completing any such deviations shall constitute cause for termination of this Agreement and revocation of County's grant of license to complete and maintain the Project.

e. No portion of the Project shall be installed so as to obstruct the field of vision of motorists or pedestrians along Roscoe Boulevard. Upon completion of the Project, sight distance shall meet the requirements set forth in the Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, latest edition at the time of permitting.

f. Alliance may install or construct signage on the Project, subject to meeting applicable County, state and permitting requirements.

g. No portion of the Project or improvements thereto, including without limitation, landscaping, signage or any other improvements allowed under this Agreement shall in any way impede or alter drainage, affect roadways or sight lines, or create any hazard or danger to public health, safety, or welfare.

h. The Project shall be maintained by Alliance subject to the terms and conditions contained herein. The cost of maintenance, repair and/or replacement of the Project shall be paid by Alliance. If the County, in its sole reasonable discretion, determines that the condition of the Project (or any portion thereof) requires maintenance, repair, replacement or removal, the County shall provide written notice thereof to Alliance. Alliance shall have thirty (30) days from its receipt of such notice to make the requested maintenance, repair, replacement or removal of the specified portions of the Project, provided, however, that if the noncompliance is due to an event of Force Majeure, Alliance shall have such additional amount of time as is reasonably necessary to complete the maintenance or repair, replacement or removal. Should Alliance fail to timely complete the requested maintenance, repair, replacement or removal, the County shall have the right, but not the obligation, to make the requested maintenance, repair, replacement or removal and invoice Alliance for reimbursement of the reasonable costs of such work. Alliance may perform its maintenance, repair, replacement and removal responsibilities with its own staff, or may enter into maintenance contracts with independent contractor(s) to perform such work on behalf of Alliance. The County reserves the right to approve any independent contractors constructing portions of the Project located on the County Property.

i. Alliance shall maintain the Project in good condition and in conformance with the terms and conditions of this Agreement. Alliance is not relieved of this requirement in the event that it abandons the Project, unless and until the Project is removed. In the event Alliance gives the County written notice of its intent to abandon the Project, the County will have ninety (90) days thereafter to decide whether to assume full ownership and maintenance responsibility for the Project or require Alliance to remove all or any portion of the Project, if any, located on the County Property within a reasonable time at Alliance's sole cost and expense.

j. The parties expressly stipulate that this Agreement is a license for permissive use only, and that any maintenance, repair or replacement of the Project shall not operate to create or vest any property rights in the County Property to Alliance.

k. Alliance understands and expressly agrees that, if an approved capital improvement on or an emergency use of the County Property require the removal, relocation or other alteration, of the improvements or work herein authorized, Alliance will be required, upon twenty-four (24) months notice from the County of an approved capital improvement, to remove, relocate or alter the improvements or obstructions caused thereby, without expense to the County. No claim shall be made against the County on account of any such removal or alteration. The County represents to Alliance that, as of the effective date of this Agreement, there are no such future capital improvements included in the County's now current Capital Improvement Plan (CIP), a copy of which is attached hereto as Exhibit B, and incorporated herein.

l. Construction of the Project shall be completed by no later than December 31, 2023. Any request by Alliance for an extension of time to complete construction of the Project shall be provided in writing to the County at least sixty (60) days before the date noted above.

m. The County reserves the right to inspect the Project at any time it deems necessary to ensure that the Project is constructed and maintained in accordance with the terms and conditions of this Agreement.

n. For the duration of this Agreement, Alliance shall comply with all applicable local, state and federal laws, rules, regulations, orders and policies governing construction, maintenance and operation of the Project.

o. In light of the scope of and rationale for this Agreement, Alliance may not assign, transfer or sell any of its rights and obligations under this Agreement for construction of portions of the Project on the County Property, without the express written approval by the County, which approval may not be unreasonably withheld. Notwithstanding the above, Alliance, without County approval, may assign, transfer or sell the Project and its rights and obligations hereunder as to such portions of the Project not located on the County Property to another non-profit corporation that agrees, in writing, to assume all of Alliance's obligations hereunder. Alliance may obtain reimbursement for its costs and expenses for the Project from any transferee/assignee. Should Alliance assign, transfer or sell any of the rights of this Agreement, without the required prior written approval by the County, then such action on part of Alliance, shall result in the automatic termination of this Agreement and revocation of the license described herein, without further notice or action required by the County.

p. The County agrees that, to the fullest extent practicable or except as may be required for emergencies, any use of the County Property will not conflict or interfere with or materially impact construction, maintenance, repair or use of the Project or the license granted hereunder.

q. The County agrees that it will not vacate or otherwise convey the County Property unless such vacation or conveyance is expressly made subject to this Agreement, and the County shall reserve an easement fifteen (15) feet in width across the County Property to access the Project for the benefit of Alliance, its successors and assigns, contractors, invitees and the public.

Section 3. Indemnification. Alliance shall indemnify, defend and hold the County, its officials, officers, employees and agents harmless from all claims (including tort-based, contractual, injunctive and/or equitable), losses (including personal and/or real), bodily injury, costs (including attorneys' fees), suits, and administrative actions caused by Alliance's construction, maintenance, repair and operation of the portion of the Project not located on County Property, subject to the following.

a. In the event of a lawsuit against the County that survives dismissal, the County shall assert any claim of immunity limits of liability available to it under law in any action or suit involving the County Property and/or the Project, which claim of immunity, if and to the extent successful, shall obviate Alliance's indemnification hereunder.

b. Nothing contained in this Agreement shall be deemed a waiver of immunity limits of liability of the County beyond any statutory limited waiver of immunity or limits of liability contained in Florida Statute Section 768.28, as amended, or other applicable statute. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim that would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

c. Nothing contained in this Agreement shall be deemed a waiver of immunity limits of liability available to Alliance under Florida Statute Section 375.251, as amended, or other applicable statute. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against Alliance that would otherwise be barred by operation of law.

Section 4. Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

If to the County: St. Johns County Engineering Division
2740 Industry Center Road
St. Augustine, Florida 32084
Attn: County Engineer

With Copies to: St. Johns County Office of County Attorney
Attn: Regina D. Ross, Deputy County Attorney
500 San Sebastian View
St. Augustine, Florida 32084

St. Johns County Administration Officer
Attn: Joy Andrews, Assistance County Administrator
500 San Sebastian View
St. Augustine, Florida 32084

If to the Alliance: PV Greenway Alliance, Inc.
Post Office Box 878
Ponte Vedra Beach, FL 32082
Attn: Deborah A. Chapin

With copies to: Smith Hulsey & Busey
Attn: E. Owen McCuller, Jr.
Post Office Box 53315
Jacksonville, FL 32201-3315

Section 5. General Terms and Conditions.

a. **Term.** This Agreement shall be effective upon full execution by the parties, and shall remain in effect until such time as (i) the Project and all associated

improvements have been completely removed or (ii) upon mutual consent by the parties to terminate this Agreement.

b. 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.

c. Merger. This Agreement, all the attached exhibits and the Right-of-Way permit described above, constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement.

d. Amendments to Agreement. The County and Alliance acknowledge that this Agreement constitutes the complete agreement and understanding of both parties. Both parties acknowledge that any amendments to this Agreement shall be in writing, and executed by authorized representatives of each party.

e. 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 (Florida Statutes, Chapter 119), 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.

f. Enforcement. A default by either party under this Agreement shall entitle the other party to all remedies available at law or in equity, which shall include, but not be limited to, the right of damages, injunctive relief and specific performance.

g. Recovery of Costs and Fees. In the event either party is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorneys' fees.

h. Force Majeure. As used in this Agreement, the term "Force Majeure" shall mean acts of God; strikes, lock-outs, or other industrial disturbance; acts of public enemies; war; blockades; riots; acts of armed forces, militia, or public authority; epidemics; breakdown of or damage to machinery, pumps, or pipelines; landslides, earthquakes, fires, hurricanes, storms, tornadoes or floods; governmental restraints of any nature, whether federal, state, county, municipal or otherwise; explosions; failure or inability to obtain necessary materials, supplies, labor or permits or governmental approvals, whether resulting from or pursuant to existing or future rules, regulations, orders, laws or proclamations, whether federal, state, county, municipal or otherwise; or by any other causes not within the reasonable control of the Alliance, and which, even through the exercise of due diligence, the Alliance is unable to overcome.

i. Severability. If any part of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable part shall be deemed severable and the remaining parts of this Agreement shall continue

in full force and effect provided that the rights and obligations of the parties are not materially prejudiced and the intentions of the parties can continue to be effected:

j. Survivability. Any term, condition, covenant or obligation, which requires performance by a party subsequent to the termination of this Agreement, shall remain enforceable against such party subsequent to such termination.

k. Construction. This Agreement is the result of the negotiations among and between the County and the Alliance such that all parties have contributed materially and substantially to its preparation, and shall not be construed more strictly against one party than the other.

l. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same agreement.

m. Authority to Execute. Each party covenants to the other party/parties that it has lawful authority to enter into this Agreement, and has authorized its execution by the representative named below.

n. Recording. This Agreement shall be recorded in the St. Johns County public records.

IN WITNESS WHEREOF, the County and the Alliance have each caused this Agreement to be executed and delivered as of the date indicated above.

ATTEST: _____, Clerk St. Johns County, Florida

Deputy Clerk

By: _____
County Administrator

Date: _____, 2018

Legal Review:

Deputy County Attorney

STATE OF FLORIDA)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, the County Administrator of St. Johns County, Florida. He/She

either [] is personally known to me or [] has produced _____ as identification.

NOTARY PUBLIC, State of Florida
Printed Name: _____
Commission No.: _____
My commission expires: _____

[NOTARIAL SEAL]

WITNESSED:

PV Greenway Alliance, Inc.

Print Name: _____
Title: _____

By: _____
Print: _____
Title: _____

Date: _____, 2018

Print Name: _____
Title: _____

STATE OF FLORIDA)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, the _____ of PV Greenway Alliance, Inc. He/She either [] is personally known to me or [] has produced _____ as identification.

NOTARY PUBLIC, State of Florida
Printed Name: _____
Commission No.: _____
My commission expires: _____

[NOTARIAL SEAL]

EXHIBIT A

Legal Description (County right-of-way)

(following page)

All that portion of Canal Boulevard lying west of N. Roscoe Boulevard, as shown on the plat of East Coast Canal Estates, Unit No. 3, as recorded in Map Book 5, page 64, of the public records of St. Johns County, Florida.

EXHIBIT B

(County Capital Improvement Plan-Fiscal Years 2018-2021)



2016 Aerial Imagery
October 4, 2018

Canal Boulevard
License Agreement
PV Greenway Alliance, Inc.

Land Management
Systems
Real Estate
Division
(904) 209-0790

Disclaimer:
This map is for reference use only.
Data provided are derived from multiple
sources with varying levels of accuracy.
The St. Johns County Real Estate
Division disclaims all responsibility
for the accuracy or completeness
of the data shown hereon.

