




Interoffice Memorandum

August 10, 2020

AGENDA ITEM

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

FROM: Lonnie C. Bell, Director 
Community and Family Services Department

**CONTACT PERSON: Matt Suedmeyer, Manager
Parks and Recreation Division
(407) 836-6202**

SUBJECT: **Consent Agenda Item – September 1, 2020
Lake Fairview Park Contribution Agreement**

The City of Orlando has requested funding from the County Retained Vessel Fee (CRV) funds to develop a boat dock at Lake Fairview Park.

CRV funds are collected from boat registration fees and provided to local governments to improve and/or increase boating opportunities for citizens. The County may provide this funding to local municipalities for boating enhancement projects only. The estimated annual funds collected are \$150,000. The current budget is \$1.7 million.

The City of Orlando has requested \$300,000 to develop a bulkhead/pier at Lake Fairview Park located on Lee Road in the City. Staff recommends providing CRV funds to the City of Orlando to develop the bulkhead/pier through a funding agreement.

ACTION REQUESTED: Approval and execution of Lake Fairview Park Contribution Agreement by and among Orange County, Florida and City of Orlando in the amount of \$300,000.

MS/bh:jam

Attachment

c: Randy Singh, Deputy County Administrator, County Administration
Kate Latorre, Assistant County Attorney, County Attorney's Office

BCC Mtg. Date: September 1, 2020

**LAKE FAIRVIEW PARK
CONTRIBUTION AGREEMENT**

THIS CONTRIBUTION AGREEMENT ("Agreement") is made and entered into as of the Effective Date (hereinafter defined) by and among **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida whose principal address is 201 South Rosalind Avenue, Orlando, Florida 32801 ("County"), and **CITY OF ORLANDO**, a Florida municipal corporation whose principal address is 400 South Orange Avenue, Orlando, Florida 32801 ("City").

WITNESSETH:

WHEREAS, the County receives funding from the State of Florida derived from vessel registration fees; and

WHEREAS, pursuant to section 328.72(15), Florida Statutes, the County is required to use said funding for providing, maintaining, or operating recreational channel marking and other uniform waterway markers, public boat ramps, lifts, and hoists, marine railways, boat piers, docks, mooring buoys, and other public launching facilities; and

WHEREAS, the City has requested the County contribute \$300,000 from the County's funding to make improvements to the City's Lake Fairview Park, which improvements shall include design and construction of a bulkhead and pier ("Park Improvements"); and

WHEREAS, the County desires to contribute funding to the Park Improvements pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises made herein and for other good and valuable consideration, the receipt of which is hereby acknowledged by the parties, the parties hereby agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **County Contribution**. The County has appropriated and shall contribute to the City a one-time contribution in an amount not to exceed Three Hundred Thousand and No/100 Dollars (\$300,000.00) ("County Contribution") for the design, engineering, permitting, and construction of the Park Improvements. The County shall disburse the County Contribution after it receives from the City an invoice and supporting documentation evidencing the costs and expenses to design, engineer, permit, and construct the Park Improvements. Upon its receipt of the invoice(s) and supporting documentation, the County shall process payment of the County Contribution within 30 days thereafter.

3. **Use of County Contribution/Surplus Funds and Shortfall**. The City shall use the County Contribution for the costs associated with the design, engineering, permitting, and construction of the Park Improvements, as depicted on the conceptual plan attached hereto as "**Exhibit A.**" Should the County Contribution exceed the final costs and expenses incurred for the design, engineering, permitting, and construction of the Park Improvements, or in the event the

City fails to complete the design, engineering, permitting, and construction of the Park Improvements within three (3) years of the Effective Date, the City agrees to repay to the County that portion of the County Contribution not otherwise expended toward the design and construction of the Park Improvements. The City shall be solely responsible for any costs and expenses incurred in excess of the County Contribution related to the design, engineering, permitting, and construction of the Park Improvements.

4. **Audit.** The County or its designee shall have the right to audit from time to time for compliance with the terms, conditions, obligations, limitations, restrictions and requirements of this Agreement, the use of the County Contribution for the design, engineering, permitting, and construction of the Park Improvements. Such right shall extend for a period of five (5) years after completion of the Park Improvements. The City agrees to provide reasonable assistance in providing documents, materials, data, information and records to the County or its designee in the performance of these audits as requested by the County during the term of this Agreement.

5. **Lobbying.** The City shall not expend any funds paid under this Agreement for any lobbyist, as such term is defined in section 2-351 of the Orange County Code, to engage in any lobbying activities designed to influence decisions or other foreseeable actions of the Board of County Commissioners or the governing body of any other municipality located within Orange County.

6. **Permitting.** The City shall be responsible for obtaining or causing to be obtained all land use, zoning, special exception, building, development and environmental permits or approvals necessary for the proper execution and completion of the work which are legally required hereunder, including, but not limited to, any application for a future land use amendment, zoning change, special exception application, site plan submissions, general building permits, easements and all other permits, licenses, inspections, fees and similar items to complete the Park Improvements; sewer (sanitary and storm), water, electrical power, telephone, data utility connections and extensions; utility meter installation and hook-up charges, and other charges assessed by local entities having jurisdiction to permit lawful occupancy, as applicable.

7. **Signage.** Upon completion of the Park Improvements, the City shall prominently display in reasonable proximity to the Park Improvements signage acknowledging the names of the Orange County Mayor and Board of County Commissioners and their contribution to the Park Improvements.

8. **Indemnification.** To the extent permitted by law, each party agrees to defend, indemnify and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorney's fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this agreement. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions and/or negligence of the other party.

9. **Notice.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly received as of (i) the date and time the same are personally delivered, transmitted electronically (i.e., facsimile or e-mail); (ii) within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested; or (iii) within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

City: City of Orlando
Attn: Director, Families, Parks and Recreation
400 South Orange Avenue
Orlando, Florida 32801

COUNTY: Orange County Parks & Recreation Division
Attn: Manager
Orange County, Florida
4801 W. Colonial Drive
Orlando, Florida 32808

With a copy to: County Attorney
Orange County, Florida
201 South Rosalind Avenue, Third Floor
Orlando, Florida 32801

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided. The attorneys for the parties set forth herein may deliver and receive notices on behalf of their clients.

10. **Effective Date.** The Effective Date of this Agreement shall be the date upon which the last of the parties hereto signs this Agreement ("Effective Date").

11. **Term and Termination.** The term of this Agreement shall commence upon the Effective Date and shall terminate five (5) years after the City's completion of the Park Improvements.

12. **Modifications and Amendments.** This Agreement may be amended upon the mutual, written consent of both parties hereto.

13. **Entire Agreement.** This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party to the extent incorporated into this Agreement.

14. **No Partnership.** The City and the County do not, in any way or for any purpose, become a partner of the other in the conduct of its business, or otherwise, or a joint venturer or a member of a joint enterprise.

15. **Waiver.** The failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at

variance with the terms hereof, shall not constitute a waiver of either party's right to demand exact compliance with the terms hereof.

16. **Time.** Time is of the essence of this Agreement.

17. **Legal Construction.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or holiday, such time for performance shall be extended to the next business day. For purposes of this Agreement, "holiday" shall mean federal holidays as defined in 5 U.S.C. 6103. Except as otherwise set forth herein, the last day of any period of time described herein shall be deemed to end at 11:59 p.m. local time in Orange County, Florida. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph.

18. **Governing Law and Venue.** Venue for any action, suit, or proceeding brought to recover any sum due under, or to enforce compliance with, this Agreement shall lie in the court of competent jurisdiction in and for Orange County, Florida; each party hereby specifically consents to the exclusive personal jurisdiction and exclusive venue of such court.

19. **Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

20. **Attorneys' Fees.** In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, each party hereto shall bear its own costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney, paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, in mediation, arbitration, bankruptcy or administrative proceeding, or at trial or on appeal.

21. **Counterparts and Facsimile Signatures.** This Agreement may be executed in two or more counterpart copies, including facsimile and electronic mail signatures, each of which shall be deemed to constitute one original document. The parties may execute different counterparts of this agreement, and, if they do so, the signatures pages from the different counterparts may be combined to provide one integrated document and taken together shall constitute one and the same instrument.

22. **Relationship of the Parties.** This Agreement is solely for the benefit of the parties executing the Agreement and no rights are intended, nor shall any rights accrue, to any third party unless expressly provided in this Agreement.

23. **Successors and Assigns.** City shall not assign its right hereunder, without the prior written consent of the County. Failure to comply with this section may result in immediate termination of this Agreement.

24. **Force Majeure.** The time for the performance of the City's obligations under this Agreement will be extended for a period of time equal to any period of delay experienced by the City, or the number of days lost, due to any of the following ("Force Majeure"): strikes, civil riots or commotion, war, invasion, acts of terrorism, explosion, fire or other casualty, sabotage, theft, vandalism, Acts of God, labor disputes, unavailability of labor or materials, hurricane, tropical storm, tornado, or other adverse weather conditions, act or failure to act of governmental authorities (including failure or delay in issuing necessary approvals, permits, and licenses so long as the City is diligently pursuing its obligations hereunder), act or failure to act of third-party utility service providers, or other causes beyond the reasonable control of the City.

25. **Participation.** All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; this Agreement shall not be construed more strongly for or against any party regardless of which party is deemed to have drafted the Agreement.

26. **Jury Trial.** THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS UNDER OR CONNECTED WITH THIS AGREEMENT OR ANY OF ITS PROVISIONS AND ANY NEGOTIATIONS IN CONNECTION THEREWITH.

IN WITNESS WHEREOF, the County and the City have caused this Agreement to be executed as of the dates set forth below.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

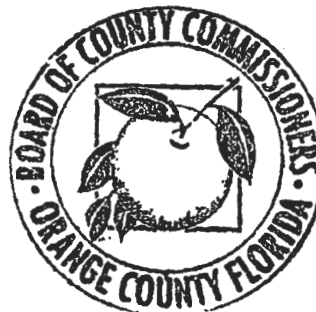
By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: SEP 01 2020

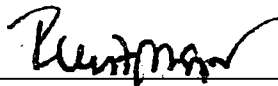
ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Kate Smith*
Deputy Clerk

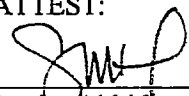
Date: SEP 01 2020



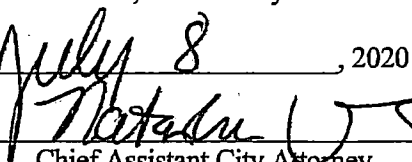
CITY OF ORLANDO, FLORIDA

BY 
-Mayor/Pro Tem

ATTEST:

 Stephanie Herdacia
Denise Aldridge, City Clerk
City of Orlando, Florida

APPROVED AS TO FORM AND LEGALITY,
for the use and reliance of the
City of Orlando, Florida only.

July 8, 2020

Chief Assistant City Attorney
City of Orlando, Florida

City Council Meeting: 7-6-2020
Item: D-2 Documentary: 200706D02