



Interoffice Memorandum

AGENDA ITEM

January 2, 2019

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

FROM: Jon V. Weiss, P.E., Director
Community, Environmental and Development
Services Department

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

SUBJECT: January 29, 2019 – Consent Agenda
Contribution Agreement between Orange County and the Town
of Oakland

As part of the FY 2019 budget approval process, the Board approved funding of \$182,000 to assist the Town of Oakland with the cost of building their Arts and Heritage Center ("Center"). This center will be built in the downtown area adjacent to the West Orange Trail.

The West Orange Trail is a 22-mile multiuse pedestrian trail in West Orange County that traverses through multiple municipalities to include the Town of Oakland, Winter Garden, Ocoee, and Apopka. Since the Town of Oakland receives requests from trail patrons, they have agreed to build restroom facilities to serve these patrons as part of the Center.

The total cost of the Center is \$1,225,000, with the cost of the restroom facilities being \$182,000. The contribution agreement sets forth the terms and conditions of the mutual agreement for the design and construction of the Arts and Heritage Center.

ACTION REQUESTED: Approval and execution of Contribution Agreement by and between the Town of Oakland and Orange County, Florida to partially fund the Arts and Heritage Center in the amount of \$182,000. District 1

JVW/MS/bh

Attachments

c: Byron W. Brooks, AICP, County Administrator
Kate Latorre, Attorney II, Assistant County Attorney, County Attorney's Office
Kurt Petersen, Manager, Office of Management and Budget



July 9, 2018

To: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

From: Commissioner Betsy VanderLey, District 1

Subject: Town of Oakland Funding Request

The West Orange Trail is a 22-mile multiuse pedestrian trail that traverses through many jurisdictions throughout West Orange County. These jurisdictions include the Town of Oakland, City of Winter Garden, Ocoee, and Apopka. The trail services approximately 1.2 million patrons per year who use the trail for alternative transportation and recreation.

Oakland is in the process of building an arts and history museum in their downtown area adjacent to the West Orange Trail. They have included in the plans a restroom facility accessible from the exterior of the museum for trail patrons to use. Since Oakland is located between the Killarney and Winter Garden Trailheads, they receive an abundance of requests for restrooms and a rest area along the trail. I was recently asked by the Town of Oakland to help fund the construction of a restroom that will be available to the trail patrons.

The total museum project cost is \$1,225,000, which is being jointly funded through a direct bank loan to the Town of Oakland and a United Arts Grant. The cost for the restroom facilities portion of the building is \$182,000. In an effort to assist Oakland with their development of the restroom facilities for our trail patrons, I am proposing \$182,000 be committed in the upcoming budget to fund the restroom portion of the Oakland Arts and History Museum. Construction of the museum is scheduled to begin July 2018 with an estimated completion date is February 2019.

Thank you for your consideration of this request.

Cc: Ajit Lalchandani, County Administrator
Chris Testerman, Assistant County Administrator
Jon Weiss, Community, Environmental & Development Services Director
Matt Suedmeyer, Parks and Recreation Division Manager

COMMISSIONER BETSY VANDERLEY, DISTRICT 1

201 South Rosalind Avenue • Reply To: Post Office Box 1393 • Orlando, Florida 32808-1393
Telephone: 407-836-7312 • Fax: 407-836-5879

District1@ocfl.net

CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT (“Agreement”) is made and entered into as of the Effective Date (hereinafter defined) by and between the **TOWN OF OAKLAND**, a Florida municipal corporation, whose address is 220 N. Tubb Street, Oakland, Florida 34760-0098 (“Town”), and **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida whose address is 201 South Rosalind Avenue, Orlando, Florida 32801 (“County”).

WITNESSETH:

WHEREAS, the West Orange Trail is a 22-mile multiuse pedestrian trail traversing many jurisdictions throughout West Orange County including the Town, Winter Garden, Ocoee, and Apopka; and

WHEREAS, the Town is developing the Arts and Heritage Center at Oakland (“Center”) in its downtown area adjacent to the West Orange Trail, which includes restroom facilities; and

WHEREAS, given the Town’s location and distance from existing trailheads with restroom facilities, the Town desires to make the Center’s restroom facilities available to patrons of the West Orange Trail; and

WHEREAS, the County has agreed to contribute to the Town the Capital Contribution (as defined below) for the design and construction of the restroom portion of the Center to be located at 126 Petris Avenue, Oakland, Florida 34760 (“Proposed Facility”); and

WHEREAS, the Town and the County desire to set forth the terms and conditions of their mutual agreement for the design and construction of the Proposed Facility.

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’s Capital Contribution.** The County has appropriated and shall contribute to the Town a one-time contribution in an amount not to exceed One Hundred Eighty-Two Thousand and No/100 Dollars (\$182,000.00) (“Capital Contribution”) for the design and construction of the Proposed Facility. The County shall disburse the Capital Contribution after it receives from the Town an invoice and supporting documentation evidencing the costs and expenses to design and construct the Proposed Facility. Upon its receipt of the invoice and supporting documentation, the County shall process payment of the County Contribution within 30 days thereafter.

3. **Use of County’s Capital Contribution/Surplus Funds and Shortfall.** The Town shall use the Capital Contribution for the costs associated with the design and construction of the Proposed Facility. Should the Capital Contribution exceed the final costs and expenses

incurred for the design and construction of the Proposed Facility, or in the event the Town fails to complete the design and construction of the Proposed Facility within two (2) years of the Effective Date, the Town agrees to repay to the County that portion of the Capital Contribution not otherwise expended toward the design and construction of the Proposed Facility. The Town shall be solely responsible for any costs and expenses incurred in excess of the Capital Contribution related to the design and construction of the Proposed Facility. For purposes of this Agreement, the term "Proposed Facility" shall include the restroom portion of the Center only. For avoidance of doubt, the Capital Contribution shall not be used to fund the design and/or construction of the Center except for the costs and expenses attributed directly to the Center's restrooms.

4. **Lobbying.** The Town 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.

5. **Permitting.** The Town 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 Proposed Facility; 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 the lawful occupancy of the Proposed Facility. Permitting shall be through the Town's Planning & Zoning Department, the Town's authorized agents, and all other applicable agencies.

6. **Signage.** Except as otherwise specified herein, County shall be entitled to install signage on the exterior of the Proposed Facility identifying the County and its logo as a contributor to the Proposed Facility, subject to the review and approval of the Town which will not be unreasonably withheld. In the event County provides written notice to the Town of its intent to install, repair or replace signage on the exterior of the Proposed Facility ("Signage Notice"), the Town shall have thirty (30) days to review such Signage Notice. Failure to respond to the Town within thirty (30) days of receipt of the Signage Notice shall amount to an approval by the Town of the proposed sign.

7. **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.

8. **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:

Town: Town of Oakland
 Attn: Town Manager
 220 N. Tubb Street
 Oakland, Florida 34760-0098

COUNTY: Mayor
 Orange County, Florida
 201 South Rosalind Avenue
 Orlando, Florida 32801

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

and

 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.

9. **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”).

10. **Term and Termination.** The term of this Agreement shall continue throughout the life of the Proposed Facility.

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

12. **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.

13. **No Partnership.** The Town 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.

14. **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.

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

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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.

22. **Successors and Assigns.** Town 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.

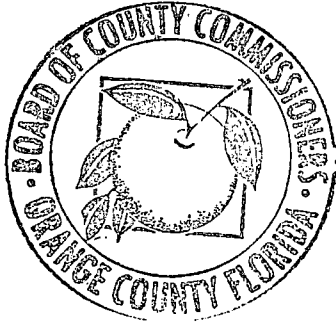
23. **Force Majeure.** The time for the performance of the Town's obligations under this Agreement will be extended for a period of time equal to any period of delay experienced by the Town, or the number of days lost, due to any of the following ("Force Majeure"): strikes, civil riots or commotion, 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 Town 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 Town.

24. **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.

25. **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 Town have caused this Agreement to be executed as of the dates set forth below.

[EXECUTION PAGES FOLLOW]



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: Bernard Brooks
Jerry L. Demings
Orange County Mayor

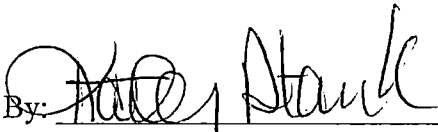
Date: 29 Jan 19

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

By: Katie Reed
Deputy Clerk

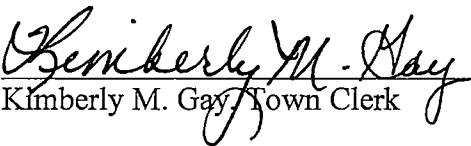
Date: JAN 29 2019

TOWN OF OAKLAND, FLORIDA

By: 
Kathy Stark,
Town Mayor

Date: 12-11-18

ATTEST:


Kimberly M. Gay, Town Clerk

TOWN SEAL:

