

ST. PETERSBURG CITY COUNCIL

Consent Agenda

Meeting of June 4, 2009

TO: The Honorable Jeff Danner, Chair, and Members of City Council

SUBJECT: A resolution authorizing the Mayor to execute an interlocal agreement with Pinellas County for the maintenance of the Pinellas Trail Extension from 34th Street South to approximately 13th Street South; authorizing the Mayor or his designee to execute all other documents necessary to effectuate this transaction; and providing an effective date.

EXPLANATION: In July 2008, the City opened the Pinellas Trail Extension to Downtown St. Petersburg along the former CSX line which runs from 34th St S to approximately 13th Street South. The City decided to extend the Trail even further along First Avenue South to Demen's Landing. At the time that the property was purchased in 2005, City staff consulted with Pinellas County staff and agreed that the City would retain ownership of the property. Since the section from 34th Street to 13th Street is an extension of the County's Pinellas Trail, the County administration agreed to provide maintenance for the section of the trail along the former rail line, and the section in Downtown St. Petersburg would remain the responsibility of the City, given its distinctive nature.

The attached Interlocal Agreement specifies that the County will maintain the new section of trail with due care in a similar manner as applied to the other sections of the trail. Any enhanced features, such as the development of Rail Switch Park, would be required to be maintained by the City.

COST/FUNDING/ASSESSMENT INFORMATION: The Interlocal Agreement calls for the County to provide all routine minor repairs to the trail including major capital repairs which will be funded in an amount not to exceed \$20,000 annually.


ATTACHMENTS: Interlocal Agreement

APPROVALS:

bp



Administrative



Budget

Legal: 00107949.doc V. 3

Resolution No. 2009 - _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH PINELLAS COUNTY FOR THE MAINTENANCE OF THE PINELLAS TRAIL EXTENSION FROM 34TH STREET SOUTH TO APPROXIMATELY 13TH STREET SOUTH; AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE ALL OTHER DOCUMENTS NECESSARY TO EFFECTUATE THIS TRANSACTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City acquired a portion of the CSX right-of-way in downtown between 34th Street South and Martin Luther King, Jr. Blvd. South for the purpose of providing an extension of the Pinellas Trail ("Trail Extension"); and

WHEREAS, the City has developed the Trail Extension; and

WHEREAS, Pinellas County has maintenance responsibilities for the Pinellas Trail throughout the county; and

WHEREAS, the City and Pinellas County have reached agreement subject to City Council approval to maintain that portion of the Trail Extension between 34th Street South and approximately 13th Street South.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida that the Mayor is authorized to execute an interlocal agreement with Pinellas County for the maintenance of the Pinellas Trail Extension from 34th Street South to approximately 13th Street South, and the Mayor or his designee is authorized to execute all other documents necessary to effectuate this transaction.

This Resolution shall take effect immediately upon its adoption.

Approvals:

Legal: _____

[Signature]

Administration: _____

[Signature]

Budget: _____

N/A

**INTERLOCAL AGREEMENT
BETWEEN PINELLAS COUNTY AND THE CITY OF ST. PETERSBURG
FOR MAINTENANCE OF THE
FRED MARQUIS PINELLAS TRAIL – ST. PETERSBURG EXTENSION**

THIS AGREEMENT, ("Agreement") made and entered into on the _____ day of _____, 2009, by and between Pinellas County, a political subdivision of the State of Florida, hereinafter called the "COUNTY," and the City of St. Petersburg, a municipal corporation of the State of Florida, hereinafter called the "CITY."

RECITATIONS:

WHEREAS, this Agreement is made and entered between the parties pursuant to Section 163.01, Florida Statutes, the "Florida Interlocal Cooperation Act of 1969;" and

WHEREAS, the CITY is continuing the development of the Fred Marquis Pinellas Trail ("Trail") on old CSX right of way, from 34th Street to the junction of the old CSX right of way at 1st Avenue South and 13th Street, extended, including the trestle bridge, hereinafter known as the TRAIL EXTENSION; and

WHEREAS, the CITY is fully funding and proceeding with the construction phase of the TRAIL EXTENSION; and

WHEREAS, the COUNTY has agreed to maintain the entire width, including paved and unpaved portions of the TRAIL EXTENSION as part of its maintenance program for the Trail.

NOW THEREFORE, the COUNTY and the CITY, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**SECTION 1
INTENT OF AGREEMENT**

The intent of this Agreement is to provide for the maintenance of the TRAIL EXTENSION. The boundaries of the TRAIL EXTENSION are defined in the plans prepared by _____, Project No. _____, dated _____ (which is hereinafter sometimes referred to as "TRAIL RIGHT-OF-WAY").

**SECTION 2
TRAIL EXTENSION MAINTENANCE**

2.1 The COUNTY shall, at its sole cost and expense, at all times during the term hereof maintain the TRAIL EXTENSION in a reasonable manner and with due care, in accordance with the standards determined appropriate by the COUNTY and applied along the existing sections of the TRAIL. Specifically, unless otherwise agreed to in writing by the COUNTY, the COUNTY shall provide the following maintenance, repair and replacement for the TRAIL EXTENSION within the TRAIL RIGHT-OF-WAY:

- (A) Prune, weed or remove vegetation and keep trees, shrubs and other vegetation ("Plantings") as free as practicable from disease and harmful insects;

- (B) Mow;
 - (C) Remove all trash and litter;
 - (D) Clean-up of flood or rain damage (e.g. silt clean up, culvert/ drain clean out);
 - (E) Minor patching of TRAIL EXTENSION pavement and performing minor regrading;
 - (F) Maintain drainage facilities within the TRAIL RIGHT-OF-WAY that solely serve the TRAIL EXTENSION, except for facilities that also serve areas outside the TRAIL EXTENSION, which shall be the sole responsibility of the CITY as provided in Section 2.2 herein.
 - (G) Routine minor capital repairs to the TRAIL EXTENSION pavement.
 - (H) Major capital repairs to the TRAIL EXTENSION in an amount not to exceed \$20,000 annually in any County budget year during the term hereof.
 - (I) Replacement and/or rehabilitation of the TRAIL EXTENSION pavement, including milling and resurfacing pavement in accordance with the County's pavement management program.
- 2.2 Except as otherwise provided in 2.1 herein, the CITY shall, at its sole cost and expense, at all times during the term hereof, maintain, repair, and replace the TRAIL EXTENSION, including but not limited to the TRAIL EXTENSION, drainage that serves the TRAIL EXTENSION and areas outside the TRAIL EXTENSION, the trestle bridge, and Enhanced Amenities as defined in Section 2.3 herein, in a reasonable manner and with due care in accordance with the standards deemed appropriate by the CITY.
- 2.3 The City may choose to provide additional Plantings and hardscape items, including but not limited to mini-parks, additional landscaping, and street lighting ("Enhanced Amenities") along the TRAIL EXTENSION. The City will be responsible for maintaining any such Enhanced Amenities.

SECTION 3 TERM

This Agreement shall take effect immediately upon filing with the Clerk of the Circuit Court and shall continue in full force and effect for twenty (20) years ("Term"), unless otherwise terminated as provided herein.

SECTION 4 TERMINATION

- 4.1 This Agreement may be terminated without cause by either party 180 days after providing notice in writing to the non-terminating party of such termination.
- 4.2 This Agreement may be immediately terminated if either party fails to maintain the TRAIL EXTENSION in accordance with this Agreement, and the defaulting party does not cure

the default within thirty (30) days after receipt of written notice of the default from the non-defaulting party.

SECTION 5 RESPONSIBILITIES OF THE PARTIES

The COUNTY and the CITY shall be fully responsible for their own acts of negligence and their respective agents' acts of negligence, when such agents are acting within the scope of their employment; and shall be liable for any damages resulting from said negligence to the extent permitted by Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by either the COUNTY or the CITY. Nothing herein shall be construed as consent by the COUNTY or CITY to be sued by third parties in any matter arising out of this Agreement.

SECTION 6 HAZARDOUS SUBSTANCES

- 6.1 As used herein, the term "Hazardous Substance" means any substance, which is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, the State of Florida, or the United States government including any and all materials or substances, which are defined as "Hazardous Waste", "extremely hazardous waste" or a "hazardous substance" pursuant to state, federal or local governmental law. Hazardous Substance includes, but is not limited to, asbestos, polychlorobiphenyls, and petroleum. The provisions under this paragraph shall survive the expiration or earlier termination of this Lease.
- 6.2 CITY shall be liable for contamination by Hazardous Substances in, on, or under the TRAIL EXTENSION, existing on the TRAIL EXTENSION on the date this Agreement is filed with the Clerk of the Circuit Court or thereafter caused by the acts of omissions of the CITY, its officers, employees, agents, volunteers and contractors (collectively "City Contamination"). If City Contamination occurs, the CITY shall be responsible for any and all claims, demands, actions, damages, fines, judgments, penalties, costs (including attorneys', consultants', and experts' fees), liabilities, losses and expenses, including but not limited to costs incurred due to any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision, arising as a result of such contamination. Without limitation of the foregoing, if City Contamination occurs CITY, at its sole expense, shall complete all required clean up, removal and remediation.
- 6.3 COUNTY shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on, in or about the TRAIL EXTENSION without obtaining CITY's prior written consent. However, the foregoing provision shall not prohibit the use, storage, maintenance, transportation to and from or handling within the TRAIL EXTENSION of substances customarily used in carrying out the COUNTY's duties under this Agreement, provided: (i) such substances shall be used, stored, maintained, transported, handled and disposed of only in accordance with Environmental Laws, and (ii) such substances shall not be released or discharged in or upon the TRAIL EXTENSION in violation of Environmental Law. If the TRAIL EXTENSION becomes contaminated in any manner as a result of any breach of the foregoing covenant or any act or omission of COUNTY or any of its agents, employees or contractors, (collectively, "County Contamination"), COUNTY shall be responsible for any and all claims,

demands, actions, damages, fines, judgments, penalties, costs (including attorneys', consultants', and experts' fees), liabilities, losses and expenses, including but not limited to costs incurred due to any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision, arising as a result of County Contamination. Without limitation of the foregoing, if County Contamination occurs, or COUNTY exacerbates any existing condition of contamination, COUNTY, at its sole expense, shall complete all required clean up, removal and remediation. COUNTY shall first obtain CITY's consent for any such remedial action.

**SECTION 7
NON-APPROPRIATION**

In accordance with the Florida Constitution and other applicable state and local laws, including but not limited to Sections 129.07 and 166.241(2), Florida Statutes, the obligations of the Parties are subject to sufficient budgeted funds being available in each budget year to achieve the purposes of this Agreement. In the event that sufficient budgeted funds are not available in a fiscal year, this Agreement shall terminate on the last day of the fiscal year for which sufficient budgeted funds are available without penalty to either of the Parties.

**SECTION 8
ENTIRE AGREEMENT**

This document embodies the whole agreement of the parties. There are no promises, terms, conditions, or allegations other than those contained herein and this document shall supersede all previous communications, representations and/or agreements, whether written or verbal, between the parties hereto. This Agreement may be modified only in writing and executed by all parties. This Agreement shall be binding upon the parties, their successors, assigns and legal representatives.

**SECTION 9
CLERK OF CIRCUIT COURT FILING**

Prior to its effectiveness, this Agreement and any amendments thereto must be filed with the Clerk of the Circuit Court of Pinellas County.

**SECTION 10
MISCELLANEOUS**

- 10.1 Each party shall retain all records relating to this Agreement as required by Chapter 119, Florida Statutes.
- 10.2 The CITY and the COUNTY shall not discriminate against any applicant for employment or employee with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of age, sex, race, color, religion, national origin or disability. The CITY and the COUNTY shall, during the performance of this Agreement, comply with all applicable provisions of federal, state and local laws and regulations pertaining to prohibited discrimination.
- 10.3 The CITY and COUNTY shall operate within strict conformity to all federal, state and local laws and any rules and regulations adopted thereunder.
- 10.4 All notices, requests, demands, invoices or other communications hereunder shall be in

writing and shall be deemed to have been served as of the delivery date appearing upon the return receipt if sent by certified mail, postage prepaid with return receipt requested, at the address listed below, or upon the actual date of delivery, if hand delivered to the address below. Either party may change the below-listed address at which it receives written notices by providing notice of such change to the other party in accordance with this paragraph.

COUNTY: Culture, Education and Leisure Department
Attn: Director
631 Chestnut Street
Clearwater, FL 33756

CITY: Joseph J. Kubicki, Director of Transportation
City of St. Petersburg
P.O. Box 2842
St. Petersburg, Florida 33731-2842

- 10.5 Should any section or part of any section of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other section or any part of any section of this Agreement.
- 10.6 No act of omission or commission of either party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be effected only through a written modification to this Agreement.
- 10.7 This Agreement shall be governed by and be interpreted in accordance with the laws of the State of Florida. Venue for state court actions shall be in Pinellas County. Venue for federal court actions shall be in the Middle District of Florida, Tampa Division, unless a division is created in St. Petersburg, or Pinellas County, in which case the action shall be brought in that division. Each party waives any defense of improper or inconvenient venue as to either court and consents to personal jurisdiction in either court.
- 10.8 The paragraph headings are inserted herein for convenience and reference only, and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.
- 10.9 For the purposes of this Agreement any required written permission, consent, approval or agreement ("Approval") by the City means the approval of the Mayor or his designee unless otherwise set forth herein and such approval shall be in addition to any and all permits and other licenses required by law or this Agreement, and any right of the City to take any action permitted, allowed or required by this Agreement, may be exercised by the Mayor or his designee, unless otherwise set forth herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused these present to be executed by their duly authorized officers, and their official seals hereto affixed, the day and year first above written.

CITY OF ST. PETERSBURG
A municipal corporation of the State of
Florida

PINELLAS COUNTY, by and through its
County Administrator

By:

By:

Rick Baker
As its Mayor

Robert S. LaSala

ATTEST:

ATTEST:

By:

By:

Eva A. Andujar, City Clerk

APPROVED AS TO FORM AND CONTENT:

APPROVED AS TO FORM:

City Attorney (Designee)

By:

By:

Assistant City Attorney

Chief Assistant County Attorney