

**DONATION AGREEMENT
FOR MARKHAM TRAILHEAD PAVILION**

THIS DONATION AGREEMENT (“Agreement”) is dated as of the ____ day of _____ 20____, (“Effective Date”) by and between **BIG NOVA FOUNDATION**, a Florida nonprofit organization, whose address is 312 W 1st Street Unit 505 Sanford, Florida 32771, in this Agreement referred to as “DONOR”, and **SEMINOLE COUNTY**, a charter county and political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 E. 1st Street, Sanford, Florida 32771, in this Agreement referred to as “COUNTY”.

WITNESSETH:

WHEREAS, DONOR desires to fund the construction and donation of a recreational pavilion and related improvements to be located at the Seminole Wekiva Trail Markham Trailhead located at 8515 Markham Road, Lake Mary, Florida (the “Project”); and

WHEREAS, the Project is intended to enhance public recreational opportunities and amenities available to users of the Seminole Wekiva Trail and surrounding public lands; and

WHEREAS, the COUNTY desires to accept the donation of the Project subject to the terms and conditions set forth herein, including the County’s review and acceptance of the completed improvements; and


WHEREAS, the parties acknowledge that the Project site is located within property subject to a sublease agreement between the Florida Department of Environmental Protection and Seminole County, and that all improvements remain subject to applicable State approvals and requirements; and

WHEREAS, as further consideration for the donation of the Project, the COUNTY agrees to provide certain support for the Project, including payment of applicable plan review fees, permit fees, and impact fees associated with the Project, construction of a sidewalk connection to the

pavilion, and ongoing maintenance of the completed improvements following acceptance by the COUNTY.

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth in this Agreement, COUNTY and DONOR agree as follows:

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

Section 2. Project. Donor agrees to fund the construction and donation of a pavilion and related improvements at the Seminole Wekiva Trail Markham Trailhead located at 8515 Markham Road, Lake Mary, Florida, as more particularly described in the project scope and specifications attached to this Agreement as Exhibit A and incorporated into this Agreement by reference. The Project and all associated improvements shall remain subject to review and approval by the COUNTY and any other governmental agencies having jurisdiction, including the Florida Department of Environmental Protection, if applicable.  In the event of any inconsistency between Exhibit A and this Agreement, this Agreement shall control.

Section 3. DONOR Responsibilities.

(a) DONOR shall be solely responsible for funding all costs associated with the design, engineering, construction, installation, delivery, and completion of the Project, including all contractor, subcontractor, supplier, consultant, labor, material, equipment, and related project costs, except those obligations expressly assumed by the County pursuant to Section 4 of this Agreement.

(b) DONOR shall be solely responsible for the solicitation, selection, engagement, direction, coordination, supervision, and payment of all contractors, subcontractors, suppliers, engineers, consultants, and other persons or entities performing work or services related to the Project. Nothing herein shall be construed to create a contractual relationship between the

COUNTY and any contractor, subcontractor, supplier, engineer, consultant, or other party engaged by DONOR, nor shall this Agreement be construed as obligating the COUNTY to procure, manage, supervise, control, or construct the Project.

(c) DONOR shall ensure that all contractors and subcontractors performing the work on the Project are properly licensed and insured in accordance with applicable Florida law. Prior to commencement of construction, DONOR shall provide the COUNTY with proof of commercial general liability insurance, workers' compensation insurance, and any other insurance reasonably required by the COUNTY, and Seminole County shall be included as an additional insured under applicable liability policies. A copy of the insurance requirements is attached to this Agreement as Exhibit B and incorporated into this Agreement by reference.

(d) DONOR shall cause the Project to be constructed in compliance with all applicable federal, state, and local laws, codes, regulations, permit conditions, accessibility requirements, and approved plans.




(e) Prior to commencement of construction, DONOR shall provide the COUNTY with copies of all applicable plans, specifications, permits, contractor information, and other documentation reasonably requested by the COUNTY.

(f) DONOR shall be responsible for maintaining the Project site in a safe condition during construction and shall be responsible for any damage caused by DONOR or DONOR's contractors, subcontractors, suppliers, or agents in connection with the Project prior to the COUNTY's acceptance of the Project pursuant to this Agreement.

(g) DONOR shall execute and deliver to the COUNTY an affidavit of compliance as required by section 787.06(14), Florida Statutes, concurrently with the execution of this Agreement. A copy of the required affidavit is attached to this Agreement as Exhibit C.

Section 4. COUNTY Responsibilities.

(a) Subject to applicable law and governmental approval requirements, the COUNTY agrees to pay applicable plan review fees, permit fees, and impact fees associated with the Project, and to construct a sidewalk connection from the existing trail to the pavilion area. Following acceptance of the Project pursuant to Section 6, the COUNTY shall maintain the completed Project improvements for so long as the COUNTY owns, operates, or controls the Project site. Except as expressly stated herein, the COUNTY shall have no obligation to fund, reimburse, manage, supervise, or construct the Project.

Section 5. Review and Approval. The COUNTY shall have the right to review and approve all final plans, specifications, and material modifications to the Project, which approval shall not be unreasonably withheld, conditioned, or delayed. The COUNTY shall further have the right, but not the obligation, to inspect the Project during construction to confirm compliance with the approved plans and applicable requirements.  Any material deviation from approved plans or specifications shall require prior written approval from the COUNTY.

Section 6. Acceptance of Project.

(a) Upon completion of the Project, DONOR shall notify the COUNTY in writing and request final inspection.

(b) The Project shall not be deemed accepted by the COUNTY until the COUNTY has completed a final inspection and issued written acceptance of the Project.

(c) Prior to acceptance, all risk of loss, damage, defects, or noncompliance shall remain with DONOR.

(d) The COUNTY may require correction of any defective, incomplete, unsafe, or nonconforming work prior to acceptance.


(e) Upon written acceptance by the COUNTY, ownership of the completed Project improvements shall automatically vest in Seminole County without further action by either party.

Section 7. Indemnification of COUNTY. To the fullest extent permitted by law, DONOR shall indemnify and hold harmless COUNTY, its commissioners, officers, employees, and agents from any and all claims, losses, damages, costs, reasonable attorney fees, and lawsuits for damages arising from, or related to the construction activities performed by or on behalf of DONOR. Nothing herein shall be deemed a waiver of sovereign immunity or the limits of liability set forth in section 768.28, Florida Statutes.

Section 8. Compliance with State Property Requirements. The parties acknowledge that the Project site is located on property subject to a sublease agreement involving the Florida Department of Environmental Protection. DONOR agrees that all work performed pursuant to this Agreement shall comply with all applicable requirements, approvals, restrictions, and conditions imposed by FDEP and any applicable sublease or park management requirements. A copy of the sublease between Seminole County and FDEP is attached hereto as Exhibit D and incorporated into this Agreement by reference.

Section 9. Project Issues and Corrective Action. If the COUNTY reasonably determines that the Project is not being performed in accordance with this Agreement, applicable law, approved plans, permit requirements, or applicable safety standards, the COUNTY shall provide written notice to DONOR identifying the issue(s) requiring corrective action. DONOR and COUNTY shall work in good faith to address and resolve such issues within a reasonable period of time. If the COUNTY determines that continuation of the Project presents an immediate threat to public safety or public property, the COUNTY may require construction activities to be temporarily suspended until the issue is resolved to the COUNTY's reasonable satisfaction.

Section 10. Termination. The COUNTY may terminate this Agreement upon written notice to DONOR if: (a) the Project is abandoned or substantially discontinued for an unreasonable period of time; (b) required governmental approvals are denied, revoked, or rendered unattainable; (c) DONOR is unable or unwilling to substantially comply with the material requirements of this Agreement following written notice and a reasonable opportunity to cure; or (d) the COUNTY reasonably determines that continuation of the Project is no longer feasible, appropriate, or in the public interest due to safety concerns, site conditions, legal requirements, or other circumstances beyond the COUNTY's reasonable control.

Section 11. Notices. Whenever either party desires to give notice to the other, it must be given by written notice, sent by registered or certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified. The place for giving of notice will remain such until it has been changed by written notice in compliance with the provisions of this Section. For the present,  the parties designate the following as the respective places for giving of notice:

For COUNTY:

Seminole County Parks and Recreation
Bill Pandos
100 E. 1st Street
Sanford, FL 32771

With a copy to:

Seminole County Attorney's Office
1101 E. First Street
Sanford, FL 32771

For DONOR:

312 W 1st Street
Unit 505
Sanford, Florida 32771

Section 12. Assignment. Neither this Agreement nor any interest in it may be assigned or transferred under any circumstances by either party without prior written consent of the other party and in such cases only by a document of equal dignity with this Agreement.

Section 13. All Prior Agreements Superseded. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained or referred to in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement may be predicated upon any prior representations or agreements, whether oral or written.

Section 14. Modifications, Amendments, or Alterations. No modification, amendment, or alteration in the terms or conditions contained in this Agreement will be effective unless contained in a written amendment executed with the same formality and of equal dignity with this Agreement.



Section 15. Public Records Law.

(a) DONOR acknowledges COUNTY's obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, to release public records to members of the public upon request. DONOR acknowledges that COUNTY is required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and this statute controls over the terms of this Agreement. Any related records to this Agreement may constitute public records subject to disclosure unless exempt by law.

Section 16. Governing Law, Jurisdiction, and Venue. The laws of the State of Florida govern the validity, enforcement, and interpretation of this Agreement. The sole jurisdiction and

venue for any legal action in connection with this Agreement will be in the courts of Seminole County, Florida.

Section 17. Headings and Captions. All headings and captions contained in this Agreement are provided for convenience only, do not constitute a part of this Agreement, and may not be used to define, describe, interpret or construe any provision of this Agreement.



[Balance of page intentionally left blank, signatory page to follow.]

IN WITNESS WHEREOF, the parties have made and executed this Agreement for the purposes stated above.

WITNESSES:

BIG NOVA FOUNDATION

SIGNATURE

By: _____
SARAH ASMA, Executive Director

PRINTED NAME

SIGNATURE

Date: _____

PRINTED NAME

[Balance of page intentionally left blank, signatory page to follow.]

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

ATTEST:

GRANT MALOY
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
ANDRIA HERR, Chairman

Date: _____

For the use and reliance
of Seminole County only.

As authorized for execution by the Board of
County Commissioners at its _____
20____, regular meeting.

Approved as to form and
legal sufficiency.

County Attorney

Attachments:

- Exhibit A: Project Scope and Specifications
- Exhibit B: Insurance Requirements
- Exhibit C: 787.06(14) Noncoercion Affidavit
- Exhibit D: Sublease between FDEP & County



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