

RESOLUTION NO. 2006-213

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE TOLOMATO COMMUNITY DEVELOPMENT DISTRICT, WHICH PROVIDES FOR A WAIVER OF THE REQUIRED CONSTRUCTION BOND, AND IN ITS PLACE SUBSTITUTE ALTERNATE FINANCIAL ASSURANCE FOR CONSTRUCTION OF IMPROVEMENTS REQUIRED BY THE NOCATEE DEVELOPMENT OF REGIONAL IMPACT (DRI) DEVELOPMENT ORDER

WHEREAS, the Tolomato Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, has issued Special Assessment Bonds, Series 2006 for funds to construction of a portion of the Nocatee DRI Roadway Improvements and on February 16, 2006 by Resolution No. 2006-05 the District further certified for collection assessments upon those lands within the DRI Order for repayment of the Series 2006 Bonds as identified in Notice of Assessments recorded in Official Records Book 2646, Page 164, which certification was amended on March 16, 2006 by Resolution 2006-06, and as amended by the Amended Notice of Assessments recorded in Official Records Book 2674, Page 1238, public records of St. Johns County, Florida, (the "Certified Assessment Area"); and

WHEREAS, pursuant to St. Johns County Ordinance No. 2000-05, as amended, St. Johns County Land Development Code Section 6.04.08.B.3 provides that the Construction Bond Requirement may be waived by the Board of County Commissioners.

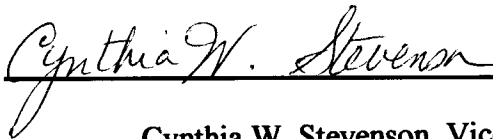
NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida that:

Section 1. The County Administrator is hereby authorized to approve and execute an Interlocal Agreement with the Tolomato Community Development District substantially in the form of that which is attached hereto and incorporated herein by reference.

Section 2. Upon acceptance by the County Administrator, the Clerk is instructed to record this agreement in the official records of St. Johns County Florida.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida this 27th day of June, 2006.


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



Cynthia W. Stevenson, Vice-Chair

ATTEST:

CHERYL STRICKLAND, CLERK

By: 
Deputy

RENDITION DATE 7/3/2006

PREPARED BY:
M. LYNN PAPPAS, ESQ.

AFTER RECORDING, RETURN TO:
JENNIFER WICK
PAPPAS METCALF JENKS & MILLER, P.A.
245 RIVERSIDE AVENUE, SUITE 400
JACKSONVILLE, FLORIDA 32202

FILED

06 JUL 19 AM 8:13

CHERYL SHICKLAND
CLERK COUNTY COMMISSION
ST. JOHNS COUNTY FL

Public Records of
St. Johns County, FL
Clerk # 2006053911,
O.R. 2746 PG 1502-1539
07/19/2006 at 08:26 AM,
REC. \$153.00 SUR. \$171.50

**INTERLOCAL AGREEMENT BETWEEN
ST. JOHNS COUNTY, FLORIDA AND THE
TOLOMATO COMMUNITY DEVELOPMENT DISTRICT
PROVIDING FOR WAIVER OF BOND
WITH ALTERNATE FINANCIAL ASSURANCE FOR
CONSTRUCTION OF IMPROVEMENTS**

THIS INTERLOCAL AGREEMENT (the "Interlocal Agreement"), dated as of the 19th day of July, 2006, is entered into by and between:

St. Johns County, Florida, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32084 ("County"); and

Tolomato Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located in St. Johns County, Florida, whose address is 14785-4 St. Augustine Road, Jacksonville, Florida 32258 ("District")

RECITALS

WHEREAS, the County has approved that certain Development of Regional Impact Development Order for Nocatee pursuant to Resolution 2001-30, as amended (the "DRI Order") which includes among other things, certain transportation improvement conditions as set forth in DRI Order, Special Condition 25 (the "Transportation Conditions"); and

WHEREAS, pursuant to the DRI Order, it is provided that the Developer (as defined therein) shall construct improvements referred to therein as (a) New County Road 210 pursuant to DRI Order, Special Condition 25(a)(i) to widen and construct 4-lane improvements from U.S.1 to the 4-lane Intracoastal Waterway Bridge, including a grade separated interchange at Town Center Loop Road East; (b) a 4-lane extension of Racetrack Road pursuant to DRI Order, Special Condition 25(a)(ii) to construct a 4-lane extension of Racetrack Road between the

current terminus of Racetrack Road at U.S.1 and the intersection of New County Road 210 and Town Center Loop Road West; and (c) certain additional master roadways as identified on Map H of the DRI Order which provide for the master roadway system within the DRI and consisting of Crosswater Parkway, Town Center Loop Road (a/k/a Coastal Ridge Boulevard), all as graphically depicted and identified by current name on **Exhibit A** attached hereto and made a part hereof (all collectively referred to herein as the “DRI Roadway Improvements”); and

WHEREAS, Section 34 of the DRI Order further provides that one or more community development districts may be established to provide various infrastructure improvements, including but not limited to the DRI Roadway Improvements; and

WHEREAS, the District was established by a rule of the Florida Land and Water Adjudicatory Commission for the purpose of planning, financing, constructing, installing, operating, and/or maintaining certain infrastructure, including transportation and roadway improvements, drainage facilities, potable water facilities, sanitary sewer facilities, and other improvements, including the DRI Roadway Improvements; and

WHEREAS, on November 29, 2004 by Resolution 2005-11 (the “District Levy Resolution”), the District levied non ad valorem assessments in the amount of \$356,970,000 (excluding costs of collection and early payment discounts) upon all developable lands within the jurisdiction of the District, being all developable lands subject to the DRI Order within St. Johns County, Florida, for the purpose of construction of District master infrastructure improvements, including the DRI Roadway Improvements, which levied amounts substantially exceed the estimated cost of construction of all DRI Roadway Improvements; and

WHEREAS, on February 16, 2006, the District issued its \$91,020,000 **Tolomato Community Development District** (St. Johns County, Florida) Special Assessment Bonds, Series 2006 (the “Series 2006 Bonds”), yielding \$75,115,741 in construction funds (the “2006 Construction Funds”), a portion of which has been allocated to construction of the DRI Roadway Improvements and on February 16, 2006 by Resolution No. 2006-05 the District further certified for collection assessments upon those lands within the DRI Order for repayment of the Series

2006 Bonds as identified in Notice of Assessments recorded in Official Records Book 2646, Page 164, which certification was amended on March 16, 2006 by Resolution 2006-06, and as amended by that Amended Notice of Assessments recorded in Official Records Book 2674, Page 1238, public records of St. Johns County, Florida, (the “Certified Assessment Area”); and

WHEREAS, the District has commenced construction of a portion of the DRI Roadway Improvements as described on **Exhibit B** attached hereto (the “Phase I Roadways”) which the District intends to dedicate to the County by plat; and

WHEREAS, the District is utilizing a portion of the construction funds from the Series 2006 Bonds to fund the construction of the Phase I Roadways; and

WHEREAS, Section 6.04.08A.-C. of the St. Johns County Land Development Code (the “LDC Construction Bond Requirement”) provides in part that: “Bonds shall be required for all Roadway, drainage, and water and wastewater Construction ... within county or municipal service district Rights-of-Way”; and

WHEREAS, Section 6.04.08B.3. of the St. Johns County Land Development Code provides that the LDC Construction Bond Requirement may be waived by the Board of County Commissioners; and

WHEREAS, Section 16.04.E.2.of the St. Johns County Development Review Manual provides that a construction bond or letter of credit in an amount to be determined shall be submitted with all plats to be scheduled before the Board of County Commissioners for final approval (together with the LDC Construction Bond Requirement, are referred to as the “County Bonding Requirements”);and

WHEREAS, the County Bonding Requirements, in general, are for the purpose of making funds available to complete improvements in the event a private party seeking to develop land is unable to complete necessary infrastructure; and

WHEREAS, in light of the nature and timing of the construction of the DRI Roadway Improvements, the issuance of bonds by the District for a portion of the Phase I Roadways, and the fact that the District is a public governmental body with the ability to issue additional bonds and assess lands within its boundaries, the District seeks an alternative mechanism to meet the County Bonding Requirements for the DRI Roadway Improvements from time to time (and to provide for the acceptance of such alternative assurances as to the Phase I Roadways) which would allow the cost effective construction of the DRI Roadway Improvements, take into account the bond funds available for completion of such improvements as well as the District's previous actions to lien property in an amount sufficient to generate funds that might be needed in the future, and allow acceptance by the Board of County Commissioners of plats containing the DRI Roadway Improvements; and

WHEREAS, collecting on a construction bond to fund deficiencies in construction funding is often a time consuming process involving litigation against third party sureties, with all attendant risks and costs; and

WHEREAS, having bond proceeds in a bank held by a third party trustee under a trust indenture for the purpose of constructing designated improvements, and having the established process under Chapter 197, Florida Statutes, for the collection of non ad valorem assessments already levied by the District provides greater certainty as to the likelihood and timeliness of having funds available in the event construction of the DRI Roadway Improvements subject to these alternative financial assurances is abandoned; and

WHEREAS, the District has requested that the County accept an alternative mechanism to meet the County Bonding Requirements for the DRI Roadway Improvements from time to time (and to provide for the acceptance of such alternative assurances as to the Phase I Roadways) and the County has examined the foregoing factors enumerated above and has determined that the alternative mechanisms set forth in this Interlocal Agreement provide equal or greater assurance of completion of the DRI Roadway Improvements by the District than a customary construction bond would.

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the District agree as follows:

SECTION 1. AUTHORITY. This Interlocal Agreement is entered into pursuant to the authority set forth in Chapters 125, 163, and 190, Florida Statutes, and other applicable laws.

SECTION 2. RECITALS AND EXHIBITS. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Interlocal Agreement. All exhibits identified herein are hereby incorporated by reference to the same extent as if fully set forth herein.

SECTION 3. GENERAL CRITERIA FOR ALTERNATIVE ASSURANCES.

3.1 **DISTRICT COMMITMENT TO COMPLETE CONSTRUCTION.** The District shall be obligated to commit to completion of construction (subject only to reasonable delays due to Force Majeure) of such portion of the DRI Roadway Improvements to which the alternate financial assurances set forth in this Interlocal Agreement relate (“Alternate Assurances”) upon the District’s commencement of construction of the DRI Roadway Improvements for which Alternate Assurances are sought, all in the manner provided in this Interlocal Agreement. For purposes of this Interlocal Agreement, the term “Force Majeure” shall mean any fire, flood, windstorm, hurricane, epidemic, abnormal weather condition, labor dispute, strike, insurrection or unrest, act of God, dispute between the District and contractors or subcontractors, which causes a work slowdown, delay or stoppage as a result of any of the foregoing, action by another governmental agency with jurisdiction over construction permitting resulting in a slowdown or stoppage of construction, or any other circumstance or event beyond the control of the District. Force Majeure shall only apply to alter the time for completion of construction and not excuse a failure to perform.

3.2 **DISTRICT DUTY TO FUND.** The District shall be obligated hereunder, at its sole cost and expense, to complete such DRI Roadway Improvements for which Alternate

Assurances are provided pursuant to this Interlocal Agreement by (i) application of proceeds from issuance of special assessment bonds in one or more series by the District in amounts identified by the District to the County for completion of the DRI Roadway Improvements from time to time (the "Roadway Bond Proceeds"); and (ii) such other revenue sources available to the District. The District shall be obligated hereunder to promptly (a) certify for collection assessments upon all developable lands within the jurisdiction of the District within St. Johns County (excluding only the Certified Assessment Area as may be modified from time to time) (the "Future Certification Areas") in such amounts as may be necessary to fund completion of construction of any DRI Roadway Improvements which are subject to Alternate Assurances after taking into account the Roadway Bond Proceeds and as to which the District has committed a Roadway Event of Default (as hereinafter defined) and (b) upon collection of such assessments, pay over to the County the estimated costs to complete such DRI Roadway Improvements as to which a Roadway Event of Default has occurred for the purpose of completion of the applicable portion of the DRI Roadway Improvements. In all cases, the District may designate land to be included in the Future Certification Areas on which assessments have been certified to the extent such assessments are less than the amounts identified in Resolution 2005-11.

3.3 ASSURANCES AS TO ADDITIONAL SOURCES. At the time of request to use Alternate Assurances, the District shall provide to the County a certification by England-Thims & Miller (the "District Engineer") certified to the County and District as to the estimated cost to complete any portion of the DRI Roadway Improvements as to which Alternate Assurances shall apply (the "Completion Cost") and the estimated time to complete. The Completion Cost shall not include costs for water, wastewater or reuse facilities being paid for by the JEA pursuant to that certain Developer and Utility Service Agreement recorded in Official Records Book 2359, Page 1979, public records of St. Johns County, Florida. As to any portion of such Completion Cost which exceeds the amount of Roadway Bond Proceeds committed by the District for completion of such portion of the DRI Roadway Improvements (the "Secondary Assurance Amount"), the District shall provide evidence reasonably satisfactory to the County that the fair market value of the Future Certification Areas is not less than one hundred fifty percent (150%) of the Secondary Assurance Amount (the "Valuation Statement"). Such Valuation Statement may include a review or certification by an appraiser approved by the

County or other valuation information reasonably acceptable to the County when lands within the DRI have been conveyed to third party purchasers so as to establish a sales comparable basis to establish fair market value. Such Valuation Statement shall be accompanied by title evidence to substantiate that the Future Certification Areas included within the Valuation Statement are subject to the District Levy Resolution.

3.4 **ADDITIONAL BOND PROCEEDS.** The County and the District contemplate that from time to time as construction is anticipated to commence or actually commences on additional portions of the DRI Roadway Improvements, that the District shall issue special assessment bonds and certify additional assessments for collection within the developable lands subject to the DRI Order so as to allow for funding by the District of such additional DRI Roadway Improvements with additional Roadway Bond Proceeds. Nothing herein shall prevent the District from certifying assessments to secure future bond issues or require any action by the County in relation to such certification or bond issuance, nor shall such action by the District create any liability for the County with respect to the District's bond issues. Any Valuation Statement provided by the District from time to time pursuant to Section 3.3 above must meet the requirements of Section 3.3 as to valuation of those lands within the Future Certification Areas, as of the date of such Valuation Statement. In addition, within thirty (30) days after closing of any future bond issue by the District and at all times as a condition to approval of any future Supplementary Alternate Assurances Agreement (as hereinafter defined), the District shall provide an update of any previously approved Valuation Statement. Such update shall evidence a calculation of the Completion Costs and the amount of Roadway Bond Proceeds then available for completion. Such update shall also evidence that the land value of the Future Certification Area as of such update is not less than one hundred fifty percent (150%) of the amount of all Secondary Assurance Amounts calculated as of the date of such update which are applicable to previously approved Alternate Assurances for DRI Roadway Improvements pursuant to this Interlocal Agreement.

3.5 **DISBURSEMENTS.** The District shall, from time to time, direct disbursements of the funds to contractors or subcontractors as payment for the amount of work completed in construction of the DRI Roadway Improvements by the respective contractor or

subcontractor. Each direction to disburse shall be in the form approved by the District and in compliance with the requirements of the District's trust indenture governing the use of bond proceeds being disbursed. The District Engineer shall certify to the District and the County the amount of the disbursement, the percentage of progress of the DRI Roadway Improvements subject to Alternate Assurances, and that the value thereof is consistent with Contractor's pay request substantially in the form attached hereto as **Exhibit C** (the "District Engineer's Certification"). The District shall cause a copy of each District Engineer's Certification to be delivered to County coincident with delivery to the District. Upon completion of any roadways constituting part of the DRI Roadway Improvements subject to Alternate Assurances, the last construction draw shall only be paid upon approval of as-built surveys for such part of the DRI Roadway Improvements by the County.

3.6 **ROADWAY EVENT OF DEFAULT.** If, at any time, the District abandons construction of any DRI Roadway Improvements as to which Alternate Assurances have been provided for a period in excess of sixty days (60) consecutive days, subject only to reasonable delays for Force Majeure (a "Roadway Event of Default"), and if such Roadway Event of Default is not waived by the County, the County may, at its option, demand that the District, and upon such demand, the District shall, take all steps necessary to certify for collection sufficient assessments on the Future Certification Areas to generate funds to pay the costs of completion of the DRI Roadway Improvement in default as described herein. The District agrees that upon notification by the County that as a result of a Roadway Event of Default, the County has undertaken to complete or cause to be completed the DRI Roadway Improvements, the District shall process requisitions for payments to contractors from remaining Roadway Bond Proceeds, if any, in accordance with applicable trust indentures and will cooperate fully with the County and take all actions reasonably necessary to accomplish the transactions contemplated by this Interlocal Agreement. Any funds paid or disbursed by the District to, or at the direction of, the County hereunder shall only be utilized for completion of the applicable portion of the DRI Roadway Improvements.

3.7 **ATTORNEY'S OPINION.** The use of Alternate Assurances as provided for herein shall require delivery of an opinion letter by the counsel for the District that the Interlocal

Agreement is enforceable against the District and that non ad valorem assessments which may be certified for collection by the District in accordance herewith may lawfully be certified for collection, shall be enforceable, shall have a lien priority which is co-equal to that of ad valorem taxes imposed by the County, any municipality, and school board as set forth in Florida law, and that the certification of such assessments for collection under the Interlocal Agreement do not require further public hearing. Such opinion shall be in substantial form and content attached hereto as **Exhibit D**.

3.8 **PAYMENT OF LEGAL FEES.** The District shall pay the County's outside counsel's related legal fees associated with the drafting and negotiation of this Interlocal Agreement and any Supplementary Alternate Assurance Agreement.

SECTION 4. USE OF OTHER BOND ASSURANCES. Nothing contained herein shall require the District to utilize the provisions of this Interlocal Agreement as to Alternate Assurances and at any time the District may comply with County Bonding Requirements as to any portion of the DRI Roadway Improvements. The Development Order contemplates that certain of the DRI Roadway Improvements are to be conveyed to the County prior to commencement of construction of improvements thereon. The County agrees that neither the Developer nor the District shall be required to meet the County Bonding Requirements or elect Alternate Assurances, as provided for herein, until commencement of construction of DRI Roadway Improvements upon property title to which shall have been conveyed to the County or dedicated by plat.

SECTION 5. PROCEDURE FOR IMPLEMENTATION OF ALTERNATE ASSURANCES. The District has commenced construction of the Phase I Roadways and pursuant to Section 6 below, the County has approved the use of Alternate Assurances as to such Phase I Roadways. As to additional portions of the DRI Roadway Improvements for which the District desires to utilize Alternate Assurances, the District shall submit to the County the form of Supplementary Alternate Assurances Agreement substantially in form and content attached hereto as **Exhibit E** (the "Supplementary Alternative Assurances Agreement") for approval by the County upon verification of compliance with the criteria of Section 3 of this Interlocal Agreement.

SECTION 6. PHASE I ROADWAYS.

6.1 **COMPLETION OF PHASE I ROADWAYS.** The District hereby agrees to complete or cause to be completed the Phase I Roadways, subject only to reasonable delays due to Force Majeure, and to abide by and comply with the provisions of Section 3 of this Interlocal Agreement, including particularly Sections 3.2 and 3.6, with respect to the Phase I Roadways. The County agrees that the District's pledge to complete or cause to be completed the Phase I Roadways together with the remaining provisions of this Section 6 shall satisfy the County Bonding Requirements as Alternate Assurances pursuant to this Interlocal Agreement.

6.2 **COMPLETION COST.** The District has provided to the County the District Engineer's Certification as to the Completion Cost of the Phase I Roadways dated as of May 31, 2006, equal to \$50,615,595.00. The District hereby agrees that that portion of the 2006 Construction Funds equal to \$30,000,000.00 (the "Phase I Roadway Bond Proceeds") shall be utilized by the District solely for costs to complete the Phase I Roadways. Nothing herein prevents the District from utilizing more than the Phase I Roadway Bond Proceeds, nor from utilizing the proceeds of any future bond issue or other revenue source for the completion of the Phase I Roadways.

6.3 **SECONDARY ASSURANCES.** The amount of the Completion Cost of the Phase I Roadways in excess of the Phase I Roadway Bond Proceeds is \$20,615,595.00 (the "Phase I Secondary Assurance Amount"). The District has provided to the County (i) a Valuation Statement that the fair market value of the Future Certification Areas as of June 19, 2006 is equal to or greater than \$30,923,392.50, which is one hundred fifty percent (150%) of all Secondary Assurance Amounts under this Interlocal Agreement or any Supplementary Alternate Assurance Agreement; (ii) title evidence that the Future Certification Areas addressed by the Valuation Statement are subject to the District Levy Resolution; and (iii) attorney's opinion meeting the requirements of Section 3.7 hereof.

6.4 **DUTY TO FUND AS TO PHASE I ROADWAYS.** The District shall comply with the provisions of Sections 3.2 and 3.6 of this Interlocal Agreement to provide funds for the costs of completion of the Phase I Roadways if there shall occur a Roadway Event of Default as to the Phase I Roadways or any portion thereof.

6.5 **ACCEPTANCE OF ALTERNATE ASSURANCES.** The County hereby accepts the Alternate Assurances as to the Phase I Roadways as provided in this Section 6 to satisfy the County Bonding Requirements relating to the Phase I Roadways.

SECTION 7. MAINTENANCE BONDS. Nothing contained herein shall be construed to waive or modify the requirements of Sections 6.04.08D of the Land Development Code as to the duty to deliver maintenance bonds for the Phase I Roadways.

SECTION 8. NO LIEN OR ENCUMBRANCE. Nothing contained herein shall constitute a lien or encumbrance upon any portion of the lands subject to the DRI Order.

SECTION 9. AUTHORITY TO CONTRACT. The execution of this Interlocal Agreement has been duly authorized by the appropriate body or official(s) of the County and the District, each party has complied with all applicable requirements of law, and each party has full power and authority to comply with the terms and provisions of this instrument.

SECTION 10. LIMITATIONS ON GOVERNMENTAL LIABILITY; INSURANCE. Nothing in this Interlocal Agreement shall be deemed a waiver of immunity limits of liability or sovereign immunity of either the County or the District, pursuant to Chapter 768, Florida Statutes, and any amendment thereto, or other statute or law. Nothing in this Interlocal Agreement shall inure to the benefit of any third party for the purpose of allowing any claim, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law. The District agrees that as to any construction contracts entered into after the effective date hereof for construction of any part of the DRI Roadway Improvements subject to Alternate Assurances, the District shall

include a provision requiring the contractor to name the County as an additional insured under the liability insurance policies carried by contractor under such construction agreement.

To the extent permitted by law, the District agrees to indemnify and hold the County harmless from and against any and all damages, losses or claims, including, but not limited to, legal fees and expenses, to the extent that such damages, losses or claims are attributable to actions, omissions or negligence by the District, its supervisors, officers, agents, employees or independent contractors.

To the extent permitted by law, the County agrees to indemnify and hold the District harmless from and against any and all damages, losses or claims, including, but not limited to, legal fees and expenses, to the extent that such damages, losses or claims are attributable to actions, omissions or negligence by the County, its supervisors, officers, agents, employees or independent contractors.

SECTION 11. NEGOTIATION AT ARM'S LENGTH. This Interlocal Agreement has been negotiated fully between the parties as an arm's length transaction and with the assistance of legal counsel. Both parties participated fully in the preparation of this Interlocal Agreement. In the case of a dispute concerning the interpretation of any provision of this Interlocal Agreement, both parties are deemed to have drafted, chosen, and selected the language, and the language in question will not be interpreted or construed against either party.

SECTION 12. NOTICES. Any notices required or allowed to be delivered shall be in writing and be deemed to be delivered when: (i) hand delivered to the official hereinafter designated, or (ii) upon receipt of such notice when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith.

If to the County: County Administrator
St. Johns County
Post Office Drawer 349
St. Augustine, Florida 32085-0349

With Copies to: County Attorney
St. Johns County
4020 Lewis Speedway
St. Augustine, FL 32084

If to the District: Tolomato Community Development District
14785-4 St. Augustine Road
Jacksonville, Florida 32258
Attn: District Manager

With Copies to: Hopping Green & Sams, P.A.
123 S. Calhoun Street
Tallahassee, Florida 32301
Attn: Cheryl Stuart

SECTION 13. DEFAULT. Each of the parties hereto shall give the other party written notice of any default hereunder and shall allow the defaulting party a reasonable time from the date of its receipt of such notice within which to cure any such defaults and to thereafter notify the other parties of the actual cure of any such defaults. The parties agree to act in good faith in determining the reasonable amount of time necessary to cure any breach, provided however a reasonable amount of time to cure any monetary default or a Roadway Event of Default shall be no longer than 10 days and 15 days, respectively. If the breach is not cured within a reasonable time period, the County and the District shall be entitled to all remedies at law or in equity, which may include but not be limited to, damage, injunctive relief and specific performance. The parties may utilize the governmental dispute procedures set forth in Chapter 164, Florida Statutes and any amendments thereto.

SECTION 14. OTHER AGREEMENTS. Nothing in this Interlocal Agreement shall be construed as superseding, altering or amending the conditions and terms of any other agreement between the parties hereto.

SECTION 15. ASSIGNMENT OR TRANSFER. Neither party may assign or transfer its rights or obligations under this Interlocal Agreement without the prior written consent of the other party.

SECTION 16. BINDING EFFECT. This Interlocal Agreement shall be binding upon and shall inure to the benefit of the County, the District, and their respective successors.

SECTION 17. FILING. The County Attorney is hereby authorized and directed, after approval of this Interlocal Agreement by the respective governing bodies of the County and the District and the execution thereof by the duly qualified and authorized officers of each of the parties hereto, to cause this Interlocal Agreement to be filed with the Clerk of the Circuit Court of St. Johns County, Florida, in accordance with the requirements of Section 163.01(11) of the Cooperation Act.

SECTION 18. APPLICABLE LAW AND VENUE. This Interlocal Agreement and the provisions contained herein shall be governed by and construed in accordance with the laws of the State of Florida. In any action, in equity or law, with respect to the enforcement or interpretation of this Interlocal Agreement, venue shall be in St. Johns County, Florida.

SECTION 19. SEVERABILITY. If any part of this Interlocal 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 Interlocal 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.

SECTION 20. ENTIRE AGREEMENT; AMENDMENT. This instrument and its exhibits constitute the entire agreement between the parties and supersede all previous discussions,

understandings and agreements between the parties relating to the subject matter of this Interlocal Agreement. Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendment.

SECTION 21. EFFECTIVE DATE. This Interlocal Agreement shall become effective upon the filing hereof in accordance with Section 17 hereof.

SECTION 22. ATTORNEYS FEES. In the event of litigation to enforce the remedial provisions of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs associated with any such litigation at the trial level and/or appeal.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties hereto, by and through the undersigned, have entered into this Interlocal Agreement on the date and year first above written.

ST. JOHNS COUNTY, FLORIDA

By: [Signature]
Ben Adams, County Administrator

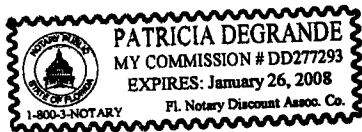
Approved as to legal sufficiency:

By: [Signature]
Name: Michael D. Hunt
Title: Deputy County Attorney
County Attorney's Office
Date: 7/19/06

STATE OF FLORIDA }
COUNTY OF St. Johns }

The foregoing instrument was acknowledged before me this 19th day of July, 2006, by Ben Adams as the County Administrator of St. Johns County, and who has acknowledged that he executed the same on behalf of St. Johns County and that he was authorized to do so. He is personally known to me, or ~~has produced~~ as identification.

In witness whereof, I hereunto set my hand and official seal.



[Signature]
Notary Public, State of Florida

**TOLOMATO COMMUNITY
DEVELOPMENT DISTRICT**

By: *Richard T. Ray*
Richard T. Ray
Chairman, Board of Supervisors

ATTEST:

Richard H. O'Steen
Name: RICHARD H. O'STEEN
Title: Secretary / Assistant Secretary

STATE OF FLORIDA }
COUNTY OF Duval }

The foregoing instrument was acknowledged before me this 20th day of June, 2006, by Richard T. Ray as the Chairman of the Board of Supervisors and Richard O'Steen as Secretary / Assistant Secretary for the **TOLOMATO COMMUNITY DEVELOPMENT DISTRICT**, and who have acknowledged that they executed the same on behalf of the **TOLOMATO COMMUNITY DEVELOPMENT DISTRICT** and that each was authorized to do so. Each is personally known to me ~~or has produced~~ as identification.

In witness whereof, I hereunto set my hand and official seal.

Lauren Owens
Notary Public **Lauren Owens**
Commission # DD359213
Expires November 3, 2008
Bonded Troy Pain - Insurance, Inc. 800-385-7019

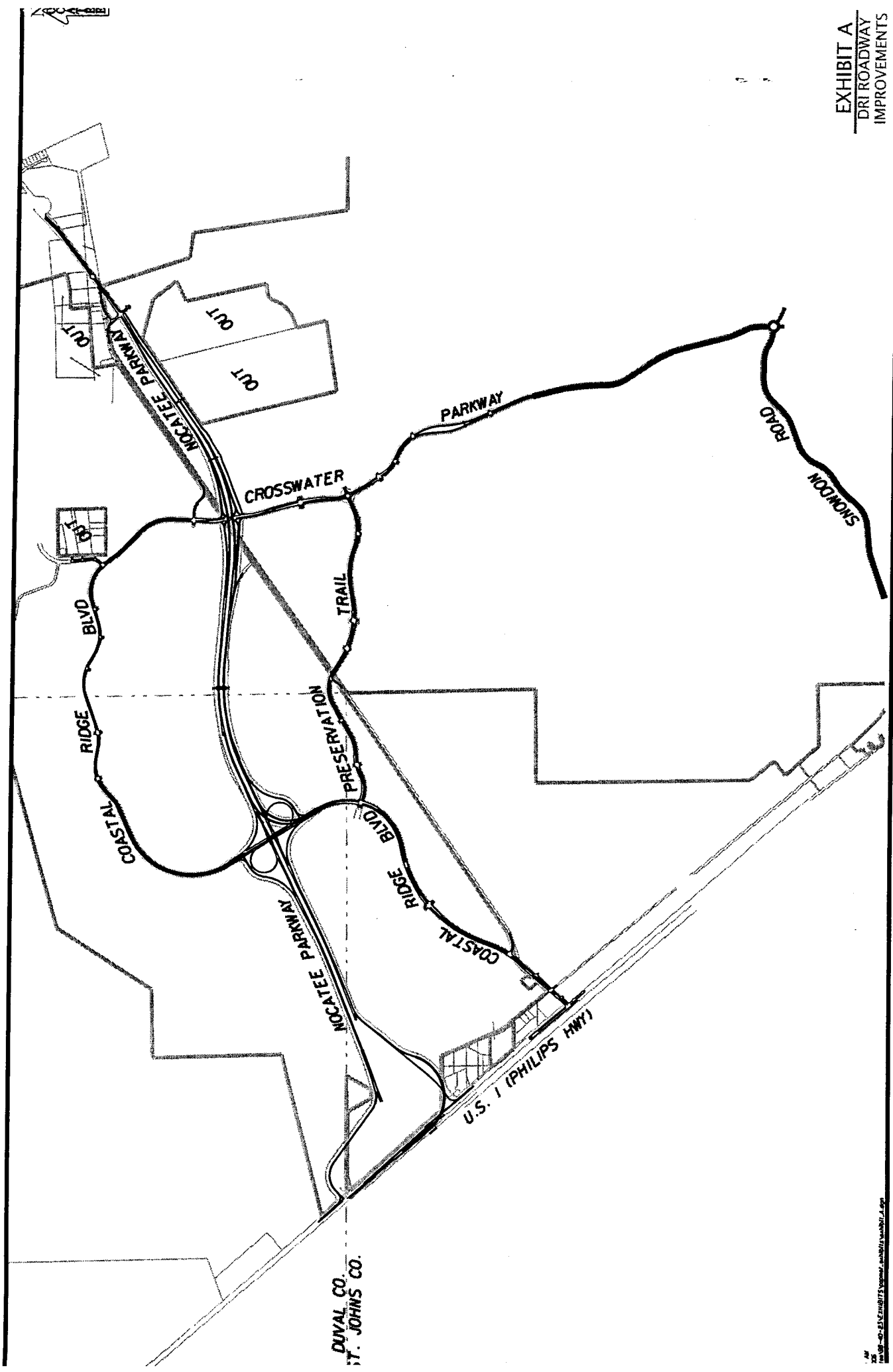
LIST OF EXHIBITS

- Exhibit A - DRI Roadway Improvements
- Exhibit B - Phase I Roadways
- Exhibit C - Form of District Engineer's Certification
- Exhibit D - Form of Attorney's Opinion
- Exhibit E - Supplementary Alternate Assurances Agreement

EXHIBIT A

DRI Roadway Improvements

EXHIBIT "A"



DUVAL CO.
ST. JOHNS CO.

EXHIBIT A
DRI ROADWAY
IMPROVEMENTS

EXHIBIT B

Phase I Roadways

EXHIBIT "B"

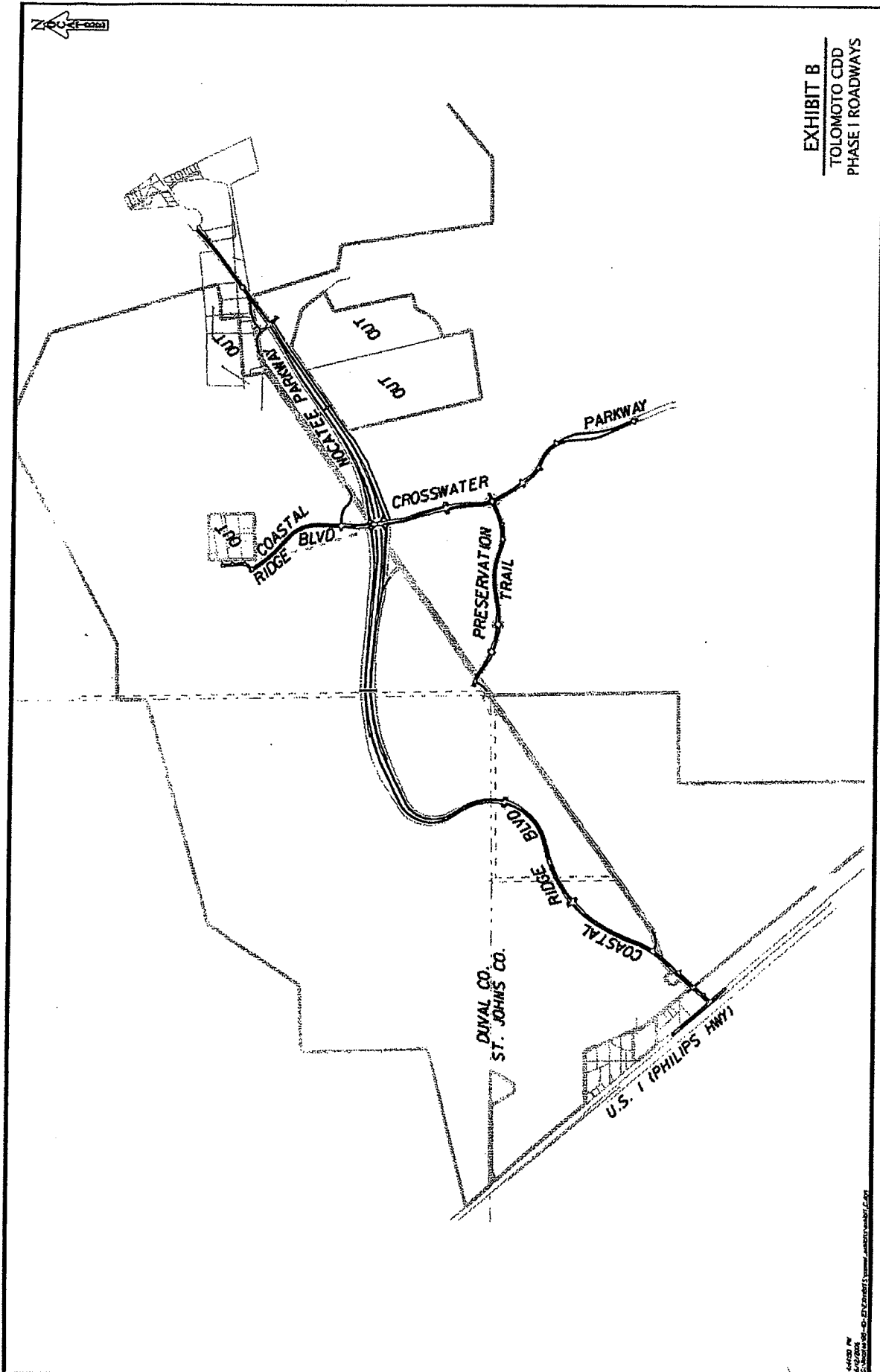


EXHIBIT B
TOLOMOTO CDD
PHASE I ROADWAYS

EXHIBIT C

Form of District Engineer's Certification

EXHIBIT "C"

CERTIFICATION OF PAYMENT REQUEST

No. _____

Owner's Project No. _____ ET&M Project No. _____

Project Title: _____

Contractor: _____

Contract For: _____

Contract Date: _____ Application Date: _____

Application No: _____

Application Amount: _____ for Period Ending: _____

TO: Tolomato Community Development District and St. Johns County, Florida
(Owner)

Attached hereto is the Contractor's Application for Payment for Work accomplished under the above contract through the date indicated above.

In accordance with the above contract, the undersigned approves payment to the Contractor of the amount due shown below. The value of work installed in consistent with the amount certified below.

AMOUNT CERTIFIED: _____

Signature

Robert Mizell, P.E.
ENGLAND, THIMS & MILLER, INC.

Date

Of the amount certified above, the sum of \$ _____ is allocated to the cost of DRI Roadway Improvements (as defined in the Interlocal Agreement dated _____, 2006 between St. Johns County, Florida and the Tolomato Community Development District). The DRI Roadway Improvements under the above described Contract with Contractor are _____ % complete as of the date of the attached Contractor Application for Payment.

EXHIBIT "C"

APPLICATION FOR PAYMENT NO. _____

To: _____ (OWNER)
From: _____ (CONTRACTOR)
Contract: _____
Project: _____
OWNER's Contract No. _____ ENGINEER's Project No. _____
For Work accomplished through the date of: _____

- 1. Original Contract Price: \$ _____
2. Net change by Change Orders and Written Amendments (+ or -): \$ _____
3. Current Contract Price (1 plus 2): \$ _____
4. Total completed and stored to date: \$ _____
5. Retainage (per Agreement):
% of completed Work: \$ _____
% of stored material: \$ _____
Total Retainage: \$ _____
6. Total completed and stored to date less retainage (4 minus 5): \$ _____
7. Less previous Application for Payments: \$ _____
8. DUE THIS APPLICATION (6 MINUS 7): \$ _____

Accompanying Documentation:

CONTRACTOR'S Certification:

The undersigned CONTRACTOR certifies that (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied on account to discharge CONTRACTOR's legitimate obligations incurred in connection with Work covered by prior Applications for Payment numbered 1 through _____ inclusive; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to OWNER indemnifying OWNER against any such Lien, security interest or encumbrance); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and not defective.

Dated _____ CONTRACTOR

By: _____

State of _____
County of _____
Subscribed and sworn to before me this _____
day of _____, _____

Notary Public
My Commission expires: _____

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated _____ ENGINEER

By: _____

EJCDC No. 1910-8-E (1996 Edition)
Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specification Institute.

EXHIBIT D

Form of Attorney's Opinion

EXHIBIT D

Insert date__

St. Johns County
Board of County Commissioners
Insert address

Re: Tolomato Community Development District Financial Assurances

Ladies and Gentlemen:

We serve as counsel to the Tolomato Community Development District (the "District"), a community development district established pursuant to the laws of the State of Florida. In connection with the interlocal agreement between the District and St. Johns County (the "County") dated _____, 2006 (the "Interlocal Agreement"), we have been asked to provide you an opinion as to certain matters relating to the District and the use of Alternate Assurances. Capitalized terms used herein unless otherwise defined shall have the meaning ascribed to them in the Interlocal Agreement.

In our capacity as counsel to the District, we have examined such documents as we have deemed necessary or appropriate in rendering the opinions set forth below.

Based on the foregoing, and subject to the qualifications set forth below, we are of the opinion that:

1. The Interlocal Agreement is a valid and binding agreement and enforceable against the District in accordance with its terms.

2. The District has levied special or non ad valorem assessments on lands within its boundaries pursuant to the District's Resolution 2005-11, as amended (collectively, the "Assessment Resolutions"). Certain of those special or non ad valorem assessments, though levied, have not yet been certified for collection. Said special or non ad valorem assessments may be lawfully certified for collection pursuant to the Assessment Resolutions and as set forth in the Interlocal Agreement. Pursuant to s. 170.09, Florida Statutes, the special or non ad valorem assessments, are legal, valid and binding liens upon the property against which such special or non ad valorem assessments are made co-equal with the lien of all state, county, district and municipal taxes, superior in dignity to all other liens, titles and claims, until paid. Enforcement of

St. Johns County

Insert date

Page 2 of 2

the District's special or non ad valorem assessments pursuant to the Uniform Method of Collection in Chapter 197, Florida Statutes, is by the tax collector as provided therein.

The special or non ad valorem assessments levied pursuant to the Assessment Resolutions may be certified for collection without the need for further public hearing as provided in the Assessment Resolutions in accordance with the Interlocal Agreements.

This opinion is solely for the benefit of the addressee and this opinion may not be relied upon in any manner, nor used, by any other persons or entities. In rendering the foregoing opinions, we have assumed the accuracy and truthfulness of all public records and of all certifications, documents and other proceedings examined by us that have been executed or certified by public officials acting within the scope of their official capacities and have not verified the accuracy or truthfulness thereof. We have also assumed the genuineness of the signatures appearing on such public records, certifications, documents and proceedings. We have also assumed the due authorization, execution, and delivery of each document by each of the other parties thereto.

Our opinion as to enforceability of any document is subject to limitations imposed by bankruptcy, insolvency, reorganization, moratorium, liquidation, readjustment of debt, or similar laws relating to or affecting creditors' rights generally and general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and to the exercise of judicial discretion in appropriate cases.

The opinions or statements expressed above are based solely on the laws of Florida and of the United States of America. Accordingly, we express no opinion nor make any statement regarding the effect or application of the laws of any other state or jurisdiction.

Very truly yours,

For the Firm

EXHIBIT E

Supplementary Alternate Assurances Agreement

PREPARED BY:
M. LYNN PAPPAS, ESQ.

AFTER RECORDING, RETURN TO:
JENNIFER WICK
PAPPAS METCALF JENKS & MILLER, P.A.
245 RIVERSIDE AVENUE, SUITE 400
JACKSONVILLE, FLORIDA 32202

SUPPLEMENTARY ALTERNATE ASSURANCES AGREEMENT

THIS SUPPLEMENTARY ALTERNATE ASSURANCES AGREEMENT (this "Supplementary Agreement"), dated as of the ____ day of _____, 20____, is entered into by and between:

St. Johns County, Florida, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32084 ("County"); and

Tolomato Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located in St. Johns County, Florida, whose address is 14785-4 St. Augustine Road, Jacksonville, Florida 32258 ("District")

RECITALS

WHEREAS, the County and the District have entered into that certain Interlocal Agreement Providing for Waiver of Bond with Alternate Financial Assurance for Construction of Improvements dated _____, 2006 (the "Interlocal Agreement"). All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Interlocal Agreement; and

WHEREAS, the parties wish to enter into this Supplementary Agreement pursuant to Section 5 of the Interlocal Agreement to provide Alternate Assurances for the portion DRI Roadway Improvements as described on **Exhibit A** attached hereto (the "Phase ____ Roadways"); and

[WHEREAS, on _____, 20____, the District issued its \$ _____
Tolomato Community Development District (St. Johns County, Florida) Special Assessment

Bonds, Series _____ (the "Series _____ Bonds"), yielding \$ _____ in construction funds (the " _____ Construction Funds"), a portion of which has been allocated to construction of the DRI Roadway Improvements.]

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the District agree as follows:

SECTION 1. AUTHORITY. This Interlocal Agreement is entered into pursuant to the authority set forth in Chapters 125, 163, and 190, Florida Statutes, and other applicable laws.

SECTION 2. RECITALS AND EXHIBITS. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Interlocal Agreement. All exhibits identified herein are hereby incorporated by reference to the same extent as if fully set forth herein.

SECTION 3. PHASE ROADWAYS.

3.1 **COMPLETION OF PHASE ROADWAYS.** The District hereby agrees to complete or cause to be completed the Phase _____ Roadways, subject only to reasonable delays due to Force Majeure, and to abide by and comply with the provisions of Section 3 of the Interlocal Agreement, including particularly Sections 3.2 and 3.6, with respect to the Phase _____ Roadways. The County agrees that the District's pledge to complete or cause to be completed the Phase _____ Roadways together with the remaining provisions of this Section 3 shall satisfy the County Bonding Requirements as Alternate Assurances pursuant to the Interlocal Agreement, as supplemented hereby.

3.2 **COMPLETION COST.** The District has provided to the County the District Engineer's Certification as to the Completion Cost of the Phase _____ Roadways dated as of _____, equal to \$ _____. The District hereby agrees that that portion of the _____ Construction Funds equal to \$ _____ (the "Phase _____ Roadway

Bond Proceeds”) shall be utilized by the District solely for costs to complete the Phase _____ Roadways. Nothing herein prevents the District from utilizing more than the Phase _____ Roadway Bond Proceeds, nor from utilizing the proceeds of any future bond issue or other revenue source for the completion of the Phase _____ Roadways.

3.3 **SECONDARY ASSURANCES.** The amount of the Completion Cost of the Phase _____ Roadways in excess of the Phase _____ Roadway Bond Proceeds is \$_____ (the “Phase _____ Secondary Assurance Amount”). The District has provided to the County (i) a Valuation Statement that the fair market value of the Future Certification Areas as of _____ is equal to or greater than \$_____, which is one hundred fifty percent (150%) of all Secondary Assurance Amounts under the Interlocal Agreement or any Supplementary Alternate Assurance Agreement; (ii) title evidence that the Future Certification Areas addressed by the Valuation Statement are subject to the District Levy Resolution; and (iii) attorney’s opinion meeting the requirements of Section 3.7 of the Interlocal Agreement.

3.4 **DUTY TO FUND AS TO PHASE _____ ROADWAYS.** The District shall comply with the provisions of Sections 3.2 and 3.6 of the Interlocal Agreement to provide funds for the costs of completion of the Phase _____ Roadways if there shall occur a Roadway Event of Default as to the Phase _____ Roadways, or any portion thereof.

3.5 **ACCEPTANCE OF ALTERNATE ASSURANCES.** The County hereby accepts the Alternate Assurances as to the Phase _____ Roadways as provided in this Section 3 to satisfy the County Bonding Requirements relating to the Phase _____ Roadways.

SECTION 4. MAINTENANCE BONDS. Nothing contained herein shall be construed to waive or modify the requirements of Sections 6.04.08D of the Land Development Code as to the duty to deliver maintenance bonds for the Phase _____ Roadways.

SECTION 5. NO LIEN OR ENCUMBRANCE. Nothing contained herein shall constitute a lien or encumbrance upon any portion of the lands subject to the DRI Order.

SECTION 6. AUTHORITY TO CONTRACT. The execution of this Supplementary Agreement has been duly authorized by the appropriate body or official(s) of the County and the District, each party has complied with all applicable requirements of law, and each party has full power and authority to comply with the terms and provisions of this instrument.

SECTION 7. LIMITATIONS ON GOVERNMENTAL LIABILITY; INSURANCE. Nothing in the Interlocal Agreement, as supplemented hereby, shall be deemed a waiver of immunity limits of liability or sovereign immunity of either the County or the District, pursuant to Chapter 768, Florida Statutes, and any amendment thereto, or other statute or law. Nothing in the Interlocal Agreement, as supplemented hereby shall inure to the benefit of any third party for the purpose of allowing any claim, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

To the extent permitted by law, the District agrees to indemnify and hold the County harmless from and against any and all damages, losses or claims, including, but not limited to, legal fees and expenses, to the extent that such damages, losses or claims are attributable to actions, omissions or negligence by the District, its supervisors, officers, agents, employees or independent contractors.

To the extent permitted by law, the County agrees to indemnify and hold the District harmless from and against any and all damages, losses or claims, including, but not limited to, legal fees and expenses, to the extent that such damages, losses or claims are attributable to actions, omissions or negligence by the County, its supervisors, officers, agents, employees or independent contractors.

SECTION 8. NEGOTIATION AT ARM'S LENGTH. This Supplementary Agreement has been negotiated fully between the parties as an arm's length transaction and with the assistance of legal counsel. Both parties participated fully in the preparation of this Supplementary Agreement. In the case of a dispute concerning the interpretation of any provision of this

Supplementary Agreement, both parties are deemed to have drafted, chosen, and selected the language, and the language in question will not be interpreted or construed against either party.

SECTION 9. NOTICES. Any notices required or allowed to be delivered shall be in writing and be delivered in accordance with the Interlocal Agreement.

SECTION 10. DEFAULT. The terms of Section 13 of the Interlocal Agreement shall apply to any default hereunder.

SECTION 11. OTHER AGREEMENTS. Nothing in this Interlocal Agreement shall be construed as superseding, altering or amending the conditions and terms of any other agreement between the parties hereto, other than the Interlocal Agreement.

SECTION 12. ASSIGNMENT OR TRANSFER. Neither party may assign or transfer its rights or obligations under this Supplementary Agreement without the prior written consent of the other party.

SECTION 13. BINDING EFFECT. The Interlocal Agreement, as supplemented hereby shall be binding upon and shall inure to the benefit of the County, the District, and their respective successors.

SECTION 14. FILING. The County Attorney is hereby authorized and directed, after approval of this Supplementary Agreement by the respective governing bodies of the County and the District and the execution thereof by the duly qualified and authorized officers of each of the parties hereto, to cause this Supplementary Agreement to be filed with the Clerk of the Circuit Court of St. Johns County, Florida, in accordance with the requirements of Section 163.01(11) of the Cooperation Act.

SECTION 15. APPLICABLE LAW AND VENUE. The Interlocal Agreement and the provisions contained therein as supplemented hereby shall be governed by and construed in

accordance with the laws of the State of Florida. In any action, in equity or law, with respect to the enforcement or interpretation of the Interlocal Agreement and this Supplementary Agreement, venue shall be in St. Johns County, Florida.

SECTION 16. SEVERABILITY. If any part of the Interlocal Agreement or this Supplementary 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 the Interlocal Agreement and this Supplementary 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.

SECTION 17. ENTIRE AGREEMENT; AMENDMENT. This instrument and its exhibits constitute the entire agreement between the parties and supersede all previous discussions, understandings and agreements between the parties relating to the subject matter of this Supplementary Agreement, other than the Interlocal Agreement. Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendment.

SECTION 18. EFFECTIVE DATE. This Supplementary Agreement shall become effective upon the filing hereof in accordance with Section 14 hereof.

SECTION 19. ATTORNEYS FEES. In the event of litigation to enforce the remedial provisions of this Supplementary Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs associated with any such litigation at the trial level and/or appeal.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties hereto, by and through the undersigned, have entered into this Interlocal Agreement on the date and year first above written.

ST. JOHNS COUNTY, FLORIDA

By: _____
Ben Adams, County Administrator

Approved as to legal sufficiency:

By: _____

Name: _____

Title: _____
County Attorney's Office

Date: _____

STATE OF FLORIDA }
COUNTY OF _____ }

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Ben Adams as the County Administrator of St. Johns County, and who has acknowledged that he executed the same on behalf of St. Johns County and that he was authorized to do so. He is personally known to me or has produced _____ as identification.

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of Florida

**TOLOMATO COMMUNITY
DEVELOPMENT DISTRICT**

By: _____
Richard T. Ray
Chairman, Board of Supervisors

ATTEST:

Name: _____

Title: Secretary/Assistant Secretary

STATE OF FLORIDA }
COUNTY OF _____ }

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Richard T. Ray as the Chairman of the Board of Supervisors and _____ as Secretary / Assistant Secretary for the **TOLOMATO COMMUNITY DEVELOPMENT DISTRICT**, and who have acknowledged that they executed the same on behalf of the **TOLOMATO COMMUNITY DEVELOPMENT DISTRICT** and that each was authorized to do so. Each is personally known to me or has produced _____ as identification.

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of Florida

EXHIBIT A

Phase _____ Roadways