

RESOLUTION NO. 2006-477

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY
ADMINISTRATOR TO EXECUTE AN IMPACT FEE CREDIT AGREEMENT
WITH TOLOMATO COMMUNITY DEVELOPMENT DISTRICT
(Nocatee Parkway)**

WHEREAS, Tolomato Community Development District ("TOLOMATO") is the Developer of certain lands contained within the Nocatee Development of Regional Impact, (the "Project") as described and approved in St. Johns County Resolution No. 2001-30; and

WHEREAS, Section 13 of St. Johns County Ordinance No. 87-57, as amended, St. Johns County Road Impact Fee Ordinance ("Impact Fee Ordinance") allows for impact fee credits to be granted by the Board of County Commissioners for the improvements made as identified within the Impact Fee Agreement attached hereto and incorporated herein; and

WHEREAS, in accordance with the County Road Impact Fee Ordinance, TOLOMATO is entitled to certain impact fee credits for certain improvements.

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 Impact Fee Credit Agreement with TOLOMATO substantially in the form of that which is attached hereto and incorporated herein by reference for those improvements identified within the Road Impact Fee Ordinance which are eligible for impact fee credits.

Section 2. Upon acceptance by the County Administrator, the Clerk is instructed to record the 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 12th day of December, 2006.

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



Its Chairman

ATTEST:

Cheryl Strickland, Clerk

By: 
Deputy Clerk

**IMPACT FEE CREDIT AGREEMENT
("AGREEMENT")**

ROAD IMPACT FEES

THIS AGREEMENT is made this _____ day of _____, 2006, by and among the **BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA** ("County") and **TOLOMATO COMMUNITY DEVELOPMENT DISTRICT** ("TOLOMATO")

Recitals

- A. TOLOMATO is the Developer and projected Impact Feepayer of certain lands contained within the Nocatee Development of Regional Impact (the "Project"), as described and approved in St. Johns County Resolution No. 2001-30.
- B. Pursuant to St. Johns County Ordinance No. 87-57, as amended ("Road Impact Fee Ordinance"), the County requires any person who seeks to develop land within St. Johns County, as evidenced by such person's application for a building permit or certificate of occupancy ("Feepayer"), to pay a Road impact fee ("Road Impact Fee"), so as to assure that such new development bears a proportional share of the cost of capital expenses necessary to provide roads within St. Johns County.
- C. Section 13 of the Road Impact Fee Ordinance allows impact fee credits to be granted for certain dedications ("Road Impact Fee Credits").
- D. Pursuant to the County requirements of Resolution 2001-30, TOLOMATO constructed the Phase I improvements to Nocatee Parkway, which is recognized as meeting the requirements for Road Impact Fee Credits.
- E. Pursuant to the terms of the Road Impact Fee Ordinance, County and TOLOMATO desire to set forth their agreement and a procedure for the applicant and treatment of such Road Impact Fee Credits.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. The above stated Recitals are incorporated herein as Findings of Facts.
- 2. The total Road Impact Fee Credits will be calculated as the sum shown on Exhibit B in the amount of Seventy Eight Million Six Hundred Seventy Eight Thousand Six Hundred Twenty Four and 02/100 Dollars (\$78,678,624.02).
- 3. From and after the date thereof, all Feepayers applying for building permits or certificates of occupancy in connection with any construction in the Project shall pay the amount due under the Road Impact Fee Ordinance directly to TOLOMATO.

Then, for so long as the total Road Impact Fee Credits for which TOLOMATO has issued vouchers under this Agreement is less than the total Road Impact Fee Credits authorized by this Agreement, TOLOMATO shall issue to such Feepayer a voucher evidencing full payment of Road Impact Fees in connection with such Feepayer's application for a building permit or certificate of occupancy. The voucher issued by TOLOMATO shall contain a statement setting forth the amount of Road Impact Fee paid. Upon presentation of such voucher by the Feepayer, the County shall issue a receipt to the Feepayer.

4. In the event that TOLOMATO determines to sell all or part of the Project, TOLOMATO may sell, transfer, assign or convey any of its interest in part of the Road Impact Fee Credits to such purchaser, transferee, assignee or grantee for use within its sole discretion, determines. In such event, TOLOMATO shall execute and deliver to the County a copy of the instrument selling, transferring, assigning or granting the Road Impact Fee Credits so sold, transferred, assigned or granted and the remaining amount of the Impact Fee Credits, if any, shall remain vested in TOLOMATO. The Parties agree that no impact fee credit may be used or applied to development outside the Project without the specific approval of the County, and that such approval may be denied based on factors including, but not limited to the relationship of the dedication to the particular development to which credits are transferred.
5. On or before January 31 of each year, so long as there remains any Road Impact Fee Credits, TOLOMATO shall prepare and deliver to the County Planning Department an annual report setting forth the amount of Road Impact fee payments made by the Feepayers applying for building permits or certificates of occupancy within the Project and the remaining balance of Road Impact Fee Credits.
6. At such time as the Road Impact Fee Credits approved for hereunder have been exhausted, TOLOMATO or the Feepayer seeking building permits or certificates of occupancy within the Project shall pay the County the Road Impact Fees as are then due and payable under the Road Impact Fee Ordinance in effect at that time. Until such time, any Feepayer within the project shall be instructed by the County to pay its Road Impact Fees directly to TOLOMATO.
7. Miscellaneous Provisions
 - a. This Agreement shall be constructed and governed in accordance with the laws of the State of Florida. All parties to this Agreement have participated fully in the negotiation and preparation hereof and accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto. All parties agree particularly that this Agreement is bound by the terms of the County's Road Impact Fee Ordinance and other applicable ordinances. Any and all applicable terms of those Ordinances are to be considered incorporated herein by reference. If there is any inconsistency found between this Agreement and such Ordinances

or applicable law, those Ordinances or law shall prevail and be applicable.

- b. The Parties agree that Road Impact Fee Ordinance Section 13 limits the total amount of impact fee credits given to an amount not greater than the total amount of impact fees due for the Project. The parties further agree that they will not challenge in any judicial proceeding and will accept the interpretation of the County's Attorney's Office that the Road Impact Fee Credits identified or granted by this Agreement are limited to the amount of the Impact Fees which are due or become due within the Development.
- c. In construing the Agreement, the singular shall be held to include the plural, and the plural shall include the singular, the use of any gender shall include every other and all gender and captions and paragraph headings shall be disregarded.
- d. All of the exhibits attached to the Agreement are incorporated in, and made a part of this Agreement.
- e. The Agreement, and any Exhibits and/or addendum made a part hereof constitute the entire Agreement and understanding of the parties and shall not be modified or amended except by written agreement duly executed by the parties hereto.
- f. This Agreement is made for the sole benefit and protection of the parties and no other persons shall have any right of action hereunder. This Agreement shall be binding upon the parties and their respective successors, and permitted assigns.
- g. All covenants, agreements, representation and warranties made herein shall be deemed to have material and relied on by each party to this Agreement.
- h. This Agreement is recognized as being subject to the laws of the State of Florida and the Ordinances of St. Johns County, Florida, and therefore all applicable provisions thereof are incorporated herein and if any provision hereof is inconsistent with such provisions, such provision shall apply.
- i. TOLOMATO must be a feepayer as referenced in the applicable impact fee ordinance to receive impact fee credits under this ordinance.
- j. Nothing in this Agreement shall act to allow an entity to receive impact fee credits for contributions provided by a government entity including, but not limited to, a Community Development District.
- k. All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

If to the County: County Administrator

St. Johns County
Post Office Drawer 349
St. Augustine, Florida 32085-0349

If to the District: Tolomato Community Development District
c/o Governmental Management Services, LLC
14785-4 St. Augustine Road
Jacksonville, Florida 32258
Attn: James A. Perry

With a copy to: Pappas Metcalf Jenks & Miller, P.A.
245 Riverside Avenue, Suite 400
Jacksonville, Florida 32202
Attn: Thomas O. Ingram, Esq.

and

Cheryl G. Stuart, Esq.
Hopping Green & Sams
123 South Calhoun Street
Tallahassee, Florida 32301

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth in this Agreement. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the parties may deliver Notice on behalf of the parties. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth in this Agreement.

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the date set forth above.

Attest: Cheryl Strickland

St. Johns County, Florida

Print: _____
Deputy Clerk

Baldemar Kropachek
Interim County Administrator

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by **Baldemar Kropachek**, Interim County Administrator for St. Johns County, Florida, a political subdivision of the State of Florida, **on behalf of St. Johns County, Florida**. He [____] is personally known to me or [____] has produced _____ as identification.

Notary Public
Print Name: _____
My Commission Expires:

ATTEST:

**TOLOMATO COMMUNITY
DEVELOPMENT DISTRICT**

By: _____
Print: _____
Its: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing Agreement was acknowledged before me this _____ day of _____, 2006, by _____, as _____ of TOLOMATO COMMUNITY DEVELOPMENT DISTRICT.

Notary Public
Print Name: _____
My Commission Expires:
Personally Known _____
or Produced I.D. _____
[check one of the above]
Type of Identification Produced

EXHIBIT A: ELIGIBLE ROAD IMPROVEMENTS
TOLOMATO COMMUNITY DEVELOPMENT DISTRICT

The District intends to complete or cause to be completed the following roadway improvement required by the Development Order:

New County Road 210 as described in section 25(a)(i) of the Nocatee DRI Development Order, St. Johns County Ordinance 2001-30, described therein as a 4 lane improvement from U.S. 1 to the new 4-lane Intracoastal Waterway Bridge including a grade-separated interchange at Town Center Loop Road East, and including a paved direct access road to the St. Johns County Northeast Regional Park.

The improvements have an estimated cost of Seventy Eight Million Six Hundred Seventy Eight Thousand Six Hundred Twenty Four and 02/100 Dollars (\$78,678,624.02) **(including** costs for right-of-way).

Financial assurances for completion of these improvements have been provided pursuant to the "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," dated July 19, 2006 and approved by St. Johns County Resolution 2006-213.

EXHIBIT B
ST. JOHNS COUNTY IMPACT FEE VOUCHER

Tolomato Community Development District

Voucher No. _____

1. Name and Address of Grantor: Tolomato Community Development District
c/o Governmental Management Services, LLC
114785-4 St. Augustine Road
Jacksonville, Florida 32258
Attn: James A. Perry

2. Name and Address of Grantee: _____

3. Legal Description of Subject Property: **See Exhibit A attached hereto.**

4. Subdivision or Master Development Plan Name: _____

The undersigned confirms that it has received from _____
on _____, 200__, funds sufficient for the following impact fees required under the
applicable St. Johns County Impact Fee Ordinance, as amended, as indicated below. Grantor gives
notice to St. Johns County, Florida, that the following sums should be deducted from the applicable
Impact Fee Credit Account of the Tolomato Community Development District.

_____ Roads Ordinance #87-57 in the amount of \$ _____

Tolomato Community Development District

By: _____
Print: _____
Its: _____