

RESOLUTION NO. 2007- 225

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS OF A HOLD HARMLESS AGREEMENT BETWEEN ST. JOHNS COUNTY AND TOLOMATO COMMUNITY DEVELOPMENT DISTRICT AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY.

RECITALS

WHEREAS, Tolomato Community Development District (“District”) has dedicated to St. Johns County (“County”) certain roadway right-of-ways as described on plats known as Nocatee Parkway, Coastal Ridge Boulevard, Preservation Trail and Crosswater Parkway; and

WHEREAS, in connection therewith, the District intends to install and maintain certain landscape related improvements which are required to be located along and within said roadway right-of-ways; and

WHEREAS, the County has agreed to allow the District to install and maintain the improvements within the roadway right-of-ways and the District has executed a Hold Harmless Agreement, attached hereto as Exhibit “A”, incorporated by reference and made a part hereof, to indemnify and hold the County harmless from damages and expenses which may be incurred as a direct or indirect result of such installation, maintenance or construction of the improvements.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section. 1. The above recitals are incorporated by reference into the body of this Resolution as findings of fact.

Section 2. The Board of County Commissioners of St. Johns County hereby approves the terms of the Hold Harmless Agreement and authorizes the County Administrator to execute said Agreement.

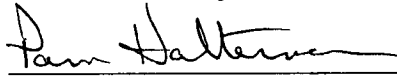
Section 3. The Clerk is instructed to record the original Hold Harmless Agreement in the Official Records of St. Johns County, Florida.

PASSED AND ADOPTED this 7th day of August, 2007.

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

By: 
Ben Rich, Chairman

ATTEST: Cheryl Strickland, Clerk


Deputy Clerk

RENDITION DATE 8/9/07

HOLD HARMLESS AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2007, by and among:

St. Johns County, Florida, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32095 ("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 Old St. Augustine Road, Suite 4, Jacksonville, Florida 32258 ("District").

Recitals

WHEREAS, the District was established by 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, landscaping and recreation improvements; and

WHEREAS, the District presently intends to construct and/or install certain improvements within the right-of-way of Nocatee Parkway, Coastal Ridge Blvd, Preservation Trail and Crosswater Parkway, which improvements will be conveyed to the County for ownership, operation and maintenance as a public road; and

WHEREAS, in connection therewith, the District will install certain landscape related improvements which are required to be located within lands which are to be dedicated to the County as rights-of-way within and along Nocatee Parkway, Coastal Ridge Blvd, Preservation Trail and Crosswater Parkway located in St. Johns County ("County's Right-of-Way"); and

WHEREAS, the improvements which are and may be constructed within the County's Right-of-Way include landscaping and irrigation (collectively, the "Right-of-Way Improvements"); and

WHEREAS, upon completion of the construction of the Right-of-Way Improvements, the District shall have the responsibility for their maintenance, repair, and replacement; and

WHEREAS, the County has agreed to allow the Right-of-Way Improvements to be installed, constructed or maintained within the County's Right-of-Way only if the District, after the acceptance of the dedication of the County's Right-of-Way by the County, agrees to indemnify and hold the County harmless, to the extent permitted by Florida law, from damages and expenses which may be incurred as a direct or indirect result of such installation, maintenance or construction of the Right-of-Way Improvements and certain other conditions.

NOW, THEREFORE, based upon good and valuable consideration and the mutual covenants of the parties, the receipt of which and sufficiency of which is hereby acknowledged, the District and the County agree as follows:

SECTION 1. RECITALS. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Agreement.

SECTION 2. RIGHT-OF-WAY UTILIZATION. The District may place, construct and/or maintain or cause to be placed, constructed and/or maintained the Right-of-Way Improvements in the Right-of-Way under the terms and conditions contained herein. The cost of maintenance, repair or replacement of any Right-of-Way Improvements shall be paid by the District.

SECTION 3. INDEMNIFICATION. Subsequent to acceptance of the dedication of the County's Right-of-Way by the County and to the extent permitted by Florida law, the District agrees to protect, defend, indemnify, and hold the County, its tenants, elected officials, officers, employees, and agents, free and unharmed from and against any, and all, third party (including employees of the District and its contractors, and subcontractors) claims, liability, losses, and/or cause of action, which may arise from any negligent act or omission of the District's staff, employees, or agents (including court costs and reasonable attorneys' fees) associated with, or connected with, the use of the landscape tract by the District, and its contractors, including ingress and egress thereto.

SECTION 4. COVENANT WITH LAND. This Agreement shall touch and concern the land and shall be a covenant running with the fee interest underlying the County's Right-of-Way, whether in existence on the date hereof or constructed in the future.

SECTION 5. SOVEREIGN IMMUNITY. The County agrees that nothing in this Agreement shall constitute or be construed as a waiver of the District's limitation on liability contained in Section 768.28 Florida Statutes, or obligate the District to indemnify or hold the County harmless in excess of that permitted by Florida law.

SECTION 6. SEVERABILITY. If any word, phrase, sentence, part, subsection, section, or other portion of this Agreement, or any application thereof, to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid shall remain in full force, and effect.

SECTION 7. GOVERNING LAW AND VENUE. This Agreement shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

SECTION 8. PROCEDURE FOR ACHIEVING ASSIGNMENT. In light of the scope and rationale for this Agreement, neither the County, nor the District may assign, transfer, and/or sell any of the rights noted in this Agreement without the express written approval of

the other party. Should either the County, or the District, assign, transfer, or sell any of the rights of this Agreement without such prior express written approval of the other party, then such action on the part of either the County, or the District, shall result in the automatic termination of this Agreement, without further notice or action required on the part of the other party.

SECTION 9. AMENDMENTS TO AGREEMENT. Both the County, and the District, acknowledge that this Agreement constitutes the complete agreement and understanding of both parties. Both the County, and the District, acknowledge that any amendment to this Agreement shall be in writing, and shall be executed by duly authorized representatives of both the County, and the District.

SECTION 10. ACCESS TO RECORDS. The access to, disclosure, non-disclosure, or exemption of records, data, documents, and materials associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes).

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the District and the County have caused these presents to be executed on the day and year first written above.

Executed in the presence of: **Tolomato Community Development District**

By: RT Ray

Print Name: Richard T. Ray

Title: Chairman, Board of Supervisors

Attest: [Signature]

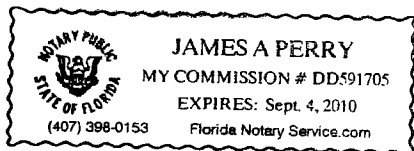
Print Name: ROBERT MIZELL

Title: DISTRICT ENGINEER

STATE OF FLORIDA
COUNTY OF DUAL

The foregoing instrument was acknowledged before me this 27th day of February, 2007, by Richard Ray, on behalf of Tolomato Community Development District. He/she is personally known to me or has produced as identification and who did/did not take an oath.

[Signature]
(Signature of Notary Public)



(Print Name of Notary)

Notary Public - State of _____
Commission Number: _____
My Commission Expires: _____

St. Johns County, Florida

By: _____

Print Name: _____

Its: _____

Attest: _____

Print Name: _____

Title: _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by _____, St. Johns County, Florida, on behalf of the County. He/she is personally known to me or has produced _____ as identification and who did/did not take an oath.

(Signature of Notary Public)

(Print Name of Notary)

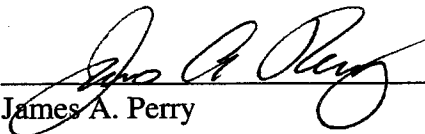
Notary Public - State of Florida

Commission Number: _____

My Commission Expires: _____

CERTIFICATION

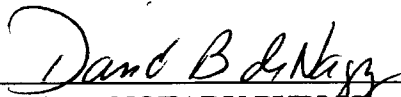
I, James Perry, as District Manager of the Tolomato Community Development District, and public records custodian for said District, hereby certify that Richard T. Ray is the duly elected and authorized Chairman of the Board of Supervisors of the Tolomato Community Development District. In such capacity, Richard T. Ray has the authority to execute contracts and agreements binding the District, including but not limited to, that certain Hold Harmless Agreement between the Tolomato Community Development District and St. Johns County, Florida. Said Hold Harmless Agreement has been duly authorized by the Board of Supervisors of the Tolomato Community Development District.


James A. Perry
Manager
Tolomato Community Development District

COUNTY OF St. Johns
STATE OF FLORIDA

The foregoing was sworn to and acknowledged before me this 27th day of February, 2007 by James A. Perry, Manager of the Tolomato Community Development District, who is personally known to me or who has produced _____ as identification.

My Commission Expires:


(Signature) NOTARY PUBLIC

David B. deNagy

(Printed Name)

