

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS OF AN INTERLOCAL AGREEMENT BETWEEN MAIN STREET COMMUNITY DEVELOPMENT DISTRICT AND ST. JOHNS COUNTY FOR THE CONSTRUCTION OF THE COUNTY ROAD 244 AS A FOUR LANE SECTION

WHEREAS, Main Street CDD is constructing improvements upon certain properties owned by the St. Joe Company under development as a Development of Regional Impact; the St. Joe Company will convey the proposed County Road (CR) 244 right of way between Sta. 10+00 to Sta. 117+00 to St. Johns County, Florida;

WHEREAS, both parties want to improve CR 244 as delineated in the attached Document (the "CR 244 Interlocal Agreement (111 02 2007)");

WHEREAS, improvements to CR 244 from Sta. 10+00 to Sta. 117+00, is above the requirements of the River Town Development Order;

WHEREAS, the County and Main Street CDD are entering into this Agreement to coordinate the construction and improve the operational efficiency of the proposed CR 244 section.

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

Section 1: The above recitals as hereby incorporated into this body of this Resolution and adopted as findings of fact.

Section 2: The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of an Inter-local Agreement between the Main Street CDD, and St. Johns County, Florida, and authorizing the Chair of Board of County Commissioners to execute the Agreement on behalf of the County.

Section 3: The Clerk of Circuit Court is instructed to file the Agreement in the public records of St. Johns County, Florida.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 22nd day of January, 2008.

Attest: *Pam Halterman*
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA
By: *Thomas G. Manuel*
Thomas G. Manuel, Chair

Effective Date: January 22, 2008

RENDITION DATE 1/25/08

**INTERLOCAL AGREEMENT BETWEEN
ST. JOHNS COUNTY, FLORIDA, AND THE
MAIN STREET COMMUNITY DEVELOPMENT DISTRICT
REGARDING THE CONSTRUCTION OF
CERTAIN ROADWAY IMPROVEMENTS FOR COUNTY ROAD 244**

THIS INTERLOCAL AGREEMENT (the "Interlocal Agreement"), dated as of the _____ day of _____, 2008, is entered into by and between:

The **Board of County Commissioners of St. Johns County, Florida**, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida, 32095 ("County"); and

Main Street 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 Town Center 1 at World Golf Village, 475 West Town Place, Suite 111, St. Augustine, Florida 32092, C/O Governmental Management Services ("District").

RECITALS:

WHEREAS, the District was established by an ordinance 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, recreation improvements, and other improvements; and

WHEREAS, consistent with the RiverTown Development of Regional Impact Development Order for the RiverTown Development of Regional Impact, approved by County Resolution No. 2004-45 on February 24, 2004 ("Development Order"), the District assumed from the developer, The St. Joe Company ("Developer"), the responsibility for the construction of a two-lane urban roadway within the proposed County Road 244 ("CR 244") right of way from County Road 210 to Greenbriar Road ("District Project"): and

WHEREAS, the District is a party to the construction contract (the “Construction Contract”) entered into with Barco-Duval Engineering, Inc. (the, “Contractor”), for the construction of District Project. The Construction Contract is being administered by England-Thims & Miller, Inc. (the “District Engineer”); and

WHEREAS, the County believes that in the very near future that due to the transportation needs of St. Johns County, CR 244 will need to be expanded to a four-lane roadway and has made the request to the District to expand CR 244 from the two-lane roadway as contemplated by the Development Order to a four-lane roadway from approximately Station 10+00 to Station 117+00 pursuant to a proposed design that will be completed upon execution of this Interlocal Agreement (“County Project”); and

WHEREAS, on the basis of mutual advantage, the County and the District have determined that it is in the public’s best interest to conduct the County Project concurrent with the District Project; and

WHEREAS, the District shall amend by way of a change order the Construction Contract to include the County Project (“Change Order”) with the understanding that construction of County’s Project shall be at the County’s sole expense, without impact on completion of the District Project, and County shall, if necessary, grant the District additional time to complete the District Project; and

WHEREAS, the County’s obligations under this Interlocal Agreement are contingent upon the District fully executing a Change Order to the Construction Contract with the Contractor to include the County; and

WHEREAS, it is in the mutual interest of the County and the District to establish intergovernmental relations that encourage, promote and improve the coordination,

overall effectiveness and efficiency of governmental activities and services within the boundaries of the District; and

WHEREAS, Chapter 163 Part I, Florida Statutes (2006) known as the “Florida Interlocal Cooperation Act of 1969,” (the “Cooperation Act”) permits local government units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, the County and the District find this Interlocal Agreement to be a desirable and permissible exercise of their powers, duties and purposes authorized by law.

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:

ARTICLE I: INTRODUCTION

SECTION 1.01. AUTHORITY. This Interlocal Agreement is entered into pursuant to the authority set forth in the Cooperation Act, the District Act, Chapter 125, Florida Statutes, and other applicable laws.

SECTION 1.02. 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 1.03. 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 1.04. DEFINITIONS. The following terms when used in capitalized form herein shall have the respective meaning indicated below unless the context shall clearly indicate otherwise:

“Cooperation Act” means Chapter 163 Part I, Florida Statutes (2006), known and referred to as the Florida Interlocal Cooperation Act of 1969, and any amendments thereto.

“District Act” means Chapter 190, Florida Statutes (2006) and any amendments thereto.

ARTICLE II: COUNTY AND DISTRICT POWERS

SECTION 2.01. COUNTY POWERS. All powers inherent to the County shall in no way be affected or abridged by operation of this Interlocal Agreement.

SECTION 2.02. DISTRICT POWERS. Unless otherwise expressly provided in this section, the County agrees that the District shall retain all powers, rights, obligations and responsibilities granted or imposed by the District Act, as amended, including but not limited to, the general powers set forth in § 190.011 and 190.012 (1), Florida Statutes (2006).

ARTICLE III: RESPONSIBILITIES OF DISTRICT AND COUNTY

SECTION 3.01. COUNTY PROJECT. County Project shall include the expansion of the District Project from a two-lane roadway to a four-lane roadway within the CR 244 right of way from approximately Station 10+00 to Station 117+00 pursuant to a proposed design that will be finalized upon the execution of this Interlocal Agreement.

SECTION 3.02. CHANGE ORDER FOR COUNTY PROJECT. District shall issue a change order (hereinafter "Initial Change Order") to Contractor to provide for completion of the County Project based on final plans to be completed by the District Engineer and approved by the County.

SECTION 3.03. PAYMENT FOR COUNTY PROJECT. County shall pay the District the amounts shown on Exhibit A as the cost of the County Project plus any additional work (beyond the Initial Change Order) requested by County and approved by the District.

SECTION 3.04. PAYMENT SCHEDULE. The County shall make monthly progress payments to the District based on percentage completion of the County Project for each of the Items of Work identified in Exhibit A.

- (a) Within five (5) days of receipt from the District Engineer of an Application for Payment, County shall inspect the completed work within the County Project and either approves the Application for Payment as representing the percentage of work in place or reject the Application and propose to the District an alternate percentage complete to be used for payment purposes.
- (b) If a revised Application for Payment is necessary, the District shall prepare and submit it to the County within five (5) days. The County shall review the revised Application for Payment within five (5) days of receipt.

- (c) Upon approval of an Application for Payment, County shall promptly process it for payment to the District so as not to unnecessarily delay ultimate payment to Contractor.
- (d) Upon receipt of payment from the County, District shall promptly pay Contractor.

SECTION 3.04. ACCEPTANCE OF WORK.

(a) Before the District makes final payment to Contractor for the work being performed on behalf of the County, the District shall provide the County with a certificate from the District Engineer that, to the best of his knowledge, the County Project has been substantially completed in accordance with the approval plans. Within ten (10) days after County's receipt of said certificate, the County shall inspect the County Project and within ten (10) days provide written notice to the District that the County Project has or has not been completed in substantial compliance with the approved plans.

(b) If the County's notice referred to in 3.04 (a) is that the County Project are in substantial compliance, then the County shall be deemed to have accepted the County Project except as to defects not then readily discoverable. Subsequent to the County giving such notice of such substantial compliance and the making of final payment to the District, the County agrees that it shall have no claim against the District with respect to any part of the County Project performed by the Contractor, the only obligation of the District being to enforce the terms of the Construction Contract.

SECTION 3.05. INSURANCE AND WAIVER OF SUBROGATION.

(a) **Insurance.** The District shall provide the County documentary proof that the County is named as an additional insured under the Construction Contract. The District shall ensure that such insurance remains in full force and effect during construction of the

Project and thereafter as provided in said policies. The intent is that the County be provided the same protections in said policies as that accorded to the District. Subject to the County's reservation to represent itself at its own expense in the event of a claim or dispute, adjustment and settlement of any loss with the insurers shall be conducted by the District, and the District shall account to the County for the proceeds of such insurance that is applicable to the County's Items of Work.

(b) Waiver of Subrogation. The District and the County waive all rights against each other and any of their agents and employees, each of the other, for all losses and damages caused by any of the perils covered by the policies of insurance obtained pursuant to the Construction Contract, except such rights as they have to proceeds of such insurance held by either the District or the Contractor pursuant to the Construction Contract.

ARTICLE IV: MISCELLANEOUS PROVISIONS

SECTION 4.01. LIMITATIONS ON GOVERNMENTAL LIABILITY.

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 (2006) or under any other State or Federal law, and any amendment thereto. 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.

SECTION 4.02. 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 4.03. 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: St. Johns County
2740 Industry center Rd.
St. Augustine, Florida 32084
Attn: Darrell Locklear, PE

If to the District: Main Street Community Development District
C/O Governmental Management Services
Town Center 1 at World Golf Village
475 West Town Place, Suite 111
St. Augustine, Florida 32092
Attn: District Manager

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

SECTION 4.04. DEFAULT. Each of the parties hereto shall give the other party written notice of any default hereunder and shall allow the defaulting party thirty (30) days from receipt of such notice 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. If the breach is not cured within a reasonable amount of time period, the County and the District shall comply with the procedures set forth in Chapter 164, Florida Statutes (2006) and any amendments thereto.

SECTION 4.05. 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 4.06. 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 4.07. 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 4.08. AMENDMENT. This Interlocal Agreement shall constitute the entire agreement between the parties and may be modified in writing only by mutual agreement and execution by both parties.

SECTION 4.09. 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 4.10. 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 4.11. 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 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 4.12. ENTIRE AGREEMENT. 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 agreement. Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendment.

SECTION 4.13. EFFECTIVE DATE. This Interlocal Agreement shall become effective upon the date of execution by the authorized representatives of both parties.

SECTION 4.14. TERMINATION. This Interlocal Agreement can only be terminated upon written consent of both parties.

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

Chairman, Board of County Commissioners

ATTEST: Clerk of the Board

Approved as to legal sufficiency:

Clerk

County Attorney's Office

Date

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MAIN STREET COMMUNITY
DEVELOPMENT DISTRICT

ATTEST:

By:
Chairman, Board of Supervisors

Name: _____
Title: Secretary/Assistant Secretary

STATE OF FLORIDA }
COUNTY OF _____ }

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by _____ as the Chairman of the Board of Supervisors for the Main Street Community Development District, and who has acknowledged the he executed the same on behalf of the Main Street Community Development District 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

STATE OF FLORIDA }
COUNTY OF _____ }

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by _____ as Secretary/Assistant Secretary for the Main Street Community Development District, and who has acknowledged the he executed the same on behalf of the Main Street Community Development District 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

EXHIBIT A
COUNTY PROJECT
ITEMS OF WORK
TO PROVIDE SECOND TWO LANES OF CR 244
From Station 10+00 to Station 117+00

Item	Description	Unit	Cost
1	Design	LS	\$125,000
2	Permits & Fees	LS	\$25,000
3	Earthwork	LS	\$182,700
4	Roadway Construction	LS	\$1,231,250
5	Drainage – storm pipe & structure	LS	\$631,250
6	Drainage – box culverts & wing walls	LS	\$1,306,250
7	Signalization	LS	\$250,000
8	Testing	LS	\$18,750
9	Striping & Signage	LS	\$26,250
10	Asbuilts	LS	\$22,500
11	Construction Engineering and Inspection	LS	\$120,000
12	Contract Administration	LS	\$25,000
County Project Totals			\$3,963,950