

RESOLUTION NO. 2009- 341

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA AND THE SAMPSON CREEK COMMUNITY DEVELOPMENT DISTRICT AGREEING TO PAY THE DUE DILIGENCE FEES FOR THE EXPANSION OF THE ST. JOHNS GOLF AND COUNTRY CLUB POND SITE FOR THE CR 210/I95 TRANSPORTATION IMPROVEMENT PROJECT.

RECITALS

WHEREAS, per Resolution No. 2008-326, approved by the St. Johns County Board of County Commissioners at a regular meeting on November 18, 2008, the State of Florida Department of Transportation (FDOT) and St. Johns County executed the Transportation Regional Incentive Program (TRIP) Agreement wherein FDOT and the County would share the cost of the CR 210 at I-95 Roadway Improvement Project, pursuant to Florida Statute 339.2819 for the; and

WHEREAS, this phase of the project also includes construction and/or expansion of pond sites for additional storm water as a result of the roadway improvements; and

WHEREAS, the St. Johns River Water Management District has indicated a preference for the pond site at the entry to the St. Johns Golf & Country Club; and

WHEREAS, the owner of said pond site, the Sampson Creek CDD has presented an Interlocal Agreement, attached hereto as Exhibit "A", incorporated by reference and made a part hereof, in which the County agrees to pay for costs incurred by the CDD's Engineer and Attorney in reviewing calculations and legal aspects for a proposed pond expansion; and

WHEREAS, this Capital Improvement Project shall be funded jointly with FDOT TRIP funds and St. Johns County 2006 Transportation Bond; and

WHEREAS, it is in the best interest of the County to move forward with identifying an additional pond site.

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 and such Recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners hereby approves the terms of the Interlocal Agreement and authorizes the Chair, or designee, to execute same.

Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

Section 4. The Clerk of Circuit Court is instructed to file the Interlocal Agreement in the Clerk's Office.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 1st day of December, 2009.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: 

Ron Sanchez, Chair

ATTEST: Cheryl Strickland, Clerk

By: 

Deputy Clerk

RENDITION DATE 12/3/09



INTERLOCAL AGREEMENT BETWEEN ST. JOHNS COUNTY AND THE SAMPSON CREEK COMMUNITY DEVELOPMENT DISTRICT

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into this _____ day of _____, 2009, by and between **ST. JOHNS COUNTY**, a political subdivision of the State of Florida ("County") and **SAMPSON CREEK COMMUNITY DEVELOPMENT DISTRICT**, a local unit of special purpose government ("District").

WITNESSETH:

WHEREAS, it is the purpose and intent of this Agreement to permit and authorize the County and the District to make the most efficient use of their respective powers, resources, authority and capabilities by enabling them to cooperate on the basis of mutual advantage and to achieve the results provided for in this Agreement pursuant to Section 163.01, Florida Statutes, known as the Florida Interlocal Cooperation Act of 1969 ("Cooperation Act"); and

WHEREAS, it is the purpose of the Cooperation Act to provide a means by which the County and the District may exercise their respective powers, privileges, and authority which they may have separately, but which pursuant to this Agreement and the Cooperation Act they may exercise collectively; and

WHEREAS, the District was created pursuant to Chapter 190, Florida Statutes ("Act"), for the purpose of delivering certain community development services and facilities within and outside the boundaries of the District; and

WHEREAS, all of the lands contained within the boundaries of the District are located entirely within the boundaries of the County; and

WHEREAS, pursuant to its authority under the Act, the District constructed various infrastructure improvements including the stormwater pond and entrance improvements located at the intersection of County Road 210 and Leo Maguire Parkway (the "Pond"); and

WHEREAS, the County is moving forward with its project to expand County Road 210 from the intersection at I-95 west past the intersection of Leo Maguire Parkway (the "County's Project"), which will result in the County needing to expand that portion of County Road 210 that is adjacent to the Pond; and

WHEREAS, the County has requested that the District allow for the expansion of the Pond for the purpose of providing drainage capacity that will be required for the Project (the "Pond Expansion"); and

WHEREAS, at the District's September 23, 2009 Board of Supervisors meeting, the Board conceptually approved the Pond Expansion and authorized District Staff, including, but not limited to, District Counsel, District Manager, Operations Manager and District Engineer, to begin the due diligence necessary to research the technical aspects of the Pond Expansion and to negotiate an interlocal agreement between the County and the District detailing each parties' obligations related to the Pond Expansion (the "Preliminary Work"); and

WHEREAS, the County acknowledges that the Pond Expansion is for the County's sole benefit in order to provide the additional drainage capacity necessary for the County's Project; and

WHEREAS, the County recognizes that the Preliminary Work is necessary for the District to be able to make a final determination whether it will agree to move forward with the Pond Expansion and enter into an agreement with the County regarding the Pond Expansion and, as set forth in more detail in Section 8 of this Agreement, agrees to reimburse District for the costs of the Preliminary Work in an amount not to exceed \$15,000.00; and

WHEREAS, the parties hereto now desire to enter into this Agreement to confirm the County's obligation to reimburse for the costs of the Preliminary Work as set forth in more detail herein.

NOW, THEREFORE, in consideration of the mutual promises and other consideration contained herein, the parties hereto agree as follows:

Section 1. Incorporation of Recitals. The recitals stated above are true and correct and by this reference are incorporated by reference as a material part of this Agreement, and said Recitals are adopted as Findings of Fact.

Section 2. 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 3. Duration of Agreement. The duration of this Agreement runs from December 15, 2009, through and until 11:59 pm on June 15, 2010.

Section 4. Extension of Agreement. Either the County or the District may request, in writing, an extension of this Agreement. If the extension request is acceptable to the other party, then such party shall approve the extension request, in writing. Both the extension request, and approval of the extension request, shall indicate the same timeframe/duration of the extension of this Agreement.

Section 5. Procedure for Achieving Assignment; Effect of Not Following Procedure.

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, or associated with this Agreement, without the express written approval of the other party. Should either the County, or the District, assign, transfer, and/or sell any of the rights of this Agreement, without such prior 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 6. Amendments to this Agreement. Both the County and District acknowledge that this Agreement constitutes the complete agreement and understanding of the parties.

Further, both the County and the District acknowledge that any change, amendment, modification, revision, or extension of this Agreement (other than termination, as noted elsewhere in this Agreement) shall be in writing, and shall be executed by duly authorized representatives of both the County, and the District.

Section 7. Termination. This Agreement may be terminated without cause upon either the County, or the District providing at least sixty (60) days advance written notice to the other party of such notice of termination without cause. Such written notification shall indicate that either the County or the District intends to terminate this Agreement sixty (60) days from the date of notification (unless a date greater than sixty (60) days is specified). Consistent with other provisions of this Agreement, the District shall be compensated for any services and/or expenses that are both authorized under this Agreement and that are performed and/or accrue up to the termination of this Agreement.

Section 8. Preliminary Work. In consideration for the District agreeing to undertake the Preliminary Work, the County hereby agrees that it shall reimburse the District for the costs of the Preliminary Work. The County and District agree that it is anticipated that the costs of the Preliminary Work shall not exceed \$15,000.00 (the "Estimated Costs"). As long as the actual total costs of the Preliminary Work do not exceed the Estimated Costs, the County agrees to reimburse the District for such costs as set forth herein without the need of further approval from the County. As the District receives invoices from its staff relating to the Preliminary Work, the District shall submit Preliminary Work Invoices to the County, which shall include copies of the District staff invoices. The County agrees to pay to the District the amount of each Preliminary Work Invoice within thirty (30) days of receipt of the invoice. Should it be necessary for the District to incur costs for the Preliminary Work that exceed the Estimated Costs, the District shall obtain written approval from the County prior to incurring such costs. The County shall provide the District written approval within five days of its receipt of a written request for approval from the District. The County acknowledges that its obligation to reimburse the District for the costs of the Preliminary Work is not contingent on the parties successfully entering into a subsequent interlocal agreement regarding the Pond Expansion and that should the parties fail to enter into such an agreement, the County shall still remain responsible to reimburse the costs of the Preliminary Work.

Section 9. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each which shall be an original and all of which shall constitute but one and the same instrument.

Section 10. Access to Records. The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State or Federal law. Access to such public records, may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

Section 11. Limitation on Governmental Liability. Nothing in this Agreement shall be deemed a waiver of immunity limits of liability of the County or the District beyond any statutory limited waiver of immunity or limits of liability contained in Section 768.28, Florida Statutes, as amended, or other statute. Nothing in this 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.

No covenant, stipulation, obligation or agreement contained in this Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the governing body or agent or employee of the County or the District in its, his or their individual capacity, and neither the members of the governing body of the County or the District nor any official executing this Agreement shall be liable personally or shall be subject to any accountability for reason of the execution by the County or the District of this Agreement or any related act.

Section 12. Notices. All notices, requests, consents and other communications 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:	St. Johns County Engineering Division 2740 Industry Center Road St. Augustine, Florida 32084 Attention: Andrew J. Ames, P.E.
With a Copy to:	Michael D. Hunt, Deputy County Attorney St. Johns County 500 San Sebastian View St. Augustine, Florida 32084
If to the District:	Sampson Creek Community Development District 475 West Town Place, Suite 111 St. Augustine, Florida 32092 Attention: District Manager

With a Copy to:

Hopping, Green & Sams, P.A.
119 S. Monroe Street, Suite 300
Tallahassee, FL 32301
Attn: Wesley S. Haber

Section 13. Filing. After approval of this Agreement by the respective governing bodies of the County and the District, and its execution by the duly qualified and authorized officers of each of the parties, the District shall cause this 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), Florida Statutes.

Section 14. Severability. If any part of this 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 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 15. Entire Agreement. This instrument and all the attached exhibits and schedules constitute the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the County and the District have each caused this Agreement to be executed and delivered as of the date indicated above:

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

Clerk of the Board of County
Commissioners of St. Johns
County, Florida
(SEAL)

Ron Sanchez, Chair
Date: _____

ATTEST:

SAMPSON CREEK COMMUNITY
DEVELOPMENT DISTRICT

Secretary, Board of Supervisors

Chairman, Board of Supervisors

STATE OF FLORIDA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by _____ as the Chairman of the Board of Supervisors for the Sampson Creek Community Development District, and who has acknowledged that he executed the same on behalf of the 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 have hereunto set my hand and official seal.

Notary Public, State of Florida

Printed Name