

RESOLUTION NO. 2013 - 243

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE AN IMPACT FEE CREDIT AGREEMENT BETWEEN ST. JOHNS COUNTY AND TOLOMATO TO EXPEDITE THE CONSTRUCTION OF A NOCATEE FIRE/RESCUE STATION.

WHEREAS, the Tolomato Community Development District ("Tolomato") was established by rule of the Florida Land and Water Adjudicatory Commission for the purpose of planning, financing, constructing, installing, operating and maintaining certain infrastructure, including, without limitation, transportation and roadway improvements, drainage facilities, and recreation improvements, and as such is a projected impact feepayer of certain lands contained within the Nocatee Development of Regional Impact, as described and approved in St. Johns County Resolution No. 2001-30, as amended.

WHEREAS, pursuant to St. Johns County Ordinance No. 87-59 (Public Capital Facilities), as amended, 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, to pay an impact fee, of which one component is Fire/Rescue, so as to assure that such new development bears a proportional share of the cost of capital expenses necessary to provide fire/rescue services within St. Johns County.

WHEREAS, Section Twelve of the Public Capital Facilities Impact Fee Ordinance allows impact fee credits to be granted for certain publicly beneficial occurrences.

WHEREAS, upon and subject to the terms set forth in this Agreement, Tolomato has agreed to prepay impact fees to fund and equip a fire/rescue station within the Project, on the land owned by the County as described in the deed recorded in Official Records Book 3789, Page 622 of the public records of St. Johns County, Florida, and such Nocatee Fire/Rescue Station will benefit the Project area, the northeast impact fee zone, and St. Johns County.

WHEREAS, pursuant to the terms of the Public Capital Improvements Impact Fee Ordinance, the County and Tolomato desire to set forth their agreement and a procedure for the application and treatment of such Fire/Rescue Impact Fee Credits.

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

1. The above recitals are hereby adopted as findings of fact.
2. The County Administrator, or designee, is hereby authorized to execute the Impact Fee Credit Agreement, attached as Exhibit A, on behalf of the County for the purposes mentioned above.
3. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

PASSED AND ADOPTED by the Board of Board of County Commissioners of St. Johns County, Florida this 5 day of November, 2013.

ATTEST: Cheryl Strickland, Clerk

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: *Pam Halter*
Deputy Clerk

By: *J. H. Morris*
John H. Morris, Chair

rendition Date: 11/7/13

Effective Date: 11/5/13

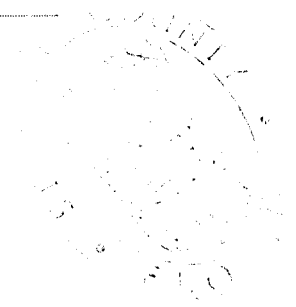


EXHIBIT A

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

FIRE/RESCUE IMPACT FEES

THIS AGREEMENT is made this _____ day of _____, 20____, by and between the **BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA** ("County") and **TOLOMATO COMMUNITY DEVELOPMENT DISTRICT** ("TOLOMATO").

RECITALS:

- A. **TOLOMATO** was established by rule of the Florida Land and Water Adjudicatory Commission for the purpose of planning, financing, constructing, installing, operating and maintaining certain infrastructure, including, without limitation, transportation and roadway improvements, drainage facilities, and recreation improvements, and as such is a projected impact feepayer of certain lands contained within the Nocatee Development of Regional Impact ("Project"), as described and approved in St. Johns County Resolution No. 2001-30, as amended.
- B. Pursuant to St. Johns County Ordinance No. 87-59 (Public Capital Facilities), as amended, 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 an impact fee, of which one component is Fire/Rescue ("Fire/Rescue Impact Fee"), so as to assure that such new development bears a proportional share of the cost of capital expenses necessary to provide fire/rescue services within St. Johns County.
- C. Section Twelve of the Public Capital Facilities Impact Fee Ordinance allows impact fee credits to be granted for certain publicly beneficial occurrences ("Impact Fee Credits").
- D. Upon and subject to the terms set forth in this Agreement, **TOLOMATO** has agreed to prepay impact fees to fund and equip a fire/rescue station within the Project (the "Nocatee Fire/Rescue Station"), on the land owned by the County as described in the deed recorded in Official Records Book 3789, Page 622 of the public records of St. Johns County, Florida, and such Nocatee Fire/Rescue Station will benefit the Project area and St. Johns County.
- E. Pursuant to the terms of the Public Capital Improvements Impact Fee Ordinance, the County and **TOLOMATO** desire to set forth their agreement and a procedure for the application and treatment of such Fire/Rescue 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 County will establish a Fire/Rescue Impact credit account in favor of **TOLOMATO** (the "Fire/Rescue Impact Fee Credit Account").
3. **TOLOMATO** shall pre-pay Fire/Rescue Impact Fees to the County and receive credits in the Fire/Rescue Impact Fee Credit Account, as hereinafter provided in this Agreement.
4. All payments by **TOLOMATO** to the County under this Agreement shall be credited to the Fire/Rescue Impact Fee Credit Account. As provided in more detail in Section 12 below, upon the County's receipt of vouchers from a Feepayer paying Fire/Rescue Impact Fees to **TOLOMATO**, the County shall deduct the amount of such voucher from the Fire/Rescue Impact Fee Credit Account.
5. Within thirty (30) days of the date of this Agreement (the "First Payment Date"), **TOLOMATO** shall make a payment to the County in the amount of \$750,000 (the "First Payment"), which shall be credited to the Fire/Rescue Impact Fee Credit Account.
6. All funds received by the County under this Agreement shall be used by the County solely for construction and equipping of the Nocatee Fire/Rescue Station, and **TOLOMATO** may require such reasonable supporting documentation from the County as may be reasonably necessary for **TOLOMATO** to confirm same in connection with payments made by **TOLOMATO** hereunder.
7. The total costs of construction and equipping the Nocatee Fire/Rescue Station shall be referred to in this Agreement as the "Total Costs."
8. The total amount of Fire/Rescue Impact Fees which have been received by the County for the Project prior to the First Payment shall be referred to in this Agreement as the "Base Amount" (for informational purposes, as of September 30, 2013, the County had received approximately \$1,200,000 in Fire/Rescue Impact Fees from the Project). Upon the determination of the Base Amount, the County shall advise **TOLOMATO** in writing of the Base Amount.
9. Within thirty (30) days after any written request delivered by the County to **TOLOMATO** after the First Payment Date, **TOLOMATO** shall pay to the County the Second Payment (as defined below), which shall be credited to the Fire/Rescue Impact Fee Credit Account.

10. As used herein, the "Second Payment" means the following:
- (a) The amount of the Total Costs estimated by the County in good faith at the time of delivery of the request for the Second Payment, minus
 - (b) The First Payment, minus
 - (c) The Base Amount:
- provided, however, the Second Payment shall be in an amount that will not cause the credits in the Fire/Rescue Impact Fee Credit Account to exceed \$750,000.
11. The County shall make best efforts to (i) commence bona fide construction of the Nocatee Fire/Rescue Station no later than March 31, 2014, (ii) complete the construction of the Nocatee Fire/Rescue Station no later than one (1) year after commencement of construction, and (iii) fully equip and staff the Nocatee Fire/Rescue Station and open it for operation no later than January 1, 2016. Any obligations of **TOLOMATO** to make any payments under this Agreement shall cease on January 1, 2016 or upon any earlier material violation of this Agreement by the County and **TOLOMATO** shall not be required to make any payments under this Agreement during any Fire/Rescue Impact moratorium or after any repeal of Fire/Rescue Impact Fees by the County.
12. After the payment of the First Payment, all Feepayers applying for building permits or certificates of occupancy in connection with any construction in the Project shall pay the Fire/Rescue Impact Fee amount due under the Public Capital Facilities Impact Fee Ordinance directly to **TOLOMATO**. **TOLOMATO** shall be fully responsible for notifying all Feepayers of this requirement and shall ensure that such payments are paid directly to **TOLOMATO**. Then, for so long as the total Fire/Rescue Impact Fee Credits for which **TOLOMATO** has issued vouchers under this Agreement is less than the total Fire/Rescue Impact Fee Credits authorized by this Agreement, **TOLOMATO** shall issue to such Feepayer a voucher evidencing full payment of Fire/Rescue 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 Fire/Rescue Impact Fee paid. Upon presentation of such voucher by the Feepayer, the County shall issue a receipt to the Feepayer and shall deduct the amount of such voucher from the Fire/Rescue Impact Fee Credit Account.
13. In the event that **TOLOMATO** determines to sell all or part of the Project or otherwise determines to sell all or part of its credits under this Agreement, **TOLOMATO** may sell, transfer, assign or convey any of its interest in the Fire/Rescue Impact Fee Credits to such purchaser, transferee, assignee or grantee for use within the Project for such

consideration as **TOLOMATO** in 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 Fire/Rescue Impact Fee Credits so sold, transferred, assigned or granted and the remaining amount of Fire/Rescue 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 donation to the particular development to which credits are transferred. **TOLOMATO** acknowledges that only one Fire/Rescue Impact Fee Credit account may exist at any given time for the Project.

14. On or before January 31 of each year, so long as there remain any Fire/Rescue Impact Fee Credits, **TOLOMATO** shall prepare and deliver to the County Growth Management Department an annual report setting forth the amount of Fire/Rescue Impact fee payments made by the Feepayers applying for building permits or certificates of occupancy within the Project and the remaining balance of Fire/Rescue Impact Fee Credits.
15. At such time as the Fire/Rescue Impact Fee Credits provided for hereunder have been exhausted, **TOLOMATO** or the Feepayer seeking building permits or certificates of occupancy within the Project shall pay the County the Fire/Rescue Impact Fees as are then due and payable under the Public Capital Facilities 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 Fire/Rescue Impact Fees directly to **TOLOMATO**.
16. By entering into this Agreement, the County consents, pursuant to Section 190.012(2)(b) and other provisions of Chapter 190, Florida Statutes, that **TOLOMATO** may exercise for the purposes limited to this Agreement, such powers related to fire prevention and control and other powers as necessary to allow **TOLOMATO** to perform and enforce this Agreement, including, without limitation, funding for the construction and equipping of the Nocatee Fire/Rescue Station as set forth in this Agreement.
17. 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 Public Capital Facilities Impact Fee ordinance and other applicable ordinances, and any and all applicable terms of those ordinances are to be considered

incorporated herein by reference. To the parties best knowledge, this Agreement is consistent with such ordinances.

- b. The parties agree that the total amount of impact fee credits given hereunder shall not be 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 Attorney's Office that the Fire/Rescue Impact Fee Credits identified or granted by this Agreement are limited to the amount of Impact Fees which are due or become due within the Project.
- 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 this 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 Florida and the Ordinances of St. Johns County, Florida and therefore all applicable provisions thereof are incorporated herein.
- i. The parties agree that **TOLOMATO** is a feepayer as referenced in the applicable impact fee ordinance entitled to receive impact fee credits under this Agreement.
- j. Nothing in this Agreement shall be deemed to require the County to continue to levy or collect Impact Fees, or, if levied, to levy them for any certain amount. Nothing in this Agreement shall be deemed to obligate future ad valorem taxes.

- k. The parties shall have all remedies available at law or in equity as to any default by the other party under this Agreement, specifically including, without limitation, specific performance.
- l. 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
500 San Sebastian View
St. Augustine, Florida 32084

With a copy to: County Attorney
St. Johns County
500 San Sebastian View
St. Augustine, Florida 32084

If to TOLOMATO: Toitomato Community Development District
245 Nocatee Center Way
Ponte Vedra, Florida 32081

With a copy to: Katie Buchanan, Esq.
Hopping Green & Sams, P.A.
119 South Monroe Street, Suite 300
Tallahassee, FL 32301

18 Venue.

Any controversies or legal issues arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be submitted to the jurisdiction of the Circuit Court of St. Johns County, Florida, the venue sits, and shall be governed by the laws of the State of Florida.

{Signatures on following page}

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

**TOLOMATO COMMUNITY
DEVELOPMENT DISTRICT**

By: _____
Richard T. Ray, Chairman

State of: _____
County of: _____

The foregoing instrument was acknowledged before me this _____ day of _____
20____, by Richard T. Ray, who is personally known to me or who has provided
_____ as identification.

Notary Public

ST. JOHNS COUNTY, FLORIDA

By: _____
Michael D. Wanchick
County Administrator

State of: _____
County of: _____

The foregoing instrument was acknowledged before me this _____ day of _____
20____, by _____, who is personally known to me or who has
provided _____ as identification.

Notary Public
