

RESOLUTION NO. 2013-99

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 St. Augustine Associates, Inc.

WHEREAS, St. Augustine Associates, Inc. is the Developer of certain lands contained within the St. Augustine Centre (the Project) as described and approved in St. Johns County Resolution No. 97-77 as amended; and

WHEREAS, Section 13 of St. Johns County Ordinance No. 87-57, as amended, St. Johns County Road 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, St. Augustine Associates, Inc. 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 St. Augustine Associates, Inc. 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. Provided, however, that the County Administrator's execution of this Agreement is conditioned upon him having received an executed copy of this Impact Fee Agreement from St. Augustine Associates, Inc. within thirty days of the adoption of this Resolution.

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 7 day of May, 2013.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

John H. Morris, Chair

ATTEST:

CHERYL STRICKLAND, CLERK

By: Ram Halterman
Deputy Clerk

RENDITION DATE 5/9/13



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

Road Impact Fees

THIS AGREEMENT is made this _____ day of _____, 20____, by and among the **BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA** ("County") and **St. Augustine Associates, Inc.**

RECITALS:

- A. **St. Augustine Associates, Inc.** is the Developer and projected Impact Feepayer of certain lands contained within the **St. Augustine Centre DRI** ("Project"), as described and approved in St. Johns County **Resolution No. 97-77, as amended.**
- 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, 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 13B** of the **Road** Impact Fee Ordinance allows impact fee credits to be granted for certain **improvements** ("**Road** Impact Fee Credits").
- D. Pursuant to General Condition 9 and Special Condition 12 of the St. Augustine Centre DRI Development Order (Resolution 97-77, as amended), St. Augustine Associates, Inc. is funding the signalization of the intersection of Inman Road and State Road 16, together with the addition of a southbound left turn lane at Inman Road, which is recognized as meeting the requirements for **Road** Impact Fee Credits and the above-referenced conditions of the Development Order.
- E. Pursuant to the terms of the **Road** Impact Fee Ordinance, County and **St. Augustine Associates, Inc.** 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 Fact.
2. The Developer agrees to pay the County the sum of \$410,000 for the purpose of signaling the intersection of State Road 16 and Inman Road, and to install a southbound left turn lane at Inman Road and State Road 16 (the "Improvements"). The County agrees to use such funds for this purpose and to recognize that such payment satisfies the Developer's obligations under the DRI to signalize Inman Road at State Road 16 and to add a southbound left turn lane at Inman Road and State Road 16. The County further agrees to cause physical construction to commence on the Improvements within twenty-four months from the date this Agreement is fully executed, and to complete the Improvements within twelve months of commencement of physical construction.
3. The County hereby grants **Road** Impact Fee Credits to St. Augustine Associates, Inc. and its designated successors and assigns, in the sum of \$410,000 as shown on **Exhibit A**, attached, which shall be added to an Impact Fee Credit Account kept by the County which may be drawn upon by St. Augustine Associates or its designated successors and assigns in accordance with this Agreement.
4. Timing of Payment. The timing of the Developer's payment of \$410,000.00 shall be as follows. Developer shall pay the County the sum of \$60,000.00 upon the full execution of this Agreement, which the County shall use to fund the design and permitting of the Improvements. Within fourteen (14) days following the full execution of this Agreement, the Developer shall provide the County an irrevocable and unconditional Letter of Credit in the amount of \$350,000.00. The Developer shall cause replacement letters of credit to be issued as needed such that a letter of credit in the amount of \$350,000.00 remains in effect during the entire time the Improvements are being designed and permitted. The County agrees that such Letter of Credit (including any replacement letters of credit) shall be held in escrow by the County or its Clerk and not drawn upon unless and until a contract for construction of the Improvements has been entered into between the County and a general contractor. At its election, the Developer may provide the County cash as a substitute for the Letter of Credit.
5. Refund of Payment and Reduction of Credit in Event Improvements are Under Budget. In the event that the Department of Public Works determines that the Improvements were constructed for less than \$410,000.00, then the County (through the County Administrator) shall refund the difference between the \$410,000.00 and the actual cost for the Improvements (the "Savings") within thirty (30) days of such determination, and the amount of Road Impact Fee Credits issued under this Agreement shall be reduced by an amount equal to the Savings. However, in the event that the unused amount of Road Impact Fee Credits existing at the time the refund is to be issued is less than the amount of the Savings, then the refund amount shall be reduced to an amount equal to the amount of the Road Impact Fee Credits existing at the time of the refund, and the amount of the unused Road Impact Fee Credits shall be reduced to zero. The Department of Public Works shall evaluate whether the actual cost of the Improvements was less than \$410,000.00 within sixty (60) days of making all

payments due to the general contractor(s) for such Improvements and shall notify St. Augustine Associates, Inc. upon the making of its determination.

6. **Method of Issuance.** From and after the date of the execution of this Agreement, so long as there is any balance remaining in the Impact Fee Credit Account, all Feepayers applying for building permits or certificates of occupancy in connection with any construction within the DRI, as may be amended from time to time, shall pay the amount due under the then-current Road Impact Fee Ordinance directly to St. Augustine Associates, Inc. St. Augustine Associates, Inc. shall be fully responsible for notifying all Feepayers of this requirement and shall ensure that such payments are directly paid to St. Augustine Associates, Inc. Then, for so long as the total Road Impact Fee Credits for which St. Augustine Associates, Inc. has issued vouchers under this Agreement is less than the total Road Impact Fee Credits authorized by this Agreement, St. Augustine Associates, Inc. shall issue to such Feepayers a voucher evidencing full payment of the Road Impact Fees in connection with such Feepayer's application for a building permit or certificate of occupancy. The voucher issued by St. Augustine Associates, Inc. shall contain a statement setting forth the amount of Road Impact Fee paid and shall be in substantially the same form as set forth on the attached **Exhibit B**. 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 Road Impact Fee Credit Account.
7. In the event that **St. Augustine Associates, Inc.** determines to sell all or part of the Project, **St. Augustine Associates, Inc.** 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 the Project for such consideration as **St. Augustine Associates, Inc.** in its sole discretion, determines. In such event, **St. Augustine Associates, Inc.** 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 **Road** Impact Fee Credits, if any, shall remain vested in **St. Augustine Associates, Inc.** 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 improvements to the particular development to which credits are transferred. Developer acknowledges that only one Impact Fee Credit account may exist at any given time for the Development Property. The Impact Fee Credits issued under this Agreement are in addition to any Impact Fee Credits previously issued by the County for the Development Property.
8. On or before January 31 of each year, so long as there remains any **Road** Impact Fee Credits, **St. Augustine Associates, Inc. and/or assigns** shall prepare and deliver to the County Growth Management 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.
9. At such time as the **Road** Impact Fee Credits provided for hereunder have been exhausted, **St. Augustine Associates, Inc.** 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.

10. Miscellaneous Provisions

1. 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.
2. 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 Attorney's Office that the Road 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 Development. However, the County agrees that the total Road Impact Fee credits granted under this Agreement and in prior agreements for this Development Project do not exceed the total amount of Road Impact Fees that would be due or which may become due for the Development.
3. 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.
4. All of the exhibits attached to this Agreement are incorporated in, and made a part of this Agreement.
5. 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.
6. 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 assigns.
7. All covenants, agreements, representation and warranties made herein shall be deemed to have material and relied on by each party to this Agreement.
8. 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 and if any provision hereof is inconsistent with such provisions, such provision shall apply.

9. **St. Augustine Associates, Inc.** must be a feepayer as referenced in the applicable impact fee ordinance to receive impact fee credits under this ordinance.
10. Nothing in this Agreement shall act to allow an entity to receive impact fees credits for contributions provided by a government entity including, but not limited to, a Community Development District.
11. 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.

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

St. Augustine Associates, Inc.

By: _____
Frank Cannon, President

State of Florida
 County of: _____

The foregoing instrument was acknowledged before me this ____ day of _____ 2013, by _____, as President of St. Augustine Associates, Inc., who is personally known to me or who has provided _____ as identification.

Notary Public

 Printed Name: _____
 My Commission Expires: _____

ST. JOHNS COUNTY, FLORIDA

By: _____
 Michael D. Wanchick
 Administrator

State of Florida
 County of ST. JOHNS

The foregoing instrument was acknowledged before me this ____ day of _____ 2013, by _____, as Administrator for St. Johns County, Florida, who is personally known to me or who has provided _____ as identification.

Notary Public

 Printed Name: _____
 My Commission Expires: _____

EXHIBIT A (p. 1 of 2)

INMAN AND SR 16 INTERSECTION IMPROVEMENTS
ST. JOHNS COUNTY, FL
ENGINEERING CONSTRUCTION ESTIMATE

GENERAL CONSTRUCTION OPERATIONS						
ITEM	DESCRIPTION	UNITS	QTY	UNIT COSTS	ITEM COSTS	
1	MOBILIZATION	LS	1	\$ 11,641.69	\$	11,641.69
2	SWPPP	LS	1	\$ 3,000.00	\$	3,000.00
3	TESTING	LS	1	\$ 2,500.00	\$	2,500.00
4	PAYMENT AND PERFORMANCE BOND	LS	1	\$ 3,880.56	\$	3,880.56
5	MAINTENANCE OF TRAFFIC	DA	30	\$ 350.00	\$	10,500.00
6	GEOTECHNICAL BORINGS	LS	1	\$ 5,000.00	\$	5,000.00
7	CIVIL DESIGN AND PERMITTING	LS	1	\$ 30,000.00	\$	30,000.00
8	INLET BARRIERS	EA	2	\$ 45.00	\$	90.00
9	SILT FENCING	LF	700	\$ 5.50	\$	3,850.00
10	SODDING	SY	1,000	\$ 5.40	\$	5,400.00
					\$	75,862.26
DEMOLITIONS (INMAN)						
11	REMOVE MITERED END SECTION	EA	2	\$ 1,500.00	\$	3,000.00
12	REMOVE SIGN	EA	4	\$ 40.00	\$	160.00
					\$	3,160.00
PAVEMENT REPAIR AND CONSTRUCTION (SR16)						
13	2.0" SP-12.5 STRUCTURAL COURSE	TN	141	\$ 121.50	\$	17,126.94
14	8" LIMEROCK BASE	SY	1,253	\$ 11.00	\$	13,783.00
15	12" STABILIZED SUBBASE (LBR 40)	SY	1,253	\$ 2.47	\$	3,094.91
16	1.5" FC-12.5 FRICTION COURSE	TN	106	\$ 121.50	\$	12,849.01
17	24" WHITE THERMOPLASTIC STOP BAR	LF	96	\$ 15.00	\$	1,440.00
18	6" WHITE THERMOPLASTIC	LF	1,500	\$ 6.50	\$	9,750.00
19	WHITE THERMOPLASTIC TURN ARROW	EA	10	\$ 540.00	\$	5,400.00
					\$	63,443.87
PAVEMENT REPAIR AND CONSTRUCTION (INMAN)						
20	2.0" SP-12.5 STRUCTURAL COURSE	TN	137	\$ 121.50	\$	16,703.21
21	8" LIMEROCK BASE	SY	1,222	\$ 11.00	\$	13,442.00
22	12" STABILIZED SUBBASE (LBR 40)	SY	1,222	\$ 2.47	\$	3,018.34
23	1.5" FC-12.5 FRICTION COURSE	TN	107	\$ 121.50	\$	12,976.54
24	24" WHITE THERMOPLASTIC STOP BAR	LF	24	\$ 15.00	\$	360.00
25	6" WHITE STRIPING	LF	1,500	\$ 0.75	\$	1,125.00
26	6" YELLOW STRIPING	LF	1,050	\$ 0.75	\$	787.50
27	WHITE THERMOPLASTIC TURN ARROW	EA	2	\$ 540.00	\$	1,080.00
					\$	49,492.59
DRAINAGE CONSTRUCTION (INMAN)						
20	30" MITERED END SECTION	EA	2	\$ 1,850.00	\$	3,700.00
21	30" RCP	LF	30	\$ 92.00	\$	2,760.00
					\$	6,460.00
SIGNALIZATION (SR16)						
22	SIGNALIZATION DESIGN (INCL STRUCTURAL)	LS	1	\$ 30,000.00	\$	35,000.00
23	SIGNAL CONSTRUCTION AND PROGRAMMING	LS	1	\$ 225,000.00	\$	225,000.00
					\$	260,000.00
GENERAL CONSTRUCTION						
					SUBTOTAL	\$ 75,862.26
					20% CONTINGENCY	\$ 15,172.45
					TOTAL	\$ 91,034.71
INMAN ROAD IMPROVEMENTS						
					SUBTOTAL	\$ 59,112.59
					20% CONTINGENCY	\$ 11,822.52
					TOTAL	\$ 70,935.11
SR16 IMPROVEMENTS						
					SUBTOTAL	\$ 323,443.87
					20% CONTINGENCY	\$ 64,688.77
					TOTAL	\$ 388,132.64
TOTAL PROJECT						
					SUBTOTAL	\$ 458,418.72
					20% CONTINGENCY	\$ 91,683.74
					TOTAL	\$ 550,102.46

Developer responsibility for Inman Rd. and SR 16 signalization costs, plus \$50,862.00 of General Construction Operations costs (subtotal \$369,974.85), x 10% contingency = \$406,972.34, rounded to \$410,000.00 (see agmt for specifics as to timing of payments and amounts).

EXHIBIT A (p. 2 of 2)

Based on recent projects within FDOT rights-of-way, the following assumptions were used to determine the improvements to be placed at the intersection:

- Extend turn lane on westbound SR16 onto Inman by 200'.
- Install 5' paved shoulder along entire right turn lane on westbound SR16.
- Widen Inman Road 22' for approximately 500' to accommodate 3 lanes with 5' shoulders.
- Install 250' left turn lane on westbound SR16 to Harvest Court (Private).
- Install mast arms and signals for all 4 directions at intersection.
- FDOT will require thermoplastic marking in their right-of-way.
- Lengthen the 30" RCP at Inman Road. No other drainage improvements will be made.
- No concessions for bicycle lanes or sidewalks will be required in this area.

The following are items not included in the cost estimate, but may be required:

- Acquisition of right-of-way.
- Permitting with SJRWMD as it is assumed this project will be exempted as turn lane addition and shoulder improvements less than 0.25 miles.
- Relocation of utilities.

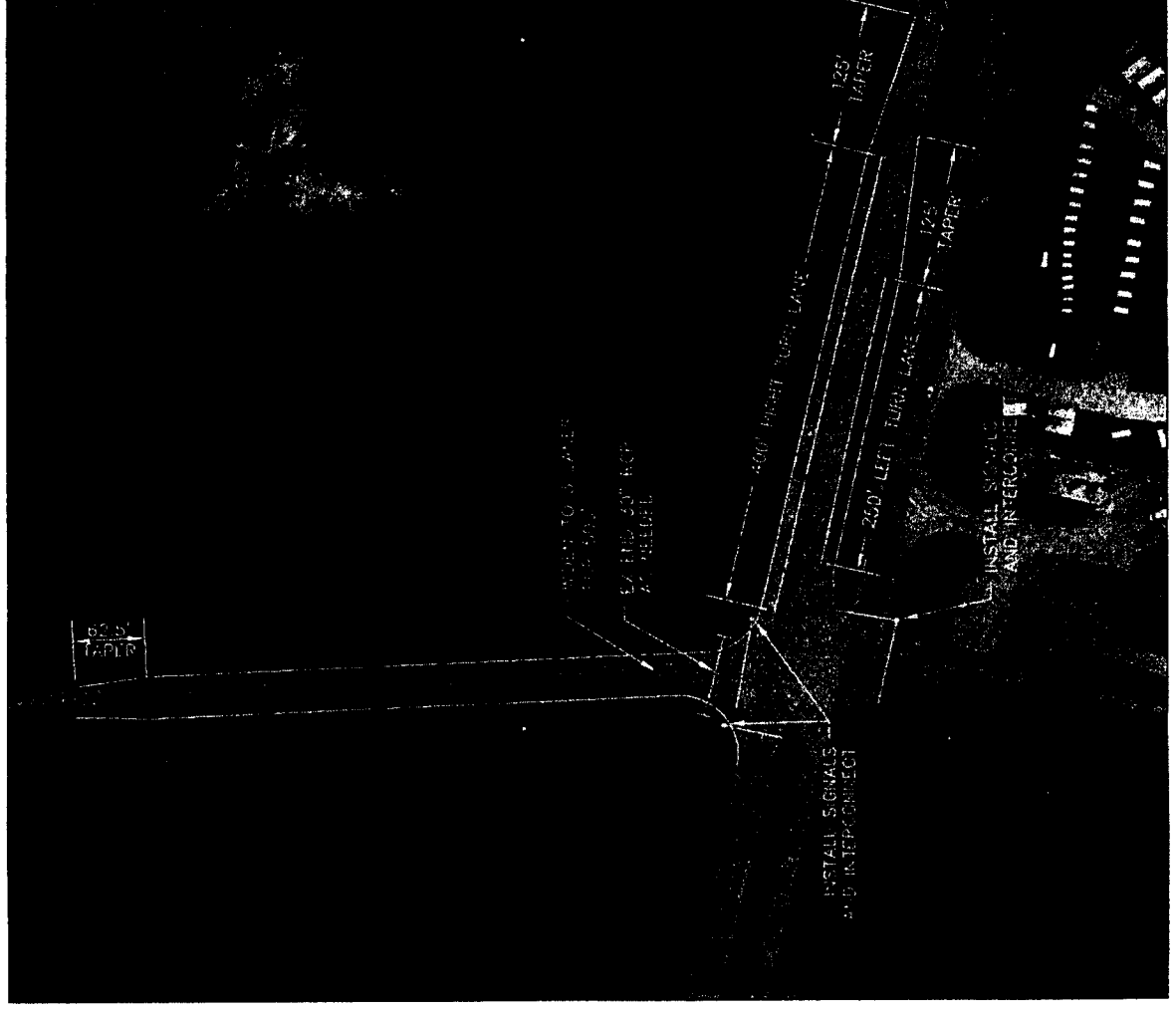


EXHIBIT B

Voucher #

St. Johns County Impact Fee Voucher

Name of Development/Developer

Name and address of Developer/Grantor: St. Augustine Associates, Inc. 1431 Orange Camp Road, Suite 116, Deland, FL 32724

Name and address of Grantee: _____

Legal description of subject property: _____

4. Subdivision or Master Development Plan name: St. Augustine Centre

The undersigned Developer/Grantor confirms that it has received from _____ on _____, 20__ funds sufficient for the following impact fees required under the applicable St. Johns County Impact Fee Ordinance, as amended, as indicated below. Developer/Grantor gives notice to St. Johns County, Florida that the following sums should be deducted from the applicable Impact Fee Credit account of the Developer/Grantor.

- Roads Ordinance #87-57 in the amount of \$ 410,000.00
- Parks Ordinance #87-58 in the amount of \$ _____
- Public Capital Facilities Ordinance #87-59
- Buildings in the amount of \$ _____
- Police in the amount of \$ _____
- Fire in the amount of \$ _____
- EMS in the amount of \$ _____
- Educational Facilities Ordinance #87-60 in the amount of \$ _____

By: _____

Print: _____

Its: _____