

RESOLUTION NO. 2017-348

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE AN IMPACT FEE REIMBURSEMENT AGREEMENT BETWEEN ST. JOHNS COUNTY AND THE TOLOMATO COMMUNITY DEVELOPMENT DISTRICT TO COMPLETE CONSTRUCTION OF A TRAILHEAD FACILITY; AND RECOGNIZING AND APPROPRIATING PRE-PAID IMPACT FEES WITHIN THE FISCAL YEAR 2018 BUDGET.

WHEREAS, the Nocatee Preserve (Preserve) is a 1,630-acre parcel uniquely situated on the western shores of the Tolomato River, directly across from the Guana Wildlife Management Area and State Park, and adjacent to a Natural Estuarine Research Reserve; and

WHEREAS, the Preserve was conveyed to the County by the Tolomato Community Development District (Tolomato) to enhance and maintain the ecological integrity of the natural systems associated with the property, while facilitating passive recreational uses by the public; and

WHEREAS, subject to the guidelines and restrictions provided in the Preserve's management plan such uses include the development of trails, interpretive exhibits, public access points, environmental learning centers, restrooms, ADA accessibility, parking, observation areas, support facilities and other infrastructure; and

WHEREAS, in accordance with the management plan, the County and Tolomato mutually seek to complete construction of a southern trailhead facility; and

WHEREAS, pursuant to St. Johns County Ordinance No. 87-59 (Public Capital Facilities Impact Fee Ordinance), as amended, the County requires any person who seeks to develop land within St. Johns County, Florida, 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 to provide for parks and recreational facilities, so as to assure that such new development bears a proportional share of the cost of capital expenses necessary to provide recreational services within St. Johns County, Florida; and

WHEREAS, subject to the terms, conditions and provisions set forth in the proposed agreement (attached hereto and incorporated herein), Tolomato agrees to prepay impact fees to fund a portion of the project cost to facilitate completion of the project, in exchange for impact fee reimbursement; and

WHEREAS, completion of the project will benefit the public by providing unique educational and recreational opportunities while preserving invaluable natural resources.

WHEREAS, the County did not anticipate receiving pre-paid impact fees from the Tolomato Community Development District during the Fiscal Year 2018 budget process; and

WHEREAS, the County must recognize and appropriate the pre-paid impact fees within the Fiscal Year 2018 in order to expend the funds for their intended purpose.

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

1. The above stated Recitals are incorporated herein as findings of fact.
2. The County Administrator, or designee, is hereby authorized to execute an impact fee reimbursement agreement in substantially the same form and format as attached hereto for completion of the project described herein.
3. The Board of County Commissioners recognizes and appropriates pre-paid impact fees in the amount of \$368,511 to the Fiscal Year 2018 Budget.
4. 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 by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida on this 17th day of October, 2017.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA



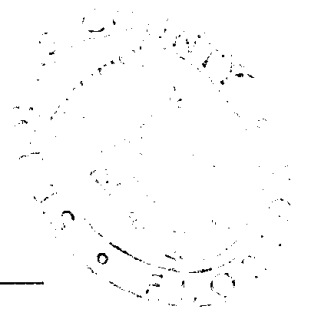
James K. Johns, Chair

ATTEST: Hunter S. Conrad, Clerk

By: Pam Haltermas
Deputy Clerk

Rendition Date: 10/19/17

Effective Date: 10/17/17



**IMPACT FEE REIMBURSEMENT AGREEMENT
Nocatee Preserve Landing – Southern Trailhead**

THIS IMPACT FEE REIMBURSEMENT AGREEMENT (Agreement) is made this day of _____, 2017, by and between St. Johns County, a political subdivision of the State of Florida, with administrative offices located at 500 San Sebastian View, St. Augustine, FL 32084 (County), and Tolomato Community Development District (Tolomato), a local unit of special purpose government in the State of Florida, with offices located at 245 Nocatee Center Way, Ponte Vedra, FL 32081.

Recitals

WHEREAS, the Nocatee Preserve (Preserve) is a 1,630-acre parcel uniquely situated on the western shores of the Tolomato River, directly across from the Guana Wildlife Management Area and State Park, and adjacent to a Natural Estuarine Research Reserve; and

WHEREAS, the Preserve was conveyed to the County by Tolomato in accordance with the Nocatee DRI Development Order (incorporated herein by this reference) to enhance and maintain the ecological integrity of the natural systems associated with the property, while facilitating passive recreational uses by the public; and

WHEREAS, subject to the guidelines and restrictions provided in the Preserve Management Plan (incorporated herein by this reference), such uses include the development of trails, interpretive exhibits, public access points, environmental learning centers, restrooms, ADA accessibility, parking, observation areas, support facilities and other infrastructure; and

WHEREAS, in accordance with the Preserve Management Plan, the County and Tolomato mutually seek to complete construction of a southern trailhead facility comprised of a main trail, parking area, restrooms, an open air pavilion with picnic tables and grills, benches, native landscaping, educational and informational signage, bike racks, hitching post, an equestrian mounting block and a canoe/kayak launch (Project) at a total cost of \$887,766.67 (Project Cost); and

WHEREAS, pursuant to St. Johns County Ordinance No. 87-59 (Public Capital Facilities Impact Fee Ordinance), as amended, the County requires any person who seeks to develop land within St. Johns County, Florida, 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 to provide for parks and recreational facilities, so as to assure that such new development bears a proportional share of the cost of capital expenses necessary to provide recreational services within St. Johns County, Florida; and

WHEREAS, subject to the terms, conditions and provisions set forth in this Agreement, Tolomato agrees to prepay impact fees to fund a portion of the Project Cost to facilitate completion of the Project, in exchange for impact fee reimbursements ;

WHEREAS, as the completion of the Project will benefit the public by providing unique educational and recreational opportunities while preserving invaluable natural resources, the County and Tolomato desire to set forth their agreement and a procedure for the reimbursement of such prepaid park/recreational impact fees in accordance with the Public Capital Facilities Impact Fee Ordinance.

NOW THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Effect of Recitals.** The above stated Recitals are incorporated herein as findings of fact.
2. **Duration.** The term of this Agreement shall begin on the date upon which the last party has dated and executed the same ("Effective Date") until final completion the Project, or upon early termination as described elsewhere herein. The term of this Agreement may be extended as necessary by mutual written consent of the parties hereto.
3. **Project Cost.** The total cost for construction of the project is \$887,766.67 (Project Cost). In order to facilitate completion of the Project, upon execution of this Agreement, Tolomato agrees to pre-pay park/recreation impact fees to the County in a lump sum payment of \$368,511 (Pre-Paid Impact Fees). The County will provide funding in an amount up to \$519,255.67. Additional Pre-Paid Impact Fees may be paid to the County by Tolomato if a Project Cost increase and Change Order is reviewed and approved by both the County and Tolomato. The County shall expend the Pre-Paid Impact Fees solely for completion of the Project. For the duration of this Agreement, Tolomato may require such supporting documentation from the County as may be reasonably necessary for Tolomato to confirm the County's compliance with this provision of the Agreement.
4. **Reimbursement.** The County agrees to reimburse Tolomato for the Pre-Paid Impact Fees from proceeds collected as park/recreation impact fee payments by Feepayers seeking building permits or certificates of occupancy in connection with construction in Zone B, as more specifically described (and/or depicted) in Exhibit 1, attached hereto and incorporated herein. Such reimbursement shall be paid in accordance with the section entitled "Reimbursement of Pre-Paid Impact Fees" provided herein. It is expressly agreed by each of the parties hereto that, in no event shall the County reimburse Tolomato any amounts in excess of the Pre-Paid Impact Fees noted above or as amended.
5. **Project Commencement.** Upon receipt of the Pre-Paid Impact Fees, the County shall designate and commit funding, and commence development and construction of the Project within 45 days. The Project shall be complete by no later than one (1) year after commencement of construction, and shall be open to the public upon completion.
6. **Project Management.**
 - (1) **Bidding.** It is mutually understood that the County shall manage and facilitate competitive bidding of the Project using the County procurement process.
 - (2) **Construction Contract Award.** Upon receiving competitive bids for the Project, the County shall award the construction contract to the lowest responsive bidder prior to issuing the contract.
 - (3) **Construction Management.** The County shall manage construction of the Project, including but not limited to:
 - i. employing a professional engineer to serve as the Engineer of Record for [Construction][KSB1];

- ii. ensuring that all necessary permits for completion of the Project are secured and maintained;
 - iii. construction contract management (i.e., reviewing and processing all contractor invoices, RFI's, change orders, etc.); and
 - iv. reviewing and resolving foreseeable technical challenges during construction.
- (4) **Change Orders.** No changes orders that impact the Project Cost shall be executed, unless the both the County and Tolomato review, and approve such change order in writing. Each change order that impacts the Project Cost, and is approved in writing by each party hereto, shall provide all amended terms concerning the payment and/or reimbursement of any additional funds or Pre-Paid Impact Fees used to complete construction of the Project. Such amended terms shall be incorporated into the body of this Agreement.
7. **Reimbursement of Pre-Paid Impact Fees.** The County shall reimburse the Pre-Paid Impact Fees in accordance with the following process:
- (1) On a quarterly basis, beginning on January 1, 2018, the District shall provide a request for reimbursement to: County Administrator, 500 San Sebastian View, St. Augustine, Florida 32804.
 - (2) The reimbursement amount provided by the County to Tolomato shall be 70% of the Zone B park/recreation impact fee payments received by the County during the prior quarter.
 - (3) The County shall have 45 days from the end of the prior quarter to provide reimbursement and supporting documents. The failure by Tolomato to provide a request for reimbursement shall not waive the County's payment obligations.
8. **Acceptance of Final Payment.** Acceptance of the final payment by the County made pursuant to this Agreement shall constitute a release of all claims against the County arising from, or by reason of, this Agreement.
9. **No Third Party Beneficiaries.** Both Tolomato and the County agree, and this Agreement explicitly provides, that no third party beneficiary status or interest is conveyed, conferred or inferred to any other person or entity.
10. **Amendments to This Agreement.** Both Tolomato and the County acknowledge that this Agreement constitutes the complete agreement and understanding of the parties. Further, both Tolomato and the County acknowledge that any change, amendment, modification or revision of this Agreement shall be in writing, and shall be executed by duly authorized representatives of both Tolomato and the County.
11. **Procedure for Achieving Assignment.** In light of the scope and rationale for this Agreement, neither Tolomato, nor the County shall assign, transfer, and/or sell any of the rights noted in this Agreement, or associated with this Agreement, without the prior express written approval of the other party. Approval shall not unreasonably be withheld.

12. **Governing Law and Venue.** This Agreement shall be construed according to the law of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be exclusively in state court in St. Johns County, Florida.
13. **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.
14. **Tolomato's Ability to Terminate.** Tolomato may terminate this Agreement prior to beginning any of the work contemplated herein.
15. **Authority to Execute.** Each party covenants to the other party/parties that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth above.

COUNTY

TOLOMATO

{Insert Signature Block}

{Insert Signature Block}

ATTEST:

Hunter S. Conrad
Clerk of the Court

By: _____

Deputy Clerk