

RESOLUTION NO. 2010- 83

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY FLORIDA, APPROVING THE TERMS, OF AN INTERLOCAL AGREEMENT BETWEEN ST JOHNS COUNTY AND THE ABERDEEN COMMUNITY DEVELOPMENT DISTRICT AND AUTHORIZING THE COUNTY ADMINISTRATOR OR DESIGNEE, TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY.

WHEREAS, Aberdeen Community Development District (Aberdeen CDD), a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located in St Johns County, Florida, has requested permission to install, construct and maintain certain landscape improvements which are required to be located within lands that have been dedicated to the County as rights-of-way within and along a portion of County Road 244 located in St. Johns County; and

WHEREAS, upon completion of the installation and construction of the rights-of-way improvements, Aberdeen CDD shall have responsibility for their maintenance, repair and replacement; and

WHEREAS, Aberdeen CDD has executed an Interlocal Agreement, attached hereto as Exhibit "A", incorporated by reference and made a part hereof, to indemnify their responsibility for their maintenance, repair, and replacement; and

WHEREAS, to the extent that there are typographical, scrivener 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.

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 the 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 the attached Interlocal Agreement and authorizes the County Administrator, or designee, to execute said Agreement.

Section 3. The Clerk of Court is instructed to record the original Interlocal Agreement in Official Records of St. Johns County, Florida.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 6th day of ~~March~~^{April}, 2010.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

Attest: Reina S. Black
Deputy Clerk

By: Ron Sanchez
Ron Sanchez, Chair

Effective Date: 2th April, 2010

RENDITION DATE 4/7/2010

**INTERLOCAL AGREEMENT BY AND BETWEEN THE
ABERDEEN COMMUNITY DEVELOPMENT DISTRICT AND
ST. JOHNS COUNTY, FLORIDA, REGARDING THE INSTALLATION
OF RIGHT OF WAY IMPROVEMENTS**

THIS AGREEMENT is made and entered into this ____ day of _____, 2010,
by and between:

St. Johns County, Florida, a political subdivision of the State of Florida, whose address is 500 San Sebastian View, St. Augustine, Florida 32084 (“County”); and

Aberdeen 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 mailing address is 475 West Town Place, Suite 111, World Golf Village, St. Augustine, Florida 32092 (“District”).

Recitals

WHEREAS, the District was established by rule of the Florida Land and Water Adjudicatory Commission for the purpose of planning, financing, constructing, installing, operating, and/or maintaining certain infrastructure, including transportation and roadway improvements, drainage facilities, landscaping and recreation improvements; and

WHEREAS, the District has constructed and/or installed certain improvements within the right-of-way of County Road 244, which improvements were conveyed to the County for ownership, operation and maintenance as a public road; and

WHEREAS, the District intends to install, construct and maintain certain landscape related improvements which are required to be located within lands that have been dedicated to the County as rights-of-way within and along a portion of County Road 244 located in St. Johns County as shown on **Exhibit A**, attached hereto and incorporated herein by reference (“County’s Right-of-Way”); and

WHEREAS, the improvements that may be installed, constructed and maintained within the County’s Right-of-Way include landscaping and irrigation (collectively, the “Right-of-Way Improvements”); and

WHEREAS, upon completion of the construction of the Right-of-Way Improvements, the District shall have the responsibility for their maintenance, repair, and replacement; and

WHEREAS, the County has agreed to allow the Right-of-Way Improvements to be installed, constructed or maintained within the County’s Right-of-Way only if the District agrees to indemnify and hold the County harmless, to the extent permitted by Florida law, from damages and expenses which may be incurred as a direct or indirect result of such installation, construction or maintenance of the Right-of-Way Improvements and certain other conditions.

NOW, THEREFORE, based upon good and valuable consideration and the mutual covenants of the parties, the receipt of which and sufficiency of which is hereby acknowledged, the District and the County agree as follows:

SECTION 1. RECITALS. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Agreement.

SECTION 2. RIGHT-OF-WAY UTILIZATION. The District may install, construct and/or maintain or cause to be installed, constructed and/or maintained the Right-of-Way Improvements in the County's Right-of-Way under the terms and conditions contained herein. The cost of maintenance, repair or replacement of any County's Right-of-Way Improvements shall be paid by the District.

SECTION 3. INDEMNIFICATION. The District agrees to protect, defend, indemnify, and hold the County, its tenants, elected officials, officers, employees and agents, free and harmless from and against any, and all, third party (including employees of the District and its contractors and subcontractors) claims, liability, losses and/or causes of action, which may arise from any negligent act or omission of the District's staff, employees or agents (including court costs and reasonable attorneys' fees) associated with or connected with, the use of the County's Right of Way by the District, and its contractors for the purposes set forth herein, including ingress and egress thereto.

SECTION 4. COVENANT WITH LAND. This Agreement shall touch and concern the land and shall be a covenant running with the fee interest underlying the County's Right-of-Way, whether in existence on the date hereof or constructed in the future.

SECTION 5. REMOVAL OF IMPROVEMENTS. Whenever necessary for the construction, repair, improvement, maintenance, safe and efficient operation or the alteration or relocation of all, or any portion of, the County's Right-of-Way as determined by the County, any or all of the Right-of-Way Improvements shall be immediately removed from the County's Right-of-Way as required by the County, at the District's expense, unless reimbursement was preauthorized in writing. In addition, the County may remove any and all of the Right-of-Way Improvements if the Right-of-Way Improvements create a safety hazard or are not properly maintained as described herein.

SECTION 6. SOVEREIGN IMMUNITY. The County agrees that nothing in this Agreement shall constitute or be construed as a waiver of the District's limitation on liability contained in Section 768.28 Florida Statutes, or obligate the District to indemnify or hold the County harmless in excess of that permitted by Florida law.

SECTION 7. PROCEDURE FOR ACHIEVING ASSIGNMENT. 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 without the express written approval of the other party. Notwithstanding any other provision in this Agreement, should either the County or the District, assign, transfer or sell any of the rights of this Agreement without such prior express 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 8. DURATION OF AGREEMENT. The duration of this Agreement runs from April 15, 2010, through and until 11:59 pm on April 15, 2020.

SECTION 9. RENEWAL OF AGREEMENT. At the expiration of the original term of this Agreement, this Agreement shall renew for another term of equal length, unless either the District or the County objects at least one hundred eighty (180) days prior to the expiration of the term. Thereafter, this Agreement may be renewed in any manner approved by both parties hereto.

SECTION 10. NO THIRD PARTY BENEFICIARIES. Both the County and the District explicitly agree, and this Agreement explicitly states, that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

SECTION 11. TERMINATION FOR CAUSE. This Agreement may be terminated with cause, upon either the County, or the District, providing at least ninety (90) days advance written notice to the other party of such notice of termination for cause. Such written notification shall indicate the exact cause for termination. The non-breaching party shall give the breaching party a ten (10) day period of cure, in which to cure/correct the cause which gave rise to the notice of termination. If cured/corrected during the period of cure, the non-breaching party will have the option to stop the termination for cause.

SECTION 12. NOTICE OF ALLEGED VIOLATION. To the extent that there is a violation of this Agreement that may give rise to the administrative and/or judicial action, including termination of this Agreement, the non-breaching party shall provide written notice to the breaching party, within thirty (30) days of the alleged violation.

SECTION 13. NOTICES. All notices, consents, and other communications shall be in writing, and delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service to the parties as follows:

If to the County: Michael Wanchick
County Administrator
500 San Sebastian View
St. Augustine, Florida 32084

With a Copy to: Michael Hunt
Deputy Attorney
St. Johns County Attorney's Office
500 San Sebastian View
St. Augustine, Florida 32084

If to the District: Aberdeen Community
Development District
475 West Town Place
Suite 111
World Golf Village
St. Augustine, Florida 32092
Attn: Jim Oliver

With a Copy to: Hopping, Green & Sams, P.A.
119 South Monroe Street
Suite 300
Tallahassee, Florida 323201
Attn: Michael Eckert

SECTION 14. FILING. After approval of this Agreement by the respective governing bodies of the County and the District, and its execution by duly qualified and authorized officers of each of the parties hereto, the County 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 15. 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.

SECTION 16. 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 17. AMENDMENTS TO AGREEMENT. Both the County and the District acknowledge that this Agreement constitutes the complete agreement and understanding of both parties. Both the County and the District acknowledge that any amendment to this Agreement shall be in writing, and shall be executed by duly authorized representatives of both the County and the District.

SECTION 18. ACCESS TO RECORDS. The access to, disclosure, non-disclosure, or exemption of records, data, documents, and materials associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes).

SECTION 19. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed but one agreement.

IN WITNESS WHEREOF, the District and the County have caused these presents to be executed on the day and year first written above.

Executed in the presence of:

Aberdeen Community Development District

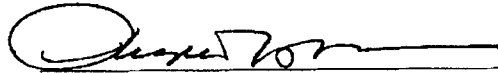
Helen He Helms
Print Name: Helen He

J. Thomas Gillette, III
Chairman, Board of Supervisors

Scott A. Wild
Print Name: Scott A. Wild

STATE OF FLORIDA
COUNTY OF Duval

The foregoing instrument was acknowledged before me this 23rd day of February, 2010, by J. Thomas Gillette, III, on behalf of Aberdeen Community Development District. He/she is personally known to me or has produced _____ as identification and who did/did not take an oath.


(Signature of Notary Public)

PHYLLIS H. LUTHER
Notary Public, State of Florida
My comm. exp. May 12, 2013
Comm. No. DD 885981

Phyllis H Luther
(Print Name of Notary)
Notary Public - State of Florida
Commission Number: DD885981
My Commission Expires: 5/12/13

St. Johns County, Florida

Print Name: _____

By: _____
Print Name: _____
Its: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by _____, St. Johns County, Florida, on behalf of the County. He/she is personally known to me or has produced _____ as identification and who did/did not take an oath.

(Signature of Notary Public)

(Print Name of Notary)
Notary Public - State of Florida
Commission Number: _____
My Commission Expires: _____