

**PUBLIC INFRASTRUCTURE CAPITAL IMPROVEMENTS
COSTS DISBURSEMENT AGREEMENT
BETWEEN
CITY OF JACKSONVILLE
AND
EASTLAND DEVELOPMENT GROUP, INC.**

THIS CAPITAL MAINTENANCE AND CAPITAL IMPROVEMENTS COSTS DISBURSEMENT AGREEMENT (the “Agreement”) is made and entered into this _____ day of _____, 2021 (the “Effective Date”) between the **CITY OF JACKSONVILLE**, a municipal corporation and a political subdivision of the State of Florida (“City”), and **EASTLAND DEVELOPMENT GROUP, INC.**, a Florida corporation (“Eastland”).

**ARTICLE 1
PRELIMINARY STATEMENTS**

1.1 Background; the Improvements.

1.1.1 The City has included in its adopted 2021-2022 Capital Improvements Plan (CIP) an improvement to widen to four (4) lanes a portion of Race Track Road, which is located in the City of Jacksonville and transitions into St. Johns County, extending approximately from Bartram Park Boulevard to the proposed intersection of East Peyton Parkway and Race Track Road (the “RTR Segment”).

1.1.2 Eastland is the developer of the Bartram Park Development of Regional Impact, approved by the City in Resolution No. 2000-451-E, as amended, with the latest amendment being Ordinance 2017-487-E (collectively, the “Bartram Park DRI”).

1.1.3 The property on which the Bartram Park DRI is located (“Bartram Park DRI Property”) is served by Bartram Park Boulevard and fronts, in part, on the RTR Segment.

1.1.4 The Florida Department of Transportation (“FDOT”) has committed to widen to four (4) lanes portions of Race Track Road (the “FDOT Improvements”) as part of FDOT’s planned improvements to I-95.

1.1.5 Eastland and the City wish to provide a structure for the widening of the RTR Segment (the “RTR Segment Widening”), including the design, permitting, construction, and financing of the RTR Widening (the “RTR Segment Work”), prior to or concurrently with the FDOT’s construction of the FDOT Improvements.

1.1.6 Eastland will perform the RTR Segment Widening and the RTR Segment Work in accordance with the terms and conditions of this Agreement (collectively, the “Improvements”) as more specifically described in **Exhibit A**, attached hereto and incorporated herein by this reference. A description of the City-owned real property on which the Improvements will be constructed is provided in **Exhibit B**, attached hereto (the “Improvements Area”).

1.1.7 The City will benefit by having Eastland undertake the Improvements within the timeframe set forth in this Agreement.

1.1.8 The City has determined that the design, engineering, permitting, construction, and inspection of the Improvements can most efficiently and cost effectively be completed by Eastland. Eastland is willing to design, engineer, permit, construct, and inspect the Improvements in accordance with applicable Florida law for public projects, including but not limited to pursuant to procedures consistent with Section 287.055, Florida Statutes, and otherwise generally consistent with Chapter 126, *Ordinance Code*, provided the City contributes to the cost of such Improvements as provided herein.

1.1.9 The City has requested, and Eastland has agreed, that Eastland will design, engineer, permit, construct, and inspect the Improvements as specifically described and depicted on **Exhibit A**. The Plans and Specifications for the Improvements shall be incorporated into **Exhibit A** as set forth below. The City has agreed to fund the design, engineering, permitting, construction, and inspection of the Improvements in a maximum amount equal to the lesser of: (i) the actual Verified Direct Costs for the construction of the Improvements; or, (ii) \$10,681,250.00, with the balance, if any, being funded by Eastland. Eastland will oversee all aspects involving the design, engineering, permitting, construction, and inspection of the Improvements. City has agreed to reimburse Eastland up to \$10,681,250.00 upon Substantial Completion of the Improvements in accordance with the terms and conditions of this Agreement.

1.2 Design, Construction Budget. The total estimated design and construction costs of the Improvements are estimated to be up to \$10,681,250.00. A final budget setting forth the costs of the Improvements shall be submitted to the City for its administrative review and approval prior to Eastland's entering into any contracts for such work, and the final, approved budget for the Improvements shall be attached hereto as **Exhibit C**. The City will provide such approvals within ten (10) business days of receiving the final budget.

1.3 Jacksonville Small and Emerging Businesses. It is important to the economic health of the community that whenever a person/entity receives incentives for construction, that the person/entity and its contractors use good faith efforts to provide contracting opportunities to small and emerging business enterprises in Duval County pursuant to Section 7.22 hereof.

1.4 Maximum Indebtedness. The total maximum indebtedness of City for the Improvements is \$10,681,250.

1.5 Availability of Funds. Notwithstanding anything to the contrary herein, all of City's financial obligations under this Agreement are subject to and contingent upon the availability of lawfully appropriated funds for the Improvements and this Agreement.

NOW, THEREFORE, in consideration of the mutual undertakings and agreements herein of the City and Eastland, and for Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are acknowledged, the City and Eastland agree that the above preliminary statements are true and correct, and the parties represent, warrant, covenant, and agree as follows:

ARTICLE 2 DEFINITIONS

The foregoing preliminary statements are true and correct and are hereby incorporated herein by this reference. As used in this Agreement, the following terms shall have the following meanings.

2.1 **“Budget”** means the line item budget of Direct Costs for the Improvements, attached hereto as **Exhibit C**, and showing the total costs for each line item, as the same may be revised from time to time with the written approval of Eastland and the City’s Director of Public Works, subject to the restrictions and limitations contained herein. Annually on or before June 30, Eastland shall submit its Budget (along with its Plans and Specifications, defined below) for the Improvements to the City to be undertaken by Eastland, which shall be subject to review and approval by the City in its reasonable discretion. Any revisions to the Budget arising from the City’s change in scope shall be subject to review and approval by Eastland in its reasonable discretion. The Budget contains a general project contingency in the amount of \$2,136,250. Any unused portion of the City contingency fund shall be retained by the City.

2.2 **“Commence Construction”** The terms "Commence" or "Commenced" or “Commencement” or “Commencement Date” or "Commencing" Construction as used herein when referencing the Improvements or any portion thereof means the date when Eastland (i) has obtained all federal, state or local permits as required for the construction of such portion of the Improvements, and (ii) has begun physical, material construction (e.g., site demolition, land clearing, utility installation, or such other evidence of commencement of construction as may be approved by the City in its reasonable discretion) of the Improvements on an ongoing basis without any Impermissible Delays.

2.3 **“Completion of Construction”** The terms "Complete Construction" or "Completion of Construction" or “Completion” as used herein when referencing the Improvements means Substantial Completion (as defined below in this Article 2) of such Improvements.

2.4 **“Completion Date”** The term “Completion Date” as used herein means the completion date described in **Exhibit D**.

2.5 **“Construction Contract”** means any contract between Eastland and a General Contractor for the construction of the Improvements entered into after the Effective Date and in accordance with the terms and conditions of this Agreement, and any amendments or modifications thereto approved by City and Eastland.

2.6 **“Construction Documents”** means the Design Professional’s Contract(s), the Construction Contract, all construction, engineering, architectural, or other design professional contracts and subcontracts, all change orders, all government approvals, the Plans and Specifications, and all other drawings, budgets, and agreements relating to the construction of the Improvements.

2.7 **“Construction Inspector”** has the meaning ascribed in Section 3.8.

2.8 “**Construction Management Fees**” has the meaning ascribed in Section 3.5.

2.9 “**Design Professional**” means engineers, architects, or other professional consultants providing technical advice in accordance with the terms of this Agreement.

2.10 “**Design Professional’s Contract(s)**” means any contracts between Eastland and a Design Professional for the design or construction inspection of any portion of the Improvements, and any amendments or modification thereto.

2.11 “**Direct Costs**” means direct design, pre-construction, and construction costs Eastland incurs after the Effective Date of this Agreement (including the purchase, after the Effective Date of this Agreement, of plans and studies prepared prior to the Effective Date of this Agreement to define the scope of the Improvements and devise the Budget, provided all such work is subject to the review and approval of the City Director of Public Works) in connection with the design, engineering, permitting, construction, and inspection of the Improvements, including soft costs associated with the design of the Improvements, surveys, geotechnical, environmental, and construction testing, removal of unsuitable soils, and also including the Construction Inspector’s fees, as itemized in the Budget and as may be revised from time to time with the written approval of the City’s Director of Public Works, not exceeding the applicable Maximum Improvements Disbursement Amount for the Improvements. Direct Costs shall not include any Construction Management Fees or other project management or construction fees of Eastland relating to any other Eastland project which may be constructed contemporaneously with the Improvements.

2.12 “**Disbursement(s)**” means disbursements to Eastland of sums equivalent to Eastland’s Direct Costs for the Improvements as approved by the City pursuant to this Agreement for the design, engineering, permitting, construction, and inspection of the Improvements, not to exceed the applicable Maximum Improvements Disbursement Amount. The Disbursements will be made at the times and subject to the conditions set forth in this Agreement. No portion of the amounts allocated for the Improvements as shown in the Budget shall be disbursed to Eastland unless such improvements comply in all material respects with the Plans and Specifications and description of the Improvements attached hereto as **Exhibit A** (which may be modified from time to time pursuant to the terms of this Agreement) and the minimum requirements of the Budget for the Improvements as described in **Exhibit C**, as reasonably determined by the Director of Public Works or his or her designee.

2.13 “**General Contractor**” means the person or entity licensed as a general contractor under Florida law and providing construction management of any portion of the Improvements.

2.14 “**Impermissible Delay**” means, subject to the Force Majeure provisions of Section 11.2, failure to proceed with reasonable diligence with the construction of the Improvements in the reasonable judgment of the City or Construction Inspector, or if the City or Construction Inspector is of the reasonable opinion that the Improvements at issue cannot be Completed by the Completion Date for such improvements, or abandonment of or cessation of work on the Improvements at any time prior to the Completion of any Improvements for a period of more than thirty (30) consecutive business days except in the case of Force Majeure as set forth in Section 11.2 or other casualties which are not the result of Eastland’s

negligence or other causes beyond Eastland's control, in which case such period shall be the lesser of the actual period of delay or ninety (90) consecutive days.

2.15 **“Improvements”** means any portion of the Improvements or other related improvements described herein as determined by the context of the usage of such term.

2.16 **“Improvements Costs”** means, depending upon the context of the usage of the term, the Direct Costs of the design, engineering, permitting, construction, and inspection of the Improvements to be undertaken by Eastland.

2.17 **“Improvements Documents”** means this Agreement and any other documents executed in connection herewith between the parties hereto.

2.18 **“Maximum Improvements Disbursement Amount”** means the maximum disbursement to Eastland for the Improvements as approved by the City of sums equivalent to Eastland’s Direct Costs for the Improvements for the design and construction of the Improvements. The Maximum Improvements Disbursement Amount for the Improvements shall be the lesser of the Verified Direct Costs for the Improvements or \$10,681,250. The Disbursements will be made as provided in this Agreement.

2.19 **“Payment Bond”** and **“Performance Bond”** have the meanings ascribed in Section 7.21.

2.20 **“Plans and Specifications”** means the final plans and specifications, including without limitation all maps, sketches, diagrams, surveys, drawings, and lists of materials for the construction of the Improvements or any portion thereof prepared by the Design Professional and approved by the City, and any and all modifications thereof made with the written approval of the City.

2.21 **“Substantial Completion”** means the satisfaction of the Improvements Completion Conditions applicable to the Improvements, as described in Section 7.13. The date of Substantial Completion of the Improvements is the date of a letter from the City stating that such improvements are substantially complete. Such letter is referred to herein as the “Substantial Completion Letter.” The one-year warranty as described herein on the Improvements begins on the Substantial Completion date of the Improvements.

2.22 **“Verified Direct Costs”** means the Direct Costs actually incurred by Eastland for Work in place as part of the Improvements, as certified by the Construction Inspector, not more frequently than monthly pursuant to the provisions of this Agreement.

2.23 **“Work”** means workmanship, materials, and equipment necessary to this Agreement and any and all obligations, duties, and responsibilities necessary to the successful completion of the Improvements undertaken by Eastland under this Agreement, including the furnishing of all labor, materials, and equipment and any other construction services related thereto.

ARTICLE 3
DISBURSEMENT OF FUNDS BY CITY

3.1 Terms of Disbursement. Subject to an appropriation of funds therefor, City agrees to reimburse Eastland for the Verified Direct Costs incurred and paid for the design, engineering, permitting, construction, and inspection of the Improvements on the terms and conditions hereinafter set forth. The disbursement amount shall be in the maximum amount of \$10,681,250. Eastland shall be responsible for all costs of the Improvements beyond such amount. Should the total Verified Direct Costs incurred by Eastland applicable to the Improvements amount to a sum less than the Maximum Improvements Disbursement Amount, City shall only be liable for the actual amount of the Verified Direct Costs for the Improvements. City hereby grants Eastland, its contractors, and its agents a temporary license on, over, under, through, and across the Improvements Area as necessary for the construction of the Improvements.

3.2 Use of Proceeds. All funding authorized pursuant to this Agreement shall be expended solely for the purpose of reimbursing Eastland for the Verified Direct Costs for any portion of the Improvements as authorized by this Agreement and for no other purpose. Upon Substantial Completion of the Improvements, any excess funds budgeted for the Improvements will be retained by the City.

3.3 Disbursements Directly to Contractors and Vendors. Notwithstanding anything herein, the City may at its option upon the occurrence of an Event of Default which is not cured within the applicable cure period after notice, and in accordance with the disbursement procedures described in this Article 3, and in Article 4 and Article 5, disburse directly to the Design Professionals, General Contractor, subcontractors, suppliers, and vendors whom Eastland has engaged in connection with the Improvements, the reasonable amounts charged by such persons upon submission to the City of invoices, receipts, or other documents required by the City showing that the services rendered pertain to the Improvements and are included in the Direct Costs. In the event the City makes any direct Disbursement as described in this Section 3.3, the City shall, upon request of Eastland, deliver to Eastland a complete copy of any Disbursement documentation for Eastland's records.

3.4 Deficiency in Maximum Improvements Disbursement Amount; Eastland Obligation for any Shortfall in the Improvements Budgeted Costs. If prior to any Disbursement the City reasonably determines that the actual cost to complete construction of the Improvements exceeds the aggregate undisbursed balance of the Maximum Improvements Disbursement Amount applicable to the Improvements, the City shall provide written notice of such to Eastland. Eastland, the City, the General Contractor, and the Design Professionals shall meet and determine how to make adjustments to the Plans and Specifications for the Improvements, and Eastland shall be responsible for the payment of any amounts in excess of the undisbursed balance of the Maximum Improvements Disbursement Amount. In no event will the City be responsible for any shortfall in the amounts necessary to Complete Construction of the Improvements. If Eastland fails to continue construction at its own cost or fails to timely complete construction due to a shortfall or for any other reason, the City in its sole discretion may choose to terminate the City's additional obligations hereunder and/or complete the remaining portion of the Improvements (on its own or through a third party contractor or developer and in compliance with the Plans and Specifications).

If the City completes any portion of the Improvements, Eastland shall be liable to the City for the costs thereof in excess of the amount allocated for such portion of the Improvements as shown on **Exhibit C**, and such repayment obligation of Eastland shall survive any termination or expiration of the City's obligations hereunder.

3.5 Project Management Fees/Construction Management Fees. No development fees, project management fees, or other fees of Eastland (collectively, the "Project Management Fees") shall be paid to Eastland under this Agreement, nor are any such fees owed to Eastland as of the Effective Date. Any construction management fees to be paid to the General Contractor ("Construction Management Fees") shall be paid only after all conditions to the Disbursement have otherwise been satisfied, and such fees shall be made pro rata (other than fees for preconstruction work) with the progress of the Improvements as determined by Construction Inspector and upon approval of the amount of such fees by the City. All requests for Construction Management Fees must be included in the Disbursement Request as a separate line item, and the aggregate amount of such fees shall be set forth in the General Contractor's contract, which is subject to the City's approval.

3.6 Procedures for Payment. All Disbursements shall be made from time to time as construction progresses upon written application of Eastland pursuant to a Disbursement Request in the form as provided by the City and as defined in Section 4.1. Subject to Article 5 below and the other terms of this Agreement, Eastland shall file Disbursement Requests with the City no more frequently than once per month covering Work performed since the prior Disbursement Request. Each Disbursement Request shall constitute a representation by Eastland that the Work done and the materials supplied to the date thereof are in accordance with the Plans and Specifications for the Improvements; that the Work and materials for which payment is requested have been physically incorporated into the Improvements (except with respect to Stored Materials, which shall be physically incorporated into the Improvements in accordance with Section 3.7 below); that any stored materials for which payment is requested have been secured in accordance with Section 3.7; that the value is as stated; that the Work and materials conform with all applicable rules and regulations of the public authorities having jurisdiction; that such Disbursement Request is consistent with the then current Budget; that the proceeds of the previous Disbursement have been actually paid by Eastland in accordance with the approved Disbursement Request for such previous Disbursement; and that no Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing. The Council Auditor's Office has the right to audit all information in the Disbursement Requests.

3.7 Stored Materials. The City shall not be required to disburse funds for costs incurred by Eastland with respect to materials stored on or off the site unless the following conditions shall have been satisfied: (a) copies of all invoices relating to such stored materials and a stored materials inventory sheet shall be submitted to the City with the Disbursement Request; (b) such materials must be (i) adequately protected from damage by the elements and from theft, (ii) insured for the full cost thereof under a builder's risk policy acceptable to the City and naming the City as an additional insured, (iii) subject to a first priority lien held by the City, and (iv) subject to inspection by Construction Inspector. Notwithstanding any provisions to the contrary herein, Eastland may not request as part of the Disbursement costs incurred by Eastland on materials stored on property owned by Eastland or its affiliates.

3.8 Construction Inspector. The Construction Inspector shall be a construction engineering consultant approved by the City and engaged by Eastland for standard inspections of the Improvements as provided herein, and all fees for the Construction Inspector are included in the Budget and shall be deemed a part of the Direct Costs. The Construction Inspector will: inspect the construction of the Improvements as provided herein; review and advise Eastland and the City jointly with respect to the Construction Documents and other matters related to the construction, operation, and use of the Improvements; monitor the progress of construction; and, review and sign-off on the Disbursement Requests and change orders submitted hereunder. Eastland shall make its construction management facilities located on or around the project site available for the City and Construction Inspector for the inspection of the Improvements, and Eastland shall afford full and free access by City and Construction Inspector to all Construction Documents. City shall be granted access to the project site at all reasonable times to inspect the Work in progress and upon Substantial Completion.

Eastland acknowledges that (a) Construction Inspector shall in no event have any power or authority to make any decision or to give any approval or consent or to do any other thing which is binding upon the City and any such purported decision, approval, consent, or act by Construction Inspector on behalf of the City shall be void and of no force or effect, (b) the City reserves the right to make any and all decisions required to be made by the City under this Agreement, in its reasonable discretion without in any instance being bound or limited in any manner whatsoever by any opinion expressed or not expressed by Construction Inspector to the City or any other person with respect thereto, and (c) the City reserves the right in its sole and absolute discretion to replace Construction Inspector with another inspector at any time and with reasonable prior notice to Eastland.

3.9 No Third-Party Beneficiaries. The parties hereto do not intend for the benefits of this Agreement to inure to any third party. Notwithstanding anything contained herein or any conduct or course of conduct by any of the parties hereto, this Agreement shall not be construed as creating any rights, claims, or causes of action against City or any of its respective officers, agents, or employees in favor of any contractor, subcontractor, supplier of labor, materials, or services, or any of their respective creditors or any other person or entity other than Eastland.

3.10 Performance Schedule. Eastland and City shall jointly establish dates for the performance of Eastland's obligations under this Agreement, which shall be set forth in **Exhibit D**, attached hereto and incorporated herein by this reference (the "Performance Schedule").

3.11 Progress Reports. During the period of construction of the Improvements, Eastland shall provide to the City on a monthly basis (not later than fifteen (15) days after the close of each calendar month) progress reports of the status of construction of the Improvements, which shall include: (i) certification by Eastland's engineer of (a) the total dollars spent to date, and (b) the percentage of completion of the Improvements, as well as the estimates of the remaining costs to complete such construction; and (ii) evidence of full payment of all invoices or draw requests, to include copies of checks for payment and invoice draw requests submitted for payment as to such portion of the Improvements during such monthly reporting period. In addition, on a monthly basis Eastland shall provide to the City copies of its internally generated monitoring reports and related

documentation as to construction of the portion of the Improvements within fifteen (15) days after the close of the month.

3.12 Pre-Construction Meetings; Critical Path Diagram. The City and Eastland shall meet no later than ten (10) days prior to the Commencement Date for construction of the Improvements. At such meeting, Eastland shall provide to the City a logical network diagram describing all components of the construction of the Improvements to be constructed in a critical path format (the “Critical Path Diagram”) in accordance with the Performance Schedule. Eastland shall update the Critical Path Diagram monthly and submit the updated Diagram to the City monthly. Additionally, at such meeting Eastland shall submit a complete schedule of values for the construction of the Improvements and a projected cash flow statement for the remaining time period for the same (collectively, the “Schedule of Values”), which Eastland shall also update monthly to show all items completed and provide the updated version to the City.

3.13 No Warranty by City. Nothing contained in this Agreement or any other Improvements Document shall constitute or create any duty or warranty by City regarding (a) the accuracy or reasonableness of the Budget or (b) the competence or qualifications of the General Contractor or Design Professional or any other party furnishing labor or materials in connection with the construction of the Improvements. Eastland acknowledges that Eastland has not relied and will not rely upon any experience, awareness or expertise of City regarding the aforesaid matters.

ARTICLE 4 DISBURSEMENT REQUESTS

4.1 Request for Disbursement; Payment by City. For each request, which shall be made no more frequently than monthly, for a Disbursement, Eastland shall submit to the City at least thirty (30) calendar days prior to the requested date of disbursement a completed written disbursement request (each, a “Disbursement Request”) in the form as provided by the City. Disbursements shall be made on a work performed and invoiced basis. Each Disbursement Request shall certify in detail, reasonably acceptable to the City, (a) the unit price schedule of values that includes the cost of the labor that has been performed and the materials that have been incorporated into the Improvements under construction, and (b) the amount of the Disbursement that Eastland is seeking in accordance with the amounts set forth in the Budget and subject to Section 1.4 above. Each Disbursement Request shall be accompanied by the following supporting data: (i) invoices, waivers of mechanic’s and materialmen’s liens obtained for payments made by Eastland on account of Direct Costs as of the date of the Disbursement Request; (ii) AIA Forms G702 and G703 certified by the General Contractor and Design Professional for the completed Improvements under construction; and, (iii) the updated Critical Path Diagram and Schedule of Values as described in Section 3.12 (collectively, the “Supporting Documentation”). The City shall pay to Eastland the amount of each Disbursement Request submitted by Eastland in accordance with the applicable requirements of this Agreement within thirty (30) calendar days of the City’s receipt of such Disbursement Request; provided, however, that if the City reasonably disputes any portion of the Disbursement Request, the City shall provide written notice to Eastland of such dispute within ten (10) business days of the City’s receipt of such Disbursement Request. Thereafter, the parties shall negotiate in good faith to resolve such dispute. Notwithstanding the

City's rights to dispute a Disbursement Request as set forth herein, in the event of such a dispute, the City shall within such original fifteen (15) business day period disburse to Eastland the non-disputed portion of the funds requested pursuant to such Disbursement Request. Each Disbursement Request shall be accompanied by a certification by Eastland's Design Professional of (a) updated budgets showing the amount of expenditures for the Improvements to date, (b) the percentage of completion of the Improvements and (c) estimates of the remaining costs to complete the overall Improvements. Eastland shall also promptly furnish to City such other information concerning the Improvements as City may from time to time reasonably request.

4.2 Inspection. Upon receiving each Disbursement Request, Construction Inspector will determine in its reasonable discretion (a) whether the Work completed to the date of such Disbursement Request has been done satisfactorily and in accordance with the Plans and Specifications, (b) the percentage of construction of the Improvements completed as of the date of such Disbursement Request for purposes of determining, among other things, the Direct Costs actually incurred for Work in place as part of such Improvements as of the date of such Disbursement Request, (c) the actual sum necessary to complete construction of such Improvements in accordance with the Plans and Specifications, and (d) the amount of time from the date of such Disbursement Request which will be required to complete construction of such Improvements in accordance with the Plans and Specifications until such improvements are completed. All inspections by or on behalf of the City shall be solely for the benefit of the City and Eastland, but Eastland shall have no right to claim any loss or damage against City arising from any alleged (i) negligence in or failure to perform such inspections, or (ii) failure to monitor Disbursements or the progress or quality of construction.

4.3 Disbursements. The City shall have no obligation after making Disbursements in a particular manner to continue to make Disbursements in that manner, except that the City shall provide Eastland reasonable advance notice of any change in the City's disbursement procedures, and any new disbursement procedures shall be commercially reasonable and in conformance with this Agreement. Notwithstanding the foregoing, the City's records of any Disbursement made pursuant to this Agreement shall, in the absence of manifest error, be deemed correct and acceptable and binding upon Eastland.

4.4 No Warranty by City. Nothing contained in this Agreement shall constitute or create any duty on or warranty by the City regarding (a) the accuracy or reasonableness of the Budget, (b) the proper application by Eastland of the Disbursement proceeds, (c) the quality of the Improvements, or (d) the competence or qualifications of the General Contractor, Design Professional, Construction Inspector any other party furnishing labor or materials in connection with the construction of the Improvements. Eastland acknowledges that Eastland has not relied and will not rely upon any experience, awareness, or expertise of the City regarding the aforesaid matters.

ARTICLE 5 CONDITIONS TO DISBURSEMENTS

5.1 General Conditions. Subject to compliance by Eastland with the terms and conditions of this Agreement, the City shall make Disbursements to Eastland for Direct Costs of the Improvements, up to the Maximum Public Infrastructure Disbursement Amount; provided,

however, that in no event shall the City be obligated to make Disbursements in excess of the sum of Verified Improvements Costs applicable to such Improvements. The City will have no obligation to make any Disbursement (a) unless City is satisfied, in its reasonable discretion, that the conditions precedent to the making of such Disbursement have been satisfied or (b) if an Event of Default or an event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing.

5.2 Conditions to Initial Disbursement. The City's obligation hereunder to make the initial Disbursement with respect to the Improvements is conditioned upon the City's receipt of the following, each in form and substance reasonably satisfactory to the City:

5.2.1 Each of the documents duly executed as necessary to be enforceable against the parties thereto, and that no Event of Default or event which, with the giving notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing under any of the documents.

5.2.2 If improvements have been constructed, a satisfactory inspection report with respect to the Improvements from Construction Inspector, which shall be delivered by Construction Inspector with the Disbursement Request.

5.2.3 The Supporting Documentation described in Section 4.1 above.

5.3 Conditions to Subsequent Disbursements. The City's obligations hereunder to make any subsequent Disbursements with respect to the Improvements are conditioned upon City's receipt of the following, each in form and substance reasonably satisfactory to the City:

5.3.1 Disbursement Request, together with all required Supporting Documentation;

5.3.2 Except for subsequent disbursements for pre-construction costs, evidence that Eastland has obtained all Governmental Approvals or, after construction has commenced, a satisfactory inspection report with respect to the applicable Improvements from Construction Inspector, which shall be delivered by Construction Inspector with the applicable Disbursement Request; and

5.3.3 An updated Budget (showing the amount of money spent or incurred to date on particular items and the remaining costs for the Improvements under construction).

5.3.4 Additionally, prior to any Disbursement hereunder for the costs of construction of any Improvements, the City must be satisfied that all necessary approvals from governmental or quasi-governmental authorities (including without limitation the St. Johns River Water Management District and FDEP) having jurisdiction over the Improvements, including but not limited to street openings or closings, zonings and use and occupancy permits, sewer permits, stormwater drainage permits, and environmental permits and approvals (the "Governmental Approvals"), have been obtained for the applicable Improvements under construction and are or will be final, unappealed, and unappealable, and remain in full force and effect without restriction or modification.

5.4 Conditions to Final Disbursement. The City's obligation hereunder to make the final Disbursement with respect to the Improvements is conditioned upon City's receipt of all of the following, each in form and substance reasonably satisfactory to the City:

5.5 Disbursement Request, together with all required Supporting Documentation.

5.6 Evidence that Eastland has obtained all Governmental Approvals for the completed Improvements and a satisfactory inspection report with respect to the Improvements from Construction Inspector, which shall be delivered by Construction Inspector with the Disbursement Request.

5.7 An updated Budget showing the amount of money spent or incurred to date on all of the Improvements.

5.8 Additionally, prior to any final Disbursement hereunder for the costs of construction of any Improvements, the City must be satisfied that all necessary Governmental Approvals have been obtained or will be obtained in due course for the Improvements and are or will be final, unappealed, and unappealable, and remain in full force and effect without restriction or modification.

5.9 A final as-built survey showing all of the Improvements and applicable easements in compliance with the requirements of Section 7.9.

5.10 Evidence satisfactory to the City that Eastland has completed construction of the Improvements and each of the items set forth in the Improvements Completion Conditions set forth in Section 7.13 below.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

Eastland represents and warrants to City that to its knowledge:

6.1 Authority; Enforceability. (a) The execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents of Eastland; (b) this Agreement and any documents executed in connection herewith do not violate any of the terms or conditions of such governing documents and this Agreement is binding upon Eastland and enforceable against it in accordance with its terms; (c) the person(s) executing this Agreement on behalf of Eastland is (are) duly authorized and fully empowered to execute the same for and on behalf of Eastland; and, (d) Eastland is duly authorized to transact business in the State of Florida and has received all necessary permits and authorizations required by appropriate governmental agencies as a condition to doing business in the State of Florida.

6.2 Survival. All of the representations and warranties of Eastland as set forth in this Agreement shall survive the making of this Agreement and shall be continuing for a period of one year after the Completion Date as set forth herein.

ARTICLE 7 COVENANTS

7.1 Construction of the Improvements. Subject to the provisions of Section 11.2 and unless otherwise agreed in writing by City, ongoing physical construction of the Improvements, once commenced pursuant to Section 2.2, shall be carried on diligently without delay or interruption for more than thirty (30) consecutive business days.

7.2 Manner of Construction of the Improvements. The Improvements shall be constructed in a good and workmanlike manner, in substantial accordance with the applicable Plans and Specifications, and in compliance with all state, federal, and local laws.

7.3 Plans and Specifications for the Improvements. Prior to the Commencement of Construction of the Improvements and prior to entering into any construction contracts for the same, the City shall have received and approved in its reasonable discretion the Plans and Specifications and Budget (for the purposes of this Article 7, collectively, the "Plans") prepared by Eastland's design team for the Improvements. The Plans (i) will comply with all applicable City/state/federal standards and with provisions of this Agreement, (ii) shall be reviewed by the City within thirty (30) days of submission in form acceptable to the City, and (iii) shall be subject to the City's approval. Eastland shall use the approved Plans and Specifications to solicit bids and/or proposals for the construction of such Improvements. City representatives shall have access to any portion of the Improvements during construction to confirm such Improvements are constructed consistent with the approved Plans.

7.4 Pre-Construction Surveys and Proof of Ownership. On or before the Commencement Date, Eastland shall deliver to the City surveys (meeting Florida minimum technical standards) and legal descriptions which will cover such improvements as well as the location of utility and drainage easements and utility sites. The form and content of the surveys and legal descriptions shall be reasonably satisfactory to City, which shall indicate its approval in writing after approving of such form and content in accordance with its respective standard practices.

7.5 Eastland Responsibilities; Dedication of Improvements. After the Effective Date, Eastland shall be responsible for overseeing the design, permitting, and construction of the Improvements under the terms and conditions of this Agreement. Upon Substantial Completion of the Improvements, Eastland is responsible for overseeing the dedication and acceptance of such improvements to and by the City, which shall take title to all of the Improvements.

7.6 Award of Design Professional's Contract(s) and Construction Contract(s).

7.6.1 Eastland shall be responsible for competitively and publicly soliciting professional services, including design and engineering professionals, and conducting the Work in compliance with Section 287.055, Florida Statutes, and otherwise in compliance with applicable State of Florida law and this Agreement, and in consultation with the City Procurement Department. Competitive solicitation of all professional services, construction services, and/or other equipment and materials for the construction of the Improvements and any portions thereof shall be in compliance with Section 287.055 and Section 255.20, Florida Statutes. All potential

bidders shall be prequalified to do business with the City pursuant to the requirements and procedures set forth by the Chief of Procurement and the Ordinance Code of the City of Jacksonville. The bidder or bidders selected by Eastland in its final award may or may not have submitted the absolute lowest bid; provided, however, that prior to the actual bid award to any bidder other than the lowest bidder, the City shall be given the opportunity to review and approve the bid analysis and award procedures utilized in Eastland's final award. City shall have the right to review the bid analysis and award procedures, subject to such bid and award procedures being in compliance with Florida law. All planning, design, and construction services shall be conducted by design professionals, construction companies, and/or equipment and material suppliers licensed or certified to conduct business in the State of Florida and the City. Nothing herein shall be deemed to (1) confer any rights on third parties, including any bidders, prospective bidders, contractors, or subcontractors, or (2) impose any obligations or liability on the City. Notwithstanding anything to the contrary herein, the bidding and contract award procedures must comply with the procurement requirements of Florida law for public construction projects, including but not limited to Section 287.055, Florida Statutes.

7.6.2 After awarding the Construction Contract for any portion of the Improvements, Eastland shall in a timely manner notify the General Contractor to proceed with the Work of constructing such portions of the Improvements. No notice to proceed shall be given until, and the parties' obligations hereunder shall be conditioned upon, satisfaction of the following conditions:

(a) The City shall have received evidence reasonably satisfactory to it that the Improvements Costs of the Improvements to be constructed will not exceed the amount set forth in the Budget, and that such Improvements will be completed by the Completion Date;

(b) Eastland shall provide to the City payment and performance bonds in form and content acceptable to the City in accordance with this Agreement as set forth in Section 7.21 below and **Exhibit E**, attached hereto;

(c) The City shall have received such assurances as may reasonably be required that all necessary permits and other governmental requirements for construction of the Improvements have been received and satisfied or can be received and satisfied in due course;

(d) The parties have complied with the Pre-Construction Meeting requirements of Section 3.12.

7.6.3 Eastland, the Design Professionals, and General Contractor, in consideration of the fees set forth in the Budget, shall perform construction contract management, including obtaining of required testing, inspecting the Work, and rendering periodic reports to the City on the progress of the Improvements in compliance with procedures reasonably satisfactory to the City. The City shall be entitled to review and approve the General Contractor's (or construction manager's) draw requests (to be submitted in a City approved format).

7.7 Prosecution of Work. Eastland, the Design Professionals, and General Contractor, in consideration of the fees set forth in the Budget, shall perform construction contract management, including obtaining of required testing, inspecting the Work, and rendering monthly reports to City on the progress of the Improvements if requested by City. Eastland shall work diligently to complete construction of the Improvements in a timely and reasonable manner.

7.8 Liens and Lien Waivers. Eastland shall take all action necessary to have any mechanic's and materialmen's liens, judgment liens, or other liens or encumbrances related to the Improvements released or transferred to bond within ten business (10) days of the date Eastland receives notice of the filing of such lines or encumbrances. City shall not be responsible for any lien or encumbrance related to the Improvements, but City shall work cooperatively with Eastland for Eastland to bond over or remove any such lien or encumbrance. Eastland shall be responsible for assuring compliance in all respects whatsoever with the applicable mechanic's and materialmen's lien laws.

7.9 As-Built and Other Surveys. Eastland shall deliver to City, in compliance with City's survey requirements, an as-built survey of the Improvements and applicable easements within sixty (60) after Substantial Completion of construction thereof.

7.10 Compliance with Laws and Restrictions. All construction of any portion of the Improvements shall be performed in accordance with all applicable statutes, ordinances, codes, regulations, and restrictions. All contractors, subcontractors, mechanics, laborers, or other persons providing labor or material in construction of any portion of the Improvements shall have or be covered by workers' compensation insurance, if required by applicable law.

7.11 Ownership of Construction Documents. As security for the obligations of Eastland under this Agreement, Eastland hereby grants, transfers, and assigns to City all of Eastland's right, title, interest (free of any security interests of third parties), and benefits in or under the Construction Documents, including any copyrights thereto. Eastland represents and warrants that is has permission and authority to convey ownership of the Construction Documents as set forth herein.

7.12 Authority of City to Monitor Compliance. During all periods of design and construction, Eastland shall permit the City's Director of Public Works or his respective designated personnel, to monitor compliance by Eastland with the provisions of this Agreement, the Construction Documents, and the Improvements Documents. During the period of construction and with prior notice to Eastland, representatives of City shall have the right of access to Eastland's records and employees, as they relate to Improvements, during normal business hours, provided, however, that Eastland shall have the right to have a representative of Eastland present during any such inspection.

7.13 Completion of the Improvements. Subject to the terms of this Agreement and to the Force Majeure provisions of Section 11.2, Eastland shall Complete Construction of the Improvements by no later than the Completion Date. For purposes of this Agreement, completion of the Improvements shall be deemed to have occurred only when the following conditions (the "Improvements Completion Conditions") shall have been satisfied:

7.13.1 Eastland shall furnish to City the completed acceptance package as required by the Development Services Division of the City, promulgated by such permits and/or certificates (including a certificate of substantial completion from the Design Professional(s)) as shall be required to establish to City's satisfaction that the Improvements have been properly completed and are not subject to any violations or uncorrected conditions noted or filed in any municipal department, or any governmental or quasi-governmental authority (as applicable), and that such improvements are ready for immediate use;

7.13.2 Upon Completion of the Improvements, Eastland shall submit to City a proper contractor's final affidavit and releases of liens from each contractor, subcontractor, and supplier, or other proof satisfactory to City, confirming that payment has been made for all materials supplied and labor furnished in connection with such Improvements through the date of Substantial Completion reflected in the Disbursement Request;

7.13.3 The Improvements shall have been finally completed in all material respects in substantial accordance with the applicable Plans and Specifications, as verified by a final inspection report satisfactory to City from Eastland's Construction Inspector, certifying that the Improvements have been constructed in a good and workmanlike manner and are in satisfactory condition and are ready for immediate use;

7.13.4 The City shall have issued the Substantial Completion Letter as to the Improvements stating that the Improvements are Substantially Complete and may be used for their intended purpose; and

7.13.5 Eastland shall cause the General Contractor to provide a one-year warranty on the Improvements, with said warranty commencing on Substantial Completion and acceptance by the City of the Improvements.

7.14 Change Orders. In connection with any portion of the Improvements, no material amendment shall be made to the Plans and Specifications, the Design Professional's Contract(s), or the Construction Contract, nor shall any change orders be made thereunder without the prior written consent of the City in its reasonable discretion. Eastland shall notify the City in writing of any requested changed condition/change order, which shall describe the changed scope of work, all related costs, and any necessary delay in the Completion Date ("Eastland Change Order Request"). Within five (5) business days after receipt of an Eastland Change Order Request, the City will determine if the Eastland Change Order Request is justified and will respond to Eastland in writing as to whether or not the City approves the Eastland Change Order Request and whether the City is willing to authorize any associated delay in the Completion Date set forth therein. If the City does not approve the Eastland Change Order Request, the City will have an additional ten (10) business days to evaluate and respond to Eastland in writing. Once an Eastland Change Order Request has been agreed upon by Eastland and the City, a formal Change Order describing the agreed scope of work and applicable extension of the Completion Date will be executed by both parties within ten (10) business days ("Approved Change Order"). The parties acknowledge that the Work that is the subject of an Eastland Change Order Request will not proceed during the City change order response period, but other Work that will not affect or be affected by the Work that is the subject of a Eastland Change Order Request will not be stopped during the City change order response period. Notwithstanding anything herein, any increased costs in excess of the Maximum

Disbursement Amount for the Improvements resulting from any and all Approved Change Orders during the construction of the Improvements shall be the responsibility of Eastland. For the purposes of this Section 7.14, “material” amendment to the Plans and Specifications, the Design Professional’s Contract(s), or the Construction Contract is defined as an amendment with related costs in excess of \$10,000 and/or that change the scope of the Improvements or associated delays in the Completion Date.

7.15 Subcontractors. Eastland agrees that it will not engage or permit the General Contractor to engage or continue to employ any contractor, subcontractor, or materialman who may be reasonably objectionable to City. If requested by City, Eastland shall deliver to City a fully executed copy of each of the agreements between Eastland and such contractors and between the General Contractor and its subcontractors, each of which shall be in form and substance reasonably satisfactory to City. City's approval of a construction contract is specifically conditioned upon the following: (a) the total contract price thereof does not exceed the fair and reasonable cost of the Work to be performed thereunder, (b) the contractor or subcontractor is of recognized standing in the trade and is otherwise reasonably acceptable to City, and (c) approval of the City's Procurement Department based on its standard prequalification criteria for construction work on City property, provided such contractors or subcontractors are determined by Eastland to be qualified and experienced in the design and construction of the Improvements.

7.16 Discrimination. Eastland shall not discriminate against any person or group of persons on account of race, color, creed, sex, age, religion, national origin, marital status, handicap, having children, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of all or any part of the Improvements nor shall Eastland or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with the reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees’ or vendees thereof.

7.17 Indemnification.

Eastland shall indemnify the City and its respective employees, agents, representatives, successors, assigns, contractors, and subcontractors (collectively “Indemnified Parties”) against and from all liabilities, damages, losses, costs, and expenses of whatsoever kind or nature, including, but not limited to, reasonable attorney’s fees, reasonable expert witness fees, and court costs (all of which are collectively referred to as “Damages”) arising out of or in connection with any negligent act or omission or willful misconduct of Eastland, the General Contractor, or any of their respective employees, contractors, agents, or representatives (collectively, the “Eastland Parties”) in connection with the Eastland Parties’ construction of the Improvements, which Damages are not paid or reimbursed by or through the Payment and Performance Bonds or Insurance as required under this Agreement. This indemnification shall survive the expiration or termination of this Agreement. The term “Indemnified Parties” as used in this Section shall include the City and all officers, City Council members, employees, representatives, agents, successors, and assigns of the City. This Section 7.17 shall survive the expiration, earlier termination, or completion of this Agreement for a period of five (5) years.

7.18 Insurance and Bond Requirements. See **Exhibit E**, attached hereto and incorporated herein by this reference, for the insurance and bond requirements of the General Contractor.

7.19 Materials and Workmanship. All workmanship, equipment, materials, and articles incorporated into the Work are to be new and in accordance with City's Standards, Specification, and Details to be provided by City. Eastland shall furnish Construction Inspector certified copies of test results made of the materials or articles which are to be incorporated into the Work for approval. When so directed, samples of materials shall be submitted for approval. Machinery, equipment, materials, and articles installed or used without such approval shall be at the risk of subsequent rejection, removal, and replacement at Eastland's expense. If not otherwise provided, material or Work called for in this Agreement shall be furnished and performed in accordance with the manufacturer's instructions and established practice and standards recognized by architects, engineers, and the trade.

7.20 Warranty and Guarantee of Work.

7.20.1 Eastland warrants to the City that all Work will be of good quality and substantially in compliance with this Agreement and in accordance with the provisions of Section 7.19. All Work not in conformance to the requirements of this Agreement, including substitutions not properly approved and authorized, may be considered defective. If required by City, Eastland shall provide satisfactory evidence as to the quality, type, and kind of equipment and materials furnished. This warranty is not limited by nor limits any other warranty-related provision in this Agreement.

7.20.2 If within one year of acceptance of the Improvements by City or within such longer period of time prescribed by law or by the terms of any special warranty provision of this Agreement, any of the Work is found to be defective or not in conformance with this Agreement, Eastland shall cause the General Contractor to correct it promptly after notice of such defect or nonconformance. Corrective Work during the warranty period shall also be warranted for a period of one year, with each corrective effort in turn being warranted for a period of one year of satisfactory performance. This obligation shall survive termination, expiration, or completion of the Agreement. City shall give notice to Eastland promptly after discovery of the condition.

7.20.3 Eastland shall bear the cost of correcting or removing all defective or nonconforming Work, including the cost for correcting any damage caused to equipment, materials, or other Work by such defect or the correcting thereof.

7.20.4 Eastland shall correct any defective or nonconforming Work to the reasonable satisfaction of City and any of the Work, equipment or materials damaged as a result of such condition or the correcting of such condition, within thirty (30) calendar days of notice of such condition. Should Eastland fail to timely correct defective or non-conforming Work under warranty, City or a third party contractor on behalf of City may correct such Work itself and Eastland shall reimburse City for the costs of such corrective Work promptly and no later than 30 days after receipt of an invoice from City pertaining to such corrective Work undertaken by City. If Eastland fails to correct the nonconforming or defective Work, Eastland will be in default hereunder.

7.20.5 Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Eastland may have under this Agreement. The establishment of the time period of one year after the date of Substantial Completion or such longer period of time as may be prescribed by law or by the items of any warranty required by this Agreement, relates only to the specific obligation of Eastland to correct the Work and has no relationship to the time within which its obligation to comply with this Agreement may be sought to be enforced, nor the time within which proceedings may be commenced to establish Eastland's liability with respect to its obligations other than specifically to correct the Work.

7.21 Payment and Performance Bonds.

7.21.1 Eastland shall cause the General Contractor to furnish Performance and Payment Bonds consistent with the requirements of Section 255.05, Florida Statutes, as security for its faithful performance under this Agreement. The Bonds shall be in an amount at least equal to the amount of the Direct Costs for the construction of the Improvements. The Bonds shall be in a form acceptable to the City and with a surety that is acceptable to the City's Division of Insurance and Risk Management. The cost thereof shall be included in the applicable Budget.

7.21.2 The Performance and Payment Bonds for the Improvements shall accompany the Budget and Plans and Specifications submitted to the City for approval. The Performance and Payment Bonds shall be delivered prior to commencement of the Improvements.

7.21.3 If any surety upon any bond furnished in connection with this Agreement becomes unacceptable to the City, or if any such surety fails to furnish reports as to its financial condition from time to time as requested by the City, Eastland shall, at its own expense, promptly furnish such additional security as may be required from time to time to protect the interests of the City and of persons supplying labor or materials in the prosecution of the Work contemplated by this Agreement and as permitted in the Budget.

7.22 Jacksonville Small and Emerging Businesses (JSEB) Program. Eastland, in further recognition of and consideration for the public funds provided to assist Eastland pursuant to this Agreement, hereby acknowledges the importance of affording to small and emerging vendors and contractors the full and reasonable opportunity to provide materials and services ("Opportunity"). Therefore, Eastland hereby agrees as follows:

7.22.1 Eastland shall obtain from City's Procurement Division the list of certified Jacksonville Small and Emerging Businesses ("JSEB") and shall, in accordance with Sections 126.601 et seq., *Ordinance Code*, use good faith efforts to enter into contracts with City certified JSEBs to provide materials or services in an aggregate amount of twenty percent (20%) of the total Verified Direct Costs of the construction of the Improvements or the City's maximum contribution to the Improvements, whichever is less, provided such JSEBs are determined by Eastland to be qualified and experienced in the design and construction of the Improvements.

7.22.2 Eastland shall submit a JSEB report regarding Eastland's actual use of City certified JSEBs for design, engineering, permitting, construction, and inspection of the Improvements. A JSEB report shall be submitted on a quarterly basis until Substantial Completion

of Construction of the Improvements. The form of the report to be used for the purposes of this Section is attached hereto as **Exhibit F** (the “JSEB Reporting Form”).

7.23 Indemnification by Contractors. Eastland agrees to include the indemnification provisions set forth in **Exhibit G**, attached hereto and incorporated herein, in all contracts with contractors, subcontractors, consultants, and subconsultants who perform work in connection with this Agreement.

ARTICLE 8 NO ASSIGNMENT OR CONVEYANCE; RESTRICTIONS ON ENCUMBRANCE

Assignment; Limitation on Conveyance. Eastland agrees that it shall not, without the prior written consent of City (except for assignment to affiliates of Eastland of which Eastland has a managing interest) assign, transfer or convey this Agreement or the Improvements Documents or any provision hereof or thereof. The provisions of this section shall not apply to any assignment, transfer, or conveyance as collateral or to the sale or conveyance to the holder of any mortgage encumbering all or any portion of Eastland’s property. Any such sale, assignment, or conveyance in violation of this section shall constitute a default hereunder, and City may continue to look to Eastland to enforce all of the terms and conditions of this Agreement as if such purported sale, assignment or conveyance had not occurred. Any authorized assignment hereunder shall be pursuant to an assignment and assumption agreement in form and content acceptable to the City in its reasonable discretion.

ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES

9.1 Event of Default. The following shall constitute an event of default (each, an “Event of Default”) hereunder:

9.1.1 A breach by any party of any other term, covenant, condition, obligation, or agreement under this Agreement and the continuance of such breach for a period of thirty (30) days after written notice thereof shall have been given to such party; provided, however, that if such breach is not reasonably susceptible to cure within thirty (30) days, then the time to cure such breach shall be extended to ninety (90) days so long as the defaulting party is diligently and in good faith pursuing such cure;

9.1.2 Any representation or warranty made by any party in this Agreement or the Improvements Documents shall prove to be false, incorrect, or misleading in any material respect as of the Effective Date which is not cured as provided in Section 9.1.1;

9.1.3 A continuing default after any applicable cure period under the Improvements Documents;

9.1.4 The termination of, or default under, the Construction Contract by Eastland or the General Contractor, provided, however, that in the event the Construction Contract is terminated, Eastland shall have up to ninety (90) days in which to enter into a replacement

Construction Contract on such terms and with such other General Contractor as shall be reasonably acceptable to City;

9.1.5 Failure of Eastland to complete the Improvements in accordance with the Plans and Specifications which, in the reasonable judgment of the City Director of Public Works, results in a Improvements which will not adequately serve the City;

9.1.6 Failure of Eastland to Complete Construction of the Improvements, or abandonment of or cessation of Work on any portion of the Improvements at any time prior to completion for a period of more than thirty (30) consecutive business days, except on account of Force Majeure, in which case such period shall be the lesser of the actual period of delay or ninety (90) consecutive days;

9.1.7 The entry of a decree or order by a court having jurisdiction in the premises adjudging the defaulting party bankrupt or insolvent or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of or in respect of such party under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, custodian, assignee, or sequestrator (or other similar official) of such party or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuation of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days; or

9.1.8 The institution by any party of proceedings to be adjudicated bankrupt or insolvent or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it to the institution of bankruptcy or insolvency proceedings against it, or the filing of a petition or answer or consent seeking reorganization or relief under the United States Bankruptcy Code or any other similar applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, custodian, assignee, trustee, or sequestrator (or other similar official) of such party of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due.

9.2 Disbursements. Upon or at any time after the occurrence of an Event of Default, subject to the notice and cure requirements set forth in Section 9.1.1, the City may refuse to make the Disbursement and terminate City's commitment to make any portion of the Disbursement hereunder except for Verified Direct Costs for work actually performed prior to the date giving rise to the Event of Default.

9.2.1 In the event Eastland's action giving rise to an Event of Default pertains to any failure by Eastland to commence with or complete construction of the Improvements within the time periods required herein, the City shall be entitled (but not obligated) to (i) complete the applicable the Improvements, and (ii) terminate the City's obligation to pay for any other Improvements Costs hereunder. Eastland shall remain obligated to the City for any amounts owed by Eastland hereunder as a result of such default.

- (a) Provided however, if the Event of Default and failure of Eastland to cure described above is caused by unforeseen events, Force Majeure

(as set forth in Section 11.2), or third party actions which are outside the control of Eastland, then in such event the City shall meet with Eastland to consider alternative resolutions and shall use reasonable efforts and reasonably cooperate with Eastland to reach a mutually acceptable amendment to this Agreement.

- (b) In the event that the Event of Default and failure of Eastland to cure is caused by Eastland's acts or omissions, then upon termination the City may use an alternative general contractor or development manager selected in its sole discretion provided however such general contractor or development manager shall complete the Improvements in accordance with the terms and conditions of this Agreement and all Exhibits hereto.

9.2.2 Notwithstanding anything herein, upon any breach by the City hereunder, Eastland's maximum damages hereunder (including prejudgment interest) shall be limited to the undisbursed Direct Costs required for the completion of the construction of the Improvements previously commenced and then under construction in accordance with this Agreement. Any such damages amount will be used by Eastland only for the construction of the Improvements then under construction in accordance with the costs in the Budget and pursuant to the Plans and Specifications and shall be disbursed periodically in partial amounts by the City pursuant to the disbursement terms and conditions of this Agreement so that a particular disbursement will only be made after receipt by the City of a Disbursement Request and the completion by Eastland of the portion of Improvements to which such Disbursement Request applies.

ARTICLE 10 ENVIRONMENTAL MATTERS

10.1 Environmental Laws. "Environmental Laws" or "Environmental Law" shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, retention ponds, storm water systems, waste emissions, or wells. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes, regulations, orders, decrees, permits, licenses, and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) ("CERCLA"); (ii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) ("RCRA"); (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. Section 2061 et seq.); (v) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vi) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vii) the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); (viii) the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.); (ix) the Superfund Amendments and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendments and Reauthorization Act (42 U.S.C. Section 11001 et seq.); (xi) the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et

seq.); (xii) the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.); (xiii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (xiv) the Noise Control Act (42 U.S.C. Section 4901 et seq.); (xv) Chapter 62-780, Florida Administrative Code (FAC) Contaminated Site Cleanup Criteria; and, (xvi) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 et seq.).

10.2 Hazardous Materials. “Hazardous Materials” means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste, or other substance which is defined, determined, or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include: (a) “Hazardous Substance(s)” as defined in CERCLA, the Superfund Amendments and Reauthorization Act of 1986, or Title III of the Superfund Amendments and Reauthorization Act, each as amended, and regulations promulgated thereunder, including but not limited to asbestos or any substance containing asbestos, polychlorinated biphenyls, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes; (b) any petroleum or petroleum-derived waste or product or related materials, and any items defined as hazardous, special, or toxic materials, substances, or waste; (c) “Hazardous Waste” as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder; (d) “Materials” as defined as “Hazardous Materials” in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; (e) “Chemical Substance” or “Mixture” as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder; and, (f) mold, microbial growth, moisture impacted building material, lead-based paint or lead-containing coatings, components, materials, or debris, and self-illuminated tritium containing structures, including but not limited to tritium containing exit signs.

10.3 Eastland Handling of Hazardous Materials. In the event Eastland handles Hazardous Materials attendant to construction of the Improvements, it shall do so in compliance with all applicable Environmental Laws and shall be responsible for the health and safety of its workers in handling these materials.

10.4 Eastland Release of Hazardous Materials. Eastland shall be responsible for any new release of Hazardous Materials within the Improvements Area directly caused by the actions of Eastland occurring after the Effective Date of this Agreement Closing Date (“New Release”). Eastland shall indemnify and hold the City and its members, officials, officers, employees, and agents harmless from and against any and all claims, costs, damages, or other liability incurred by the City in connection with New Releases or the spreading, worsening, or exacerbation of a release directly caused by Eastland to the extent of and due to Eastland’s negligence, recklessness, or intentional wrongful misconduct.

ARTICLE 11 GENERAL PROVISIONS

11.1 Non-Liability. No member, official, or employee of City shall be personally liable to Eastland or to any person with whom Eastland shall have entered into any contract, or to any other person in the event of any default or breach of City, or for any amount which may become due to Eastland or any other person under the terms of this Agreement. No director, officer, or

employee of Eastland shall be personally liable to City or to any person with whom City shall have entered into any contract or to any other person in the event of any default or breach of Eastland, or for any amount which may become due to City or any other person under the terms of this Agreement.

11.2 Force Majeure. No party to this Agreement shall be deemed in default hereunder where such a default is based on a delay in performance as a result of war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualty, declared state of emergency, acts of God, acts of public enemy, epidemic, pandemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, severe weather, and other acts or failures beyond the control or without the control of any party (collectively, a “Force Majeure Event”); provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay. A party affected by a Force Majeure Event (the “Affected Party”) shall immediately notify the other party (“Non-Affected Party”) in writing of the event, giving sufficient details thereof and the likely duration of the delay. The Affected Party shall use all commercially reasonable efforts to recommence performance of its obligations under this Agreement as soon as reasonably possible. In no event shall any of the foregoing excuse any financial liability of a party.

11.3 Notices. All notices to be given hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or delivered by a courier service utilizing return receipts, to the parties at the following addresses (or to such other or further addresses as the parties may designate by like notice similarly sent) and such notice shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail if sent by registered or certified mail, or the date actually received if sent by personal delivery or courier service, except that notice of a change in address shall be effective only upon receipt.

11.3.1 City:

City of Jacksonville
Department of Public Works
214 N. Hogan Street, 10th Floor
Jacksonville, Florida 32202
Attn: _____

With a copy to:

General Counsel
Office of the General Counsel
City Hall – St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

11.3.2 Eastland:

Eastland Development Group, Inc.

700 Ponte Vedra Lakes Boulevard
Ponte Vedra Beach, Florida 32082

With a copy to:

T.R. Hainline, Esq.
Rogers Towers, P.A.
1301 Riverplace Boulevard
Jacksonville, Florida 32207

11.4 Time is of the Essence. Time is of the essence in the performance by any party of its obligations hereunder.

11.5 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

11.6 Amendment. No amendment or modification of this Agreement shall be effective or binding upon any party hereto unless such amendment or modification is in writing, signed by an authorized officer of the party claimed to be bound, and delivered to the other party.

11.7 Waivers. All waivers, amendments, or modifications of this Agreement must be in writing and signed by all parties. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, or any other rights or remedies for the same default or any other default by the other party.

11.8 Severability. The invalidity, illegality, or inability to enforce any one or more of the provisions of this Agreement shall not affect any other provisions of this Agreement, but this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

11.9 Independent Contractor. In the performance of this Agreement, Eastland will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venture, or association of City. Eastland and its employees, agents, and contractors shall be solely responsible for the means, method, technique, sequences, and procedures utilized by Eastland in performance of this Agreement.

11.10 Exemption of City. Neither this Agreement nor the obligations imposed upon City hereunder shall be or constitute an indebtedness of City within the meaning of any constitutional, statutory, or charter provisions requiring City to levy ad valorem taxes nor a lien upon any properties of City.

11.11 Parties to Agreement. This is an agreement solely between City and Eastland. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any person not a party hereto other than and the permitted successors or assigns of City and Eastland. This Agreement shall be binding upon Eastland and Eastland's successors and assigns, and shall inure to the benefit of City and its successors and assigns; provided, however, Eastland shall not assign, transfer, or encumber its rights or obligations hereunder or under any document executed in connection herewith except in accordance with the terms and conditions of Section 8.1 above.

11.12 Venue: Applicable Law; Attorneys' Fees. Venue for the purposes of any and all legal actions arising out of or related to this Agreement shall lie solely and exclusively in the Circuit Court of Duval County, Florida, or in the U.S. District Court for the Middle District of Florida, Jacksonville Division. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement. Each party shall be responsible for its own attorneys' fees and costs related to this Agreement and the Improvements Documents.

11.13 Contract Administration. The City's Director of Public Works or his respective designees shall act as the designated representatives of the City to coordinate communications between the City and Eastland regarding the administration of this Agreement and to otherwise coordinate and facilitate the performance of the obligations of the City under this Agreement.

11.14 Further Authorizations. The Mayor, or his designee, and the Corporation Secretary are authorized to execute any and all contracts and documents and otherwise take all necessary or appropriate actions in connection with this Agreement and to negotiate and execute all necessary and appropriate changes, amendments, and supplements to this Agreement and other contracts and documents in furtherance of the Improvements without further City Council action, provided any such changes and amendments are limited to "technical amendments" and do not change the total financial commitments or the Performance Schedule, and further provided that all such amendments and changes shall be subject to legal review by the Office of General Counsel and by all other appropriate official action required by law. The term "technical amendments" as used herein includes, without limitation, changes in legal descriptions and surveys, description of infrastructure improvements and/or Improvements, ingress and egress and utility easements and rights of way, design standards, vehicle access and site plans, to the extent the same have no material financial impact, and to the extent that the Office of General Counsel concurs that no further City Council action would be required to effect such technical amendment.

11.15 Civil Rights. Eastland agrees to comply with all of the terms and requirements of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1968, as amended, and the antidiscrimination provisions of Chapter 126, Part 4, *Ordinance Code*, and further agrees that in its operation under this Agreement, it will not discriminate against anyone on the basis of race, color, age, disability, sex, or national origin.

11.16 Further Assurances. Eastland will, upon the City's request: (a) promptly correct any defect, error, or omission in this Agreement or any of the Improvements Documents; (b) execute, acknowledge, deliver, procure, record, or file such further instruments and do such further acts deemed necessary, desirable, or proper by the City to carry out the purposes of such Improvements Documents and to identify (subject to the liens of the Improvements Documents) any property intended to be covered thereby, including any renewals, additions, substitutions,

replacements, or appurtenances to the subject property; (c) execute, acknowledge, deliver, procure, file, or record any documents or instruments deemed necessary, desirable, or proper by City to protect the liens or the security interests under the Improvements Documents against the right or interests of third persons; and, (d) provide such certificates, documents, reports, information, affidavits, or other instruments and do such further acts deemed necessary, desirable, or proper by City to carry out the purposes of the Improvements Documents.

11.17 Exhibits. In the event of a conflict between any provisions of this Agreement and any exhibit attached to or referenced in this Agreement, the provisions of this Agreement shall govern.

11.18 Construction. All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Eastland further acknowledges that it has had ample time to review this Agreement and related documents with counsel of choice. Any doubtful or ambiguous provisions contained herein shall not be construed against the party who drafted this Agreement. Captions and headings in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

11.19 Counterparts. This Agreement may be executed in counterparts which when later combined shall constitute one and the same document as if originally executed together. Scanned or faxed signatures shall suffice as original signatures, and the parties may exchange executed counterparts by fax or email.

11.20 Limitations on Governmental Liability. Nothing in this Agreement shall be deemed as a waiver of the City's sovereign immunity or the limits of liability as set forth in Section 768.28, Florida Statutes, or other law, and 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 such limitations of liability or by operation of law.

Remainder of page left blank intentionally. Signature page follows immediately.]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement to be effective on the Effective Date.

ATTEST:

CITY OF JACKSONVILLE

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry, Mayor

Form Approved:

Office of General Counsel

In compliance with the Ordinance Code of the City of Jacksonville, I do hereby certify that there is or will be an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement in accordance with the terms and conditions thereof and that provision has been made for the payment of monies provided therein to be paid.

Director of Finance

WITNESS:

**EASTLAND DEVELOPMENT GROUP,
INC.**

By: _____

By: _____

Name: _____

Name: _____

Its: _____

LIST OF EXHIBITS

| | |
|------------------|--|
| EXHIBIT A | Description of Improvements/Plans and Specifications |
| EXHIBIT B | Improvements Area |
| EXHIBIT C | Budget for Improvements |
| EXHIBIT D | Performance Schedule |
| EXHIBIT E | Insurance and Bond Requirements |
| EXHIBIT F | JSEB Reporting Form |
| EXHIBIT G | Indemnification Requirements of Contractors |

EXHIBIT A
DESCRIPTION OF IMPROVEMENTS

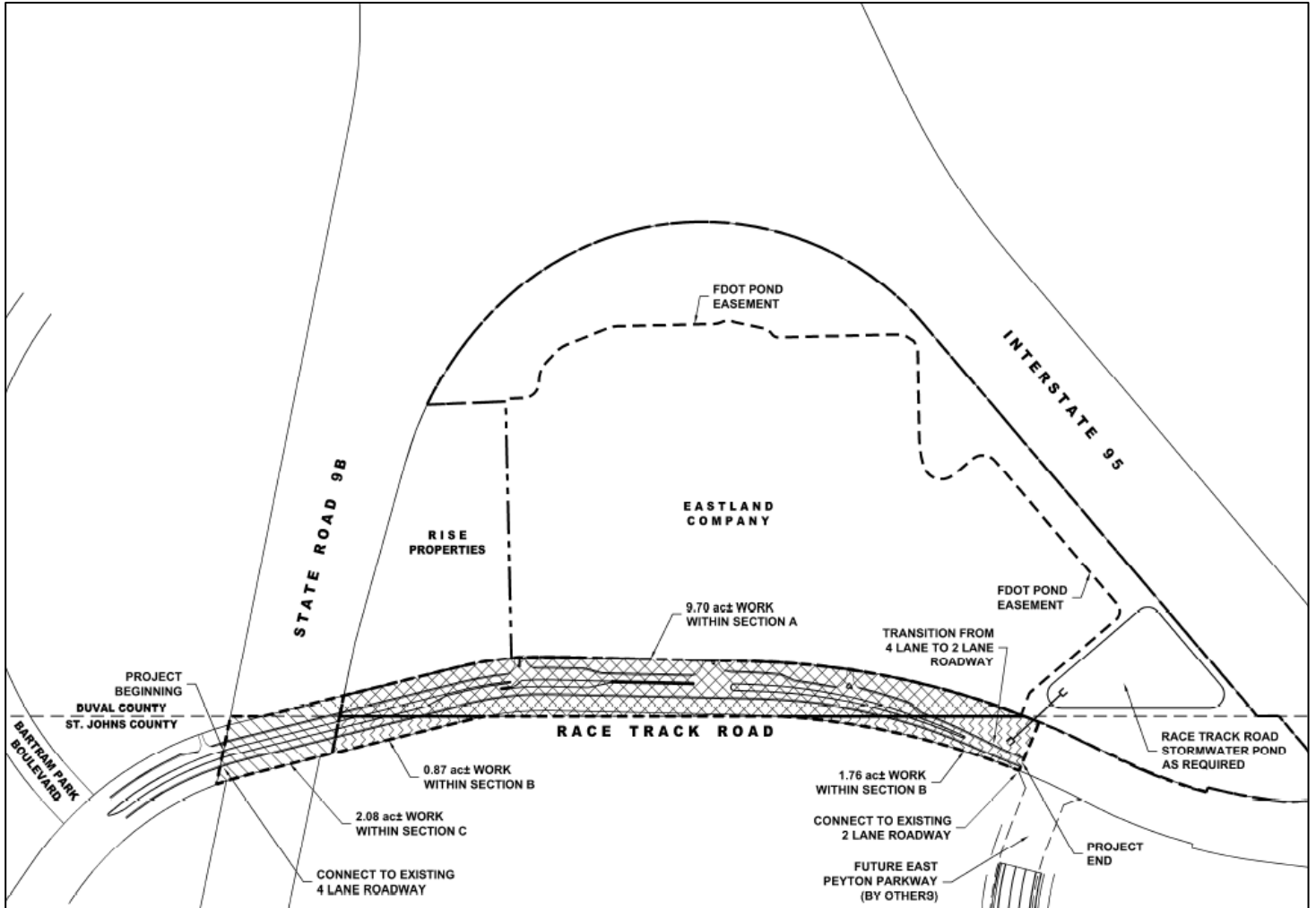
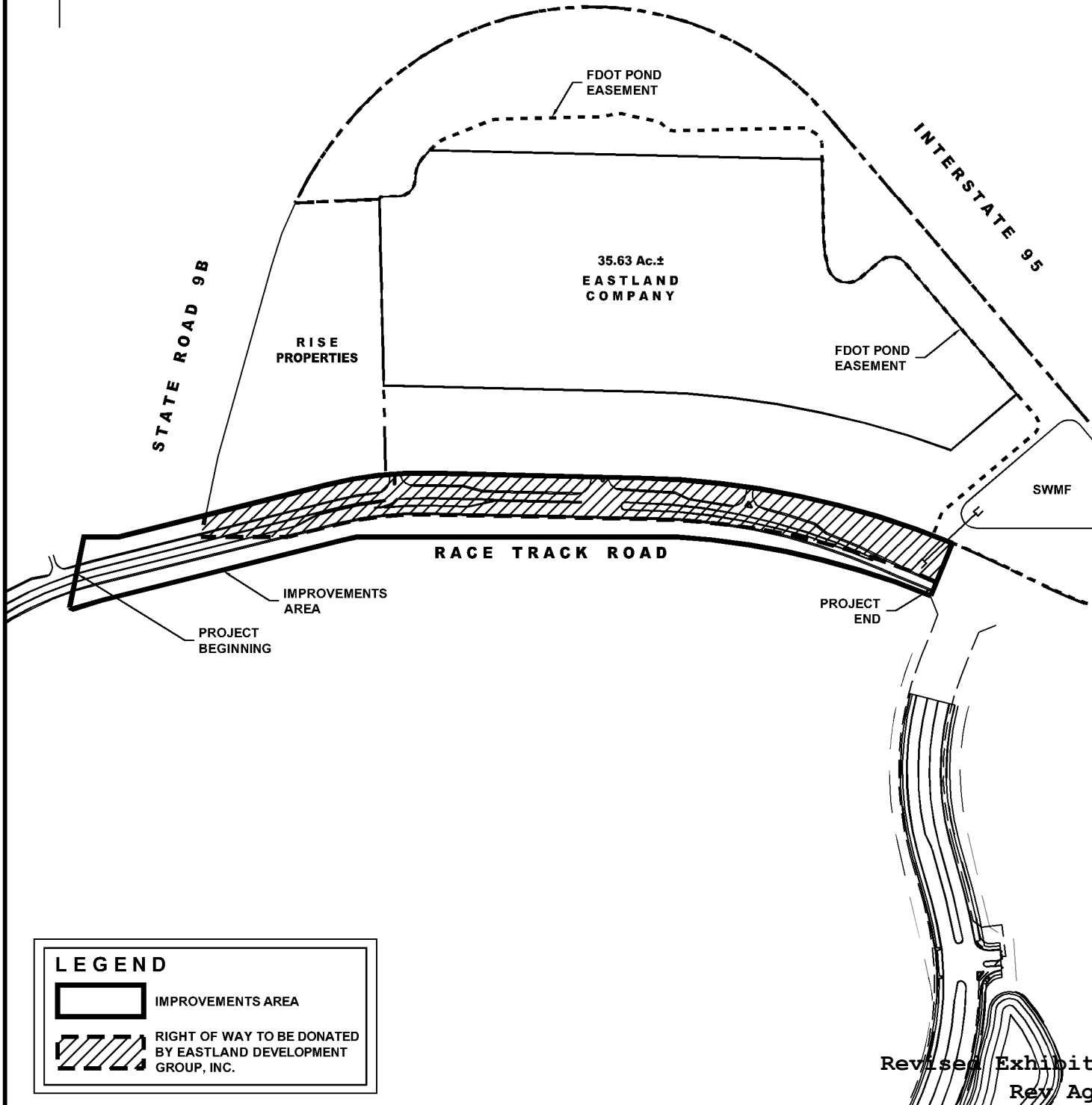
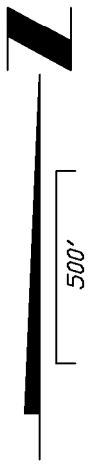




EXHIBIT "B"

IMPROVEMENTS AREA



LEGEND

 IMPROVEMENTS AREA

 RIGHT OF WAY TO BE DONATED BY EASTLAND DEVELOPMENT GROUP, INC.

Revised Exhibit 1
 Rex Agat
 November 15, 2021 - THU

PLOTTED: September 17, 2021 - 2:12 PM, BY: Terry Smith
 \2020-20-222\LandDev\Design\Plots\Exhibits\2021-09-15 - BartramCommons-8x11-Exhibit.dwg

RACE TRACK ROAD WIDENING PROJECT BUDGET

| ITEM | DESCRIPTION | COJ COST |
|------|---|--------------|
| 1 | General Roadway Construction - Section A | \$2,540,000 |
| 2 | General Roadway Construction - Section B | \$690,000 |
| 3 | General Roadway Construction - Section C | \$550,000 |
| 4 | Stormwater Pond Construction | \$500,000 |
| 5 | Traffic Signalization | \$700,000 |
| 6 | Unsuitable Soil Removal | \$500,000 |
| 7 | JEA Water and Reuse Relocation | \$800,000 |
| 8 | Telecommunication Relocation | \$150,000 |
| 9 | Landscaping | \$350,000 |
| 10 | Irrigation | \$150,000 |
| 11 | Surveying | \$100,000 |
| 12 | Engineering Design | \$675,000 |
| 13 | Wetland Permitting | \$35,000 |
| 14 | FDOT Permitting | \$30,000 |
| 15 | Geotechnical Exploration/ Construction Testing | \$45,000 |
| 16 | Traffic Signal Mast Arm Structural Design | \$20,000 |
| 17 | Design Fee (Owner's Contingency) | \$90,000 |
| 18 | Permit Fees (budget) | \$20,000 |
| 19 | Post Design Services | \$50,000 |
| 20 | Unknown Utility Conflicts (Owner's Contingency) | \$200,000 |
| 21 | CEI | \$350,000 |
| | | |
| | Subtotal | \$8,545,000 |
| | Contingency 25% | \$2,136,250 |
| | | |
| | Budget Total | \$10,681,250 |

Project Length

Length = 0.56 miles

Historical Roadway Construction Cost Data

Unit Cost for 4-lane Suburban Roadway with Paved Shoulders Outside and Curbed Median = \$4,905,654 per mile
(This is FDOT Suburban Roadway cost as of July 2020)

The budget (assume 2 years of 15% annual price increase) = \$6,487,727 per mile

Notes:

1. This Preliminary Opinion of Probable Cost is based in part on FDOT Average Costs per Centerline Mile and was formulated prior to final design work.
2. The Utility Relocation Costs listed are estimates only. Actual utility relocations required, and their costs will be determined during final design.
3. Wetland Mitigation will be provided by developer.
4. R/W for pond is provided by developer.
5. Road R/W is provided by developer.

EXHIBIT D

Performance Schedule

Within ninety (90) days after the Effective Date of this Agreement, Eastland shall engage a civil engineer for the design, engineering, and permitting of the Improvements.

Within sixty (60) days after the issuance of all federal, state, regional, and local permits for the Improvements, Eastland shall solicit bids for the contract for the construction of the Improvements.

Within one-hundred-twenty (120) days after the solicitation of bids, Eastland shall award a contract for the construction of the Improvements.

Within six (6) months of the contract award, Eastland shall Commence Construction of the Improvements.

Within twenty-four (24) months of Commencing Construction, Eastland shall Complete Construction of the Improvements.

EXHIBIT E

Insurance Requirements

The General Contractor and its subcontractors (for this Exhibit E, the “**Contractor**”) shall at all times during the term of this Agreement procure prior to commencement of work and maintain at its sole expense during the life of this Agreement (and Contractor shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

| Schedule | Limits |
|------------------------------|--|
| Worker's Compensation | Florida Statutory Coverage |
| Employer's Liability | \$1,000,000 Each Accident \$1,000,000 Disease Policy Limit \$1,000,000 Each Employee/Disease |

This insurance shall cover the City and Eastland (and, to the extent they are not otherwise insured, their Contractors and subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers’ Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers’ Compensation Act, where appropriate, coverage is to be included for the Federal Employers’ Liability Act, USL&H and Jones, and any other applicable federal or state law.

| | | |
|-------------------------------------|-------------|-----------------------------|
| Commercial General Liability | \$3,000,000 | General Aggregate |
| | \$3,000,000 | Products & Comp. Ops. Agg. |
| | \$1,000,000 | Personal/Advertising Injury |
| | \$1,000,000 | Each Occurrence |
| | \$50,000 | Fire Damage |
| | \$5,000 | Medical Expenses |

The policy shall be endorsed to provide a separate aggregate limit of liability applicable to the Work via a form no more restrictive than the most recent version of ISO Form CG 2503

Contractor shall continue to maintain products/completed operations coverage for a period of ten (10) years after the final completion of the project. The amount of products/completed operations coverage maintained during the ten year period shall be not less than the combined limits of Products/ Completed Operations coverage required to be maintained by Contractor in the

combination of the Commercial General Liability coverage and Umbrella Liability Coverage during the performance of the Work.

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management.

Automobile Liability \$1,000,000 Combined Single Limit (Coverage for all automobiles, owned, hired or non-owned used in performance of the Agreement)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Design Professional Liability \$5,000,000 per Claim
\$10,000,000 Aggregate

Any entity hired to perform professional services as a part of this Agreement shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement and with a ten (10) year reporting option beyond the annual expiration date of the policy.

Builders Risk %100 Completed Value of the Project

Such insurance shall be on a form acceptable to the City's Office of Insurance and Risk Management. The Builder's Risk policy shall include the SPECIAL FORM/ALL RISK COVERAGES. The Builder's Risk and/or Installation policy shall not be subject to a coinsurance clause. A maximum \$10,000 deductible for other than windstorm and hail. For windstorm and hail coverage, the maximum deductible applicable shall be 2% of the completed value of the Improvements. Named insureds shall be: Eastland, Contractor, the City, and respective members, officials, officers, employees and agents, the Engineer, and the Program Management Firms(s) (when program management services are provided). The City of Jacksonville, its members, officials, officers, employees and agents are to be named as a loss payee.

Pollution Liability \$5,000,000 per Loss
\$5,000,000 Annual Aggregate

Any entity hired to perform services as part of this Agreement for environmental or pollution related concerns shall maintain Contractor's Pollution Liability coverage. Such Coverage will include bodily injury, sickness, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to destruction of tangible property including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;

coverage for losses caused by pollution conditions that arises from the operations of the contractor including transportation.

| | |
|----------------------------------|---|
| Pollution Legal Liability | \$5,000,000 per Loss \$5,000,000 Aggregate |
|----------------------------------|---|

Any entity hired to perform services as a part of this Agreement that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this Agreement.

| | |
|---------------------------|---|
| Umbrella Liability | \$5,000,000 Each Occurrence/ Aggregate. |
|---------------------------|---|

The Umbrella Liability policy shall be in excess of the above limits without any gap. The Umbrella coverage will follow-form the underlying coverages and provides on an Occurrence basis all coverages listed above.

In the event that any part of the work to be performed hereunder shall require Contractor or Subcontractors to enter, cross or work upon or beneath the property, tracks, or right-of-way of a railroad or railroads, Contractor shall, before commencing any such work, and at its expense, procure and carry liability or protective insurance coverage in such form and amounts as each railroad shall require.

The original of such policy shall be delivered to the railroad involved, with copies to the City, and their respective members, officials, officers, employee and agents, Engineer, and Program Management Firm(s) (when program management services are provided).

The Contractor shall not be permitted to enter upon or perform any work on the City Parcels until such insurance has been furnished to the satisfaction of the railroad. The insurance herein specified is in addition to any other insurance which may be required by the City, and shall be kept in effect at all times while work is being performed on or about the property, tracks, or right-of-way of the railroad.

Additional Insurance Provisions

- A. Additional Insured: All insurance except Worker’s Compensation and Professional Liability shall be endorsed to name the City of Jacksonville, Eastland and their respective members, officials, officers, directors, employees, representatives and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.
- B. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter’s rights of subrogation in favor of the City of Jacksonville, Eastland and their respective members, officials, officers, directors, employees, representatives and agents.
- C. Contractors’ Insurance Primary. The insurance provided by Contractor shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-

insurance maintained by the City, Eastland or any of their respective members, officials, officers, directors, employees, representatives and agents.

- D. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- E. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Agreement shall remain the sole and exclusive responsibility of the named insured. Under no circumstances will the City of Jacksonville, Eastland and their respective members, officials, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Agreement.
- F. Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of Contractors, Subcontractors, employees or agents to the City, Eastland or others. Any remedy provided to City, Eastland or City of Jacksonville, Eastland and their respective members, officials, officers, directors, employees and agents shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.
- G. Waiver/Estoppel. Neither approval by City nor Eastland nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide insurance as required under this Agreement.
- H. Certificates of Insurance. Contractor shall deliver to City Certificates of Insurance that show the corresponding City Contract or Bid Number in the Description, Additional Insureds, Waivers of Subrogation, and Primary and Non-Contributory statement as provided herein. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202..
- I. Notice. Contractor shall provide an endorsement issued by the insurer to provide the City and Eastland thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, Contractor shall provide a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of Contractor shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City or Eastland may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City and Eastland also be named as an additional insured.

- L. Special Provisions: Prior to executing this Agreement, Contractor shall present this Agreement and this Exhibit E to its Insurance Agent affirming: 1) That the Agent has personally reviewed the insurance requirements of the Project Documents, and(2) That the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Contractor.

Bonds and Other Performance Security. Contractor shall not perform or commence any construction services for the Improvements until the following performance bond and labor and material payment bond or other performance security have been delivered to City and Eastland:

Bonds - In accordance with the provisions of Section 255.05, Florida Statutes, Design-Builder shall provide to City on forms furnished by the City, a 100% Performance Bond and a 100% Labor and Material Payment Bond for the Improvements performed under this Agreement, each in an amount not less than an amount at least equal to the amount of the Direct Costs for the construction of the Improvements no qualification or modifications to the Bond forms are permitted.

To be acceptable to City, as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

1. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code during the life of this agreement.
5. If the Contract Award Amount exceeds \$200,000, the Surety Company shall also comply with the following provisions:
 - a. The Surety Company shall have at least the following minimum ratings in the latest issue of A.M. Best’s Key Rating Guide.

| CONTRACT AMOUNT | RATING | RATING |
|------------------------------|--------|------------|
| \$ 500,000 TO \$1,000,000 | A- | CLASS IV |
| \$1,000,000 TO \$2,500,000 | A- | CLASS V |
| \$2,500,000 TO \$5,000,000 | A- | CLASS VI |
| \$5,000,000 TO \$10,000,000 | A- | CLASS VII |
| \$10,000,000 TO \$25,000,000 | A- | CLASS VIII |
| \$25,000,000 TO \$50,000,000 | A- | CLASS IX |
| \$50,000,000 TO \$75,000,000 | A- | CLASS X |

b. The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to conduct business in this state have been met.

2) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

EXHIBIT F

JSEB Reporting Form

Business:

Goal: \$

Contact: _____

Date: _____

| Date Contract Awarded | Contractor Name | Ethnicity (1) | Scope of Work (2) | Contract Amount | Amount Paid to Date | % of Work Completed to Date |
|-----------------------|-----------------|---|-----------------------|-----------------|---------------------|-----------------------------|
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| | | (1) AA – African American | (2) Examples: Masonry | | | |
| | | HANA – Hispanic, Asian, Native American | Painting | | | |
| | | WBE – Women | Site Clearing | | | |
| | | C - Caucasian | Electrical | | | |

EXHIBIT G

Indemnification by Contractor

Contractor and its subcontractors shall hold harmless, indemnify, and defend the City of Jacksonville and City's members, officers, officials, employees and agents (collectively the "Indemnified Parties") from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Contractor that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Contractor's performance of the Agreement, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this Agreement contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the Agreement; and

3. Intellectual Property Liability, to the extent this Agreement contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Work, any product generated by the Work, or any part of the Work as contemplated in this Agreement, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Work, or any product generated by the Work, is held to constitute an infringement and its use is permanently enjoined, the Contractor shall, immediately, make every reasonable effort to secure within 60 days, for the Indemnified Parties a license, authorizing the continued use of the Work or product. If the Contractor fails to secure such a license for the Indemnified Parties, then the Contractor shall replace the Work or product with a non-infringing Work or product or modify such Work or product in a way satisfactory to Buyer, so that the Work or product is non-infringing.

If Contractor exercises its rights under this Agreement, the Contractor will (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to this Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of this Agreement.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes. The City is an intended third-party beneficiary of the indemnifications set forth herein, which indemnifications shall survive the expiration or earlier termination of Contractor's agreement with Eastland or its contractors and consultants.