

RESOLUTION JIA/CRA-2021-01

A RESOLUTION OF THE JACKSONVILLE INTERNATIONAL AIRPORT COMMUNITY REDEVELOPMENT AGENCY ("JIA/CRA") FINDING THAT THE RANCH ROAD IMPROVEMENTS COMPLY WITH AND FURTHER THE JIA/CRA COMMUNITY REDEVELOPMENT PLAN; APPROVING AND AUTHORIZING THE ALLOCATION AND TRANSFER OF \$250,000 WITHIN THE FY 2020/2021 BUDGET FROM UNALLOCATED PLAN AUTHORIZED EXPENDITURES TO A NEW FINANCIAL OBLIGATION FOR A TAX INCREMENT DISTRICT INFRASTRUCTURE DEVELOPMENT GRANT ("TID GRANT"); ADOPTING A FY 2020/2021 AMENDED AND RESTATED BUDGET; APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT ("AGREEMENT") BETWEEN THE CITY OF JACKSONVILLE ("CITY") AND AVENTON JAX NORTH (THE "COMPANY") THAT AUTHORIZES JIA/CRA TAX INCREMENT FUNDS NOT TO EXCEED \$250,000 FOR A TID GRANT FOR RANCH ROAD IMPROVEMENTS; AUTHORIZING THE MAYOR, OR HIS OR HER DESIGNEE, AND CORPORATION SECRETARY TO EXECUTE AND DELIVER ALL CONTRACTS; AUTHORIZING APPROVAL OF TECHNICAL AMENDMENTS BY THE EXECUTIVE DIRECTOR OF THE OFFICE OF ECONOMIC DEVELOPMENT ("OED"); PROVIDING FOR OVERSIGHT BY THE OED; PROVIDING A DEADLINE FOR THE COMPANY TO EXECUTE THE AGREEMENT; REQUESTING A WAIVER BY THE CITY COUNCIL OF THAT PORTION OF THE PUBLIC INVESTMENT POLICY ADOPTED BY ORDINANCE 2016-382-E THAT WOULD REQUIRE THE COMPANY TO CREATE AT LEAST 20 NEW FULL-TIME JOBS IN ORDER TO RECEIVE A TID GRANT AND A WAIVER OF CHAPTER 126, ORDINANCE

CODE WITH THE EXCEPTION OF PART 6B; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 22, 2020, the Jacksonville City Council approved Ordinance 2020-504-E, appropriating \$10,244,703 to the budget line item “Unallocated Plan Authorized Expenditures” in the JIA/CRA FY 2020/2021 Budget; and

WHEREAS, there is currently a balance of \$10,244,703 in the JIA/CRA’s Unallocated Plan Authorized Expenditures account; and

WHEREAS, in accordance with Sec. 106.341, *Ordinance Code*, the JIA/CRA Agency Board has been given the authority to allocate and transfer funds from “Unallocated Plan Authorized Expenditures” to existing or new Financial Obligations without further Council approval; and

WHEREAS, on January 21, 2020, the JIA/CRA Advisory Board approved a FY 2020/2021 Amended and Restated Budget with a vote of 4-1 recommending the Agency Board consider allocating \$250,000 from the Unallocated Plan Authorized Expenditures account to a new Financial Obligation to be known as “Ranch Road TID Infrastructure Development Grant” to implement the Ranch Road Improvements; now, therefore,

BE IT RESOLVED, by the Board:

Section 1. Findings. The Board finds that the development of Ranch Road Improvements project, as described in the Project Summary, attached hereto as **Exhibit A**, is in compliance with, and furthers the purposes and objectives of the JIA/CRA Redevelopment Plan as stated below:

Section A (Purpose of the Plan), as follows:

1. Paragraph 3 - Community Redevelopment Plan Objectives

- *(c) Increase the opportunities for both temporary and full time employment of Jacksonville residents;*
- *(f) Strengthen the tax base of Jacksonville through new development in the Community Redevelopment Area; and*

- *(k) Provide public improvements to complement and service new development, including needed utilities, including: electric, water, sewer, and gas line extensions, street closings and changes, streetscape improvements, open space improvements, landscaping, pedestrian linkages, and parking.*

Section 2. Revenue transfer. Pursuant to Sec. 106.341, *Ordinance Code*, the JIA/CRA allocates \$250,000 from “Unallocated Plan Authorized Expenditures” to a new Financial Obligation for the Ranch Road Improvements. Pursuant to Sec. 106.344, *Ordinance Code*, a CRA Budget Transfer Form regarding the aforementioned project is attached hereto as **Exhibit B**.

Section 3. Approval of the Amended and Restated Budget. The FY 2020/2021 Amended and Restated Budget showing the transfer to the new Financial Obligation is attached hereto as **Exhibit C** and is hereby adopted by the JIA/CRA.

Section 4. Economic Development Agreement Approved. There is hereby approved, and the Mayor and Corporation Secretary are authorized to enter into an Economic Development Agreement (“Agreement”) between the City and the Company, substantially in the form as attached hereto as **Exhibit D**, (with such “technical” changes as herein authorized), for the purpose of implementing the recommendations of the OED, as are further described in the Project Summary attached hereto as **Exhibit A**. A Tax Increment District Infrastructure Development Grant (“TID Grant”), which will implement the Ranch Road Improvements project, is included in the Agreement.

Section 5. Further Authorizations. The Mayor, or his designee, and the Corporation Secretary, are hereby authorized to execute the Agreement and all other contracts and documents and otherwise take all necessary action in connection therewith and herewith. The Executive Director of the OED, as contract administrator, is authorized to negotiate and execute all necessary changes and amendments to the Agreement and other contracts and documents, to effectuate the purposes of this Resolution, without further Council action, provided such changes and amendments are limited to amendments that are technical in nature

(as described in Section 6 hereof), and further provided that all such amendments shall be subject to appropriate legal review and approval by the General Counsel, or his or her designee, and all other appropriate official action required by law.

Section 6. Approval of Technical Amendments. The Agreement may include such additions, deletions and changes as may be reasonable, necessary and incidental for carrying out the purposes thereof, as may be acceptable to the Mayor, or his designee, with such inclusion and acceptance being evidenced by execution of the Agreement by the Mayor or his designee. No modification to the Agreement may increase the financial obligations or the liability to the City and any such modification shall be technical only and shall be subject to appropriate legal review and approval of the General Counsel, or his or her designee, and all other appropriate action required by law. "Technical" is herein defined as including, but not limited to, changes in legal descriptions and surveys, descriptions of infrastructure improvements and/or any road project, ingress and egress, easements and rights of way, performance schedules (provided that no performance schedule may be extended for more than one year without City Council approval) design standards, access and site plan, which have no financial impact.

Section 7. Oversight Department. The OED shall oversee the project described herein.

Section 8. Deadline for Execution of the Agreement. If the Agreement approved by this Resolution has not been signed by the Company within ninety (90) days after the OED delivers or mails the unexecuted Agreement to the Company for execution, then the City Council approval of the Project and authorization for the Mayor to execute the Agreement is automatically revoked, provided however, that the Executive Director of the OED shall have the authority to extend such ninety (90) day period in writing at his discretion for up to an additional ninety (90) days.

Section 9. Request for Waiver of the Public Investment Policy Requiring the Creation of at Least 20 New Full-time Jobs and portions of the Procurement Code. The TID Grant authorized herein requires a waiver by the City Council, and the Board requests that

the Council waive the following requirements of the Public Investment Policy adopted by City Council Ordinance 2016-382-E: the requirements that the Company will create at least 20 new full-time jobs. The reason for this waiver request is that the overall Avention JAX North project will cause an estimated \$52,000,000 in private capital investment and furthers the goals and objectives as aforementioned. Further, the Board requests that for this project the Council waive Chapter 126, *Ordinance Code*, with the exception of Part 6B (Jacksonville Small Emerging Business Program).

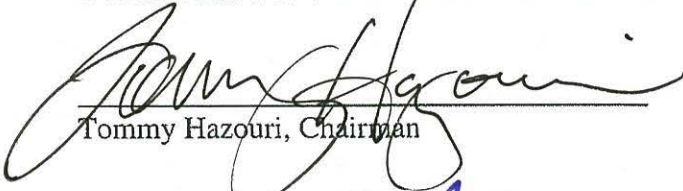
Section 10. This Resolution shall become effective upon a majority vote of the JIA/CRA and upon execution by the Chair.

WITNESS:

JACKSONVILLE INTERNATIONAL AIRPORT
COMMUNITY REDEVELOPMENT AGENCY



Signature



Tommy Hazouri, Chairman




Print

Date signed: April 8, 2021

VOTE: In Favor: 14 Opposed: 0 Abstained: 0

FORM APPROVAL:



Office of General Counsel

GC-#1422700-v3-JIA_CRA_Agency_Board_Reso_21-01.docx



ONE CITY ONE JACKSONVILLE.

City of Jacksonville, Florida

Lenny Curry, Mayor

City Hall at St. James
117 W. Duval St.
Jacksonville, FL 32202
(904) 630-CITY
www.coj.net

Aventon JAX North
14670 Duval Road
PROJECT SUMMARY
March 23, 2021

Company:

Aventon Companies

Background: The developer, Jax North Apartments Owner, LLC, a subsidiary of Aventon Companies, is seeking assistance for the construction of proposed infrastructure supporting Aventon JAX North redevelopment project within the JIA CRA boundary.

The developer is proposing the development of a multifamily garden apartment project located at 14670 Duval Road utilizing 18.88 acres in the JIA CRA boundary area. The project will consist of 3-story buildings with 324, one, two and three bedroom apartment homes and detached parking. This type of product, the first of its level in this underserved area, includes high-end amenities such as a resort size pool, cabanas, activity lawn with outdoor yoga/fitness space, dog park and pet spa, boardwalk and trail, electric car charging, remote workstations and a state of the art fitness center. Construction start is estimated during the second quarter of 2021.

Project Location: At Duval and Ranch Roads in Council District: 7/Councilmember Reggie Gaffney

Project Description:

The improvements to Ranch Road will include removing the existing asphalt and base material, and installing a new road base material and asphalt, with a 1' wide concrete ribbon installed on either side of the roadway. Additionally, the slopes of drainage ditches will be dressed and sodded, and the bellies of the ditches will be re-graded to improve drainage flow. Finally, vegetation will be removed to open the view corridor along the road. Overall, the improvements will bring this section of Ranch Road to City standards, improve the appearance of the roadway and surrounding areas, and improve the safety and functionality of the roadway.

Project Incentives:

The city will be providing a TID Infrastructure Development grant of \$250,000, to be disbursed once the project infrastructure is complete. This program is designed to attract economic development to CRA areas of the city by providing infrastructure improvements to create opportunities for businesses that will generate new jobs and increase the tax base within the CRA.

Project Budget:

Civil Engineering Design	\$8,500
Landscape Architect	\$3,000
Site Prep, Mobilization & MOT	\$67,200
Erosion and Sediment Control & SWPPP	\$9,600
Roadway w/Concrete Ribbon Curb (Base & Asphalt)	\$96,250
Machine Dress & Sod	\$10,500
Close Out and Clean Up	\$2,500
Material Testing & Inspections	\$3,500
Tree Pruning & Misc. Landscape Improvements	\$25,000
Subtotal	\$226,050
Supervision & Overhead	\$12,082
GC Fee	\$11,868
Total	\$250,000

Project Rationale & Benefits:

The Aventon Companies will make a significant private capital investment of \$52 million and reduce the amount of vacant land within the CRA, adding to the City’s commercial tax base for years to come. As stated in the

Redevelopment Plan, low-medium density housing along with new units is needed to accommodate future growth in and around existing neighborhoods. The purpose of such development is to provide a mix of permanent residences in low to moderate densities within a close proximity to commercial, service and open space areas. The purpose is to allow employees of the JIA and surrounding commercial development the option to live closer to their employment base, further reducing the impact on the City’s traffic circulation, and subsequently improving the overall quality of life in the JIA CRA.

Compliance with JIA Community Redevelopment Plan:

This project meets the goals and objectives of the CRA Plan

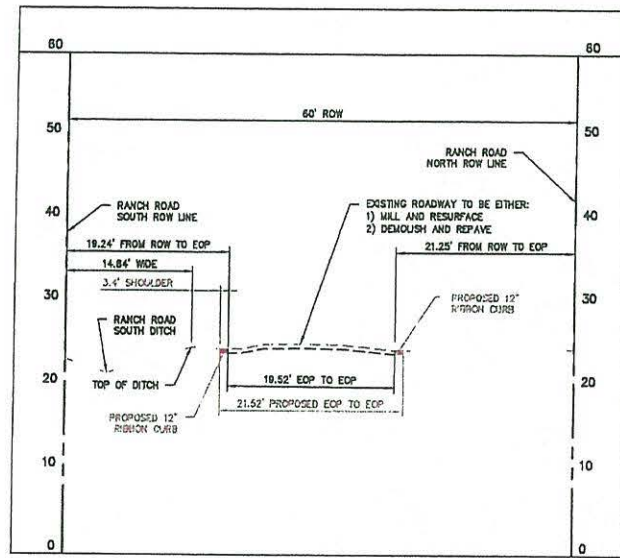
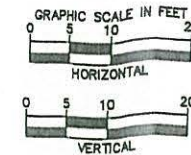
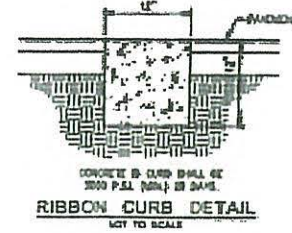
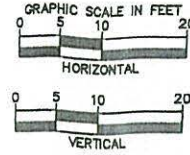
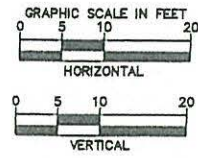
- Strengthen the tax base of Jacksonville through new development in the CRA area;
- Improve the surrounding environment and replace, through new construction, deteriorated or obsolete buildings within the project area;
- Increase Jacksonville’s penetration of the economic activity generated by the growth of the JIA area of Jacksonville by developing additional commercial, residential, transportation and open space used in the redevelopment area;
- Provide a strong visual image for the project area through consistently high quality of building design, open space plaza and park areas and landscape treatment;
- Enhance the image of the JIA area, the northside and Jacksonville area in general through the redevelopment of the area

JIA CRA Advisory Board Action:

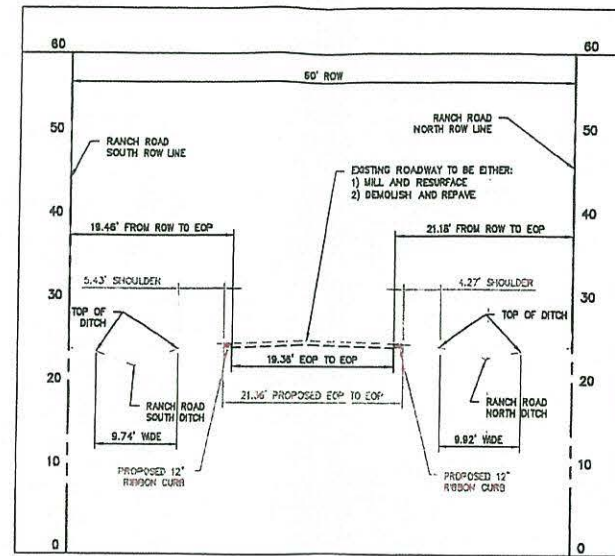
On February 11, 2021, the project was reviewed by the JIA CRA Advisory Board and they voted 4-1 to approve the project recommending consideration by the JIA Agency Board.

Please contact Karen Nasrallah at 255-5449, if you have any questions on this project.

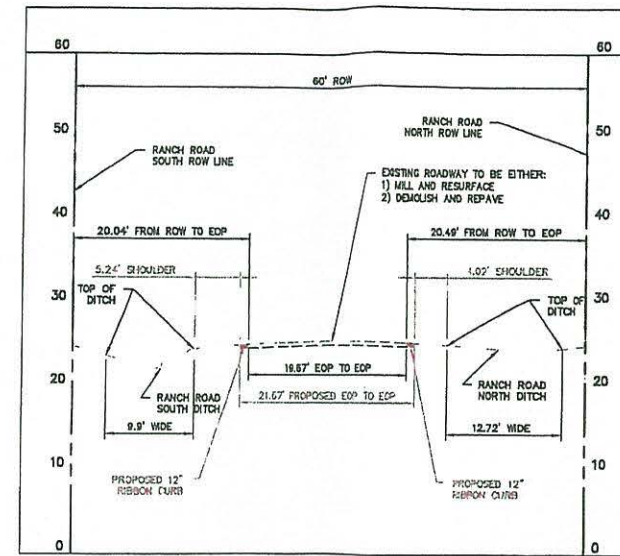
Exhibit A
Resolution JIA/CRA-2021-01
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EXISTING ROADWAY SECTION A-A



EXISTING ROADWAY SECTION B-B



EXISTING ROADWAY SECTION C-C



Ranch Road Apartments

Ranch Road Improvements Exhibit - Roadway Cross Sections

Kimley»Horn

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PHONE: 904-628-3900
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CRA Budget Transfer Line Item Detail

* This element of the account string is titled project but it houses both projects and grants.

TRANSFER FROM: (Revenue line items in this area are being appropriated and expense line items are being de-appropriated.)

Rev Exp	Fund Title	Activity / Grant / Project Title	Line Item / Account Title	Amount	Accounting Codes							
					Fund	Center	Account	Project *	Activity	Interfund	Future	
				Total:	\$500,000.00							
EXP	Jacksonville International Airport CRA Trust Fund	JIA Area CRA Unallocated Plan Auth Exp	Trust Fund Authorized Expenditures	\$250,000.00	10804	191021	549006	000000	00001857	000000	00000000	
REV	Jacksonville International Airport CRA Trust Fund	Ranch Road TID Infrastructure Development	Property Taxes	\$250,000.00	10804	191021	311010	000000	00001747	000000	00000000	

TRANSFER TO: (Revenue line items in this area are being de-appropriated and expense line items are being appropriated.)

Rev Exp	Fund Title	Activity / Grant / Project Title	Line Item / Account Title	Amount	Accounting Codes							
					Fund	Center	Account	Project *	Activity	Interfund	Future	
				Total:	\$500,000.00							
EXP	Jacksonville International Airport CRA Trust Fund	Ranch Road TID Infrastructure Development	Misc Non-Departmental Expenditures	\$250,000.00	10804	191021	549045	000000	00001747	000000	00000000	
REV	Jacksonville International Airport CRA Trust Fund	JIA Area CRA Unallocated Plan Auth Exp	Property Taxes	\$250,000.00	10804	191021	311010	000000	00001300	000000	00000000	

Fiscal Year 2021 Fund 10804 Center --Select Value-- Center Description --Select Value-- Project --Select Value-- Activity --Select Value-- Account 311010

Apply Reset

Budgetary Balances

Budget Year	Fund	Fund Description	Department	Division	Center	Center Description	Project	Activity	Account	Account Description	Initial Budget	Budget Adjustments	Total Budget	Obligations	Actuals	A
2021	10804	Jacksonville International Airport CRA Trust Fund	JX	JXSF	191021	JXSF Citywide Industry Development	000000	00000234	311010	Property Taxes	0.00	107,795.00	107,795.00	0.00	0.00	
2021	10804	Jacksonville International Airport CRA Trust Fund	JX	JXSF	191021	JXSF Citywide Industry Development	000000	00001300	311010	Property Taxes	14,316,202.00	-12,833,609.00	1,512,593.00	0.00	14,316,202.00	
2021	10804	Jacksonville International Airport CRA Trust Fund	JX	JXSF	191021	JXSF Citywide Industry Development	000000	00001301	311010	Property Taxes	0.00	1,400,000.00	1,400,000.00	0.00	0.00	
2021	10804	Jacksonville International Airport CRA Trust Fund	JX	JXSF	191021	JXSF Citywide Industry Development	000000	00001302	311010	Property Taxes	0.00	745,000.00	745,000.00	0.00	0.00	
2021	10804	Jacksonville International Airport CRA Trust Fund	JX	JXSF	191021	JXSF Citywide Industry Development	000000	00001303	311010	Property Taxes	0.00	265,000.00	265,000.00	0.00	0.00	
2021	10804	Jacksonville International Airport CRA Trust Fund	JX	JXSF	191021	JXSF Citywide Industry Development	000000	00001305	311010	Property Taxes	0.00	18,200.00	18,200.00	0.00	0.00	
2021	10804	Jacksonville International Airport CRA Trust Fund	JX	JXSF	191021	JXSF Citywide Industry Development	000000	00001355	311010	Property Taxes	0.00	75,000.00	75,000.00	0.00	0.00	
2021	10804	Jacksonville International Airport CRA Trust Fund	JX	JXSF	191021	JXSF Citywide Industry Development	000000	00001657	311010	Property Taxes	0.00	10,224,703.00	10,224,703.00	0.00	0.00	

Budget Office Dashboard

Fiscal Year 2021 Fund 10804 Center --Select Value-- Center Description --Select Value-- Project --Select Value-- Activity --Select Value-- Account 549006

Apply Reset

Budgetary Balances

Budget Year	Fund	Fund Description	Department	Division	Center	Center Description	Project	Activity	Account	Account Description	Initial Budget	Budget Adjustments	Total Budget	Obligations	Actuals	Available Amount	A
2021	10804	Jacksonville International Airport CRA Trust Fund	ED	EDED	105180	EDED GRADED Plan Authorized Expenditures	000000	00001657	549006	Trust Fund Authorized Expenditures	0.00	-4,483,371.00	-4,480,371.00	0.00	0.00	-4,480,371.00	
2021	10804	Jacksonville International Airport CRA Trust Fund	JX	JXSF	191021	JXSF Citywide Industry Development	000000	00001657	549006	Trust Fund Authorized Expenditures	10,224,703.00	6,481,036.09	16,705,739.09	0.00	0.00	16,705,739.09	
2021	10804	Jacksonville International Airport CRA Trust Fund	JX	JXSF	191021	JXSF Citywide Industry Development	000000	00001659	549006	Trust Fund Authorized Expenditures	0.00	395,467.85	395,467.85	0.00	0.00	395,467.85	

**JIA CRA TRUST FUND
ORACLE FUND 10804
FY 20/21 AMENDED & RESTATED BUDGET**

	<u>FY 20/21 APPROVED BUDGET</u>	<u>FY 20/21 AMENDED & RESTATED BUDGET</u>
REVENUES		
Property Taxes	\$ 14,346,202	\$ 14,346,202 (A)
Investment Pool Earnings	\$ -	\$ -
Total Revenues	<u>\$ 14,346,202</u>	<u>\$ 14,346,202</u>
EXPENDITURES		
Administrative Expenses		
Professional and Contractual Services (not "Plan Professional Services")	\$ 1,000	\$ 1,000
Travel	250	250
Local Mileage	150	150
OGC Internal Service	6,000	6,000
Advertising and Promotion	1,000	1,000
Office Supplies	500	500
Employee Training	700	700
Dues, subscriptions	342	342
Supervision Allocation	95,354	95,354 (B)
Annual Independent Audit	2,500	2,500
Total Administrative Expenses	<u>\$ 107,796</u>	<u>\$ 107,796</u>
Financial Obligations		
REV Grants		
Amazon	\$ 1,400,000	\$ 1,400,000
RAMCO	745,000	745,000
Ecolab	-	-
River City Crossing (RCC)	265,000	265,000
QTI Grants		
Mercedes Benz	16,200	16,200
Amazon	75,000	75,000
Safariland	-	-
Ranch Road TID Infrastructure Development Grant	-	250,000 (C)
Debt Service - 2014 Special Revenue, RAMCO (Interest)	432,503	432,503
Debt Service - 2014 Special Revenue, RAMCO (Principal)	1,080,000	1,080,000
Total Financial Obligations	<u>\$ 4,013,703</u>	<u>\$ 4,263,703</u>
Future Years Debt Reduction	\$ -	\$ -
Total Future Years Debt Reduction	<u>\$ -</u>	<u>\$ -</u>
Plan Authorized Expenditures		
Unallocated Plan Authorized Expenditures	10,224,703	9,974,703
Total Plan Authorized Expenditures	<u>\$ 10,224,703</u>	<u>\$ 9,974,703</u>
Total Expenditures	<u>\$ 14,346,202</u>	<u>\$ 14,346,202</u>

(A) FY20/21 revenues as of July 1st.

(B) Provided by Budget Office.

(C) New activity. Financial obligation to Aventura Jax North for Ranch Road improvements.

Economic Development Agreement

between

The City of Jacksonville

and

Jax North Apartments Owner, LLC

Economic Development Agreement

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Exhibits:

- Exhibit A - Description of the Project Parcel
- Exhibit B – JSEB Reporting Form
- Exhibit C - Annual Survey
- Exhibit D – Infrastructure Improvements
- Exhibit E – Insurance Requirements
- Exhibit F - Indemnification

ECONOMIC DEVELOPMENT AGREEMENT

This ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is made this ____ day of _____, 2021 (the "Effective Date"), between the CITY OF JACKSONVILLE, a municipal corporation and a political subdivision of the State of Florida (the "City") and JAX NORTH APARTMENTS OWNER, LLC, a Delaware limited liability company (the "Company").

Article 1. PRELIMINARY STATEMENTS

1.1 The Project.

The Company proposes the development of a multifamily garden apartment project located generally at a portion of 14670 Duval Road, Jacksonville, Florida 32218 as more particularly described on Exhibit A attached hereto (the "Project Parcel"), which will consist of several three-story buildings with an aggregate of approximately 324 residential units comprised of one, two and three-bedroom apartment units with surface and/or detached parking (the "Development"). The construction and development of the apartment community, construction of the Infrastructure Improvements as set forth on Exhibit D attached hereto and the obligations of the Company under this Agreement are collectively referred to herein as the "Project." The Project is expected to represent an estimated total Capital Investment of \$52,000,000 by the Company.

1.2 Authority.

The City Council has authorized execution of this Agreement pursuant to City Resolution 2021-____-A (the "Resolution").

1.3 City Determination.

The City has determined that the Project is consistent with the goals of the City in that the Project will, among other things:

- (a) generate significant new ad valorem taxes, including significant new tax revenues for the public school system;
- (b) help meet the overall community goal of business development and growth in North Jacksonville;
- (c) create induced and indirect job effects which will have a positive impact on local small businesses; and
- (d) promote and encourage private Capital Investment of approximately \$52,000,000.

1.4 Jacksonville Small and Emerging Business Program.

As more fully described in City Ordinance 2004-602-E, the City has determined that it is important to the economic health of the community that whenever a company receives incentives from the City, that company provides contracting opportunities to the maximum extent possible to small and emerging businesses in Duval County as described in Section 6.1.

1.5 **Coordination by City.**

The City hereby designates the Economic Development Officer of the OED or his or her designee to be the "Project Coordinator" who will, on behalf of the City, coordinate with the Company and administer this Agreement according to the terms and conditions contained herein and in the Exhibit(s) attached hereto and made a part hereof. It shall be the responsibility of the Company to coordinate all project related activities and all matters under this Agreement with the designated Project Coordinator, unless otherwise stated herein. Notwithstanding the foregoing or any other statements herein to the contrary, the OED is an office of the City and has no separate liability under this Agreement.

1.6 **Maximum Indebtedness.**

The maximum indebtedness of the City for all fees, reimbursable items or other cost pursuant to this Agreement shall not exceed the sum of TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00).

1.7 **Availability of Funds.**

The City's obligations under this Agreement are contingent upon availability of lawfully appropriated funds for the TID Grant and this Agreement.

**Article 2.
DEFINITIONS**

As used in this Agreement, the following terms shall have the meaning set opposite each:

2.1 **Capital Investment.**

Money invested by a company to purchase items that may normally be capitalized by a company in the normal conduct of its business, including the construction of improvements within the Project.

2.2 **City Council.**

The body politic, as the same shall be from time to time constituted, charged with the duty of governing the City.

2.3 **Commencement of Construction.**

The terms "Commence" or "Commenced" or "Commencing" Construction as used herein when referencing the Infrastructure Improvements or any portion thereof means the date when Company (i) has obtained all Federal, State or local permits as required for the construction of such portion of the Infrastructure 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 Infrastructure Improvements on an ongoing basis.

2.4 Direct Costs.

“Direct Costs” means direct design, pre-construction, and construction costs Company incurs after the Effective Date of this Agreement in connection with the design, engineering, permitting, construction and inspection of the Infrastructure Improvements, including soft costs associated with the design of the Infrastructure Improvements, Construction Management Fees or other project management or construction fees of Company relating to the Infrastructure Improvements, but not the remainder of the Project, bonding, preliminary engineering, traffic studies, roadway re-alignment studies, surveys, geotechnical, environmental and construction testing, and removal of unsuitable soils.

2.5 Infrastructure Improvements.

All of the right-of-way infrastructure improvements to be constructed by Company as needed to support the Development, as set forth on **Exhibit D** attached hereto and incorporated herein by this reference. The Infrastructure Improvements shall be designed and constructed in accordance with all applicable City standards and legal requirements.

2.6 OED.

The Office of Economic Development and any successor to its duties and authority.

2.7 Substantial Completion.

“Substantially Completed”, “Substantial Completion” or “Completion” means that all permits have been finalized and a certificate of substantial completion has been issued by the contractor and verified by the engineer of record, and the Infrastructure Improvements are available for use in accordance with their intended purpose.

Other capitalized terms not defined in this Article shall have the meanings assigned to them elsewhere in this Agreement.

Article 3.

APPROVALS; PERFORMANCE SCHEDULES

3.1 Performance Schedule.

The Company and the City have jointly established the following dates for the performance of each party’s respective obligations under this Agreement (herein called the “Performance Schedule”):

Commencement of Construction of Infrastructure Improvements - shall be no later than April 1, 2022.

Substantial Completion of Infrastructure Improvements shall be no later than March 31, 2023.

The City and the Company have approved this Performance Schedule. By the execution hereof, and subject to the terms of this Agreement, the Company hereby agrees to undertake and complete the construction and development of the Infrastructure Improvements in accordance with this Agreement and the Performance Schedule, and to comply with all of the Company’s obligations set forth herein.

3.2 **Approval of Agreement.**

By the execution hereof, the parties certify as follows:

- (a) Company certifies that
 - (i) the execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents creating the particular Company entity;
 - (ii) this Agreement does not violate any of the terms or conditions of such governing documents and the Agreement is binding upon the Company and enforceable against it in accordance with its terms;
 - (iii) the person or persons executing this Agreement on behalf of the Company are duly authorized and fully empowered to execute the same for and on behalf of the Company;
 - (iv) the Company and each entity composing the Company 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; and
 - (v) the Company, its business operations, and each person or entity composing the Company are in compliance with all federal, state and local laws.
- (b) The City certifies that the execution and delivery hereof is binding upon the City to the extent provided herein and enforceable against it in accordance with its terms.

Article 4.

TAX INCREMENT DISTRICT INFRASTRUCTURE DEVELOPMENT GRANT

4.1 **Tax Increment District Infrastructure Grant: Amount.**

The City shall make a tax increment district infrastructure development grant to the Company in an amount up to and not to exceed \$250,000 (the "TID Grant") to partially fund the Infrastructure Improvements needed to complete the Project. The City's obligation to make the TID Grant is subject to the terms and conditions of this Agreement. The Company shall be solely responsible for the cost of any Infrastructure Improvements attendant to the Project exceeding the TID Grant amount.

4.2 **Payment of TID Grant:**

The City's obligation to pay the TID Grant to the Company is conditioned upon the prior occurrence of the following:

- (a) The Company, the Company's general contractor or the Company's construction lender shall submit invoices, contractor's affidavit and/or receipts and such other documentation as reasonably requested by City in form and content that are acceptable to the City.

(b) The Company must promptly furnish the OED evidence satisfactory to the City that all applicable permits have been issued.

(c) All property taxes on the Project Parcel must be current.

(d) The Company must promptly furnish to the OED evidence satisfactory to the City that the Company has caused the Substantial Completion of the Infrastructure Improvements contemplated by this Agreement in accordance with all applicable building permits and applicable law. Company shall submit paid invoices and other documentation as reasonably required by the City demonstrating that the Company invested at least \$26,000,000 in funds in the Project.

(e) Upon Substantial Completion of the Infrastructure Improvements in accordance with this Agreement and applicable law, Company shall be responsible for overseeing the dedication and acceptance of such improvements to and by the City, which shall include submission by the Company of the completed acceptance package as required by the development services division of the City for review. City shall take title to all of the Infrastructure Improvements upon dedication and acceptance thereof by the City, which shall be a precondition to disbursement of the TID Grant.

Within ninety (90) days of satisfaction of subparagraphs (a) – (e) above, and receipt of the paid invoices, contractor's affidavit, mechanics' lien releases and/or other evidence (including without limitation site inspections and inspection reports) that may be required in the discretion of the City, the City shall disburse the TID Grant to the Company.

4.3 **Removal of Liens and Encumbrances.**

Additionally, Company shall take all action necessary to have any mechanic's and materialmen's liens, judgment liens or other liens or encumbrances filed against the subject property other than the first mortgage released or transferred to bond within ten days of the date Company receives notice of the filing of such liens or encumbrances. If any such lien or encumbrance is filed, the City shall not be required to make any disbursement of the TID Grant funds until such lien or encumbrance is bonded over or removed and the City receives a copy of the recorded release. The City shall not be obligated to disburse any of the TID Grant funds to Company if, in the opinion of the City, any such disbursement would be subject to a mechanic's or materialmen's lien or any other lien or encumbrance other than inchoate construction liens. Company shall be fully and solely responsible for compliance in all respects whatsoever with the applicable mechanic's and materialmen's lien laws.

4.4 **Further disclaimer.**

The TID Grant shall not be deemed to constitute a debt, liability, or obligation of the City or of the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City or of the State of Florida or any political subdivision thereof, but shall be payable solely from the funds provided therefor in this Article 4. The City shall not be obligated to pay the TID Grant or any installment thereof except from the non-ad valorem revenues or other legally available funds provided for that purpose, and neither the faith and credit nor the taxing power of the City or of the State of Florida or any political subdivision thereof is pledged to the payment of the TID Grant or any installment thereof. The Company, and any person, firm or entity claiming by, through or under the Company, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power

of the City or of the State of Florida or any political subdivision thereof for the payment of the TID Grant or any installment thereof.

Article 5.
THE DEVELOPMENT

5.1 Scope of Development.

- (a) The Company shall construct and develop or cause to be constructed and developed, in substantial compliance with the times set forth in the Performance Schedule, all Infrastructure Improvements which the Company is obligated to construct and develop under the Performance Schedule and this Agreement.
- (b) The Company shall construct all Infrastructure Improvements in accordance with all applicable building and permitting codes.

5.2 Cost of Development.

Except as otherwise set forth in this Agreement, the Company shall pay the cost of constructing and developing the Infrastructure Improvements at no cost to the City.

5.3 Approval by Other Governmental Agencies.

All of the parties' respective rights and obligations under this Agreement are subject to and conditioned upon approval of the Project by such other governmental agencies, whether state, local or federal, as have jurisdiction and may be required or entitled to approve them. Notwithstanding any provision of this Agreement to the contrary, the City does not guarantee approval of this Agreement or any aspect of the Project by any government authorities and agencies that are independent of the City.

5.4 Manner of Construction of the Infrastructure Improvements.

The Infrastructure Improvements shall be constructed in a good and workmanlike manner, in substantial accordance with the applicable Plans (as defined below) and in compliance with all state, federal and local laws.

5.5 Plans and Specifications for the Infrastructure Improvements.

Prior to the Commencement of Construction of the Infrastructure 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 5, collectively, the "Plans") prepared by Company's design team for the Infrastructure 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. Company shall use the approved Plans to solicit bids and/or proposals for the construction of such Infrastructure Improvements.

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

To the extent applicable, Company shall be responsible for competitively and publicly soliciting professional services, including design and engineering professionals and to construct the Infrastructure Improvements 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. To the extent applicable, competitive solicitation of all professional services, construction services, and/or other equipment and materials for the construction of the Infrastructure Improvements and any portion thereof shall be in compliance with Section 287.055, and Section 255.20, Florida Statutes. For purposes of clarification, City and Company agree that the cost of the Infrastructure Improvements is below the thresholds in Section 287.055, and Section 255.20, Florida Statutes, that would require a competitive bidding and solicitation process. All potential contractors 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 contractor selected by Company in its final award may or may not have submitted the absolute lowest bid; provided, however, that prior to the actual award to any contractor other than the lowest bidder, the City shall be given the opportunity to review and approve the selection analysis and award procedures utilized in Company's final award. 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.

5.7 Payment and Performance Bonds.

- (a) Company and/or its general contractor shall furnish Performance and Payment Bonds consistent with the requirements of Section 255.05, Florida Statutes, as security for its faithful construction of the Infrastructure Improvements pursuant to this Agreement. The Bonds shall be in an amount at least equal to the amount of the Direct Costs for the construction of the Infrastructure 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.
- (b) The Performance and Payment Bonds shall be delivered prior to commencement of the Infrastructure Improvements.
- (c) If any surety upon any bond furnished in connection with this Agreement becomes reasonably 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, Company shall, at its own expense, promptly furnish such additional security as may be reasonably required from time to time to protect the interests of the City and of persons supplying labor or materials in the prosecution of the Infrastructure Improvements contemplated by this Agreement.

5.8 **As-Built and Other Surveys.**

Company shall deliver to City, in compliance with City's survey requirements, an as-built survey of the Infrastructure Improvements within sixty (60) after Substantial Completion of construction thereof.

5.9 **Ownership of Construction Documents.**

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

5.10 **Insurance Requirements.**

See **Exhibit E** attached hereto and incorporated herein by this reference for the insurance and bond requirements of the Company and/or its general contractor.

5.11 **Indemnification by Contractors.**

Company agrees to include the indemnification provisions set forth in **Exhibit F**, attached hereto and incorporated herein, in all contracts with contractors, subcontractors, consultants, and subconsultants who perform work in connection with this Agreement.

5.12 **Warranty and Guarantee of Work.**

- (a) Company 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 5.4. 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, Company 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.
- (b) If, within one year of acceptance of the Infrastructure 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, Company 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 Company promptly after discovery of the condition.
- (c) Company 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.

- (d) Company 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 Company fail to timely correct defective or nonconforming Work under warranty, City, or a third-party contractor on behalf of City, may correct such Work itself and Company 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 Company fails to correct the nonconforming or defective Work, Company will be in default hereunder.
- (e) Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Company 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 Company 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 Company' liability with respect to its obligations other than specifically to correct the Work.

5.13 Company Responsibilities; Dedication of Infrastructure Improvements.

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

5.14 Authority of OED to Monitor Compliance.

During all periods of construction of the Infrastructure Improvements, the Economic Development Officer of the OED and the City's Director of Public Works, or his designee, shall have the authority to monitor compliance by the Company with the provisions of this Agreement. Insofar as practicable, the OED shall coordinate such monitoring and supervising activity with those undertaken by the City so as to minimize duplicate activity. To that end, during the construction of the Infrastructure Improvements and with prior notice to the Company, representatives of the City shall have the right of access to the construction area during normal business hours.

5.15 Timing of Completion.

The construction of the Infrastructure Improvements shall be completed substantially in accordance with the terms of this Agreement and the Performance Schedule.

5.16 Construction and Operation Management.

Except as otherwise expressly provided herein, the Company shall have discretion and control, free from interference, interruption or disturbance, in all matters relating to the management, development, redevelopment, construction and operation of the Project, provided that the same shall, in

any event, conform to and comply with the terms and conditions of this Agreement, and all applicable state and local laws, ordinances and regulations (including without limitation, applicable zoning, subdivision, building and fire codes). The Company's discretion, control and authority with respect thereto shall include, without limitation, the following matters:

- (a) the construction and design of the Project, subject to the express terms and conditions of this Agreement;
- (b) the selection, approval, hiring and discharge of engineers, architects, contractors, subcontractors, professionals and other third parties (collectively the "Vendors") on such terms and conditions as the Company deems appropriate; provided however, that to the extent that the City furnishes to the Company the names and identities of Jacksonville-based Vendors, including without limitation Jacksonville-based minority Vendors, and to the extent that Company has the need to enter into contracts with Vendors outside of persons employed by Company or companies affiliated with or controlled by Company or its principals, then Company agrees to include all such Jacksonville-based Vendors in the process established by Company for obtaining bids for any of the Infrastructure Improvements;
- (c) the negotiation and execution of contracts, agreements, easements and other documents with third parties, in form and substance satisfactory to Company; and
- (d) the preparation of such budgets, cost estimates, financial projections, statements, information, and reports as the Company deems appropriate.

Article 6. JSEB PROGRAM

6.1 Jacksonville Small and Emerging Businesses (JSEB) Program.

The Company, in further recognition of and consideration for the public funds provided to assist the Company 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, the Company hereby agrees as follows:

- (a) The Company shall obtain from the City's Procurement Division the list of certified Jacksonville Small and Emerging Businesses ("JSEB"), and shall exercise good faith, in accordance with Municipal Ordinance Code Sections 126.608 et seq., to enter into contracts with City certified JSEBs to provide materials or services to the Project in an aggregate amount of not less than \$50,000 which amount represents 20% of the City's maximum contribution to the Infrastructure Improvements.
- (b) The Company shall submit JSEB report(s) regarding the Company's actual use of City certified JSEBs on the construction of the Project, (i) on the date of any request for City funds which are payable prior to the Completion of Construction, (ii) upon Completion of Construction. The form of the report to be used for the purposes of this section is attached hereto as Exhibit B (the "JSEB REPORTING FORM").

Article 7.
REPORTING; SITE VISITS

7.1 Reporting.

On an annual basis, and prior to March 1 each year this Agreement is in effect, the Company shall submit reports to the OED regarding activities affecting the implementation of this Agreement, including a narrative summary of progress on the Project. Samples of the general forms of these reports are attached hereto as Exhibit C (the "Annual Survey"); however the City reserves the right to request specific data that may vary from the forms attached.

The Company's obligation to submit such reports shall continue until the Company has complied with all of the terms of this Agreement concerning the Project, the associated employment, and TID Grant.

Within thirty (30) days following the request of the City, the Company shall provide the City with additional information requested by the City.

7.2 Site Visits.

With prior written notice to Company, on not more frequently than a monthly basis, representatives of City, for so long as City has any payment obligations to Company pursuant to this Agreement, Company shall permit representatives from the City's OED and other designated City personnel, to monitor compliance by Company with the provisions of this Agreement. With prior notice to Company, representatives of City shall have the right to tour the Project and access Company's records and employees related to the Project and this Agreement, during normal business hours, provided, however, that Company shall have the right to have a representative of Company present during any such inspection, provided that such activities shall not materially interfere, interrupt or otherwise disturb the activities of Company relating to the management, development, redevelopment, and construction of the Project.

Article 8.
DEFAULTS AND REMEDIES

8.1 General.

A default shall consist of the breach of any covenant, agreement, representation, provision, or warranty contained in this Agreement (including, but not limited to, any failure to meet the reporting requirements described herein. A default shall also exist if any event occurs or information becomes known which, in the reasonable judgment of the City, makes untrue, incorrect or misleading in any material respect any statement or information contained in this Agreement to contain an untrue, incorrect or misleading statement of material fact or to omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

If any such default or breach occurs under this Agreement, the City may refuse to pay any portion of the TID Grant and additionally, may at any time or from time to time proceed to protect and enforce all rights available to the City under this Agreement by suit in equity, action at law or by any other appropriate proceeding, except for specific performance, or proceed to take any action authorized

or permitted under applicable laws or regulations, including, but not limited to, terminating this Agreement. The City shall not act upon a default until it has given the Company written notice of the default and fifteen (15) business days within which to cure the default; provided, however, that the City may withhold any portion of the TID Grant immediately upon the occurrence of a default and throughout any notice or cure period. However, if any default cannot reasonably be cured within the initial fifteen (15) business days, Company shall have a total of ninety (90) days in which to cure such default, so long as Company has commenced and is diligently proceeding to cure such default within the initial fifteen (15) day period. Notwithstanding the foregoing, Company shall immediately and automatically be in default, and the City shall not be required to give Company any notice or opportunity to cure such default (and thus the City shall immediately be entitled to act upon such default), upon the occurrence of any of the following:

- (a) The entry of a decree or order by a court having jurisdiction in the premises adjudging the Company bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company 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 the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days; and
- (b) The institution by Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it 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 the Company or 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.

8.2 Specific Defaults.

Additionally, for any of the specific events of default described in this Section 8.2 below, the parties agree that the City's damages recoverable from the Company shall include, but not be limited to, the following: in the event reporting requirements are not met in the time period specified in Article 7 of this Agreement, the City will be entitled to withhold payment of the TID Grant until such reporting requirements are met.

Article 9. GENERAL PROVISIONS

9.1 Non-liability of City Officials.

No member, official or employee of the City shall be personally liable to the Company or to any Person with whom the Company shall have entered into any contract, or to any other Person, in the event of any default or breach by the City, or for any amount which may become due to the Company or any other Person under the terms of this Agreement.

9.2 **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, acts of God, acts of public enemy, epidemic, 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; 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, and in no event shall any of the foregoing excuse any financial liability of a party.

9.3 **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 an air 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 notices 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 air courier service, except that notice of a change in address shall be effective only upon receipt.

(a) the City:

Economic Development Officer
Office of Economic Development
117 West Duval Street, Suite 275
Jacksonville, Florida 32202

With a copy to:

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

(b) The Company:

Jax North Apartments Owner, LLC
1555 Palm Beach Lake Boulevard, Suite 840
West Palm Beach, FL 33401
Attn: Robert Gaherty

9.4 **Time.**

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

9.5 **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.

9.6 **Amendment.**

This Agreement may be amended by the parties hereto only upon the execution of a written amendment or modification signed by the parties. Notwithstanding the foregoing, the Economic Development Officer of the OED is authorized on behalf of the City to approve, in his or her sole discretion, any "technical" changes to this Agreement. Such "technical" changes include without limitation non-material modifications to legal descriptions and surveys, ingress and egress, easements and rights of way, performance schedules (provided that no performance schedule may be extended for more than one year), and design standards, as long as such modifications do not involve any increased financial obligation or liability to the City.

9.7 **Waivers.**

Except as otherwise provided herein, all waivers, amendments or modifications of this Agreement must be in writing and signed by all parties. Any failures or delays by any party in insisting upon strict performance of the provisions hereof or 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 any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any other party.

9.8 **Indemnification.**

Company shall indemnify, hold harmless and defend the City from and against, without limitation, any loss, claim, suit, action, damage, injury, liability, fine, penalty, cost, and expense of whatsoever kind or nature (including without limitation court, investigation and defense costs and reasonable expert and attorneys' fees and costs) related to any suits and actions of any kind brought against the City arising out of or in connection with any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of Company or those under its control that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to Company's performance under this Agreement, except to the extent cause by the negligence of the City. Nothing contained in this paragraph shall be construed as a waiver, expansion or alteration of the City's sovereign immunity beyond the limitations stated in Section 768.28, Florida Statutes.

This indemnification shall survive the expiration or termination (for any reason) of this Agreement for a period of three (3) years, but in no event for more than three (3) years after acceptance of the Infrastructure Improvements by the City. 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. The term "City" as used in this Section 9.8 shall include all City's members, officers, officials, employees and agents.

9.9 Severability.

The invalidity, illegality or unenforceability of 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.

9.10 Compliance with State and Other Laws.

In the performance of this Agreement, the Company must comply with any and all applicable federal, state and local laws, rules and regulations, as the same exist and may be amended from time to time. Such laws, rules and regulations include, but are not limited to, Chapter 119, Florida Statutes (the Public Records Act) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

9.11 Non-Discrimination Provisions.

In conformity with the requirements of Section 126.404, *Ordinance Code*, the Company represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employment relations, throughout the term of this Agreement. The Company agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Human Rights Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Chapter 126, Part 4 of the *Ordinance Code*, provided however, that the Company shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written. The Company agrees that, if any of its obligations to be provided pursuant to this Agreement are to be performed by a subcontractor, the provisions of this Section 9.11 shall be incorporated into and become a part of the subcontract.

9.12 Contingent Fees Prohibited.

In conformity with Section 126.306, *Ordinance Code*, the Company warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Company, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Company, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of these provisions, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

9.13 Ethics.

The Company represents that it has reviewed the provisions of the Jacksonville Ethics Code, as codified in Chapter 602, *Ordinance Code*, and the provisions of the Jacksonville Purchasing Code, as codified in Chapter 126, *Ordinance Code*.

9.14 **Conflict of Interest.**

The parties will follow the provisions of Section 126.110, *Ordinance Code* with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with the City, to the extent the parties are aware of the same.

9.15 **Public Entity Crimes Notice.**

In conformity with the requirements of Section 126.104, *Ordinance Code* and Section 287.133, Florida Statutes, the Parties agree as follows:

The parties are aware and understand that a person or affiliate who has been placed on the State of Florida Convicted Vendor List, following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity, in excess of \$35,000.00, for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

9.16 **Survival.**

Any obligations and duties that by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and remain in effect. Without limiting the foregoing, all obligations for the payment of fees or other sums accruing up to the expiration or termination of this Agreement and all provisions relating to the City's right to conduct an audit shall survive the expiration or termination of this Agreement.

9.17 **Incorporation by Reference.**

All exhibits and other attachments to this Agreement that are referenced in this Agreement are by this reference made a part hereof and are incorporated herein.

9.18 **Order of Precedence.**

In the event of any conflict between or among the provisions of this Agreement and those of any exhibit attached hereto or of any amendment, the priority, in decreasing order of precedence shall be: 1) any fully executed amendment; 2) provisions in this Agreement; and 3) exhibits to this Agreement.

9.19 **Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. A counterpart delivered by electronic means shall be valid and enforceable for all purposes.

9.20 **Independent Contractor.**

In the performance of this Agreement, the Company will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or association of the City.

The Company and its employees or agents shall be solely responsible for the means, method, technique, sequences and procedures utilized by the Company in the performance of this Agreement.

9.21 Retention of Records/Audit

The Company agrees:

- (a) To establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by the City under this Agreement.
- (b) To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of six (6) years after completion of the date of final payment by the City under this Agreement. If an audit has been initiated and audit findings have not been resolved at the end of six (6) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement, at no additional cost to the City.
- (c) Upon demand, at no additional cost to the City, to facilitate the duplication and transfer of any records or documents during the required retention period.
- (d) To assure that these records shall be subject at all reasonable times to inspection, review, copying, or audit by personnel duly authorized by the City, including but not limited to the City Council auditors.
- (e) At all reasonable times for as long as records are maintained, to allow persons duly authorized by the City, including but not limited to the City Council auditors, full access to and the right to examine any of the Company's contracts and related records and documents, regardless of the form in which kept.
- (f) To ensure that all related party transactions are disclosed to the City.
- (g) To include the aforementioned audit, inspections, investigations and record keeping requirements in all subcontracts and assignments of this Agreement.
- (h) To permit persons duly authorized by the City, including but not limited to the City Council auditors, to inspect and copy any records, papers, documents, facilities, goods and services of the Company which are relevant to this Agreement, and to interview any employees and subcontractor employees of the Company to assure the City of the satisfactory performance of the terms and conditions of this Agreement. Following such review, the City will deliver to the Company a written report of its findings and request for development by the Company of a corrective action plan where appropriate. The Company hereby agrees to timely correct all deficiencies identified in the corrective action plan.
- (i) If the result of any audit by the City establishes that the amount of private capital investment has been overstated by five percent (5%) or more, the entire expense of the audit shall be borne by the Company.

- (j) Additional monies due as a result of any audit or annual reconciliation shall be paid within thirty (30) days of date of the City's invoice.
- (k) Should the annual reconciliation or any audit reveal that the Company has overstated the amount of private capital investment, and the Company does not make restitution within thirty (30) days from the date of receipt of written notice from the City, then, in addition to any other remedies available to the City, the City may terminate this Agreement, solely at its option, by written notice to the Company.

9.22 **Exemption of City.**

Neither this Agreement nor the obligations imposed upon the City hereunder shall be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provisions requiring the City to levy ad valorem taxes nor a lien upon any properties of the City. Payment or disbursement by the City of any loan or grant amount hereunder is subject to the availability of lawfully appropriated funds. If funds are not available pursuant to a lawful appropriation thereof by the City Council, this Agreement shall be void and the City shall have no further obligations hereunder.

9.23 **Parties to Agreement; Successors and Assigns.**

This is an agreement solely between the City and Company. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any person not a party hereto. This Agreement shall be binding upon Company and Company's successors and assigns, and shall inure to the benefit of the City and its successors and assigns. However, Company shall not assign, transfer or encumber its rights or obligations hereunder or under any document executed in connection herewith, without the prior written consent of the City, which consent may be withheld in the sole discretion of the City.

9.24 **Venue; Applicable Law.**

The rights, obligations and remedies of the parties specified under this Agreement shall be interpreted and governed in all respects by the laws of the State of Florida. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Duval County, Florida, or in the Federal 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 the payment of its own attorneys' fees and costs incurred in connection with the enforcement of the terms of this Agreement.

9.25 **Civil Rights.**

The Company 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, of the City 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.

9.26 **Further Assurances.**

Company will, on request of the City,

- (a) promptly correct any defect, error or omission herein or in any document executed in connection herewith (collectively the "Project 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 the Project Documents and to identify and subject to the liens of the Project 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 the City to protect the liens or the security interest under the Project Documents against the rights or interests of third persons; and
- (d) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Project Documents and this Agreement.

9.27 **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.

9.28 **Construction.**

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

9.29 **Further Authorizations.**

The parties acknowledge and agree that the Mayor of the City, or his designee, and the City's Corporation Secretary, or their respective designees, are hereby authorized to execute any and all other contracts and documents and otherwise take all necessary action in connection with this Agreement and the Resolution.

9.30 **Attorney's Fees.**

Each party shall be responsible for its own attorneys' fees and costs in connection with any legal action related to this Agreement.

[Signatures on following page(s)]

IN WITNESS WHEREOF, this Agreement is executed the day and year above written.

ATTEST:

CITY OF JACKSONVILLE

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

By: _____
Lenny Curry, Mayor

WITNESS:

JAX NORTH APARTMENTS OWNER, LLC, a
Delaware limited liability company

Print Name: _____

By: _____
Name: _____
Its: _____

Print Name: _____

FORM APPROVED:

Office of the General Counsel

GC-#1408477-v8-Jax_North_Apartments_(Ranch_Road)_EDA.doc

Encumbrance and funding information for internal City use:

Account..... _____

Amount.....\$ _____

In accordance with Section 24.103(e), of the *Ordinance Code* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; *provided however*, this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance[s] shall be made by subsequent check request[s], as specified in said Contract.

Director of Finance
City Contract # _____

Contract Encumbrance Data Sheet follows immediately.

LIST OF EXHIBITS

Exhibit A Description of the Project Parcel

Exhibit B JSEB Reporting Form

Exhibit C Annual Survey

Exhibit D Infrastructure Improvements

Exhibit E Insurance Requirements

Exhibit F Indemnification

Exhibit A
Description of Project Parcel

A portion of that certain real property located generally at 14670 Duval Road, Jacksonville, Florida 32218, more particularly described as follows:

A PART OF FRACTION SECTION 30, TOWNSHIP 1 NORTH, RANGE 27 EAST, AND A PART OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE, COMMENCE AT THE NORTHWESTERLY CORNER OF SAID SECTION 30, THENCE SOUTH 00° 30' 06" WEST ALONG THE WESTERLY LINE OF SAID SECTION 30, A DISTANCE OF 370.33 FEET TO THE CENTERLINE OF STATE ROAD 111 (AIRPORT ROAD) AS NOW ESTABLISHED; THENCE SOUTH 79° 16'56" EAST ALONG SAID CENTERLINE, A DISTANCE OF 272.51 FEET; THENCE SOUTH 10° 43' 04" WEST, A DISTANCE OF 125.00 FEET TO A POINT ON THE END OF THE LIMITED ACCESS PORTION OF INTERSTATE 95 RIGHT OF WAY; THENCE ALONG SAID LIMITED ACCESS RIGHT OF WAY, THE FOLLOWING THREE COURSES; (1) SOUTH 79° 15' 22" EAST, A DISTANCE OF 299.00 FEET; (2) SOUTH 42° 59' 48" EAST, A DISTANCE OF 295.72 FEET; (3) SOUTH 01° 56'49" WEST, A DISTANCE OF 324.29 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID LIMITED ACCESS RIGHT OF WAY, THE FOLLOWING SIX COURSES (1) THENCE SOUTH 01° 56'49" WEST, A DISTANCE OF 150.27 FEET; (2) THENCE NORTH 88° 03' 11" WEST, A DISTANCE OF 40.00 FEET; (3) THENCE SOUTH 01° 56'49" WEST A DISTANCE OF 15.00 FEET; (4) THENCE SOUTH 88° 03' 11" EAST, A DISTANCE OF 40.00 FEET; (5) THENCE SOUTH 01° 56' 49" WEST, A DISTANCE OF 217.77 FEET; (6) THENCE SOUTH 06° 44' 39" WEST, A DISTANCE OF 320.99 FEET TO A POINT ON THE LINE DIVIDING LINE OF THE AFOREMENTIONED SECTION 30 FROM THE JOHN BROWARD GRANT, SECTION 37, TOWNSHIP 1 NORTH, RANGE 27 EAST; THENCE SOUTH 60° 18' 48" WEST, A DISTANCE OF 798.89 FEET TO A POINT ON THE WESTERLY LINE OF THE AFOREMENTIONED SECTION 30; THENCE SOUTH 01° 02' 52" WEST ALONG SAID WESTERLY LINE, A DISTANCE OF 99.97 FEET TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF RANCH ROAD, A 60 FOOT RIGHT OF WAY AS PRESENTLY ESTABLISHED; THENCE NORTH 52° 22' 57" WEST, ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE, A DISTANCE OF 362.41 FEET TO THE SOUTHEAST CORNER OF THE "BIT AND SPUR SADDLE CLUB"; THENCE NORTH 11° 30' 17" EAST, DEPARTING SAID RIGHT OF WAY LINE AND ALONG THE EASTERLY LINE OF SAID "BIT AND SPUR SADDLE CLUB", A DISTANCE OF 799.36 FEET TO A POINT ON THE SOUTHERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS VOLUME 17095, PAGE 1559 OF SAID CURRENT PUBLIC RECORDS OF DUVAL COUNTY; THENCE NORTH 89° 14' 56" EAST, ALONG SAID SOUTHERLY LINE, A DISTANCE OF 137.15 FEET TO A POINT LYING ON THE EASTERLY LINE OF SAID AFOREMENTIONED LANDS, AND SAID WESTERLY LINE OF THE AFOREMENTIONED SECTION 30; THENCE NORTH 00° 32' 22" EAST, ALONG SAID EASTERLY LINE OF SAID LANDS AND ALONG SAID WESTERLY LINE OF SAID SECTION 30, A DISTANCE OF 150.23 FEET; THENCE SOUTH 89° 52' 05" EAST, ALONG SAID AFOREMENTIONED LANDS, A DISTANCE OF 17.83 FEET; THENCE NORTH 00° 00' 00" WEST, A DISTANCE 24.46 FEET; THENCE SOUTH 89° 59' 01" EAST, A DISTANCE 50.21 FEET; THENCE SOUTH 00° 00' 00" EAST, A DISTANCE OF 47.01 FEET; THENCE SOUTH 89° 59' 01" EAST, A DISTANCE OF 315.25 FEET; THENCE NORTH 01°

56' 49" EAST, A DISTANCE OF 75.28 FEET; THENCE SOUTH 88° 03' 11" EAST, A DISTANCE OF 350.00 FEET TO THE POINT OF BEGINNING.

Exhibit C

Annual Survey 2021

Please complete the form below as it relates to the project for which you received City or State assistance. Should you have any questions, please call (904) 255-5447 or email OEDFinance@coj.net. Send completed form to: City of Jacksonville, Office of Economic Development, Finance and Compliance, 117 West Duval Street, Suite 275, Jacksonville, FL 32202, Fax: (904) 630-1019, Email: OEDFinance@COJ.NET

Company name: _____

Mailing Address: _____

Primary Contact Name: _____

Primary Contact Title: _____

Phone: _____ Email: _____

Signature: _____ Reporting Date: _____

As of 12/31/2020:

I. EMPLOYMENT INFORMATION

Number of Jobs at Project Site	[1]
Number of Jobs at Project Site before Project	[2]
Net New Jobs (subtract line [2] from line [1])	
Average Wage of New Employees (excluding benefits)	\$
Estimated cost of benefits as a percentage of Average Wage	%

II. CAPITAL INVESTMENT INFORMATION

Project Land Costs	[3] \$
Project Structure Costs	[4] \$
Project Equipment Costs	[5] \$
Other Costs	[6] \$
Total Project Costs (sum [3] through [6])	\$

III. ASSESSED PROPERTY VALUE

Assessed Value of Property on 2020	
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Exhibit D

Infrastructure Improvements

The Infrastructure Improvements to Ranch Road will include removing the existing asphalt and base material, and installing a new road base material and asphalt, with a 1' wide concrete ribbon installed on either side of the roadway. Additionally, the slopes of drainage ditches will be dressed and sodded, and the bellies of the ditches will be re-graded to improve drainage flow. Finally, vegetation will be removed to open the view corridor along the road. Overall, the Infrastructure Improvements will bring this section of Ranch Road to City standards, improve the appearance of the roadway and surrounding areas, and improve the safety and functionality of the roadway.

[See 1 page, following.]

Exhibit E

Insurance Requirements

The Company and/or its general contractor (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 Employer's Liability	Florida Statutory Coverage \$1,000,000 Each Accident \$1,000,000 Disease Policy Limit \$1,000,000 Each Employee/Disease

This insurance shall cover the City and Company (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	\$2,000,000	General Aggregate
	\$2,000,000	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 construction of the Infrastructure Improvements 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 construction of the Infrastructure Improvements.

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 \$1,000,000 per Claim
\$2,000,000 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 *Not applicable to horizontal development*

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, Company 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, Company 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, Company 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, Company 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, Company or others. Any remedy provided to City, Company or City of Jacksonville, Company 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 Company 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 provide the City and Company Certificates of Insurance that shows the corresponding City Agreement Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. 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 and to Company (Attention: Robert Gaherty), 1555 Palm Beach Lakes Boulevard, Suite 840, West Palm Beach, Florida 33401.
- I. Notice. Contractor shall provide an endorsement issued by the insurer to provide the City and Company 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 Company may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City and Company also be named as an additional insured.
- L. Special Provisions: Prior to executing this Agreement, Company or its 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 Company or Contractor, as applicable.

EXHIBIT F

Indemnification by Contractor

Contractor 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

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 Company or its contractors and consultants.