

RESOLUTION NO. 2022- 271

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE CHAIR TO EXECUTE A PERMITTING AGREEMENT FOR LIMITED PURPOSES ASSOCIATED WITH ROADWAY CONSTRUCTION THROUGH COUNTY-OWNED PROPERTY LOCATED OFF STATE ROAD 16 (CR 2209).

RECITALS

WHEREAS, Eastland Partners, LLC (“Eastland”) is requesting a Permitting Agreement between Eastland and St. Johns County (“County”), attached hereto as Exhibit “A”, incorporated by reference and made a part hereof, that will allow Eastland to obtain environmental permits and other authorizations required for the construction of roadways as well as to modify existing permits on the County’s behalf, and

WHEREAS, the County approved County Ordinance 2021-87, on December 7, 2021; and

WHEREAS, Eastland is the developer who will be constructing the Proposed Roadways identified in County Ordinance 2021-87 and will dedicate the Proposed Roadways to the County once constructed; and

WHEREAS, the Turnbull Creek Regional Off-site Mitigation Area (“TCROMA”) is a regional offsite mitigation area, as defined in section 373.4135, Florida Statutes, owned and operated by the County in part to provide wetland mitigation credits for its capital projects; and

WHEREAS, portions of the Proposed Roadways consisting of Adler Creek Parkway will cross the TCROMA and other County-owned lands outside of the TCROMA that are subject to conservation easement granted in favor of the St. Johns River Water Management District (“SJRWMD”); and

WHEREAS, construction of the Proposed Roadways through County-owned properties will require additional environmental permits and other authorizations as well as modification of Environmental Resource Permit No. 4-109-107782-1 issued by SJRWMD, US Army Corps of Engineers Permit No. SAJ-2006-7358 (SP-MRE) and Memorandum of Agreement (“MOA”) between SJRWMD and the County, adopted by Resolution 2011-49, and conservation easements granted in favor of SJRWMD, recorded in Official Records Book 1166, Page 503 and Official Records Book 3431, Pages 1232-1245; and

WHEREAS, Eastland desires to obtain the required environmental permits and other authorizations and to modify the above referenced permits, MOA and conservation easements on the County's behalf to reflect the construction of the Proposed Roadways; and

WHEREAS, the County has determined that accepting the terms of the Permitting Agreement, and entering into said agreement will serve the interests of the County.

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

Section 1. The above recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners hereby approves the terms and authorizes the Chair to execute the Permitting Agreement.

Section 3. To the extent that there are typographical, scrivener or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

Section 4. The Clerk of the Circuit Court is instructed to file the original Permitting Agreement in the Public Records of St. Johns County, Florida.

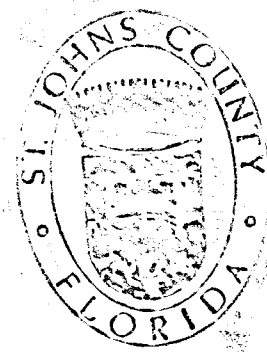
PASSED AND ADOPTED this 2 day of August, 2022.

**BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA**

By: Henry Dean
Henry Dean, Chair

ATTEST: Brandon J. Patty, Clerk of the
Circuit Court & Comptroller

Pam Halterman
Deputy Clerk



Rendition Date 8/4/22

PERMITTING AGREEMENT

BETWEEN

EASTLAND PARTNERS, LLC

AND

ST JOHNS COUNTY

This Permitting Agreement (Agreement) is entered into as of this ____ day of _____, 2022, (Effective Date) between Eastland Partners, LLC (Eastland) and St. Johns County (the County). In this Agreement, Eastland and the County are individually referred to as “Party” and jointly referred to as the “Parties.”

RECITALS

WHEREAS, by County Ordinance Number 2021-87, the County approved Comprehensive Plan Amendment 2020-02 on December 7, 2021, regarding the proposed Adler Creek Development; and

WHEREAS, in order to relieve traffic on existing surrounding rights-of-way, Eastland proposed in its comprehensive plan amendment application the construction of (i) a two-lane section of County Road 2209 (a major collector) from State Road 16 south approximately one mile to a proposed 2-lane minor collector roadway to be known as “Adler Creek Parkway,” and (ii) Adler Creek Parkway, from County Road 2209 through the proposed Adler Creek development and connecting to Pacetti Road (collectively, the “Proposed Roadways”); and

WHEREAS, Eastland is the developer who will be constructing the Proposed Roadways identified in County Ordinance Number 2021-87; and

WHEREAS, once constructed, Eastland will dedicate the Proposed Roadways to the County; and

WHEREAS, the Turnbull Creek Regional Off-site Mitigation Area (TCROMA) is a regional offsite mitigation area, as defined in section 373.4135, Florida Statutes, owned and operated by the County in part to provide wetland mitigation credits for its capital projects; and

WHEREAS, the current County Road 2209 right-of-way corridor (2209 Corridor) was previously removed from the TCROMA; and

WHEREAS, the portion of the Proposed Roadways consisting of the Adler Creek Parkway will cross the TCROMA as well as County-owned land located outside of the TCROMA that is subject to a conservation easement granted in favor of the St. Johns River Water Management District (SJRWMD), recorded in Official Records Book 1166, Page 503, collectively referred to as “County-owned Properties”; and

WHEREAS, the TCROMA has been authorized by Environmental Resource Permit No. 4-109-107782-1 issued by SJRWMD and is subject to a thirty-year Memorandum of Agreement (MOA) between SJRWMD and the County, adopted by Resolution 2011-49, effective as of March 3, 2011, and a conservation easement granted in favor of the SJRWMD, recorded in Official Records Book 3431, Pages 1232-1245; and

WHEREAS, the TCROMA has also been authorized by Permit No. SAJ-2006-7358 (SP-MRE) issued by the US Army Corps of Engineers (Corps); and

WHEREAS, construction of the Proposed Roadways through the County-owned Properties will require additional environmental permits and other authorizations as well as modification of the above referenced permits, MOA and conservation easements; and

WHEREAS, Eastland desires to obtain the required permits and modify the above referenced permits on the County's behalf to reflect the construction of the Proposed Roadways; and

WHEREAS, the County also desires to allow Eastland to obtain environmental permits and other authorizations required for the construction of the Proposed Roadways as well as to modify the above referenced permits on the County's behalf as provided herein;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. **Recitals Incorporated.**

The foregoing recitals are true and correct and incorporated herein.

2. **County Designation of Eastland as Permitting Agent.**

The County designates Eastland as the County's agent for the limited purpose of (1) obtaining required permits and other authorizations for construction of the Proposed Roadways on County-owned Properties and (2) modifying the above referenced permits, MOA and conservation easements on the County's behalf to reflect and accommodate the construction of Adler Creek Parkway through the TCROMA and County-owned Properties. To facilitate this designation, the County will execute and provide any permit application forms, agent authorization letters, and other documentation as may be required or requested by either the SJRWMD, the Corps and/or the Florida Department of Environmental Protection (FDEP)¹ to accept Eastland as the County's agent and to allow Eastland to apply for and pursue applications to the SJRWMD, Corps and FDEP if needed.

¹ In December 2020, the U.S. Environmental Protection Agency (EPA) and FDEP entered into an Assumption Agreement authorizing FDEP to issue permits in the state under Section 404 of the Clean Water Act. Such permits were previously issued by the Corps. It's possible that, due to the Assumption Agreement, FDEP may be the appropriate agency to modify the TCROMA Permit in the event that the Corps is unable to effectuate an amendment under its reserved authority.

3. Transfer of Permit to County Post-Construction.

The parties envision that the above referenced existing permits and MOA relating to the TCROMA and County-owned Properties will remain in the County's name although Eastland will be modifying these permits and MOA on the County's behalf. For any new environmental permits or other authorizations needed to construct the Proposed Roadways, Eastland will obtain these permits and other authorizations initially in its name as the permit and authorization holder. Once the Proposed Roadways have been constructed and dedicated to the County, Eastland will apply to transfer these environmental permits and other authorizations for the Proposed Roadway to the County for long-term maintenance. The County will accept such transfer provided Eastland is in compliance with these environmental permits and other authorizations at the time of the transfer. The provisions of this paragraph shall survive expiration of this Agreement.

4. Designation Limitation.

The County's designation of Eastland as the County's agent herein shall extend no further than the authority needed to (1) obtain required permits and other authorizations for construction of the Proposed Roadways on County-owned Properties, and (2) modify the above referenced permits, MOA and conservation easements to reflect the construction of Adler Creek Parkway through the TCROMA and County-owned Properties. This designation does not authorize Eastland to undertake any other action on the County's behalf.

5. Opportunity for County to Review and Comment on Information.

Prior to submitting any permit application or other documentation to either the SJRWMD, the Corps or FDEP to obtain a new permit or authorization, or to modify an existing permit or authorization, as allowed by this Agreement, Eastland shall first provide a copy of such permit application or other documentation to the County and allow the County a reasonable period of time to review and comment on the same. The amount of time considered reasonable for the County to review and comment on permit applications and related documentation will vary depending upon the nature, length and extent of such application and related information. Eastland and the County shall specify the time period for the County to review and comment when each application and related information is submitted to the County.

If, after the review and comment period described above, the County provides comments on an application or other related information, Eastland shall undertake reasonable efforts to incorporate the County's comments into the application or other related information. If Eastland cannot incorporate the County's comments because Eastland believes the County's comments would adversely impact obtaining one or more new permits or authorizations or adversely impact modifying the above referenced permits, MOA or conservation easements, Eastland will promptly notify the County of the same. As necessary, Eastland and the County shall discuss the County's comments with the goal of developing a mutually acceptable positions on the application or other related information. Under no circumstances shall the permits, MOA or conservation easements be modified in a way that violates federal or state law or the St. Johns County Comprehensive Land Use Plan or Land Development Code or modified in a manner that changes the County's current alignment of the 2209 Corridor.

6. Opportunity for County to Participate in Meetings.

To assist in obtaining new permits or other authorizations for the construction of the Proposed Roadways on County-owned property or modifying the above referenced permits, MOA and conservation easements to reflect construction of Adler Creek Parkway through the TCROMA and County-owned Properties, Eastland's representatives may meet with SJRWMD, Corps or FDEP staff. Such meetings may occur virtually or in person. Such meetings may also include site visits with SJRWMD, Corps or FDEP staff to the County-owned Properties. When Eastland arranges meetings with SJRWMD, Corps or FDEP staff, Eastland shall coordinate the same with the County and allow County staff to attend such meetings including any site visits. However, the parties intend for the County's presence at such meetings to be in the role of only monitoring the meetings or to facilitate Eastland's conduct of the meetings. In contrast, the parties intend for Eastland to arrange, conduct and lead the meetings as needed to achieve the goal of obtaining new permits or other authorizations and modifying the above referenced permits to reflect construction of the Proposed Roadways.

7. Replacement of Lost Mitigation Credit.

The parties recognize that modifying the above referenced permits and MOA to accommodate the construction of Adler Creek Parkway through the TCROMA will likely result in the removal of land from those permits and, as a result, a reduction in the total acreage of the TCROMA. The parties also recognize that this reduction in acreage and the placement of Adler Creek Parkway may lead to a corresponding reduction in the amount of ecological value increase (also known as mitigation credit) awarded to the TCROMA by either the SJRWMD, Corps or FDEP, in the above referenced permits.

In pursuing modification of above referenced permits, Eastland shall undertake all reasonable measures to reduce the amount of state and federal mitigation credit loss resulting from the Adler Creek Parkway construction. Eastland may accomplish this by developing plans to perform ecological enhancement activities on other County-owned lands, as agreed upon by the County, in the vicinity of TCROMA or developing other measures or actions as Eastland best determines. Eastland may also accomplish this by obtaining the rights to use comparable mitigation credits from a permitted wetlands mitigation bank whose service area would allow the County to use such credits to the same extent as the County can use the TCROMA credits. The County shall reasonably support Eastland in these efforts.

If Eastland cannot fully offset the loss in mitigation credit from both the SJRWMD and Corps issued permits referenced above due to the loss of acreage and/or reduction in ecological value resulting from the construction of Adler Creek Parkway, Eastland shall purchase comparable mitigation credits from a private mitigation bank for each permanently lost credit and assign them to the County. Any mitigation credits due to the County will be purchased and assigned to the County prior to and as a condition of construction plan approval for the Proposed Roadways.

The provisions of this paragraph shall survive expiration of this Agreement.

8. No Compensation Required.

The County is not required to compensate Eastland for work to obtain new permits or other authorizations or to modify existing permits, authorizations and agreements as described in this Agreement. Permit modification work for which Eastland may be required to perform includes, but is not limited to, additional work for ecological surveys, new restoration activities that may be required, additional monitoring of restoration activities and any other activities required as a condition of permit modification, modification of the MOA or conservation easements. In addition, should Eastland propose a donation of property to the County to offset the loss of mitigation credits, Eastland will be responsible for all costs and due diligence associated with the conveyance as well as any permitting work proposed to be performed on the donated property. All costs incurred by either Party in fulfilling the terms of this Agreement shall be borne by that Party except where expressly provided otherwise herein.

9. Eastland's Right to Transfer.

Provided Eastland has not defaulted under this Agreement, Eastland shall have the right and privilege from time to time to sell, assign or otherwise transfer all or any portion of its rights under this Agreement to a related legal entity, subject to prior approval from the County, which will not be unreasonably withheld.

10. Construction.

The section headings in this Agreement are inserted for convenience only and are not intended to affect the interpretation of this Agreement. The word "including" in this Agreement means "including without limitation." Unless the context requires otherwise, any reference to any law will be deemed also to refer to all amendments and successor provisions thereto and all rules and regulations promulgated thereunder, in each case, at the time such reference is made. The word "or" in this Agreement is disjunctive but not necessarily exclusive. All words in this Agreement will be construed to be of such gender or number as the circumstances require. References in this Agreement to time periods in terms of a certain number of days mean calendar days unless expressly stated herein to be business days. In the event a deadline hereunder falls on a day that is not a business day, such deadline shall be deemed extended to the next succeeding business day.

11. Counterparts; Facsimile.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

12. **Notices.**

Any and all notices and other communications necessary or desirable to be served hereunder shall be delivered in writing, in each case to the address specified below or to such other address as such party may from time to time specify in writing in compliance with this provision:

- (a) If to Eastland:

Eastland Partners, LLC
c/o Art Lancaster
700 Ponte Vedra Lakes Blvd.
Ponte Vedra Beach, FL 32082

with a copy (which will not constitute notice) to:

Gunster
215 S. Monroe Street, Suite 601
Tallahassee, FL 32301
Attention: Eric Olsen
Email: EOlsen@gunster.com

- (b) If to the County:

St. Johns County Administrator
500 San Sebastian View
St. Augustine, FL 32084

with a copy (which will not constitute notice) to:

St. Johns County Attorney's Office
500 San Sebastian View
St. Augustine, FL 32084

13. **Entire Agreement; No Third Party Beneficiaries.**

This Agreement constitutes the full and entire understanding and agreement between the Parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof. Nothing expressed or implied herein is intended, or shall be construed, to confer upon or give any person other than the parties, and their successors or permitted assigns, any right, remedy, obligation or liability under or by reason of this Agreement or result in such person being deemed a third-party beneficiary hereof.

14. **Liability.**

Neither Party shall be deemed to assume any liability for the negligent or wrongful acts or omissions of the other Party. Nothing contained herein shall be construed as a waiver or expansion

by the County of the liability limits established in Section 768.28 of the Florida Statutes. Eastland shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of Eastland's performance of the terms of this Agreement or due to the acts or omissions of Eastland or its agents, contractors or assigns.

15. **Legal Fees.**

Each Party shall bear its own costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms and conditions of this Agreement.

16. **Amendments.**

Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless agreed to by the Parties in writing and executed in the same manner as this Agreement.

17. **Venue.**

This Agreement shall be construed and governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement shall be held in St. Johns County and any trial shall be nonjury. No remedy herein conferred upon either Party is intended to be exclusive of any other remedy, and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now hereafter existing at law existing at law or in equity or by statute or otherwise. No single or partial exercise by either Party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

18. **Preparation.**

Preparation of this Agreement was a joint effort of the Parties and should not be construed more severely against one Party than the other.

19. **Severability.**

In the event any provision hereof is held invalid by a court of competent jurisdiction, the remaining portions of the Agreement shall remain in full force and effect.

20. **Term.** This Agreement shall terminate five (5) years from the effective date but may be extended for additional one (1) year terms, not to exceed five extensions, by mutual written agreement of the Parties, executed no later than 30 days before expiration.

IN WITNESS WHEREOF, the Parties have executed this Permitting Agreement Between Eastland Partners, LLC and St. Johns County of the date first written above, the effective date.

**EASTLAND PARTNERS,
LLC, a Florida Limited
Liability Company**

ST JOHNS COUNTY, FLORIDA
By: Board of County Commissioners

By: _____

By: _____

Printed Name: _____

Printed Name _____

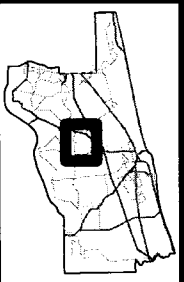
Its: _____

ATTEST:

By: _____

Approved as to form and legal sufficiency:

Office of the St. Johns County Attorney




 Aerial Photography 2021
 0 800 1,600 3,200
 Feet
 Date: 7/21/2022

Permitting Agreement
 Between
 Eastland Partners, LLC
 & St. Johns County

Land Management
 Systems
 Real Estate
 Division
 (904) 209-0782
Disclaimer:
 This map is for reference use only.
 Data provided are derived from multiple
 sources with varying levels of accuracy.
 The St. Johns County Real Estate
 Division disclaims all responsibility
 for the accuracy or completeness
 of the data shown hereon.

