



ECONOMIC PLANNING & DEVELOPMENT COMMITTEE MEETING

MONDAY, JULY 12, 2021 | 6 PM

5th Committee Meeting

The Committee will meet in the Mauldin City Hall at 5 East Butler Road in the Council Chambers

The meeting will be available remotely through Zoom. Please visit the City's website at [https:// cityofmauldin.org/your-government/meeting-minutes-agendas/](https://cityofmauldin.org/your-government/meeting-minutes-agendas/) to access the meeting via audio and videoconferencing.

ECONOMIC PLANNING & DEVELOPMENT COMMITTEE MEETING
JULY 12, 2021, 6PM
CITY HALL - COUNCIL CHAMBERS

Committee Members: Taft Matney (Chair), Jason Kraeling, Diane Kuzniar

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| 1. <u>Call to Order</u> | Chairperson Taft Matney |
| 2. <u>Public Comment</u> | Chairperson Taft Matney |
| 3. <u>Reading and Approval of Minutes</u> | Chairperson Taft Matney |
| a. Economic Planning & Development Committee Meeting: June 7, 2021 [Pages 3-5] | |
| 4. <u>Reports or Communications from City Officers</u> | Chairperson Taft Matney |
| a. Economic Development Department Director Van Broad | |
| i. Budget Review | |
| 5. <u>Unfinished Business</u> | Chairperson Taft Matney |
| There is no unfinished business. | |
| 6. <u>New Business</u> | Chairperson Taft Matney |
| a. Resolution for Agreement with Crawford Strategies | |
| b. Maintenance Agreement with SC Department of Transportation | |
| 7. <u>Public Comment</u> | |
| 8. <u>Committee Concerns</u> | |
| 9. <u>Adjournment</u> | |

MINUTES
ECONOMIC PLANNING & DEVELOPMENT COMMITTEE MEETING
JUNE 7, 2021, 6PM
CITY HALL - COUNCIL CHAMBERS
5 E. BUTLER ROAD

Committee Members present: Taft Matney (Chair), Jason Kraeling, Diane Kuzniar
Others present: Community and Development Director Van Broad and City Administrator Brandon Madden

1. Call to Order- Chairman Matney
2. Public Comment- None
3. Reading and Approval of Minutes
 - a. Economic Planning & Development Committee Meeting: May 3, 2021

Motion: Councilwoman Kuzniar made a motion to approve the minutes with Councilman Kraeling seconding.

Vote: The vote was unanimous (3-0).

4. Reports or Communications from City Officers
 - a. Economic Development Department Director Van Broad
 - i. Budget Review- The budget is at 25% and the ideal remaining percentage is 7%.

The department raised a little over \$12,000 during the fundraising dinner last week and expect more funds to come in from that event.

The Cultural Center Board has some new members to lead the Cultural Center Council into the future.

Beachin' Fridays and the Farmer's Market are going well.

Momentum Construction will start demolition at the Cultural Center soon to begin work on the lobby renovation.

Chairman Matney said he thinks Beachin' Fridays is bigger than it has ever been. He has heard nothing but compliments on the festival.

5. Unfinished Business
There is no unfinished business.
6. New Business
 - a. Development Agreement

Motion: Councilman Kraeling made a motion to send this item to Council with Councilwoman Kuzniar seconding.

Vote: The vote was unanimous (3-0).

b. Cultural Center Lease Rental Agreements and Rules

In 2006, under the former arrangement with the Mauldin Cultural Council, who operated and managed the building on behalf of the city, the Council entered into an agreement with Mauldin Rotary to renovate the Rotary Room at a cost of \$25,000, supplied by Rotary in exchange for lease space until October 30, 2021.

Subsequently, at some point the City began to manage the facility and added the Cultural Council Director as full-time City employee. The Cultural Center was then added to the management operation of the City Recreation Department who added rental arrangements to its established rental policies.

In 2015, the City established the Community Development Department and in the following year moved all functions of the center to Community Development Department for its operations. Community Development expanded the Cultural Center operations, programs, and rental opportunities. Additionally, the renovation of the auditorium, and covering of the amphitheater have led to rental opportunities for weddings and corporate events. With that expansion, the need for a more defined process, rental agreements, and policies are needed to maintain the facility at its highest level of operation. Staff reached out to multiple facilities and the proposed rates are in line with other facilities in the area.

There are some groups that are not charged a rental rate such as the Rotary Club, Civitan, Disabled Veterans; etc. Due to the Cultural Center programming growth, space availability is becoming tighter although we are happy to have these groups continue to use the space. If you let one group use the facility for free, you have to let every group use it for free according to the law. Staff presented rental information to Committee for consideration.

Motion: Councilwoman Kuzniar made a motion to send this item to Council with Councilman Kraeling seconding.

Chairman Matney said he would like the opinion of our Counsel on the issues Mr. Broad raised about charging rent to some groups and not charging others before this issue is considered by City Council.

Vote: The vote was unanimous (3-0).

c. Mauldin Development Corporation

During the Council April 16, 2021, Economic Development workshop, Council requested that the draft by-laws and ordinance attendant to the establishment of a Mauldin Development Corporation be presented to the Economic Planning & Development Committee for vetting. Council would appoint members to the Development Corporation. Mr. Madden said through the draft ordinance, economic development would be done through a different entity. There are a number of entities here that use an ED Corporation.

Motion: Councilman Kraeling made a motion to send this to Council. Councilwoman Kuzniar seconded the motion.

Councilman Kraeling asked if there could be a meeting with the Greer Economic Development Corporation to talk to them about how this entity works for them. Mr. Broad said he could schedule a meeting.

Councilwoman Kuzniar said she needs more information on this item and would like to meet with Greer or another City that already has an Economic Development Corporation. She is not comfortable with this item.

Chairman Matney said he is in favor of the corporation because there are discussions that can be had within the Corporation that cannot be had the way things are set up now. He is in favor, though, of meeting with other cities to get their input on how this works.

Councilman Kraeling rescinded his motion to send this to Council.

Motion: Councilman Kraeling made a motion to hold this item in Committee with Councilwoman Kuzniar seconding.

Vote: The vote was unanimous (3-0).

This item was held in committee pending scheduling a workshop.

7. Public Comment- None
8. Committee Concerns- None
9. Adjournment- Chairman Matney adjourned the meeting at 7:33 p.m.

Respectfully Submitted,
Cindy Miller
Municipal Clerk

ECONOMIC PLANNING & DEVELOPMENT COMMITTEE

AGENDA ITEM SUMMARY

MEETING DATE: July 12, 2021
AGENDA ITEM: 6b

TO: Economic Planning & Development Committee
FROM: City Administrator Brandon Madden
SUBJECT: Maintenance Agreement with SC Department of Transportation (SCDOT)

REQUEST

To recommend to City Council approval of the Maintenance Agreement with the SCDOT for the Pedestrian Bridge.

HISTORY/BACKGROUND

The City entered into a Development Agreement with Centerpoint Land, Inc. (the "Developer"), on December 19, for the construction of a public bridge to be used for public pedestrian and bicycling purposes which bridge will traverse Interstate I-385.

Subsequently, in furtherance of the construction of the Bridge, the Developer entered into an Agreement for the Design & Construction of Bridgeway Station Pedestrian Bridge with United Infrastructure Group, Inc. (the "Contractor").

SCDOT is currently reviewing the plans and specifications for the construction of the Bridge to issue a permit to the Contractor to commence the construction. A component of this process is the approval of a maintenance agreement for the Bridge between the City and SCDOT.

ANALYSIS or STAFF FINDINGS

Attached hereto is the draft maintenance agreement for the Bridge between the City and SCDOT.

FISCAL IMPACT

None.

RECOMMENDATION

Approval of the maintenance agreement.

ATTACHMENTS

Draft maintenance agreement (redlined).

**Cooperative Intergovernmental Agreement Between
The City of Mauldin and
The South Carolina Department of Transportation
Regarding the I-385 Pedestrian Bridge Project**

This Agreement is made this _____ day of _____, 202__, by and between the City of Mauldin (hereinafter “City”) and the South Carolina Department of Transportation (hereinafter “SCDOT”) (collectively “the Parties”).

WITNESSETH THAT:

WHEREAS, the City entered into a Development Agreement with Centerpoint Land, Inc., a South Carolina corporation (the “Developer”) dated the 19th day of December, 2019 (the “Development Agreement”), for the construction of a public bridge to be used for public pedestrian and bicycling purposes which bridge will traverse Interstate I-385 in order to connect the Property to other property (the “Bridge”); and,

WHEREAS, in furtherance of the construction of the Bridge, the Developer has entered into an Agreement for the Design & Construction of Bridgeway Station Pedestrian Bridge (the “DBA”) with United Infrastructure Group, Inc. (the “Contractor”) dated November 1, 2020,; and,

WHEREAS, SCDOT owns an easement and/or a fee simple interest for highway purposes for Interstate Highway 385 (hereinafter “I-385”) in Mauldin, South Carolina, in the Area of Encroachment more particularly described herein; and

WHEREAS, City has requested that SCDOT allow City to build and maintain, at City’s sole cost and expense, a City-owned and operated Pedestrian Bridge (“Bridge”) over and above I-385 in the Area of Encroachment in a manner that will not interfere with the primary use of I-385 for interstate highway purposes; and

WHEREAS, SCDOT is willing to permit the Bridge to be constructed, owned, operated, and maintained by City over I-385 provided it is at no cost to SCDOT and in accordance with the conditions set forth in this Agreement; and

WHEREAS, pursuant to South Carolina Code of Laws Section 57-5-600, 1976 (as amended), SCDOT has authority to grant written permits to encroach upon highway right-of-way under such rules as SCDOT may establish; and

WHEREAS, Part 710, Subpart D of 23 United States Code of Federal Regulations at 710.401, *et seq.*, allows alternative use of Interstate right-of-way when it is in the public interest and is consistent with the continued operation, maintenance, and safety of the Interstate and complies with the other requirements of said regulations; and

WHEREAS, the use of the airspace over I-385 for the Bridge is in the public interest because it will allow pedestrians to cross the Interstate highway without interference to traffic on I-385 or the surrounding highway network; and

WHEREAS, the Federal Highway Administration agrees to such alternative use as stated in this Agreement, provided the primary use of I-385 remains a public highway; and

WHEREAS, despite the fact that some of the Bridge structure will be constructed outside of the I-385 right-of-way, the Parties specifically intend that all portions of the Bridge will be subject to the terms of this Agreement with regard to ownership, design, construction, inspection, maintenance, operation, repair, replacement, reconstruction, and removal; and

WHEREAS, SCDOT is an agency of the State of South Carolina with the authority to enter into contracts necessary for the proper discharge of its functions and duties; and

WHEREAS, City is a body politic with the authority to enter into contracts necessary for the proper discharge of its functions and duties; and

WHEREAS, the Parties wish to set forth herein the terms of their relationship to accomplish the purpose set forth above;

NOW THEREFORE, in consideration of the mutual benefits accruing to each and to the State of South Carolina, the Parties agree as follows:

I. DESCRIPTION

This Agreement is for the ownership, design, construction, inspection, maintenance, operation, repair, replacement, reconstruction, and removal of City's Bridge over I-385. The encroachment permitted pursuant to this Agreement is a publicly-owned and operated pedestrian bridge, with its associated structures and approaches.

The Area of Encroachment means the I-385 right-of-way, to include both sides of the highway, as well as over and across the highway, located at approximate station to . The actual location of the Bridge superstructure and piers, abutments and other structures will be determined by the specific design of the Bridge as prepared and constructed by City subject to SCDOT's approval as provided herein. The Release for Construction (RFC) and as-built plans, including as-built utility plans, shall be provided to SCDOT and such final plans will be incorporated into this Agreement by written amendment signed by the Parties hereto.

The primary use of I-385 shall remain for highway purposes, including, but not limited to: the operation, use, construction, maintenance, reconstruction, or improvement of I-385 for public use.

Additional Project details and location information are included in Exhibit A, attached hereto and incorporated herein.

II. LIMITED RIGHTS OF USE AND OCCUPANCY

- A. City shall have the limited right to use and occupy the air and surface space within the Area of Encroachment as defined above and as shown in Exhibit A and further detailed in the RFC and as-built plans for the Bridge for the purposes of: construction, inspection, maintenance, control, operation, repair, replacement, reconstruction, and removal of the Bridge, subject to the terms of this Agreement and the associated Encroachment Permit.
- B. Except as granted to City in this Agreement, SCDOT specifically reserves all other rights to and control over the airspace and surface space of the Area of Encroachment, including control of access.
- C. City's use shall be subordinate at all times to SCDOT's primary use of I-385 for highway purposes, and City shall use and maintain the Bridge at all times in a manner that will not interfere with SCDOT's use of I-385 for highway purposes.

III. OWNERSHIP

- A. SCDOT warrants that it has property rights for highway purposes at the Area of Encroachment.
- B. City, [through the Development Agreement and the DBA](#), -warrants that it owns or will obtain any necessary property interests adjacent to and outside of the Area of Encroachment sufficient for City to construct, own, operate, and maintain the Bridge. Furthermore, City agrees that it will maintain ownership of the Bridge throughout the term of this Agreement, and for so long as the Bridge remains within the Area of Encroachment, unless otherwise specifically agreed to in writing by SCDOT.

IV. COSTS AND EXPENSES

- A. City, [through the Development Agreement and the DBA](#), -shall be solely responsible for all costs and expenses associated with the construction of the Bridge, including, but not limited to: project management, planning, design, environmental assessments or determinations, permitting costs and fees, acquisition of necessary easements or property interests, construction, construction engineering, inspections, and utility placement/movement/removal. In addition, any work required to satisfy or implement environmental requirements in relation to the design or construction of the Bridge will be accomplished at the sole cost of the Permittee for as long as the Bridge is located within the Area of Encroachment.

- B. City, [through the Development Agreement and the DBA](#), shall be solely responsible for all costs and expenses associated with the ownership, operation, maintenance, inspection, control, repair, reconstruction, replacement, and removal of the Bridge and its support structures to ensure ongoing compliance with this Agreement for as long as the Bridge is located within the Area of Encroachment.
- C. City, [through the Development Agreement and the DBA](#), shall be solely responsible for all costs and expenses associated with the removal of the Bridge at or before termination of this Agreement, including all costs and expenses associated with restoring the Area of Encroachment to its condition as of the date of execution of this Agreement.
- D. City, [through the Development Agreement and the DBA](#), shall reimburse SCDOT for its reasonable labor and expenses necessary to: review design plans; review and inspect City's work progress and activities for compliance with this Agreement and approved plans, permits, and authorizations; and any time it is necessary for SCDOT to provide a designated representative during City activities which may impact the free flow of traffic or the safety of the traveling public.
- E. City, [through the Development Agreement and the DBA](#), shall also reimburse SCDOT for its reasonable labor and expenses for SCDOT personnel and equipment in the event it is necessary to impede traffic lanes or detour existing traffic in response to emergency events. If it is necessary for SCDOT to intercede in any activities, City shall reimburse SCDOT for its reasonable labor and expenses for SCDOT personnel and equipment and any other expense that may be incurred as part of this action. City understands that highway traffic may not be restricted or impeded except as specifically authorized in advance by SCDOT.
- F. City, [through the Development Agreement and the DBA](#), shall install all protective guardrails, attenuators, and/or other protective devices on the Area of Encroachment, including at or near the Bridge piers, as required by SCDOT's design standards. City shall install, maintain, and repair the roadside safety hardware in accordance with SCDOT Engineering Directive #42, then current at the time of the installation, maintenance, or repair. Any repair or maintenance of roadside safety hardware on the interstate roadway shall be coordinated with and communicated to SCDOT District Three's District Engineering Administrator in writing and performed in accordance with the then-current SCDOT policies, including any restrictions on lane closures. Written approval must be obtained from the District Three Engineering Administrator prior to the initiation or performance of any traffic control set up or work.
- G. SCDOT shall submit a written, itemized invoice to City within 60 days from the date that: (1) SCDOT incurs a cost or expense for which it seeks reimbursement from City, or (2) SCDOT provides a service for which it is entitled to be reimbursed under the terms of this Agreement. Unless the Parties have previously agreed in writing upon a specified rate, unit price, or fixed sum for any material, equipment,

or service for which SCDOT will seek reimbursement, SCDOT shall document its actual cost or expense and the method or basis for calculating the amount of such cost or expense on or before the date SCDOT submits its invoice or request for payment for the cost or expense. Except in the event of emergency services or equipment, SCDOT shall provide a Rough Order of Magnitude to City upon City's written request for any material, equipment, service, or other reimbursable cost or expense to be incurred by SCDOT in excess of \$5,000.00. SCDOT covenants that it shall substantially comply with the terms of this Section in good faith as a condition of its right to be reimbursed by City for costs, expenses, and services in accordance with this Agreement. City shall remit payment to SCDOT within 30 days of receipt of SCDOT's invoice or request for payment.

V. **DESIGN REQUIREMENTS**

- A. City, [through the Development Agreement and the DBA](#), shall design the Bridge in accordance with SCDOT's design standards and specifications. SCDOT shall have the right to review and approve the design plans, but this review shall not absolve City of its responsibility to design and build the Bridge in accordance with the design requirements or shift any responsibility for such design to SCDOT. All final design plans issued for construction shall be signed and sealed by a professional engineer licensed in the State of South Carolina.
- B. Bridge design shall adhere to all SCDOT Bridge Design Criteria. This includes, but is not limited to: geotechnical, structural, and seismic design requirements. The design shall assure the future safety of the highway facility and of the airspace use.
- C. Use of airspace beneath the established gradeline of the Bridge shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation, and safety of the highway facility.
- D. The proposed use of airspace above the established gradeline of the highway shall not, at any location between two points established two feet beyond the two outer edges of the shoulder extend below a horizontal plane which is at least 17 feet above the gradeline of the highway, or the minimum vertical clearance plus six inches as approved by SCDOT, except as necessary for columns, foundations, or other support structures.
- E. Where control and directional signs needed for the highway are to be installed beneath an overhead structure, vertical clearance will be at least 20 feet from the gradeline of the highway to the lowest point of the soffit of the overhead structure, unless otherwise specifically agreed upon in advance by SCDOT after consultation with FHWA as appropriate.
- F. Piers, columns, or any other portion of the airspace structure shall not be erected in a location which will interfere with visibility or reduce sight distance or in any other

way interfere materially with the safety and free flow of traffic on the highway facility.

- G. The structural supports for the Bridge shall be located to clear all horizontal and vertical dimensions established by SCDOT. Supports shall be clear of the shoulder or safety walks of the outer roadway. However, supports may be located in the median or outer separation when SCDOT determines, with FHWA concurrence as necessary, that such medians and outer separations are of sufficient width.
- H. All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to SCDOT. No supports shall be located in the ramp gores, or in a position so as to interfere with the signing necessary for the proper use of the ramp, unless otherwise specifically agreed upon in advance by SCDOT.
- I. Under no conditions shall airspace be used for the manufacture or storage of flammable, explosive, or hazardous material for any occupation which is deemed by SCDOT or FHWA to be a hazard to highway or non-highway users. This would include the storage of gas in the airspace under, above, or near the highway facility. This prohibition shall not be construed to preclude the transverse or longitudinal installation of such items as petroleum pipelines that have been approved by SCDOT.
- J. The design, occupancy, and use of any structure over or under the highway facility shall not interfere with the use, safety, appearance, or the enjoyment of the facility, nor produce fumes, vapors, odors, drippings, droppings, or discharges of any kind.
- K. The use of airspace shall not result in either highway or non-highway users being unduly exposed to hazardous conditions because of highway location, design, maintenance, and operation features.
- L. Appropriate safety precautions and features must be incorporated in the design to minimize the possibility of injury to users of either the highway facility or airspace due to highway or non-highway incidents.
- M. The Bridge shall be fire resistant in accordance with standards acceptable to SCDOT and FHWA. The placement of aesthetic items, structures, or facilities which utilize combustible materials that may be fire hazards are prohibited on the Bridge. Bridge access must be provided for emergency response, as may be needed.
- N. Adequate security measures shall be in place to ensure the safety of the facility from both natural disasters and human actions, whether accidental or intentional. Examples of such measures include: the use of bollards to restrict vehicular traffic, pier protection devices, and sufficient caging to avoid the accidental or intentional

dropping of materials from the Bridge and its support structures deck onto the highway right-of-way below.

- O. City ~~u~~ understands and agrees, [through the Development Agreement and the DBA](#), to cooperate with the coordination required by and between multiple divisions of SCDOT to obtain the necessary and required approvals to proceed with construction of the Bridge and its support structures, and also to perform future maintenance and inspections upon the Bridge and its support structures as more specifically set forth in this Agreement. Such divisions include, but are not limited to: SCDOT's planning, design, bridge, environmental, traffic, operations, and maintenance divisions / districts. City's primary point of contact with SCDOT, designated in Section XXI. G. of this Agreement, shall facilitate City's coordination with such divisions as required.
- P. The underside and any supports for the Bridge and its support structures shall have smooth and easily cleanable surfaces. Supports for the Bridge shall leave as much open space on the sides of the highway as feasible. Such space shall be appropriately graded where deemed necessary or desirable by SCDOT.
- Q. Construction of the Bridge above or below a highway facility shall not require any temporary or permanent change in alignment or profile of an existing highway without prior approval by SCDOT.
- R. City shall be solely responsible for any hazardous waste contamination that may result from the construction, maintenance, operation, and use of the Bridge, without liability to SCDOT.
- S. To the extent required by law, City shall design, construct, and operate the Bridge in compliance with the Americans with Disabilities Act.

VI. CONSTRUCTION REQUIREMENTS

- A. All work shall conform to SCDOT's standards of construction and shall be performed in a workman-like manner. It is expressly understood that the encroachment shall be constructed in accordance with the approved plans. City, [through the Development Agreement and the DBA](#), agrees to comply with and be bound by SCDOT's "Policy for Accommodating Utilities on Highway Right of Way," then current at the time of construction, maintenance, or repair and "2007 Standard Specifications for Highway Construction," as supplemented, including all Supplemental Technical Specifications, then current at the time of construction, maintenance, or repair. City, [through the Development Agreement and the DBA](#), shall make adequate provisions for maintaining the proper drainage of I-385 as it may be affected by the construction of the Bridge. Any utilities attached to the Bridge at any time will require an SCDOT Utility Permit in accordance with SCDOT's "Policy for Accommodating Utilities on Highway Right of Way." No wet, gas, or electric utilities, except for electricity for lights on the Bridge, will be

allowed to be attached to the Bridge. All work shall be subject to the satisfaction of SCDOT [as provided for in the Development Agreement and the DBA](#).

- B. City, [through the Development Agreement and the DBA](#), -shall provide a complete set of City's plans and specifications for construction for SCDOT's review. These plans and specification shall set forth all aspects of the project, including the coordination and timing of phasing, and shall also provide such additional and further documentation as requested by SCDOT so that it may complete its review. City's plans must be prepared and signed by a professional engineer licensed in the State of South Carolina. SCDOT will promptly review the City's construction plans, and agrees that its approval will not be unreasonably withheld, delayed, or denied so long as the plans conform to all applicable SCDOT requirements as well as applicable federal, state, and local laws, ordinances, rules, and regulations. If a fundamental disagreement occurs with regard to City's plans and specifications for construction, City, [through the Development Agreement and the DBA](#), -agrees to make such reasonable modifications as can be made to the plans such that the project may proceed with SCDOT's approval.
- C. Prior to the commencement of any work on SCDOT right-of-way, City, [through the Development Agreement and the DBA](#), -shall provide a Performance Bond or Letter of Credit to SCDOT to secure the performance of its obligations to construct the Bridge pursuant to this Agreement. The Performance Bond or Letter of Credit shall be in the full amount of the estimate for the construction of the Bridge. The Performance Bond or Letter of Credit shall be presented to SCDOT's District Three Office prior to the issuance of the Notice to Proceed.
- D. SCDOT shall document the conclusion of its pre-construction review and approval process by providing City a written notice to proceed. No occupation, construction, or alteration of the Area of Encroachment may occur until SCDOT has issued the Notice to Proceed.
- E. Commencement of Construction; Obligations.
 - 1. Upon receipt of SCDOT's Notice to Proceed, City shall be entitled to commence construction of the Bridge in a manner consistent with City's properly submitted and accepted construction plans, and consistent with all SCDOT-issued permits and approvals.
 - 2. City, [through the Development Agreement and the DBA](#), -shall provide for proper project management, inspection, oversight, and control of all elements of construction.
 - 3. City, [through the Development Agreement and the DBA](#), -shall ensure that the Bridge is constructed in strict compliance with the accepted construction plans and specifications, or as amended by any change orders approved in advance by SCDOT.

4. City, [through the Development Agreement and the DBA,](#) –shall complete all necessary material testing in accordance with SCDOT requirements.

F. SCDOT Review / Limitations.

1. During construction, SCDOT will rely on the professional performance and ability of City, its agents and representatives, and its selected contractors.
2. Examination by SCDOT, or any acceptance or use of the work product, will not be considered to be a full and comprehensive examination and will not be considered an approval of the work which would relieve City from its liability or expense for the work to be accomplished by City pursuant to this Agreement.
3. Acceptance or approval of any of the work by SCDOT will not constitute a waiver of any rights of SCDOT to recover damages from City that are caused by any error, omission, or negligence of City, its agents, consulting engineers, or contractors in the performance of the design, construction, maintenance, inspection, or repair of the Bridge. Further, if due to error, omission, or negligence of City, its agents, consulting engineers, or contractors, the plans, specifications, and estimates are found to be in error, or there are omissions therein revealed during the construction, maintenance, inspection, or repair of the Bridge and revision or reworking of the plans is necessary, City, [through the Development Agreement and the DBA,](#) –shall make all such revisions without expense to SCDOT.
4. City’s legal liability for all damages incurred by SCDOT or third parties caused by error, omission, or negligent acts of City, City’s employees, agents, consultants, or contractors in the design, construction, maintenance, inspection, repair, or use of the Bridge will be borne solely by City without liability or expense to SCDOT.

VII. TRAFFIC CONTROL RESPONSIBILITIES

City shall own, ~~and~~ [through the Development Agreement and the DBA,](#) control, construct, operate, maintain, repair, inspect, reconstruct, and remove the Bridge in a manner that does not impact the safety of traffic on I-385 and will cause no unreasonable interference with the use of the highway by the travelling public or by SCDOT. City, [through the Development Agreement and the DBA,](#) shall not close, restrict, or impede the free flow of traffic on I-385 except in a manner consistent with SCDOT’s Standard Drawings, The Rule on Work Zone Safety and Mobility, Policy and Guidelines, Hourly Restrictions for Lane Closures found at SCDOT’s website, and the Manual on Uniform Traffic Control Devices (MUTCD), then current at the time of closure, restriction, or impediment of the free flow of traffic. In no event shall closure, restriction, or impediment of the free flow of traffic occur unless specifically approved in advance by SCDOT. All traffic control shall comply with SCDOT Standards for Traffic Control.

VIII. PROTECTION OF UTILITIES

This Agreement is subject to all existing utilities and rights of such utility providers. City, [through the Development Agreement and the DBA](#), shall be responsible for identifying the location of existing utilities that may be affected by the construction of the Bridge, establish whether SCDOT or the utility has prior rights, obtain all necessary utility agreements, and pay for the cost of any required relocations in accordance with SCDOT's "Utility Accommodations Manual."

IX. ALTERATIONS

Once constructed, City, [through the Development Agreement and the DBA](#), shall not make any alterations, modifications, or changes to the Bridge without the advance written permission of SCDOT.

X. MAINTENANCE AND INSPECTION REQUIREMENTS

- A. City shall be solely responsible for the ownership, operation, maintenance, control, repair, inspection, [through the Development Agreement and the DBA](#), reconstruction, and removal of the Bridge, all of which shall occur at no expense to SCDOT. City, [through the Development Agreement and the DBA](#), shall comply with SCDOT's bridge maintenance and inspection specifications.
- B. City, [through the Development Agreement and the DBA](#), shall take special precautions to prevent and provide for the adequate and appropriate removal of water, snow, ice, and other elements or materials from the Bridge on an ongoing basis to avoid any impact on the safety or free flow of traffic travelling on I-385. Adequate drainage facilities and snow removal activities are required by City such that there is no overflow or dropping of accumulated water, snow, or other materials from the Bridge upon the highway right-of-way below.
- C. City, [through the Development Agreement and the DBA](#), shall conduct a structural inspection of the Bridge in compliance with the National Bridge Inspection Standard ("NBIS"), then current at the time of each inspection. Such inspections must occur prior to opening the Bridge to the public and subsequently every 24 months, or more frequently if required by law, and more frequently where structural damage or deterioration becomes evident or in the event of emergency circumstances that could potentially impact the integrity of the structure. These inspections shall be performed by a Professional Structural Engineer licensed in the State of South Carolina, and shall include written reports that shall be submitted to SCDOT. Inspections and reports shall meet all requirements outlined in the SCDOT Bridge Inspection Guidance Document, then current at the time of inspection. City agrees that SCDOT has no duty to inspect, report, or remedy observed conditions (even if SCDOT has notice of said conditions) on the Bridge. City, [through the Development Agreement and the DBA](#), shall promptly and adequately address any critical finding and other safety concerns that are identified during inspections.

- D. A load rating must be performed during the design phase of the Bridge construction project and subsequent load rating analyses performed as conditions warrant in accordance with the then current version of the SCDOT Load Rating Guidance Document. A copy of each load rating report must be submitted to SCDOT upon completion of the load rating analysis. Load restrictions shall be placed on the Bridge as dictated by the load rating report by City and at the expense of City. Any load traversing the Bridge shall not exceed the allowable limits as specified in the load rating report.
- E. City, [through the Development Agreement and the DBA, if applicable,](#) shall obtain written approval from SCDOT prior to engaging in maintenance, repair, or inspection activities on the Bridge from SCDOT right-of-way.
- F. SCDOT shall have the right, but not the duty, to access the Bridge at all reasonable times, without prior notice to City to view all portions of the Bridge for compliance with this Agreement and to notify City of any issues identified.
- G. In the event SCDOT discovers disrepair or deterioration to the Bridge which has not been addressed by City, SCDOT shall have the right, but not the obligation, to notify City of such condition, and to require correction of same within a reasonable time period specified by SCDOT. Significant disrepair or deterioration which could impact or interfere with public safety shall be addressed by City immediately. SCDOT shall have the right, but not the obligation, to perform necessary repairs or maintenance upon the Bridge after reasonable notice to City and a failure of City to correct the issue within the timeframe specified by SCDOT. City shall reimburse SCDOT for all labor and expenses incurred by SCDOT to complete any such repairs or maintenance.
- H. City shall be solely responsible for the prompt repair and cost of any damage to the Bridge caused by vehicle crashes, vandalism, or other acts or omissions by third-parties. City shall be solely responsible for collecting reimbursement for any and all damages from the entity / entities that caused such damage. In an emergency event, SCDOT will take such actions as may be required to protect the travelling public. City shall reimburse SCDOT for any such emergency expenses. SCDOT shall notify City of any emergency activities within 24 hours of their completion.
- I. All repair and rehabilitation work shall be subject to the prior approval of SCDOT and in accordance with its standard design and construction requirements and specifications. The work must be designed and approved by a professional engineer licensed in the State of South Carolina. Records of all repair and rehabilitation work shall be retained by City and shall be subject to inspection by SCDOT. City shall use contractors identified on SCDOT's Contractor Prequalification List for any such work.

XI. LIGHTING

- A. City and/or its agents -shall only install lighting or illumination devices approved in advance by SCDOT. Such lighting shall not shine or direct any light upon the highway right-of-way in any direction in a manner that could cause distraction or impairment to travelers on the highway.
- B. SCDOT shall have the right to remove any unapproved, non-conforming, or improperly installed lighting or illumination devices placed on the Bridge or within the Area of Encroachment. Alternatively, SCDOT may direct City in writing to remove same. If City fails to comply with SCDOT's request within 24 hours, SCDOT shall proceed with removal, which shall be done at City's expense.

XII. OUTDOOR ADVERTISING

City, through the Development Agreement and the DBA, -shall not erect, display, or allow or cause to be erected or displayed any outdoor advertising, including, but not limited to: signs, banners, bridge art, or devices of any kind on the Bridge or Area of Encroachment or within the I-385 right-of-way. To the extent that some portions of the Bridge are outside of SCDOT right-of-way, City must comply with state, federal, and local laws, rules, and regulations pertaining to outdoor advertising.

XIII. CONDITION OF THE AREA OF ENCROACHMENT

City acknowledges that it has examined and is familiar with the condition of the Area of Encroachment, and that no representations as to the condition or repair of the Area of Encroachment have been made to City by SCDOT. SCDOT makes no warranties or representations as to the condition of the Area of Encroachment or the I-385 right-of-way or its fitness for City's intended use. SCDOT shall not be liable to City for any claims or damage occasioned by reason of the condition of the Area of Encroachment during the term of this Agreement.

XIV. ENVIRONMENTAL

City shall be solely responsible for the clean-up of any environmental contamination caused by its use of the Area of Encroachment. City shall not be responsible for contamination existing prior to its occupancy and use of the Area of Encroachment.

XV. PROTECTION OF SCDOT PROPERTY AND FACILITIES

During construction and for so long as the Bridge is located within the Area of Encroachment, City, through the Development Agreement and the DBA, -shall have the obligation to protect SCDOT property and facilities that may be impacted by City's activities or use of the Bridge or Area of Encroachment, and City, through the Development Agreement and the DBA, -shall be responsible for the expense, coordination, and undertaking of measures necessary to repair and restore any damaged property to its prior condition as approved by SCDOT, including the purchase

of new materials where restoration using existing materials is not feasible or consistent with applicable requirements.

XVI. RESPONSIBILITY FOR CLAIMS

- A. Within the limitations of the South Carolina Tort Claims Act, City shall be responsible for any loss resulting from bodily injuries (including death) or damages to property arising out of any negligent act or negligent failure to act on City's part, or the part of any employee of City in performance of the work undertaken pursuant to this Agreement.
- B. Notwithstanding any provision of this Agreement to the contrary, SCDOT shall, within the limitations of the South Carolina Tort Claims Act, be responsible for any loss resulting from bodily injuries (including death) or damages to property arising out of any negligent act or negligent failure to act on SCDOT's part, or the part of any employee of SCDOT in performance of the work undertaken pursuant to this Agreement.

XVII. INSURANCE

- A. City, [through the Development Agreement and the DBA,](#) -shall require all contractors constructing, maintaining, repairing, replacing, reconstructing, or removing the Bridge to comply with the insurance requirements in SCDOT's Standard Specifications, then standard at the time of work.
- B. City, [through the Development Agreement and the DBA,](#) shall require all consultants performing work on or related to the Bridge to indemnify and hold harmless City and SCDOT from claims and liability due to negligent acts of consultants in connection with the Bridge. Consultants shall meet insurance requirements listed in [Attachment-Exhibit "AC,"](#) attached hereto and incorporated herein.
- C. SCDOT, [through the Development Agreement and the DBA,](#) -shall be named as an additional insured on applicable policies, and shall be given the same rights and insurance coverage as normally granted to additional insureds. In the event that any insurer issues a reservation of rights for SCDOT as an additional insured, SCDOT shall be entitled to employ independent counsel, of its choice, at consultant's expense.

XVIII. FUTURE MOVING OF ENCROACHMENT

- A. If it becomes necessary for City to alter or remove the Bridge to accommodate SCDOT's needs for the primary use of I-385 or its expansion, such alteration or removal shall be done at the sole expense of City. If and when the Bridge and its associated approaches and structures must be altered or removed, the highway and facilities shall be immediately restored to their original condition at City's expense.

~~B. In the event it becomes necessary to terminate this Agreement because of a new highway project, City will not be entitled to any relocation or acquisition benefits pursuant to federal or state laws, and City specifically waives any such claims or rights in order to enter into this Agreement.~~

XIX. TERMINATION

- A. SCDOT shall have the right to terminate this Agreement in the event that the Area of Encroachment is necessary for SCDOT's use of I-385 for its primary use as an interstate highway or for future widening purposes.
- B. SCDOT shall have the right to terminate this Agreement if City fails to construct the Bridge, or once constructed, ceases to use the Bridge for the purposes contemplated herein.
- C. SCDOT shall have the right to terminate this Agreement if City fails to fulfill the material terms thereof, and such breach is not corrected or City has not commenced to correct within 15 business days after written notice of non-compliance has been given to City by SCDOT. If City cannot reasonably complete the correction or cure of such breach within the 15 day cure period, City shall be entitled to such additional time as necessary (not to exceed six months unless SCDOT agrees to a longer period in writing) to complete the correction or cure of the breach, provided that City commences correction within the initial 15 day cure period and thereafter pursues completion of the correction with reasonable diligence.
- D. Upon termination of this Agreement, City shall remove the Bridge and restore the Area of Encroachment to its pre-encroachment condition to the satisfaction of SCDOT at City's sole cost and expense.

XX. AGREEMENT SUBJECT TO OTHER RIGHTS

- A. This Agreement is being made subject to any and all existing public utility rights of user, reservations, easements, rights-of-way, control-of-access, zoning ordinances, and restrictions or protective covenants that may appear of record or by an onsite examination of the Area of Encroachment.
- B. SCDOT holds control-of-access (C/A) rights along the I-385 right-of-way. City will be given no access to the Area of Encroachment across the C/A line without prior approval of SCDOT.
- C. It is distinctly understood that this Agreement does not in any way grant or release any rights lawfully possessed by the property owners abutting I-385 or who may own the underlying fee simple interest if SCDOT has only an easement interest. It is City's responsibility to secure any such rights, as may be necessary to construct the Bridge.

XXI. GENERAL TERMS

- A. This Agreement shall take effect upon its execution and shall terminate upon the earlier of: written notification for cause from one Party to the other, or satisfaction of all terms and conditions of this Agreement.
- B. The Parties hereto agree to conform to all applicable SCDOT policies, all State, Federal, and local laws, rules, regulations, and ordinances governing agreements or contracts relative to the acquisition, design, construction, maintenance, and repair of roads and bridges, and other services covered under this Agreement.
- C. The Parties, or their authorized agents, shall agree to hold consultations with each other as may be necessary with regard to the execution of supplements, modifications, or amendments to this Agreement during the course of the Project for the purpose of resolving any unforeseen issues that may arise or items that may have been unintentionally omitted from this Agreement. Such supplements, modifications, or amendments shall be subject to the approval and proper execution of the Parties hereto. No supplement, modification, or amendment to this Agreement shall be effective or binding on any Party hereto unless such supplement, modification, or amendment has been agreed to in writing by the Parties hereto.
- D. Any and all reviews and approvals required of the Parties herein shall not be unreasonably denied, delayed, or withheld.
- E. No waiver of any event of default by a Party hereunder shall be implied from any delay or omission by the other Party to take action on account of such event of default, and no express waiver shall affect any event of default other than the event of default specified in the waiver and it shall be operative only for the time and to the extent therein stated. Waivers of any covenants, terms, or conditions contained herein must be in writing and shall not be construed as a waiver of any subsequent or other breach of the same covenant, term, or condition. The consent or approval by a Party of any act by the other requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act. No single or partial exercise of any right or remedy of a Party hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy.
- F. In the event a dispute or claim in connection with this Agreement shall arise between the Parties, the Parties shall meet in good faith and attempt to resolve any issues prior to taking legal or equitable action. Any lawsuit arising out of or relating to this Agreement shall be filed for non-jury proceedings in Richland County.
- G. All notices and other correspondence will be officially delivered as follows:

As to SCDOT:

SCDOT District Three
Attn.: District Engineering Administrator
252 S. Pleasantburg Dr.
Greenville, South Carolina 29607

As to City:

City of Mauldin

Mauldin, South Carolina

- H. The Parties each bind themselves, their respective successors, executors, administrators, and assigns to the other Party with respect to these requirements, and also agree that no Party shall assign, sublet, or transfer its respective interest in this Agreement without the written consent of the other.
- I. This Agreement is made and entered into for the sole protection and benefit of SCDOT, City, and their respective successors and assigns. No other persons, firms, entities, or parties shall have any rights or standing to assert any rights under this Agreement in any manner.
- J. Invalidation of any one or more of the provisions of this Agreement by a court of competent jurisdiction shall in no way affect any of the other provisions herein, all of which shall remain in full force and effect.
- K. This Agreement may be executed and delivered in counterparts, and if so executed, shall become effective when a counterpart has been executed and delivered by all Parties hereto. All counterparts taken together shall constitute one and the same Agreement and shall be fully enforceable as such. Delivery of counterparts via facsimile transmission or via email with scanned attachment shall be effective as if originals thereof were delivered.
- L. By executing this Agreement, the undersigned each affirm and certify that he or she has the authority to bind his or her principal thereto and that all necessary acts have been taken to duly authorize this Agreement under applicable law.
- M. This Agreement with attached Exhibits and Certifications constitutes the entire Agreement between the Parties. This Agreement is to be interpreted under the laws of the State of South Carolina.

[Signature blocks on next page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on their behalf

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF

CITY OF MAULDIN

Witness

By: _____

Title

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION

Witness

By: _____
Secretary of Transportation

RECOMMENDED BY:

Deputy Secretary for Finance and Administration

Deputy Secretary for Engineering

EXHIBIT A
ADDITIONAL PROJECT DETAILS

~~ATTACHMENT ATTACHMENT A~~
INSURANCE REQUIREMENTS

City, [through the Development Agreement and the DBA,](#) -shall require consultants to take out and maintain as a normal business expense the following insurance policies:

1. Commercial General Liability (CGL) which shall include (Public Liability and Property Damage (PLPD) Insurance) and Completed Operations coverage,
2. Professional Errors and Omissions (E&O) Insurance,
3. Automobile Liability (Auto),
4. Worker's Compensation and Employer's Liability Insurance (Statutory Limits Required), and
5. Pollution Liability Insurance (for those consultants performing environmental services, drilling services, excavation services, or if the project involves the risk of environmental contamination) with coverage in the amount not less than customarily carried by any party in the performance of similar work and in such form and with such insurance carriers as are available to it and acceptable to SCDOT.

Consultant will secure and maintain such insurance as will protect it from:

1. Claims under worker's compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees, and for claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom;
2. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;
3. Claims involving contractual liability insurance applicable to Consultant's obligations under the indemnity provisions of this contract;
4. Claims involving professional liability, to include errors, omissions, or negligent acts in the performance, by Consultant or by any entity for which Consultant is legally responsible, of professional services included in the work.
5. Claims involving information security risks, including without limitation: failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;
6. Claims involving privacy risks, including: failure to properly handle, manage, store, dispose of, destroy, or otherwise control non-public personally identifiable information in any format; loss of, unauthorized access to, or disclosure of confidential information; and any form of invasion, infringement, or interference with rights of privacy, including breach of security/privacy laws or regulations;

Consultant shall purchase and maintain insurance from a company or companies that maintain an A.M. Best rating of not less than A-VII with coverage forms acceptable to City.

Certificates of Insurance acceptable to City will be provided to City prior to execution of this Agreement. These certificates shall:

1. list City and SCDOT as additional insureds under the CGL, PLPD, and Auto policies;
2. contain that the policies have a Per Project Endorsement;
3. reference the Project to which the certificate applies;
4. contain a provision that coverage afforded will not be canceled or reduced until at least 30 days prior written notice has been given to City and that the policies cannot be canceled for non-payment of premiums until at least 10 days prior written notice has been provided to City; and
5. show approved deductible amounts.

Consultant shall maintain continual additional insured status for City and SCDOT for the time period required to satisfy the statute of limitations for South Carolina. Make certain that the policies are endorsed to reflect this requirement. Verification of additional insured status shall be furnished to City by including a copy of the endorsements with the Certificate of Insurance. CGL, PLPD, Pollution Liability, and Auto insurance shall apply as primary and noncontributory insurance with respect to any other insurance or self-insurance programs, including any deductibles afforded to or maintained by City. Consultant's deductibles shall not exceed \$250,000 without written consent of City, and certificates must show the deductible amounts. Consultant shall provide evidence of financial ability to cover the amount of this deductible at the time of execution of this Agreement and for every year thereafter until the insurance obligations set forth herein ends.

Consultant's CGL, PLPD, Pollution Liability, and Auto insurance policies shall contain no provision providing that the limits available to an additional insured are less than the limits available to Consultant. City and SCDOT shall be given all the same rights and insurance coverage as normally granted to additional insureds. In the event that any Insurer issues a reservation of rights for SCDOT as an additional insured, SCDOT shall be entitled to employ independent counsel, of its choice, at Consultant's expense.

There shall be no endorsements or modifications of the CGL limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or work performed by Consultant.

Consultant shall waive its rights against City and SCDOT, other additional insured parties, and their respective agents, officers, directors, and employees for recovery of damages, or any other claims, to the extent these damages are covered by the CGL, PLPD, Auto, and workers' compensation policies maintained pursuant to this section of the Agreement.

After Final Invoice of the work, Consultant shall maintain E&O, CGL, Pollution Liability, and PLPD insurance coverage to include liability coverage for damage to insured's completed work equivalent to that provided under ISO CG 00 01 for three years.

Consultant accepts the responsibility to provide the liability insurance policies and endorsements as specified herein. Failure of City to identify a deficiency in the Certificate of Insurance submitted by Consultant as evidence of the specified insurance or to request other evidence of full compliance with the liability insurance specified shall not be construed as a waiver by City of Consultant's obligation to provide and maintain the required insurance for the duration of the contract.