CITY COUNCIL MEETING

MONDAY, OCTOBER 18, 2021 | 7:00 PM

City Council will meet at 7:00 p.m. in the Mauldin City Hall Council Chambers, 5 East Butler Road

Please note that members of the public are encouraged to participate remotely through Zoom. Please visit the City's website at https://cityofmauldin.org/your-government/meeting-minutes-agendas/ to access the meeting via audio and videoconferencing.

CITY OF MAULDIN
CITY COUNCIL MEETING AGENDA
OCTOBER 18, 2021, 7:00 P.M.
CITY HALL COUNCIL CHAMBERS, 5 E. BUTLER ROAD

1. Call to Order — Mayor Merritt

a. Welcome
b. Invocation
c. Pledge of Allegiance

2. Proclamations and Presentations — Mayor Merritt

a. Rett Syndrome Proclamation [Page 5]
b. Police Officer of the Quarter

3. Reading and Approval of Minutes — Mayor Merritt

a. City Council Meeting – September 20, 2021 [Pages 6- 21]
b. Special Called Council Meeting – October 7, 2021 [Page 22]

4. Public Comment — Mayor Merritt

5. Report from City Administrator — City Administrator Brandon Madden

6. Report from Standing Committees

a. Finance and Policy (Chairperson Reynolds)

b. Public Safety (Chairperson King)

c. Public Works (Chairperson Kraeling)

d. Economic Planning & Development (Chairperson Matney)

e. Building Codes (Chairperson King)

f. Recreation (Chairperson Black)

7. Unfinished Business — Mayor Merritt

Ordinances – 2nd Reading

a. An ordinance to provide for the annexation of property owned by Bo Lac Properties, LLC, and located at 2001 Fork Shoals Road (Tax Map Parcel: 0583.02-01-007.05) by one hundred percent petition method; and to establish a zoning classification of R-10, residential, for said property [Pages 23-40] — Councilor Kuzniar

b. An ordinance to provide for the annexation of property owned by Cojac Whitehorse, LLC, and located at Fork Shoals Road and Union Church Road (Tax Map Parcel: 0583.02-01-007.02) by one hundred percent petition method; and to establish a zoning classification of R-10, residential, and C-2, commercial, for said property [Pages 23-40] — Councilor Kuzniar

c. An amendment to the Mauldin Zoning Ordinance establishing definitions and conditional use standards for thrift stores, consignment stores and like businesses and to establish the zoning districts for which they can locate [Pages 41- 53] — Councilor Kuzniar

8. <u>New Business</u> — Mayor Merritt

Ordinances – 1st Reading

a. An ordinance to provide for the annexation of property owned by Gail C. Frost and Sarah S. Coates, and located at 220 Fowler Circle (Tax Map Parcel: M007.03-01-010.01) by one hundred percent petition method; and to establish a zoning classification of RM-1, residential, for said property [Pages 54-63] — Councilor Kuzniar

b. An ordinance to adopt a revised business license ordinance in accordance with the Business License Standardization Act (2020 Act No. 176) [Pages 64-90] — Councilor Kuzniar

Standing Committee Items

c. Acceptance of Donation of Veteran's Bench [Page 91] — Councilor Reynolds

d. Maintenance Agreement with SC Department of Transportation [Pages 92-114] — Councilor Matney

e. Underground Utilities – City Center Streetscape Project – Phase 1 [Pages 115-117] — Councilor Matney

f. Springfield Park Parking Lot Paving [Pages 118-119] — Councilor Black

g. PARD Grant Amendment [Page 120] — Councilor Black

h. Resolution to Approve a Contract with Pratt Recycling [Pages 121-126] — Councilor Kraeling

i. Acceptance of Body Worn Camera Grant [Pages 127-130] — Councilor King

j. Contract with D&J Productions (Cold Justice) [Pages 131-135] — Councilor King

k. In-Car Video Camera System Use Agreement [Pages 136-139] — Councilor King

l. School Resource Officer Agreement [Pages 140- 162] Councilor King

m. Resolution for Construction Manager [Pages 163-235] Councilor King

9. <u>Public Comment</u> Mayor Merritt

10. <u>Council Concerns</u> Mayor Merritt

11. <u>Adjournment</u> Mayor Merritt

PROCLAMATION

WHEREAS, Rett syndrome is characterized by normal early growth and development, followed by a slowing of development resulting in repetitive hand movements, slowed brain and head growth, problems with walking, seizures, and intellectual disability; and

WHEREAS, children with Rett syndrome have six to eighteen months of apparently normal development before developing severe problems with language and communication, learning coordination, and other brain functions, with more than half of those affected losing their ability to walk; and

WHEREAS, Rett syndrome is almost exclusively found in females and affects an estimated one in 9,000 to 10,000 females; and

WHEREAS, those diagnosed with Rett syndrome require maximum assistance with daily living activities; and

WHEREAS, although there is no cure for Rett syndrome, the disorder is not degenerative and there are a number of treatments that assist with the symptoms of the disorder, such as: regular medical care, medication, physical therapy, occupational therapy, speech-language therapy, nutritional support, behavioral intervention, and support services; and

WHEREAS, continued research is needed to improve lives and eradicate the disease.

NOW THEREFORE, I, Terry Merritt, Mayor of the City of Mauldin do proclaim October 2021 as

RETT SYNDROME AWARENESS MONTH

In the City of Mauldin and encourage its citizens to help raise awareness of the disorder and recognize the individuals, families, and caregivers it affects.

_____

Mayor Terry Merritt

ATTEST:

_____

Cindy Miller, Municipal Clerk

Before the Council Meeting was called to order, a remembrance was held for the 13 service members who died in Afghanistan.

MINUTES
CITY COUNCIL MEETING
SEPTEMBER 20, 2021
7:00 P.M

Council members present: Mayor Terry Merritt, Council members Taft Matney, Carol King, Dale Black, Michael Reynolds, and Diane Kuzniar. Councilman Jason Kraeling participated via Zoom.

Others present: Brandon Madden, City Administrator and John Duggan, City Attorney

1. Call to Order- Mayor Merritt
   a. Welcome- Mayor Merritt
   b. Invocation- Councilman Matney
   c. Pledge of Allegiance- Councilman Matney

2. Proclamations and Presentations
   a. Woodworker's Guild Proclamation- Mayor Merritt read the proclamation.
   b. Constitution Week Proclamation- Mayor Merritt presented the proclamation.

3. Reading and Approval of Minutes
   a. City Council Meeting August 16, 2021

      Motion: Councilman Matney made a motion to approve the minutes with Councilwoman King seconding the motion.

      Vote: The vote was unanimous (7-0).

   b. Special Called Council Meeting- August 16, 2021

      Motion: Councilwoman King made a motion to approve the minutes with Councilman Matney seconding the motion.

      Vote: The vote was unanimous (7-0).

   c. Special Called Council Meeting-August 18, 2021

      Motion: Councilman Black made a motion to approve the minutes with Councilman Reynolds seconding the motion.

      Vote: The vote was unanimous (6-0). Councilwoman Kuzniar did not vote as she was not present at the meeting.

d. Special Called Council Meeting – September 13, 2021

Motion: Councilman Black made a motion to approve the minutes with Councilwoman King seconding the motion.

Vote: The vote was unanimous (7-0).

4. Public Comment

a. Melanie Giles: I am representing Bluewater Civil Design at 718 Lowndes Hill Road. I wanted to address item b, the ordinance to rezone property consisting of approximately 12.5 acres located at Ashmore Bridge Road and Fork Shoals Road. I would ask you to table this item for several months which will give us time to study the market for larger commercial tracts and find out what should go at the intersection.

b. Mark Steenback: I live at 24 Trailstream Drive in Mauldin. First off, I would like to thank the committee for passing along the recommendation as it was. We would like to operate a thrift store here in Mauldin. We operate a clean, safe store. I encourage you if you haven't to go out to the end of Butler on Woodruff Road and come see our store there. We are donor and shopper friendly. We represent Habitat for Humanity, and we see 900 people a day, so we know we have to put our best foot forward.

We don't put boxes out. Our expectations- we honestly expect to see another 700-900 people at this location. We will generate enough in the first year to pay for the construction of two new homes, and we expect in the next three years to generate enough revenue for five homes. We will provide the citizens of Mauldin access to new and used furniture, appliances, flooring, tools, construction and other items. We divert waste- three million pounds were diverted from the landfill last year. That will save the City money and time. We anticipate creation of 15 jobs, and maybe 25 in the future. We want to continually raise the bar. We are constantly told that our stores do not look like thrift stores, and that is exactly what we are after. I humbly ask Council to continue the path they have been on so far and pass what is proposed. Thank you.

c. Monroe Free: Good evening. My address is 602 Rosebud Lane in Greer. I am the guy that gets blamed if something goes wrong with Habitat. I am here to tell you who we are and why we do what we do. If you look at our mission statement, it says Habitat builds homes, communities, and hope. We are about to embark on our 400th home here in Greenville County. We do build homes. Jimmy Carter made us famous for that. We also do repairs and weatherization on homes. This year we will do about 50. We just finished one on a Veteran's home here in Mauldin. We believe homes are important; they are foundations for families to grow from.

We also build communities. We make our communities better. 68% of our families tell us their kids perform better in school. If you look at what makes communities better- public participation. Our families- 80% of our families voted in the last election.

Finally, we build hope. You will hear from one of our families later. We provide hope for people with low incomes. They get to own their own home and all the residual effects of that. We guarantee each family will pay less than 30% of their income in housing. That means they have money for medicine, extracurriculars at school; it is transformational. That is how our program works.

Of all the issues we face, the worst is the lack of affordable housing. Everyone is talking about it. Greenville County said we are 12,000 units short of affordable housing and we have a crisis. If you look at what Simpsonville and Greer have done; they have made investments because they feel that affordable housing is the key to the growth in our communities. It amazes me that you are having a discussion that basically is going to limit the ability of the leading agency in the affordable housing to do more. It is a time to do more, and you should be encouraging agencies, groups and other developers to do more affordable housing. Please look at this and give us the opportunity to raise more revenue so we can provide more affordable housing.

d. Glenda Fair: Good evening, thank you for the opportunity to speak. I also happen to be Chairman of the Board for Habitat. I would like each of you to think about the question, "What is your why?" I asked myself that question. Oftentimes, I find that my why is service, and volunteering is the tool that I use to accomplish this task. However, my reason for sharing tonight gives me an opportunity to glimpse back to 2018. A young, 90-year-old woman from Brooklyn, New York, asked family and friends to help her relocate to her home state of South Carolina. This young 90-year-old New Yorker had no children and was the last in a family of eight brothers and sisters. Why is my service. I was asked to assist in finding a place to live and given the task of furnishing these quarters.

A retired educator has a modest income on which to survive, and certainly never has extra financing for moving and furnishing an apartment. Finding a place to stay was relatively easy. Furnishing this studio apartment was more daunting. I researched my options and Habitat Restore won with flying colors. I was able to furnish this apartment with furniture that said love and welcome home. Ladies and gentlemen, Habitat for Humanity Restore is a place where people trust that their memories will give others pleasure. This 90-year-old New Yorker felt right at home. Now with her small budget, she is able to bring cherished pictures and many lifetime achievement awards in the field of education. Ladies and gentlemen, Habitat Restore filled the gap. I hope you understand that this not only benefited the young ladies like our 90-year-old New Yorker, but benefits residents of the City of Mauldin. Residents working, playing, making an economic impact in the town they live in. May I also note an added bonus to employees that work and live with Habitat, the opportunity to work in the City they live, which also helps with the regentrification problem. I could go on and on about the numerous benefits of Habitat, but I won't.

I want you to think about your why and what you discovered in my comments that should be important. How can this information used to benefit this great City of Mauldin and allow Habitat to partner in the success? How can we benefit the City of Mauldin? Thank you so much for your time.

e. Kevin Conway: Good evening. I am Kevin Conway and work for Wheeler Real Estate, the current owner of the Bi-Lo shopping center. My address is 3209 Hartford Way in Weddington, NC. I would like to give everyone a little background on our company. We are a publicly traded group. We have about 65 grocery anchored buildings from Washington, DC to Tampa, Florida. We have relationships with almost every grocery store in the southeast. We have 16 Food Lions, 7 Kroger, 5 Lowes Food, 3 Publix, 2 Winn Dixies and others. We have been marketing this box since we heard it was closing,

about six months, and we have thrown out many incentives to get someone to come to Mauldin. We also reached out to over 100 businesses such as Hobby Lobby, Ross, TJ Maxx, Marshall's, Lidl, Aldi, Whole Foods, Bell's Outlet, Harbor Freight Tools, and we are not getting anyone. We have also analyzed splitting the space. That is something we have done. The cost to split the box is close to a million dollars.

Bi-lo's lease doesn't expire for two more years. We don't want to have a dark tenant and it is not good for the community or our customers. At the end of the day, we have to do what is in the best interest of our investors. Habitat would be a good tenant and is a well-respected operator. We have had Habitat in other shopping centers and the communities like what they do. Also, I want to mention we pay about $152,000 a year in taxes. We have paid Greenville County about $900,000 in taxes over the last six years.

f. Randall Bentley: I don't get called Mr. very often, so thank you for that. I am here to support Habitat, number one. I also am representing them on the lease here. I am a commercial real estate broker that has been selling Mauldin since 1976. I can't tell you how many projects I have been involved in inside the City of Mauldin, but let me turn your attention to one. We have brought development here that is now under construction totaling 900,000 square feet of space. To this point, in those four projects, we have landed four new businesses, 110 employees, we are negotiating now and planning 80 more. The Mayor was gracious enough to meet with a company that is thinking about coming here and occupying 300,000 square feet. It is a bigger picture. I hope you will accept the proposal and resolution that is there.

The original 200-foot setback seems excessive when the City has industrial zoning that allows 25 foot setbacks even near residential properties. It seems a little inconsistent especially when it involves an existing business. It looks like you are changing the rules after they have invested millions of dollars.

The use is retail as it is selling goods to the public. It is not wholesale. And, by the way, it was mentioned S1. You can't do what they do in S1 in the City of Mauldin. You would be ruling out almost in any form them moving to the City of Mauldin. I am not real sure that is the message you want to send. If you look at these properties we are talking about, every one of them is class A industrial projects and they are good for exposure to 385, which is one of your major corridors.

The last thing I would say is we wouldn't want to look like we are changing the rules in the middle of the game for people who have already invested here. There is not a problem here, and I have sat in a little bit of your chairs. I was Chairman of the Greenville Planning Commission and on the commission for six. I know you want quality. We all do.

g. Dennis Raines: It is good to be back here, and I commend you on what you did with these flags. I live at 305 East Butler Road. I have been with Habitat going on seven years and if they keep me, I will stay another 8 months, 13 days, 4 hours, 19 minutes, and 3 seconds, and then I will join the ranks of Mr. Merritt and Mr. Black, called retirement.

Overreaching decisions can sometimes have unintended consequences. There were two thrift stores, and there is now one. A few years back, I remember cleaning up the sign ordinances, and I think we did thirteen amendments. Later, there was a code in place and all the businesses had to come into compliance. I believe that is your intent, and working with this one business can

probably help put a similar code in place and not eliminate an entire segment of businesses. Again, overreaching decisions compound unintended consequences. I appreciate, and I am sure you do too, Mr. Dyrhaug's research on this. Page 24- Growth of Industry- thrift and other second-hand stores are growing on a national basis both in number and in popularity. Prior to Covid-19, the industry was growing at a rate of 7%. The appeal is growing beyond low-income households to include middle and upper income. Thrift store shopping has also spread to younger shoppers, who find the lower prices sensible, but also speak to the uniqueness and quality of the items sold.

Overreaching decisions can sometimes have unintended consequences. I have known some of you for quite some time, and you might say, "Yeah, I know," and I don't believe it is your intent to deny Habitat to locate in what we consider to be one of the premiere locations to providing citizens with affordable housing. This is for those who might wait your table, service the rooms at the new Marriott, or check you out at a retailer. These folks, like Amanda, who will speak, have a dream of owning homes also. Unintended messages. Here is a headline- "Mauldin City Limits Thrift Shops, Delaying Planned Restore in Bilo shopping center." The headline in tomorrow's paper can read this- "Last night Mauldin Voted against their Planning Commission and in doing so, show that they are against affordable housing." Here is our preferred headline- "Mauldin City Council unanimously voted last night to support the ongoing efforts of Habitat for Humanity providing affordable housing throughout our County by allowing Habitat to open a Restore."

Habitat hopes and desires that you will vote to agree with the Planning Commission and join us and them in continuing the efforts to provide affordable housing in Greenville County. I thank you for the jobs that you do. I am very familiar with them.

h. Amanda Piper: I am Amanda Piper, and I am a Habitat homeowner. I live at 18 Ferdlee Reid Drive. A quick story on what Habitat means to me and how it is impacted our lives. Grace, my daughter, and I came to Habitat of Greenville in 2017 from a bad relationship with a husband that did drugs. We came to the point where we had to make a hard decision- to leave and provide what I could for my daughter. One day we left everything, and it was a sad day. Grace was 2 years old. In this day and age, trying to provide for my daughter on one income was difficult. A close friend came alongside to help me and we got an apartment together. It was a two bedroom, two bath apartment where we lived together for three years. We shared everything and Grace and I slept in the same room on a trundle bed.

Realizing that Grace was growing up, I started thinking about the future and getting help. I got really discouraged because everywhere I turned there was nothing available. I looked up Section 8 housing, HUD housing, and everyone was on a waiting list. So, I stopped, and I prayed for days and asked the Lord to help me. At that time, I felt like I should try one more place. Habitat for Humanity of Greenville was the place I should try. I put in an application and within two weeks I got an email to come in for an interview. Every step was a challenge in what I was willing to do for Grace to have a home. This was about a two-year process from beginning to end. We started building my house in September 2019 and we were able to move in March of 2020, just two weeks before Covid hit. What a blessing.

I have a three bedroom, two bath house that my daughter saw our family and friends coming together to help us build. That is not something you can ever teach. In those moments we could see the hand of the Lord providing for us. It is like the world stopped and gave us hope and love, which is something I personally never expected to happen to us. This is truly a blessing, and I can

now provide for my daughter. I have a mortgage that I can afford without going into debt, and the confidence to provide a bedroom Grace doesn't have to share and a place that we can all call home that brings us closer together as a family. I have a neighborhood with families that have different stories, but we all have one thing in common- Habitat of Greenville was the answer to our prayers. We are all family now thanks to Habitat.

i. Joseph Law: Good evening. I am a 20-year resident of Greenville County. I want to talk about annexation and state law with the 1994 Planning Enabling Act. From what I see, it appears the annexation step, the rezoning step is being abbreviated with annexation in Mauldin. I am not educated on the whole process, but I have read the Enabling Act and it is pretty clear how the annexation in the City allows a lack of any public hearing to be held. There is one specific example close to my home. We have R12 housing all around and Mauldin came in an annexed and decided to put 100 homes on 14 acres. This is completely counter to the existing Greenville County zoning. I do understand that Mauldin has its own zoning, but there was no public hearing and I feel that is being missed here.

   I do feel also there is a conflict of interest purely because you have this developer that decides what it is going to be without community input. The City is doing a good job when it comes to rezoning, but specifically to annexation, it appears there is some steps missing. The 1994 Planning Enabling Act is pretty clear in Section 7, there is no exemption to annexation.

5. Report from City Administrator

   Mr. Madden thanked the departments for their help on the BBQ festival this past weekend. Councilman Matney asked Mr. Madden for a list of the winners and what they cooked for the Anything Butt competition. Mr. Madden answered the list will be provided.

6. Report from Standing Committees

   a. Finance and Policy (Chairperson Reynolds)- Chairman Reynolds reported there are 4 items coming out of committee tonight.

   b. Public Safety (Chairperson King)- None

   c. Public Works (Chairperson Kraeling)- Chairman Kraeling thanked the department for the help with the BBQ festival.

   d. Economic Planning & Development (Chairperson Matney)- None

   e. Building Codes (Chairperson Kuzniar)- None

   f. Recreation (Chairperson Black)- None

7. Unfinished Business

Ordinances- 2nd Reading

a. An ordinance to rezone property consisting of approximately 1 acre located at 227 E. Butler Road (tax map parcel: M004.02-01-010.00) and providing an effective date. This property is across the street from CVS Pharmacy on East Butler Road.

Motion: Chairwoman Kuzniar made a motion to accept this ordinance on final reading. Councilman Black seconded the motion.

Vote: The vote was 6-1 with Councilman Matney dissenting.

b. An ordinance to rezone property consisting of approximately 12.5 acres located at Ashmore Bridge Road and Fork Shoals Road (portions of tax map parcel: 0411.00-01-001.00) and providing an effective date

Motion: Chairwoman Kuzniar made a motion to table this ordinance. Councilman Matney seconded the motion.

Vote: The vote was unanimous (7-0).

c. Consideration of an Ordinance related to the Fire Department (Committee of the Whole)

Motion: Councilman Matney made a motion to consider this ordinance informally. Councilman Reynolds seconded the motion.

Vote: The vote was unanimous (7-0).

Motion: Chairwoman King made a motion to pass this ordinance on second reading. Councilman Matney seconded the motion.

Chairwoman King reported this is the current headquarters for our fire department. We are in the process of building a new headquarters on West Butler Road.

Councilman Reynolds would like for the City to hang on to the property for now and look at it at a later date because it is in our front yard.

Vote: The vote was unanimous (6-1) with Councilman Reynolds dissenting.

8. New Business

Ordinances – First Reading

a. An ordinance to provide for the annexation of property owned by Bo Lac Properties, LLC, and located at 2001 Fork Shoals Road (Tax Map Parcel: 0583.02-01-007.05) by one hundred percent

petition method; and to establish a zoning classification of R-10, residential, for said property

Motion: Chairwoman Kuzniar made a motion to accept this ordinance on first reading. Councilman Black seconded the motion.

Councilman Kraeling said this property is RS. Changing the zoning to R10 would mean going from one home per 25,000 square feet to one home per 10,000 square feet. He said that is a lot of homes and thinks until SCDOT improves Ashmore Bridge Road, the zoning is too dense.

Vote: The vote was 6-1 with Councilman Kraeling dissenting.

b. An ordinance to provide for the annexation of property owned by Cojac Whitehorse, LLC, and located at Fork Shoals Road and Union Church Road (Tax Map Parcel: 0583.02-01-007.02) by one hundred percent petition method; and to establish a zoning classification of R-10, Residential, and C-2, Commercial, for said property

Motion: Chairwoman Kuzniar made a motion to accept this ordinance on first reading. Councilman Black seconded the motion.

Vote: The vote was 6-1 with Councilman Kraeling dissenting.

c. An amendment to the Mauldin Zoning Ordinance establishing definitions and conditional use standards for thrift stores, consignment stores and like businesses and to establish the zoning districts for which they can locate

Motion: Chairwoman Kuzniar made a motion to accept this ordinance on first reading. Councilman Matney seconded the motion.

Councilman Matney said he would like to get the discussion back on track. Somehow talking about Mauldin's future has changed into Mauldin having a target on the back of an incredibly worthwhile charity. He is a huge fan of what Habitat does. The bravery of Ms. Piper to come forward should be congratulated. This is not about Habitat for Humanity, but Habitat's Restores are in the County, not in a City, nor do they abut a central business district. This is about looking at Mauldin's future. This was in process before Habitat came up. Council worked very hard putting a MCIP together and City Center village. We understand what we need to do to attract the retail businesses we have. The City has been very intentional in this process, and he would like to go back to the original ordinance before the planning commission made their changes that includes distance separations.

The City has been a leader in affordable housing in Greenville County. We worked with GCRA on the development at Miller and Old Mill, there is a project across the street from Mutt's at East Butler, and there will be a project behind South State bank. We want to make sure that people have an affordable place to live, but we also have to balance that with economic development. Councilman Matney believes the original version should be considered the way it was before the planning commission made changes and will make a motion to that end.

Chairwoman Kuzniar said there is one thrift store near our City Center. While not technically a thrift store, Bin Time sells items at $5.00 and less and is also located in the central corridor. She suggests that we use the original version with the 200-foot separation, and the store shall be

located within a multi-tenant shopping center. In addition, she would also like to implement a separation of one mile from any other thrift store, as was done with small box variety stores.

Motion: Chairwoman Kuzniar made a motion to amend the motion to revert back to the original version with the addition of the 200-foot separation, along with adding the multi-tenant shopping center, and the one-mile separation from other thrift stores. Councilman Matney seconded the motion.

Councilwoman King said Council represents the City. She has talked to the residents and believes we have an economic need for stores such as the Restore. She thinks it has been presented that the stores are different than a stereotypical thrift store. She shops these stores and has friends who do as well and will not support an amendment that will eliminate this store from the City.

Councilman Black said he has been to the Restore on Woodruff Road, and it is very clean and a worthwhile project. The draft ordinance presented did not include a separation requirement from existing stores. He believes it will put a hardship on Habitat and will support them.

Councilman Reynolds clarified that the two items that the Planning Commission took out would be added back in. This came out of Planning Commission unanimously. Mayor Merritt answered yes, and also a one-mile separation from other thrift stores would be added.

Councilman Matney reminded everyone that this amendment is regarding thrift and consignment stores. Restore is different from other thrift stores, but there are other stores that don't apply the same standards. Without protections in place, we leave the door open for the others. Despite all the discussions and terse conversations, he reached out and asked if we could find another location for Restore in the City. There is nothing here that would prevent Restore from coming into the City of Mauldin, just not in the central business district. Mr. Bentley talked about the Class A industrial, those are not abutting the CBD either. They don't fit the character. As we continue to build downtown, these guidelines need to be in place.

We have antiquated zoning that was great twenty years ago. The Council has its foot on the gas with economic development. We need to look at a comprehensive zoning overhaul.

Chairwoman Kuzniar agreed with Councilman Matney. She is not against Habitat coming into Mauldin. We are trying to protect City Center from thrift stores.

Councilwoman King said the representative for the property mentioned they reached out to over 100 retailers to try to bring someone else into the center. With that effort, we have Habitat that wants to come to Mauldin, and this text amendment would preclude them from locating in the old Bilo. She would welcome Habitat there, rather than having a vacant building. She respects Mr. Matney and is excited about City Center, but cannot support an amendment to stop Habitat from locating there.

Mayor Merritt said he is invited to meetings with developers on projects, and then he goes home and looks at the vision of City Center. He wasn't in favor of it several years ago because he didn't understand it. It has now been presented in a way that he understands it and wholeheartedly supports City Center. The vision is to reinvent Mauldin. It will not happen

overnight, but it has started. We do have industrial corridors, but they do not back up to residential areas. They don't need buffers.

When he grew up in Mauldin, there was Sky City, the Kmart plaza, Bilo, Ingles… strip malls from the 70s and 80s, which are now a detriment to developers. They see it as an old City not doing anything. Maverick Station on the corner shows that we are doing something. We have a broker for our fire station headquarters who wants to do something before we even get out of the building. Developers want to see that we are serious about modernizing. We brought up text amendment overlays four to five years ago, but got sidetracked. This will bring us forward to developers and show the potential to modernize the City. He is not against Habitat.

Mayor Merritt said he is a member of Habitat and has participated in building homes. The first thing he did was reach out to Habitat when he heard some residents may be displaced by the widening of East Butler Road. We can't build workforce housing en masse because that adds to the low-income portfolio that developers have seen in Mauldin. It has taken six years to turn that around and say no, we are an upper middle-class community. We want to make it better. We need workers for hotels and restaurants, and we are planning for that. Mercy Housing is near Mutt's. That is 45 units. The development at Old Mill and Miller is 16 units. They were full as soon as they got their occupancy permit. The vision said we have to clean this up and put text amendments in place to get to our vision.

Councilman Reynolds said this is growing pains. He appreciates all the work done by the committee and planning commission and appreciates the passion shown.

Vote: The vote on the amendment to the motion was done by roll call. Councilman Matney- yes, Councilwoman King- no, Councilman Kraeling- yes, Councilman Reynolds- no, Councilman Black- no, Councilwoman Kuzniar- yes, Mayor Merritt- yes. The amendment passed 4-3.

City Attorney Duggan interjected and said that because the planning commission had recommended a different version, a super majority of Council was needed to overrule the commission. Mr. Dyrhaug said he had talked earlier with Daniel Hughes, Mr. Duggan's partner, and he said because part of the ordinance recommended by the planning commission was still being considered, a super majority was not needed. Amendments to the ordinance are permitted.

Councilwoman King asked Mr. Duggan about the one-mile separation since that was not part of any discussion by the planning commission. Mr. Duggan said he is concerned about that. The amendment includes items that were not part of the recommendation. The commission has not considered this part at all and the public has not had the opportunity to discuss this at the commission level.

Mayor Merritt asked if the one-mile separation could be removed so that the Council could continue. Mr. Duggan said yes, then he would not have a concern.

Motion: Councilman Matney made a motion to remove the one-mile separation from consideration. Chairwoman Kuzniar seconded the motion.

Vote: The vote was unanimous (7-0).

Motion: Chairwoman Kuzniar made a motion to amend the amendment to strike the one mile separation provision. Councilman Matney seconded the motion.

Vote: The vote to strike the one-mile provision was unanimous (7-0).

Vote on the amended motion to add the 200-foot separation and the multi-tenant shopping center provision was : Councilman Matney- yes, Councilwoman King- no, Councilman Kraeling- yes, Councilman Reynolds- no, Councilman Black- no, Councilwoman Kuzniar- yes, Mayor Merritt- yes. The amendment passed 4-3.

The vote on the motion as amended was: Councilman Matney- yes, Councilwoman King- no, Councilman Kraeling- yes, Councilman Reynolds- no, Councilman Black- no, Councilwoman Kuzniar- yes, Mayor Merritt- yes. The motion passed 4-3.

Standing Committee Items

d. Corporate Memberships

Motion: Chairman Black made a motion to update the fee schedule for corporate memberships to 30+ memberships = $350.00 per year -15+ memberships = $400.00 per year -10+ memberships = $450.00 per year. Councilman Reynolds seconded the motion.

Councilwoman Kuzniar asked after the first year of the company paying for their residents to join the Sports Center, does the rate go back to what the City residents pay?

Mr. Bart Cumalander said to get the corporate membership, there has to be a certain number of people join. If it is an individual, it would go back to the regular rate.

Councilwoman King said this is an item that we have discussed for a while. It is her understanding that a discounted rate for corporations would help us recruit more members.

Councilman Reynolds asked if there is a way to track when the corporate memberships would start. Mr. Cumalander said yes, there is.

Councilwoman Kuzniar said our residents are paying much more and she has a problem with that even though she knows what we are trying to do. She doesn't believe it is fair to our residents. Some of the corporations' employees may not even live in Mauldin, but they get a really discounted rate versus what our citizens pay.

Mayor Merritt said these are annual paid memberships. There is an annual membership available for residents, and it is not far from the number. Mr. Cumalander said the numbers are about the same.

City Attorney Duggan brought up the point that a neighborhood is not a corporation. Councilman Matney said most neighborhoods have an HOA, which is a corporate entity.

Chairman Black said the residents that joined through the company paying their memberships should be told up front that after the one year expires, they are responsible for paying the full amount if they want to continue the membership.

Mr. Cumalander said that can be done. The Sports Center is unique. No other municipality has a facility like this. We are just trying to sell it and bring in more members.

Councilwoman King said Council needs to set rates for corporate memberships and let staff can work out the details as to when the time expires and how to track the memberships.

Vote: The vote was unanimous (7-0).

e. Upfit of Police Cars

18 Ford Explorers were budgeted and there is a cost associated for up-fit with police equipment.

Motion: Chairwoman King made a motion to award the bid for upfitting the police vehicles to Unique Lighting Solutions. Councilman Reynolds seconded the motion.

Vote: The vote was unanimous (7-0).

f. Department of Juvenile Justice Agreement

Motion: Chairwoman King made a motion to adopt the resolution to enter into a MOA with SCDJJ for juvenile detention services. Councilman Black seconded the motion.

Vote: The vote was unanimous (7-0).

g. Purchasing Policy Amendment

Motion: Chairman Reynolds made a motion to adopt the resolution to establish a policy providing that only the Mayor, the Mayor Pro-Tem, and the City Administrator with the express written authority of the Council may execute contracts or other documents that obligate the City financially or otherwise and prohibit department heads and all other City employees from executing such documents. Councilwoman King seconded the motion.

Councilman Matney said he understands the intent of the policy but is concerned this will tie department heads' hands. He feels this policy may be going a little too far and worries we may have to come back and change the policy again.

Councilman Black asked if the Mayor could refuse to sign a contract if he doesn't approve of it. He is concerned that the policy says Mayor and Council. City Administrator Madden said no, the way it is set up is a majority of Council will give the Mayor the authority to sign a contract. John Duggan suggested that the wording be changed from "Mayor and Council" to add majority vote. Mayor Merritt suggested it could be changed to majority vote of the Mayor and Council.

Motion: Chairman Reynolds made a motion to amend the motion to insert the words by majority of the Mayor and Council. Councilwoman King seconded the motion.

Councilwoman King said this is just to clarify the policy that has been in place by custom and practice. This action just puts it in writing in the procurement policy.

Councilman Matney asked if department heads would still have the ability to make purchases under $5,000. John Duggan said all he was asked about was contracts. Mr. Madden said this makes clear that if there is an agreement to be executed, the City's legal counsel reviews the contract. The City Administrator has the express written authority of Council to spend up to $15,000.00. The City Administrator must obtain the express written authorization of the Mayor and Council for any expenditure in excess of $15,000.00 or before entering into any agreement which otherwise obligates the City.

John Duggan said the City is tightening up policies to prevent people acting to obligate the City.

Mayor Merritt said he thinks we are getting confused between purchase orders and contracts. Councilman Matney quoted section 3 of the resolution, "The City Administrator has the express written authority of Council to spend up to $15,000.00. The City Administrator must obtain the express written authorization of the Mayor and Council for any expenditure in excess of $15,000.00 or before entering into any agreement which otherwise obligates the City." The "or" provides for the contract, the preceding language provides for purchase orders. There is no mechanism for department heads to spend up to $5,000 if need be and he would like that included in the resolution.

The Mayor reminded Council that a vote needed to be taken on inserting the words "by majority of the Mayor and Council."

Vote: The vote was unanimous (7-0).

Vote on the motion as amended to adopt the resolution establishing a policy providing that only the Mayor, the Mayor Pro-Tem, and the City Administrator with the express written authority of the Council may execute contracts or other documents that obligate the City financially or otherwise and prohibit department heads and all other City employees from executing such documents and amended "by majority of the Mayor and Council", and amending section 6 to change the language from will be terminated to may be terminated.

Motion: Councilman Matney made a motion to amend the motion to insert a section after section 3 stating department heads may spend up to $5,000 for budgeted items as currently defined in procurement policy and renumber sections appropriately. Councilwoman Kuzniar seconded the motion.

Councilman Matney said we currently have the common practice to trust our department heads to be able to spend up to $5,000 and he doesn't want to take away from that especially if they need to move quickly on something.

Councilwoman King said she thinks we are getting away from what the amendment is for- which is contracts. This is for contracts only, not general spending.

Vote: Councilman Matney- yes, Councilwoman King- no, Councilman Kraeling- yes, Chairman Reynolds- no, Councilman Black- no, Councilwoman Kuzniar- yes, Mayor Merritt- yes. The amendment passed 4-3.

Vote: The vote on the motion as amended was 5-2 with Chairman Reynolds and Councilwoman King dissenting.

h. City Phone Service Provider

Motion: Chairman Reynolds made a motion to approve transitioning to Segra from VC3 to the provision of Voice over Internet Protocol (VOIP) services for the City's phones. Councilwoman King seconded the motion.

Councilman Black asked if the City would be getting new phones or still using the old equipment. Mr. Madden said the City would be receiving new phones. Councilman Black then asked if it would be compatible with the City's computers. Mr. Madden answered there will be no issues. Councilwoman Kuzniar asked if we knew how much the taxes and fees would be. Ms. Abercrombie said she would check into that and get back with Council. The estimated fiscal impact is approximately $1,341.73 per month. The current payment to VC3 is approximately $4,232.85 per month.

Vote: The vote was unanimous (7-0).

i. American Recovery Plan Act

Motion: Chairman Reynolds made a motion to approve a Resolution designating an authorized representative and contact person for the purposes of the American Rescue Plan Act of 2021. Councilwoman King seconded the motion.

Vote: The vote was unanimous (7-0).

1. Covid 19 Prevention & Mitigation Efforts:
    a. Ventilation Improvements $548,000
    b. Aid small businesses through GCRA $125,000
    c. Aid households/populations disproportionately impacted (through GCRA) $125,000
2. Responding to workers performing essential work during pandemic:
    a. Payroll and covered expenses $399,146
    b. Premium pay to frontline workers $840,000
3. Revenue Recovery for the Loss associated with pandemic:
    a. Revenue Loss calculated $1,782,989
4. Investments in Water, Sewer, and Broadband Infrastructure
    a. Sewer related projects and equipment $1,375,000
    b. Stormwater investments $1,129,724

Total of the first tranche $6,324,859

Motion: Chairman Reynolds made a motion to approve the recommended spending plan for the first tranche of the Coronavirus Recovery Funds made available through the American Recovery Plan Act. Councilwoman King seconded the motion.

Vote: The vote was unanimous (7-0).

j. FY 2022 Initiatives

Motion: Chairman Reynolds made a motion to use surplus funding of $2.2M for FY2021 for capital expenditures. Councilwoman King seconded the motion.

Vote: The vote was unanimous (7-0).

k. Carolina Piedmont Railroad Reimbursement Agreement

Motion: Chairman Matney made a motion to approve the Carolina Piedmont Railroad (CPDR) reimbursement agreement for traffic safety improvements at the railroad crossing at the Jenkins St. and Miller Rd. intersection and the future railroad crossing for extending Jenkins St. to Hyde Circle. Councilman Black seconded the motion.

Vote: The vote was unanimous (7-0).

l. Resolution- Cost Reimbursement Agreement

Motion: Chairman Matney made a motion to approve the reimbursement agreement with the Parker Group for improvements made to the property at 1 East Butler Road. Councilwoman King seconded the motion.

Vote: The vote was unanimous (7-0).

m. Resolution- Multi- County Industrial Park

Motion: Chairman Matney made a motion to approval of a Resolution to add additional properties into the CenterPointe MCIP (Multi-County Industrial Park). Councilwoman King seconded the motion.

Vote: The vote was unanimous (7-0).

n. Amendment to Lease Agreement

Motion: Chairman Matney made a motion to approve amendment to the lease agreement with Pop's Cabin Creamery. Councilwoman King seconded the motion.

Vote: The vote was unanimous (7-0).

9. Public Comment

Rollie Hyust: I live at 104 Swinton Drive. I live in the city limits of Mauldin, and I will only take 30 minutes of your time. The City has done a wonderful job in maintaining their roads with projects done over the years because we are growing. The State is not doing their fair share. They are really hurting the City of Mauldin. We have a problem on our state roads. They are really bad. McMaster and the SCDOT are dragging their feet. They have $900 million in a fund plus surplus funds and they are drawing interest. The interest is going into the general fund. It is deep pockets for the politicians. We have to do something to get the State to do something about the roads in the City of Mauldin. We take Corn Road to Miller Road, go up Miller to Jenkins, and it is deteriorating before our eyes. There is no way that road can maintain the traffic. I can't get out of my road at 5:00 p.m. The four-way stop is there. I can't get out of my neighborhood. I can if someone gives me the courtesy of making a left hand turn or lets me in traffic.

The road is deteriorating. In front of the new place and the glass company, in the Spring it is not going to be there. Or if it is there, how will the fire department or police department be able to make their calls? Ashmore Bridge Road is deteriorating. If something happens on Ashmore Bridge Road, like a catastrophe on the golf course, my goodness, it will create a catastrophe. All I can say is please go to the State and beg, borrow, and steal, whatever you have to do to get them to do something on the State roads. Thank you.

10. Council Concerns- Councilman Matney thanked Council for the solid, respectful discussions held tonight, even though Council may not agree on all the issues.

Mayor Merritt agreed. There are a lot of exciting things happening in the City and we are moving forward. There are ongoing discussions with SCDOT on how we need to work together to keep up with our growth. There is progress being made. He appreciates all the hard work from everyone.

11. Adjournment- Mayor Merritt adjourned the meeting at 10:15 p.m.

Respectfully Submitted,

Cindy Miller
Municipal Clerk

MINUTES
CITY OF MAULDIN
SPECIAL CALLED CITY COUNCIL MEETING
OCTOBER 7, 2021, 6:00 PM
CITY HALL - COUNCIL CHAMBERS 5 E. BUTLER ROAD

Members present: Mayor Terry Merritt, Council members Taft Matney, Jason Kraeling, Dale Black, and Diane Kuzniar. Councilman Michael Reynolds and Councilwoman Carol King were not present for the Call to Order, but did attend the executive session.

Others present: City Administrator Brandon Madden, HR Director Mark Putnam

1. Call to Order- Mayor Merritt
   a. Invocation- Councilman Matney
   b. Pledge of Allegiance- Councilman Matney
   c. Welcome- Mayor Merritt

2. New Business
   a. Motion to enter into Executive Session for consideration of a personnel matter regarding the Police Department as allowed by State Statute Section 30-4-70 (a)(1)

      Motion: Councilman Matney made a motion to go into executive session. Councilman Black seconded the motion.

      Vote: The vote was unanimous (5-0).

      Mayor Merritt reconvened the meeting at 7:21 p.m. Councilwoman King reported no decisions were made and no action taken.

   b. Possible action on items discussed in Executive Session- None

3. Council Requests- Councilman Matney asked that everyone keep Sgt. Turner's family in their thoughts and prayers.

4. Adjournment- Mayor Merritt adjourned the meeting at 7:23 p.m.

Respectfully Submitted,
Cindy Miller
Municipal Clerk

CITY COUNCIL
AGENDA ITEM

MEETING DATE: October 18, 2021

AGENDA ITEM: 7a & 7b

TO: City Council

FROM: Business & Development Services Director, David C. Dyrhaug

SUBJECT: Annexation of Property at Fork Shoals Rd and Union Church Rd
***** 2nd READING *****

	TRACT #1 (2001 Fork Shoals Rd)	**TRACT #2 (corner of Fork Shoals Rd & Union Church Rd)**
AUTHORIZED REP(S):	SVN Blackstream Bluewater Civil Design, LLC	SVN Blackstream Bluewater Civil Design, LLC
OWNER(S):	**Bo Lac Properties, LLC**	**Cojac Whitehorse, LLC**
TAX MAP NUMBER(S):	0583.02-01-007.05	0583.02-01-007.02
LOCATION:	2001 Fork Shoals Rd	Corner of Fork Shoals Rd & Union Church Rd
CURRENT ZONING:	R-S (County)	R-S (County)
REQUESTED ZONING:	R-10, Residential	R-10, Residential & C-2, Commercial
SIZE OF PROPERTY:	Approx. 16 acres	Approx. 16 acres
CONTIGUITY:	These tracts are directly contiguous to the Chestnut Ridge subdivision which was annexed into the City of Mauldin on February 18, 2019, with an additional 62 acres annexed into the City of Mauldin on January 19, 2021.	

REQUEST

The City of Mauldin has received signed petitions requesting the annexation of two tracts of land consisting of two parcels pursuant to South Carolina Code of Laws Section 5-3-150. These petitions include approximately 16 acres owned by Bo Lac Properties, LLC, located at 2001 Fork Shoals Road, and approximately 16 acres owned by Cjoac Whitehorse, LLC, located at the corner of Fork Shoals Road and Union Church Road. The applicant has requested that these tracts be zoned R-10 Residential, with a C-2 Commercial 2.8-acre outparcel upon annexation into the City of Mauldin.

The applicant plans to expand the Chestnut Ridge subdivision, which is currently under development, onto both of these tracts totaling approximately 32 acres. Chestnut Ridge is already approved for 529 single-family detached homes, 43 single-family attached homes, and a commercial outparcel along Fork Shoals Road. This annexation will enable the applicant to improve the access to the Chestnut Ridge subdivision by creating a new entrance aligned at the intersection of Fork Shoals Road and Reedy Fork Road. This annexation will also enable the applicant to expand the Chestnut Ridge development project by adding approximately 139 single-family detached homes as well as a 2.8-acre commercial outparcel at the intersection of Forks Shoals Road and Union Church Road. The price-point for homes is expected to average in the high-$200s and up.

UTILITIES AND SERVICES

All utilities are available including water and sewer. ReWa has a main line that runs along the Reedy River and the developer has already acquired the necessary easements to tie into this line. The City of Mauldin anticipates owning and maintaining new sewer lines constructed as part of any development project on these tracts. Approvals for sewer will be required before any proposed development is approved.

This tract is currently located in in the South Greenville Fire District. The South Greenville Fire District has a station located approximately ¼ from Union Church Road. This tract is currently outside the 5-mile driving distance to the nearest Mauldin fire station required for the City's stellar ISO rating to be applied to homes that will be constructed on this tract. On February 18, 2019, the City Council approved an automatic aid agreement with the South Greenville Fire District that will trigger fire response to this tract from the South Greenville Fire District.

PLANNING AND ZONING

About the R-10 District

The R-10 zoning designation is a medium density residential district intended to provide single-family living and also encourage diverse functioning neighborhoods that may include various types of residential development with the purpose of providing a balanced and attractive residential area.

R-10 Zoning allows a minimum 10,000-square foot lot (comparable density of 4.4 units per acre)

Comprehensive Plan Analysis

This property is beyond the planning area delineated in the Future Land Use Map of the Comprehensive Plan. However, similar areas mingled among residential areas typically depict low- to medium-density residential future land uses.

Surrounding Development/Zoning

These properties are surrounded by the following zoning and land uses:

Direction	Zoning District(s)	Existing Use(s)
North	R-12 (County)	Undeveloped land
South	R-S (County)	Rural residential land
East	R-10 (City)	Chestnut Ridge subdivision
West	R-12 (County)	Harrington subdivision

Property Values

The homes in this project are projected to sell at an average in the high-$200's and up. This range will be consistent or above the average price of home sales in adjacent communities over the last couple of years. See below.

Community	2020		2021	
	No. of Sales	Avg. Price	No. of Sales	Avg. Price
Harrington*	104	$233,550	111	$261,017
Meadow Ridge	1	$126,000	1	$145,000
Lynndale†	1	$89,900	1	$58,500
Shoals Crossing	8	$197,675	6	$221,666

* Harrington is a brand new community that began selling homes in 2020

† Lynndale is a mobile home community

TIMELINE

In August, 2021, staff received the signed petition for the annexation of this tract.

On September 7, 2021, the Building Codes Committee forwarded this matter to the City Council with a recommendation of approval.

On September 20, 2021, the City Council approved this ordinance on first reading.

FISCAL IMPACT

Based on the information available, staff projects that this addition to the Chestnut Ridge project, inclusive of this annexation, will have a positive fiscal benefit to the City (projected revenue of $146,378 compared to a project cost of $138,620). This analysis is based on the following factors:

- Net Addition of Homes: 139
- Average price-point: $275,000 and up
- New streets: Publicly owned and maintained
- New sewer: Owned and maintained by the City of Mauldin

This analysis does not include the positive fiscal benefit expected for the commercial outparcel at the corner of Fork Shoals Road and Union Church Road. The commercial outparcel will bring additional revenue in terms of property taxes and business license fees, among other revenue.

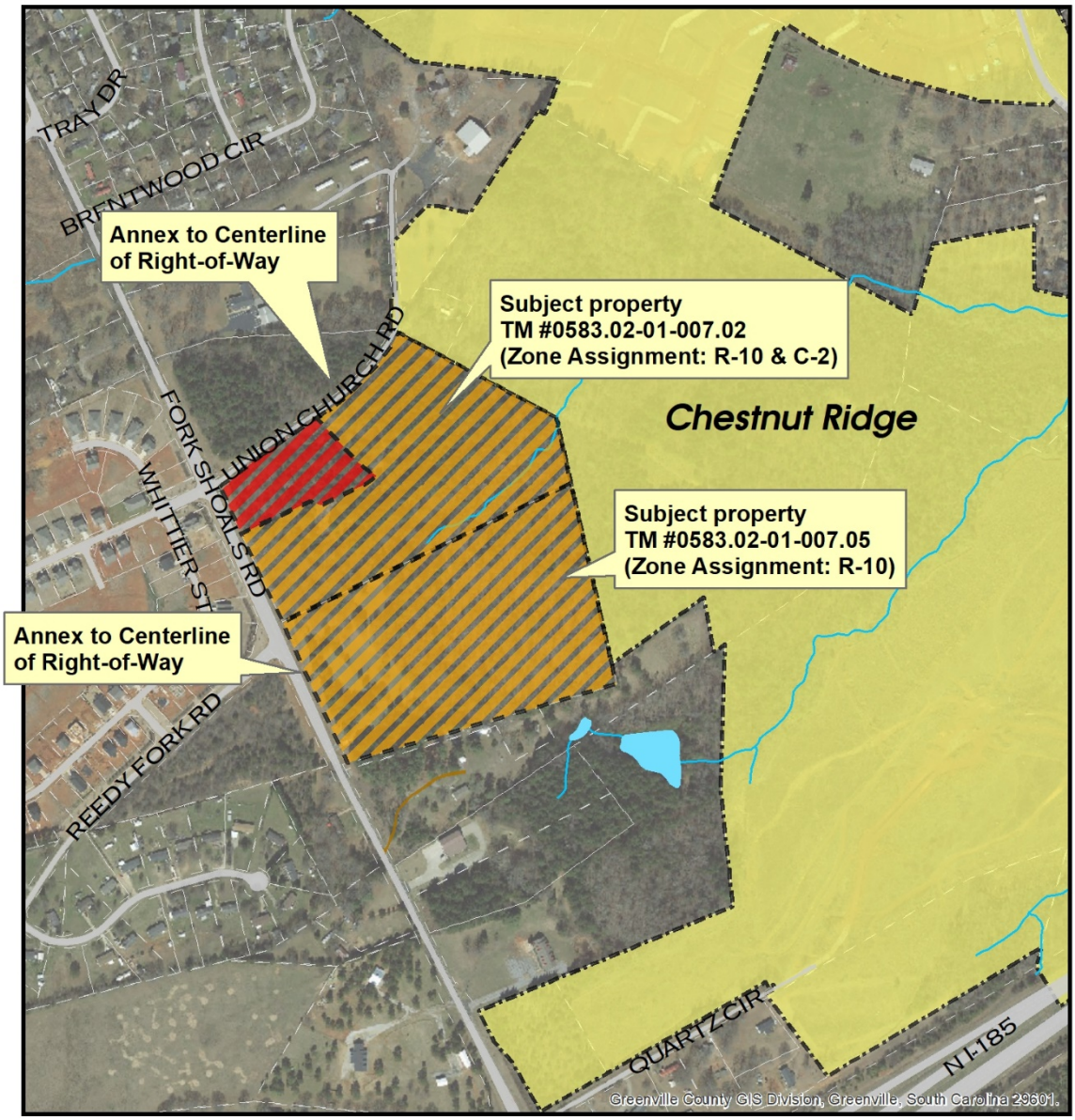
RECOMMENDATION

Consider approval of second reading of this ordinance.

ATTACHMENTS

Annexation Ordinance (maps and petitions attached therein)

Fork Shoals Rd at Union Church Rd Annexation Map



Legend

Subject Property **City Limits**

C-2 Portion — MAULDIN

R-10 Portion — Parcel

N

Feet

0 500

Created on September 2, 2021

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ORDINANCE _____-2021

AN ORDINANCE TO PROVIDE FOR THE ANNEXATION OF PROPERTY OWNED BY BO LAC PROPERTIES, LLC, AND LOCATED AT 2001 FORK SHOALS ROAD (TAX MAP PARCEL: 0583.02-01-007.05) BY ONE HUNDRED PERCENT PETITION METHOD; AND TO ESTABLISH A ZONING CLASSIFICATION OF R-10, RESIDENTIAL, FOR SAID PROPERTY

WHEREAS, Bo Lac Properties, LLC, is the sole owner of record title of a parcel of real property containing 16 acres, more or less, located at 2001 Fork Shoals Road, which property is contiguous to the City of Mauldin and is more particularly illustrated in Exhibit 1 attached hereto; and,

WHEREAS, an Annexation Petition, attached hereto as Exhibit 2, has been filed with the City of Mauldin by Bo Lac Properties, LLC, requesting that the aforementioned property be annexed into the City of Mauldin; and,

WHEREAS, the property to be annexed is contiguous to the City of Mauldin, and is more particularly depicted in Exhibit 1 attached hereto; and,

WHEREAS, Bo Lac Properties, LLC, constitutes one hundred (100%) percent of freeholders owning one hundred (100%) of the real property depicted in Exhibit 1 attached hereto; and,

WHEREAS, the proposed zoning of R-10, Residential, is compatible with the surrounding property uses in the area; and,

WHEREAS, the Mayor and Council conclude that the annexation is in the best interest of the property owner and the City;

NOW, THEREFORE, be it ordained by the Mayor and Council of the City of Mauldin that:

1. ANNEXATION: The real property owned by Bo Lac Properties, LLC, and more particularly depicted in the map attached hereto marked as Exhibit 1, is hereby annexed into the corporate city limits of the City of Mauldin effective immediately upon second reading of this ordinance.

2. ANNEXATION OF A PORTION OF ADJACENT RIGHTS-OF-WAY: All of that portion of Fork Shoals Road along the edge of and adjoined to the annexed property shown on the attached Exhibit to the centerline of the afore-mentioned right-of-way is also hereby annexed into the corporate limits of the City of Mauldin effective immediately upon second reading of this ordinance.

3. ZONING ASSIGNMENT: The above referenced property owned is hereby zoned R-10, Residential.

_____
Terry Merritt, Mayor

ATTEST:

_____
Cindy Miller, Municipal Clerk

First Reading: _____

Second Reading: _____

Approved as to Form:

_____
City Attorney

EXHIBIT 1 – ANNEXATION MAP

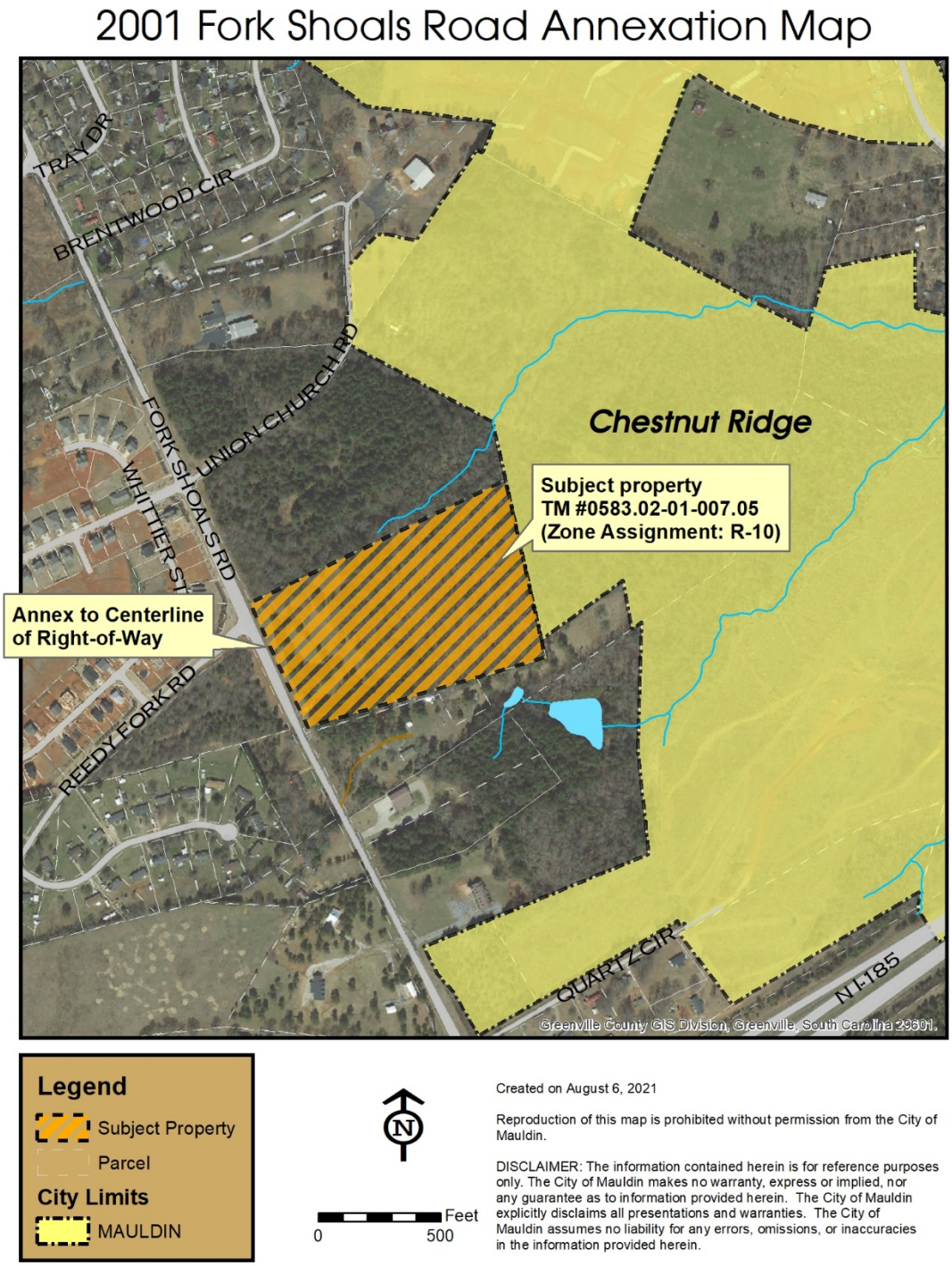


EXHIBIT 2 – PETITION

PETITION FOR ANNEXATION OF REAL PROPERTY OWNED BY BO LAC PROPERTIES LLC, AND LOCATED AT 2001 FORK SHOALS ROAD INTO THE CITY OF MAULDIN BY ONE HUNDRED PERCENT (100%) METHOD

Petitioner, Bo Lac Properties LLC, is the sole owner [freeholder owning one hundred (100%) percent of the assessed value of real property in the area proposed to be annexed] of a parcel of real property in Greenville County containing approximately 16 acres, more particularly described in the property description attached hereto marked as Exhibit A, and the Property Map attached hereto marked as Exhibit B.

Petitioner hereby petitions to annex their property consisting of 16 acres, which is contiguous to the City of Mauldin, into the corporate limits of the City of Mauldin. Petitioner also hereby petitions to assign their property the zoning classification of R-10, Residential, as depicted in Exhibit C attached hereto, on the Official Zoning Map of the City of Mauldin.

This Petition is submitted to the City of Mauldin pursuant to the provisions of S.C. Code §5-3-150(3) authorizing the City Council to annex an area by the one hundred percent (100%) method.

This Petition is dated this 12th day of August, 2021, before the first signature below is attached.

The Petitioner requests that the tract described above and shown on the attached Exhibit A be annexed into the corporate city limits of the City of Mauldin and assign the tracts the zoning classification of R-10, Residential, as depicted in Exhibit C attached hereto.

August 12th, 2021
Date

BO LAC PROPERTIES, LLC

The undersigned represents that he/she has authority to bind this entity to this petition, and no other signatures are needed.

By: Robert C Collins

Name: ROBERT C COLLINS

Title: OWNER

Witness

Witness

EXHIBIT A

PROPERTY DESCRIPTION

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as Tract "C", containing 16.50 acres, more or less, on Fork Shoals Road, upon a plat of survey prepared for R.C. Collins, Jr., Richard Todd Collins, John Waldrop Collins, Tracey C. Jackson, Jeffrey Scott Collins, Robert Calhoun Collins, Samuel B. Rouse, Lois C. Rouse and Gary Linda Upchurch by Thomas P. Dowling, PLS, dated February 12, 2001, and recorded in the Office of the Register of Deeds for Greenville County, SC in Plat Book 43-X at Page 18; reference to said plat of survey being hereby made for a more complete metes and bounds description thereof.

TAX MAP #0583.02-01-007.05

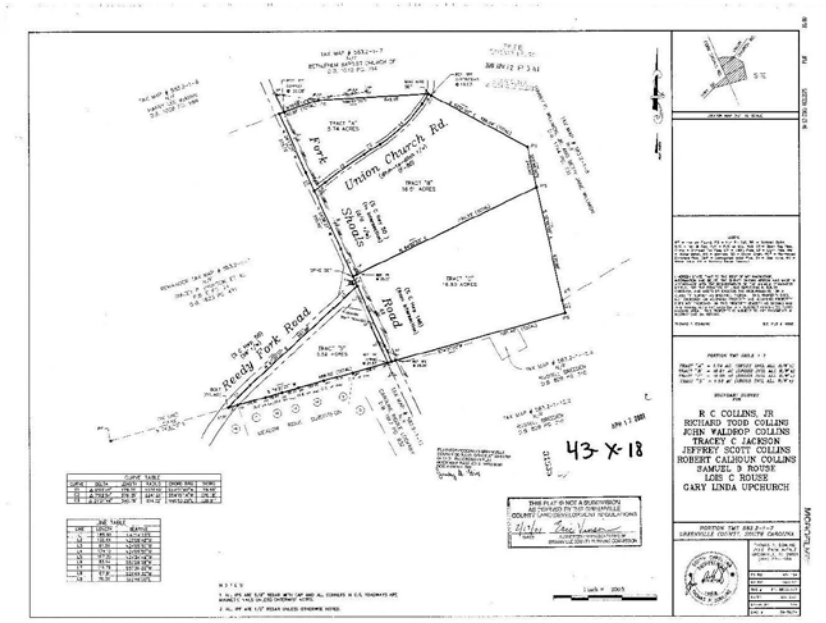
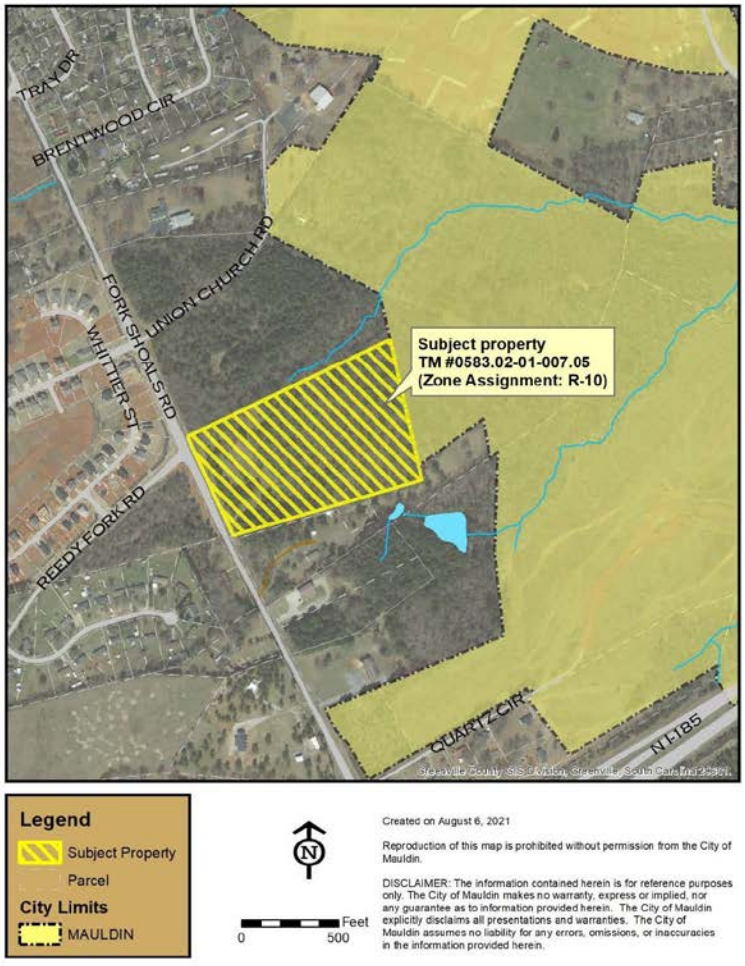


EXHIBIT B

PROPERTY MAP



Legend

Subject Property

Parcel

City Limits

MAULDIN

N

0 500 Feet

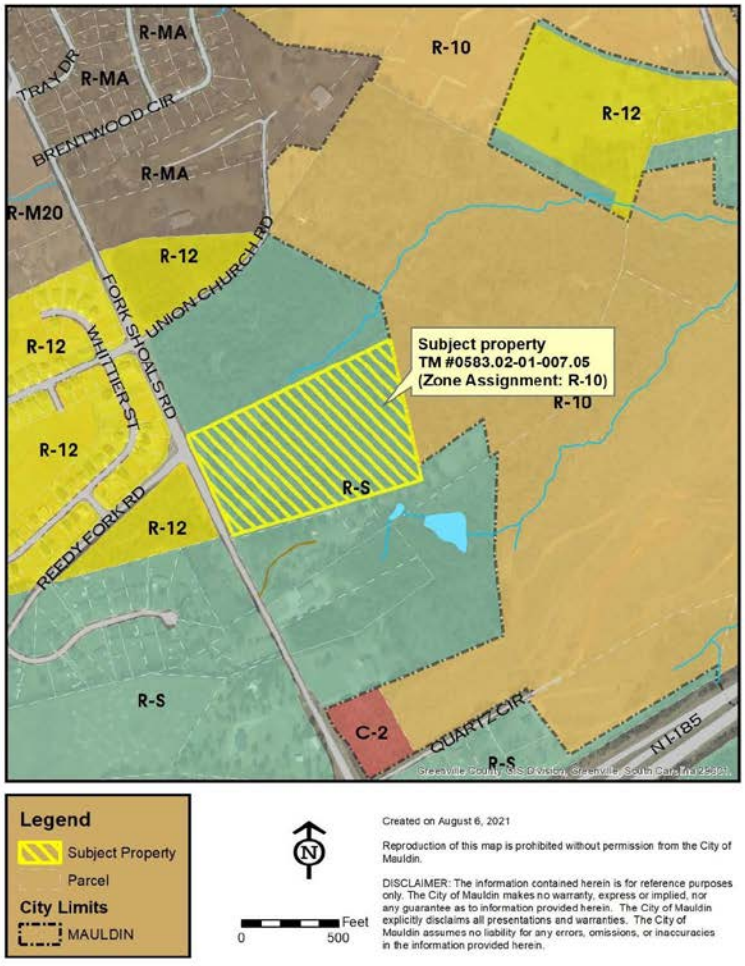
Created on August 6, 2021

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EXHIBIT C

ZONING MAP



Legend

Subject Property

Parcel

City Limits

MAULDIN

N

0 Feet 500

Created on August 6, 2021

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ORDINANCE _____-2021

AN ORDINANCE TO PROVIDE FOR THE ANNEXATION OF PROPERTY OWNED BY COJAC WHITEHORSE, LLC, AND LOCATED AT FORK SHOALS ROAD AND UNION CHURCH ROAD (TAX MAP PARCEL: 0583.02-01-007.02) BY ONE HUNDRED PERCENT PETITION METHOD; AND TO ESTABLISH A ZONING CLASSIFICATION OF R-10, RESIDENTIAL, AND C-2, COMMERCIAL, FOR SAID PROPERTY

WHEREAS, Cojac Whitehorse, LLC, is the sole owner of record title of a parcel of real property containing 16 acres, more or less, located at the intersection of Fork Shoals Road and Union Church Road, which property is contiguous to the City of Mauldin and is more particularly illustrated in Exhibit 1 attached hereto; and,

WHEREAS, an Annexation Petition, attached hereto as Exhibit 2, has been filed with the City of Mauldin by Cojac Whitehorse, LLC, requesting that the aforementioned property be annexed into the City of Mauldin; and,

WHEREAS, the property to be annexed is contiguous to the City of Mauldin, and is more particularly depicted in Exhibit 1 attached hereto; and,

WHEREAS, Cojac Whitehorse, LLC, constitutes one hundred (100%) percent of freeholders owning one hundred (100%) of the real property depicted in Exhibit 1 attached hereto; and,

WHEREAS, the proposed zoning of R-10, Residential, and C-2, Commercial, is compatible with the surrounding property uses in the area; and,

WHEREAS, the Mayor and Council conclude that the annexation is in the best interest of the property owner and the City;

NOW, THEREFORE, be it ordained by the Mayor and Council of the City of Mauldin that:

1. ANNEXATION: The real property owned by Bo Lac Properties, LLC, and more particularly depicted in the map attached hereto marked as Exhibit 1, is hereby annexed into the corporate city limits of the City of Mauldin effective immediately upon second reading of this ordinance.

2. ANNEXATION OF A PORTION OF ADJACENT RIGHTS-OF-WAY: All of that portion of Fork Shoals Road along the edge of and adjoined to the annexed property shown on the attached Exhibit to the centerline of the afore-mentioned right-of-way is also hereby annexed into the corporate limits of the City of Mauldin effective immediately upon second reading of this ordinance.

3. ZONING ASSIGNMENT: The above referenced property owned is hereby zoned R-10, Residential, and C-2, Commercial, as depicted in the attached petition.

_____
Terry Merritt, Mayor

ATTEST:

_____
Cindy Miller, Municipal Clerk

First Reading: _____

Second Reading: _____

Approved as to Form:

_____
City Attorney

EXHIBIT 1 – ANNEXATION MAP

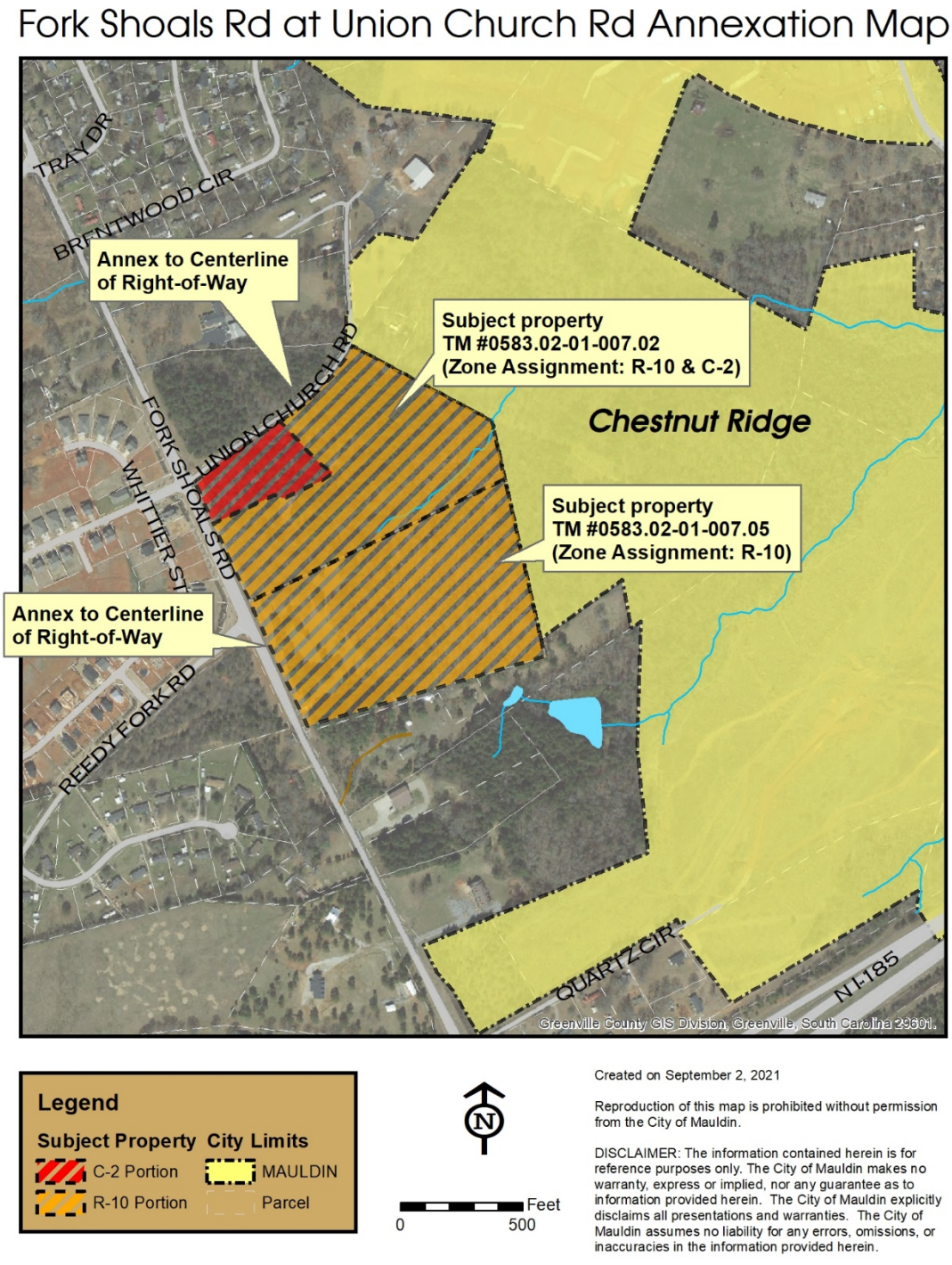


EXHIBIT 2 – PETITION

PETITION FOR ANNEXATION OF REAL PROPERTY OWNED BY COJAC WHITEHORSE LLC, AND LOCATED AT THE SOUTHEAST CORNER OF FORK SHOALS ROAD AND UNION CHURCH ROAD INTO THE CITY OF MAULDIN BY ONE HUNDRED PERCENT (100%) METHOD

Petitioner, CoJac Whitehorse LLC, is the sole owner [freeholder owning one hundred (100%) percent of the assessed value of real property in the area proposed to be annexed] of a parcel of real property in Greenville County containing approximately 16 acres, more particularly described in the property description attached hereto marked as Exhibit A, and the Property Map attached hereto marked as Exhibit B.

Petitioner hereby petitions to annex their property consisting of 16 acres, which is contiguous to the City of Mauldin, into the corporate limits of the City of Mauldin. Petitioner also hereby petitions to assign their property the zoning classification of R-10, Residential, and C-2, Commercial, as depicted in Exhibit C attached hereto, on the Official Zoning Map of the City of Mauldin.

This Petition is submitted to the City of Mauldin pursuant to the provisions of S.C. Code §5-3-150(3) authorizing the City Council to annex an area by the one hundred percent (100%) method.

This Petition is dated this 3rd day of September, 2021, before the first signature below is attached.

The Petitioner requests that the tract described above and shown on the attached Exhibit A be annexed into the corporate city limits of the City of Mauldin and assign the tracts the zoning classification of R-10, Residential, and C-2, Commercial, as depicted in Exhibit C attached hereto.

September 3, 2021
Date

COJAC WHITEHORSE, LLC

The undersigned represents that he/she has authority to bind this entity to this petition, and no other signatures are needed.

By: _____
Witness

Name: John W. Collins

Title: Member

_____
Witness

EXHIBIT A

PROPERTY DESCRIPTION

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as Tract "B", containing 16.51 acres, more or less, on Fork Shoals Road, upon a plat of survey prepared for R.C. Collins, Jr., Richard Todd Collins, John Waldrop Collins, Tracey C. Jackson, Jeffrey Scott Collins, Robert Calhoun Collins, Samuel B. Rouse, Lois C. Rouse and Gary Linda Upchurch by Thomas P. Dowling, PLS, dated February 12, 2001, and recorded in the Office of the Register of Deeds for Greenville County, SC in Plat Book 43-X at Page 18; reference to said plat of survey being hereby made for a more complete metes and bounds description thereof.

TAX MAP #0583.02-01-007.02

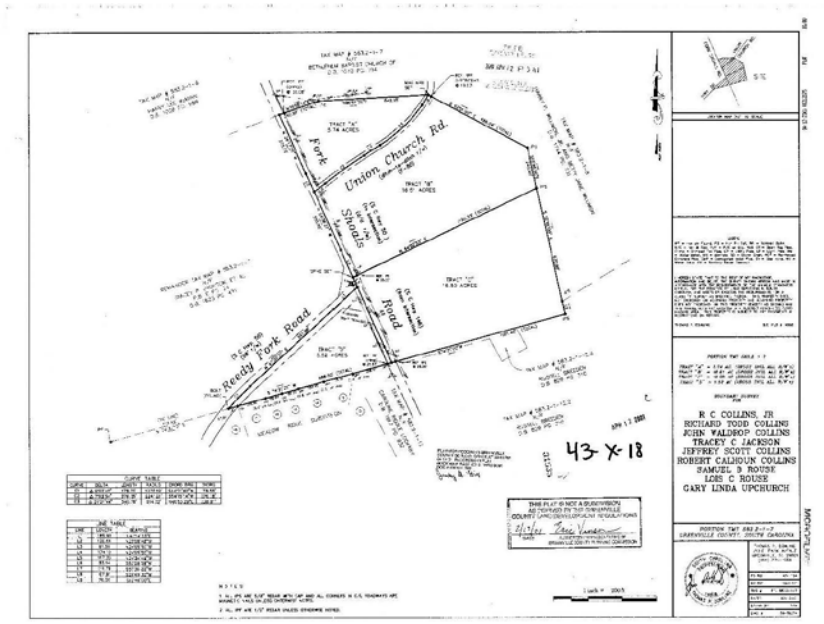
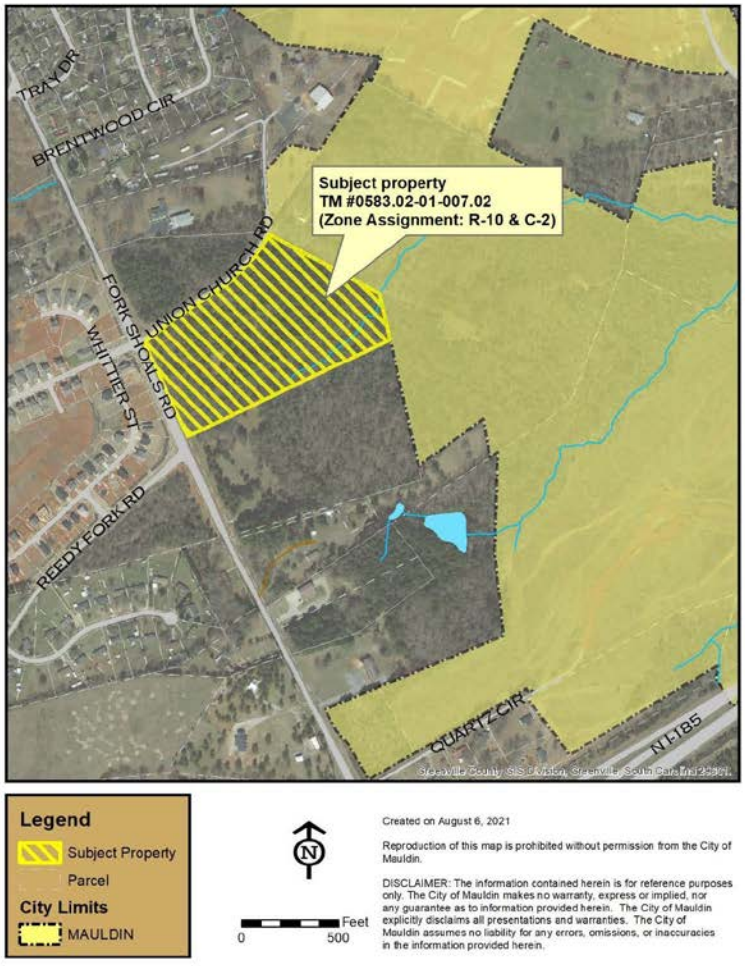


EXHIBIT B

PROPERTY MAP



Legend

Subject Property

Parcel

City Limits

MAULDIN

0 500 Feet

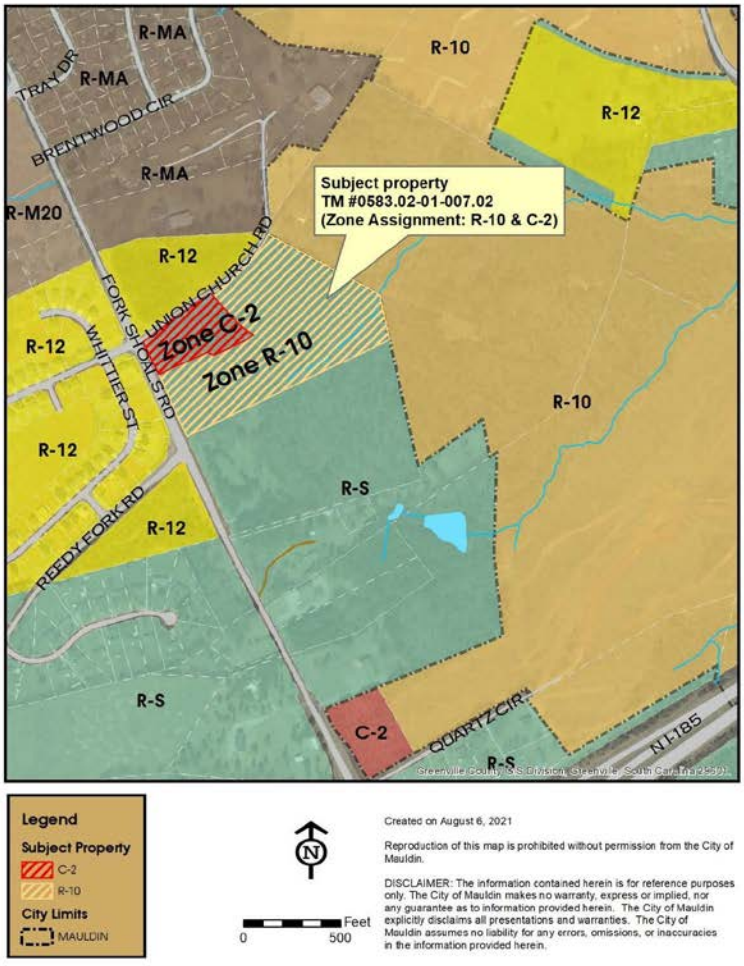
Created on August 6, 2021

Reproduction of this map is prohibited without permission from the City of Mauldin.

DISCLAIMER: The information contained herein is for reference purposes only. The City of Mauldin makes no warranty, express or implied, nor any guarantee as to information provided herein. The City of Mauldin explicitly disclaims all presentations and warranties. The City of Mauldin assumes no liability for any errors, omissions, or inaccuracies in the information provided herein.

EXHIBIT C

ZONING MAP



CITY COUNCIL
AGENDA ITEM

MEETING DATE: October 18, 2021

AGENDA ITEM: 7c

TO: City Council

FROM: Business & Development Services Director, David C. Dyrhaug

SUBJECT: Text Amendment to Mauldin Zoning Ordinance regarding Thrift and Consignment Stores
***** 2nd READING *****

BACKGROUND

On July 19, 2021, the Mauldin City Council approved a resolution requesting the Planning Commission to consider amending the zoning ordinance to limit the number of thrift stores allowed in the City' commercial districts and to conduct a public hearing.

One of the findings in the resolution passed by City Council is that "additional thrift stores in the City of Mauldin may be inconsistent with the objectives of the zoning ordinance to protect the quality and appearance of the properties in commercial zoning districts."

CURRENT REGULATION

Currently, thrift stores and consignment stores are included in the general category of retail sales as provided in the Mauldin Zoning Ordinance. As such, they are allowed in the C-1 (light commercial), C-2 (general commercial), CRD (central redevelopment), and S-1 (trades and commercial services) districts. There are presently no special use standards for thrift stores and consignment stores outside of the general standards for parking, landscaping, signs, building design, and other general district standards.

Presently, staff has knowledge of 6 thrift or consignment stores in the City of Mauldin. These include:

- Miracle Hill Thrift Store @ 114 W. Butler Road
- Kids & More @ 206 New Neely Ferry Road, Ste. E
- Déjà vu @ 202 N. Main Street
- Rainbow Paints and Home Décor @ 102 E. Butler Road
- The Dress @ 103 E. Butler Road, Ste. D
- Blue and Gold Macaw @ 1601 Woodruff Road, Ste. D

Please note that the Salvation Army Family Store at 122 S. Main Street has permanently closed.

RESEARCH

City staff has searched for and reviewed a handful of communities across the nation that provide special regulation or standards for thrift stores and consignment stores. In South Carolina, staff only identified one community with special standards: the City of Florence. Staff has found and researched the following communities with special regulations or standards:

- Albertville, Minnesota
- Belleville, Illinois
- Burnsville, Minnesota
- Columbia Heights, Minnesota
- Escondido, California
- Florence, South Carolina
- Indian Trail, North Carolina
- Madison, Alabama
- Minneapolis, Minnesota
- Olathe, Kansas
- Pompano Beach, Florida
- Redondo Beach, California
- San Clemente, California

COMMUNITY FINDINGS

Below are the findings that some of the communities listed above have made in their study of thrift stores and consignment stores.

- ***Incompatible Operations.*** Some communities have found that thrift and secondhand goods stores operate in a manner that is not directly compatible with typical commercial establishments. Specifically, these communities find that the receipt of used goods, the processing of used goods, the warehousing and distribution of goods, and the disposal or recycling of non-saleable goods and materials is closer to industrial and waste-related land use characteristics than traditional retail characteristics. Some communities have expressed concerns that the operation of motorists waiting in line to donate items can have adverse effects on traffic circulation and congestion. (*see City of Albertville*)

- ***Adverse Aesthetic Impacts.*** Some communities have found that thrift and secondhand goods stores can have an adverse impact on the appearance of the community. This is primarily attributed to donations left outside, unsightly donation boxes, and the outdoor storage and/or display of merchandise. Some communities have expressed concerns that this adversely affects the City's ability to attract and retain businesses and shoppers. (*see City of Escondido, City of Madison, and City of San Clemente*)

- ***Variety of Business Types.*** Communities have found that thrift and secondhand goods store definitions generally encompass a broad variety of businesses including antique shops, consignment shops, pawnshops, collectibles, specialty thrift stores, and general merchandise secondhand stores. Definitions generally include both for-profit and non-profit establishments. (see *City of Albertville*).

- ***Growth of Industry.*** Thrift and secondhand goods stores are growing on a national scale, both in number and in popularity. Prior to COVID-19, this industry was growing at an annual rate of 7

percent. Additionally, the appeal of thrift store shopping is growing beyond low-income households to include middle- and upper-income households. Thrift store shopping has also increased in popularity with younger shoppers who not only find the lower prices to be sensible but are also attracted to the uniqueness and quality of the items sold. (*see City of Albertville*)

TYPES OF REGULATION

Below are the types of regulations that staff identified while researching various communities that intentionally regulate thrift and secondhand goods stores.

REGULATION TYPE	SPECIFIC STANDARDS	COMMUNITIES
Prohibition in Certain Districts	Thrift stores are prohibited in neighborhood commercial districts and downtown districts	*Escondido, Madison*
Limitation on Number of Licenses	The number of licenses is limited to no more than 10 licenses that can be issued throughout the entire city	*Burnsville*
Separation Requirement	New thrift stores must be located at least [750/1,000/3,000/5,280] feet from any existing thrift store	*Columbia Heights, Florence, Olathe, Redondo Beach*
Separation from Residential Uses	New thrift stores must be separated by at least 200 feet from any residential property	*Olathe*
Location in Shopping Center	The thrift store must be located in a building that contains spaces dedicated to at least two other non-thrift store businesses.	*Florence*
Size Restriction	Thrift stores are only permitted if they do not exceed 2,500 square feet	*Albertville*
Prohibition of Outdoor Collection and Storage	The outdoor receipt or storage of secondhand goods or donations is strictly prohibited. The receipt of goods, processing of goods, and disposal of unusable or unsaleable goods must be entirely conducted in an enclosed building or bay located at the rear of the store. Outdoor donation bins, collection boxes, or similar containers are prohibited.	*Albertville, Burnsville, Columbia Heights, Escondido, Indian Trail, Madison, Minneapolis, Pompano Beach, San Clemente*
Prohibition of Outdoor Display or Sales	The outdoor display and/or sale of merchandise is prohibited.	*Belleville, Madison, San Clemente*
Warehousing Restrictions	No more than 30 percent of the floor area may be utilized for receiving, sorting and storage of donated and traded goods.	*Escondido*
Required Donation Procedures	An appointment or set hours is required for the acceptance of consignment or donated merchandise.	*Columbia Heights, Escondido, Minneapolis*
Directional Signage Required	Adequate directional signage must be provided that directs the public about where to take consignment or donated merchandise.	*Burnsville, Escondido, Madison, Pompano Beach*

REGULATION TYPE	SPECIFIC STANDARDS	COMMUNITIES
Design Standards	▪ The view into ground floor windows and doors shall not be obscured or blocked ▪ Bars, chains, and similar security devices are prohibited when visible from a public street or sidewalk ▪ Adequate directional signage for donations shall be provided	*Columbia Heights, Escondido, Florence, Minneapolis, Redondo Beach, San Clemente*
Required Drive-thru Lane	An accessory drive-thru service lane is required to receive and handle donations. Drive-thru lanes must meet the following requirements: ▪ The drive-thru lane is prohibited in a front, side or rear yard adjacent to a street. ▪ The drive-thru lane must be separated from parking lot drive aisles. ▪ The drive-thru lane must provide stacking or queuing for at least 8 vehicles. ▪ The drive-thru lane must be entirely screened up to a height of at least 6 feet. ▪ Outdoor audio equipment is strictly prohibited in the drive-thru lane.	*Burnsville*
Drive-thru Lane Prohibited	The use of drive-thru facilities for merchandise or donated goods drop-off is strictly prohibited.	*Indian Trail*
Property Maintenance	The property must be maintained free of trash and debris at all times. Store management shall also be responsible for the removal of litter that spills onto adjacent properties and streets.	*Columbia Heights, Escondido, Minneapolis*

DRAFT ORDINANCE

*** **Please note that at first reading, the City Council voted to reinsert the first two conditional standards stricken by the Planning Commission that require a thrift store to be separated by at least 200 feet from residential properties and that require a thrift store to be located within a multi-tenant shopping center. Therefore, the draft ordinance currently for review at second reading by the City Council is the original version presented at the public hearing on August 24, 2021.**

Please also note that the findings in the draft ordinance have been updated since the initial draft of the ordinance presented at the Planning Commission meeting.

The draft ordinance presented at the public hearing conducted by the Planning Commission represented a compilation of some of the standards listed above. That draft ordinance is summarized as follows:

1. The ordinance defines and categorizes consignment stores and thrift stores separately from antique shops and consignment boutique shops. NOTE: A consignment boutique shop is defined as a consignment store that is engaged in the sale of primarily only one type of used merchandise such as children's apparel (e.g., Kids & More), furniture (e.g. Rainbow Paints and Home Décor),

women's clothing and fashion (e.g., Déjà Vu, Blue and Gold Macaw), or sporting goods (e.g., Play It Again Sports).

Consignment stores and thrift stores are permitted by right in the S-1, Trades and Commercial Services district and conditionally allowed in the C-2, General Commercial district subject to specific use standards.

Antique shops and consignment boutique shops are included as retail sales which are permitted by right in the C-1, Light Commercial district, C2, General Commercial district, CRD, Central Redevelopment district, and S-1, Trades and Commercial Services district.

2. The conditional use standards for thrift stores and consignment stores in the C-2 district include the following:

    a. *Separation from residences.* A thrift store or consignment store shall not be closer than 200 feet from any residential use in a residential zoning district, as measured from lot line to lot line.
    b. *Multi-tenant shopping center*. The store shall be located within a multi-tenant shopping center, or similar center, separately occupied by at least two other non-thrift and non-consignment stores.
    c. *Outdoor collection and storage*. The outdoor receipt, processing, or storage of used goods or donations is strictly prohibited. The receipt of goods, processing of goods, and disposal of unusable or non-saleable goods must be entirely conducted within a completely enclosed principal structure or at a service bay located at the rear or the store that is entirely screened from any street or adjacent property. Outdoor donation bins, collection boxes, tractor trailers, shipping containers, or similar containers used for collection, storage, or processing shall be prohibited.
    d. *Outdoor display and sales.* The outdoor display and/or sale of merchandise is strictly prohibited.
    e. *Donation operations*. An appointment or set hours shall be in place for the acceptance of consigned or donated goods.
    f. *Directional signage*. Sufficient directional signage shall be provided that directs the public about when and where to take consigned or donated goods. Signage shall be provided that expressly states that dropping off and leaving goods after business hours is prohibited.
    g. *Loading and unloading*. Loading and unloading areas, including vehicle stacking or queuing areas, for consigned and donated goods shall not obstruct any parking areas or other traffic circulation on the site or on any adjacent streets.
    h. *Windows and security devices*. The view into ground floor windows and doors shall not be obscured or blocked. The use or bars, chains, roll-down shutters, and similar security devices visible from a public street or sidewalk or adjacent property shall be prohibited.
    i. *Property maintenance*. The property shall be maintained free of trash and debris at all times. Store management shall be responsible for the immediate removal of litter that spills over onto adjacent properties and streets.

The draft ordinance presented at the public hearing did <u>NOT</u> include limitations on the number of licenses, separation requirements from existing stores, restrictions on store size, or specific requirements for drive-thru lanes.

PUBLIC HEARING

The Planning Commission conducted a public hearing on the draft ordinance on August 24, 2021. The following is a summary of the remarks made during the public hearing.

- Monroe Free, President and CEO of Habitat for Humanity of Greenville County, requested that the Planning Commission remove the restriction that thrift stores cannot be located closer than 200 feet of a residential property. He expounded on the mission of Habitat for Humanity, including the importance of the Habitat for Humanity Restore. He commented that the requirement to be separated from residential properties by 200 feet essentially restricts new thrift stores from opening in Mauldin and provides an unfair advantage for the lone thrift stores currently operating in Mauldin.
- Mark Steenback, Chief Resource Officer of Habitat for Humanity of Greenville County, described the setup and operations of Habitat for Humanity Restores as clean and professional. He described the benefits that Restores provide, including providing the community opportunities to get rid of unwanted items. He requested that the Planning Commission remove the proposed requirements that thrift stores be separated from residential properties by at least 200 feet and that they be located in multi-tenant shopping centers.
- Kimberly Long, Owner's Representative of the former Bi-Lo grocery store and shopping center at Butler Square, remarked that the Habitat for Humanity Restore would be good for the community. She indicated that Habitat for Humanity is working towards opening a Restore in the former Bi-Lo grocery store at Butler Square on West Butler Road. She explained how her group had been exclusively seeking a grocer tenant for this space since Bi-Lo closed but no grocery stores are interested. The response her group has received is that this site is no longer a suitable location for grocery stores.
- Randall Bentley, President of Lee & Associates Greenville, expressed his support for Habitat for Humanity. He remarked on the growth of thrift stores and how they are growing at 4% per year. He commented that thrift stores are not a warehousing or industrial activity but rather a retail activity similar to big retailers that store items. A lot of goods that come through thrift would otherwise normally go to a landfill. He also remarked that industrial zoning only requires a 50-foot buffer. He indicated that it is not uncommon for large retailers and grocers to have a lot of trash behind their stores.
- Taylor Martin, a real estate agent representing Habitat for Humanity of Greenville County, explained that Habitat for Humanity had tried to move into the former Bi-Lo grocery store some time ago but was told as the time that the owners' group was only focused on grocers at the time. He also commented about the problems that the proposed requirement for thrift stores to be located at least 200 feet from residential properties at this site and asked the Planning Commission to remove this requirement.
- Dennis Raines, V.P. of Finance of Habitat for Humanity of Greenville County, expressed that he thinks the City of Mauldin is trying to clean up operations. He indicated that the proposed Restore would meet all of the other requirements of the draft ordinance except for the 200-foot separation from residential properties. He expressed appreciation for the Planning Commission's consideration of allowing the Restore to come to the City of Mauldin.
- Norman Bunn, resident at 221 Yorkswell Lane in Greenville County, described his support for Habitat for Humanity. He commented that he is an upper-class citizen who enjoys going to Restores. He indicated that the light fixtures and the basement flooring in his home came from a Habitat for Humanity Restore. He remarked that Habitat fits the sustainable model that the country is moving toward. He has seen a lot of improvements at Habitat for Humanity Restores over the years.

PLANNING COMMISSION RECOMMENDATION

After the public hearing and considerable discussion, the Planning Commission voted 6-0 to recommend approval of the draft ordinance while striking conditional standards 1 and 2 under Section 10:37. Namely, the two standards stricken by the Planning Commission include the requirement that a thrift store be separated from residential properties by at least 200 feet and the requirement that a thrift store must be located within a multi-tenant shopping center.

ATTACHMENTS

Draft Ordinance

ORDINANCE # _____

AN AMENDMENT TO THE MAULDIN ZONING ORDINANCE ESTABLISHING DEFINITIONS AND CONDITIONAL USE STANDARDS FOR THRIFT STORES, CONSIGNMENT STORES AND LIKE BUSINESSES AND TO ESTABLISH THE ZONING DISTRICTS FOR WHICH THEY CAN LOCATE.

WHEREAS, on July 19, 2021, the Mauldin City Council approved a resolution requesting the Mauldin Planning Commission to consider amending the Mauldin Zoning Ordinance to limit the number of thrift stores allowed in the City of Mauldin's commercial districts and to conduct a public hearing; and

WHEREAS, thrift and secondhand goods stores are growing on a national scale, both in number and in popularity[1]; and

WHEREAS, the receipt of used goods, the processing of used goods, the warehousing and distribution of goods, and the disposal or recycling of non-saleable goods and materials are characteristic of some warehousing land uses; and

WHEREAS, the potentially adverse effects of thrift and secondhand goods stores are not isolated to the City of Mauldin as other cities in the nation have acted to regulate; and

WHEREAS, the City, by virtue of the police powers delegated to it by the State of South Carolina, is authorized to enact laws to promote the health, safety, and general welfare of its residents; and

WHEREAS, the City is engaged in ongoing efforts to update and refine the City's master plan and zoning regulations; and

WHEREAS, a number of thrift and secondhand goods stores are already in operation in and around the City of Mauldin; and

WHEREAS, the City seeks to avoid an over-concentration of dealers in secondhand articles; and

WHEREAS, pursuant to properly published public notice, the Mauldin Planning Commission considered this matter at a public hearing on August 24, 2021.

NOW THEREFORE BE IT ORDAINED by the Mayor and City Council of the City of Mauldin, South Carolina, in council assembled and by the authority thereof that the Mauldin Municipal Code be amended as follows:

[1] NARTS: The Association of Resale Professionals, "Industry Statistics & Trends," 2021; https//:www.narts.org/i4a/pages/index.cfm?pageid=3285

Section 1 Amendment. Amend Section 3:3, Definitions, of Article 3, as follows (*language that is ~~struck through~~ is language proposed to be deleted, <u>underlined language</u> is language proposed to be added, language is not ~~struck through~~ or <u>underlined</u> is not to be changed, and *** represents sections of the Zoning Ordinance that have been skipped and remain unchanged*):

ARTICLE 3. – ZONING DISTRICTS, GENERAL STANDARDS, DEFINITIONS

***

Sec. 3:3 – Definitions

***

<u>*Antique shop.*</u> <u>A business principally engaged in the sale or trading of articles which, because of age, rarity, or historical significance, have a monetary value greater than the original value or which, because of age, are recognized by the United States government as entitled to import duties less than those prescribed for similar new merchandise. Under this definition, antique shops do not receive donated goods from the public at the place of business.</u>

***

<u>*Consignment boutique shop.*</u> <u>A business principally engaged in the sale of primarily only one type of non-donated used merchandise where the merchandise is placed for sale with the business by the owner of the merchandise. An example may include a business that primarily sells used clothing and related accessories, or a business that primarily sells used children's apparel, or a business that primarily sells used furniture and related home furnishings, or a business that primarily sells used sporting goods and sporting equipment. Upon sale of the merchandise, the purchase price is customarily divided between the business and the owner of merchandise. This use does not include businesses engaged in the sale of used guns, appliances, mattresses, or motor vehicles.</u>

<u>*Consignment store.*</u> <u>A business principally engaged in the sale of non-donated used merchandise where the merchandise is placed for sale with the business by the owner of the merchandise. Upon sale of the merchandise, the purchase price is customarily divided between the business and the owner of the merchandise. This use does not include businesses engaged in the sale of used guns, appliances, mattresses, or motor vehicles.</u>

***

<u>*Thrift store.*</u> <u>A business principally engaged in the sale of used merchandise usually obtained through bulk-purchases or through donations or gifts. Generally, the donor does not receive any value or profit upon the sale of such merchandise. This use does not include businesses engaged in the sale of used guns or motor vehicles.</u>

***

Section 2 Amendment. Amend Article 7, Allowed Uses, as follows (*language that is ~~struck through~~ is language proposed to be deleted, underlined language is language proposed to be added, language is not ~~struck through~~ or underlined is not to be changed, and *** represents sections of the Zoning Ordinance that have been skipped and remain unchanged*):

ARTICLE 7. – ALLOWED USES

***

Sec. 7:1 – Uses by Districts.

***

7:1.5 Table of Allowed Uses

	R-20, R-15, R-12	R-10, R-8, R-6, RM-1	R-M	R-O	O-D	C-1	C-2	CRD	S-1	I-1	Notes
***											
Commercial and Office Uses											
***											
Retail Sales	-	-	-	-	-	P	P	P	P	-	
—Big Box Retail Store	-	-	-	-	-	-	P	-	P	-	
—Grocery Store or Supermarket	-	-	-	-	-	P	P	P	-	-	
—Packaged Alcoholic Beverage Store	-	-	-	-	-	-	C	-	-	-	See standards in Sec. 10:35
—Small Box Variety Store	-	-	-	-	-	C	C	-	-	-	See standards in Sec. 10:36
—Thrift Store or Consignment Store	-	-	-	-	-	-	C	-	P	-	See standards in Sec. 10:37
Services to Buildings and Dwellings	-	-	-	-	-	-	-	-	P	P	
***											

Sec. 7:2 – Use Classification Descriptions.

***

7:2.4 Description of Commercial and Office Uses.

***

O. Retail Sales

Establishments engaged in the selling or rental of goods or merchandise, generally to the general public for personal use or household consumption, and in rending services incidental to the sale of such goods.

This classification includes establishments that retail or provide customary service directly related to any of the following product lines:

1. Art works and supplies.
2. Bicycles.
3. Books, magazines, music, videos, office supplies, and stationery.
4. Clothing, jewelry, luggage, shoes, etc.
5. Camera and photographic supplies and services.
6. Computers and software.
7. Electronics and appliances.
8. Flowers and floral arrangements.
9. Furniture or home furnishings.
10. Gifts, novelties, souvenirs, and similar small item miscellanea.
11. Health and personal care merchandise, including cosmetics, beauty supplies, perfume, optical goods, and health supplements.
12. Motor vehicle parts (except tires).
13. Pets and pet supplies.
14. Pharmacies or drug stores.
15. Specialty food items not for immediate consumption, including baked goods, meats and poultry, fish and seafood, coffee and tea, confectionery products, nuts, spices, dairy products and gourmet foods.
16. Sporting goods, toy and hobby, and musical instruments.
17. Tobacco products and supplies.
18. Used merchandise generally retailed in antique shops and ~~thrift stores~~ consignment boutique shops (consignment stores, thrift stores, pawn shops, and flea markets excluded).

This classification excludes other retail uses that are specifically referenced or described in other classifications provided in this Ordinance.

***

T. Thrift Store or Consignment Store

An establishment principally engaged in the sale of used merchandise. This includes consignment stores where non-donated used merchandise is placed for sale with the business by the owner of the merchandise, and the purchase price is customarily divided between the business and the owner of the merchandise upon the sale of the merchandise. This also include thrift stores where the used merchandise is usually obtained through bulk-purchases or through donations or gifts, and the donor does not generally receive any value or profit upon the sale of the merchandise.

This classification excludes pawn shops, fringe financial services including precious metal dealers, and businesses engaged in the sale of used guns, appliances, mattresses, or motor vehicles.

~~T~~ U. Services to Buildings and Dwellings

An establishment primarily engaged in providing services such as pest control, janitorial activities, locksmith, landscaping, carpet and upholstery cleaning, packing and crating services, and other services for buildings and dwellings.

This classification excludes utility services.

***

Section 3 Amendment. Amend Article 10, Nonresidential Use Standards, by adding a new section 10:37, Thrift Store or Consignment Store, as follows (*language that is ~~struck through~~ is language proposed to be deleted, underlined language is language proposed to be added, language is not ~~struck through~~ or underlined is not to be changed, and *** represents sections of the Zoning Ordinance that have been skipped and remain unchanged*):

ARTICLE 10. – NONRESIDENTIAL USE STANDARDS

***

Sec. 10:37 – Thrift Store or Consignment Store

A thrift store or consignment store is subject to the following standards:

1. *Separation from residences.* A thrift store or consignment store shall not be closer than 200 feet from any residential use in a residential zoning district, as measured from lot line to lot line.
2. *Multi-tenant shopping center.* The store shall be located within a multi-tenant shopping center, or similar center, separately occupied by at least two other non-thrift and non-consignment stores.
3. *Outdoor collection and storage.* The outdoor receipt, processing, or storage of used goods or donations is strictly prohibited. The receipt of goods, processing of goods, and disposal of unusable or non-saleable goods must be entirely conducted within a completely enclosed principal structure or at a service bay located at the rear of the store that is entirely screened from any street or adjacent property. Outdoor donation bins, collection boxes, tractor trailers, shipping containers, or similar containers used for collection, storage or processing shall be prohibited.
4. *Outdoor display and sales.* The outdoor display and/or sale of merchandise is strictly prohibited.

5. *Donation operations.* An appointment or set hours shall be in place for the acceptance of consigned or donated goods.
6. *Directional signage.* Sufficient directional signage shall be provided that directs the public about when and where to take consigned or donated goods. Signage shall be provided that expressly states that dropping off and leaving goods after business hours is prohibited.
7. *Loading and unloading.* Loading and unloading areas, including vehicle stacking or queuing areas, for consigned and donated goods shall not obstruct any parking areas or other traffic circulation on the site or on any adjacent streets.
8. *Windows and security devices.* The view into ground floor windows and doors shall not be obscured or blocked. The use of bars, chains, roll-down shutters, and similar security devices visible from a public street or sidewalk or adjacent property shall be prohibited.
9. *Property maintenance.* The property shall be maintained free of trash and debris at all times. Store management shall be responsible for the immediate removal of litter that spills over onto adjacent properties and streets.

Section 4. This ordinance shall become effective upon and after its final passage.

Passed on First Reading: _____

Passed on Second Reading _____

CITY OF MAULDIN, SOUTH CAROLINA

BY: _____
Terry Merritt, Mayor

ATTEST:

_____
Cindy Miller, Municipal Clerk

APPROVED AS TO FORM:

_____
John Duggan, City Attorney

CITY COUNCIL
AGENDA ITEM

MEETING DATE: October 18, 2021

AGENDA ITEM: 8a

TO: City Council

FROM: Business & Development Services Director, David C. Dyrhaug

SUBJECT: Annexation of 220 Fowler Circle

AUTHORIZED REP(S):	Zenith Real Estate
OWNER(S):	**Gail C. Frost** **Sarah S. Coates**
TAX MAP #(S):	M007.03-01-010.01
LOCATION:	220 Fowler Circle
CURRENT ZONING:	R-S (County)
REQUESTED ZONING:	R-M1, Residential
SIZE OF PROPERTY:	Approx. 10.77 acres
CONTIGUITY:	This tract is touches the corner of Sunset Park (diagonally across the street) located in the City of Mauldin.

REQUEST

The City of Mauldin has received a signed petition requesting the annexation of a tract of land consisting of one parcel pursuant to South Carolina Code of Laws Section 5-3-150. This petitions includes approximately 10 acres owned by Gail Frost and Sarah Coates and is located at 220 Fowler Circle.

The applicant has requested that this tract be zoned R-M1, Residential, upon annexation into the City of Mauldin. Zenith Real Estate has this property under contract for purchase. Zenith Real Estate is described on their website as a residential acquisitions, holdings, and development company. Zenith Real Estates anticipates developing this property for 50-80 townhomes at an average sales price in the mid $200,000's.

UTILITIES AND SERVICES

Sewer is not presently available at this property. Zenith Real Estate expects to extend the existing sewer line on Fowler Circle to reach this tract. Due to the topography of the site in relation to the existing sewer line, a lift station will also be needed. There has been no study yet to determine the fee that may need to be levied on the future homeowners in order to be able to support the ongoing costs associated with a lift station.

This tract is currently located in in the Mauldin Fire Service Area. The City of Mauldin will continue to provide fire protection services to this tract upon annexation.

PLANNING AND ZONING

About the R-M1 District

The R-M1 zoning designation is a medium density residential district intended to provide single-family living, including both detached and attached single-family homes, and related facilities such as recreational, religious, and educational facilities.

> R-M1 Zoning allows a minimum 6,000-square foot lot for detached single-family homes. Attached single-family homes can be developed at a maximum density of 12.5 units per acre.

Comprehensive Plan Analysis

The designation of this tract in the Future Land Use Map of the Comprehensive Plan calls for low-density residential consisting of single-family homes in this area. However, this tract is right next to the edge of am area designated for medium-density residential.

Surrounding Development/Zoning

These properties are surrounded by the following zoning and land uses:

Direction	Zoning District(s)	Existing Use(s)
North	R-S (County)	Rural residential
South	R-S (County)	Rural residential
East	R-S (County)	Rural residential
West	R-S (County) / R-M1 (City)	Rural residential / Undeveloped

Property Values

The homes in this project are projected to sell at an average in the mid-$200's. Aside from rural residential properties, the only single-family housing development in close proximity to this tract is the Parkside Villas immediately adjacent to Sunset Park. This range will be above the average price of home sales in Parkside Villas over the last couple of years. See below.

Community	2019		2020		2020	
	No. of Sales	Avg. Price	No. of Sales	Avg. Price	No. of Sales	Avg. Price
Parkside Villas	1	$164,000	3	$160,633	6	$186,966

TIMELINE

In September, 2021, staff received the signed petition for the annexation of this tract.

On October 4, 2021, the Building Codes Committee forwarded this matter to the City Council with a recommendation of approval.

FISCAL IMPACT

Based on the information available, staff projects that the development of this tract will have a neutral fiscal benefit to the City (projected revenue of $64,516 compared to a project cost of $62,757). This analysis is based on the following factors:

- Number of Homes: 50-80 (65 homes used for calculation)
- Average price-point: about $250,000
- New streets: Privately owned and maintained
- New sewer: Owned and maintained by the City of Mauldin

RECOMMENDATION

Consider approval of this ordinance on first reading.

ATTACHMENTS

Annexation Ordinance (maps and petitions attached therein)

ORDINANCE _____-2021

AN ORDINANCE TO PROVIDE FOR THE ANNEXATION OF PROPERTY OWNED BY GAIL C. FROST AND SARAH S. COATES, AND LOCATED AT 220 FOWLER CIRCLE (TAX MAP PARCEL: M007.03-01-010.01) BY ONE HUNDRED PERCENT PETITION METHOD; AND TO ESTABLISH A ZONING CLASSIFICATION OF R-M1, RESIDENTIAL, FOR SAID PROPERTY

WHEREAS, Gail C. Frost and Sarah S. Coates are the sole owner of record title of a parcel of real property containing 10.77 acres, more or less, located at 220 Fowler Circle, which property is contiguous to the City of Mauldin and is more particularly illustrated in Exhibit 1 attached hereto; and,

WHEREAS, an Annexation Petition, attached hereto as Exhibit 2, has been filed with the City of Mauldin by Gail C. Frost and Sarah S. Coates requesting that the aforementioned property be annexed into the City of Mauldin; and,

WHEREAS, the property to be annexed is contiguous to the City of Mauldin, and is more particularly depicted in Exhibit 1 attached hereto; and,

WHEREAS, Gail C. Frost and Sarah S. Coates constitute one hundred (100%) percent of freeholders owning one hundred (100%) of the real property depicted in Exhibit 1 attached hereto; and,

WHEREAS, the proposed zoning of R-M1, Residential, is compatible with the surrounding property uses in the area; and,

WHEREAS, the Mayor and Council conclude that the annexation is in the best interest of the property owner and the City;

NOW, THEREFORE, be it ordained by the Mayor and Council of the City of Mauldin that:

1. ANNEXATION: The real property owned by Gail C. Frost and Sarah S. Coates, and more particularly depicted in the map attached hereto marked as Exhibit 1, is hereby annexed into the corporate city limits of the City of Mauldin effective immediately upon second reading of this ordinance.

2. ANNEXATION OF A PORTION OF ADJACENT RIGHTS-OF-WAY: All of that portion of Fowler Circle along the edge of and adjoined to the annexed property shown on the attached Exhibit to the centerline of the afore-mentioned right-of-way is also hereby annexed into the corporate limits of the City of Mauldin effective immediately upon second reading of this ordinance.

3. ZONING ASSIGNMENT: The above referenced property owned is hereby zoned R-M1, Residential.

_____
Terry Merritt, Mayor

ATTEST:

_____
Cindy Miller, Municipal Clerk

First Reading: _____

Second Reading: _____

Approved as to Form:

_____
City Attorney

EXHIBIT 1 – ANNEXATION MAP

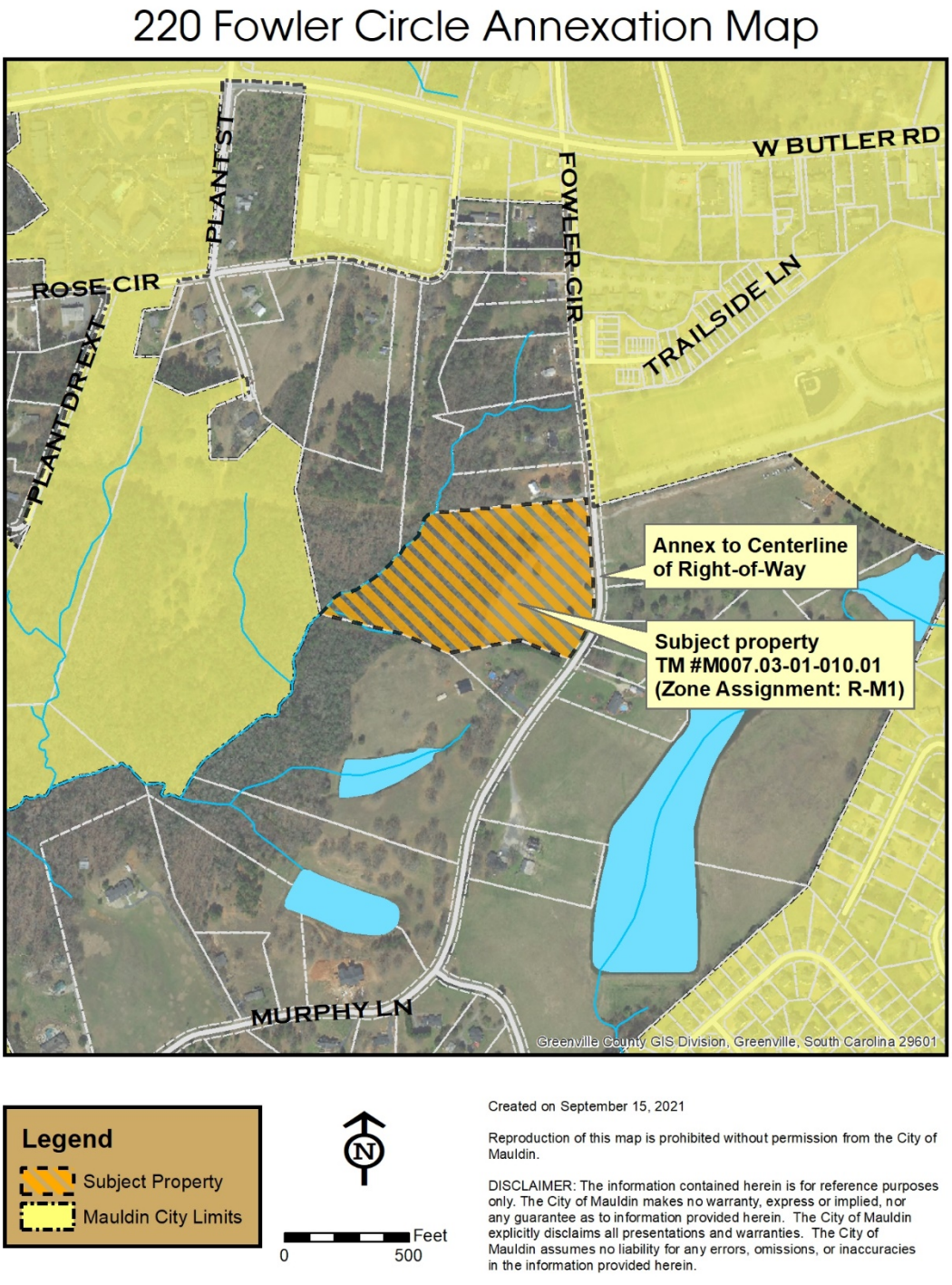


EXHIBIT 2 – PETITION

PETITION FOR ANNEXATION OF REAL PROPERTY OWNED BY GAIL C. FROST AND SARAH S. COATES, AND LOCATED AT 220 FOWLER CIRCLE (TAX MAP #M007.03-01-010.01) INTO THE CITY OF MAULDIN BY ONE HUNDRED PERCENT (100%) METHOD

Petitioners, Gail C. Frost and Sarah S. Coates are the sole owners [freeholders owning one hundred (100%) percent of the assessed value of real property in the area proposed to be annexed] of a parcel of real property in Greenville County containing approximately 10.77 acres, more particularly described in the property description attached hereto marked as Exhibit A, and the Property Map attached hereto marked as Exhibit B.

Petitioners hereby petition to annex their property consisting of 10.77 acres, which is contiguous to the City of Mauldin, into the corporate limits of the City of Mauldin. Petitioners also hereby petition to assign their property the zoning classification of R-M1, Residential, as depicted in Exhibit C attached hereto, on the Official Zoning Map of the City of Mauldin.

This Petition is submitted to the City of Mauldin pursuant to the provisions of S.C. Code §5-3-150(3) authorizing the City Council to annex an area by the one hundred percent (100%) method.

This Petition is dated this 21st day of Sept, 2021, before the first signature below is attached.

The Petitioners request that the tract described above and shown on the attached Exhibit A be annexed into the corporate city limits of the City of Mauldin and assign the tract the zoning classification of R-M1, Residential, as depicted in Exhibit C attached hereto. This Application is contingent on the sale of the subject property to Zenith Real Estate, LLC. GCF - SSC 9/21/21

Sept. 21, 2021
Date

By: Gail C. Frost
Gail C. Frost

Sherry P Elliott
Witness

Sarah S. Coates
Sarah S. Coates

Sherry P. Elliott
Witness

EXHIBIT A

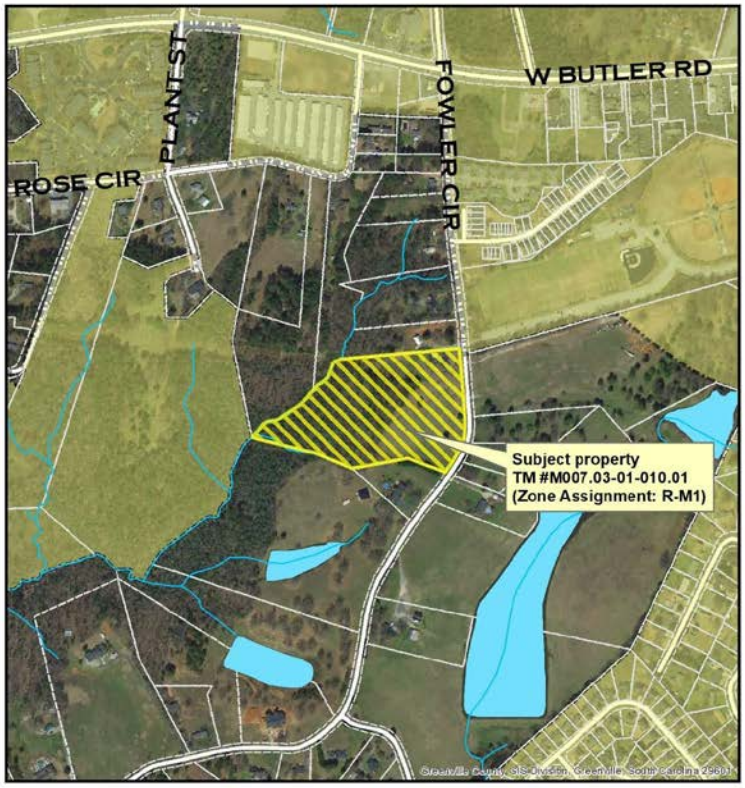
PROPERTY DESCRIPTION

All that piece, parcel or lot of land situate, lying and being in the County of Greenville, State of South Carolina, being shown on plat of survey for J. W. Coates by C. O. Riddle, Surveyor, September 23, 1959, beginning at an iron pin located on the Westerly side of a County Road, near a point where a power line begins crossing the lands of J. W. Coates, and running thence South 84-10 West 175 feet to iron pin, thence North 5-50 West 150 feet to iron pin, thence North 84-10 East 175 feet to iron pin on the Westerly side of said County road, thence along the edge of said County Road South 5-50 East to the beginning.

TAX MAP #M007.03-01-010.01

EXHIBIT B

PROPERTY MAP



Legend

Subject Property

Mauldin City Limits

N

0 600 Feet

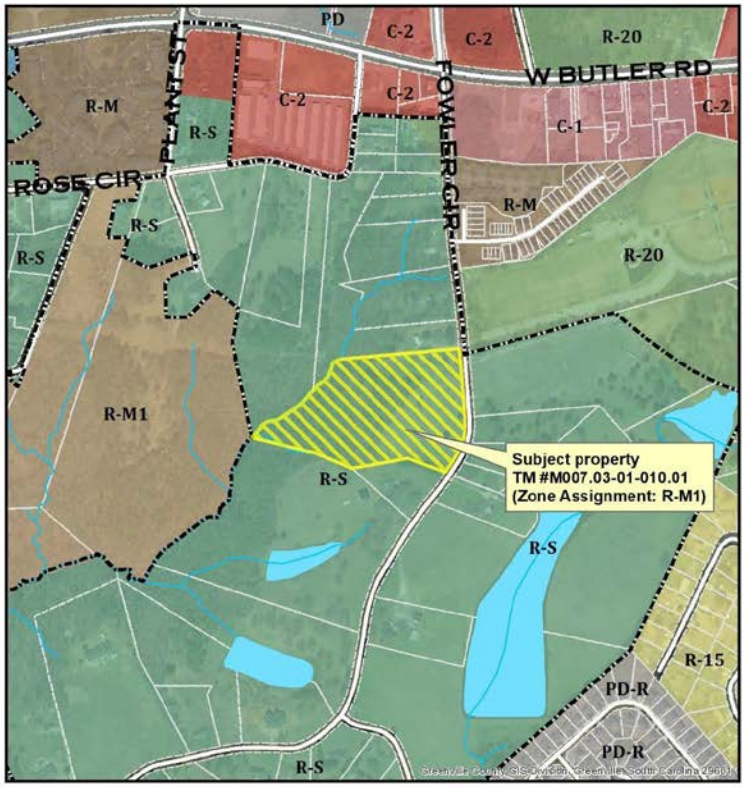
Created on September 15, 2021

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EXHIBIT C

ZONING MAP



Legend

Subject Property

Mauldin City Limits

N

0 Feet 600

Created on September 15, 2021

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CITY COUNCIL
AGENDA ITEM

MEETING DATE: October 18, 2021

AGENDA ITEM: 8b

TO: City Council

FROM: Business & Development Services Director, David C. Dyrhaug

SUBJECT: Business License Standardization Ordinance

BACKGROUND

In September 2020, the South Carolina General Assembly passed the S.C. Business License Tax Standardization Act, Act 176. This Act is intended to streamline the business license process throughout the state by creating the same process for taxing jurisdictions across the state.

Staff has been working with the Municipal Association of South Carolina (MASC) to prepare to update the City's business license in accordance with Act 176. This has included maneuvering through a series of steps including:

1. Convert Business License Year

   Note: The new license period is May 1 to April 30. The City had already been operating with a business license renewal deadline of April 30. The only change that the City will experience is that the ordinance will now specify that business licenses expire on April 30 instead of December 31.

2. Review Business License Data

   Note: Most of the City staff's efforts this year with MASC staff has been reviewing and correcting the City's business license data.

3. Rebalance Rates

   Note: More information below.

4. Adopt Class Schedule

   Note: The class schedule is established by Act 176. Every odd year, this class schedule will be updated by MASC and will need to be adopted by every municipality.

5. Replace Business License Ordinance

   Note: MASC recommends that each municipality repeal its existing business license ordinance and replace it with MASC's new model ordinance. The new model ordinance has been drafted to be compliant with Act 176.

6. Set Up an Online Renewal Center Account

   Note: MASC has developed the "Local Business License Renewal Center," which is a statewide online portal for business license renewals. The online portal is for renewals only. New business licenses will still be issued by each municipality. Per Act 176, this portal will be hosted by the S.C. Revenue and Fiscal Affairs Office.

7. Notify Stakeholders

REBALANCE OF BUSINESS LICENSE RATES

After reviewing and correcting the City's business license data as needed, MASC staff have conducted an analysis of whether the City's business license rates will need to be adjusted so that the City does not receive a windfall from adopting the new statewide class schedule. In it's analysis, MASC has projected that the City will not receive a windfall, but instead will incur a loss in revenue by switching to the new statewide class schedule. Specifically, their analysis projects that the City will lose $35,764.83 in the first year.

The City has the option of simply absorbing the revenue loss and keeping the same business license rates that it currently applies. Or the City may adjust its rate to achieve revenue neutrality. Below is a table of the current rates and the adjusted rates proposed by MASC to achieve revenue neutrality.

RATE CLASS	CURRENT BASE RATE (Income: $0 - $2,000)	CURRENT RATE PER $1,000 (Income over $2,000)	PROPOSED ADJUSTED RATE PER $1,000	% INCREASE IN RATE PER $1,000
1	$27.50	$0.90	$0.92	2.2%
2	$34.50	$0.95	$0.97	2.1%
3	$41.50	$1.00	$1.03	3.0%
4	$48.50	$1.10	$1.11	0.1%
5	$55.50	$1.15	$1.18	2.6%
6	$62.50	$1.20	$1.26	5.0%
7	$69.50	$1.25	$1.33	6.4%

MASC staff commented that one of their observations is that in the City's current rate structure, there is a $0.10 jump from rate class 3 to rate class 4. Part of their approach in adjusting the City's rates was to smooth out the increases from one class to the next.

MASC has not proposed to adjust the rates for Class 8 and 9. Classes 8 and 9 include specific business types that receive particularized considerations. This includes categories such as contractors, motor vehicle sales, peddlers, and drinking places. In the City of Mauldin, contractors are the only special category in Class 8 and 9 that represent any significant portion (about 17%) of the City's revenue from business licenses. The combined remaining Class 8 and 9 businesses represent less than 1% of the City's revenue from business licenses. Adjusting the rates for these business classes would have essentially no effect of the City's business license revenue.

If Council wishes that the above rates be adjusted differently from what is presented, staff can explore the effects of other rate scenarios. However, the City is prohibited from adjusting the rates in a manner that would lead to a revenue windfall.

MODEL ORDINANCE SUMMARY

The MASC new model business license ordinance achieves compliance with the S.C. Business License Tax Standardization Act. However, there are a few notable differences between MASC's new model ordinance and the City's current ordinance and business license practices. These differences are described below.

1. *License expiration.* Although the City maintains the same April 30 deadline for business license renewals as in the model ordinance, the model ordinance sets the license expiration as April 30 instead of December 31 as in the City's ordinance. The main effect that the new April 30 expiration will have on the City is that contractors and similar businesses not located in the City who work on a project-to-project basis will not have to apply for a license until after May 1 instead of January 1. The attached draft ordinance includes an expiration date of April 30.

Current City of Mauldin Practices Added into the Model Ordinance

2. *Income tax documentation.* The City currently requires the applicant to provide portions of their state or federal income tax returns reflecting gross receipts and gross revenue figures when renewing the license. This is not required by the model ordinance, although the model ordinance does provide the municipality to request this information at the municipality's discretion. MASC has indicated that there would not be an issue with the City including the requirement to provide income tax documentation as part of the ordinance that the City adopts. The attached draft ordinance includes the requirement to provide tax documentation plus procedures relating to applicants who have filed an extension for their income tax.

3. *Late penalties.* The City currently establishes a late penalty of ten percent of the unpaid tax for each moth or portion thereof after the due date plus a $25.00 processing fee. The model ordinance establishes a late penalty of five percent and no processing fee. While MASC advises against late penalties in excess of five percent, Act 176 does not place any limits on late fees. The attached draft ordinance includes the late penalties of ten percent for each month plus a $25.00 process fee.

4. *Early payment discount.* The City currently offers a two percent discount to businesses that renew their business license on or before February 15. The model ordinance provides no such incentive. MASC has commented that businesses using the statewide business license payment portal will not be eligible to receive this discount. The attached draft ordinance includes the early payment discount that has been traditionally been available in the City.

5. *Business license fee abatement incentive program.* The City currently offers a business license fee abatement program as an incentive to encourage private capital investment and reinvestment within the City. The model ordinance provides no such incentive program. MASC does not anticipate that the statewide business license payment portal will be able to administer this type of program unless the abatement was provided as a refund instead of a discount. The attached draft ordinance includes the abatement program as currently structured in the City.

Current City of Mauldin Practices <u>NOT</u> Added into the Model Ordinance

6. *Court fines.* The City currently establishes a maximum fine amount of $750.00 while the model ordinance establishes a maximum fine amount of $500.00. Title 5 of the South Carolina Code of Laws appears to provide the municipality the authority to establish fines and penalties for the violation of municipal ordinances and regulations not to exceed $500.00 (Section 5-7-30). Per MASC, the $750.00 fine would only be permissible if it included court assessments. The attached draft ordinance includes a maximum fine amount of $500.00.

7. *Hearings on appeals.* The City currently provides that a hearing on an appeal for a license that has been denied, suspended, or revoked shall be held within 30 days after receipt of a request for such appeal. The model ordinance provides the City with 10 business days to hold such an appeal. MASC has indicated that this ten business days lead time has been recommended based on a study of recent case law. The attached draft ordinance includes a lead time of 10 business days for the City to hold a hearing in response to an appeal.

ATTACHMENT

Proposed Ordinance with Comments

ORDINANCE NO. _____

AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 10, ARTICLE II (BUSINESS LICENSE) WITH A REVISED BUSINESS LICENSE ORDINANCE IN ACCORDANCE WITH THE SOUTH CAORLINA BUSINESS LICENSE STANDARDIZATION ACT (2020 ACT NO. 176)

WHEREAS, in September 2020 the South Carolina General Assembly adopted the South Carolina Business License Tax Standardization Act (2020 Act No. 176), now codified at S.C. Code Sections 6-1-400 to 6-1-420 (the "Act"); and,

WHEREAS, the Act requires all municipalities and counties that impose a business license tax to adopt a standard business license year of May 1 through April 30; and,

WHEREAS, the Act requires all municipalities and counties that impose a business license tax to utilize the Act's standardized business licensing requirements and class schedule; and,

WHEREAS, the Act requires all municipalities and counties to update their business license class schedules every odd year based on the latest available IRS statistics; and

WHEREAS, in order to comply with the requirements of the Act, the City of Mauldin (the "Municipality") has prepared the attached 2022 Business License Ordinance, which is incorporated herein by reference.

NOW, THEREFORE, be it ordained by the Mayor and Council of the City of Mauldin, South Carolina, that:

1. The 2022 Business License Ordinance attached hereto is hereby adopted and shall become effective beginning with the business license period commencing on May 1, 2022.

2. Chapter 10 or Article II of the City of Mauldin Code of Ordinances are hereby repealed and replaced in their entirety with the 2022 Business License Ordinance; provided that any prior ordinances of the Municipality related to collections programs administered by the Municipal Association of South Carolina, including without limitation the Insurance Tax Collection Program (ITCP), the Brokers Tax Collection Program (BTCP), the Telecommunications Tax Collection Program (TTCP), and Setoff Debt Collection Program, shall remain in full force and effect in accordance with their terms except to the extent specifically amended by the 2022 Business License Ordinance.

3. This ordinance shall become effective upon and after second reading.

Passed on First Reading: _____

Passed on Second Reading _____

CITY OF MAULDIN, SOUTH CAROLINA

BY: _____
Terry Merritt, Mayor

ATTEST:

_____
Cindy Miller, Municipal Clerk

APPROVED AS TO FORM:

_____
City Attorney

2022 BUSINESS LICENSE ORDINANCE

Section 1. **License Required**. Every person engaged or intending to engage in any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, in whole or in part within the limits of the City of Mauldin, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.

Section 2. **Definitions.** The following words, terms, and phrases, when used in this ordinance, shall have the meaning ascribed herein. Defined terms are not capitalized when used in this ordinance unless the context otherwise requires.

"*Business*" means any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, either directly or indirectly.

"*Charitable Organization*" means an organization that is determined by the Internal Revenue Service to be exempt from Federal income taxes under 26 U.S.C. Section 501(c)(3), (4), (6), (7), (8), (10) or (19).

"*Charitable Purpose*" means a benevolent, philanthropic, patriotic, or eleemosynary purpose that does not result in personal gain to a sponsor, organizer, officer, director, trustee, or person with ultimate control of the organization.

"*Classification*" means that division of businesses by NAICS codes subject to the same license rate as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationships of services, or other basis deemed appropriate by the Council.

"*Council*" means the City Council of the City of Mauldin.

"*Domicile*" means a principal place from which the trade or business of a licensee is conducted, directed, or managed. For purposes of this ordinance, a licensee may be deemed to have more than one domicile.

"*Gross Income*" means the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done within the Municipality. If the licensee has a domicile within the Municipality, business done within the Municipality shall include all gross receipts or revenue received or accrued by such licensee. If the licensee does not have a domicile within the Municipality, business done within the Municipality shall include only gross receipts or revenue received or accrued within the Municipality. In all cases, if the licensee pays a business license tax to another county or municipality, then the licensee's gross income for the purpose of computing the tax within the Municipality must be reduced by the amount of revenues or receipts taxed in the other county or municipality and fully reported to the Municipality. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds that are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross receipts or gross revenues for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Department of Insurance, or other

government agencies. In calculating gross income for certain businesses, the following rules shall apply:

A. Gross income for agents shall be calculated on gross commissions received or retained, unless otherwise specified. If commissions are divided with other brokers or agents, then only the amount retained by the broker or agent is considered gross income.

B. Except as specifically required by S.C. Code § 38-7-20, gross income for insurance companies shall be calculated on gross premiums written.

C. Gross income for manufacturers of goods or materials with a location in the Municipality shall be calculated on the lesser of (i) gross revenues or receipts received or accrued from business done at the location, (ii) the amount of income allocated and apportioned to that location by the business for purposes of the business's state income tax return, or (iii) the amount of expenses attributable to the location as a cost center of the business. Licensees reporting gross income under this provision shall have the burden to establish the amount and method of calculation by satisfactory records and proof. Manufacturers include those taxpayers reporting a manufacturing principal business activity code on their federal income tax returns.

"*License Official*" means a person designated to administer this ordinance. Notwithstanding the designation of a primary license official, the Municipality may designate one or more alternate license officials to administer particular types of business licenses, including without limitation for business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code.

"*Licensee*" means the business, the person applying for the license on behalf of the business, an agent or legal representative of the business, a person who receives any part of the net profit of the business, or a person who owns or exercises control of the business.

"*Municipality*" means the City of Mauldin, South Carolina.

"*NAICS*" means the North American Industry Classification System for the United States published under the auspices of the Federal Office of Management and Budget.

"*Person*" means any individual, firm, partnership, limited liability partnership, limited liability company, cooperative non-profit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principal.

Section 3. **Purpose and Duration.** The business license required by this ordinance is for the purpose of providing such regulation as may be required for the business subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. The license year ending on April 30, 2022, shall commence on January 1, 2021 and shall run for a 16-month period. Thereafter, the license period shall be established as follows. Except as set forth below for business licenses issued to contractors with respect to specific construction projects, each yearly license shall be issued for the twelve-month period of May 1 to April 30. A business license issued for a construction contract may, at the request of the licensee, be stated to expire at the

completion of the construction project; *provided*, any such business license may require that the licensee file, by each April 30 during the continuation of the construction project, a statement of compliance, including but not limited to a revised estimate of the value of the contract. If any revised estimate of the final value of such project exceeds the amount for which the business license was issued, the licensee shall be required to pay a license fee at the then-prevailing rate on the excess amount. The provisions of this ordinance and the rates herein shall remain in effect from year to year as amended by the Council.

Section 4. Business License Tax, Refund.

A. The required business license tax shall be paid for each business subject hereto according to the applicable rate classification on or before the due date of the 30th day of April in each year, except for those businesses in Rate Class 8 for which a different due date is specified. If the due date coincides with a weekend, holiday, or other day on which City offices are closed, the required business license tax shall be due the next business day on which City offices are opened. Late payments shall be subject to penalties as set forth in Section 12 hereof, except that admitted insurance companies may pay before June 1 without penalty.

B. A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated for classifications at one location, the business license tax shall be computed on the combined gross income for the classification requiring the highest rate. The business license tax must be computed based on the licensee's gross income for the calendar year preceding the due date, for the licensee's twelve-month fiscal year preceding the due date, or on a twelve-month projected income based on the monthly average for a business in operation for less than one year. The business license tax for a new business, including businesses newly annexed into the City, must be computed on the estimated probable gross income for the balance of the license year. A business license related to construction contract projects may be issued on a per-project basis, at the option of the taxpayer. No refund shall be made for a business that is discontinued.

C. A licensee that submits a payment greater than the amount owed may request a refund. To be considered, a refund request must be submitted in writing to the Municipality before the June 1 immediately following the April 30 on which the payment was due and must be supported by adequate documentation supporting the refund request. The Municipality shall approve or deny the refund request, and if approved shall issue the refund to the business, within thirty days after receipt of the request.

Section 5. Registration Required.

A. The owner, agent, or legal representative of every business subject to this ordinance, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year; *provided*, a new business shall be required to have a business license prior to operation within the Municipality, and an annexed business shall be required to have a business license within thirty (30) days of the annexation. A license for a bar (NAICS 722410) must be issued in

the name of the individual who has been issued the corresponding state alcohol, beer, or wine permit or license and will have actual control and management of the business.

B. Application shall be on the then-current standard business license application as established and provided by the Director of the South Carolina Revenue and Fiscal Affairs Office and shall be accompanied by all information about the applicant, the licensee, and the business deemed appropriate to carry out the purpose of this ordinance by the license official. Applicants shall be required to submit copies of portions of state or federal income tax returns reflecting gross receipts and gross revenue figures. Where the tax return form does not match the gross income reported on the business license application, the applicant shall submit other acceptable documentation that verifies the gross income reported.

C. Applicants who have filed an extension for their income tax may be allowed to renew their business license as follows. The applicant shall submit a copy of their income tax filing extension application and shall base their gross income on the best information they have available. The applicant shall be responsible for paying any additional business license fees assessed upon receipt and processing of the business's income tax filing. Late penalties and processing fess set forth in Section 12 hereof shall apply to any additional business license fees owed to the City. Applicants who fail to submit their income tax filing on or before October 31 shall be in violation of this ordinance and shall be subject to the penalties in Section 19 hereof.

D. The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported (or estimated for a new business) without any unauthorized deductions, and that all assessments, personal property taxes on business property, and other monies due and payable to the Municipality have been paid.

E. Any change of information provided in the approved application shall be reported immediately.

F. The Municipality shall allow application, reporting, calculation, and payment of business license taxes through the business license tax portal hosted and managed by the South Carolina Revenue and Fiscal Affairs Office, subject to the availability and capability thereof. Any limitations in portal availability or capability do not relieve the applicant or Licensee from existing business license or business license tax obligations.

Section 6. <u>Deductions, Exemptions, and Charitable Organizations.</u>

A. No deductions from gross income shall be made except income earned outside of the Municipality on which a license tax is paid by the business to some other municipality or county and fully reported to the Municipality, taxes collected for a governmental entity, or income which cannot be included for computation of the tax pursuant to state or federal law. Properly apportioned income from business in interstate commerce shall be included in the calculation of gross income and is not exempted. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof.

B. No person shall be exempt from the requirements of the ordinance by reason of the lack of an established place of business within the Municipality, unless exempted by state or federal law. The license official shall determine the appropriate classification for each business in accordance with the latest issue of NAICS. No person shall be exempt from this ordinance by reason of the payment of any other tax, unless exempted by state law, and no person shall be relieved of liability for payment of any other tax or fee by reason of application of this ordinance.

C. Wholesalers are exempt from business license taxes unless they maintain warehouses or distribution establishments within the Municipality. A wholesale transaction involves a sale to an individual who will resell the goods and includes delivery of the goods to the reseller. It does not include a sale of goods to a user or consumer.

D. A charitable organization shall be exempt from the business license tax on its gross income unless it is deemed a business subject to a business license tax on all or part of its gross income as provided in this section. A charitable organization, or any affiliate of a charitable organization, that reports income from for-profit activities or unrelated business income for federal income tax purposes to the Internal Revenue Service shall be deemed a business subject to a business license tax on the part of its gross income from such for-profit activities or unrelated business income.

E. A charitable organization shall be deemed a business subject to a business license tax on its total gross income if (1) any net proceeds of operation, after necessary expenses of operation, inure to the benefit of any individual or any entity that is not itself a charitable organization as defined in this ordinance, or (2) any net proceeds of operation, after necessary expenses of operation, are used for a purpose other than a charitable purpose as defined in this ordinance. Excess benefits or compensation in any form beyond fair market value to a sponsor, organizer, officer, director, trustee, or person with ultimate control of the organization shall not be deemed a necessary expense of operation.

Section 7. **False Application Unlawful.** It shall be unlawful for any person subject to the provisions of this ordinance to make a false application for a business license or to give or file, or direct the giving or filing of, any false information with respect to the license or tax required by this ordinance.

Section 8. **Display and Transfer.**

A. All persons shall display the license issued to them on the original form provided by the license official in a conspicuous place in the business establishment at the address shown on the license. A transient or non-resident shall carry the license upon his person or in a vehicle used in the business readily available for inspection by any authorized agent of the Municipality.

B. A change of address must be reported to the license official within ten (10) days after removal of the business to a new location and the license will be valid at the new address upon written notification by the license official and compliance with zoning and building codes. Failure to obtain the approval of the license official for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without

a license. A business license shall not be transferable, and a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on old business income.

Section 9. **Administration of Ordinance.** The license official shall administer the provisions of this ordinance, collect business license taxes, issue licenses, make or initiate investigations and audits to ensure compliance, initiate denial or suspension and revocation procedures, report violations to the municipal attorney, assist in prosecution of violators, produce forms, undertake reasonable procedures relating to the administration of this ordinance, and perform such other duties as may be duly assigned.

Section 10. **Inspection and Audits.**

A. For the purpose of enforcing the provisions of this ordinance, the license official or other authorized agent of the Municipality is empowered to enter upon the premises of any person subject to this ordinance to make inspections and to examine and audit books and records. It shall be unlawful for any such person to fail or refuse to make available the necessary books and records. In the event an audit or inspection reveals that the licensee has filed false information, the costs of the audit shall be added to the correct business license tax and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of business license tax shall constitute a separate offense.

B. The license official shall have the authority to make inspections and conduct audits of businesses to ensure compliance with the ordinance. Financial information obtained by inspections and audits shall not be deemed public records, and the license official shall not release the amount of business license taxes paid or the reported gross income of any person by name without written permission of the licensee, except as authorized by this ordinance, state or federal law, or proper judicial order. Statistics compiled by classifications are public records.

Section 11. **Assessments, Payment under Protest, Appeal.**

A. Assessments, payments under protest, and appeals of assessment shall be allowed and conducted by the Municipality pursuant to the provisions of S.C. Code § 6-1-410, as amended. In preparing an assessment, the license official may examine such records of the business or any other available records as may be appropriate and conduct such investigations and statistical surveys as the license official may deem appropriate to assess a business license tax and penalties as provided herein.

B. The license official shall establish a uniform local procedure consistent with S.C. Code § 6-1-410 for hearing an application for adjustment of assessment and issuing a notice of final assessment; provided that for particular types of business licenses, including without limitation for business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code, the Municipality, by separate ordinance, may establish a different procedure and may delegate one or more rights, duties, and functions hereunder to the Municipal Association of South Carolina.

Section 12. Delinquent License Taxes, Partial Payment.

A. For non-payment of all or any part of the correct business license tax, the license official shall impose and collect a late penalty of ten (10%) percent of the unpaid tax for each month or portion thereof after the due date until paid plus a $25.00 processing fee. Penalties shall not be waived. If any business license tax remains unpaid for sixty (60) days after its due date, the license official shall report it to the municipal attorney or enforcement officer for citation or other appropriate legal action. Such legal action may include, but is not limited to, the issuance of a formal citation with a fine in the amount of $750.00 and a summons to appear in the City's Municipal Court on a prescribed date. Punishment for violation shall not relieve the offender of liability for delinquent fees, penalties and costs provided herein.

B. Partial payment, including payments made by applicants who have not supplied all of the required documentation, may be accepted by the license official to toll imposition of penalties on the portion paid; *provided*, however, no business license shall be issued or renewed until the information and documentation required by this ordinance and the full amount of the tax due, with penalties, has been paid.

Section 13. Notices. The license official may, but shall not be required to, send notices by postal, electronic or other effective means that business license taxes are due. Alternatively, notice of the due date may be published in a newspaper of general circulation within the Municipality three (3) times prior to the due date in each year. Failure to receive notice shall not constitute a defense to prosecution for failure to pay the tax due or grounds for waiver of penalties.

Section 14. Denial of License. The license official may deny a license to an applicant when the license official determines:

A. The application is incomplete or contains a misrepresentation, false or misleading statement, or evasion or suppression of a material fact;

B. The activity for which a license is sought is unlawful or constitutes a public nuisance *per se* or *per accidens*;

C. The applicant, licensee, prior licensee, or the person in control of the business has been convicted within the previous ten years of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods;

D. The applicant, licensee, prior licensee, or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the Municipality or in another jurisdiction;

E. The applicant, licensee, prior licensee, or the person in control of the business is delinquent in the payment to the Municipality of any tax or fee;

F. A licensee has actual knowledge or notice, or based on the circumstances reasonably should have knowledge or notice, that any person or employee of the licensee has committed a crime of moral turpitude on the business premises, or has permitted any

person or employee of the licensee to engage in the unlawful sale of merchandise or prohibited goods on the business premises and has not taken remedial measures necessary to correct such activity; or

G. The license for the business or for a similar business of the licensee in the Municipality or another jurisdiction has been denied, suspended, or revoked in the previous license year.

A decision of the license official shall be subject to appeal as herein provided. Denial shall be written with reasons stated.

Section 15. **Suspension or Revocation of License.** When the license official determines:

A. A license has been mistakenly or improperly issued or issued contrary to law;

B. A licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this ordinance;

C. A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, or evasion or suppression of a material fact in the license application;

D. A licensee has been convicted within the previous ten years of an offense under a law or ordinance regulating business; a crime involving dishonest conduct or moral turpitude; a crime involving the unlawful sale or possession of narcotics or other controlled substances, liquor, wine, beer, merchandise or prohibited goods; a crime involving the sale or possession of weapons; or, any violent crime;

E. A licensee is delinquent in the payment to the Municipality of any tax or fee;

F. A licensee has engaged in an unlawful activity or nuisance as defined herein related to the business. The licensee's operation of the business constitutes a public nuisance, providing the determination of the public nuisance arises from one or more of the following activities on the premises or in the immediate vicinity thereof and the licensee has actual or constructive knowledge of the activities:

(1) Frequent arrests of persons for crimes of violence, possession or sale or controlled substances, underage sale of alcohol, possession or sale of deadly weapons, the discharge of firearms, excessive noise, disorderly conduct, prostitution, disturbance of the peace, or vandalism, and the illegal acts correspond with or relate to the hours of operation of the business operations of this licensee;

(2) The police make an unusually high number of response calls, regardless of arrests, to the business premises, or to the immediate vicinity, and the high number of response calls corresponds with or relates to the hours of business operations of the licensee;

(3) There are ongoing and significant deposits of litter and debris in the immediate vicinity, whether the persons making the deposits can be identified or not, when the litter and debris relate to the business operations of the licensee; and

(4) Material violations of property maintenance codes, environmental codes, fire code and building codes where violations are applicable to the business premises.

(5) Failure to provide sufficient security measures to protect people and property located on the premises and to protect people and property located in the immediate vicinity when the immediate vicinity is affected by the business operations of the licensee.

The license official may give written notice to the licensee or the person in control of the business within the Municipality by personal service or mail that the license is suspended pending a single hearing before Council or its designee for the purpose of determining whether the suspension should be upheld and the license should be revoked.

The written notice of suspension and proposed revocation shall state the time and place at which the hearing is to be held, and shall contain a brief statement of the reasons for the suspension and proposed revocation and a copy of the applicable provisions of this ordinance.

Section 16. <u>Appeals to Council or its Designee.</u>

A. Except with respect to appeals of assessments under Section 11 hereof, which are governed by S.C. Code § 6-1-410, any person aggrieved by a determination, denial, or suspension and proposed revocation of a business license by the license official may appeal the decision to the Council or its designee by written request stating the reasons for appeal, filed with the license official within ten (10) days after service by mail or personal service of the notice of determination, denial, or suspension and proposed revocation.

B. A hearing on an appeal from a license denial or other determination of the license official and a hearing on a suspension and proposed revocation shall be held by the Council or its designee within ten business days after receipt of a request for appeal or service of a notice of suspension and proposed revocation. The hearing shall be held upon written notice at a regular or special meeting of the Council, or, if by designee of the Council, at a hearing to be scheduled by the designee. The hearing may be continued to another date by agreement of all parties. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by Council or its designee shall govern the hearing. Following the hearing, the Council by majority vote of its members present, or the designee of Council if the hearing is held by the designee, shall render a written decision based on findings of fact and conclusions on application of the standards herein. The written decision shall be served, by personal service or by mail, upon all parties or their representatives and shall constitute the final decision of the Municipality.

C. Timely appeal of a decision of Council or its designee shall be made to the Greenville County Circuit Court within ten (10) days from the date of service by regular mail or personal service of the decision by Council or its designee. An Appeal does not effectuate a stay of that decision and the decision of the Council or its designee shall be binding and enforceable unless overturned by an appellate court after a due and timely appeal.

D. For business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code, the Municipality may establish a different procedure by ordinance.

Section 17. Consent, Franchise, or License Required for Use of Streets.

A. It shall be unlawful for any person to construct, install, maintain, or operate in, on, above, or under any street or public place under control of the Municipality any line, pipe, cable, pole, structure, or facility for utilities, communications, cablevision, or other purposes without a consent agreement or franchise agreement issued by the Council by ordinance that prescribes the term, fees, and conditions for use.

B. The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the ordinance approving the agreement and shall be consistent with limits set by state law. Existing franchise agreements shall continue in effect until expiration dates in the agreements. Franchise and consent fees shall not be in lieu of or be credited against business license taxes unless specifically provided by the franchise or consent agreement.

Section 18. Confidentiality. Except in accordance with proper judicial order or as otherwise provided by law, no official or employee of the Municipality may divulge or make known in any manner the amount of income or any financial particulars set forth or disclosed in any report or return required under this ordinance. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of their duties, whether or not those duties relate to enforcement of this ordinance.

Section 19. Violations. Any person violating any provision of this ordinance shall be deemed guilty of an offense and shall be subject to a fine of up to $500.00 or imprisonment for not more than thirty (30) days or both, upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent taxes, penalties, and costs provided for in this ordinance.

Section 20. Severability. A determination that any portion of this ordinance is invalid or unenforceable shall not affect the remaining portions. To the extent of any conflict between the provisions of this ordinance and the provisions of the South Carolina Business License Tax Standardization Act, as codified at S.C. Code §§ 6-1-400 *et seq.*, the standardization act shall control.

Section 21. Classification and Rates.

A. The business license tax for each class of businesses subject to this ordinance shall be computed in accordance with the current business license rate schedule, designated as Appendix A to this ordinance, which may be amended from time to time by the Council.

B. The current business license class schedule is attached hereto as Appendix B. Hereafter, no later than December 31 of each odd year, the Municipality shall adopt, by ordinance, the latest standardized business license class schedule as recommended by the Municipal Association of South Carolina and adopted by the Director of the South Carolina Revenue

and Fiscal Affairs Office. Upon adoption by the Municipality, the revised business license class schedule shall then be appended to this ordinance as a replacement Appendix B.

C. The classifications included in each rate class are listed with NAICS codes, by sector, sub-sector, group, or industry. The business license class schedule (Appendix B) is a tool for classification and not a limitation on businesses subject to a business license tax. The classification in the most recent version of the business license class schedule adopted by the Council that most specifically identifies the subject business shall be applied to the business. The license official shall have the authority to make the determination of the classification most specifically applicable to a subject business.

D. A copy of the class schedule and rate schedule shall be filed in the office of the municipal clerk.

Section 22. Early Payment Discount.

A two-percent discount deducted from the calculated business license remittance shall be allowed for resident businesses that are in "good standing" with the City and also submit their annual business license renewal (with required documentation) on or before February 15 of each year. Renewal payments and documentation received by mail must be postmarked on or before the early discount deadline.

The term "good standing" as used herein shall mean a business that was not delinquent in paying their annual business license fee during the previous business license year and who do not carry an outstanding fee or balance on their account.

Section 23. Business License Fee Abatement Incentive Program.

The City offers a business license fee abatement program to incentivize and encourage private capital investment and reinvestment opportunities in the community. This program is intended to recognize the benefits of new investment and its contribution to the economic health and stability of the City. This program also provides a tool that furthers the economic development strategies outlined in the City's comprehensive plan, and further promotes the regional strategies of the Greenville Area Development Corporation.

A. *Definitions.* The following words, terms and phrases, when used for determining a qualifying business shall have the meaning ascribed herein:

(1) *Advanced material manufacturing* shall mean the manufacturing of textile, plastic, and metal products used in a variety of downstream manufacturing. This shall also include the manufacturing of high-quality textiles that support downstream automotive and aerospace manufacturing.

(2) *Biosciences* shall mean the industry of the development and production of pharmaceuticals as well as the manufacturing of medical devices such as orthopedic instruments, surgical instruments, diagnostic tools, catheters and stents, etc.

(3) *Business centers* shall mean office centers, data centers, shared services, financial services, consumer customer care services, information technology/software,

data support for financial and insurance services and engineering services. This shall also include applications related to cloud computing, development of software applications for automotive or aerospace industries, medical-related software, open-source software, and consumer customer services.

(4) *Capital investment* shall mean an activity that adds value to the City's tax base through property acquisition, and/or improvement of real property.

(5) *Corporate and regional headquarters* shall mean the national or regional operations of a corporation, real estate investment trust, general or limited partnership, or comparable business entity, provided the business operations has offices, production facilities, shipping locations, wholesale facilities or retail outlets in other states. A majority (more than 50 percent) of the management, legal, planning, marketing and personnel operations must be handled or supervised from the corporate headquarters. The headquarters must have responsibility for an area including South Carolina and two other states.

(6) *High technology growth business* shall mean those enterprises, which have as a primary revenue component of their business activity, earnings derived from the design, engineering, development, or production of innovative technology businesses, which are expanding significantly in the world economy. Examples include companies primarily engaged in activities such as: Internet technology, digital media, biotechnology research and development, wireless and high speed communication, computerized technologies and equipment design, medical device and engineering, and proprietary electronic equipment, with micro chip components, or businesses providing systems for computer software design or hardware design, or both, based on the assessment of customers' business or organizational needs. This category does not include the mere sale or installation of standard retail software packages or individual hardware components.

(7) *Manufacturing* shall mean doing any kind of business as manufacturers, which includes any goods, wares, or products manufactured, processed, assembled or produced with the city in whole or in part, regardless of where ultimately sold, distributed, or disposed of and not herein specifically taxed in another classification under the City's business license ordinance.

(8) *Research development* shall mean a facility or enterprise devoted directly and primarily to research and development in the experimental or laboratory sense for new products, new uses, for existing products, or for improving existing products. The facility must be a separate facility devoted primarily to research and development as defined in this section. The abatement does not include facilities used in connection with efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, or research in connection with literacy, historical, or similar projects.

(9) *Transportation equipment manufacturing* shall mean the production of equipment for transporting people and goods. Transportation equipment is a type

of machinery. Establishments in this subsector utilize production processes similar to those of other machinery manufacturing establishments—bending, forming, welding, machining, and assembling metal or plastic parts into components and finished products.

B. *Eligibility criteria.* Businesses may qualify for the business license fee abatement program according to one of the two qualification options provided below.

(1) *Eligibility option 1.* A business may qualify under "eligibility option 1" if it meets the following criteria pertaining to business type and revenue growth.

(a) *Business type.* The business shall be one of the following business types: corporate and regional headquarters, advanced materials manufacturing, transportation equipment manufacturing, bioscience, research and development, high technology growth business, or business center.

(b) *Revenue growth.* A business with 100 employees or more shall have an annual increase in gross revenue of 10 percent or more during the duration of the abatement period. A business with less than 100 employees shall have an annual increase in gross revenue of 15 percent or more during the duration of the abatement period.

(2) *Eligibility option 2.* A business may qualify under "eligibility option 2" if it has an annual gross income of $10,000,000.00 or more and it makes a capital investment of $300,000.00 or more with at least 33 percent towards physical improvements (i.e., building up-fit, renovation, addition or other physical improvement, etc.).

C. *Abatement.* Businesses which qualify as outlined above and that will be in operation for a period of six months or more during the calendar year shall have their business license fee abated in accordance with "abatement option 1" below. Business which qualify as outlined above and that will be in operation for a period of less than six months during the calendar year may have their business license fee abated in accordance with either "abatement option 1" or "abatement option 2" below.

(1) *Abatement option 1.*

(a) One hundred percent for the first taxable year of operation;

(b) Sixty-six percent for the second taxable year of operation; and

(c) Thirty-three percent for the third taxable year of operation.

(2) Abatement option 2.

(a) One hundred percent for the second taxable year of operation;

(b) Sixty-six percent for the third taxable year of operation; and

(c) Fifty percent for the fourth taxable year of operation.

D. *Application and administration.*

(1) The person, firm, or corporation must apply for the business license fee abatement program through the City's Business and Development Services Department.

(2) The applicant shall provide sufficient documentation as deemed necessary to substantiate the qualifying criteria for which the abatement is being requested. Such documentation may include: a business plan showing the projected revenue growth over a three- to five-year period, a detailed description of business operations, and construction bid and contract costs.

(3) The abatement incentive shall require annual monitoring by the City to ensure continued compliance with the abatement program. Monitoring during the abatement period shall be performed during the annual business license renewal process, which requires verification of annual gross revenue for the tax year.

(4) The three-year abatement term shall commence with the issuance of the certificate of occupancy, issuance of a business license and/or other criteria corresponding to the eligibility factors.

(5) If at any time during the incentive period the development's use or business does not meet the eligibility criteria for which the abatement was established, then the City shall deem the agreement null and void.

(6) If at any time during the incentive period the development is sold, then the City shall deem the agreement null and void.

(7) If at any time during the incentive period the real property is sold, then the City shall deem the agreement null and void.

(8) No business and no successor or affiliated business entity having one or more of the same principles and substantially the same business activity may cease business operations in the name of one business and then resume business operations in another name if the effect of such resumption is to circumvent this section or to prolong the incentives provided beyond the third incentive year.

(9) A new business that qualifies under this section becomes eligible for the abatement in the tax year during which it commences business operations within the City.

(10) The Director of Business and Development Services shall be responsible for the interpretation and application of the business license abatement program.

APPENDIX A: BUSINESS LICENSE RATE SCHEDULE

	INCOME: $0 - $2,000	INCOME OVER $2,000
RATE CLASS	**BASE RATE**	**RATE PER $1,000 OR FRACTION THEREOF**
1	$27.50	$0.92
2	$34.50	$0.97
3	$41.50	$1.03
4	$48.50	$1.11
5	$55.50	$1.18
6	$62.50	$1.26
7	$69.50	$1.33
8.10	$41.50	$1.00
8.15	$150.00	$2.00
8.20	Set by state statute	
8.30	MASC Telecommunications	
8.40	MASC Insurance	
8.51	$12.50 + $12.50 per machine	
8.52	$12.50 + $180.00 per machine	
8.60	$47.00 plus $5.00 or $12.50 per table	$3.50
9.10	$90.00	$2.80
9.20	$47.00	$5.60
9.30	$27.50	$0.75
9.41	$200.00	$1.90
9.42	$200.00	$1.90
9.50	$47.00	$3.50
9.60	$47.00	$3.50
9.70	$190.00	$9.40
9.80	$260.00	see Section 9.8

NON-RESIDENT RATES

Unless otherwise specifically provided, all taxes and rates shall be doubled for nonresidents and itinerants having no fixed principal place of business within the Municipality.

DECLINING RATES

Declining Rates apply in all Classes for gross income in excess of $1,000,000.00, unless otherwise specifically provided for in this ordinance.

Gross Income	Percent of Class Rate for each additional $1,000
$0.00 - $40,000,000.00	100%
$40,000,000.00 – $100,000,000.00	50%
$100,000,000.00 – $300,000,000.00	10%
$300,000,000.00 +	0%

No resident business shall be charged more than $100,000.00, exclusive of penalties and late charges, in business license fees per year.

CLASS 8 AND 9 RATES

Each NAICS number designates a separate subclassification. The businesses in this section are treated as separate and individual subclasses due to provisions of state law, regulatory requirements, service burdens, tax equalization considerations, and other factors that are deemed sufficient to require individually determined rates. In accordance with state law, the Municipality also may provide for reasonable subclassifications for rates, described by an NAICS sector, subsector, or industry, that are based on particularized considerations as needed for economic stimulus or for the enhanced or disproportionate demands on municipal services or infrastructure.

Non-resident rates do not apply except where indicated.

8.1 NAICS 230000 – Contractors, Construction, All Types [Non-resident rates apply].

8.10 Resident rates, for contractors having a permanent place of business within the Municipality:

Minimum on first $2,000 ..... $ 41.50 PLUS

Each additional 1,000..... $ 1.00

8.15 Non-resident rates, for contractors that do not have a permanent place of business within the Municipality:

Minimum on first $2,000 ..... $ 150.00 PLUS

Each additional 1,000..... $ 2.00

NOTE: A trailer at the construction site or structure in which the contractor temporarily resides is not a permanent place of business under this ordinance.

No contractor shall be issued a business license until all state and municipal qualification examination and trade license requirements have been met. Each contractor shall post a sign in plain view on each job identifying the contractor with the job.

Sub-contractors shall be licensed on the same basis as general or prime contractors for the same job. No deductions shall be made by a general or prime contractor for value of work performed by a sub-contractor.

No contractor shall be issued a business license until all performance and indemnity bonds required by the Building Code have been filed and approved. Zoning permits must be obtained when required by the Zoning Ordinance.

Each prime contractor shall file with the License Official a list of sub-contractors furnishing labor or materials for each project.

For licenses issued on a per-job basis, the total tax for the full amount of the contract shall be paid prior to commencement of work and shall entitle the contractor to complete the job without regard to the normal license expiration date. An amended report shall be filed for each new job

and the appropriate additional license fee per $1,000 of the contract amount shall be paid prior to commencement of new work. Only one base tax shall be paid in a license year. Licensees holding a per-job license shall file, by each April 30 during the continuation of the construction project, a statement of compliance, including but not limited to a revised estimate of the value of the contract. If any revised estimate of the final value of such project exceeds the amount for which the business license was issued, the licensee shall be required to pay a license fee at the then-prevailing rate on the excess amount.

8.2 NAICS 482 – Railroad Companies (See S.C. Code § 12-23-210).

8.3 NAICS 517311, 517312 – Telephone Companies.

With respect to "retail telecommunications services" as defined in S. C. Code § 58-9-2200, the Municipality participates in a collections program administered by the Municipal Association of South Carolina. The Municipality has approved participation in the collections program by separate ordinance (the "Telecommunications Collections Ordinance"). The rates, terms, conditions, dates, penalties, appeals process, and other details of the business license applicable to retail telecommunications services are set forth in the Telecommunications Collections Ordinance.

8.4 NAICS 5241 and 5242 – Insurance Companies and Brokers:

Independent agents and their employees are subject to a business license tax based on their natural class. With respect to insurers subject to license fees and taxes under Chapter 7 of Title 38 and to brokers under Chapter 45 of Title 38, the Municipality participates in a collections program administered by the Municipal Association of South Carolina. The Municipality has approved participation in the collections program by separate ordinance (the "Insurers and Brokers Collections Ordinance"). The rates, terms, conditions, dates, penalties, appeals process, and other details of the business license applicable to insurers and brokers are set forth in the Insurers and Brokers Collections Ordinance.

8.51 NAICS 713120 – Amusement Machines, coin operated (except gambling). Music machines, juke boxes, kiddy rides, video games, pin tables with levers, and other amusement machines with or without free play feature licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(1) and (A)(2) **[Type I and Type II]**.

For operation of all machines (not on gross income), pursuant to S.C. Code §12-21-2746:

Per Machine ..... $12.50 PLUS

Business license $12.50

Distributors that sell or lease machines and are not licensed by the state as an operator pursuant to §12-21-2728 are not subject to Subclass 8.51.

8.52 NAICS 713290 – Amusement Machines, coin operated, non-payout. Amusement machines of the non-payout type or in-line pin game licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(3) **[Type III].**

For operation of all machines (not on gross income), pursuant to S.C. Code §12-21-2720(B):

Per Machine ..... $180.00 PLUS

Business license $12.50

Distributors that sell or lease machines and are not licensed by the state as an operator pursuant to §12-21-2728 are not subject to Subclass 8.52.

8.6 NAICS 713990 – Billiard or Pool Rooms, all types. (A) Pursuant to SC Code § 12-21-2746, license tax of $5.00 per table measuring less than 3½ feet wide and 7 feet long, and $12.50 per table longer than that; PLUS, (B) with respect to gross income from the entire business in addition to the tax authorized by state law for each table:

Minimum on first $2,000 ..... $47.00 PLUS

Per $1,000, or fraction, over $2,000 ..... $3.50

9.1 NAICS 423930 – Junk or Scrap Dealers [Non-resident rates apply].

Minimum on first $2,000 ..... $90.00 PLUS

Per $1,000, or fraction, over $2,000 ..... $2.80

9.2 NAICS 522298 – Pawn Brokers [All Types].

Minimum on first $2,000 ..... $47.00 PLUS

Per $1,000, or fraction, over $2,000 ..... $5.60

9.3 NAICS 4411, 4412 – Automotive, Motor Vehicles, Boats, Farm Machinery or Retail.

(except auto supply stores - see 4413)

Minimum on first $2,000 ..... $27.50 PLUS

Per $1,000, or fraction, over $2,000 ..... $0.75

One sales lot not more than 400 feet from the main showroom may be operated under this license provided that proceeds from sales at the lot are included in gross receipts at the main office when both are operated under the same name and ownership.

Gross receipts for this classification shall include value of trade-ins. Dealer transfers or internal repairs on resale items shall not be included in gross income.

9.4 NAICS 454390 – Peddlers, Solicitors, Canvassers, Door-To-Door Sales.

Direct retail sales of merchandise. [Non-resident rates apply]

9.41 Regular activities [more than two sale periods of more than three days each per year]

Minimum on first $2,000 ..... $200.00 PLUS

Per $1,000, or fraction, over $2,000 ..... $1.90

9.42 Seasonal activities [not more than two sale periods of not more than three days each year, separate license required for each sale period]

Minimum on first $2,000 ..... $200.00 PLUS

Per $1,000, or fraction, over $2,000 ..... $1.90

Applicants for a license to sell on private property must provide written authorization from the property owner to use the intended location.

9.5 **NAICS 713290 – Bingo halls, parlors.**

Minimum on first $2,000 ..... $47.00 PLUS

Per $1,000, or fraction, over $2,000 ..... $3.50

9.6 **NAICS 711190 – Carnivals and Circuses.**

Minimum on first $2,000 ..... $90.00 PLUS

Per $1,000, or fraction, over $2,000 ..... $3.75

9.7 **NAICS 722410 – Drinking Places, bars, lounges, cabarets** (Alcoholic beverages consumed on premises).

Minimum on first $2,000 ..... $190.00 PLUS

Per $1,000, or fraction, over $2,000 ..... $9.40

License must be issued in the name of the individual who has been issued a State alcohol, beer or wine permit or license and will have actual control and management of the business.

9.8 **Manufacturing.**

Base Rate	$260.00
First $100,000	$0.94 per $1,000
Next $300,000	$0.75 per $1,000
Next $600,000	$0.56 per $1,000
Next $4,000,000	$0.37 per $1,000
Over $5,000,000	$0.19 per $1,000

Appendix B: Business License Class Schedule by NAICS Code

NAICS Sector/Subsector	Industry Sector	Class
11	Agriculture, forestry, hunting and fishing	2.00
21	Mining	4.00
23	Construction	8.10
31-33	Manufacturing	9.80
42	Wholesale trade	1.00
423930	Recyclable Material Merchant Wholesalers (Junk)	9.10
44-45	Retail trade	1.00
4411	Automobile Dealers	9.30
4412	Other Motor Vehicle Dealers	9.30
454390	Other Direct Selling Establishments (Peddlers)	9.41 & 9.42
48-49	Transportation and warehousing	2.00
482	Rail Transportation	8.20
51	Information	4.00
517311	Wired Telecommunications Carriers	8.30
517312	Wireless Telecommunications Carriers (except Satellite)	8.30
52	Finance and insurance	7.00
522298	Pawnshops	9.20
5241	Insurance Carriers	8.40
5242	Insurance Brokers for non-admitted Insurance Carriers	8.40
53	Real estate and rental and leasing	7.00
54	Professional, scientific, and technical services	5.00
55	Management of companies	7.00
56	Administrative and support and waste management and remediation services	4.00
61	Educational services	4.00
62	Health care and social assistance	4.00
71	Arts, entertainment, and recreation	3.00
71190	Other Performing Arts Companies (carnivals and circuses)	9.60
713120	Amusement Parks and Arcades (per machine)	8.51
713120	Amusement Parks and Arcades (on gross)	3.00
713290	Nonpayout Amusement Machines (per machine)	8.52
713290	Nonpayout Amusement Machines (on gross)	3.00
713290	Bingo Halls	9.50
713990	Other Amusement and Recreational Industries (pool tables)	8.60
721	Accommodation	3.00
722	Food services and drinking places	1.00
722410	Drinking Places (Alcoholic Beverages)	9.70
81	Other services	5.00

CITY COUNCIL
AGENDA ITEM SUMMARY

MEETING DATE: October 18, 2021
AGENDA ITEM: 8c

TO: City Council
FROM: City Administrator Brandon Madden
SUBJECT: Veteran's Memorial Bench

REQUEST

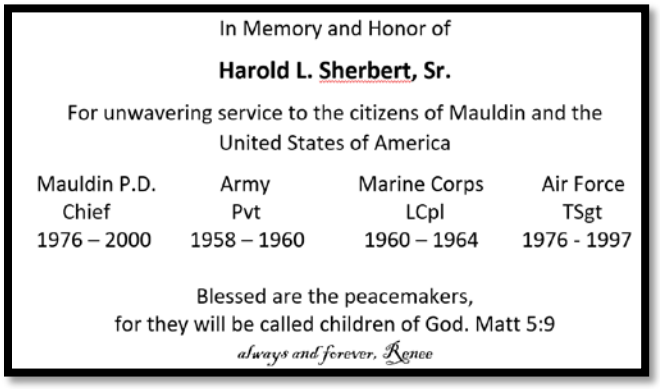
Acceptance of a $1,151 donation from Mrs. Sherbert for an engraved plaque in tribute to her late husband, former City Police Chief, and Army Veteran, Mr. Harold Sherbert. The engraved plaque will be placed on a bench along with the City's Veterans Memorial.

HISTORY/BACKGROUND

The City purchased benches in the Veteran's Memorial with blank plaques on them for interested residents to buy and have engraved. All of the benches except two have been purchased. By way of custom and practice, residents interested in purchasing a plaque and having it engraved reimburse the City for the cost of the bench and also pay for the plaque to be engraved.

ANALYSIS or STAFF FINDINGS

Once purchased and engraved, the plaque will be placed on the bench along the City's Veterans Memorial. The plaque will be engraved with the following:



FISCAL IMPACT

The fiscal impact of this request is $1,151.

RECOMMENDATION

Staff recommends Council's acceptance of a donation of $1,151 from Mrs. Sherbert for an engraved plaque in tribute to her late husband, former City Police Chief, and Army Veteran, Mr. Harold Sherbert.

ATTACHMENTS

None.

CITY COUNCIL
AGENDA ITEM SUMMARY

MEETING DATE: October 18, 2021
AGENDA ITEM: 8d

TO: City Council
FROM: City Administrator Brandon Madden
SUBJECT: Maintenance Agreement with SC Department of Transportation (SCDOT)

REQUEST

To recommend 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

During its July 19 meeting, City Council approved a maintenance agreement with SCDOT with amendments. Upon transmittal of the Council approved agreement to SCDOT, SCDOT rejected some of the amendments proposed by City Council.

Subsequently, attached is the proposed maintenance agreement for Council's review.

FISCAL IMPACT

None associated with this request; however, the agreement prompts the assumption of liabilities by the City as it relates to the ownership and ongoing maintenance of the Pedestrian Bridge.

RECOMMENDATION

Staff recommends Council's approval of the agreement.

ATTACHMENTS

SCDOT Maintenance Agreement

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, ~~the~~ City entered into a Development Agreement with Centerpoint Land, Inc., a South Carolina corporation (~~the~~hereinafter "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")~~Bridge; and

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

_____ By:_____
Witness

_____
Title

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION

_____ By:_____
Witness Secretary of Transportation

RECOMMENDED BY:

_____
Deputy Secretary for Finance and Administration

_____
Deputy Secretary for Engineering

EXHIBIT A
ADDITIONAL PROJECT DETAILS

~~ATTACHMENT A~~EXHIBIT ~~C~~B
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.

CITY COUNCIL
AGENDA ITEM SUMMARY

MEETING DATE: October 18, 2021
AGENDA ITEM: 8e

TO: City Council
FROM: Community Development Director Van Broad
SUBJECT: Underground Utilities – City Center Streetscape Project – Phase I

REQUEST

Approval of staff proceeding with the steps needed to facilitate the undergrounding of electrical lines in along Jenkins St. and Jenkins Ct. as a component of Phase I of the City Center Streetscape Project.

HISTORY/BACKGROUND

During its May 17, 2021 meeting, City Council approved the participation agreement with the GLDTC to commence Phase I of City Center Streetscape Project for the following roadway improvements: Murray Drive and Miller Road Intersection; Extending Jenkins Street to Hyde Circle; Resurfacing Jenkins Court; and, Constructing a new street off North Main Street. The aerial map below provides an overview of Phase I of the streetscape project.



This project will require Genese and Wyoming railroad company to close the railroad crossing a Jenkins St. and Murray Dr. and construct a new crossing at Jenkins St. and Murray Rd. The aerial maps below illustrate the foregoing railroad components of this project.



(Illustration of the extension of Jenkins to Hyde Circle across an existing railroad)



(Illustration of the closure of the railroad crossing at Jenkins St., Murray Dr., and Miller Rd. intersection)

ANALYSIS or STAFF FINDINGS

A potential component of the project is to underground the electrical lines along Jenkins St. and Jenkins Ct. as illustrated in the aerial picture below.:



Duke Power would remove the overhead electrical facilities in red in the attached and the City would facilitate burying the conduit.

FISCAL IMPACT

The high-level cost estimate provided by Duke Power for this effort is $650,000. Duke Power will provide a dollar-for-dollar match for this project and has allocated $482,280 for the City for undergrounding utilities. This would result in the City's portion of the project costing $325,000. Funding is available in the City's Assigned Fund Balance or the Capital Fund Balance to cover this expense.

RECOMMENDATION

Staff recommends authorization for staff to proceed with the steps needed to facilitate the undergrounding of electrical lines in along Jenkins St. and Jenkins Ct. as a component of Phase I of the City Center Streetscape Project.

ATTACHMENTS

None.

CITY COUNCIL
AGENDA ITEM SUMMARY

MEETING DATE: October 18, 2021
AGENDA ITEM: 8f

TO: City Council
FROM: Recreation Director Bart Cumalander
SUBJECT: Springfield Park Parking Lot Paving

REQUEST

Approve a qualified contractor to repave the parking lot with new asphalt at Springfield Park.

HISTORY/BACKGROUND

The City's FY2022 Capital Budget provides funding for repaving the parking lot with new asphalt at Springfield Park.

ANALYSIS or STAFF FINDINGS

The City issued a solicitation for Request for Proposals (RFP) from qualified contractor to repave the parking lot with new asphalt at Springfield Park. The RFP was issued on August 26, 2021 and closed on September 26, 2021. The City received one proposal from Panagakos Asphalt Paving, Inc.

FISCAL IMPACT

Council budgeted $125,000 in its Capital Improvement Plan for repaving the parking lot with new asphalt at Springfield Park. However, the bid from Panagokos is for $198,337 for the older section of the parking lot and $76,840 for the newer section of the parking lot that was repaved approximately 5 years ago. Should Council want to proceed with the paving, then an amendment to the CIP for this item is required. Funding is available in the Capital Project Fund balance to cover the additional funds. However, staff can repost the RFP to repave the parking lot. The picture below illustrates the newer section of the parking lot (outlined in red) and the older section of the parking lot (outlined in blue).



RECOMMENDATION

Staff recommends proceeding with repaving the older section of the parking lot. In reviewing the project, it appears that asphalt costs have increased significantly since staff obtained quotes for this project during the FY2022 budget development process. The Recreation Committee recommended to proceed with awarding the bid with a budget amount of $225,000 to repave the older section of the parking lot.

ATTACHMENTS

CITY COUNCIL
AGENDA ITEM SUMMARY

MEETING DATE: October 18, 2021
AGENDA ITEM: 8g

TO: City Council
FROM: Recreation Director Bart Cumalander
SUBJECT: PARD Grant Amendment

REQUEST

Amend the FY2022 Recreation Department budget in the amount of $13,768.64 to cover the full match amount of the Park and Recreation Development Fund (PARD) Grant.

HISTORY/BACKGROUND

The Recreation Department was awarded a PARD grant in the amount of $68,843.18, with a 20% match of $13,768.64 to reimburse the costs associated with improvements to the City Park walking trail. The improvements to the walking trail are slated to occur this fiscal year as a component of the City's FY2022 Capital Improvement Plan.

ANALYSIS or STAFF FINDINGS

Annually, the Recreation Department submits a grant application for funding through the PARD Grant program. The PARD Grant funds for this fiscal year will be used to finish improvements to the walking trail at City Park.

Given that the PARD Grant funds will be used to reimburse the City for the cost of the improvements to the walking trail, funding was included in the City's FY2022 Budget in the amount of $55,074.54 to cover the total amount of the grant, including the match. However, review of the PARD Grant documentation revealed that the amount needed to cover the match and amount of the grant is $68,843.18. Accordingly, Council is requested to amend its FY2022 grant budget to cover the difference of $13,768.64.

FISCAL IMPACT

The fiscal impact of this request is $13,768.64. If approved, the funding source will be the Recreation Fund balance.

RECOMMENDATION

Approval of the request for an amendment to the FY2022 Budget.

ATTACHMENTS

None.

CITY COUNCIL
AGENDA ITEM SUMMARY

MEETING DATE: October 18, 2021
AGENDA ITEM: 8h

TO: City Council
FROM: Public Works Director Matt Fleahman
SUBJECT: Resolution to approve a contract with Pratt Recycling

REQUEST

Approve a Resolution to approve a contract with Pratt Recycling, Inc. to provide recycling services for the City of Mauldin and to authorize the Mayor to execute the agreement.

HISTORY/BACKGROUND

The City takes its recycling collections to Pratt Recycling located in Spartanburg, SC, daily. The charge a tipping fee of $66 per ton for the collections. Over the past few years, the tipping fee charged by Pratt has increased annually.

ANALYSIS or STAFF FINDINGS

Given that the PARD Grant funds will be used to reimburse the City for the cost of the improvements to the walking trail, funding was included in the City's FY2022 Budget in the amount of $55,074.54 to cover the total amount of the grant, including the match. However, review of the PARD Grant documentation revealed that the amount needed to cover the match and amount of the grant is $68,843.18. Accordingly, Council is requested to amend its FY2022 grant budget to cover the difference of $13,768.64.

FISCAL IMPACT

Council budgeted $400,000 in its FY2022 Budget to cover the cost for tipping fees for its trash, recycling, limbs, brush, and debris. The impact of the increase of the tipping fees for recycling should Council approve this agreement should be able to be absorbed in the City's current budget.

RECOMMENDATION

Staff recommends approval of the Resolution and attendant agreement.

ATTACHMENTS

Resolution
Pratt Agreement

RESOLUTION _____ - 2021

A RESOLUTION TO APPROVE A CONTRACT WITH PRATT RECYCLING, INC., TO PROVIDE RECYCLING SERVICES FOR THE CITY OF MAULDIN AND TO AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT.

WHEREAS, Pratt Recycling, Inc. (hereinafter "Pratt") provides recycling services; and,

WHEREAS, the City has a strong environmental policy to recycle as much material as possible.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF MAULDIN AS FOLLOWS:

1. The Contract attached hereto marked as Exhibit "A" is approved.

2. The Mayor is hereby authorized to execute the Contract.

IT IS SO RESOLVED THIS ____ DAY OF OCTOBER, 2021.

_____
Terry Merritt, Mayor
City of Mauldin

_____
Cindy Miller, Municipal Clerk
City of Mauldin

Approved as to form

_____
John B. Duggan, City Attorney

PRATT RECYCLING, INC.

RECYCLING SUPPLY CONTRACT

1. Parties:

Pratt Recycling, Inc.		**Customer** (full legal name):	**City of Mauldin**
a Delaware Corporation ("Pratt")		**Customer's state of incorporation/formation:**	**South Carolina**
Customer's Service Location ("Service Location")		**Customer's billing address:**	
Address:	**5 East Butler Rd.**	**Address:**	**P.O. Box 249**
City/State/Zip:	**Mauldin, S.C. 29662**	**City/State/Zip:**	**Mauldin, S.C. 29662**
Contact Name:	**Matthew Fleahman**	**Contact Name:**	**Matthew Fleahman**
Phone:	**864-289-8904**	**Phone:**	**854-289-8904**
Email:	**MFleahman@mauldincitysc.com**	**Email:**	**MFleahman@mauldincitysc.com**

2. Term.

Start date: **10/19/2021** ***(Effective Date)***

End date: **10/19/2026** ***(5 years from the Effective Date)***

Check here if contract automatically renews : If checked, this Contract will automatically renew annually through the term of the agreement unless either Party gives a written non-renewal notice at least 90 days before the term ends.

3. Materials Procurement. Pratt has the obligation and exclusive right to procure from the Service Location 100% of the materials on the Pricing/Fees Attachment (which is part of this Contract) generated at the Service Location ("Materials").

4. Termination. If a Party fails to cure a material failure to meet obligations under this Contract within 30 days after notice, the other Party may terminate this Contract with 30 days' notice. A Party may immediately terminate this Contract (with no right to cure) if the other Party fails to pay on time; makes an assignment to benefit creditors; assigns this contract without the prior written consent of the other party; states that it cannot timely pay its debts; or files a bankruptcy petition or has an involuntary bankruptcy petition filed against it.

5. Indemnification. Notwithstanding anything herein to the contrary, Pratt shall indemnify and hold Customer, its employees, officers, officials, contractors, agents, and/or representatives ("Indemnified Parties"), free and harmless from and against any and all liabilities, losses, claims, demands, suits, judgments, causes of action and/or expenses of any kind or nature ("Claim"), including the payment of reasonable attorney's fees, resulting from property damage and/or personal injury, including death, to the extent resulting from the negligence and/or willful misconduct of Pratt, its subcontractors, agents or representatives under this Contract, except to the extent of any of the Indemnified Parties' negligence or willful misconduct, act or omission. Such losses, liabilities, expenses, damages and/or claims shall include, but not be limited to, civil or criminal fines or penalties, for loss of use and/or service, personal injury, death, libel, slander, and attorney's fees through all levels of appeals. The foregoing indemnity shall survive the expiration or termination of this Contract. South Carolina law prohibits any state or local government from indemnifying another party. The South Carolina Tort Claims Act (SCTCA) limits the liability of state and local governments to acts of gross negligence, recklessness or intentional acts and limits damages therefor to $300,000 per person, $600,000 per event. The Customer maintains a liability policy with policy limits provided for in the SCTCA for wrongful acts by Customer's employees and agents provided for in the SCTCA. Customer will maintain this coverage during the duration of this Contract.

6. Limitation of Liability. The parties will not be liable to one another for incidental, indirect, consequential, special, or punitive damages, including, without limitation, any damages for business interruption, loss of use, revenue or profits whether due to breach of contract, breach of any warranty, tort, or any other legal grounds for liability.

7. Governing Law and Notices. For all disputes arising out of this Contract, South Carolina law will govern all issues (regardless of any jurisdiction's choice-of-law rules), and the Parties submit to personal jurisdiction and venue in the South Carolina courts of Greenville County, South Carolina, and the federal courts of the District of South Carolina. To be effective, notices must be in writing and delivered by certified mail or overnight delivery by UPS or FedEx to:

To Pratt:
1800-C Sarasota Parkway
Conyers, GA 30013
Attention: Chief Financial Officer

With a simultaneous copy to:
Pratt Industries, Inc.
3535 Piedmont Road NE, Building 14, Suite 440
Atlanta, GA 30305
Attention: Douglas R. Balyeat, General Counsel
and Vice President

To City of Mauldin:
5 East Butler Road
Mauldin, S.C. 29662
Attention: Terry Merritt, Mayor or his Successor

With a simultaneous copy to:
Duggan & Hughes, LLC
457-B Pennsylvania Avenue (29650)
P.O. Box 449
Greer, SC 29652
Attention: John Duggan, Esq.

Pratt Recycling, Inc.	**Customer**
By: _____	By: _____ Customer's Authorized Agent
Name: Stephen Ward	Name: Terry Merritt
Title: Chief Financial Officer	Title: Mayor
Date signed: _____	Date signed: _____

Attachment for Additional Service Locations

List the addresses of any additional service locations, all of which will be included in the term “Service Location.”

Pricing/Fees Attachment

1. Purchase Prices (per short ton):

Revenue Share: 50% of the Composite Market Value ("CMV") when the CMV is equal to or greater than $30.00 (the "Revenue Share"), which will be calculated as the combined measure of the overall market for Material. The calculation shall occur on a quarterly basis.

2. Definitions.

Materials will be Single Stream recyclables that conform to grade specifications in the ISRI Scrap Specifications Circular in effect when Pratt obtains title to the Materials.

3. Payment Terms. Pratt will pay Customer for Materials received at Pratt's destination point at the Purchase Prices in Section 1 above (if Purchase Prices exceed $0). Any amount that Pratt owes the customer will first offset any amount that Customer owes Pratt, and Pratt will pay Customer any remaining amount due to Customer within 30 days after Pratt receives the Materials.

4. Collection Fees and Processing Fees.

_____ If checked, Customer will pay Pratt $_____ per short ton to collect and haul away the following types of Materials: _____.

____X_ If checked, Customer will pay Pratt a Processing Fee of $70.00 for every short ton of Materials that Pratt receives at its destination point.

Customer will pay any amount owed to Pratt within 30 days after the invoice date.

5. Unacceptable Materials. Customer will ensure that no Materials contain any of the following "Unacceptable Materials:" hazardous substances; herbicides, insecticides, fungicides, or rodenticides; heavy metals; antimony, arsenic, barium, cadmium, chromium, copper, lead, mercury, selenium, silver, or zinc; toxic or potentially carcinogenic substances; formaldehyde, PCBs, or phenolic based resins; biological or medical waste; radioactive substances; or any container that previously held any of the items in this list. Customer will retain title to and legal responsibility for any Unacceptable Materials even if collected by Pratt.

6. Delivery and Taxes. Pratt will pay all taxes and government fees imposed on the Materials.

_____ If checked, Pratt will collect the Materials from Customer's Service Location at Pratt's expense and will obtain title and risk of loss when it collects the Materials. OR

___X_____ If checked, Customer will deliver the Materials to Pratt's destination point at 255 Morley Court Duncan, SC 29334 at Customer's expense, and Pratt will obtain title and risk of loss when the Materials are delivered to Pratt's destination point.

7. Unusual Cost Increases or Market Conditions. Pratt may, at reasonable times, petition the Customer to reduce Purchase Prices or pay new or adjusted rates to account for unusual increases in Pratt's operation costs or unusual changes in market or other conditions beyond Pratt's reasonable control. If Customer unreasonably refuses, and Pratt determines in its sole discretion that the Contract is no longer in Pratt's economic interest, then Pratt may terminate this Contract for cause with 30 days' notice to Customer. If Customer determines that proposed increases are in excess of market rates Customer may refuse to pay the increases and terminate the agreement upon thirty (30) days notice to Pratt.

CITY COUNCIL
AGENDA ITEM SUMMARY

MEETING DATE: October 18, 2021
AGENDA ITEM: 8i

TO: City Council
FROM: Interim-Chief George Miller
SUBJECT: Body-Worn Camera Grant

REQUEST

Authorize the acceptance and expenditure of a $52,092 grant awarded to the Mauldin Police Department by the South Carolina Public Safety Coordinating Council and the South Carolina Department of Public Safety for body worn cameras (BWC) and associated maintenance and storage.

HISTORY/BACKGROUND

The Department's body-worn cameras that are continually upgraded and replaced to make sure the cameras are serviceable. This grant aids in this effort, along with facilitating the purchase of a server.

ANALYSIS or STAFF FINDINGS

The police department applied for a grant for body-worn cameras and server by the South Carolina Department of Public Safety.

FISCAL IMPACT

No fiscal impact as this grant does not require a match from the City.

RECOMMENDATION

Staff recommends authorizing the acceptance and expenditure of a $52,092 grant awarded to the Mauldin Police Department by the South Carolina Public Safety Coordinating Council and the South Carolina Department of Public Safety for BWCs and associated maintenance and storage.

ATTACHMENTS

Grant award document from the South Carolina Department of Public Safety

South Carolina Department of Public Safety

Office of Highway Safety and Justice Programs

September 7, 2021

Interim Chief George Miller
Mauldin Police Department
Post Office Box 249
Mauldin, South Carolina 29662-0249

Dear Interim Chief Miller,

On behalf of the South Carolina Public Safety Coordinating Council and the South Carolina Department of Public Safety, I am pleased to announce that your agency will be receiving funding for body-worn cameras (BWC) and associated maintenance and storage in the amount of $52,092.00. This funding is being provided pursuant to SC Code of Laws §23-1-240 and may be applied to the initial purchase or reimbursement of equipment, storage, and/or maintenance as indicated in your agency's BWC Request for Financial Support document submission.

Enclosed please find a Cash Award document relative to funding that your agency is receiving for the purchase and/or reimbursement of body-worn cameras, storage, and/or maintenance. Also enclosed is a document outlining conditions associated with the receipt and use of these funds.

Please sign the Cash Award document, which affirms your acceptance of the award and your understanding of an agreement to abide by the conditions for receiving and using the award, and return the document to the address below within 30 days of receipt of this communication.

South Carolina Department of Public Safety
Office of Highway Safety and Justice Programs
Post Office Box 1993
Blythewood, South Carolina 29016
ATTN: Mr. Johnny Price

Thank you for your prompt attention to this matter. Should you have any questions, please do not hesitate to contact Mr. Johnny Price, who serves as our BWC Program Coordinator, at 803-896-7789, or by email at JohnAPrice@scdps.gov. Congratulations on your agency's award.

Sincerely,

Phil Riley
OHSJP Director

cc: Johnny Price

Attachments

CERTIFIED COPY ORIGINAL

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
OFFICE OF HIGHWAY SAFETY AND JUSTICE PROGRAMS
P. O. BOX 1993
BLYTHEWOOD, SOUTH CAROLINA 29016

BODY-WORN CAMERAS FUND

CASH AWARD

Award Recipient: Mauldin Police Department

Date of Award: September 7, 2021

Amount of Award: **$52,092.00**

Pursuant to the SC Code of Laws, §23-1-240, the South Carolina Public Safety Coordinating Council (SCPSCC) has been given oversight of the funding and disbursement of the "Body-Worn Cameras (BWC) Fund." The legislation states that the SCPSCC "…shall oversee the fund…and disburse the funds in a fair and equitable manner, taking into consideration priorities in funding." In accordance with the above, your agency is being awarded funding to be used for the purchase of body-worn cameras, and/or associated storage/maintenance.

This agreement shall become effective as of the Date of Award, contingent upon the return of this form to the Office of Highway Safety and Justice Programs, signed by the Chief/Sheriff/Director (Official Authorized to Sign) in the space provided below. This award must be returned to the Office of Highway Safety and Justice Programs within 30 days of the Date of Award.

ACCEPTANCE OF FUNDING

Signature of Official Authorized to Sign

Phil Riley, Director
Office of Highway Safety and Justice Programs

CERTIFIED COPY OF
ORIGINAL

This award is subject to the attached conditions.

BODY-WORN CAMERAS FUND
CASH AWARD CONDITIONS

AWARDED AGENCY: Mauldin Police Department

AWARD DATE: September 7, 2021

AUTHORIZED SIGNATURE ON THE BODY-WORN CAMERAS FUND CASH AWARD DOCUMENT IS INDICATIVE OF THE AWARDED AGENCY UNDERSTANDING AND AGREEING TO THE STATED CONDITIONS BELOW.

* *

1) This award is contingent upon approval and availability of funds from the state funding source.

2) The signed BWC Cash Award document must be sent to the Office of Highway Safety and Justice Programs (OHSJP) within 30 days of the Date of Award specified on the Cash Award document.

3) Documentation of purchases for equipment, storage, and/or maintenance, whether initial purchase or reimbursement, must be submitted, after all items have been ordered, received, and paid, to the OHSJP as soon as possible. Documentation should demonstrate clearly that any and all procurement procedures operative within your agency have been followed.

4) Funds awarded to the agency may only be used for the intended purpose (i.e., purchase of body-worn camera equipment, maintenance, and/or storage) of the award. Funds awarded are subject to audit by the awarding agency.

5) Funds shall not be used to purchase printers or laptops.

* *

FOR OHSJP USE ONLY

* *

NO.	ASSIGNED TO	CLEARED BY	DATE	NO.	ASSIGNED TO	CLEARED BY	DATE
2	SA			4	SA		
3	SA						

CERTIFIED COPY OF
ORIGINAL

CITY COUNCIL
AGENDA ITEM SUMMARY

MEETING DATE: October 18, 2021
AGENDA ITEM: 8j

TO: City Council
FROM: Interim-Chief George Miller
SUBJECT: Contract with D&J Productions (Cold Justice)

REQUEST

To approve a contract with D&J Productions (Cold Justice)

HISTORY/BACKGROUND

Debra Chisolm was murdered and burned in a fire in 2007. Detectives have been working diligently since then to get closure for the family. In May contact was made with Cold Justice, a cold case documentary show on The Oxygen Channel. They reviewed the file and agreed to assist with the case.

ANALYSIS or STAFF FINDINGS

At the end of taping the show, a press conference was held to announce that a suspect in the case had been arrested for Murder and Arson.

FISCAL IMPACT

No fiscal impact associated with this request.

RECOMMENDATION

Staff recommends we accept the contract with D&J Productions (Cold Justice). The show will air in December, 2021.

ATTACHMENTS

A copy of the contract with D&J Productions (Cold Case)

ACCESS AGREEMENT

D AND J PRODUCTIONS
6255 Sunset Blvd., Ste. 1600
Los Angeles, CA 90028

Effective Date: _____

Mauldin Police Department ("Entity") is the owner of and/or controls all rights with respect to the property that is the subject of this agreement (the "Property"). Entity hereby gives permission to D and J Productions and its employees, agents, contractors and suppliers ("Producer") to enter upon and use the Property located at: 5 E Butler Rd, Mauldin, South Carolina, commencing on _____ and continuing through _____ (subject to change on account of weather conditions or change in production schedule) for the purpose of photographing, filming and recording (including sound recording) certain scenes for use in and in connection with the program tentatively entitled "Cold Justice" (the "Program") and for any additional uses as described below. The Property shall include the grounds at such address and all buildings and rooms and other structures located thereon (including balconies and patios), together with access to and egress from the Property. Producer may use the Property until all scenes requiring the Property have been completed. Producer will have the right to use the Property for additional filming as may be necessary and payment will be prorated from the charges (if any) listed below. Entity has been advised of the nature of the Program and has no objections to participating or appearing in the Program. However, D and J Productions understands and agrees that it may not interrupt or interfere with the normal operations of the Mauldin Police Department which determination shall be made at the sole discretion of the Chief of Police.

Entity acknowledges and agrees that Entity will not be paid compensation for Producer's use of the Property under this agreement nor for Producer's exercise of the rights granted by Entity under this agreement. Entity further acknowledges and agrees that the consideration Entity will receive for Producer's use of the Property and/or Producer's exercise of its rights under this agreement is the opportunity for publicity that the Property and/or Entity will receive if Producer decides to include photographs, film, or recordings made on the Property or of the Entity Marks (defined below) in any of its productions. Entity hereby grants and assigns to Producer a perpetual, worldwide, non-exclusive, royalty-free, transferable and sub-licensable right to use and exploit any material provided by Entity to Producer in connection with the Program (collectively, the "Entity Licensed Material") to the same and full extent Producer can use and exploit any photographs, film and recordings as set forth herein.

Producer may place all necessary facilities and equipment on the Property and agrees to remove them after completion of work and leave the Property in as good condition as when received, except for reasonable wear and tear from the uses permitted. Signs on the Property may, but need not, be removed or changed, but, if removed or changed, Producer will replace them. Producer may, if it elects, include any and all signs on the Property and any tradenames, trademarks, copyrights, logos, seals and symbols of Entity or visible on the Property (collectively, the "Entity Marks"), which may appear on uniforms and equipment of Entity's employees, agents, representatives or subcontractors, in the photographs, film and recordings. Entity represents and warrants that the Property is maintained and operated in compliance with all federal, state and local laws, rules, regulations, codes and ordinances and is free of latent defects or illegal conditions of which Entity is or should be aware except those of which Entity has notified Producer.

Producer's liability of any kind or nature with respect to its use of the Property shall be limited to the following: Producer agrees to use reasonable care to prevent damage to the Property and will indemnify and hold Entity harmless from any claims and demands of any person or persons arising out of or based upon personal injuries or property damage resulting from the negligence or willful misconduct of Producer, its officers, employees, agents or representatives while Producer is engaged in the aforementioned use of the Property, except to the extent that Entity contributes to such injury or damage.

If Entity claims that Producer is responsible for any such damage or injury, or both, Entity must notify Producer in writing within 5 business days of the date that Producer vacates the Property, which writing shall include a detailed listing of all property damage and injuries for which Entity claims Producer is responsible. Entity shall cooperate fully with Producer in the investigation of such claims, and permit Producer's investigators to inspect the property claimed to be damaged.

Entity acknowledges and agrees that Producer has the right to photograph, film and record the Property, and to broadcast, exhibit and otherwise exploit the photographs, film and recordings of the Property and any and all furnishings, works of art and other objects located in or around the Property, as well as the Entity Marks, in any and all manner and media whatsoever, whether now known or hereafter devised, throughout the universe in perpetuity. Without in any way limiting the foregoing, all rights of every kind in and to all photographs, film and recordings made on the Property (including all copyrights) shall be and remain vested in Producer, including the right to use and reuse all such photographs, film and recordings in and in connection with subsequent related and unrelated productions of any kind, as well as in and in connection with advertisements, promotions, publicity, clips, and other materials, etc. Neither Entity nor any tenant or any other party having an interest in the Property shall have any claim or action against Producer or any other party arising out of any use of the photographs, film and/or recordings. Entity's sole remedy for breach of this agreement by Producer shall be an action for money damages. In no event will Entity be entitled to injunctive or other equitable relief, and in no event will Entity be entitled to terminate this agreement. Producer has no obligation to include the Property in the Program or in any other production.

From the date of this Agreement through 6 months after the initial exhibition of the final episode of the Program in which Entity appears, Entity shall not participate in any programming or content (in all forms of media) that concerns the subject matter of the Program without Network's prior written approval. Except for any action taken due to the ongoing investigation of the crime which is the subject of this show.

Entity represents and warrants that (a) Entity has the right to enter into this agreement and to grant Producer all rights provided by this contract; (b) in the event that Entity is not the legal owner of the Property, the Entity Marks, or the Entity Licensed Material, Entity has secured from the legal owner(s) the right and authority to enter into this agreement and to grant Producer all rights provided hereunder; (c) the consent or permission of no other person or entity is necessary; (d) Entity shall take no action, nor allow or authorize any third party to take any action which might interfere with Producer's authorized use of the Property, the Entity Marks, or the Entity Licensed Material; and (e) Entity's participation in the Program will comply with all applicable municipal, state, and local laws, rules, and regulations, and ordinances.

Entity shall keep in strictest confidence and shall not disclose to any participant or other third party at any time (i.e., prior to, during, or after the taping or exhibition of the Program) any information or materials concerning or relating to Producer or to any programming service or other platform of NBCUniversal Media, LLC ("Network"), the business of Producer or the Network, any program produced by Producer and/or exhibited by the Network, including any information concerning or relating to the Program, the Program participants, the location(s) of the Program, the events contained in the Program or outcome of any such event, and any information that Entity reads, hears or otherwise acquires or learns in connection with or as a result of Entity's participation on the Program (collectively, "Confidential Information") unless and until such Confidential Information is specifically disclosed in the exhibition of the Program, if ever. Entity acknowledges and agrees that the Confidential Information is confidential and the exclusive property of Producer and/or the Network. At no time will Entity ever, directly or indirectly, divulge in any manner, or use or permit others to use, any of the Confidential Information. Entity's obligations with respect to confidentiality as set forth in this paragraph shall continue in perpetuity or until terminated by the Network in writing. In no event shall Entity have the right to terminate its confidentiality obligations under this agreement. Excluded herefrom is the right of the Entity to investigate the crime which is the subject of the show.

Without Producer's and/or Network's prior written approval, neither Entity nor Entity's representatives shall at any time: (a) issue any press releases or public statements about Producer, Network, the Program or Entity's participation hereunder; or (b) make any commercial or other use of Entity's participation, the Program or any of Producer's and/or Network's names, logos or trademarks.

If any controversy or claim arising out of or relating to this contract, or the breach of any term hereof, cannot be settled through direct discussions, the parties agree to endeavor to first settle the controversy or claim by mediation conducted by a mutally acceptable certified mediator located within 50 miles of Mauldin City Hall. The Parties will share equally the cost for the mediator. If a dispute is not otherwise resolved through direct discussions or mediation, the controversy or claim, including the scope or applicability of this agreement to arbitrate, shall be resolved by final and binding confidential arbitration conducted in New York, New York, and administered by JAMS in accordance with the Streamlined Arbitration Rules and Procedures of JAMS or subsequent versions thereof, including the optional appeal procedure (the "JAMS Rules," available at www.jamsadr.com, including the rules providing for limited discovery and other exchange of information and, to the maximum extent permitted by law, the rule providing that each party shall pay *pro rata* its share of JAMS fees and expenses). The JAMS Rules for selection of mediators and arbitrators shall be followed, except that the mediator or arbitrator shall be (i) an experienced mediator or arbitrator (as applicable) licensed to practice law in New York or (ii) a retired judge. Notwithstanding the above requirements, if a party files suit in court or files an arbitration before first seeking to mediate, in direct violation of this paragraph, the other party does not have to request mediation to enforce the right to compel arbitration as required under this paragraph. Upon the conclusion of any arbitration proceedings, the arbitrator shall render findings of fact and conclusions of law and a written opinion setting forth the basis and reasons for any decision reached and shall deliver such documents to each party to the dispute. The arbitrator shall not have the authority to grant any remedies the parties to any dispute have waived herein.

This Agreement shall be interpreted under the internal, substantive laws of the State of South Carolina without regard to the conflicts of law provisions thereof. The parties submit to the in personam jurisdiction of state and federal courts of South Carolina.

Entity agrees that Producer may license, assign and otherwise transfer this agreement and all rights granted by Entity to Producer under this agreement to any person or entity. Network is an express intended third-party beneficiary of this Agreement, with full standing to enforce each, every, any and all of its provisions as if it was an express party thereto.

The parties acknowledge that each party is acting independently from the other. Nothing in this Agreement shall be deemed to make either party the agent of the other, or create a partnership or joint venture between the parties. Neither party shall have any right or authority to assume or create any obligation or responsibility, either expressed or implied, on behalf of or in the name of the other party, or to bind the other party in any matter or thing whatsoever.

Producer shall have the right to cancel this agreement by written notification at any time prior to Producer's use of the Property. Upon Producer's cancellation of this agreement, neither Producer nor Entity shall have any obligations whatsoever under this agreement, and Entity shall immediately refund to Producer any and all sums previously paid by Producer pursuant to this agreement (if any). If any provisions of this agreement are held to be void or unenforceable, all other provisions of this agreement shall continue in full force and effect. Except for any expenses incurred by Entity prior to receiving written notice of cancellation.

This is the entire agreement. No other authorization is necessary to enable Producer to use the Property for the purpose contemplated. Nothing in this agreement shall limit or restrict any rights otherwise enjoyed by Producer and/or Network under law or agreement.

NBCUniversal's privacy notice at www.nbcuniversal.com/privacy describes NBCUniversal's information practices in relation to Entity and Entity's personnel (if any) whose personal information is provided by Producer to NBCUniversal in connection with this Agreement. Entity will bring this privacy notice to the attention of such personnel, if any. This notice may be updated from time to time.

Producer further understands and acknowledges that South Carolina law prohibits any disclosure of the personal information of individuals and must comply with South Carolina Code Section 30-4-40. Producer understands and agrees that the City of Mauldin and its Police Department is subject to the SC Freedom of Information Act (FOIA). Therefore, the City of Mauldin and its Police Department will release any information required by the FOIA.

ACCEPTED AND AGREED:

PRODUCER

By:_____

Date: _____

Show:

ENTITY

By:_____

Print Name/Title: _____

Address:_____

Telephone:_____

Date:

CLEARANCE AGREEMENT

D AND J PRODUCTIONS
6255 Sunset Blvd., Ste. 1600
Los Angeles, CA 90028

Mauldin Police Department ("**Licensor**") hereby grants to D and J Productions and its successors, licensees and assigns ("**Producer**"), the full and complete right to use:

All case files, photos, audio recordings and videos relating to the victim, Debra Chisholm, provided by Licensor to Producer, and all insignias, logos, seals and similar such items for Mauldin, South Carolina including the Mauldin Police Department

(the "**Licensed Material**") in and in connection with the production currently entitled "Cold Justice" (the "**Production**"), any other production, and in and in connection with advertisements, promotions, publicity and other material relating to the Production or such other production.

The rights herein granted shall extend to and include Producer's use of the Licensed Material in any and all manner and media whatsoever, whether now known or hereafter devised, throughout the universe in perpetuity, free and clear of any and all claims for royalties, residuals, or other compensation.

The rights granted to Producer to use the Licensed Material will be non-exclusive, however, Licensor shall not grant any third party the right to use the Licensed Material in any form of media without Producer's written approval, from the date of Licensor's execution of this agreement ("**Effective Date**") through the earlier of: (a) 6 months after the initial exhibition of the episode of the Production in which Licensed Material is first used; or (b) 24 months after the Effective Date.

Producer shall have the sole right to determine the manner in which the Licensed Material shall be used pursuant to this agreement, and Producer shall not be obligated to use the Licensed Material as part of the Production or otherwise, or to broadcast or otherwise exhibit or exploit the Production.

Licensor hereby warrants and represents that it is the sole owner or holder (or the authorized representative of the sole owner or holder) of the rights granted herein, including any and all copyrights, trademarks, and rights in the likenesses of any people (if any) depicted in the Licensed Material, that it is authorized to enter into and execute this agreement, that nothing of value apart from the Licensed Material was given (or was agreed to be given) to Producer or any other person or entity in exchange for use of the Licensed Material in the Production, that the consent of no other person or entity is required to enable Producer to use the Licensed Material as described herein, and that such use will not violate the rights of any third parties. Licensor further warrants and represents that the Licensed Material is authentic and the events depicted therein (if any) actually occurred and were not fictionalized in any way.

The parties agree to indemnify and hold free and harmless to the fullest extent permitted by law, the other party, each of their respective parent, subsidiary, and affiliated organizations, and each of their respective agents, employees, successors, licensees and assigns, from and against any and all claims, damages, liabilities, costs and expenses, including reasonable attorneys' fees, resulting from any breach of any warranty, representation or agreement made herein.

This agreement and all matters or issues collateral thereto shall be governed by the internal, substantive law of New York without regard to the conflicts of law provisions thereof. In any action by Licensor for breach of any provision hereunder, Licensor agrees that its exclusive remedy shall be an action at law for damages and in no event shall Licensor be entitled to injunctive or any other equitable relief. This agreement contains the parties' entire understanding relative to its subject matter. Licensor is not relying on any promises or statements made by anyone in connection with the Production that are not contained within this agreement, including about the nature or content of the Production, the nature of any investigation to be carried out in the Production, or that investigation's theories, findings, and/or conclusions. Nothing in this agreement shall limit or restrict any rights otherwise enjoyed by Producer under law or contract.

NBCUniversal's privacy notice at www.nbcuniversal.com/privacy describes NBCUniversal's information practices in relation to Licensor and Licensor's personnel (if any) whose personal information is provided by Producer to NBCUniversal in connection with this Agreement. Licensor will bring this privacy notice to the attention of such personnel, if any. This notice may be updated from time to time.

AGREED AND ACCEPTED:
LICENSOR

Signature: _____ Date: _____ Phone: _____

Print Name: _____ Title (if applicable): _____

Address: _____

CITY COUNCIL
AGENDA ITEM SUMMARY

MEETING DATE: October 18, 2021
AGENDA ITEM: 8k

TO: City Council
FROM: Interim-Chief George Miller
SUBJECT: In-Car Video Camera System Use Agreement

REQUEST

To approve an Agreement with the South Carolina Department of Public Safety on receiving 13 in-car video cameras.

HISTORY/BACKGROUND

The South Carolina Department of Public Safety each year gives departments across the state in-car video camera systems. This year they will be giving the Mauldin Police Department thirteen (13) brand new cameras as a result of the agreement.

ANALYSIS or STAFF FINDINGS

This is a program that we have participated in, in the past. With the acceptance of this agreement for the cameras it will save $65,000 this year in the Capital Improvement Plan for the purchase and upfit of vehicles. The installation will also be at no cost to the city.

FISCAL IMPACT

There will be no Fiscal Impact

RECOMMENDATION

Staff recommends we accept the agreement with the South Carolina Department of Public Safety.

ATTACHMENTS

A copy of the In-Car Video Camera System Use Agreement.

IN-CAR VIDEO CAMERA SYSTEM USE AGREEMENT

This agreement, made and entered into this _____day of _____ between the South Carolina Department of Public Safety, hereinafter referred to as the Department and the _____ hereinafter referred to as the law enforcement entity.

Whereas, the Department has been charged with purchasing, maintaining and supplying in-car videotaping cameras to law enforcement entities for use in enforcing traffic laws; and,

Whereas, the law enforcement entity has been chosen by the Department to receive and use said video equipment identified as:

Description	Control Number	Serial Number

See Attachment A

NOW, THEREFORE, in consideration of the opportunity to provide, and the privilege to use said equipment, the parties mutually agree as follows:

1. **The Department will provide, initial install and will maintain said equipment. There is a five year factory warranty purchased by DPS for every system awarded. Law enforcement entities should not pay for any repairs on this equipment.**

2. **The videotaping equipment is on loan to the law enforcement entity and remains the property of the Department. Improper disposition may result in the law enforcement entity becoming financially responsible for the camera systems.**

3. The law enforcement entity agrees to comply with all requests from the Department regarding equipment use, maintenance and disposition within a reasonable time, but not more that 10 working days after the request.

4. The law enforcement entity will exercise due care at all times when using the equipment.

5. If repairs to the equipment become necessary as a result of negligence or misuse, the law enforcement entity agrees that the Department has the right to bill for said repairs or replacement.

6. **The law enforcement entity agrees not to perform, or have any maintenance or repairs performed upon the equipment without authorization from the department. The law enforcement entity also agrees to immediately notify the Department or its designee if maintenance or repairs become necessary.**

7. The law enforcement entity will return the equipment to the Department as soon as possible but no later than thirty (30) days from receipt of notice, or when the system is no longer needed.

8. **The law enforcement entity will not sell, lease or otherwise dispose of the equipment.**

9. The law enforcement entity will not remove the equipment from the vehicle in which it was originally installed without prior approval from the Department's authorized representative.

10. The law enforcement entity will conduct an annual inventory, in a timely manner, of the equipment on loan, upon written request from the Department.

IN WITNESS WHEREOF, the law enforcement entity listed below and the Department have executed this agreement as of the date first above written

LAW ENFORCEMENT ENTITY ADDRESS

_____ Telephone Number_____

_____ Fax Number_____

_____

_____ _____

Witness Signature Law Enforcement Entity

Authorized Law Enforcement Entity Signature

_____ _____

Printed or Typed Name

Printed or Typed Name

_____ _____

Title

Title

DEPARTMENT OF PUBLIC SAFETY

Sergeant Jack B. Parrish IV
Authorized Representative

_____ _____

Witness Signature for DPS

Authorized Representative Signature

Attachment A

Agency Name: _____

Description	Control Number	Serial Number

Note: The information will be provided on the DPS Property Transfer Form when the camera systems are picked up from the Agency.

CITY COUNCIL
AGENDA ITEM SUMMARY

MEETING DATE: October 18, 2021
AGENDA ITEM: 8l

TO: City Council
FROM: City Administrator Brandon Madden
SUBJECT: School Resource Officer Agreement

REQUEST

Approval of the School Resource Officer (SRO) Agreement with the Greenville County School District for the provision of SROs at Mauldin High and Mauldin Middle schools.

HISTORY/BACKGROUND

The City provides SROs at schools (e.g., Mauldin High, Bethel Elementary, Mauldin Middle, and Mauldin Elementary) within the City limits via agreements with the Greenville County School District.

ANALYSIS or STAFF FINDINGS

The City has two agreements with the Greenville County School District for the provision of SROs. The agreement related to this request is for the provision of 3 SROs from the City Police Department – 2 SROs at Mauldin High and 1 SRO at Mauldin Middle.

Additionally, the City has an agreement with the Greenville County School District for the provision of SROs at Bethel and Mauldin elementary schools,automatically renews annually.

It is suggested that City Council consider approving the SRO agreement for the provision of SROs at Mauldin High and Mauldin Middle schools and then merge the agreement with the SRO agreement for Bethel and Mauldin elementary schools next year. This will allow for the City to have one agreement with the Greenville County School District for SROs.

FISCAL IMPACT

Per the agreement, the School District will pay $100,000 to the City for 3 SROs.

RECOMMENDATION

Staff recommends approval of the agreement. There were some minor language adjustments made by the School District and the City's attorney regarding the term of the agreement and the manner in which the School District pays the City for the SROs. Attached is a redlined copy and clean copy of the agreement. Staff recommends approval of the agreement.

ATTACHMENTS

Agreement (Redlined and clean)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AGREEMENT FOR SCHOOL RESOURCE OFFICERS

THIS AGREEMENT, made and entered into _____, but effective as of July 1, 2021, by and between the School District of Greenville County, hereinafter referred to as "School District", and the City of Mauldin, South Carolina, hereinafter referred to as "City".

W I T N E S S E T H:

WHEREAS, pursuant to Section 5-7-12 of the Code of Laws of South Carolina (1976), the School District has requested that the City assign two (2) officers from the Mauldin Police Department (hereinafter "the MPD") to serve as School Resource Officers at Mauldin High School and one (1) officer to serve as a School Resource Officer at Mauldin Middle School. The School Resource Officers are hereinafter referred to collectively as "SROs" or individually as "SRO;" and,

WHEREAS, Mauldin High School and Mauldin Middle School are located within the Mauldin City limits; and,

WHEREAS, pursuant to Section 5-7-12 of the Code of Laws of South Carolina (1976), t the Mayor and Council for the City consent to assigning two (2) MPD Officers to Mauldin High School and one (1) officer to Mauldin Middle School to serve as a SROs pursuant to the terms and conditions as more particularly hereinafter set forth.

NOW, THEREFORE, for and in consideration of the foregoing and the promises and covenants set forth herein, the parties heretoagree as follows:

1. **School Resource Officers.** The MPD will assign two (2) officers to the School District to act as SROs to Mauldin High School and one (1) officer to the School District to act as a SRO to Mauldin Middle School .

(A) The MPD will be responsible for the administration and supervision of the School Resource Officer Program at Mauldin High School and Mauldin Middle School, and will provide to the Superintendent of the School District, or his/her designee, an annual report of calls for services and criminal incidents at the schools in which the SROs are placed. The SROs shall be stationed at his or her assigned school.

(B) The School District shall provide for the benefit of each SRO the following: (i) access to an air-conditioned and properly lighted private office that contains a telephone that may be used for general business purposes; (ii) a location for files and records which can be properly locked and secured within the office; and (iii) a desk with drawers, an office chair, work table, filing cabinet, and office supplies.

2. **Term of Agreement.** This Agreement shall be effectively retroactively to the 1st day of July, 2021, and shall continue in effect for a term of one (1) year, terminating on June 30, 2022. This Agreement shall be renewed automatically for successive terms of one (1) year up to a maximum of five (5) years unless the Agreement is terminated as provided for herein.

3. **Duties and Responsibilities of the SRO.**

(A) Instructional Duties and Responsibilities: TheSRO shall act as an instructor for specialized, short-term programs consistent with their role as a SRO whenever requested to do so by the principal of the School to which a SRO is assigned. When conducting public safety classes, the SRO shall act in the capacity of law enforcement officer, teacher and counselor.

(B) Additional Duties and Responsibilities: In addition to the above, except as to any law enforcement action required, each SRO shall: (i) coordinate all of his/her activities and programs with the principal and appropriate staff members and will request and receive permission, advice and guidance prior to enactment and (ii) develop expertise in presenting various subjects to students, such subjects to include a basic understanding of the law, the role of the law enforcement officer, and his/her duties. The SRO shall encourage individual and small group discussions concerning the class materials with students to further establish rapport with the students. A program evaluation form will be distributed by the SRO to all students in attendance and the

teacher after each session. The information provided by the students and the teacher on the program evaluation form will be kept on file by the principal and reviewed by the School District and the MPD on an annual basis. The SRO, whenever requested by the principal of the School to which a SRO is assigned, shall attend parent/faculty meetings for purposes of explaining and soliciting support for the School Resource Officer Program. The SRO, whenever requested by the principal of the School to which a SRO is assigned, shall be available for conferences with students, parents, and faculty members in order to assist them with problems of a law enforcement or crime prevention nature. The SRO shall become familiar with community agencies that offer assistance to youth and their families, including, but not limited to, mental health clinics and drug assistance centers. The SRO shall make referrals to such agencies when necessary, thereby acting as a resource person to students, parents, faculty and staff of the school. The SRO shall assist the School's principal in developing plans and strategies to prevent and/or minimize dangerous situations that may result from student unrest. In the event it becomes necessary to conduct formal police interviews with the students, the SRO shall inform the school principal or his/her designee. The SRO shall adhere to the policies of the MPD as well as legal requirements whenever conducting such interviews.

The SRO shall take law enforcement action as required. The SRO shall give assistance to other police officers and deputy sheriffs in matters regarding his/her school assignment whenever necessary. TheSRO shall, whenever possible, participate in and/or attend school functions as they relate to the duties of a SRO. The SRO shall maintain detailed and accurate records of their activities on a monthly basis and shall forward such records to their supervisors who, in turn, shall forward copies of such records to the Chief of Police for the MPD. The SRO shall not act as school disciplinarians, as disciplining students is a school responsibility. The SRO shall, however, provide reasonable assistance to the school principal in the event of a disciplinary problem that requires such assistance. In the event the school principal is of the belief that a student has violated a law, then, in such event, the principal shall contact the SRO, or the SRO's supervisor, whenever the SRO is unavailable, to determine whether law enforcement action is appropriate. In the event of an emergency, school

personnel shall notify the MPD via the 911 system. In cases of contested expulsions the officer will provide case information and/or testimony on behalf of the Superintendent of the School District, or his/her designee, and shall upon the request of the Superintendent, or his/her designee, testify, unless such testimony is deemed by the MPD as inappropriate or will compromise a criminal investigation.

(C) **Co- curricular Activities and School Functions:** (i) **School Events Outside Greenville County.** Upon request of the principal, or his/her designee, a SRO may attend school events outside Greenville County for purposes of providing security services subject to the jurisdictional limitations imposed by S. C. Code §5-7-12(1976) . Payment for the security services to be provided by the SRO shall be based on an hourly rate as determined by MPD policy. The particular School making the request for security services shall be responsible for all payments related to such request. (ii) **School Related Events.** Upon request of the principal, or his/her designee, or a sponsor group, a SRO may attend any school related event including, but not limited to, carnivals, proms, Grad Night, overnight trips, dances, dramas and sporting events, for purposes of providing security services subject to the jurisdictional limitations imposed by S.C. Code §5-7-12 (1976). Payment for the security services to be provided by the SRO and paid directly to the SRO shall be based on an hourly rate as determined by MPD Policy. The particular School or sponsor group making the request for security services shall be responsible for all payments related to such request.

4. **Program Goals and Evaluation.** The MPD and the School District shall develop program goals and objectives for the SRO program. Program goals shall be in line with the School District's action plan for a safe school atmosphere. This means that the SRO shall be active law enforcement officials on the School campuses, classroom instructors consistent with their role as a SRO, and resources for teachers, students, and parents. The SRO shall also be active in conferences, counseling and referrals. Indicators of success shall be developed objectively and independently to measure howwell the goals and objectives are obtained. The Chief of Police for the MPD shall evaluate the effectiveness of the SRO Program and make an annual report to the School District.

5. **Fees.** The School District shall pay to the City the total annual sum of

one hundred thousand dollars [$100,000] for the three officers assigned to the schools being Mauldin Middle School and Mauldin High School, for the law enforcement services provided pursuant to this Agreement. The amounts owed by the School District hereunder shall be paid by the School District to the City of Mauldin, in arrears, in monthly installments of eight thousand three hundred thirty three dollars and 34/100 dollars [$8,333.34]. The City will submit monthly invoices to the School District within thirty (30) days after the close of each calendar month for the law enforcement servicesprovided during the preceding month. Payment on the invoices shall be due within thirty (30) days of the date on the invoice. If payment is not received in accordance with the terms of this Agreement, the City, in addition to any other rights the City may have, shall have the right, without *notice,* to suspend all services provided pursuant to this Agreement, or City may immediately terminate this Agreement. The School District shall be responsible to the City of Mauldin for payment of all law enforcement services provided pursuant to the terms of this Agreement prior to the date of termination.

6. **Employment Status of SROs.** SROs shall at all times remain employees ofthe MPD, and under no circumstances shall the SROs be consideredemployees of the School District. SROs are law enforcement officers who shall uphold the law, be under the direct supervision and control of the MPD, and remain responsible to the chain of command of the MPD.

7. **Appointment of SROs.** In the event that the principal of the School to whicha SRO is assigned believes that a particular SRO is not effectively performing his or herduties and responsibilities, the principal shall state in writing the reasons for such belief to the Superintendent of the School District. The Superintendent of the School District, within a reasonable time after receiving the complaint from the principal, shall inform the MPD Chief of Police or his/her designee, of the principal's concerns. Should the Chief of Police so desire, the Superintendent and the Chief of Police, or their designees, shall meet with the particular SRO for purposes of mediating or resolving the matter. If, within a reasonable amount of time after commencement of mediation, the problem cannot be resolved, or should the Chief of Police not seek mediation, then the particular SRO shall be reassigned and a replacement obtained. The Chief of Policereserves the right to dismiss or reassign a SRO at his/her

sole discretion. In the event of a resignation, dismissal, or reassignment of a SRO, or in the event of absences by a SRO, the Chief of Police may provide a temporary replacement for the SRO within (30) school days of receiving notice of such resignation, absence, dismissal, or reassignment. In the event a SRO is away from his/her assigned School due to illness, vacation, or subpoena, the School shall notify the MPD for routine and emergency calls.

8. **Good Faith.** The School District, the MPD, their agents and employees agree to cooperate in good faith in fulfilling the terms of this Agreement. Unforeseen difficulties or questions will be resolved by negotiation between the Superintendent of the School District and the Chief of Police, or their designees.

9. **Notices.** All notices made pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, to the parties at their respective addresses set forth below:

Greenville School District
Attn: Superintendent
301 E. Camperdown Way
Greenville, SC 29601

City of Mauldin
Attn: City Administrator
P.O. Box 249
Mauldin, SC
29662

cc: **Mauldin Police Department**
Attn: Chief of Police
P.O. Box 249
Mauldin, SC
29662

Either party may change the person and/or address to which notices are to be sent bygiving ten (10) calendar days written notice of such change to the other party.

10. **Termination.** Without cause, either party hereto may terminate this Agreement upon ninety (90) calendar days prior written notice to the other party hereto. For cause, either party may terminate this Agreement effective immediately upon giving written notice of termination for cause. "For cause" shall include (i) any material violation of this Agreement and (ii) Any act exposing the other party to liability for any loss, claim, damage or expense that is not covered pursuant to the South Carolina Tort Claims Act or similar insurance protection.

11. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party.

12. **Nonwaiver.** The waiver by School District or City of a breach of this Agreement shall not operate as a waiver of any subsequent breach, and no delay in acting with regard to any breach of this Agreement shall be construed to be a waiver of such breach.

13. **Entire Agreement.** This Agreement represents the entire agreement between the parties hereto and supersedes any and all prior agreements, whether written or oral, that may exist between the parties relating to the matters herein; and this Agreement may be amended only by a writing signed by all parties hereto.

14. **Severability.** If any part or provision of this Agreement is held invalid

or unenforceable under applicable law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining parts and provisions of this Agreement.

15. **Relationship of the Parties.** The Parties shall at all times act as independent contractors, and the relationship between the parties shall not be deemed to be that of an employer/employee, joint venture, partnership, or agent/principal.

16. **Applicable Law.** The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

17. **Successors and Assigns** The rights and obligations herein shall inure to and be binding upon the successors and assigns of the parties hereto.

18. **School Records**

To the extent that the City has access to records in furtherance of the obligations contained in this Agreement, that access and use of records, including student records, shall be in compliance with applicable state and federal law, including, but not limited to, the Family Educational Rights and Privacy Act.

ON BEHALF OF THE PARTIES HERETO, the duly authorized representatives of the parties have executed this Agreement on the date first herein above written.

CITY OF MAULDIN, SOUTH CAROLINA

By: ----------
Terry Merritt, Mayor

THE SCHOOL DISTRICT OF GREENVILLE COUNTY

By: ----------
W. Burke Royster, Ph.D.
Superintendent

STATE OF SOUTH CAROLINA)
) AGREEMENT FOR SCHOOL RESOURCE OFFICERS
COUNTY OF GREENVILLE)

THIS AGREEMENT, made and entered into _____, but effective as of _____ ~~1~~, 2021, by and between the School District of Greenville County,hereinafter referred to as "School District", and the City of Mauldin, South Carolina, hereinafter referred to as "City".

W I T N E S S E T H:

WHEREAS, pursuant to Section 5-7-12 of the Code of Laws of South Carolina (1976), the School District has requested that the City assign two (2) officers from the Mauldin Police Department (hereinafter "the MPD") to serve as School Resource Officers at Mauldin High School and one (1) officer to serve as a School Resource Officer at Mauldin Middle School. The School Resource Officers are hereinafter referred to collectively as "SROs" or individually as "SRO;" ~~three officers from the City of Mauldin Police Department, hereinafter sometimes referred to as "Mauldin Police Department", to each of the following schools located in the City of Mauldin: 1) Mauldin Middle School, and Mauldin High School, to act as a School Resource Officer, hereinafter sometimes referred to as a "SRO"~~; and,

WHEREAS, Mauldin High School and Mauldin Middle School are located within the Mauldin City limits; and,

WHEREAS, pursuant to Section 5-7-12 of the Code of Laws of South Carolina (1976), ~~City, with the concurrence of the Mauldin Police Department,~~ the Mayor and Council for the City ~~is agreeable to the Mauldin Police Department~~ consent to assigning ~~the~~ two (2) MPD Officers to Mauldin High School and one (1) officer to Mauldin Middle School to serve as a SROs ~~three requested officers to the designated schools as SRO's,~~ pursuant to ~~on all~~ the terms and conditions as more particularly hereinafter set forth. ~~out.~~

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NOW, THEREFORE, for and in consideration of the foregoing and the promises and covenants set forth herein, the parties heretoagree as follows:

1. **School Resource Officers.** The ~~Mauldin Police Department~~ MPD will assign two (2) ~~three [3]~~ officers to the School District to act as ~~a School Resource Officer~~ SROs to Mauldin High School and one (1) officer to the School District to act as a SRO to Mauldin Middle School ~~and Mauldin High School), located within the city of Mauldin, and the School District agrees to the assignment of one of the two officers to act as a SRO to Mauldin Middle School and two of the officers to Mauldin High School~~.

(A) The MPD ~~**Mauldin Police Department**~~ will be responsible for the administration and supervision of the School Resource Officer Program at Mauldin High School and Mauldin Middle School, and will provide to the Superintendent of the School~~s~~ District, or his/her designee, an annual report of calls for services and criminal incidents at the schools in which the SRO's are placed. The SROs shall be stationed at his or her ~~the~~ assigned school.

(B) The School District shall provide ~~in each of the identified schools,~~ for the benefit of ~~the~~each SRO the following: (i) access to an air-conditioned and properly lighted private office that contains a telephone that may be used for general business purposes;~~,~~ (ii) a location for files and records which can be properly locked and secured within the office; ~~,~~ and (iii) a desk with drawers, an office chair, work table, filing cabinet, and office supplies.

2. **Term of Agreement.** This Agreement shall be effective retroactively to ~~commence on~~ the 1st day of July_____, 2021, and shall continue in effect for a term of one (1) year, terminating on June 30, 2022. This Agreement shall be renewed automatically for successive terms of one (1) year up to a maximum of five (5) years unless the Agreement is terminated as provided for herein.

3. **Duties and Responsibilities of the SRO's.**

(A) Instructional Duties and Responsibilities: The ~~–~~SRO's shall act as an instructor~~s~~ for specialized, short-term programs consistent with their role as a SRO ~~at any school~~ whenever requested to do so by the principal of the School to which a SRO is assigned. When conducting public safety classes, the SRO's shall act in the capacity of law enforcement officer, teacher and counselor.

(B~~8~~) Additional Duties and Responsibilities: In addition to the above, except as to any law enforcement action required, each SRO shall: (i) coordinate all of his/her activities and programs with the principal and appropriate staff members and will request and receive permission, advice and guidance prior to enactment~~;~~ and (ii) develop expertise in presenting various subjects to students, such subjects to include a basic understanding of the law, the role of the law enforcement officer, and his/her duties. The SRO's shall encourage individual and small group discussions concerning the class materials with students ~~so as~~ to further establish rapport with the students. A program

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evaluation form will be distributed by the SRO to all students in attendance and the teacher after each session. The information provided by the students and the teacher on the program evaluation form will be kept on file~~, on an annual basis,~~ by the principal and reviewed by the School District and the ~~Mauldin Police Department~~MPD on an annual basis.~~–~~ T h e SRO~~'s~~, whenever requested by the principal of the School to which a SRO is assigned, shall attend parent/faculty meetings for purposes of explaining

and soliciting support for the School Resource Officer Program. The SRO's, whenever requested by the principal of the School to which a SRO is assigned, shall be available for conferences with students, parents, and faculty members in order to assist them with problems of a law enforcement or crime prevention nature. The SRO's shall become familiar with community agencies that offer assistance to youth and their families, including, but not limited to, mental health clinics and drug assistance centers. The SRO's shall make referrals to such agencies when necessary, thereby acting as a resource person to students, parents, faculty and staff of the school. The SRO's shall assist the School's principals in developing plans and strategies to prevent and/or minimize dangerous situations that may result from student unrest. In the event it becomes necessary to conduct formal police interviews with the students, the SRO's shall inform the school principal or his/her designee. The SRO's shall adhere to the policies of the Mauldin Police DepartmentMPD as well as legal requirements whenever conducting such interviews.

The SRO's shall take law enforcement action as required. The SRO's shall give assistance to other police officers and deputy sheriffs in matters regarding his/her school assignment whenever necessary. The SRO's shall, whenever possible, participate in and/or attend school functions as they relate to the duties of a SRO. The SRO's shall maintain detailed and accurate records of their activities on a monthly basis and shall forward such records to their supervisors who, in turn, shall forward copies of such records to the Chief of Police for the, Mauldin Police DepartmentMPD. The SRO's shall not act as school disciplinarians, as disciplining students is a school responsibility. The SRO's shall, however, provide reasonable assistance to the school principal in the event of a disciplinary problem that requires such assistance. In the event the school principal is of the belief that a student has violated a law, then, in such event, the principal shall contact the SRO, or the SRO's supervisor, whenever the SRO is unavailable, to determine whether law enforcement action is appropriate. In the event of an emergency, school personnel shall notify the Mauldin Police DepartmentMPD via the 911 system. In cases of contested expulsions the officer will provide case information and/or testimony on behalf of the Superintendent of the School District, or his/her designee, and shall upon the request of the

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Superintendent, or his/her designee, testify, unless such testimony is deemed by the ~~Mauldin Police Department~~MPD as inappropriate or will compromise a criminal investigation.

~~(C)~~ **Co- curricular Activities and School Functions:** (i) **School Events Outside Greenville County.** Upon request of the principal, or his/her designee, a SRO may attend school.

(C) events outside Greenville County for purposes of providing security services subject to the jurisdictional limitations imposed by S. C. Code §5-7-12(1976) . Payment for the security services to be provided by the SRO shall be based on an hourly rate as determined by ~~Mauldin Police Department~~MPD policy. The particular School making the request for security services shall be responsible for all payments related to such request. (ii) **School Related Events.** Upon request of the principal, or his/her designee, or a sponsor group, a SRO may attend any school related event including, but not limited to, carnivals, proms, Grad Night, overnight trips, dances, dramas and sporting events, for purposes of providing security services subject to the jurisdictional limitations imposed by S.C. Code §5-7-12 (1976). Payment for the security services to be provided by the SRO and paid directly to the SRO shall be based on an hourly rate as determined by ~~Mauldin Police Department~~MPD Policy. The particular School or sponsor group making the request for security services shall be responsible for all payments related to such request.

4. **Program Goals and Evaluation.** The ~~Mauldin Police Department~~MPD and the School District shall develop program goals and objectives for the SRO program. Program goals shall be in line with the School District's action plan for a safe school atmosphere. This means that the SRO~~'s~~ shall be active law enforcement officials on the School campuses, classroom instructors consistent with their role as a SRO, and resources for teachers, students, and parents. The SRO~~'s~~ shall also be active in conferences, counseling and referrals. Indicators of success shall be developed objectively and independently to measure how well the goals and objectives are obtained. The Chief of Police for the~~,~~ ~~Mauldin Police Department~~MPD~~,~~ shall evaluate the effectiveness of the SRO Program and make an annual report to the School District.

5. **Fees.** The School District shall pay to the City ~~-~~the total annual sum of one hundred thousand dollars [$100,000] for the three officers assigned to the schools being Mauldin Middle School and Mauldin High School, for the law enforcement services provided pursuant to this Agreement ~~to. tal annual sum of one hundred thousand dollars [$100,000.00] for the three officers assigned to the schools, being Mauldin Middle School and Mauldin High School, for the law enforcement services provided pursuant to this Agreement.~~ The amounts owed by the School District~~,~~ hereunder~~,~~ shall be paid by the School District to the City of Mauldin, in arrears, in ~~monthly~~ installments of ~~Fifty Thousand Dollars~~ eight thousand three hundred

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thirty three dollars and 34/100 dollars [$8,333.34 ~~50,000].~~ The City ~~of Mauldin~~ will submit monthly invoices to the School District within thirty (30) days after the close of each calendar month for the law enforcement services provided during the preceding month. Payment on the invoices shall be due within thirty
(30) days of the date on the invoice. If payment is not received in accordance with the terms of this Agreement, the ~~Mauldin Police Department~~ City, in addition to any other rights the City

may have, shall have the right, without *notice,* to suspend all services provided pursuant to this Agreement, or City may immediately terminate this Agreement. The School District shall be responsible to the City of Mauldin for payment of all law enforcement services provided pursuant to the terms of this Agreement prior to the date of termination.

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6. **Employment Status of SRO's.** SRO's shall at all times remain employees of the ~~Mauldin Police Department~~MPD, and under no circumstances shall the SRO's be considered employees of the School District. SRO's are law enforcement officers who shall uphold the law, be under the direct supervision and control of the ~~Mauldin Police Department~~MPD, and remain responsible to the chain of command of the ~~Mauldin Police Department~~MPD.

7. **Appointment of SRO's.** In the event that the principal of the School to which a SRO is assigned believes that a particular SRO is not effectively performing his or her duties and responsibilities, the principal shall state in writing the reasons for such belief to the Superintendent of the School District. The Superintendent of the School District, within a reasonable time after receiving the complaint from the principal, shall inform the MPD Chief of Police~~, Mauldin Police Department,~~ or his/her designee, of the principal's concerns. Should the Chief of Police so desire, the Superintendent and the Chief of Police, or their designees, shall meet with the particular SRO for purposes of mediating or resolving the matter. If, within a reasonable amount of time after commencement of mediation, the problem cannot be resolved, or should the Chief of Police not seek mediation, then the particular SRO shall be reassigned and a replacement obtained. The Chief of Police reserves the right to dismiss or reassign a SRO at his/her sole discretion. In the event of a resignation, dismissal, or reassignment of a SRO, or in the event of absences by a SRO, the Chief of Police may provide a temporary replacement for the SRO within (30) school days of receiving notice of such resignation, absence, dismissal, or reassignment. In the event a SRO is away from his/her assigned School due to illness, vacation, or subpoena, the School shall notify the ~~Mauldin Police Department~~MPD for routine and emergency calls.

8. **Good Faith.** The School District, the ~~Mauldin Police Department~~MPD,

their agents and employees agree to cooperate in good faith in fulfilling the terms of this Agreement. Unforeseen difficulties or questions will be resolved by negotiation between the Superintendent of the School District and the Chief of Police, or their designees.

9. **Notices.** All notices made pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, to the parties at their respective addresses set forth below:

Greenville School District
Attn: Superintendent
301 E. Camperdown Way
Greenville, SC 29601

City of Mauldin
Attn: City Administrator~~Manager~~
P.O. Box 249
Mauldin, SC
29662

cc: **Mauldin Police Department**
Attn: Chief of Police
P.O. Box 249
Mauldin, SC
29662

Either party may change the person and/or address to which notices are to be sent bygiving ten (10) calendar days written notice of such change to the other party.

10. **Termination.** ~~—~~Without cause, ~~E~~either party hereto may terminate this Agreement upon ninety (90) calendar days~~'~~ prior written notice to the other party hereto. For cause, either party may terminate this Agreement effective immediately upon giving written notice of termination for cause. "For cause" shall include (i) any material violation of this Agreement and (ii) Any act exposing the other party to liability for any loss, claim, damage or expense that is not covered pursuant to the South Carolina Tort Claims Act or similar insurance protection.

11. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party.

12. **Nonwaiver.** The waiver by School District or City of a breach of this Agreement shall not operate as a waiver of any subsequent breach, and no delay in acting with regard to any breach of this Agreement shall be construed to be a waiver of such breach.

13. **Entire Agreement.** This Agreement represents the entire agreement between the parties hereto and supersedes any and all prior agreements, whether written or oral, that may exist between the parties relating to the matters herein; and this Agreement may be amended only by a writing signed by all parties hereto.

14. **Severability.** If any part or provision of this Agreement is held invalid

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or unenforceable under applicable law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining parts and provisions of this Agreement.

15. **Relationship of the Parties.** The Parties shall at all times act as independent contractors, and the relationship between the parties shall not be deemed to be that of an employer/employee, joint venture, partnership, or agent/principal.

16. **Applicable Law.** The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

17. **Successors and Assigns** The rights and obligations herein shall inure to and be binding upon the successors and assigns of the parties hereto.

18. **School Records**

To the extent that the City has access to records in furtherance of the obligations contained in this Agreement, that access and use of records, including student records, shall be in compliance with applicable state and federal law, including, but not limited to,the Family Educational Rights and Privacy Act.

ON BEHALF OF THE PARTIES HERETO, the duly authorized representatives of theparties have executed this Agreement on the date first herein above written.

CITY OF MAULDIN, SOUTH CAROLINA

By: ----------
Terry Merritt, ~~City Manager~~ Mayor

THE SCHOOL DISTRICT OF GREENVILLE COUNTY

By: ----------
W. Burke Royster, Ph.D.
Superintendent

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CITY COUNCIL
AGENDA ITEM SUMMARY

MEETING DATE: October 18, 2021
AGENDA ITEM: 8m

TO: City Council
FROM: City Administrator Brandon Madden
SUBJECT: Resolution – Construction Manager Contract

REQUEST

Approval of a Resolution to approve a contract with the Cloverleaf Group, LLC to serve as Construction Manager for the construction of a new Fire Station and Police Department Sub-station, and to authorize the Mayor to execute the contract and related documents.

HISTORY/BACKGROUND

During the August 16, 2021 meeting, City Council awarded the bid for a Construction Manager At Risk (CMAR) to provide preconstruction and construction services for the construction of a new Fire Station and Police Department Sub-station to the Cloverleaf Group, LLC.

ANALYSIS or STAFF FINDINGS

Based on City Council's approval of the Cloverleaf Group, LLC., staff negotiated the attached contract for Cloverleaf to serve as Construction Manager.

FISCAL IMPACT

To be determined once Cloverleaf develops and submits for Council approval a guaranteed maximum price amendment.

RECOMMENDATION

Staff recommends approval of the Resolution and contract.

ATTACHMENTS

Resolution
Contract

RESOLUTION _____-2021

A RESOLUTION TO APPROVE A CONTRACT WITH THE CLOVERLEAF GROUP, LLC, TO SERVE AS CONSTRUCTION MANAGER FOR THE CONSTRUCTION OF A NEW FIRE STATION AND POLICE DEPARTMENT SUB-STATION, AND TO AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT AND RELATED DOCUMENTS

WHEREAS, the City of Mauldin (hereinafter "Mauldin) is constructing a new Fire Station and Police Department Sub-station on West Butler Road; and,

WHEREAS, Cloverleaf Group, LLC, (hereinafter "Cloverleaf") is the low bidder to serve as Construction Manager for the project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL AS FOLLOWS:

1. The Contract with Cloverleaf is hereby approved.

2. The Mayor is authorized to execute the Contract and related documents.

IT IS SO RESOLVED THIS ____ DAY OF _____, 2021.

_____
Terry Merritt, Mayor
City of Mauldin

_____
Cindy Miller, Municipal Clerk
City of Mauldin

Approved as to form

_____
John B. Duggan, City Attorney

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

City of Mauldin Fire Station

THE OWNER:
(Name, legal status and address)

City of Mauldin
5 East Butler Road
P. O. Box 249
Mauldin, South Carolina 29662

THE ARCHITECT:
(Name, legal status and address)

Stewart-Cooper-Newell Architects, P.A.
719 East Second Avenue
Gastonia, North Carolina 28054

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and

delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
.5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and litigation; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliersto ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, orto see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded as a result of litigation, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop theWork until payment of the amount owing has been received. The Contract Time shall be extended appropriately andthe Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (6) waivers of all liens by all subcontractors and sub-subcontractors; and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents;
.3 terms of special warranties required by the Contract Documents; or
.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;
.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished to the Owner.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act

or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 180 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation without a decision having been rendered. Unless the Initial Decision Makerand all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and personsor entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Party asserting the Claim to authorize retention of such persons at that Party's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, by litigation.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or litigate with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waivedas provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to litigation. The parties shall, before mediation or litigation is commenced, endeavor in good faith to resolve their dispute. In the event the parties are unable to resolve their dispute, then either party may request non-binding mediation conducted by a Mediator certified by the South Carolina Supreme Court. The mediation must take place prior to the commencement of litigation. The Mediator must be located within 50 (fifty) miles of Mauldin City Hall. The mediation shall be held in the place where the project is located unless another location is mutually agreed upon. If the parties are unable to agree upon a Mediator the Chief Circuit Judge for civil matters for Greenville County, South Carolina, will select the Mediator. The parties will share equally all of the costs for the Mediator. In the event mediation is unsuccessful then either party may commence litigation in the State or Federal Court having jurisdiction located in Greenville County, South Carolina.

Additions and Deletions Report for
AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

City of Mauldin Fire Station

...

City of Mauldin
5 East Butler Road
P. O. Box 249
Mauldin, South Carolina 29662

...

Stewart-Cooper-Newell Architects, P.A.
719 East Second Avenue
Gastonia, North Carolina 28054

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I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:20:52 ET on 09/09/2021 under Order No. 2863604529 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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AIA® Document A133™ – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the day of in the year
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

City of Mauldin
5 East Butler Road
P. O. Box 249
Mauldin, South Carolina 29662
Telephone Number: (864) 289-8890

and the Construction Manager:
(Name, legal status, address, and other information)
The Cloverleaf Group, LLC
297 Prince Ave, Suite 20
Athens GA 30601
706-395-5804

for the following Project:
(Name, location, and detailed description)

City of Mauldin Fire Station

New Fire Station Headquarters & Police Department Sub-Station

The Architect:
(Name, legal status, address, and other information)

Stewart-Cooper-Newell Architects, P.A.
719 East Second Avenue
Gastonia, North Carolina 28054
Telephone Number: (704) 865-6311
Fax Number: (704) 865-0046

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT
EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

.2 Construction commencement date:

.3 Substantial Completion date or dates:

.4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 1.1.6.1 Not Applicable.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Brandon Madden
5 East Butler Road
P. O. Box 249
Mauldin, South Carolina 29662
Telephone Number: (864) 289-8890

Email Address: bmadden@mauldincitysc.com

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Kenneth C. Newell, AIA, LEED-AP BD+C

Telephone Number: (704) 865-6311
Fax Number: (704) 865-0046
Mobile Number: (704) 564-8156
Email Address: knewell@scn-architects.com

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)
Drew Wren
297 Prince Ave
Athens GA 30601
706-395-5804

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement.

The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The

Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

.5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

$7,500

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ( ) months ofthe date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid Thirty Five Days (35) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailingfrom time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

4.5%

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)
6.75%

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

12%

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

15%

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed percent (8 5 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

§ 6.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal and mediation costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Not applicable.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work with Owner's prior approval.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;

.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;

.3 Expenses of the Construction Manager's principal office and offices other than the site office;

.4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;

.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

.7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and

.9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and,

subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 15th day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Fifteen (15) days after the Architect receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

10%

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)
Pre construction fee
County Permits
Builders Risk Insurance
Performance and Payment Bonds

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)
After fifty percent (50%) of the total project construction cost is complete, the retainage shall be reduced to five percent (5%)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30- day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
(Insert rate of interest agreed upon, if any.)

4.5%

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of dispute resolution shall be litigation provided for in Article 15 of AIA Document A201 – 2017.
(Check the appropriate box.)

[ ] Arbitration pursuant to Article 15 of AIA Document A201–2017

[x] Litigation in a court of competent jurisdiction located in Greenville County, South Carolina

[ ] Other: *(Specify)*

If the Owner and Construction Manager do not select a method of dispute resolution, or do not subsequently agreein writing to a dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA DocumentA201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:
(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in

Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than ($1,000,000) for each occurrence and($2,000,000) in theaggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ($1,000,000) per accident for bodily injury, death of any person, and property damage arisingout of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobilecoverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than($1,000,000) eachaccident, ($1,000,000) each employee, and($1,000,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ($5,000,000) per claim and($5,000,000) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction

.5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

.6 Other Exhibits:
(Check all boxes that apply.)

[ ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

See next page

Force Majeure

Federal Acquisition Regulation ("FAR") § 52.249-14 provides that a "Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are epidemics and quarantine restrictions . . . . In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor." The coronavirus pandemic fits squarely within FAR § 52.249-14. See also FAR § 52.249-10.

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*

Brandon Madden, City Administator
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Drew Wren- Principal- Project Manager
(Printed name and title)

Additions and Deletions Report for
AIA® Document A133™ – 2019

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:33:46 ET on 08/19/2021.

PAGE 1

City of Mauldin
5 East Butler Road
P. O. Box 249
Mauldin, South Carolina 29662
Telephone Number: (864) 289-8890

...

City of Mauldin Fire Station

...

New Fire Station Headquarters & Police Department Sub-Station

...

Stewart-Cooper-Newell Architects, P.A.
719 East Second Avenue
Gastonia, North Carolina 28054
Telephone Number: (704) 865-6311
Fax Number: (704) 865-0046
PAGE 3

Brandon Madden
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Mauldin, South Carolina 29662
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Email Address: bmadden@mauldincitysc.com
PAGE 4

Kenneth C. Newell, AIA, LEED-AP BD+C

...

Telephone Number: (704) 865-6311
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PAGE 24

Brandon Madden, City Administator

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:33:46 ET on 08/19/2021 under Order No. 2863604529 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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