



CITY COUNCIL MEETING

MONDAY, OCTOBER 21, 2024 | 7:00 PM

**City Council will meet 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
COUNCIL MEETING AGENDA
OCTOBER 21, 2024
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- None | Mayor Merritt |
| 3. Reading and Approval of Minutes | Mayor Merritt |
| a. City Council Meeting- September 16, 2024 [Pages 4-8] | |
| b. Special Called City Council- October 7, 2024 [Pages 9-11] | |
| 4. Public Comment | Mayor Merritt |
| 5. Report from City Administrator | Seth Duncan |
| 6. Report from Standing Committees | |
| a. Economic Planning & Development (Chairperson Matney) | |
| b. Public Safety (Chairperson King) | |
| c. Public Works (Chairperson Kraeling) | |
| d. Finance and Policy (Chairperson Reynolds) | |
| e. Recreation (Chairperson Allgood) | |
| f. Building Codes (Chairperson Steenback) | |
| 7. Unfinished Business-
 Ordinances- 2nd Reading | Mayor Merritt |
| a. Ordinance 1045- Franchise Agreement with Frontier
Communications [Pages 12-34] | Chairman Reynolds |
| 8. New Business
 Ordinances – 1st Reading | Mayor Merritt |
| a. Ordinance 1046-Sewer Ordinance Revisions
[Pages 35-39] | Chairman Kraeling |

Standing Committee Items

- b. Resolution 2024-11 Create Mauldin Accommodations Tax Advisory Committee [Pages 40-45] Chairman Matney
- c. Appointments to Mauldin Accommodations Tax Advisory Committee Chairman Matney

Committee of the Whole

- d. Memorandum of Understanding with Greenville County Regarding Utility Easement [Pages 46-50]

9. Public Comment Mayor Merritt

10. Council Concerns Mayor Merritt

11. Call for Executive Session Mayor Merritt

- a. Executive Session to consider an economic development matter related to Bridgeway Station as allowed by State Statute Section 30-4-70(a)(2)
- b. Executive session for a personnel matter to consider the City Administrator’s evaluation as allowed by State Statute Section 30-4-70(a)(1)
- c. Possible action on items discussed in Executive Sessions

12. Adjournment Mayor Merritt

**MINUTES
CITY OF MAULDIN
COUNCIL MEETING
SEPTEMBER 16, 2024
CITY HALL COUNCIL CHAMBERS, 5 E. BUTLER ROAD**

Members present were Mayor Terry Merritt, Council Members Taft Matney, Carol King, Jason Kraeling, Michael Reynolds, Frank Allgood and Mark Steenback.

Others present were City Attorney Daniel Hughes and City Administrator Seth Duncan

1. Call to Order- Mayor Merritt

- a. Welcome- Mayor Merritt
- b. Invocation- Councilman Kraeling
- c. Pledge of Allegiance- Councilman Kraeling

2. Proclamations and Presentations

- a. Constitution Week Proclamation- Mayor Merritt read the proclamation.
- b. Gene Smith Proclamation- Mayor Merritt read the proclamation.
- c. Fire Safe Award- The award was presented to the Mauldin Fire Department by the South Carolina State Office of the Fire Marshal.

3. Reading and Approval of Minutes

- a. City Council Meeting- August 19, 2024

Motion: Councilman Matney made a motion to approve the minutes as distributed with Councilman Reynolds seconding.

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

- b. Special Called City Council- September 4, 2024

Motion: Councilman Reynolds made a motion to approve the minutes as distributed with Councilman Kraeling seconding.

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

4. Public Comment

Noelle Dellala was present from Ripple Fiber. She assured Council that her company was not looking to go into areas that are already overserved. Ripple Fiber wants to go into communities that are underserved.

Councilman Allgood asked what would happen if Ripple decided to leave the City. Ms. Dellala answered they have no plans to leave. Ripple is working with neighboring cities to sign agreements with them as well. They already have an agreement with Simpsonville and are currently talking to Fountain Inn

5. Report from City Administrator

Mr. Duncan reported the City's Soovie BBQ Festival was a huge success. Thousands of people from as far away as Texas joined in on the fun at the Mauldin Cultural Center.

The Mighty Kicks! – Friday, Sept 27th at 7pm

In October, the Mauldin Cultural Center will host Friday Night Flicks at the Mauldin Outdoor Amphitheater.

- Harry Potter & the Sorcerer's Stone – Oct 4th, sponsored by WOW! Fiber Internet
- Encanto – Oct 11th
- Barbie – Oct 18th
- Hocus Pocus – Oct. 25th. The Greater Mauldin Chamber of Commerce will host a trick-or-treat before the movie from 6-7:30pm.

The Mauldin Fire Department will be piloting a new fire prevention K9 program during Fire Prevention Month in October. Led by Fire Marshall John Centrone, the program utilizes a trained and certified 2.5 year old German Shepherd mix named Ember as an ambassador for the department, as well as a community outreach and education tool. She will serve as mental health and well-being support for on duty fire personnel.

Mauldin Fire will be the first fire department in the state to implement a program of this kind.

a. Fire Prevention Month- Fire Marshal John Centrone

Fire Marshal Centrone presented Ember and she demonstrated Stop, Drop and Roll, and how to crawl out of a burning building.

6. Report from Standing Committees

- a. Economic Planning & Development (Chairperson Matney)- Chairman Matney reported SOOIE. went well and all departments worked together to make it a success.
- b. Public Safety (Chairperson King)- Chairwoman King thanked the police and fire departments for their help with SOOIE.
- c. Public Works (Chairperson Kraeling)- Chairman Kraeling said that Public Works did a great job helping at the SOOIE. festival.
- d. Finance and Policy (Chairperson Reynolds)- Chairman Reynolds said he knew Gene Smith from his term on Council and through the Greenville County Recreation District. He expressed his sympathy to the family on Gene's passing.

- e. Recreation (Chairperson Allgood)- No report
- f. Building Codes (Chairperson Steenback)- Chairman Steenback advised Council there will be a Planning Commission meeting on September 24th.

7. Unfinished Business-

Ordinances- 2nd Reading

- a. Ordinance 1044- Franchise Agreement with Ripple Fiber

Motion: Chairman Reynolds made a motion to accept this ordinance on second reading with Councilwoman King seconding.

Councilman Steenback said he did not have anything against any of these companies personally, but allowing them into the City feels like giving them a blank check to come in and go wherever they want.

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

8. New Business

Ordinances – 1st Reading

- a. Ordinance 1045- Franchise Agreement with Frontier Communications

Frontier Communications is an existing fiber and telecommunications company operating in the City, region and state for more than 50 years. It was discovered recently that the company did not have a franchise agreement with the City.

Motion: Chairman Reynolds made a motion to accept this ordinance on first reading with Councilwoman King seconding.

Councilman Allgood asked if this was fiber and other infrastructure. Mr. Duncan said it is fiber and there is some copper. Councilman Allgood said he wished there was a representative from Frontier present to answer questions.

Vote: The vote was (7-0).

Standing Committee Items

- b. FY 2024 Surplus Plan

The FY 2024 budget has a surplus this year. Staff is recommending \$500,000 added to General Fund fund balance, \$1,000,000 transferred to Capital Projects fund for future projects or equipment and to fund capital lease principal and interest payments and \$1,500,000 transferred to Capital Projects Transportation for streetscaping, sidewalks,

trails, and other transportation related improvements. If there is a larger surplus, the overage will be added to the capital projects fund.

Motion: Chairman Reynolds made a motion to accept staff's recommendation for allocation of the surplus. Councilman Steenback seconded.

Vote: The vote was (7-0).

Committee of the Whole- None

9. Public Comment- None

10. Council Concerns- None

11. Call for Executive Session

Motion: Councilman Matney made a motion to adjourn into executive session for discussion on the two items below. Councilwoman King seconded the motion.

Vote: The vote was (7-0).

- a. Executive Session to consider discussion of negotiations incident to proposed contractual arrangements with the Mauldin Police Department as allowed by State Statute Section 30-4-70(a)(2)
- b. Executive Session to consider an economic development matter related to Bridgeway Station as allowed by State Statute Section 30-4-70(a)(2)

Mayor Merritt reconvened the meeting at 8:47 p.m. Councilman Matney reported no decisions and no votes were taken in executive session.

- c. Possible action on items discussed in Executive Sessions

Motion: Councilwoman King made a motion to authorize the Mauldin Police Department to participate in the Safe Streets Task Force. Councilman Matney seconded the motion.

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

12. Adjournment- Mayor Merritt adjourned the meeting at 8:49 p.m.

Respectfully Submitted,
Cindy Miller
Municipal Clerk

**MINUTES
CITY OF MAULDIN
SPECIAL CALLED CITY COUNCIL MEETING
MONDAY, OCTOBER 7, 2024
CITY HALL COUNCIL CHAMBERS—5 E. BUTLER ROAD
AFTER COMMITTEE MEETINGS**

Members present were Mayor Terry Merritt, Council members Taft Matney, Carol King, Jason Kraeling, Michael Reynolds, Frank Allgood and Mark Steenback.

City Administrator Seth Duncan was also present.

1. Call to Order- Mayor Merritt

- a. Welcome- Mayor Merritt
- b. Invocation- Councilman Reynolds
- c. Pledge of Allegiance- Councilman Reynolds

2. New Business

Committee of the Whole

Motion: Councilman Matney made a motion consider the next items on the agenda informally as committee of the whole. Councilman Reynolds seconded the motion.

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

- a. Resolution 2024-10, Oak Park Drive Stormwater Project

This project will need more money than was originally funded. There is some additional ARPA money the South Carolina Office of Resilience is going to grant to the City to fund stormwater infrastructure improvements on Oak Park Drive. The City will receive \$2,883,851.50 in ASIP money. The City's match is still \$676,153.50 and will not increase with the additional funding.

Motion: Councilman Reynolds made a motion to adopt this resolution for additional funding. Councilman Kraeling seconded the motion.

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

- b. Hurricane Helene response briefing

Mr. Duncan thanked department heads and a few other staff members for their response to the hurricane and the recovery efforts. He recognized Lt. Turner for his

professionalism and dedication. Mr. Duncan also mentioned Mr. Fleahman did not leave during the clean-up and was very dedicated. There will be other recognitions coming during a future meeting.

A few of our City buildings are still without phones or internet but remain open. The David Bates Greenway is closed while crews clear the walking trail. Friday Night Flicks will run as scheduled this week at the Cultural Center.

A contracted hauler is helping with debris pickup and the State released a MOU with DOT to allow us to piggyback with their contractors.

Motion: Chairman Kraeling made a motion to authorize the use of \$500,000 in ARPA funding for debris removal and authorize the City Administrator or Mayor to enter into agreements or Memorandums of Understanding with entities necessary or able to do such work. Councilman Matney seconded the motion.

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

Mayor Merritt said the City's response to the hurricane began at the top. Mr. Duncan was on top of the response and sent out large amounts of correspondence to Council to keep them apprised of everything that was happening. He thanked Mr. Duncan for the exceptional job.

c. Motion to enter into Executive Session

Motion: Councilman Matney made a motion to go into executive session for the two items below. Councilman Allgood seconded the motion.

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

1. Executive Session to consider an economic development matter related to Bridgeway Station as allowed by State Statute Section 30-4-70 (a)(2)
2. Executive Session to consider an economic development matter related to City Center as allowed by State Statute Section 30-4-70 (a)(2)

Mayor Merritt reconvened the meeting at 7:50 p.m. Councilman Matney reported no decisions were made and no action taken in executive session.

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

3. Council Requests- None

4. Adjournment- Mayor Merritt adjourned the meeting at 7:52 p.m.

Respectfully Submitted,
Cindy Miller
Municipal Clerk

CITY COUNCIL AGENDA ITEM

MEETING DATE: October 21, 2024

AGENDA ITEM: 7a

TO: City Council

FROM: Seth Duncan, City Administrator

SUBJECT: Ordinance: Frontier Communications Franchise Agreement

REQUEST

Council is being asked to approve an Ordinance on second reading establishing a franchise agreement with Frontier Communications.

HISTORY/BACKGROUND

Frontier Communications is an existing fiber and telecommunications company operating in the City, region and state for more than 50 years. It was discovered recently during an encroachment permit request that the company did not have a franchise agreement with the City. The agreement as drafted is a standard franchise agreement that allows the company to install fiber connections within the City's rights-of-way and to operate in the City.

ANALYSIS or STAFF FINDINGS

Frontier is an existing provider of fiber and telecommunications services in the City. The company has some fiber installed, but is actively replacing overhead and underground copper with buried fiber. Frontier services are mostly south of E. Butler Road and west of HWY 276. The company has not provided any plans for installing beyond their existing footprint in the City.

The agreement presented will establish a franchise between the company and the City and apply our general franchise rules.

FINANCIAL IMPACT

As a condition of the franchise agreement, Frontier Communications will pay \$1,000 per year to the City for the privilege of operating in the City.

RECOMMENDATION

Staff recommends Council approval of the Ordinance.

ATTACHMENT(S)

- Ordinance approving the franchise agreement
- Frontier Franchise Agreement

AN ORDINANCE

ESTABLISHING A FRANCHISE AGREEMENT WITH FRONTIER COMMUNICATIONS

WHEREAS, Frontier Communications of the Carolinas, LLC, (“Franchisee”) seeks to enter into a Franchise Agreement with the City of Mauldin (the “City”) to allow Franchisee to install, operate, use, maintain, repair, replace, upgrade and remove a fiber-based telecommunications network and facilities in the City owned right-of-way; and,

WHEREAS, Franchisee is considered a telecommunications company pursuant to the definition under Section 58-9-2200 of the Code of Laws of South Carolina (“Code”); and,

WHEREAS, Franchisee holds a certificate of public convenience and necessity granted by the Public Service Commission of the State of South Carolina; and,

WHEREAS, the City is required by S.C. Code § 58-9-2230 and Section 153 (2) of Title 47 of the U.S. Code to manage its public rights-of-way on a competitively neutral and nondiscriminatory basis and is entitled to impose a fair and reasonable franchise or consent fee on a telecommunications company, or an administrative fee upon a telecommunications company that is not subject to the franchise or consent fee, for the use of the public streets and public property on a nondiscriminatory basis, to provide telecommunications services unless the telecommunications company has an existing contractual, constitutional, statutory, or other right to contract or operate in the public streets and public property, in amounts not to exceed the amounts specified in said Section 58-9-2230; and,

WHEREAS, the purpose of this franchise is to allow Franchisee the right to install, operate, use, maintain, upgrade, repair, replace and remove telecommunication services as contemplated by the Franchise Agreement attached hereto as **Exhibit “A;”** and,

WHEREAS, the City of Mauldin desires to enter into the Agreement attached hereto as **Exhibit “A”**, the terms of which are incorporated herein as is set forth verbatim; and,

WHEREAS, pursuant to S.C. Code § 5-7-260, the grant, renewal, or extension of a franchise shall be made by Ordinance; and,

WHEREAS, the Mayor and City Council find that it is in the best interests of the City of Mauldin to enter into the Agreement attached hereto as **Exhibit “A”**.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the City of Mauldin, that the Mayor is hereby authorized, empowered and directed to execute acknowledge and deliver the Franchise Agreement attached hereto as **Exhibit “A”**.

This Ordinance shall be effective upon second reading approval thereof and no further authorization is required to execute and deliver all documents related to Franchise Agreement contemplated by this Ordinance.

SIGNATURE OF MAYOR:

Terry Merritt

ATTEST:

Cindy Miller
City Clerk

APPROVED AS TO FORM:

Daniel Hughes
City Attorney

FIRST READING: _____, 2024
SECOND READING: _____, 2024

**CITY OF MAULDIN, SOUTH CAROLINA FRANCHISE
AGREEMENT WITH FRONTIER**

This Franchise Agreement (hereinafter "Agreement") is made and entered into as of this [__] day of [_____] 2024 ("Effective Date"), by and between the CITY OF MAULDIN, a South Carolina municipal corporation (hereinafter "City" or "Grantor") and Frontier Communications of the Carolinas LLC, a Delaware limited liability company and its Affiliates, (hereinafter "Frontier" or "GRANTEE"), having an office at 725 E Markham Ave., Durham NC 27701.

WHEREAS, GRANTEE is a limited liability company duly organized and existing under the laws of Delaware; and,

WHEREAS, GRANTEE desires to use and occupy the streets and public rights-of-way (as hereinafter defined) located within the City for the purposes of constructing, installing, and maintaining network facilities for telecommunications services within and through the City; and,

WHEREAS, the City maintains that, pursuant to Title V, Chapter 7, Section 30 of the South Carolina Code, and Title LVIII, Chapter 9, Section 2230 of the South Carolina Code, the City has the authority to grant franchises and other authorizations for the use and occupancy of the streets and public rights-of-way; and,

WHEREAS, Frontier holds a certificate of public convenience and necessity granted by the Public Service Commission of the State of South Carolina; and,

WHEREAS, the City is agreeable to allowing GRANTEE to use the streets and public rights-of-way, subject to the terms and conditions hereinafter set forth and subject to any lawful telecommunications regulatory ordinance that may be adopted by the City in the future; and

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the City and GRANTEE agree as follows:

Section 1. Grant of Authority. (a) Subject to the terms of this Agreement, the City hereby grants to GRANTEE the non-exclusive right to construct, install, maintain, locate, move, operate, place, protect, reconstruct, reinstall, relocate, remove, and replace fiber optic or other cable and related facilities for the provision of telecommunications service in the public streets and public rights-of-way in the City. GRANTEE shall be solely

responsible for obtaining any required consents from State agencies or private parties to the extent that its operations affect State or private property.

(b) GRANTEE acknowledges that this grant of authority is for the benefit of GRANTEE only, and that GRANTEE is not authorized to lease, sublease, assign or otherwise allow other non-affiliated providers to use or occupy the public rights-of-way except in accordance with provisions of this Agreement.

(c) GRANTEE acknowledges that, to the extent allowed by State and Federal law, the City has the authority to adopt ordinances regulating the use of the public rights-of-way, so long as such ordinances apply equally to all certificated providers of telecommunications services and are related to using the public streets and public rights-of-way in the City. GRANTEE agrees to be bound by all such future lawful ordinances so long as it operates telecommunication services or has property or equipment within the public streets or rights-of-way located in the City.

(d) This Agreement is not a grant by the City of any fee simple or other property interest except as expressly contemplated by this Agreement and is made subject and subordinate to the prior and continuing right of the City to use the public streets and public rights-of-way occupied by GRANTEE for the purpose of laying, installing, maintaining, repairing, protecting, replacing, and removing sanitary sewers, water mains, storm drains, gas mains, poles and other equipment for municipal uses and with the right of ingress and egress, along, above, over, across and in said public streets and public rights-of-way.

(e) This Agreement shall be in full force and effect from and after the date of its approval by the City Council governing body; provided, however, that notwithstanding such approval, this Agreement shall not become effective until all required bonds, certificates of insurance and other instruments required by this Agreement have been filed with, and accepted and approved by the City, which acceptance and approval shall not be unreasonably delayed, conditioned, or withheld.

Section 2. Definitions. For the purpose of this Agreement, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

"Affiliate" means a person or entity that directly, or indirectly, through one or more intermediaries, owns, manages, controls, is owned or controlled by, or is under common ownership, management or control with another person or entity.

"*Cable service*" shall have the same meaning as in the 47 U.S. Code § 522 and shall be synonymous with the term "cable television service."

"*City*" means the City of Mauldin, South Carolina, and where appropriate to the context, its officers, agents, employees, and volunteers.

"*City Attorney*" means the City Attorney or his designee.

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

"*City Engineer*" means the City Engineer or his designee.

"*City Administrator*" means the City Administrator or his designee.

"*City Property*" means and includes all real property owned by the City, including all property held in a proprietary capacity by the City.

"*Conduit*" means any materials, such as metal or plastic pipe, that protects wire, cable, lines, fiber optic cable, or other technology for the provision of telecommunications service.

"*Duct*" means a pipe, tube, channel, or similar item for carrying wires, lines, cables, fiber optic cable, or other technology for the provision of telecommunications service.

"*Fiber facilities*" means fiber optic cables and fiber-related facilities, conduits, converters, splice boxes, handholds, manholes, vaults, equipment, drains, surface location markers, appurtenances and related facilities placed or located by GRANTEE in the public streets or rights-of-way of the City after the Effective Date of this Agreement.

"*GRANTEE*" or "*Frontier*" means Frontier Communications of the Carolinas LLC.

"*Grantor*" means the City of Mauldin.

"*Public streets and public rights-of-way*" or "*public ways*" include the surface of, and the space above and below, any public street, road, highway, avenue, sidewalk, way, bridge, viaduct, alley or other public right-of-way, including unimproved surfaces, now or hereafter held by the City for the purpose of public travel, communications, alarm,

street lighting, power distribution, water or sewer service or other public use, whether present or future, to the extent of the City's right, title, interest or authority to grant a franchise to occupy and use such streets and easements for the purpose of providing telecommunications services.

“Public works project or public improvements” include, without limitation, the construction, realignment, paving or repaving, or other work on any public street or public right-of-way, change of grade or alignment of any public street or public right-of-way, the construction or reconstruction of any water, sanitary sewer, storm sewer, force main, drainage or communications facility of the City.

“Telecommunications facilities” means the plant, equipment, and property, including, but not limited to, the poles, pipes, mains, conduits, ducts, fiber optic and other cables, circuits, and wires, and any other equipment and property used to provide telecommunications service.

“Telecommunications service” means the providing or offering for rent, sale, or lease, or in exchange for other value received, the transmittal of signals, including but not limited to, voice, data, internet, image, graphic or video or other programming information, except cable television service, between or among points by wire, lines, cable, fiber optics, circuits, laser or infrared, microwave, radio, satellite, or other telecommunications facilities, but not including cable television service.

Section 3. Term of Agreement. The term of this Agreement shall be for an initial term of ten (10) years, commencing on the Effective Date (“Initial Term”). Unless either party gives ninety (90) days written notice of its intention to terminate the Agreement prior to the end of the Initial Term, the Agreement shall thereafter automatically renew for up to three (3) additional ten (10) year terms, for a maximum of forty (40) years (each a “Renewal Term”); however, such renewal shall not automatically occur if a material, uncured breach has not been remedied prior to the expiration of applicable notice and cure periods and the non-breaching party provides ninety (90) days’ written notice prior to the end of a Renewal Term. Upon termination of this Agreement as herein provided, and unless the parties are in active good faith negotiation of a replacement agreement or otherwise agree in writing to an extension, GRANTEE shall be prohibited from further access to the public rights-of-way in the City.

Section 4. Compliance With Applicable Law. GRANTEE shall at all times during the term of this Agreement, including any renewal period, comply with all applicable federal, state, and local laws, ordinances, and regulations. Expressly reserved

to the City is the right to adopt, in addition to the provisions of this Agreement and existing laws, such additional ordinances and regulations as are necessary for the lawful exercise of its police power for the benefit and safety of the public.

Section 5. Construction; Location or Relocation of Facilities. All GRANTEE Fiber facilities shall be constructed, installed, and located according to the terms and conditions contained herein, unless otherwise specified by the City.

5.1. Grantee shall place Fiber facilities underground when commercially and technologically reasonable and subject to the rights and obligations set forth in Sections 5.8 and 5.9 below. Commercially reasonable means, with respect to any action required to be made, attempted or taken by GRANTEE under this Section 5.1, the level of effort in light of the facts known to GRANTEE at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action without a material increase in costs incurred by GRANTEE; (b) is consistent with industry practices; and (c) takes into consideration the amount of advance notice required to take such action, the duration and type of action, and the competitive environment in which such action occurs.

5.2 Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a particular segment of a street or public right-of-way of the City, GRANTEE shall also install its Fiber facilities underground.

5.3. Whenever existing overhead electric utilities, cable facilities or telecommunications facilities are relocated underground within a particular segment of a street or public right-of-way of the City, GRANTEE shall relocate its Fiber facilities underground within a reasonable amount of time after notification by the City that such facilities must be relocated. Absent extraordinary circumstances or undue hardship as reasonably determined by the City, such relocation shall be made concurrently to minimize the disruption of the public streets or public rights-of-way.

5.4. GRANTEE shall obtain all required permits for the construction or installation of its Fiber facilities as required in this Agreement, provided, however, that nothing in this Agreement shall prohibit the City and GRANTEE from agreeing to an alternative plan to review permit and construction procedures, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

5.5. In the performance and exercise of its rights and obligations under this Agreement, GRANTEE shall not interfere in any manner with the existence and operation of any public street and public or private right-of-way, sanitary sewer, water line, storm drain

gas main, pole, overhead or underground electric and telephone wires, television cables, public works, facilities of other telecommunication providers, whose installations predate those of GRANTEE, or City Property, without the prior approval of the City.

5.6. Except as may be expressly provided herein, nothing in this Agreement shall be construed to abrogate or limit the right of the City to perform any public works or public improvements. If any Fiber facilities of GRANTEE interfere with the construction, operation, maintenance, repair or removal of such public works or public improvements, within ninety (90) days after receipt of written notice from the City (or such other period of time set forth in Section 5.7 or as may be agreed upon in writing by the City and GRANTEE), GRANTEE shall, at its own expense protect, alter, remove or relocate facilities, as directed by the City Administrator or City Engineer. If GRANTEE fails to so protect, alter, remove, or relocate equipment within such period, the City may break through, remove, alter, or relocate the facilities of GRANTEE without any liability to City, and GRANTEE shall pay to the City the actual, reasonable costs incurred in connection with such breaking through, removal, alteration, or relocation. GRANTEE shall also reimburse the City for or bear any additional actual, reasonable cost actually incurred by the City as a result of GRANTEE's failure to comply with the City's request to protect, alter or remove equipment under this Agreement. The City may collect such costs, and any reasonable expenses and reasonable attorney fees incurred in collecting such costs, as debts owed to the City, by bringing action in any court of competent jurisdiction or exercising the City's rights to draw on bonds or in any other lawful manner, individually or in combination.

5.7. The City retains the right and privilege to cut or move any Fiber facilities located within the public ways or other areas of the City as the City may reasonably determine to be necessary, appropriate, or useful in response to any life-threatening emergency. The City will endeavor to provide prior notice to GRANTEE of such emergencies which may impact its Fiber facilities. If City is unable to provide prior notice of the life-threatening emergency as described above, City shall notify GRANTEE within twenty-four (24) hours of the occurrence of such emergency.

5.8. The Fiber facilities of GRANTEE shall be located so as not to interfere with public safety or, to the extent possible, with the convenience of persons using the public streets or rights-of-way. GRANTEE shall construct, maintain, and locate its Fiber facilities system so as not to interfere with the construction, location and maintenance of sewer, water, drainage, electrical, signal, and fiber optic facilities of the City.

5.9. The City shall have the right to specifically designate the location of the Fiber facilities of GRANTEE with reference to sewer and water mains, drainage facilities,

fiber optic cable, signal poles and lines and similar services, other facilities, such as public telephone utilities, public electric utilities, cable television facilities, and railway, communication, and power lines, in such a manner as to protect the public safety and public and private property. Failure by the City to designate the location of GRANTEE's facilities shall not relieve GRANTEE of its responsibilities in matters of public safety, as provided in this Agreement.

5.10. Except in the cases of emergencies, GRANTEE shall not move, alter, change, or extend any of its Fiber facilities in any public street or public right-of-way unless prior written notice of its intention to do so is given to the City Administrator and permission in writing to do so is granted, or such requirement is waived, by the City Administrator. The City Administrator shall either approve or deny GRANTEE's request to relocate its facilities within five (5) days of receipt of GRANTEE's request. Such permission shall not be unreasonably withheld by the City Administrator and shall be conditioned upon compliance with the terms and conditions of this Agreement, and as will prevent undue interference with or obstruction of the use of the public ways by the public, the City or by any other public utility, public service corporation or cable operator for their respective purposes and functions. Such work by GRANTEE shall also be coordinated with the City's annual paving program through the Office of the City Engineer.

5.11. GRANTEE shall not open, disturb or obstruct, at any time, any more of the public streets or public rights-of-way than is reasonably necessary to enable it to proceed in laying or repairing its telecommunications system. GRANTEE shall not permit any public street or public right-of-way so opened, disturbed, or obstructed by it to remain open, disturbed, or obstructed for a longer period of time than shall be reasonably necessary. In all cases where any public street or public right-of-way is excavated, disturbed, or obstructed by GRANTEE, GRANTEE shall take all precautions necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals, and other devices necessary or proper to adequately give notice, protection, and warning to, the public of the existence of all actual conditions present.

5.12. After the installation, removal, relocation, construction, or maintenance of the Fiber facilities is completed, GRANTEE shall, at its own cost, repair and return the public streets or public rights-of-way to the same or similar condition existing before such installation, removal, relocation, construction, or maintenance, in a manner as may be reasonably specified by the City and to the reasonable satisfaction of the City. GRANTEE shall be responsible for damage to City street pavements, existing utilities,

curbs, gutters, and sidewalks due to GRANTEE's installation, construction, maintenance, repair, or removal of its telecommunications facilities in the public streets, public rights-of-way, and shall repair, replace, and restore in kind, the said damaged property at its sole expense. Upon failure of GRANTEE to repair, replace and restore said damaged property, in a manner as may be reasonably specified by the City and to the reasonable satisfaction of the City, after sixty (60) days' notice in writing shall have been given by the City, the City may cause such necessary repairs to be made and may collect the actual, reasonable costs incurred from GRANTEE, including but not limited to, exercising the City's rights to draw on bonds. The City may collect such costs, and any reasonable expenses and attorney fees incurred in collecting such costs, as debts owed to the City, by bringing an action in any court of competent jurisdiction or in any manner allowed by law.

5.13. Neither GRANTEE, nor any person acting on GRANTEE's behalf, shall take any action or permit any action to be done which may impair or damage any City Property more than is reasonably necessary to enable it to install or repair its Fiber facilities, including, but not limited to, any public street, public right-of-way or other property located in, on or adjacent thereto.

5.14. In the event of an unexpected repair or emergency, GRANTEE may commence such repair and emergency response work as required under the circumstances, provided GRANTEE shall notify the City as promptly as possible, before such repair or emergency work is started or as soon thereafter as possible if advance notice is not practicable.

5.15. GRANTEE shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements, laws, ordinances, and regulations.

5.16. GRANTEE shall at all times employ a high standard of care and shall install and maintain and use approved methods and devices for preventing failure or accidents which are likely to cause damages, injuries, or nuisances to the public.

5.17. GRANTEE shall obtain all required permits from the City and any other governmental entity having jurisdiction prior to commencing work of any nature related to its Fiber facilities and shall comply with all terms and conditions of any such permit. GRANTEE shall furnish detailed plans of the work and other required information prior to issuance of a permit. GRANTEE shall comply with all applicable ordinances and permitting requirements.

A single permit may be issued for multiple excavations to be made in public streets and rights-of-way. Exceptions to the requirement for a written permit may be allowed in cases of emergencies involving public safety or restoration of service. In the case of emergency excavations made in a public street or public right-of-way without a permit, GRANTEE shall make a report of each such excavation to the City within two (2) working days. Any permit application and inspection related to repair of excavations shall be promptly acted upon by the City so as not to unreasonably delay GRANTEE in efficiently discharging its public service obligation and in any event shall be granted or denied within thirty (30) days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

5.18. (a) Promptly after installation, repair or extension of the Fiber facilities or any portion thereof or any pavement cut by GRANTEE in any public way of the City, the incidental trenches or excavations shall be refilled by GRANTEE in a manner reasonably acceptable to the City Administrator. Pavement, sidewalks, curbs, gutters or any other portions of public ways damaged, disturbed or destroyed by such work shall be promptly restored and replaced with like materials to their former condition by GRANTEE at its own expense; however, where it is necessary, and if authorized by the City, in order to achieve the former conditions, GRANTEE shall use materials whose type, specification and quantities exceed or are different from those used in the installation, then GRANTEE at its own expense shall provide such different materials. Where a cut or disturbance is made in a section of sidewalk or paving, rather than replacing only the area actually cut, GRANTEE shall replace the full width of the existing sidewalk or appropriate sections of paving as determined by the City Engineer and the full length of the section or sections cut, a section being defined as that area marked by expansion joints or scoring or as determined by the City Engineer. GRANTEE shall maintain, repair, and keep in good condition for a period of one (1) year following such disturbance all portions of public ways disturbed by GRANTEE, provided such maintenance and repair shall be necessary because of defective workmanship or materials supplied by GRANTEE.

(b) All trees, landscaping and grounds removed, damaged, or disturbed as a result of the construction, installation maintenance, repair or replacement of Fiber facilities shall be replaced or restored, as nearly as may be practicable, to the condition existing prior to performance of work. All restoration work within the public ways or other areas shall be done in accordance with landscape plans approved by the City, which approval shall not be unreasonably withheld, delayed or conditioned.

5.19. (a) GRANTEE shall promptly remove or correct any obstruction, damage, or defect in any public street or public right-of-way caused by GRANTEE in the installation, operation, maintenance, or extension of GRANTEE's Fiber facilities. Any such obstruction, damage, or defect which is not promptly removed, repaired, or corrected by GRANTEE after thirty (30) days' written notice to do so, given by the City to GRANTEE, may be removed or corrected by the City, and the actual, reasonable cost thereof shall be charged against GRANTEE and payable on demand. Any expense, cost, or damages incurred for repair, relocation, or replacement to City water, sanitary sewer, storm sewer, storm drainage, telecommunication facilities or other property resulting from construction or maintenance of GRANTEE Fiber facilities shall be borne by GRANTEE and any and all actual, reasonable expense and cost incurred in connection therewith by the City shall be fully reimbursed by GRANTEE to the City.

(b) If weather or other conditions do not permit the complete restoration required by this Section, GRANTEE shall temporarily restore the affected property. Such temporary restoration shall be at GRANTEE's sole expense and GRANTEE shall only be required to make reasonable, temporary restorations based on the conditions. GRANTEE shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(c) GRANTEE or other person acting on its behalf shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property and shall comply with all federal, state, and local laws and regulations, including, but not limited to, the flagging requirements of the South Carolina Department of Transportation.

5.20. Except in the case of the City's, its officers', agents' or employees' negligence or intentional or willful misconduct, the City, its officers, agents, or employees, shall not be liable for any damage to or loss of any of GRANTEE's Fiber facilities within the public ways or any other areas of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work or activity or lack of any activity of any kind by or on behalf of the City.

5.21. GRANTEE shall cooperate with the City in coordinating its construction activities as follows:

(a) GRANTEE shall provide the City with a schedule of its proposed

construction activities prior to commencing any expansion of its backbone system;

(b) Upon at least thirty (30) days' prior written request, GRANTEE shall meet with the City and other users of the public ways to coordinate construction in the public ways; and

(c) All construction locations, activities and schedules shall be coordinated, as directed by the City Engineer, to minimize public inconvenience, disruption, or damages. GRANTEE shall submit a written construction schedule to the City Engineer at least ten (10) working days before commencing any work in or about the public streets or public rights-of-way. GRANTEE shall further notify the City Engineer not less than five (5) working days in advance of such excavation or work and shall comply with the provisions of the South Carolina Underground Facility Damage Prevention Act, South Carolina Title 58, Chapter 36.

Section 6. Mapping. (a) GRANTEE shall maintain an accurate map of its telecommunications facilities in the City. GRANTEE shall provide the City with "as built" drawings and an accurate map or maps showing the location of its facilities, including pole lines and conduit lines and any other facilities requested by the City, to include a digitized map(s) in both printed and electronic form. GRANTEE shall, upon request, provide updated maps annually of telecommunications facilities in the City.

(b) If any of the requested information of GRANTEE in this Agreement is considered proprietary, confidential, or a trade secret, GRANTEE will notify the City of this opinion and the City will keep such information confidential to the extent permitted by the South Carolina Freedom of Information Act (South Carolina Code Title 30 Chapter 4) or other any successor statute or law. As for new installations, after the Effective Date of this franchise, GRANTEE shall submit the proposed Mapping of its plans for new construction to the City prior to any construction. As-built drawings of any new construction of facilities shall be furnished to the City within sixty (60) days of completion of such construction. All as-built maps and drawings shall be drawn to scale and reference to a physical City benchmark to the extent the physical benchmark is in reasonable proximity to GRANTEE new installation. All mapping shall be provided in a format compatible to the City's present and future mapping systems. Alternatively, GRANTEE will pay for the cost of making the mapping compatible.

(c) Prior to its installation of any Fiber facilities in the public streets or public rights-of-way and after GRANTEE provides the City with its proposed plans for the Fiber facilities, the City may in its reasonable discretion designate certain locations to be excluded

from use by GRANTEE for its Fiber facilities, including, but not limited to, ornamental or similar specially designed streets lights or other facilities or locations which, in the reasonable judgment of the City Engineer, do not have electrical service adequate for or appropriate for GRANTEE's Fiber facilities or cannot safely bear the weight or wind loading thereof, or any other facility or location that in the reasonable judgment of the City Engineer is incompatible with the proposed Fiber facilities or would be rendered unsafe or unstable by the installation. The City Engineer may further exclude certain other facilities that have been designated or planned for other use or are not otherwise proprietary, legal, or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with reasonable requirements of GRANTEE, the City will cooperate in good faith with GRANTEE to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial costs nor require the City to acquire new locations for GRANTEE. GRANTEE shall, prior to any excavation or installation within the public streets or public rights-of-way, provide sufficient notification and joint installation opportunity on a shared cost basis to potential users of the public streets or public rights-of-way as may be provided for by a separate City policy. Such notification and adopted policies shall be designed to maximize co-location of providers to minimize the disturbance to the public streets or public rights-of-way and maximize its useable capacity.

Section 7. Insurance Requirements. At all times during the term of this Agreement and any renewal period, GRANTEE shall, at its expense, maintain the following insurance policies. Any required insurance shall be in a form and with an insurance company authorized to do business in South Carolina and have a rating of no less than A- VII by A.M. Best Co.

(a) *Commercial General Liability.* Commercial General Liability insurance coverage insuring against claims, loss, cost, damage, expense, or liability from loss of life or damage or injury to persons or property arising out of the work or activity under or by virtue of this Agreement, and contractual liability (subject to the terms and conditions of the policy). The limit of liability for such coverage shall be Two Million Dollars (\$2,000,000) combined single limit for any one occurrence. However, the parties acknowledge that GRANTEE may meet the policy limit in this section by combination of GRANTEE's General Commercial Liability Policy and GRANTEE's Umbrella or Excess Liability Policy.

(b) *Contractual Liability.* Broad form Contractual Liability insurance, including the indemnification obligations of GRANTEE set forth in this Agreement.

(c) *Workers' Compensation and Employer's Liability.* Workers' Compensation

insurance covering GRANTEE's statutory obligation under the laws of South Carolina and Employer's Liability insurance for all its employees engaged in work under this Agreement.

(d) *Automobile Liability.* Automobile Liability insurance having limits of liability of One Million Dollars (\$1,000,000) combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this Agreement.

(e) *Umbrella/Excess Liability Coverage.* The insurance coverages and amounts set forth in this Section may be met by an umbrella or excess liability policy providing limits in excess of the underlying primary liability coverages in an amount of Five Million Dollars (\$5,000,000) for any one occurrence/claim.

(f) Prior to commencing construction pursuant to this Agreement or within ten (10) days after the granting of the franchise contemplated by this Agreement, whichever is sooner, GRANTEE shall provide the City with a certificate or certificates of insurance, showing the type, amount, effective dates, and date of expiration of the policies, and thereafter following the renewal of any such policy. Such certificate or certificates and evidence of insurance shall include the City, its officers, agents, and employees as additional insureds on the liability policies in items a., c., and d. above. GRANTEE or its insurer shall provide the City with thirty (30) days' prior written notice of cancellation of any such required insurance if any of the required coverages are not replaced.

Section 8. Surety.

(a) Within sixty (60) days after the Effective Date of this Agreement, and prior to the commencement of any construction by GRANTEE, GRANTEE shall furnish and file with the City a bond, in a form and by a surety authorized to do business in South Carolina, in the amount of Fifty Thousand Dollars (\$50,000) securing its faithful performance of the terms and conditions of this Agreement. GRANTEE shall maintain such bond (utilizing an annual bond form) for the duration of this Agreement, unless otherwise agreed to in writing by the City. Failure to maintain the bond shall be deemed a material default by GRANTEE of this Agreement.

The bond shall guarantee GRANTEE's faithful performance of the terms and conditions of this Agreement, including, but not limited to: (1) the timely completion of construction; (2) compliance with applicable plans, permits, technical codes and standards; (3) proper location of the facilities as specified by the City; (4) restoration of

the public ways and other property affected by the construction as required by this Agreement; (5) the submission of "as-built" drawings after completion of the work as required by this Agreement; (6) timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work; and (7) the payment by GRANTEE of all lawful liens, taxes, damages, claims, costs or expenses which the City has been compelled to pay or has incurred by reason of any act or default of GRANTEE under this Agreement and all other payments due the City from GRANTEE pursuant to this Agreement.

(b) Whenever the City determines that GRANTEE has violated one (1) or more terms, conditions, or provisions of this Agreement for which relief is available against the bond, a written notice shall be given to GRANTEE. The written notice shall describe in reasonable detail the violation so as to afford GRANTEE an opportunity to remedy the violation. GRANTEE shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation before the City may make demand upon the bond. Failure to maintain the bond shall be a martial default under this Agreement.

(c) Such bond shall be in addition to any performance, defect bond, or other surety required by the City in connection with the issuance of any construction or any successor ordinance.

Section 9. Indemnification. GRANTEE agrees to indemnify, defend and hold harmless the City, its officers, employees and agents from and against all claims, demands, losses, damages, liabilities, fines, and penalties, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the losses), arising out of any breach by GRANTEE of the terms and conditions of this Agreement, except to the extent proximately caused by the negligence or willful misconduct of the City, its officers, employees and agents. In addition, GRANTEE shall protect, indemnify, and hold harmless the City, its officers, agents, and employees, from any and all demands for fees, claims, suits, actions, causes of action, or judgments based on the alleged infringement or violation of any patent, invention, article, arrangement, or other apparatus that may be used in the performance of any work or activity arising out of the use of any Telecommunication facilities or the provision of Telecommunication service, except to the extent proximately caused by the negligence or willful misconduct of the City, its officers, employees or agents.

The City is a governmental entity and political subdivision of the State of South Carolina and enjoys sovereign immunity, as well as the imposition of duties and protections afforded by the South Carolina Tort Claims Act. Although the City cannot, by law, hold

harmless and indemnify any contracting party, subject to the application of the aforementioned laws and to the limits of its insurance, the City agrees that GRANTEE shall not be liable from and against all claims, liabilities, penalties, fines, costs, damages, losses, causes of action, suits, demands, judgements and expenses (including, court costs and attorney's fees) of any nature, kind or description of any acts of negligence by the City, or its employees and agents, related to the City's breach of the terms and conditions of this Agreement.

Section 10. Hazardous Substances. In its performance of this Agreement, GRANTEE shall not transport, dispose of, or release any hazardous substance, material, or waste, except as necessary in performance of its work under this Agreement, and in any event GRANTEE shall comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, solid wastes, and other pollution, and relating to the storage, transport, release, or disposal of hazardous material, substances, or waste. Regardless of the City's acquiescence, GRANTEE shall indemnify and hold the City, its officers, agents, employees, and volunteers harmless from all costs, claims, damages, causes of action, liabilities, fines, or penalties, including reasonable attorney's fees, resulting from GRANTEE's violation of this section and agrees to reimburse City for all actual, reasonable costs and expenses incurred by the City in eliminating or remedying such violations. GRANTEE also agrees to reimburse the City and hold the City, its officers, agents, employees, and volunteers harmless from any and all actual, reasonable costs, expenses, attorney's fees and all penalties or civil judgments obtained against any of them as a result of GRANTEE's use or release of any hazardous substance or waste onto the ground, or into the water or air from, near or upon the City's premises. For purposes of this Section, the following definitions shall apply:

"Hazardous Substances" means asbestos and any and all pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials and hazardous substances as referenced or defined in, or pursuant to, any federal, state, local or other applicable environmental law, statute, ordinance, rule, order, regulation or standard in effect on the date hereof including, without limitation, the Resource Conservation and Recovery Act (42 U.S.C 6901, *et seq.*), as amended, the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136, *et seq.*), as amended, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, *et seq.*), as amended, and the Toxic Substances Control Act (15 U.S.C. 2601, *et seq.*), as amended.

As used in this Section, "release" includes the placing, releasing, depositing, spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping of any substance.

Section 11. Fees

(a) In consideration of the grant of authority to utilize the streets and public places of the City for the provision of Telecommunications Service, and in accordance with Applicable Law and ordinances, GRANTEE shall pay such franchise fees, business license taxes, and administrative fees as are presently permitted by Article 20 of Chapter 9 of Title 58 of the 1976 Code of Laws of South Carolina, as enacted in 1999, and as may be enacted and imposed by the City. GRANTEE shall also pay all such ad valorem taxes, service fees, sales taxes, or other taxes and fees as may now or hereafter be lawfully imposed on other businesses within the City. Provided, however, that in the event that Article 20 of Chapter 9 of Title 58 of the 1976 Code of Laws of South Carolina, as enacted in 1999, or other laws governing franchise fees, business license taxes and/or other fees with respect to Telecommunications Service shall be substantially modified by subsequent legislation or court decision, the provisions herein contained shall be brought into conformity with the changes in the Applicable Law by appropriate amendment to this ordinance. If the limitations on the amount of franchise fees, administrative fees, and business license taxes on Telecommunications Service providers presently contained in said statute shall be removed or modified, the City will be free, by amendment to this ordinance, to impose such fair, reasonable, competitively neutral, and non-discriminatory fees and taxes as may then be permitted by that statute or by such Applicable Law as may then govern; GRANTEE will be free to challenge any fee structure not in compliance with Applicable Law.

(b) For the use of the Right of Way, as defined by S.C. Code Section 58-9-2230, to provide Telecommunications Service, GRANTEE shall pay to the City a franchise fee in the amount of \$1,000.00 per annum which fee is in lieu of any permit fee, encroachment fee, degradation fee, or other fee assessed on a Telecommunications Service provider for use of the Right of Way to the extent required by S.C. Code Section 58-9-2230. The initial franchise fee shall be paid to City on or before the Effective Date, and thereafter on January 2 of each calendar year this Agreement remains in effect.

(c) Interest will be charged on any late payment at the maximum rate permitted under state law, or if there is no such rate, the interest will be 1.5% per month a payment is late.

Section 12. General provisions.

(a) *Authority.* GRANTEE warrants and represents that it has obtained all necessary and appropriate authority and approval from all applicable federal and state agencies or authorities to provide all telecommunications facilities and services it intends to provide within the City, and upon request by the City will provide evidence of such

authority.

(b) *Other remedies.* Nothing in this Agreement shall be construed as waiving or limiting any rights or remedies that the City or GRANTEE may have, at law or in equity, for enforcement of this Agreement.

(c) *Severability.* If any section, subsection, sentence, clause, phrase, or other portion of this Agreement, or its application to any person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

(d) *Nonenforcement.* Neither party shall be excused from complying with any of the provisions of this Agreement by any failure of the other party, upon any one or more occasions, to insist upon strict performance of this Agreement or to seek the other party's compliance with any one or more of such terms or conditions of this Agreement.

(e) *Conflicts of law.* If there is a conflict between the provisions of this Agreement and any law, whether federal, state, or City, including all future laws and ordinances, the law and conflicting Agreement provision will, to the extent reasonably possible, be construed so as to be consistent with each other and if such construction is not reasonably possible, the conflicting provision of this Agreement shall be deemed superseded by such law and have no effect, notwithstanding the contract clause of the United States Constitution.

(f) *Controlling law and venue.* By virtue of entering into this Agreement, GRANTEE agrees and submits itself to a court of competent jurisdiction in the City, South Carolina or in the United States District Court for the District of South Carolina, and further agrees that this Agreement is controlled by the laws of South Carolina or any applicable federal laws and that all claims, disputes and other matters shall be decided only by such court according to the laws of South Carolina or any applicable federal laws or by any regulatory body with jurisdiction, including the Federal Communications Commission.

(g) *Captions.* The section captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(h) *Nondiscrimination.* During the performance of this Agreement, GRANTEE agrees that it will not discriminate against any employee or applicant for employment on the basis of race, religion, color, sex, handicap, or national origin. GRANTEE agrees to post in

conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. GRANTEE, in all solicitations or advertisements for employees placed by or on behalf of GRANTEE, will state that GRANTEE is an equal opportunity employer. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements herein.

(i) *Notices.* (a) Notices given pursuant to this Agreement shall be in writing and addressed as follows:

To the City: City Administrator
 5 E. Butler Road
 Mauldin, SC 29662

With a Copy to: Daniel R. Hughes, City Attorney
 P.O. Box 249
 Mauldin, SC 29662

To GRANTEE: Frontier Communications
 ATTN: Centralized Joint Use Team
 8001 W Jefferson Blvd
 Ft Wayne, IN 46804 725 E Markham Ave. Durham, NC

27701

With a Copy to:
 Frontier Communications 1500 MacCorkle Ave., S.E.
 Room 500
 Charleston WV 25396
 Attn: Legal Department

Either party may change the address at which it will receive notices by providing at least thirty (30) days' prior written notice of the change to the other party.

(j) *Assignment.* GRANTEE may assign or transfer this Agreement or any interest therein with the City's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, this Agreement may be assigned by GRANTEE without City's written consent to an Affiliate or any entity that purchases substantially all of the assets or ownership interests of the GRANTEE; any entity that results from a merger, consolidation, or restructuring of the GRANTEE; or, any entity that assumes control of the GRANTEE. Upon such assignment by GRANTEE, the successor entity assuming

the Agreement shall execute a written document that the successor entity shall fully perform the obligations of GRANTEE under this Agreement and shall be entitled to all of []'s rights herein ("Assignment and Assumption Agreement"). GRANTEE shall provide City with a copy of the executed Assignment and Assumption Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

FRONTIER

By: _____

Name: David Woods

Title: Senior Vice President

State of _____
City/County of _____,

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by David Woods, on behalf of Frontier.

Notary Public

My commission expires: _____
My registration number: _____

CITY OF MAULDIN
a South Carolina municipal corporation

By: _____
Mayor

(SEAL)

ATTEST: _____
_____, City Clerk

STATE OF SOUTH CAROLINA
CITY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, Mayor of the City of Mauldin, on its behalf. He is personally known to me.

Notary Public

My commission expires: _____
My registration number: _____

Approved as to Content:

City Administrator

Approved as to Legal Sufficiency:

City Attorney's Office

CITY COUNCIL AGENDA ITEM

MEETING DATE: October 21, 2024

AGENDA ITEM: 8a

TO: City Council

FROM: Public Works Director, Matthew Fleahman

SUBJECT: Utility Ordinance Revisions

REQUEST

The Public Works Department is requesting that the City Council discuss a change to the City of Mauldin Utility Ordinance.

HISTORY/BACKGROUND

The City of Mauldin Sewer Division has historically maintained that the City's sewer system consists of only the mainlines and manholes within street ROWs and utility easements. The City has maintained that the lateral connection from the house to the mainline is owned and maintained by the property owner. The City has never repaired a service for a resident and does not provide any level of maintenance on sewer laterals. The existing City Ordinances (Chapter 40, Article I, *In General*) do not contain any language in support of these operational policies.

During the August 2024 Committee meeting, two options were presented to the Committee. Option 1 was to clarify the City's current policy and maintain that all responsibility beyond the tap would be the property owners. Option 2 was to take ownership of laterals from the tap to the property line. Option 1 had no financial impact on the City and Option 2 would make an annual impact of an additional \$1,000,000 to the existing budget.

During the Committee meeting, a recommendation for a third option was made by committee members. In this option, the City would make a clarification in the Ordinances; however, an exception would be made if the resident paid for the City to make repairs. An analysis of this third option is presented below.

ANALYSIS or STAFF FINDINGS

Based on the recommendation of Committee, the Utilities Ordinance would be amended and provide greater clarity to the City's current policy and view of ownership. The proposed language would make it crystal clear that ownership, maintenance, and all responsibility beyond the tap would be on the property owner. The following language could be inserted as Section 40-08:

Property owners shall be responsible for installation, repair, and maintenance of sewer lines from the property line to the point where they are connected with the sewer mains (hereinafter the "sewer lateral"). All installation, repair, and maintenance of the sewer lateral must be performed according to the standards promulgated by the Public Works Department.

Under this option, property owners would be responsible for their own laterals, and if repairs needed, would be at their own expense. If a repair is needed in the roadway at the point of connection to the main, the property owner would bear that cost and be responsible for hiring a qualified contractor to perform the work in the City's right-of-way. If the property owner wanted the City to make the repair, the City could with the following Ordinance addition listed below. In order to address the possibility of contractors billing for City work, or for contractors utilizing this service item 6 has been added which requires the property owner to pay for the activities prior to the commencement of work.

In the event the owner(s) of a single-family residential property desires for the City to perform necessary repair, maintenance, and/or replacement of sewer laterals, the owner(s) may request for the City to provide labor, equipment, and cover material to perform said work subject to the following conditions:

1. *The City shall only perform maintenance, repairs, and installation for the sewer lateral as defined in Section 40-8.*
2. *The property owner(s) shall pay for all materials necessary for the maintenance, repair, and/or installation of the sewer lateral, including the installation of a sewer clean-out at the property line. The Public Works Department shall determine, in its sole discretion, what materials are needed to perform said work.*
3. *The City shall invoice the property owner(s) for the materials prior to the commencement of work and the property owner shall remit payment to the City within thirty (30) days of receipt of the invoice. In the event the property owner fails to timely remit payment, the City will require that a new material costs invoice be generated for the proposed repairs.*
4. *This Section applies to single-family residential properties, only. Commercial, industrial, and multi-family residential properties are exempt from this ordinance.*
5. *No replacement service may be furnished on private roads or private easements.*
6. *The location of the property line shall be determined by the City based upon the recorded plat for the property, and if none exists, and the location of the property line cannot be determined or agreed upon, then the City may require the property owner, at his expense, to obtain a survey by a licensed land surveyor in recordable form showing the location of the property line prior to commencing any work.*
7. *Upon completion of installation, the City will assume ownership and maintenance of the sewer lateral.*

Under this option, the City will assume liability for the operation and maintenance of sewer laterals only after the replacement was paid for by the property owner. The exact cost to repair will vary, but a general estimate is presented below:

Material	Unit Cost	Number of Units	Total Cost
SDR-35	\$7 per foot	50	\$350.00
WYE	\$197.49	1	\$197.49
Fernco	\$29.23	2	\$58.46
Couplings	\$10.59	2	\$21.18
Cleanout	\$43.25	1	\$43.25
Asphalt	\$80.75	5	\$403.75
45-coupling	\$78.63	3	\$235.89
Cleanout box	\$201.16	1	\$201.16
Seed/straw	\$50.00	1	\$50.00
Misc (glue, etc)	\$40.00	1	\$40.00

Total	\$1,601.18
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FINANCIAL IMPACT

As the cost of materials is borne by the affected property owner, the only financial impact to the City would be in realized soft costs consisting of staff time, equipment use, and fuel. In addition, the City will be acquiring the future responsibility and liability for more and more lateral connections. These connections typically have a 30-50 year life span before replacement is needed.

RECOMMENDATION

Passage of the ordinance on first reading.

ORDINANCE # _____

AN ORDINANCE TO AMEND CHAPTER 40 OF THE MAULDIN CODE OF ORDINANCES REGARDING UTILITIES.

WHEREAS, the City is engaged in ongoing efforts to update and refine the City’s ordinances; and,

WHEREAS, the City has determined that amendments to the city ordinances are needed to clarify ownership and responsibilities for sewer lateral lines and to provide single-family residential property owners with the option to allow the City to perform maintenance, repairs and replacement of the sewer lateral at the property owners’ expense; and,

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 Utility Ordinance be amended as follows:

Section 1. Amendment. Amend Article I of Chapter 40 (“Utilities”) to add Section 40-8 (“Sewer Laterals”) and Section 40-9 (“Sewer Lateral Replacement”) (*underlined language is language proposed to be added*):

Sec. 40-8. Sewer Laterals.

Property owners shall be responsible for installation, repair, and maintenance of sewer lines from the property line to the point where they are connected with the sewer mains (hereinafter the “sewer lateral”). All installation, repair, and maintenance of the sewer lateral must be performed according to the standards promulgated by the Public Works Department.

Section 40-9. Sewer Lateral Repair, Maintenance, and Replacement for Single-Family Residential Properties.

In the event the owner(s) of a single-family residential property desires for the City to perform necessary repair, maintenance, and/or replacement of sewer laterals, the owner(s) may request for the City to provide labor, equipment, and cover material to perform said work subject to the following conditions:

1. The City shall only perform maintenance, repairs, and installation for the sewer lateral as defined in Section 40-8.
2. The property owner(s) shall pay for all materials necessary for the maintenance, repair, and/or installation of the sewer lateral, including the installation of a sewer clean-out at the property line. The Public Works Department shall determine, in its sole discretion, what materials are needed to perform said work.

3. The City shall invoice the property owner(s) for the materials prior to the commencement of work and the property owner shall remit payment to the City within thirty (30) days of receipt of the invoice. In the event the property owner fails to timely remit payment, the City will require that a new material costs invoice be generated for the proposed repairs.
4. This Section applies to single-family residential properties, only. Commercial, industrial, and multi-family residential properties are exempt from this ordinance.
5. No replacement service may be furnished on private roads or private easements.
6. The location of the property line shall be determined by the City based upon the recorded plat for the property, and if none exists, and the location of the property line cannot be determined or agreed upon, then the City may require the property owner, at his expense, to obtain a survey by a licensed land surveyor in recordable form showing the location of the property line prior to commencing any work.
7. Upon completion of installation, the City will assume ownership and maintenance of the sewer lateral.

Section 2: That the Ordinance shall be effective upon second and final reading.

Section 3: Severability is intended throughout and within the provisions of this Ordinance. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

CITY OF MAULDIN

Terry Merritt, Mayor

ATTEST:

APPROVED AS TO FORM:

Cindy Miller
City Clerk

Daniel Hughes
City Attorney

FIRST READING: _____, 2024
SECOND READING: _____, 2024

CITY COUNCIL AGENDA ITEM

MEETING DATE: October 21, 2024

AGENDA ITEM: 8 b-c

TO: City Council

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

SUBJECT: Mauldin Accommodations Tax Advisory Committee

ABOUT THE STATE ACCOMMODATIONS TAX

The state imposes a 2 percent accommodations tax and credits it to the municipality or county in which the tax was collected. A municipality receiving more than \$50,000 in revenue from the state accommodations tax is required by S.C. Code Section 6-4-25 to appoint an advisory committee to make recommendations for how the revenue generated from the accommodations tax should be spent.

ABOUT THE ACCOMMODATIONS TAX ADVISORY COMMITTEE

The advisory committee consists of seven members, with a majority being selected from the hospitality industry of the municipality receiving the revenue. At least two of the hospitality industry members must be from the lodging industry, where applicable. One member must represent the cultural organizations of the municipality receiving the revenue.

The advisory committee submits written recommendations to the municipal council at least once annually. The report addresses how to spend the portion of accommodations tax revenue that remains after allocations are made to the general and the tourism and promotion funds. The municipal council may accept, reject, or modify these recommendations.

USE OF STATE ACCOMMODATIONS TAX REVENUE

The municipality must submit an annual report detailing use of the state accommodations tax proceeds to the state Tourism Expenditure Review Committee (TERC). TERC is an 11-member committee that reviews the tourism-related expenditures funded with state accommodations tax revenue.

State law is very specific about how cities and counties can spend state accommodations tax revenue. The revenue received by a municipality must be allocated as follows:

- The first \$25,000 must be allocated to the municipality's general fund;
- Five (5) percent of the balance must be allocated to the municipality's general fund.
- Thirty (30) percent of the balance must be allocated to a special fund and used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity.
- The remaining balance plus earned interest received by the municipality must be allocated to a special fund and used for tourism-related expenditures as defined in S.C. Code Section 6-4-10.

As defined by S.C. Code Section 6-4-10, acceptable tourism-related expenses include:

- Advertising and promotion of tourism so as to develop and increase tourist attendance through the generation of publicity;
- Promotion of the arts and cultural events;
- Construction, maintenance, and operation of facilities for civic and cultural activities including construction and maintenance of access and other nearby roads and utilities for the facilities;
- The criminal justice system, law enforcement, fire protection, solid waste collection, and health facilities when required to serve tourists and tourist facilities (this is based on the estimated percentage of costs directly attributed to tourists);
- Public facilities such as restrooms, dressing rooms, parks, and parking lots;
- Tourist shuttle transportation;
- Control and repair of waterfront erosion, including beach renourishment;
- Operating visitor information centers; and
- Development of workforce housing, which must include programs to promote home ownership (up to fifteen percent of the municipality's annual accommodations tax revenue).

As used herein, "travel" and "tourism" mean the action and activities of people taking trips outside their home communities for any purpose, except daily commuting to and from work. Allocations to the special fund must be spent by the municipality within two years of receipt. However, the time limit may be extended upon the recommendation of the city council and approval of the state Tourism Expenditure Review Committee.

DRAFT RESOLUTION

The attached resolution, if adopted by City Council, will establish an accommodations tax advisory committee in accordance with S.C. Code Section 6-4-25. This resolution also establishes bylaws for this Committee which outline the purpose and duties of the Committee, its composition and membership, and other matters pertaining to terms of appointment, meetings, and amendments to the bylaws.

These bylaws establish that the Committee will consist of seven members in accordance with S.C. Code Section 6-4-25, with each member being appointed to three-year terms. The Committee will elect from among its members a chairperson to preside over its meetings. The City will provide staff to support the administrative needs of the Committee in matters such as scheduling meetings; providing notice and meeting materials to committee members; preparing agendas, minutes, and reports to City Council; notifying applicants and recipients of accommodations tax funds; and other support functions as needed.

APPLICATIONS FOR MEMBERSHIP

To date, the City has received seven applications for membership on this Committee. This includes six applications from the hospitality industry (three of which are specifically from the lodging industry) and one application from someone representing the cultural organizations of the City. These applications include:

- Julia Scholz, Owner at Rôtie by Stella's (hospitality)
- Michelle Dodge, Owner at Bridgeway Brewing Co. (hospitality)
- Leslie Jones, Events Manager at BridgeWay Station (hospitality)
- Megan Wilburn, Owner at Grand Holland Estate (hospitality/lodging)
- Dean Andrews, Jr., Director of Sales at Courtyard by Marriott (hospitality/lodging)
- Ryan Enniss, General Manager at Courtyard by Marriott (hospitality/lodging)
- Rachel Putnam, Owner at Onyx Solutions/Member of Mauldin Cultural Council (cultural)

STAFF RECOMMENDATION

Staff recommends two actions:

1. Adoption of the resolution which establishes the Mauldin Accommodations Tax Advisory Committee and its accompanying bylaws; and
2. Appointment of the seven applicants to membership on the Committee.

ATTACHMENTS

Resolution

Applications for Membership on the Mauldin Accommodations Tax Advisory Committee

RESOLUTION # _____

A RESOLUTION

CREATING THE MAULDIN ACCOMMODATIONS TAX ADVISORY COMMITTEE

WHEREAS, S.C. Code, Title 6, Chapter 4, Section 6-4-25 requires that a municipality receiving more than fifty thousand dollars in revenue from the accommodations tax shall appoint an advisory committee to make recommendations on the expenditure of revenue generated from the accommodations tax; and

WHEREAS, the City of Mauldin has exceeded this threshold and has received more than fifty thousand dollars in revenue from the accommodations tax; and

WHEREAS, the Mauldin City Council wishes to comply with S.C. Code, Title 6, Chapter 4.

NOW, THEREFORE, BE IT ORDERED AND RESOLVED by the City Council of the City of Mauldin, South Carolina, in council assembled and by the authority thereof:

ACCOMMODATIONS TAX ADVISORY COMMITTEE

BYLAWS

Article I. Name, Purpose and Membership

Section 1. Creation of Committee and Name

There is hereby created a committee which shall make recommendations to the City Council concerning the expenditure of revenue generated from the accommodations tax as established by S.C. Code, Title 6, Chapter 4. The name of this committee shall be the "Mauldin Accommodations Tax Advisory Committee" (hereinafter referred to as "the Committee").

Section 2. Purpose and Duties

The Committee shall make recommendations to the City Council on the expenditure of revenues received by the City of Mauldin from the State of South Carolina through the Accommodations Tax. The Committee is directed to deliver specific recommendations for the appropriate expenditure of these revenues. The expenditure of these revenues must be for tourism related purposes in accordance with S.C. Code, Title 6, Chapter 4.

Section 3. Composition and Membership

The Committee shall consist of seven (7) members with at least four (4) of the committee members being selected from the hospitality industry in or serving the City of Mauldin and at least one (1) of the committee members representing the cultural organizations of

the City of Mauldin. At least two (2) of the hospitality industry members must be from the lodging industry. The City Administrator shall designate a staff liaison to support the administrative needs of the Committee.

Section 4. Chairperson

The Committee shall elect from among its members a Chairperson at its first meeting in each calendar year. Notwithstanding, mid-year vacancies in the Chairperson office shall be elected at its next called meeting. The Chairperson shall preside over the meetings of the Committee and may exercise all powers usually incident to the office. The Chairperson also retains his or her status as a voting member of the Committee and may participate in deliberations and decision-making on all matters before the Committee.

Section 5. Staff Liaison

The staff liaison, designated by the City Administrator, shall assist the Committee in scheduling meetings; providing notice and meeting materials to committee members; preparing agendas, minutes, and reports to City Council; notifying applicants and recipients of accommodations tax funds; and other support functions as needed. The staff liaison is not an appointed member of the Committee and does not vote on matters considered by the Committee.

Article II. Terms and Vacancies

Section 1. Terms of Appointment

Members shall be appointed for three-year terms with any member appointed to fill a midterm vacancy being appointed for the unexpired term. The members of the Committee shall serve without compensation.

Section 2. Vacancies

When a vacancy occurs on the Committee by expiration of term, resignation or otherwise, it shall be filled by the City Administrator, or his designee, with the approval of the City Council.

Article III. Meetings

Section 1. Frequency of Meetings

The Committee shall meet at least once annually, but as often as necessary, to ensure they submit written recommendations on the expenditure of revenue generated from the accommodations tax to the City Council at least once annually.

Section 2. Schedule of Meetings

Meetings may be called by the Chairperson or the City Administrator, or his or her designee, or by a majority of the Committee as necessary to meet the purpose and duties of the Committee. Every effort shall be made to schedule meetings at a date, time and

place that is accessible to as many members of the Committee as possible.

Section 3. Quorum

A majority of the members shall constitute a quorum of the Committee for the purpose of transacting business and taking official action. When a quorum is established at a meeting, it is not broken by the subsequent withdrawal or recusal of any members present. A meeting may be adjourned by a vote of a majority of the members present despite the absence of a quorum.

Section 4. Voting

All appointed members present at a meeting shall vote. Each appointed member of the Committee is entitled to one vote. Appointed members generally shall not abstain from voting unless a conflict of interest is claimed. If a conflict of interest is claimed, the member claiming such conflict shall state the conflict for the record. No proxy voting is permitted. A vote on a matter is deemed to have passed if a majority of the votes cast on that matter are in favor of the matter.

Section 5. Procedure

Meetings shall be conducted in an orderly manner to ensure the fair treatment of all persons and issues before the Committee. Any matter not addressed in these bylaws shall be governed by "Robert's Rules of Order."

Article IV. Amendments to Bylaws

These Bylaws or any portion thereof may be amended or repealed by the City Council.

ENACTED IN REGULAR MEETING, this ____ day of _____, 20____.

Mayor

ATTEST:

Clerk

First reading: _____

Final reading: _____

CITY COUNCIL AGENDA ITEM

MEETING DATE: October 21, 2024

AGENDA ITEM: 8d

TO: City Council

FROM: Public Works Director, Matthew Fleahman

SUBJECT: Greenville County Memorandum of Understanding

REQUEST

Authorization is requested to approve the Memorandum of Understanding between the City of Mauldin and Greenville County for a stream restoration along the City's sewer easement adjacent to the Laurel Meadows Development.

HISTORY/BACKGROUND

The City of Mauldin has a sewer easement along an un-named tributary to Laurel Creek behind the Redwood Development and to the west of the Laurel Meadows Subdivision. The creek has experienced erosion and stream bank failure over time due to high intensity rainfall/runoff events. Greenville County applied for and received funding through the South Carolina Office of Resilience for a stream restoration/stabilization project along this easement.

ANALYSIS or STAFF FINDINGS

The stream restoration project will stabilize the banks of the drainage feature, protecting the City's sewer easement and preventing potential losses to the City's wastewater collection system. The Memorandum of Understanding allows Greenville County to access the City's sewer easement and use the area as part of the construction activities for the stream restoration.

FINANCIAL IMPACT

There is no financial impact in authorizing the Memorandum of Understanding.

RECOMMENDATION

Public Works Department recommends that Council approve the authorization of the Memorandum of Understanding.

STATE OF SOUTH CAROLINA) MEMORANDUM OF UNDERSTANDING
)
 COUNTY OF GREENVILLE)

This MEMORANDUM OF UNDERSTANDING is entered into this xxxxxx day of October 2024 by and between the County of Greenville Public Works Department (hereinafter referred to as ‘‘County’’), and City of Mauldin (Mauldin).

WHEREAS, it is understood that Mauldin maintains a 25-foot sanitary sewer easement located on properties owned by private land owners;

WHEREAS, the subject properties include multiple parcels adjacent to Laurel Creek and associated tributaries and include the following tax map numbers:

M012010101200
 M008020100507
 M012010101200;

WHEREAS, it is understood that the section of Laurel Creek and un-named tributary to Laurel Creek located on the subject properties has experienced erosion and stream bank failure over time due to high intensity rainfall/runoff events that could threaten the structural integrity of Mauldin sanitary sewer lines near the creek;

WHEREAS, Mauldin is a co-permittee with the County for NPDES permit SCS230001;

WHEREAS, it is understood and agreed between the parties hereto that the County desires to conduct a stream restoration/stabilization project on these subject properties to stabilize the stream using natural preservation techniques to reduce erosion and improve downstream water quality in the Reedy River watershed;

NOW, THEREFORE, for consideration of the mutual benefit to derived by both parties, Mauldin grants permission for the County to implement improvements to the subject properties that may encroach Mauldin’s existing easement to enhance the stream corridor based upon the following terms and conditions:

1. Terms and conditions for maintenance of the improvements that encroach upon the respective easements are outlined in the attached Exhibit 2- Greenville County Stream Restoration Maintenance Policy dated September 20, 2024.
2. County encroachments will be limited to areas as indicated on final construction plans titled [REDACTED] dated [REDACTED].
3. The parties may amend this Memorandum only in writing and upon the mutual consent of both parties.

This agreement will remain in effect from the date of signature by both agencies until modified by mutual actions.

(Authorized signature)

(Authorized signature)

(Title)

(Title)

(Date)

(Date)

Greenville County Public Works

City of Mauldin

Hesha Gamble
 Assistant Public Works Director

Matthew Fleahman
 Director Public Works

301 University Ridge, Suite 3800
 Greenville, SC 29601
 Phone: (864) 467-7010
 Fax: (864) 467-7161

700 East Standing Springs Road
 Simpsonville, SC 29680
 Phone: (864) 289-8904

Exhibit 2: Greenville County Stream Restoration Maintenance Policy

Purpose:

This policy outlines Greenville County's approach to maintaining stream restoration efforts where the County has performed stream restoration either on property owned by the County, in areas where a permanent access easement has been granted, or in areas where a memorandum of understanding (MOU) is in place between the County and the property owner. These multi-purpose projects improve environmental habitat and water quality, but also protect critical utilities within the community. This policy is intended to describe the County's responsibilities while setting realistic expectations on short and long-term maintenance commitments.

Extent:

This policy only applies to stream restorations performed by Greenville County. At no time will the County's responsibility extend beyond the extent of the permanent access easement, County owned property, or area designated under an MOU.

Maintenance Responsibilities:

1. Initial Maintenance (Years 1-2):

- Perform regular inspections and maintenance activities, such as watering, mulching, and invasive species removal, to ensure the success of the restoration.
- Repair or replace any restoration elements at the County's discretion during this period with similar materials/vegetation/products.
- Inspect and evaluate the restoration at least annually.

2. Ongoing Maintenance (Years 3-5):

- Carry out maintenance activities aligned with the remaining effective life of the products, up to 5 years,.
- Inspect and evaluate the restoration at least once.

Limitations and Exclusions:

1. Term of Commitment:

- The County's maintenance commitment is for five (5) years.

2. Environmental and Safety Considerations:

- Maintenance efforts will cease if, in the County's opinion, they would pose a potential risk to the structural integrity or safety of another entity's infrastructure, such as sewer lines/manholes.
- Maintenance activities will cease if, in the County's opinion, they pose a significant risk to public health or safety.

3. Acts of God/External Impacts:

- While efforts will be made to design and maintain the restoration work performed by the County, there is always the potential for Acts of God, beyond reasonable expectations for design and construction. If such damage occurs, the County will solely determine if it is feasible to repair or replace the affected features of the stream restoration.

- Damage by vandalism, utility work, or individual property owners will be addressed on a case-by-case basis, with the goal of maintaining a stable stream. Maintenance, in the County's opinion, may be limited by the extent/cost of damage and available funding.

- Where damage is determined to be caused by a third Party, the County may, at its sole discretion, seek to recoup maintenance costs.

4. Utilities (potable water, sewer, power, etc.):

- At no time will the County be held responsible for repairs or maintenance for utility infrastructure owned by others, except where damage is directly caused by the willful or negligent actions of the County, its contractors, or agents working on behalf of the County. Any repairs to damage will be based on actual cost to restore infrastructure to its previous condition. The County will not be liable for any consequential damages, additional punitive damages, or penalties.

5. Either at the end of the maintenance responsibility or product/restoration life cycle the County may terminate the permanent easement or MOU.