

**Council Members**

District 1: John Thomas, *Chairman*  
District 2: Ron L. Charlton  
District 3: Everett Carolina  
District 4: Lillie Jean Johnson, *Vice Chair*  
District 5: Raymond L. Newton  
District 6: Steve Goggans  
District 7: Louis R. Morant

**County Administrator**

Sel Hemingway

**County Attorney**

Wesley P. Bryant

**Clerk to Council**

Theresa E. Floyd

---

**September 24, 2019**

**5:30 PM**

**County Council Chambers**

---

**GEORGETOWN COUNTY COUNCIL**  
**County Council Chambers, 129 Screven Street,**  
**Suite 213, Georgetown, SC 29440**

**AGENDA**

- 1. INVOCATION**
- 2. PLEDGE OF ALLEGIANCE**
- 3. APPROVAL OF AGENDA**
- 4. PUBLIC COMMENT**
- 5. APPROVAL OF MINUTES**
  - 5.a Regular Council Session - September 10, 2019**
- 6. CONSENT AGENDA**
  - 6.a Authorizing acceptance of USDA Rural Development Community Facility Grant Funding in the amount of \$47,500 to be utilized for a Pumper Truck and Communications Equipment at the Santee/Sampit Fire Sub-station, and agreeing to the responsibilities and administrative requirements of the grant (Resolution No. 19-14)**
  - 6.b Authorizing acceptance of USDA Rural Development Community Facility Grant Funding in the amount of \$47,600 to be utilized for a Pumper Truck and Communications Equipment at the Plantersville Fire Sub-station, and agreeing to responsibilities and administrative requirements of the grant (Resolution No. 19-15)**
  - 6.c Authorizing acceptance of USDA Rural Development Community Facility Grant Funding in the amount of \$47,400 to be utilized for Yauhannah Fire Pumper Truck and Communications Equipment, and agreeing to responsibilities and administrative requirements of the grant (Resolution No. 19-16)**
  - 6.d Authorizing acceptance of USDA Rural Development Community Facility Grant Funding in the amount of \$34,900 to be utilized for**

**Yauhannah Fire Pumper Truck and Communications Equipment, and agreeing to responsibilities and administrative requirements of the grant (Resolution No. 19-17)**

- 6.e Authorizing acceptance of USDA Rural Development Grant Funding in the amount of \$50,000 to be utilized for Big Dam Swamp Fire Personal Protection Equipment and agreeing to responsibilities and administrative requirements of the grant (Resolution No. 19-18)**
- 6.f Authorizing acceptance of USDA Rural Development Grant Funding in the amount of \$30,500 to be utilized for Yauhannah Personal Protection Equipment and agreeing to responsibilities and administrative requirements of the grant (Resolution No. 19-19)**

**7. PUBLIC HEARINGS**

- 7.a ORDINANCE NO. 19-16 - AN ORDINANCE TO REPEAL, REPLACE AND CREATE THOSE CERTAIN FEES PAYABLE TO THE PROBATE COURT OF GEORGETOWN COUNTY FOR THE ISSUANCE OF MARRIAGE LICENSES, AS MANDATED BY STATUTE**

**8. APPOINTMENTS TO BOARDS AND COMMISSIONS**

**9. RESOLUTIONS / PROCLAMATIONS**

- 9.a RESOLUTION NO. 19-20 - A RESOLUTION CONFIRMING CERTAIN MATTERS IN CONNECTION WITH THE ISSUANCE OF \$28,015,000 PRINCIPAL AMOUNT INSTALLMENT PURCHASE REFUNDING REVENUE BONDS (GEORGETOWN COUNTY PROJECT), SERIES 2019, BY SCAGO PUBLIC FACILITIES CORPORATION FOR GEORGETOWN COUNTY; AND PROVIDING FOR RELATED MATTERS.**

**10. THIRD READING OF ORDINANCES**

- 10.a ORDINANCE NO. 19-16 - AN ORDINANCE TO REPEAL, REPLACE AND CREATE THOSE CERTAIN FEES PAYABLE TO THE PROBATE COURT OF GEORGETOWN COUNTY FOR THE ISSUANCE OF MARRIAGE LICENSES, AS MANDATED BY STATUTE**
- 10.b Ordinance No. 19-17 - An Ordinance to amend Appendix C, Stormwater Management Program, Part II, Flood Damage Prevention Ordinance**

**11. SECOND READING OF ORDINANCES**

- 11.a ORDINANCE NO. 19-18 - AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN GEORGETOWN COUNTY, SOUTH CAROLINA (THE "COUNTY") AND A COMPANY IDENTIFIED FOR THE TIME BEING AS PROJECT EAGLE, ACTING FOR ITSELF, ONE OR MORE AFFILIATES, AND/OR OTHER PROJECT SPONSORS**

(THE "COMPANY"), WITH RESPECT TO THE ESTABLISHMENT AND/OR EXPANSION OF OF CERTAIN FACILITIES IN THE COUNTY (COLLECTIVELY, THE "PROJECT"); (2) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; AND (3) OTHER MATTERS RELATING THERETO.

- 11.b ORDINANCE NO. 19-19 - AN ORDINANCE TO ESTABLISH A JOINT COUNTY INDUSTRIAL AND BUSINESS PARK PURSUANT TO SECTION 4-1-170 OF THE SOUTH CAROLINA CODE OF LAWS 1976, AS AMENDED, TO BE KNOWN AS THE GEORGETOWN COUNTY PROJECT EAGLE JOINT COUNTY INDUSTRIAL AND BUSINESS PARK (THE "PARK"), IN CONJUNCTION WITH HORRY COUNTY, SUCH PARK TO BE GEOGRAPHICALLY LOCATED IN GEORGETOWN COUNTY; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A WRITTEN PARK AGREEMENT WITH HORRY COUNTY AS TO THE REQUIREMENT OF PAYMENTS OF FEE IN LIEU OF AD VALOREM TAXES WITH RESPECT TO PARK PROPERTY AND THE SHARING OF THE REVENUES AND EXPENSES OF THE PARK; TO PROVIDE FOR THE DISTRIBUTION OF REVENUES FROM THE PARK WITHIN GEORGETOWN COUNTY; AND OTHER MATTERS RELATED THERETO.

## **12. FIRST READING OF ORDINANCES**

- 12.a Ordinance No. 19-21 - An Ordinance to authorize the expenditure of surplus Capital Project Sales Tax funds authorized under the Capital Project Sales Tax Act (S.C. Code Ann. Section 4-10-340, et seq.) previously collected pursuant to a majority vote on a referendum ordered by Georgetown County Ordinance 2014-28 held on November 4, 2014; further to designate the projects for which the surplus proceeds may be used; and to provide for other matters relating thereto.
- 12.b ORDINANCE NO. 19-22 - AN ORDINANCE TO AMEND ORDINANCE 2007-06, "GEORGETOWN COUNTY ANIMAL CONTROL ORDINANCE", REGARDING THE STERILIZATION OF ANIMALS BEFORE RELEASE.
- 12.c ORDINANCE NO. 19-23 - AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF GEORGETOWN COUNTY, SOUTH CAROLINA, SERIES 2019, OR SUCH OTHER APPROPRIATE SERIES DESIGNATION, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$10,000,000; FIXING THE FORM AND DETAILS OF THE BONDS; AUTHORIZING THE COUNTY ADMINISTRATOR TO DETERMINE CERTAIN MATTERS RELATING TO THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS THEREOF; AND OTHER MATTERS RELATING THERETO.

## **13. COUNCIL BRIEFING AND COMMITTEE REPORTS**

## **14. BIDS**

**15. REPORTS TO COUNCIL**

**16. DEFERRED OR PREVIOUSLY SUSPENDED ISSUES**

**16.a Ordinance No. 2017-23 – To Amend the Pawleys Plantation Planned Development to change the land use designation for two parcels along Green Wing Teal Lane from Open Space to Single Family in order to allow an additional two single family lots to the PD (County Council deferred action on 10/24/17)**

**16.b Ordinance No. 19-20 - An Ordinance to authorize Georgetown County to lease a portion of a tract of property owned by Georgetown County, designated as Tax Map No. 04-0406-001-01-00, to JB's Celebration Park Inc. for the purposes of constructing a Celebration Park for general public access.**

**17. LEGAL BRIEFING / EXECUTIVE SESSION**

**18. OPEN SESSION**

**19. ADJOURNMENT**



**Item Number:** 5.a  
**Meeting Date:** 9/24/2019  
**Item Type:** APPROVAL OF MINUTES

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** County Council

**ISSUE UNDER CONSIDERATION:**

Regular Council Session - September 10, 2019

**CURRENT STATUS:**

Pending

**POINTS TO CONSIDER:**

n/a

**FINANCIAL IMPACT:**

n/a

**OPTIONS:**

1. Approval of minutes as submitted.
2. Offer amendments.

**STAFF RECOMMENDATIONS:**

Recommendation for approval of minutes as submitted.

**ATTACHMENTS:**

Description	Type
▯ DRAFT - Minutes 9/10/19	Backup Material

Georgetown County Council held a Regular Council Session on Tuesday, September 10, 2019, at 5:30 PM in County Council Chambers located in the historic Georgetown County Courthouse, 129 Screven Street, Georgetown, South Carolina.

Present:	Everett Carolina	Lillie Jean Johnson
	Ron L. Charlton	Louis R. Morant
	Steve Goggans	John W. Thomas
Staff:	Wesley P. Bryant	Sel Hemingway
	Theresa E. Floyd	Jackie Broach-Akers

Other staff members, members of the public, and representatives of the media were also present. In accordance with the Freedom of Information Act, a copy of the agenda was sent to newspapers, television, and radio stations, citizens of the County, Department Heads, and posted on the bulletin board located outside of Council Chambers in the historic Courthouse.

Chairman John Thomas called the meeting to order. Councilmember Ron Charlton gave an invocation, and all joined in the pledge of allegiance.

#### **APPROVAL OF AGENDA:**

Councilmember Ron Charlton made a motion to approve the meeting agenda, and to move a report recognizing the 2019 Employee Charity Cook-off winners forward to the beginning of the agenda. Councilmember Everett Carolina seconded the motion. Chairman John Thomas called for discussion on the motion, and there was none.

In Favor:	Everett Carolina	Lillie Jean Johnson
	Ron L. Charlton	Louis R. Morant
	Steve Goggans	John W. Thomas

#### **PUBLIC COMMENTS:**

##### Marvin Neal

Mr. Neal, President of the local NAACP branch, stated the importance of transparency in the county's process of hiring the next county administrator. Mr. Neal said this is an opportunity to bring fairness to the process. The current administration has been plagued with discriminatory practices, and currently operates under a "good 'ole boy system" when it comes to hiring practices and the county services directed toward rural and minority communities. He said too much damage has occurred in the past, and the citizens deserve better. A large portion of county employees are underpaid, while the "top" is "topped out" in salaries. He requested that the search for an administrator go "outside" to find someone who can be fair, not black or white, but fair.

##### Cindy Bindner

Ms. Bindner spoke in favor of a project in the Pawleys Island area to create a public park. She said the park would be utilized by the community for a variety of purposes including festivals, and include a memorial park with benches, flowers, and trees purchased by private donations. She said her husband had a vision for such a park, however, he recently passed away before a plan could come to fruition. A potential tract of property owned by the county has been identified on Wildcat Way, adjacent to the Waccamaw Intermediate School. She asked County Council to favorably consider of a lease arrangement

where the county would retain ownership of the property, but the park would be accessible and available to be enjoyed by the general public.

**MINUTES:**

Regular Council Session – August 27, 2019

Councilmember Ron Charlton moved to approve the minutes of the regular council meeting held on August 27, 2019. Councilmember Everett Carolina seconded the motion. Chairman John Thomas called for discussion on the motion, and there was none.

In Favor:	Everett Carolina	Lillie Jean Johnson
	Ron L. Charlton	Louis R. Morant
	Steve Goggans	John W. Thomas

**CONSENT AGENDA:**

*The following report was included on the Consent Agenda, and therefore approved previously during the meeting:*

*Procurement #19-027 Revised, Professional Exterminating and Pest Control Services, Term Agreement -* County Council approved a service contract with Pro Tek Termite and Pest Control of Georgetown at an annual cost of \$17,490.

**BOARDS / COMMISSIONS:**

Planning Commission

Councilmember Steve Goggans moved to re-appoint Mr. John J. Weaver to the Georgetown County Planning Commission. Councilmember Ron Charlton offered a second on the motion. There was no discussion, and it was approved by unanimous vote.

In Favor:	Everett Carolina	Lillie Jean Johnson
	Ron L. Charlton	Louis R. Morant
	Steve Goggans	John W. Thomas

**RESOLUTIONS / PROCLAMATIONS:**

Proclamation No. 19-12

Councilmember Lillie Jean Johnson moved to adopt Proclamation No. 19-12 declaring October 2019 as “Fire Prevention Month” in Georgetown County. Councilmember Louis Morant seconded the motion. Chairman Thomas called for discussion, and there was none.

In Favor:	Everett Carolina	Lillie Jean Johnson
	Ron L. Charlton	Louis R. Morant
	Steve Goggans	John W. Thomas

Representatives of the following Fire Protection Agencies were present during the meeting, and were presented with signed copies of the proclamation:

Georgetown County Fire/EMS - Fire Marshal Jesse Cooper  
Midway Fire Rescue - Fire Marshal Mark Nugent  
Murrells Inlet/Garden City Fire - Fire Marshal Tom Zimpleman

Resolution No. 19-13 – Declaration of Official Intent to Reimburse

Councilmember Louis Morant moved for adoption of Resolution No. 19-13 to declare Georgetown County's Official Intent to Reimburse, in compliance with US Treasury Regulations, as pertains to the financing of various capital equipment. Councilman Everett Carolina offered a second on the motion. No discussion followed.

In Favor:	Everett Carolina	Lillie Jean Johnson
	Ron L. Charlton	Louis R. Morant
	Steve Goggans	John W. Thomas

**ORDINANCES-Third Reading**

No reports.

**ORDINANCES-Second Reading:**

Ordinance No. 19-16

Chairman John Thomas moved for second reading approval of Ordinance No. 19-16, titled "an Ordinance to Repeal, Replace and Create Those Certain Fees Payable to the Probate Court of Georgetown County for the Issuance of Marriage Licenses, as Mandated by Statute". The motion was seconded by Councilmember Louis Morant. The Chairman called for discussion.

Chairman Thomas further moved to amend Ordinance No. 19-16 to incorporate proposed text, as the ordinance was introduced at first reading by title only. Councilmember Morant offered a second on the amended motion. There was no further discussion.

In Favor:	Everett Carolina	Lillie Jean Johnson
	Ron L. Charlton	Louis R. Morant
	Steve Goggans	John W. Thomas

The vote on the main motion was as follows:

In Favor:	Everett Carolina	Lillie Jean Johnson
	Ron L. Charlton	Louis R. Morant
	Steve Goggans	John W. Thomas

Ordinance No. 19-17

Councilmember Steve Goggans made a motion for second reading approval of Ordinance No. 19-17, an Amendment to the County's Flood Damage Prevention Ordinance dealing with "temperature-controlled" prohibition for areas underneath a structure in the flood zone. Councilmember Everett Carolina seconded the motion. Chairman John Thomas called for discussion.

Councilmember Goggans moved to amend Ordinance No. 19-17 in order to incorporate proposed text, as the ordinance was introduced at first reading by title. Councilmember Carolina seconded the amendment, and there was no further discussion.

In Favor:	Everett Carolina	Lillie Jean Johnson
	Ron L. Charlton	Louis R. Morant
	Steve Goggans	John W. Thomas

The vote on the main motion was as follows:

In Favor:	Everett Carolina	Lillie Jean Johnson
	Ron L. Charlton	Louis R. Morant
	Steve Goggans	John W. Thomas

Ordinance No. 19-20

Councilmember Steve Goggans moved for second reading approval of Ordinance No. 19-20, an Ordinance to authorize Georgetown County to lease a portion of a tract of property owned by Georgetown County, designated as Tax Map No. 04-0406-001-01-00, to JB's Celebration Park Inc. for the purpose of constructing a park for general public access. Councilmember Lillie Jean Johnson seconded the motion. The Chairman called for discussion on the motion.

Councilmember Goggans moved to amend Ordinance No. 19-20 to incorporate proposed text, as the ordinance was introduced by title. Councilmember Lillie Jean Johnson offered a second on the amended motion. There was no further discussion.

In Favor:	Everett Carolina	Lillie Jean Johnson
	Ron L. Charlton	Louis R. Morant
	Steve Goggans	John W. Thomas

The vote on the main motion was as follows:

In Favor:	Everett Carolina	Lillie Jean Johnson
	Ron L. Charlton	Louis R. Morant
	Steve Goggans	John W. Thomas

**ORDINANCES-First Reading:**

No reports.

**BIDS:**

No reports.

**REPORTS TO COUNCIL:**

Employee Charity Cook-Off Winners

*This report was moved forward on the meeting agenda, and presented previously during the meeting.*

The Georgetown County Employee Morale Committee hosted the 3rd Annual Employee Cook-off at Beck Recreation Center on July 25th. The event raised \$400, which will be split and donated to two local charity groups selected by the winners. Approximately 20 County employees donated their time and culinary skills for the event. Tickets were sold to employees across the county, who participated in the event during their lunch hour.

Phillip White of the Georgetown County Sheriff's Office won the 2019 pileau cook-off. He chose to donate his portion of the winnings to Amazing Journey, a support group for the Sheriff's Re-entry Program, which teaches job skills to inmates.

Sharon Moultrie of the Public Works Division won the dessert competition for the second year in a row. She prepared a punch bowl cake with strawberries. Ms. Moultrie selected the American Red Cross to receive her portion of the cook-off winnings.

**DEFERRED:**

Ordinance No. 2017-23

County Council deferred action on Ordinance No. 2017-23, a proposed amendment to the Pawleys Plantation Planned Development pursuant to legal questions pertaining to the application as submitted by the Pawleys Plantation Property Owners Association.

Ordinance No. 19-18

County Council deferred action on Ordinance No. 19-18, an Ordinance Authorizing (1) the Execution and Delivery of a Fee In Lieu of Tax and Incentive Agreement by and Between Georgetown County, South Carolina (THE "COUNTY") and a Company Identified for the Time Being as Project Eagle, acting for Itself, One or More affiliates, And/Or, Other Project Sponsors (THE "COMPANY"), with Respect to the Establishment and/or Expansion of a Certain Facilities in the County (Collectively, THE "PROJECT"); (2) The Benefits of a Multi-County Industrial Park to be Made Available to the Company and the Project, and (3) Other Matters Relating Thereto.

Ordinance No. 19-19

County Council deferred action on Ordinance No. 19-19, an Ordinance to Establish a Joint County Industrial and Business Park Pursuant to Section 4-1-170 of the South Carolina Code of Laws 1976, as amended, to be Known as the Georgetown County Project Eagle Joint County Industrial and Business Park (THE "PARK"), in Conducting with Horry County, Such Park to be Geographically Located in Georgetown County; to Authorize the Execution and Delivery of a Written Park Agreement with Horry County as to the Requirements of Payments of Fee in Lieu of Ad Valorem Taxes with Respect to Park Property and the Sharing of the Revenues and Expenses of the park; To Provide for the Distribution of Revenues From the Park Within Georgetown County; and Other Matters Relating Thereto.

**EXECUTIVE SESSION:**

A motion was made by Councilmember Ron Charlton, and seconded by Chairman Thomas, to move into Executive Session in order to discuss a personnel matter pertaining to the county administrator position. There was no discussion on the motion.

In Favor:	Everett Carolina	Lillie Jean Johnson
	Ron L. Charlton	Louis R. Morant
	Steve Goggans	John W. Thomas

County Council moved into Executive Session at 6:41 pm.

**OPEN SESSION:**

Open Session resumed at 7:14 pm. Chairman Thomas stated that County Council discussed a personnel matter, as previously disclosed, while in Executive Session. No decisions were made, nor were any votes taken by County Council during Executive Session.

Being no further business to come before County Council, Councilmember Everett Carolina made a motion to adjourn the meeting.

Georgetown County Council  
Meeting Minutes  
September 10, 2019

---

Date

---

Clerk to Council

Item Number: 6.a  
Meeting Date: 9/24/2019  
Item Type: CONSENT AGENDA

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** County Administrator

**ISSUE UNDER CONSIDERATION:**

Resolution No. 19-14 - Authorizing acceptance of USDA Rural Development Community Facility Grant Funding in the amount of \$47,500 to be utilized for a Pumper Truck and Communications Equipment at the Santee/Sampit Fire Sub-station, and agreeing to the responsibilities and administrative requirements of the grant.

**CURRENT STATUS:**

Georgetown County has made application to USDA, for Rural Development Grant Funding, and has been awarded \$47,500 for the purchase of a Fire Pumper Truck and Communications Equipment for the Santee/Sampit Fire Sub-Station.

**POINTS TO CONSIDER:**

Georgetown County has been awarded \$47,500 in United States Department of Agriculture (USDA) Rural Development Grant Funding to be utilized for a fire pumper and communications equipment. The USDA establishes conditions which must be agreed to before additional action pertaining to the award of this funding may be considered.

**OPTIONS:**

1. Adoption of Resolution No. 19-14 - Authorizing acceptance of USDA Rural Development Grant Funding in the amount of \$47,500, and agreeing to the responsibilities and administrative requirements of the associated grant.
2. Do not adopt Resolution No. 19-14.

**STAFF RECOMMENDATIONS:**

Recommendation for the adoption of Resolution No. 19-14 authorizing acceptance of USDA Rural Development Grant Funding in the amount of \$47,500 to be utilized for a fire pumper and communications equipment at the Santee/Sampit Fire Sub-station, and agreeing to the responsibilities and administrative requirements of the grant.

**ATTACHMENTS:**

Description	Type
□ Resolution No 19-14 - USDA LOC Santee/Sampit	Resolution Letter



## COMMUNITY FACILITY GRANT RESOLUTION

State of South Carolina  
County of Georgetown

For funding for the **Santee/Sampit Fire Pumper Truck and Communication Equipment**, **Georgetown County** has made application to USDA, Rural Development for a Community Facility Grant in the amount of \$47,500.00 to assist in the need for essential community facilities in rural areas of South Carolina.

A meeting of the Georgetown County Council, governing body, was duly called and held. The governing body is composed of \_\_\_\_\_members of whom\_\_\_\_\_, constituting a quorum, were present at this meeting. At the meeting, the **Georgetown County** governing body, adopted a resolution agreeing to the responsibilities and requirements of Form RD1940-1, "Request for Obligation of Funds," with attachment and authorizing **John Thomas County Council Chairman and Theresa E. Floyd, Clerk to Council**, to execute this form and Forms RD 400-1, "Equal Opportunity Agreement," 400-4, "Assurance Agreement," 442-7, "Operating Budget," and 1942-46, "Letter of Intent to Meet Conditions," RD 3570-3, "Agreement for Administrative Requirements for Community Facilities Grants," AD-1047, "Certification Regarding Debarment, Suspension and other Responsibility Matters – Primary covered Transactions," AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions," AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I – for Grantees Other Than Individuals," and Exhibit A-1 of RD Instruction 1940-Q, "Certification for Contracts, Grants, and Loans."

The vote was:

Yeas\_\_\_\_\_Nays\_\_\_\_\_Absent\_\_\_\_\_

SEAL

\_\_\_\_\_  
**John Thomas, County Council Chairman**

Attest:

\_\_\_\_\_  
**Theresa E. Floyd, Clerk to Council**



**United States Department of Agriculture**  
**Rural Development**  
State Office  
Columbia, South Carolina

September 19, 2019

GEORGETOWN COUNTY  
ATTN: MR. SEL HEMINGWAY, COUNTY ADMINISTRATOR  
PO DRAWER 421270  
GEORGETOWN SC 29442

**Subject: Letter of Conditions**

Dear Mr. Hemingway:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given your application. This letter is not to be considered as grant and grant approval or as a representation as to the availability of funds. The docket may be completed on the basis of USDA, Rural Development administering a Rural Housing Service (RHS) grant not to exceed \$47,500.

The grant will be considered obligated on the date a signed copy of the Form RD 1940-1, "Request for Obligation of Funds", is mailed to you.

This project is for **Pumper Truck and Communication Equipment for the Santee Sampit Station**. Any change in project cost, source of funds, scope of services, or any other significant changes in the project or Georgetown County must be reported to and approved by Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

Please execute and return to Rural Development the following completed items if you desire that further consideration be given to your application:

- Form RD 1942-46, "Letter of Intent to Meet Conditions"
- Form RD 400-1, "Equal Opportunity Agreement"
- Form RD 400-4, "Assurance Agreement"
- Form RD 442-7, "Operating Budget"
- Form RD 1940-1, "Request for Obligation of Funds"

If the conditions set forth in this letter are not met within 120 days from the date hereof, USDA, Rural Development, reserves the right to discontinue processing of the application. Rural Development funding is prioritized for projects that need and will use

Strom Thurmond Federal Building • 1835 Assembly Street • Suite 1007 • Columbia, SC 29201  
Phone: (803) 765-5163 • Fax: (855) 565-9479 • TDD: (803) 765-5697 • Web: <http://www.rurdev.usda.gov/sc>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."  
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14<sup>th</sup> and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

the funding immediately. We will require that every possible effort be made to meet all conditions within the one 120 days.

The conditions are as outlined below:

**1. ORGANIZATION'S AUTHORITY TO OBTAIN FUNDS, ETC.:**

Consideration for this grant is based on the Municipality of Georgetown County being properly created as a Public Body and chartered by the Secretary of State of South Carolina.

**2. PROJECT COST:**

**Breakdown of Costs:**

Construction	\$
Legal/Administration	\$
Architectural Services	\$
Equipment	\$63,515.00

**SUBTOTAL** \$

Contingencies \$  
**TOTAL PROJECT COSTS** **\$63,515.00**

**Financing:**

CF Grant	\$47,500.00
Georgetown County Contribution	\$16,015.00

**TOTAL** **\$63,515.00**

These funds must be disbursed in accordance with the requirements of the sources of funds and must be available before proceeding with procurement. Rural Development will monitor the disbursement of all proceeds.

**3. ADOPTION OF FORM RD 3570-3, "COMMUNITY FACILITIES GRANT/GRANT AGREEMENT":**

The agreement requires review of this form. You will be required to execute the completed form at the time of closing.

- GEORGETOWN COUNTY understands that any property acquired or improved with Federal grant funds may have use and disposition conditions which apply to the property as provided by 7 CFR 3015, 3016, or 3019 in effect at this time and as may be subsequently modified.

- GEORGETOWN COUNTY understands that any sale or transfer of property is subject to the interest of the United States Government in the market value in proportion to its participation in the project as provided by 7 CFR 3015, 3016, or 3019 in effect at this time and as may be subsequently modified.

#### 4. BANK ACCOUNT:

All funds for this project will be handled through a bank account in a bank of your choice, separate from all other banking accounts. The bank account **shall be established prior to closing** and you must agree to make payments from this account only on request for payments, which are to be reviewed and concurred with by RD in advance of payment. You will establish adequate safeguards to assure that the funds from this account are used for authorized purposes only.

You must further agree to permit RD to examine your records and books during regular business hours or at other reasonable times.

#### 5. USE OF MINORITY OWNED BANKS:

You are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members) for deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D. C. 20230 or any RUS Office.

#### 6. TITLE OF PROPERTY:

Satisfactory evidence of title must be prepared and submitted to this office by you, with the assistance of your attorney, to include:

- A. Preliminary Title Opinion on Form RD 1927-9, on all real property now owned or to be acquired, executed by your attorney and **submitted to RD prior to closing.**
- B. Final Title Opinion on RD Form 1927-10, on all real property now owned or to be acquired, executed by your attorney at **closing.**
- C. A title insurance binder and title insurance policy, in an amount at least equal to the market value of the property as improved, may be substituted for requirements A and B.
- D. Where the right of use or control of real property not owned by you is essential to the successful operation of the facility during the life of the facility, such right will be evidenced by written agreements or contracts between the owner(s) of the property and the Georgetown County. Lease of the site or facility shall not contain forfeiture or summary cancellation clauses and shall provide for the right to transfer and lease without

restrictions. The lease agreements shall be written for a term at least equal to the life of the facility.

## **7. ENVIRONMENTAL:**

**Prior to grant approval**, you will be required to agree in writing to comply with all mitigation measures contained in the Environmental Assessment prepared by you or your consulting firm.

## **8. COORDINATION WITH FEDERAL, STATE AND LOCAL AGENCIES:**

A statement must be obtained from the responsible State Agency certifying that the proposed facility meets the minimum standards for design and construction, including compliance with all pertinent State and local laws, including local codes.

## **9. SPECIAL REQUIREMENTS:**

- a. A dedication ceremony is expected for this project. Any public information events are to be coordinated in advance with Rural Development. These events are to be planned in order for the public to be aware of this project and Rural Development's participation in the project.
- b. All documents requiring the signature of the officials will be executed by the County Council Chairman, attested by the CLERK to Council, and the impression of the GEORGETOWN COUNTY'S seal affixed thereon.
- c. GEORGETOWN COUNTY is to appoint one member of its governing body or management staff to serve as liaison with Rural Development.
- d. Furnish a certified list of the governing body (include addresses), samples of their signatures, and terms of their offices.
- e. A quorum of GEORGETOWN COUNTY'S governing body must convene at a meeting called by the Mayor and adopt Form RD 1942-8 "Resolution of Members or Stockholders".
- f. Prior to the approval of the grant, you will have certified on at least two different occasions as to your inability to finance this project from your own resources or other credit at reasonable rates and terms. This was based on prevailing private and cooperative rates and terms in or near your community for grants for similar purposes and periods of time.

- g. The GEORGETOWN COUNTY will operate its facilities on a fiscal year that begins 07/01 and ends 06/30.
- h. The GEORGETOWN COUNTY must adopt the attached Grant Resolution agreeing to the responsibilities of form RD 1940-1, "Request of Obligation of Funds", with attachment, and authorizing the execution of this and other forms related to the grant application.
- i. This financial assistance is subject to your compliance with the Civil Rights Act of 1964, and the Age Discrimination Act of 1975.
- j. Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Rural Development financial assistance.
- k. Prior to the closing of the grant, it will be necessary that our Rural Development Area Office conduct a compliance review. Your office's full cooperation will be necessary in accomplishing this certification and review. During the review, the representative of the Rural Development Area Office will complete and execute Form RD 400-8, "Compliance Review." So as to assist the Rural Development Area Office with the Compliance Review, you will need to have available a numerical breakdown of your agency's service area's population into the following categories: Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native, White, and Other. The nondiscrimination poster, "And Justice for All," is to be displayed at your offices and facilities.
- l. Unless the requirements of the Letter of Conditions have already been satisfied, Rural Development will request to meet with GEORGETOWN COUNTY'S officials, attorney, and any other parties that may be involved in the project during the 4<sup>th</sup> month after the date of Form RD 1942-46, "Letter of Intent to Meet Conditions." The purpose of this meeting will be to determine the progress that has been made in complying with the "Letter of Conditions" and to establish goals and a timetable for completing work on the conditions that have not yet been satisfied.
- m. If there is a significant reduction in project costs, GEORGETOWN COUNTY funding needs will be reassessed before grant closing. This reassessment will include the necessary revisions of the grant docket and the Letter of Conditions. The reassessment and revisions will be based on revised project costs and Rural Development regulations effective at the time the grant was approved. Grant funds not needed

to complete the proposed project will be returned to Rural Development.

- n. Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving RHS financial assistance.

## **10. LEGAL SERVICES:**

You must obtain a legal services agreement with your attorney for providing legal services for your project. It is suggested that ten percent of the cost be retained until the grant is closed and all legal requirements have been satisfied.

Prior to grant closing, the attorney must provide this office with a certification as to judgments and/or litigation of your agency. Such a certification must also be provided before closing instructions can be issued.

The closing instructions for this grant will be issued by the Rural Development Community Programs Director. These requirements must be met before the grant can be closed.

Report of Lien Search is to be prepared by your attorney using their standard reporting format. This report is needed to assist in obtaining our grant closing instructions. This report must also be brought current as of the date and time of the actual closing.

## **11. ACCOUNTING METHODS, MANAGEMENT REPORTS AND AUDIT REPORTS:**

- a. The business operations will be governed in accordance with the grant resolution and operating budget. Accounting records should be maintained on an accrual basis.

However, books may be kept on an accounting basis other than accrual and then adjustments made so that the financial statements are presented on the accrual basis. Your agency must retain all records, books, and supporting material for a period of three years after the issuance of the required audit reports and financial statements.

- b. Prior to grant closing or commencing with construction, whichever occurs first, your agency must provide and obtain approval from the Rural Development

Community Facility Program Director for its accounting and financial reporting system, including the required agreement for services with its auditor.

Audit Requirements:

Audits are required annually. Audits are to be conducted by an independent licensed certified public accountant (CPA). A CPA will be considered independent if the CPA meets the standards for independence contained in the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct in effect at the time the CPA's independence is under review, does not have any direct financial interest or any material indirect financial interest in the borrower during the period covered by the review; and is not, during the period of the audit, connected with the borrower as promoter, underwriter, trustee, director, officer or employee.

Audits are to be performed in accordance with generally accepted government auditing standards (GAGAS) issued by the Comptroller General of the United States, 1994 Revision, and any subsequent revisions.

Your agency is to be audited in accordance with the Office of Management and Budget (OMB) Circular A-133 in years it expends \$750,000 or more in Federal funds. The OMB will assign a cognizant Federal agency to oversee the implementation of this circular. If an agency is not assigned, you will be under the general oversight of the Federal agency that provided the most funds. Reports required by this circular must be submitted no later than 9 months after the end of your agency's fiscal year.

Your agency is to be audited in accordance with the generally accepted government auditing standards (GAGAS) and Rural Development requirements in years it expends less than \$750,000 in Federal funds. These audits are to be completed with two copies of the report submitted to the Rural Development Area Office no later than 150 days following the end of your agency's fiscal year.

**12. INSURANCE REQUIREMENTS:**

A Certificate of Insurance evidencing that all the following required insurances have been obtained and is in force **must be provided to RD prior to closing.**

- A. Property Insurance: Fire and extended coverage on all structures in an amount equal to at least the depreciated replacement value.
- B. Liability and Property Damage Insurance: You must carefully review your overall operation to establish and obtain Public Liability and Property Damage Insurance coverage that will adequately protect you, your officers, your officials, and your employees. You may want to consult your attorney to determine the amount of this coverage.



- C. Workers' Compensation Insurance: You must carry suitable Workers' Compensation Insurance for all your employees in accordance with applicable state laws.

### **13. FIDELITY BOND:**

Fidelity Bond Coverage is required for all persons who have access to funds in accordance with RD regulations and **must be provided to RD prior to closing**. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. The amount of the Fidelity Bond should be sufficient to protect RD grant funds.

You may want to consult with your attorney to determine the amount of this coverage. Form RD 440-24, "Position Fidelity Schedule Bond", may be used, as may similar forms if determined acceptable to RD. Other types of coverage may be considered acceptable if it is determined by RD that they fulfill essentially the same purpose as a fidelity bond.

### **14. PROCUREMENT, BIDDING AND CONTRACT AWARDS:**

- a. Procurement transactions shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. The method of procurement must be approved by Rural Development.
- b. Request for Proposals/Specifications are to be approved by Rural Development. Rural Development is to concur before a proposal is accepted by the GEORGETOWN COUNTY.
- c. The seller of the EQUIPMENT is to be required to execute Form AD-1048. A copy is to be submitted to Rural Development prior to payment

### **15. OTHER CERTIFICATIONS:**

The following certifications must be **submitted to RD prior to closing**.

- A. Form AD- 1047, "Certification Regarding Debarment, Suspension, and other Responsibility Matters - Primary Covered Transactions," must be executed and **submitted to RD prior to closing** to certify that you have not been debarred or suspended for federal assistance.
- B. Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions", must be completed and **submitted to RD with any executed contracts prior to closing**. This form certifies that any person or entity you do

business with as a result of this federal assistance is not debarred or suspended.

- C. Form AD-1049, "Certification Regarding Drug-Free Requirements (Grants) Alternative I - For Grant/grantees Other than Individuals", must be executed and **submitted to RD prior to closing**.
- D. The "Certification for Contracts, Grant/grants and Grants", Exhibit A-1 of RD Instruction 1940-Q, must be completed at the time an application or bid proposal is submitted by a person or entity requesting a contract or grant/grant exceeding \$100,000. Any person or entity requesting contract or grant/grant exceeding \$100,000 at any tier under a covered contract, grant/grant or grant, must complete and submit a certification to the next higher tier.
- E. Standard Form (SF) LLL, "Disclosure of Lobbying Activities", must be completed by recipients of a contract, grant/grant, or grant which meet the conditions of RD Instruction 1940-Q, 1940.812. If there have been no such activities, you should strike through the form and write "Not applicable" on the page and sign the form.
- F. Funds will be requested by GEORGETOWN COUNTY in writing. Form RD 440-11, "Estimate of Funds Needed for 30 day Period Commencing \_\_\_\_\_," may be used for making this request. Funds are to be deposited in GEORGETOWN COUNTY equipment account and Partial Payment Estimates and invoices paid by GEORGETOWN COUNTY from this account, after prior approval by Rural Development. Funds required by Rural Development to be deposited in the equipment account are considered project funds and are to be used only for authorized purposes. A pledge of collateral should be obtained for any funds in the account in excess of \$100,000. Any funds remaining in this account after payment of all Rural Development approved project costs are to be handled as unused grant funds. If necessary, and approved by the Rural Development Community Programs Director, the grant and grant funds may be disbursed through a supervised bank account selected by GEORGETOWN COUNTY. This bank will pledge collateral security to be maintained at a level equal to the greatest amount on deposit at any one time, less \$100,000.

Each payment for project costs must be approved by GEORGETOWN COUNTY and Rural Development. Payment requests may be made on Form RD 1942-18, "Partial Payment Estimate," or similar form. Payment for equipment should coincide with the delivery of the equipment along with title to motorized vehicles that have been properly filed with the South Carolina Department of Transportation showing Rural Development as lien holder.

These conditions should be reviewed by you, legal counsel, consulting architect, and a representative from this agency at the scheduled Letter of Conditions meeting. At this meeting, you will receive specific instructions on the assembly and submittal of materials for review by the Office of General Counsel and issuance of closing instructions.

The necessary forms referred to in this letter will be supplied by Rural Development.

You will have the full cooperation of this agency and if we can be of any further assistance to you, please contact Area Specialist Nickie Toomes at 843-549-1822 ext. 123.

Sincerely,

MICHELE J. CARDWELL  
Community Programs Director

Attachments

Item Number: 6.b  
Meeting Date: 9/24/2019  
Item Type: CONSENT AGENDA

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** County Administrator

**ISSUE UNDER CONSIDERATION:**

Resolution No. 19-15 - Authorizing acceptance of USDA Rural Development Community Facility Grant Funding in the amount of \$47,600 to be utilized for a Fire Pumper Truck and Communications Equipment at the Plantersville Fire Sub-station, and agreeing to the responsibilities and administrative requirements of the grant.

**CURRENT STATUS:**

Georgetown County has made application to USDA Rural Development, and has been awarded \$47,600 in grant funding for the purchase of a Fire Pumper Truck and Communications Equipment for the Plantersville Fire Station.

**POINTS TO CONSIDER:**

Georgetown County has been awarded \$47,600 in United States Department of Agriculture (USDA) Rural Development Grant Funding to be utilized for a fire pumper and communications equipment. The US Department of Agriculture has established conditions which must be agreed to before additional action pertaining to the award of this funding may be considered.

**OPTIONS:**

1. Adoption of Resolution No. 19-15 authorizing acceptance of USDA Rural Development Rural development Grant Funding in the amount of \$47,600 and agreeing to responsibilities and administrative requirements of the grant.
2. Do not adopt Resolution No. 19-15.

**STAFF RECOMMENDATIONS:**

Recommendation for the adoption of Resolution No. 19-15 authorizing acceptance of USDA Rural Development Grant Funding in the amount of \$47,600 to be utilized for a fire pumper and communications equipment at the Plantersville Fire Sub-station, and agreeing to responsibilities and administrative requirements of the grant.

**ATTACHMENTS:**

Description	Type
□ Resolution No 19-15 USDA LOC Plantersville	Resolution Letter

## COMMUNITY FACILITY GRANT RESOLUTION

State of South Carolina  
County of Georgetown

For funding for the **Plantersville Pumber and Communication Equipment, Georgetown County** has made application to USDA, Rural Development for a Community Facility Grant in the amount of \$47,600.00 to assist in the need for essential community facilities in rural areas of South Carolina.

A meeting of the Georgetown County Council, governing body, was duly called and held. The governing body is composed of \_\_\_\_\_members of whom\_\_\_\_\_, constituting a quorum, were present at this meeting. At the meeting, the **Georgetown County** governing body, adopted a resolution agreeing to the responsibilities and requirements of Form RD1940-1, "Request for Obligation of Funds," with attachment and authorizing **John Thomas, County Council Chairman and Theresa E. Floyd, Clerk to Council**, to execute this form and Forms RD 400-1, "Equal Opportunity Agreement," 400-4, "Assurance Agreement," 442-7, "Operating Budget," and 1942-46, "Letter of Intent to Meet Conditions," RD 3570-3, "Agreement for Administrative Requirements for Community Facilities Grants," AD-1047, "Certification Regarding Debarment, Suspension and other Responsibility Matters – Primary covered Transactions," AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions," AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I – for Grantees Other Than Individuals," and Exhibit A-1 of RD Instruction 1940-Q, "Certification for Contracts, Grants, and Loans."

The vote was:

Yeas\_\_\_\_\_Nays\_\_\_\_\_Absent\_\_\_\_\_

SEAL

\_\_\_\_\_  
**John Thomas, County Council Chairman**

Attest:

\_\_\_\_\_  
**Theresa Floyd, Clerk to Council**



**United States Department of Agriculture**  
**Rural Development**  
State Office  
Columbia, South Carolina

September 19, 2019

GEORGETOWN COUNTY  
ATTN: MR. SEL HEMINGWAY, COUNTY ADMINISTRATOR  
PO DRAWER 421270  
GEORGETOWN SC 29442

Subject: Letter of Conditions

Dear Mr. Hemingway:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given your application. This letter is not to be considered as grant and grant approval or as a representation as to the availability of funds. The docket may be completed on the basis of USDA, Rural Development administering a Rural Housing Service (RHS) grant not to exceed \$47,600.

The grant will be considered obligated on the date a signed copy of the Form RD 1940-1, "Request for Obligation of Funds", is mailed to you.

This project is for **Pumper Truck and Equipment for Plantersville**. Any change in project cost, source of funds, scope of services, or any other significant changes in the project or Georgetown County must be reported to and approved by Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

Please execute and return to Rural Development the following completed items if you desire that further consideration be given to your application:

- Form RD 1942-46, "Letter of Intent to Meet Conditions"
- Form RD 400-1, "Equal Opportunity Agreement"
- Form RD 400-4, "Assurance Agreement"
- Form RD 442-7, "Operating Budget"
- Form RD 1940-1, "Request for Obligation of Funds"

If the conditions set forth in this letter are not met within 120 days from the date hereof, USDA, Rural Development, reserves the right to discontinue processing of the application. Rural Development funding is prioritized for projects that need and will use

Strom Thurmond Federal Building • 1835 Assembly Street • Suite 1007 • Columbia, SC 29201  
Phone: (803) 765-5163 • Fax: (855) 565-9479 • TDD: (803) 765-5697 • Web: <http://www.rurdev.usda.gov/sc>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."

To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14<sup>th</sup> and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

the funding immediately. We will require that every possible effort be made to meet all conditions within the one 120 days.

The conditions are as outlined below:

**1. ORGANIZATION'S AUTHORITY TO OBTAIN FUNDS, ETC.:**

Consideration for this grant is based on the Municipality of Georgetown County being properly created as a Public Body and chartered by the Secretary of State of South Carolina.

**2. PROJECT COST:**

**Breakdown of Costs:**

Construction	\$
Legal/Administration	\$
Architectural Services	\$
Equipment	\$63,515.00

**SUBTOTAL** \$

Contingencies \$

**TOTAL PROJECT COSTS** \$63,515.00

**Financing:**

CF Grant	\$47,600.00
Georgetown County Contribution	\$15,915.00

**TOTAL** \$63,515.00

These funds must be disbursed in accordance with the requirements of the sources of funds and must be available before proceeding with procurement. Rural Development will monitor the disbursement of all proceeds.

**3. ADOPTION OF FORM RD 3570-3, "COMMUNITY FACILITIES GRANT/GRANT AGREEMENT":**

The agreement requires review of this form. You will be required to execute the completed form at the time of closing.

- GEORGETOWN COUNTY understands that any property acquired or improved with Federal grant funds may have use and disposition conditions which apply to the property as provided by 7 CFR 3015, 3016, or 3019 in effect at this time and as may be subsequently modified.

- GEORGETOWN COUNTY understands that any sale or transfer of property is subject to the interest of the United States Government in the market value in proportion to its participation in the project as provided by 7 CFR 3015, 3016, or 3019 in effect at this time and as may be subsequently modified.

#### 4. BANK ACCOUNT:

All funds for this project will be handled through a bank account in a bank of your choice, separate from all other banking accounts. The bank account **shall be established prior to closing** and you must agree to make payments from this account only on request for payments, which are to be reviewed and concurred with by RD in advance of payment. You will establish adequate safeguards to assure that the funds from this account are used for authorized purposes only.

You must further agree to permit RD to examine your records and books during regular business hours or at other reasonable times.

#### 5. USE OF MINORITY OWNED BANKS:

You are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members) for deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D. C. 20230 or any RUS Office.

#### 6. TITLE OF PROPERTY:

Satisfactory evidence of title must be prepared and submitted to this office by you, with the assistance of your attorney, to include:

- A. Preliminary Title Opinion on Form RD 1927-9, on all real property now owned or to be acquired, executed by your attorney and **submitted to RD prior to closing**.
- B. Final Title Opinion on RD Form 1927-10, on all real property now owned or to be acquired, executed by your attorney at **closing**.
- C. A title insurance binder and title insurance policy, in an amount at least equal to the market value of the property as improved, may be substituted for requirements A and B.
- D. Where the right of use or control of real property not owned by you is essential to the successful operation of the facility during the life of the facility, such right will be evidenced by written agreements or contracts between the owner(s) of the property and the Georgetown County. Lease of the site or facility shall not contain forfeiture or summary cancellation clauses and shall provide for the right to transfer and lease without



restrictions. The lease agreements shall be written for a term at least equal to the life of the facility.

## **7. ENVIRONMENTAL:**

**Prior to grant approval**, you will be required to agree in writing to comply with all mitigation measures contained in the Environmental Assessment prepared by you or your consulting firm.

## **8. COORDINATION WITH FEDERAL, STATE AND LOCAL AGENCIES:**

A statement must be obtained from the responsible State Agency certifying that the proposed facility meets the minimum standards for design and construction, including compliance with all pertinent State and local laws, including local codes.

## **9. SPECIAL REQUIREMENTS:**

- a. A dedication ceremony is expected for this project. Any public information events are to be coordinated in advance with Rural Development. These events are to be planned in order for the public to be aware of this project and Rural Development's participation in the project.
- b. All documents requiring the signature of the officials will be executed by the County Council Chairman Administrator, attested by the CLERK to Council, and the impression of the GEORGETOWN COUNTY'S seal affixed thereon.
- c. GEORGETOWN COUNTY is to appoint one member of its governing body or management staff to serve as liaison with Rural Development.
- d. Furnish a certified list of the governing body (include addresses), samples of their signatures, and terms of their offices.
- e. A quorum of GEORGETOWN COUNTY'S governing body must convene at a meeting called by the Mayor and adopt Form RD 1942-8 "Resolution of Members or Stockholders".
- f. Prior to the approval of the grant, you will have certified on at least two different occasions as to your inability to finance this project from your own resources or other credit at reasonable rates and terms. This was based on prevailing private and cooperative rates and terms in or near your community for grants for similar purposes and periods of time.

- g. The GEORGETOWN COUNTY will operate its facilities on a fiscal year that begins 07/01 and ends 06/30.
- h. The GEORGETOWN COUNTY must adopt the attached Grant Resolution agreeing to the responsibilities of form RD 1940-1, "Request of Obligation of Funds", with attachment, and authorizing the execution of this and other forms related to the grant application.
- i. This financial assistance is subject to your compliance with the Civil Rights Act of 1964, and the Age Discrimination Act of 1975.
- j. Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Rural Development financial assistance.
- k. Prior to the closing of the grant, it will be necessary that our Rural Development Area Office conduct a compliance review. Your office's full cooperation will be necessary in accomplishing this certification and review. During the review, the representative of the Rural Development Area Office will complete and execute Form RD 400-8, "Compliance Review." So as to assist the Rural Development Area Office with the Compliance Review, you will need to have available a numerical breakdown of your agency's service area's population into the following categories: Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native, White, and Other. The nondiscrimination poster, "And Justice for All," is to be displayed at your offices and facilities.
- l. Unless the requirements of the Letter of Conditions have already been satisfied, Rural Development will request to meet with GEORGETOWN COUNTY'S officials, attorney, and any other parties that may be involved in the project during the 4<sup>th</sup> month after the date of Form RD 1942-46, "Letter of Intent to Meet Conditions." The purpose of this meeting will be to determine the progress that has been made in complying with the "Letter of Conditions" and to establish goals and a timetable for completing work on the conditions that have not yet been satisfied.
- m. If there is a significant reduction in project costs, GEORGETOWN COUNTY funding needs will be reassessed before grant closing. This reassessment will include the necessary revisions of the grant docket and the Letter of Conditions. The reassessment and revisions will be based on revised project costs and Rural Development regulations effective at the time the grant was approved. Grant funds not needed

to complete the proposed project will be returned to Rural Development.

- n. Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving RHS financial assistance.

## **10. LEGAL SERVICES:**

You must obtain a legal services agreement with your attorney for providing legal services for your project. It is suggested that ten percent of the cost be retained until the grant is closed and all legal requirements have been satisfied.

Prior to grant closing, the attorney must provide this office with a certification as to judgments and/or litigation of your agency. Such a certification must also be provided before closing instructions can be issued.

The closing instructions for this grant will be issued by the Rural Development Community Programs Director. These requirements must be met before the grant can be closed.

Report of Lien Search is to be prepared by your attorney using their standard reporting format. This report is needed to assist in obtaining our grant closing instructions. This report must also be brought current as of the date and time of the actual closing.

## **11. ACCOUNTING METHODS, MANAGEMENT REPORTS AND AUDIT REPORTS:**

- a. The business operations will be governed in accordance with the grant resolution and operating budget. Accounting records should be maintained on an accrual basis.

However, books may be kept on an accounting basis other than accrual and then adjustments made so that the financial statements are presented on the accrual basis. Your agency must retain all records, books, and supporting material for a period of three years after the issuance of the required audit reports and financial statements.

- b. Prior to grant closing or commencing with construction, whichever occurs first, your agency must provide and obtain approval from the Rural Development

Community Facility Program Director for its accounting and financial reporting system, including the required agreement for services with its auditor.

Audit Requirements:

Audits are required annually. Audits are to be conducted by an independent licensed certified public accountant (CPA). A CPA will be considered independent if the CPA meets the standards for independence contained in the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct in effect at the time the CPA's independence is under review, does not have any direct financial interest or any material indirect financial interest in the borrower during the period covered by the review; and is not, during the period of the audit, connected with the borrower as promoter, underwriter, trustee, director, officer or employee.

Audits are to be performed in accordance with generally accepted government auditing standards (GAGAS) issued by the Comptroller General of the United States, 1994 Revision, and any subsequent revisions.

Your agency is to be audited in accordance with the Office of Management and Budget (OMB) Circular A-133 in years it expends \$750,000 or more in Federal funds. The OMB will assign a cognizant Federal agency to oversee the implementation of this circular. If an agency is not assigned, you will be under the general oversight of the Federal agency that provided the most funds. Reports required by this circular must be submitted no later than 9 months after the end of your agency's fiscal year.

Your agency is to be audited in accordance with the generally accepted government auditing standards (GAGAS) and Rural Development requirements in years it expends less than \$750,000 in Federal funds. These audits are to be completed with two copies of the report submitted to the Rural Development Area Office no later than 150 days following the end of your agency's fiscal year.

**12. INSURANCE REQUIREMENTS:**

A Certificate of Insurance evidencing that all the following required insurances have been obtained and is in force **must be provided to RD prior to closing.**

- A. Property Insurance: Fire and extended coverage on all structures in an amount equal to at least the depreciated replacement value.
- B. Liability and Property Damage Insurance: You must carefully review your overall operation to establish and obtain Public Liability and Property Damage Insurance coverage that will adequately protect you, your officers, your officials, and your employees. You may want to consult your attorney to determine the amount of this coverage.

- C. Workers' Compensation Insurance: You must carry suitable Workers' Compensation Insurance for all your employees in accordance with applicable state laws.

### **13. FIDELITY BOND:**

Fidelity Bond Coverage is required for all persons who have access to funds in accordance with RD regulations and **must be provided to RD prior to closing**. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. The amount of the Fidelity Bond should be sufficient to protect RD grant funds.

You may want to consult with your attorney to determine the amount of this coverage. Form RD 440-24, "Position Fidelity Schedule Bond", may be used, as may similar forms if determined acceptable to RD. Other types of coverage may be considered acceptable if it is determined by RD that they fulfill essentially the same purpose as a fidelity bond.

### **14. PROCUREMENT, BIDDING AND CONTRACT AWARDS:**

- a. Procurement transactions shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. The method of procurement must be approved by Rural Development.
- b. Request for Proposals/Specifications are to be approved by Rural Development. Rural Development is to concur before a proposal is accepted by the GEORGETOWN COUNTY.
- c. The seller of the EQUIPMENT is to be required to execute Form AD-1048. A copy is to be submitted to Rural Development prior to payment

### **15. OTHER CERTIFICATIONS:**

The following certifications must be **submitted to RD prior to closing**.

- A. Form AD- 1047, "Certification Regarding Debarment, Suspension, and other Responsibility Matters - Primary Covered Transactions," must be executed and **submitted to RD prior to closing** to certify that you have not been debarred or suspended for federal assistance.
- B. Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions", must be completed and **submitted to RD with any executed contracts prior to closing**. This form certifies that any person or entity you do

business with as a result of this federal assistance is not debarred or suspended.

- C. Form AD-1049, "Certification Regarding Drug-Free Requirements (Grants) Alternative I - For Grant/grantees Other than Individuals", must be executed and **submitted to RD prior to closing**.
- D. The "Certification for Contracts, Grant/grants and Grants", Exhibit A-1 of RD Instruction 1940-Q, must be completed at the time an application or bid proposal is submitted by a person or entity requesting a contract or grant/grant exceeding \$100,000. Any person or entity requesting contract or grant/grant exceeding \$100,000 at any tier under a covered contract, grant/grant or grant, must complete and submit a certification to the next higher tier.
- E. Standard Form (SF) LLL, "Disclosure of Lobbying Activities", must be completed by recipients of a contract, grant/grant, or grant which meet the conditions of RD Instruction 1940-Q, 1940.812. If there have been no such activities, you should strike through the form and write "Not applicable" on the page and sign the form.
- F. Funds will be requested by GEORGETOWN COUNTY in writing. Form RD 440-11, "Estimate of Funds Needed for 30 day Period Commencing \_\_\_\_\_," may be used for making this request. Funds are to be deposited in GEORGETOWN COUNTY equipment account and Partial Payment Estimates and invoices paid by GEORGETOWN COUNTY from this account, after prior approval by Rural Development. Funds required by Rural Development to be deposited in the equipment account are considered project funds and are to be used only for authorized purposes. A pledge of collateral should be obtained for any funds in the account in excess of \$100,000. Any funds remaining in this account after payment of all Rural Development approved project costs are to be handled as unused grant funds. If necessary, and approved by the Rural Development Community Programs Director, the grant and grant funds may be disbursed through a supervised bank account selected by GEORGETOWN COUNTY. This bank will pledge collateral security to be maintained at a level equal to the greatest amount on deposit at any one time, less \$100,000.

Each payment for project costs must be approved by GEORGETOWN COUNTY and Rural Development. Payment requests may be made on Form RD 1942-18, "Partial Payment Estimate," or similar form. Payment for equipment should coincide with the delivery of the equipment along with title to motorized vehicles that have been properly filed with the South Carolina Department of Transportation showing Rural Development as lien holder.

These conditions should be reviewed by you, legal counsel, consulting architect, and a representative from this agency at the scheduled Letter of Conditions meeting. At this meeting, you will receive specific instructions on the assembly and submittal of materials for review by the Office of General Counsel and issuance of closing instructions.

The necessary forms referred to in this letter will be supplied by Rural Development.

You will have the full cooperation of this agency and if we can be of any further assistance to you, please contact Area Specialist Nickie Toomes at 843-549-1822 ext. 123.

Sincerely,

MICHELE J. CARDWELL  
Community Programs Director

Attachments

Item Number: 6.c  
Meeting Date: 9/24/2019  
Item Type: CONSENT AGENDA

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** County Administrator

**ISSUE UNDER CONSIDERATION:**

Resolution No. 19-16 - Authorizing acceptance of USDA Rural Development Community Facility Grant Funding in the amount of \$47,400 to be utilized for Yauhannah Fire Pumper Truck and Communications Equipment, and agreeing to responsibilities and administrative requirements of the grant.

**CURRENT STATUS:**

Georgetown County has made application to USDA, Rural Development for Rural Development Grant Funding, and has been awarded \$47,400 for the purchase of a Fire Pumper Truck and Communications Equipment or the Yauhannah Fire Station.

**POINTS TO CONSIDER:**

Georgetown County has been awarded \$47,400 in United States Department of Agriculture (USDA) Rural Development Grant Funding to be utilized for a fire pumper and communications equipment. The USDA establishes conditions which must be agreed to before additional action pertaining to the award of this funding may be considered.

**OPTIONS:**

1. Adoption of Resolution No. 19-16 authorizing acceptance of USDA Rural Development Rural development Grant Funding in the amount of \$47,400 and agreeing to responsibilities and administrative requirements of the grant.
2. Do not adopt Resolution No. 19-16.

**STAFF RECOMMENDATIONS:**

Recommendation for the adoption of Resolution No. 19-16 authorizing acceptance of USDA Rural Development Grant Funding in the amount of \$47,400 to be utilized for a fire pumper and communications equipment, and agreeing to responsibilities and administrative requirements of the grant.

**ATTACHMENTS:**

Description	Type
▣ Resolution No. 19-16 USDA LOC Yauhannah Fire Pumper	Resolution Letter



# COMMUNITY FACILITY GRANT RESOLUTION

State of South Carolina  
County of Georgetown

For funding for the **Yauhannah Pumper Truck and Communication Equipment, Georgetown County** has made application to USDA, Rural Development for a Community Facility Grant in the amount of **\$47,400.00** to assist in the need for essential community facilities in rural areas of South Carolina.

A meeting of the Georgetown County Council, governing body, was duly called and held. The governing body is composed of \_\_\_\_\_ members of whom \_\_\_\_\_, constituting a quorum, were present at this meeting. At the meeting, the **Georgetown County** governing body, adopted a resolution agreeing to the responsibilities and requirements of Form RD1940-1, "Request for Obligation of Funds," with attachment and authorizing **John Thomas, County Council Chairman and Theresa E. Floyd, Clerk to Council**, to execute this form and Forms RD 400-1, "Equal Opportunity Agreement," 400-4, "Assurance Agreement," 442-7, "Operating Budget," and 1942-46, "Letter of Intent to Meet Conditions," RD 3570-3, "Agreement for Administrative Requirements for Community Facilities Grants," AD-1047, "Certification Regarding Debarment, Suspension and other Responsibility Matters – Primary covered Transactions," AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions;" AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I – for Grantees Other Than Individuals," and Exhibit A-1 of RD Instruction 1940-Q, "Certification for Contracts, Grants, and Loans."

The vote was:

Yeas \_\_\_\_\_ Nays \_\_\_\_\_ Absent \_\_\_\_\_

SEAL

## John Thomas, County Council Chairman

Attest:

### Theresa E. Floyd, Clerk to Council



**United States Department of Agriculture  
Rural Development  
State Office  
Columbia, South Carolina**

September 19, 2019

GEORGETOWN COUNTY  
ATTN: MR. SEL HEMINGWAY, COUNTY ADMINISTRATOR  
PO DRAWER 421270  
GEORGETOWN SC 29442

**Subject: Letter of Conditions**

Dear Mr. Hemingway:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given your application. This letter is not to be considered as grant and grant approval or as a representation as to the availability of funds. The docket may be completed on the basis of USDA, Rural Development administering a Rural Housing Service (RHS) grant not to exceed \$47,400.

The grant will be considered obligated on the date a signed copy of the Form RD 1940-1, "Request for Obligation of Funds", is mailed to you.

This project is for Yauhannah Pumper and Equipment. Any change in project cost, source of funds, scope of services, or any other significant changes in the project or Georgetown County must be reported to and approved by Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

Please execute and return to Rural Development the following completed items if you desire that further consideration be given to your application:

- Form RD 1942-46, "Letter of Intent to Meet Conditions"
- Form RD 400-1, "Equal Opportunity Agreement"
- Form RD 400-4, "Assurance Agreement"
- Form RD 442-7, "Operating Budget"
- Form RD 1940-1, "Request for Obligation of Funds"

If the conditions set forth in this letter are not met within 120 days from the date hereof, USDA, Rural Development, reserves the right to discontinue processing of the application. Rural Development funding is prioritized for projects that need and will use

Strom Thurmond Federal Building • 1835 Assembly Street • Suite 1007 • Columbia, SC 29201  
Phone: (803) 765-5163 • Fax: (855) 565-9479 • TDD: (803) 765-5697 • Web: <http://www.rurdev.usda.gov/sc>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."  
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14<sup>th</sup> and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

the funding immediately. We will require that every possible effort be made to meet all conditions within the one 120 days.

The conditions are as outlined below:

**1. ORGANIZATION'S AUTHORITY TO OBTAIN FUNDS, ETC.:**

Consideration for this grant is based on the Municipality of Georgetown County being properly created as a Public Body and chartered by the Secretary of State of South Carolina.

**2. PROJECT COST:**

**Breakdown of Costs:**

Construction	\$
Legal/Administration	\$
Architectural Services	\$
Equipment	\$63,515.00

<b>SUBTOTAL</b>	<b>\$63,515.00</b>
-----------------	--------------------

Contingencies	\$
<b>TOTAL PROJECT COSTS</b>	<b>\$63,515.00</b>

**Financing:**

CF Grant	\$47,400.00
Georgetown County Contribution	\$16,115.00

<b>TOTAL</b>	<b>\$63,515.00</b>
--------------	--------------------

These funds must be disbursed in accordance with the requirements of the sources of funds and must be available before proceeding with procurement. Rural Development will monitor the disbursement of all proceeds.

**3. ADOPTION OF FORM RD 3570-3, "COMMUNITY FACILITIES GRANT/GRANT AGREEMENT":**

The agreement requires review of this form. You will be required to execute the completed form at the time of closing.

- GEORGETOWN COUNTY understands that any property acquired or improved with Federal grant funds may have use and disposition conditions which apply to the property as provided by 7 CFR 3015, 3016, or 3019 in effect at this time and as may be subsequently modified.

- GEORGETOWN COUNTY understands that any sale or transfer of property is subject to the interest of the United States Government in the market value in proportion to its participation in the project as provided by 7 CFR 3015, 3016, or 3019 in effect at this time and as may be subsequently modified.

#### 4. BANK ACCOUNT:

All funds for this project will be handled through a bank account in a bank of your choice, separate from all other banking accounts. The bank account **shall be established prior to closing** and you must agree to make payments from this account only on request for payments, which are to be reviewed and concurred with by RD in advance of payment. You will establish adequate safeguards to assure that the funds from this account are used for authorized purposes only.

You must further agree to permit RD to examine your records and books during regular business hours or at other reasonable times.

#### 5. USE OF MINORITY OWNED BANKS:

You are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members) for deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D. C. 20230 or any RUS Office.

#### 6. TITLE OF PROPERTY:

Satisfactory evidence of title must be prepared and submitted to this office by you, with the assistance of your attorney, to include:

- A. Preliminary Title Opinion on Form RD 1927-9, on all real property now owned or to be acquired, executed by your attorney and **submitted to RD prior to closing**.
- B. Final Title Opinion on RD Form 1927-10, on all real property now owned or to be acquired, executed by your attorney at **closing**.
- C. A title insurance binder and title insurance policy, in an amount at least equal to the market value of the property as improved, may be substituted for requirements A and B.
- D. Where the right of use or control of real property not owned by you is essential to the successful operation of the facility during the life of the facility, such right will be evidenced by written agreements or contracts between the owner(s) of the property and the Georgetown County. Lease of the site or facility shall not contain forfeiture or summary cancellation clauses and shall provide for the right to transfer and lease without

restrictions. The lease agreements shall be written for a term at least equal to the life of the facility.

## **7. ENVIRONMENTAL:**

**Prior to grant approval**, you will be required to agree in writing to comply with all mitigation measures contained in the Environmental Assessment prepared by you or your consulting firm.

## **8. COORDINATION WITH FEDERAL, STATE AND LOCAL AGENCIES:**

A statement must be obtained from the responsible State Agency certifying that the proposed facility meets the minimum standards for design and construction, including compliance with all pertinent State and local laws, including local codes.

## **9. SPECIAL REQUIREMENTS:**

- a. A dedication ceremony is expected for this project. Any public information events are to be coordinated in advance with Rural Development. These events are to be planned in order for the public to be aware of this project and Rural Development's participation in the project.
- b. All documents requiring the signature of the officials will be executed by the County Council Chairman, attested by the Clerk to Council, and the impression of the GEORGETOWN COUNTY'S seal affixed thereon.
- c. GEORGETOWN COUNTY is to appoint one member of its governing body or management staff to serve as liaison with Rural Development.
- d. Furnish a certified list of the governing body (include addresses), samples of their signatures, and terms of their offices.
- e. A quorum of GEORGETOWN COUNTY'S governing body must convene at a meeting called by the Mayor and adopt Form RD 1942-8 "Resolution of Members or Stockholders".
- f. Prior to the approval of the grant, you will have certified on at least two different occasions as to your inability to finance this project from your own resources or other credit at reasonable rates and terms. This was based on prevailing private and cooperative rates and terms in or near your community for grants for similar purposes and periods of time.

- g. The GEORGETOWN COUNTY will operate its facilities on a fiscal year that begins 07/01 and ends 06/30.
- h. The GEORGETOWN COUNTY must adopt the attached Grant Resolution agreeing to the responsibilities of form RD 1940-1, "Request of Obligation of Funds", with attachment, and authorizing the execution of this and other forms related to the grant application.
- i. This financial assistance is subject to your compliance with the Civil Rights Act of 1964, and the Age Discrimination Act of 1975.
- j. Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Rural Development financial assistance.
- k. Prior to the closing of the grant, it will be necessary that our Rural Development Area Office conduct a compliance review. Your office's full cooperation will be necessary in accomplishing this certification and review. During the review, the representative of the Rural Development Area Office will complete and execute Form RD 400-8, "Compliance Review." So as to assist the Rural Development Area Office with the Compliance Review, you will need to have available a numerical breakdown of your agency's service area's population into the following categories: Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native, White, and Other. The nondiscrimination poster, "And Justice for All," is to be displayed at your offices and facilities.
- l. Unless the requirements of the Letter of Conditions have already been satisfied, Rural Development will request to meet with GEORGETOWN COUNTY'S officials, attorney, and any other parties that may be involved in the project during the 4<sup>th</sup> month after the date of Form RD 1942-46, "Letter of Intent to Meet Conditions." The purpose of this meeting will be to determine the progress that has been made in complying with the "Letter of Conditions" and to establish goals and a timetable for completing work on the conditions that have not yet been satisfied.
- m. If there is a significant reduction in project costs, GEORGETOWN COUNTY funding needs will be reassessed before grant closing. This reassessment will include the necessary revisions of the grant docket and the Letter of Conditions. The reassessment and revisions will be based on revised project costs and Rural Development regulations effective at the time the grant was approved. Grant funds not needed

to complete the proposed project will be returned to Rural Development.

- n. Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving RHS financial assistance.

## **10. LEGAL SERVICES:**

You must obtain a legal services agreement with your attorney for providing legal services for your project. It is suggested that ten percent of the cost be retained until the grant is closed and all legal requirements have been satisfied.

Prior to grant closing, the attorney must provide this office with a certification as to judgments and/or litigation of your agency. Such a certification must also be provided before closing instructions can be issued.

The closing instructions for this grant will be issued by the Rural Development Community Programs Director. These requirements must be met before the grant can be closed.

Report of Lien Search is to be prepared by your attorney using their standard reporting format. This report is needed to assist in obtaining our grant closing instructions. This report must also be brought current as of the date and time of the actual closing.

## **11. ACCOUNTING METHODS, MANAGEMENT REPORTS AND AUDIT REPORTS:**

- a. The business operations will be governed in accordance with the grant resolution and operating budget. Accounting records should be maintained on an accrual basis.

However, books may be kept on an accounting basis other than accrual and then adjustments made so that the financial statements are presented on the accrual basis. Your agency must retain all records, books, and supporting material for a period of three years after the issuance of the required audit reports and financial statements.

- b. Prior to grant closing or commencing with construction, whichever occurs first, your agency must provide and obtain approval from the Rural Development

Community Facility Program Director for its accounting and financial reporting system, including the required agreement for services with its auditor.

Audit Requirements:

Audits are required annually. Audits are to be conducted by an independent licensed certified public accountant (CPA). A CPA will be considered independent if the CPA meets the standards for independence contained in the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct in effect at the time the CPA's independence is under review, does not have any direct financial interest or any material indirect financial interest in the borrower during the period covered by the review; and is not, during the period of the audit, connected with the borrower as promoter, underwriter, trustee, director, officer or employee.

Audits are to be performed in accordance with generally accepted government auditing standards (GAGAS) issued by the Comptroller General of the United States, 1994 Revision, and any subsequent revisions.

Your agency is to be audited in accordance with the Office of Management and Budget (OMB) Circular A-133 in years it expends \$750,000 or more in Federal funds. The OMB will assign a cognizant Federal agency to oversee the implementation of this circular. If an agency is not assigned, you will be under the general oversight of the Federal agency that provided the most funds. Reports required by this circular must be submitted no later than 9 months after the end of your agency's fiscal year.

Your agency is to be audited in accordance with the generally accepted government auditing standards (GAGAS) and Rural Development requirements in years it expends less than \$750,000 in Federal funds. These audits are to be completed with two copies of the report submitted to the Rural Development Area Office no later than 150 days following the end of your agency's fiscal year.

**12. INSURANCE REQUIREMENTS:**

A Certificate of Insurance evidencing that all the following required insurances have been obtained and is in force **must be provided to RD prior to closing.**

- A. Property Insurance: Fire and extended coverage on all structures in an amount equal to at least the depreciated replacement value.
- B. Liability and Property Damage Insurance: You must carefully review your overall operation to establish and obtain Public Liability and Property Damage Insurance coverage that will adequately protect you, your officers, your officials, and your employees. You may want to consult your attorney to determine the amount of this coverage.



- C. Workers' Compensation Insurance: You must carry suitable Workers' Compensation Insurance for all your employees in accordance with applicable state laws.

### **13. FIDELITY BOND:**

Fidelity Bond Coverage is required for all persons who have access to funds in accordance with RD regulations and **must be provided to RD prior to closing**. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. The amount of the Fidelity Bond should be sufficient to protect RD grant funds.

You may want to consult with your attorney to determine the amount of this coverage. Form RD 440-24, "Position Fidelity Schedule Bond", may be used, as may similar forms if determined acceptable to RD. Other types of coverage may be considered acceptable if it is determined by RD that they fulfill essentially the same purpose as a fidelity bond.

### **14. PROCUREMENT, BIDDING AND CONTRACT AWARDS:**

- a. Procurement transactions shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. The method of procurement must be approved by Rural Development.
- b. Request for Proposals/Specifications are to be approved by Rural Development. Rural Development is to concur before a proposal is accepted by the GEORGETOWN COUNTY.
- c. The seller of the EQUIPMENT is to be required to execute Form AD-1048. A copy is to be submitted to Rural Development prior to payment

### **15. OTHER CERTIFICATIONS:**

The following certifications must be **submitted to RD prior to closing**.

- A. Form AD- 1047, "Certification Regarding Debarment, Suspension, and other Responsibility Matters - Primary Covered Transactions," must be executed and **submitted to RD prior to closing** to certify that you have not been debarred or suspended for federal assistance.
- B. Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions", must be completed and **submitted to RD with any executed contracts prior to closing**. This form certifies that any person or entity you do

business with as a result of this federal assistance is not debarred or suspended.

- C. Form AD-1049, "Certification Regarding Drug-Free Requirements (Grants) Alternative I - For Grant/grantees Other than Individuals", must be executed and **submitted to RD prior to closing**.
- D. The "Certification for Contracts, Grant/grants and Grants", Exhibit A-1 of RD Instruction 1940-Q, must be completed at the time an application or bid proposal is submitted by a person or entity requesting a contract or grant/grant exceeding \$100,000. Any person or entity requesting contract or grant/grant exceeding \$100,000 at any tier under a covered contract, grant/grant or grant, must complete and submit a certification to the next higher tier.
- E. Standard Form (SF) LLL, "Disclosure of Lobbying Activities", must be completed by recipients of a contract, grant/grant, or grant which meet the conditions of RD Instruction 1940-Q, 1940.812. If there have been no such activities, you should strike through the form and write "Not applicable" on the page and sign the form.
- F. Funds will be requested by GEORGETOWN COUNTY in writing. Form RD 440-11, "Estimate of Funds Needed for 30 day Period Commencing \_\_\_\_\_," may be used for making this request. Funds are to be deposited in GEORGETOWN COUNTY equipment account and Partial Payment Estimates and invoices paid by GEORGETOWN COUNTY from this account, after prior approval by Rural Development. Funds required by Rural Development to be deposited in the equipment account are considered project funds and are to be used only for authorized purposes. A pledge of collateral should be obtained for any funds in the account in excess of \$100,000. Any funds remaining in this account after payment of all Rural Development approved project costs are to be handled as unused grant funds. If necessary, and approved by the Rural Development Community Programs Director, the grant and grant funds may be disbursed through a supervised bank account selected by GEORGETOWN COUNTY. This bank will pledge collateral security to be maintained at a level equal to the greatest amount on deposit at any one time, less \$100,000.

Each payment for project costs must be approved by GEORGETOWN COUNTY and Rural Development. Payment requests may be made on Form RD 1942-18, "Partial Payment Estimate," or similar form. Payment for equipment should coincide with the delivery of the equipment along with title to motorized vehicles that have been properly filed with the South Carolina Department of Transportation showing Rural Development as lien holder.

These conditions should be reviewed by you, legal counsel, consulting architect, and a representative from this agency at the scheduled Letter of Conditions meeting. At this meeting, you will receive specific instructions on the assembly and submittal of materials for review by the Office of General Counsel and issuance of closing instructions.

The necessary forms referred to in this letter will be supplied by Rural Development.

You will have the full cooperation of this agency and if we can be of any further assistance to you, please contact Area Specialist Nickie Toomes at 843-549-1822 ext. 123.

Sincerely,

MICHELE J. CARDWELL  
Community Programs Director

Attachments

Item Number: 6.d  
Meeting Date: 9/24/2019  
Item Type: CONSENT AGENDA

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** County Administrator

**ISSUE UNDER CONSIDERATION:**

Resolution No. 19-17 - Authorizing acceptance of USDA Rural Development Community Facility Grant Funding in the amount of \$34,900 to be utilized for Rose Hill Fire Pumper Truck and Communications Equipment, and agreeing to responsibilities and administrative requirements of the grant.

**CURRENT STATUS:**

Georgetown County has made application to USDA, Rural Development for Rural Development Grant Funding, and has been awarded \$34,900 for the purchase of a Fire Pumper Truck and Communications Equipment for the Rose Fire Station.

**POINTS TO CONSIDER:**

Georgetown County has been awarded \$34,900 in United States Department of Agriculture (USDA) Rural Development Grant Funding to be utilized for a fire pumper and communications equipment. The USDA establishes conditions which must be agreed to before additional action pertaining to the award of this funding may be considered.

**OPTIONS:**

1. Adoption of Resolution No. 19-17 authorizing acceptance of USDA Rural Development Rural development Grant Funding in the amount of \$34,900 and agreeing to responsibilities and administrative requirements of the grant.
2. Do not adopt Resolution No. 19-17.

**STAFF RECOMMENDATIONS:**

Recommendation for the adoption of Resolution No. 19-17 authorizing acceptance of USDA Rural Development Grant Funding in the amount of \$34,900 to be utilized for a fire pumper and communications equipment, and agreeing to responsibilities and administrative requirements of the grant.

**ATTACHMENTS:**

Description	Type
▣ Resolution No. 19-17 USDA LOC Rose Hill Fire Pumper	Resolution Letter

## COMMUNITY FACILITY GRANT RESOLUTION

State of South Carolina  
County of Georgetown

For funding for the **Rose Hill Pumper and Communication Equipment**, Georgetown County has made application to USDA, Rural Development for a Community Facility Grant in the amount of \$34,900.00 to assist in the need for essential community facilities in rural areas of South Carolina.

A meeting of the Georgetown County Council, governing body, was duly called and held. The governing body is composed of \_\_\_\_\_members of whom\_\_\_\_\_, constituting a quorum, were present at this meeting. At the meeting, the **Georgetown County** governing body, adopted a resolution agreeing to the responsibilities and requirements of Form RD1940-1, "Request for Obligation of Funds," with attachment and authorizing **John Thomas, County Council Chairman and Theresa E. Floyd, Clerk to Council**, to execute this form and Forms RD 400-1, "Equal Opportunity Agreement," 400-4, "Assurance Agreement," 442-7, "Operating Budget," and 1942-46, "Letter of Intent to Meet Conditions," RD 3570-3, "Agreement for Administrative Requirements for Community Facilities Grants," AD-1047, "Certification Regarding Debarment, Suspension and other Responsibility Matters – Primary covered Transactions," AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions," AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I – for Grantees Other Than Individuals," and Exhibit A-1 of RD Instruction 1940-Q, "Certification for Contracts, Grants, and Loans."

The vote was:

Yeas\_\_\_\_\_Nays\_\_\_\_\_Absent\_\_\_\_\_

SEAL

\_\_\_\_\_  
**John Thomas, County Council Chairman**

Attest:

\_\_\_\_\_  
**Theresa E. Floyd, Clerk to Council**



**United States Department of Agriculture  
Rural Development**  
State Office  
Columbia, South Carolina

September 19, 2019

GEORGETOWN COUNTY  
ATTN: MR. SEL HEMINGWAY, COUNTY ADMINISTRATOR  
PO DRAWER 421270  
GEORGETOWN SC 29442

Subject: Letter of Conditions

Dear Mr. Hemingway:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given your application. This letter is not to be considered as grant and grant approval or as a representation as to the availability of funds. The docket may be completed on the basis of USDA, Rural Development administering a Rural Housing Service (RHS) grant not to exceed \$34900.

The grant will be considered obligated on the date a signed copy of the Form RD 1940-1, "Request for Obligation of Funds", is mailed to you.

This project is for **Rose Hill Pumper Truck Equipment**. Any change in project cost, source of funds, scope of services, or any other significant changes in the project or Georgetown County must be reported to and approved by Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

Please execute and return to Rural Development the following completed items if you desire that further consideration be given to your application:

- Form RD 1942-46, "Letter of Intent to Meet Conditions"
- Form RD 400-1, "Equal Opportunity Agreement"
- Form RD 400-4, "Assurance Agreement"
- Form RD 442-7, "Operating Budget"
- Form RD 1940-1, "Request for Obligation of Funds"

If the conditions set forth in this letter are not met within 120 days from the date hereof, USDA, Rural Development, reserves the right to discontinue processing of the application. Rural Development funding is prioritized for projects that need and will use

Strom Thurmond Federal Building • 1835 Assembly Street • Suite 1007 • Columbia, SC 29201  
Phone: (803) 765-5163 • Fax: (855) 565-9479 • TDD: (803) 765-5697 • Web: <http://www.rurdev.usda.gov/sc>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."  
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14<sup>th</sup> and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

the funding immediately. We will require that every possible effort be made to meet all conditions within the one 120 days.

The conditions are as outlined below:

**1. ORGANIZATION'S AUTHORITY TO OBTAIN FUNDS, ETC.:**

Consideration for this grant is based on the Municipality of Georgetown County being properly created as a Public Body and chartered by the Secretary of State of South Carolina.

**2. PROJECT COST:**

**Breakdown of Costs:**

Construction	\$
Legal/Administration	\$
Architectural Services	\$
Equipment	\$63,515.00

<b>SUBTOTAL</b>	<b>\$</b>
-----------------	-----------

Contingencies	\$
---------------	----

<b>TOTAL PROJECT COSTS</b>	<b>\$63,515.00</b>
----------------------------	--------------------

**Financing:**

CF Grant	\$34,900.00
Georgetown County Contribution	\$28615.00

<b>TOTAL</b>	<b>\$63,515.00</b>
--------------	--------------------

These funds must be disbursed in accordance with the requirements of the sources of funds and must be available before proceeding with procurement. Rural Development will monitor the disbursement of all proceeds.

**3. ADOPTION OF FORM RD 3570-3, "COMMUNITY FACILITIES GRANT/GRANT AGREEMENT":**

The agreement requires review of this form. You will be required to execute the completed form at the time of closing.

- GEORGETOWN COUNTY understands that any property acquired or improved with Federal grant funds may have use and disposition conditions which apply to the property as provided by 7 CFR 3015, 3016, or 3019 in effect at this time and as may be subsequently modified.

- GEORGETOWN COUNTY understands that any sale or transfer of property is subject to the interest of the United States Government in the market value in proportion to its participation in the project as provided by 7 CFR 3015, 3016, or 3019 in effect at this time and as may be subsequently modified.

#### 4. BANK ACCOUNT:

All funds for this project will be handled through a bank account in a bank of your choice, separate from all other banking accounts. The bank account **shall be established prior to closing** and you must agree to make payments from this account only on request for payments, which are to be reviewed and concurred with by RD in advance of payment. You will establish adequate safeguards to assure that the funds from this account are used for authorized purposes only.

You must further agree to permit RD to examine your records and books during regular business hours or at other reasonable times.

#### 5. USE OF MINORITY OWNED BANKS:

You are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members) for deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D. C. 20230 or any RUS Office.

#### 6. TITLE OF PROPERTY:

Satisfactory evidence of title must be prepared and submitted to this office by you, with the assistance of your attorney, to include:

- A. Preliminary Title Opinion on Form RD 1927-9, on all real property now owned or to be acquired, executed by your attorney and **submitted to RD prior to closing**.
- B. Final Title Opinion on RD Form 1927-10, on all real property now owned or to be acquired, executed by your attorney at **closing**.
- C. A title insurance binder and title insurance policy, in an amount at least equal to the market value of the property as improved, may be substituted for requirements A and B.
- D. Where the right of use or control of real property not owned by you is essential to the successful operation of the facility during the life of the facility, such right will be evidenced by written agreements or contracts between the owner(s) of the property and the Georgetown County. Lease of the site or facility shall not contain forfeiture or summary cancellation clauses and shall provide for the right to transfer and lease without



restrictions. The lease agreements shall be written for a term at least equal to the life of the facility.

## **7. ENVIRONMENTAL:**

**Prior to grant approval**, you will be required to agree in writing to comply with all mitigation measures contained in the Environmental Assessment prepared by you or your consulting firm.

## **8. COORDINATION WITH FEDERAL, STATE AND LOCAL AGENCIES:**

A statement must be obtained from the responsible State Agency certifying that the proposed facility meets the minimum standards for design and construction, including compliance with all pertinent State and local laws, including local codes.

## **9. SPECIAL REQUIREMENTS:**

- a. A dedication ceremony is expected for this project. Any public information events are to be coordinated in advance with Rural Development. These events are to be planned in order for the public to be aware of this project and Rural Development's participation in the project.
- b. All documents requiring the signature of the officials will be executed by the County Council Chairman, attested by the CLERK to Council, and the impression of the GEORGETOWN COUNTY'S seal affixed thereon.
- c. GEORGETOWN COUNTY is to appoint one member of its governing body or management staff to serve as liaison with Rural Development.
- d. Furnish a certified list of the governing body (include addresses), samples of their signatures, and terms of their offices.
- e. A quorum of GEORGETOWN COUNTY'S governing body must convene at a meeting called by the Mayor and adopt Form RD 1942-8 "Resolution of Members or Stockholders".
- f. Prior to the approval of the grant, you will have certified on at least two different occasions as to your inability to finance this project from your own resources or other credit at reasonable rates and terms. This was based on prevailing private and cooperative rates and terms in or near your community for grants for similar purposes and periods of time.

- g. The GEORGETOWN COUNTY will operate its facilities on a fiscal year that begins 07/01 and ends 06/30.
- h. The GEORGETOWN COUNTY must adopt the attached Grant Resolution agreeing to the responsibilities of form RD 1940-1, "Request of Obligation of Funds", with attachment, and authorizing the execution of this and other forms related to the grant application.
- i. This financial assistance is subject to your compliance with the Civil Rights Act of 1964, and the Age Discrimination Act of 1975.
- j. Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Rural Development financial assistance.
- k. Prior to the closing of the grant, it will be necessary that our Rural Development Area Office conduct a compliance review. Your office's full cooperation will be necessary in accomplishing this certification and review. During the review, the representative of the Rural Development Area Office will complete and execute Form RD 400-8, "Compliance Review." So as to assist the Rural Development Area Office with the Compliance Review, you will need to have available a numerical breakdown of your agency's service area's population into the following categories: Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native, White, and Other. The nondiscrimination poster, "And Justice for All," is to be displayed at your offices and facilities.
- l. Unless the requirements of the Letter of Conditions have already been satisfied, Rural Development will request to meet with GEORGETOWN COUNTY'S officials, attorney, and any other parties that may be involved in the project during the 4<sup>th</sup> month after the date of Form RD 1942-46, "Letter of Intent to Meet Conditions." The purpose of this meeting will be to determine the progress that has been made in complying with the "Letter of Conditions" and to establish goals and a timetable for completing work on the conditions that have not yet been satisfied.
- m. If there is a significant reduction in project costs, GEORGETOWN COUNTY funding needs will be reassessed before grant closing. This reassessment will include the necessary revisions of the grant docket and the Letter of Conditions. The reassessment and revisions will be based on revised project costs and Rural Development regulations effective at the time the grant was approved. Grant funds not needed

to complete the proposed project will be returned to Rural Development.

- n. Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving RHS financial assistance.

## **10. LEGAL SERVICES:**

You must obtain a legal services agreement with your attorney for providing legal services for your project. It is suggested that ten percent of the cost be retained until the grant is closed and all legal requirements have been satisfied.

Prior to grant closing, the attorney must provide this office with a certification as to judgments and/or litigation of your agency. Such a certification must also be provided before closing instructions can be issued.

The closing instructions for this grant will be issued by the Rural Development Community Programs Director. These requirements must be met before the grant can be closed.

Report of Lien Search is to be prepared by your attorney using their standard reporting format. This report is needed to assist in obtaining our grant closing instructions. This report must also be brought current as of the date and time of the actual closing.

## **11. ACCOUNTING METHODS, MANAGEMENT REPORTS AND AUDIT REPORTS:**

- a. The business operations will be governed in accordance with the grant resolution and operating budget. Accounting records should be maintained on an accrual basis.

However, books may be kept on an accounting basis other than accrual and then adjustments made so that the financial statements are presented on the accrual basis. Your agency must retain all records, books, and supporting material for a period of three years after the issuance of the required audit reports and financial statements.

- b. Prior to grant closing or commencing with construction, whichever occurs first, your agency must provide and obtain approval from the Rural Development

Community Facility Program Director for its accounting and financial reporting system, including the required agreement for services with its auditor.

Audit Requirements:

Audits are required annually. Audits are to be conducted by an independent licensed certified public accountant (CPA). A CPA will be considered independent if the CPA meets the standards for independence contained in the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct in effect at the time the CPA's independence is under review, does not have any direct financial interest or any material indirect financial interest in the borrower during the period covered by the review; and is not, during the period of the audit, connected with the borrower as promoter, underwriter, trustee, director, officer or employee.

Audits are to be performed in accordance with generally accepted government auditing standards (GAGAS) issued by the Comptroller General of the United States, 1994 Revision, and any subsequent revisions.

Your agency is to be audited in accordance with the Office of Management and Budget (OMB) Circular A-133 in years it expends \$750,000 or more in Federal funds. The OMB will assign a cognizant Federal agency to oversee the implementation of this circular. If an agency is not assigned, you will be under the general oversight of the Federal agency that provided the most funds. Reports required by this circular must be submitted no later than 9 months after the end of your agency's fiscal year.

Your agency is to be audited in accordance with the generally accepted government auditing standards (GAGAS) and Rural Development requirements in years it expends less than \$750,000 in Federal funds. These audits are to be completed with two copies of the report submitted to the Rural Development Area Office no later than 150 days following the end of your agency's fiscal year.

**12. INSURANCE REQUIREMENTS:**

A Certificate of Insurance evidencing that all the following required insurances have been obtained and is in force **must be provided to RD prior to closing.**

- A. Property Insurance: Fire and extended coverage on all structures in an amount equal to at least the depreciated replacement value.
- B. Liability and Property Damage Insurance: You must carefully review your overall operation to establish and obtain Public Liability and Property Damage Insurance coverage that will adequately protect you, your officers, your officials, and your employees. You may want to consult your attorney to determine the amount of this coverage.

- C. Workers' Compensation Insurance: You must carry suitable Workers' Compensation Insurance for all your employees in accordance with applicable state laws.

### **13. FIDELITY BOND:**

Fidelity Bond Coverage is required for all persons who have access to funds in accordance with RD regulations and **must be provided to RD prior to closing**. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. The amount of the Fidelity Bond should be sufficient to protect RD grant funds.

You may want to consult with your attorney to determine the amount of this coverage. Form RD 440-24, "Position Fidelity Schedule Bond", may be used, as may similar forms if determined acceptable to RD. Other types of coverage may be considered acceptable if it is determined by RD that they fulfill essentially the same purpose as a fidelity bond.

### **14. PROCUREMENT, BIDDING AND CONTRACT AWARDS:**

- a. Procurement transactions shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. The method of procurement must be approved by Rural Development.
- b. Request for Proposals/Specifications are to be approved by Rural Development. Rural Development is to concur before a proposal is accepted by the GEORGETOWN COUNTY.
- c. The seller of the EQUIPMENT is to be required to execute Form AD-1048. A copy is to be submitted to Rural Development prior to payment

### **15. OTHER CERTIFICATIONS:**

The following certifications must be **submitted to RD prior to closing**.

- A. Form AD- 1047, "Certification Regarding Debarment, Suspension, and other Responsibility Matters - Primary Covered Transactions," must be executed and **submitted to RD prior to closing** to certify that you have not been debarred or suspended for federal assistance.
- B. Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions", must be completed and **submitted to RD with any executed contracts prior to closing**. This form certifies that any person or entity you do

business with as a result of this federal assistance is not debarred or suspended.

- C. Form AD-1049, "Certification Regarding Drug-Free Requirements (Grants) Alternative I - For Grant/grantees Other than Individuals", must be executed and **submitted to RD prior to closing**.
- D. The "Certification for Contracts, Grant/grants and Grants", Exhibit A-1 of RD Instruction 1940-Q, must be completed at the time an application or bid proposal is submitted by a person or entity requesting a contract or grant/grant exceeding \$100,000. Any person or entity requesting contract or grant/grant exceeding \$100,000 at any tier under a covered contract, grant/grant or grant, must complete and submit a certification to the next higher tier.
- E. Standard Form (SF) LLL, "Disclosure of Lobbying Activities", must be completed by recipients of a contract, grant/grant, or grant which meet the conditions of RD Instruction 1940-Q, 1940.812. If there have been no such activities, you should strike through the form and write "Not applicable" on the page and sign the form.
- F. Funds will be requested by GEORGETOWN COUNTY in writing. Form RD 440-11, "Estimate of Funds Needed for 30 day Period Commencing \_\_\_\_\_," may be used for making this request. Funds are to be deposited in GEORGETOWN COUNTY equipment account and Partial Payment Estimates and invoices paid by GEORGETOWN COUNTY from this account, after prior approval by Rural Development. Funds required by Rural Development to be deposited in the equipment account are considered project funds and are to be used only for authorized purposes. A pledge of collateral should be obtained for any funds in the account in excess of \$100,000. Any funds remaining in this account after payment of all Rural Development approved project costs are to be handled as unused grant funds. If necessary, and approved by the Rural Development Community Programs Director, the grant and grant funds may be disbursed through a supervised bank account selected by GEORGETOWN COUNTY. This bank will pledge collateral security to be maintained at a level equal to the greatest amount on deposit at any one time, less \$100,000.

Each payment for project costs must be approved by GEORGETOWN COUNTY and Rural Development. Payment requests may be made on Form RD 1942-18, "Partial Payment Estimate," or similar form. Payment for equipment should coincide with the delivery of the equipment along with title to motorized vehicles that have been properly filed with the South Carolina Department of Transportation showing Rural Development as lien holder.

These conditions should be reviewed by you, legal counsel, consulting architect, and a representative from this agency at the scheduled Letter of Conditions meeting. At this meeting, you will receive specific instructions on the assembly and submittal of materials for review by the Office of General Counsel and issuance of closing instructions.

The necessary forms referred to in this letter will be supplied by Rural Development.

You will have the full cooperation of this agency and if we can be of any further assistance to you, please contact Area Specialist Nickie Toomes at 843-549-1822 ext. 123.

Sincerely,

MICHELE J. CARDWELL  
Community Programs Director

Attachments

Item Number: 6.e  
Meeting Date: 9/24/2019  
Item Type: CONSENT AGENDA

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** County Administrator

**ISSUE UNDER CONSIDERATION:**

Resolution No. 19-18 - Authorizing acceptance of USDA Rural Development Grant Funding in the amount of \$50,000 to be utilized for Big Dam Swamp Fire Personal Protection Equipment and agreeing to responsibilities and administrative requirements of the grant.

**CURRENT STATUS:**

Georgetown County has made application to USDA, Rural Development for Grant Funding, and has been awarded \$50,000 for the purchase of Fire Personal Protection Equipment for Big Dam Swamp.

**POINTS TO CONSIDER:**

Georgetown County has been awarded \$50,000 in United States Department of Agriculture Rural Development Grant Funding to be utilized for Big Dam Swamp Personal Protection Equipment. The USDA establishes conditions which must be agreed to before additional action pertaining to the award of this funding may be considered.

**OPTIONS:**

1. Adoption of Resolution No. 19-18 authorizing acceptance of USDA Rural Development Grant Funding in the amount of \$50,000 to be utilized for Big Dam Swamp Fire Station Personal Protection Equipment and agreeing to responsibilities and administrative requirements of the grant.
2. Do not adopt Resolution No. 19-18.

**STAFF RECOMMENDATIONS:**

Recommendation for the adoption of Resolution No. 19-18 authorizing acceptance of USDA Rural Development Grant Funding in the amount of \$50,000 to be utilized for Big Dam Swamp Fire Station Personal Protection Equipment and agreeing to responsibilities and administrative requirements of the grant.

**ATTACHMENTS:**

Description	Type
▣ Resolution No 19-18 USDA LOC Big Dam Fire Station Equipment	Resolution Letter



## COMMUNITY FACILITY GRANT RESOLUTION

State of South Carolina  
County of Georgetown

For funding for the **Big Dam Swamp Fire Protection Equipment**, Georgetown County has made application to USDA, Rural Development for a Community Facility Grant in the amount of \$50,000.00 to assist in the need for essential community facilities in rural areas of South Carolina.

A meeting of the Georgetown County Council, governing body, was duly called and held. The governing body is composed of \_\_\_\_\_members of whom\_\_\_\_\_, constituting a quorum, were present at this meeting. At the meeting, the **Georgetown County** governing body, adopted a resolution agreeing to the responsibilities and requirements of Form RD1940-1, "Request for Obligation of Funds," with attachment and authorizing **John Thomas County Council Chairman and Theresa Floyd, Clerk to Council**, to execute this form and Forms RD 400-1, "Equal Opportunity Agreement," 400-4, "Assurance Agreement," 442-7, "Operating Budget," and 1942-46, "Letter of Intent to Meet Conditions," RD 3570-3, "Agreement for Administrative Requirements for Community Facilities Grants," AD-1047, "Certification Regarding Debarment, Suspension and other Responsibility Matters – Primary covered Transactions," AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions," AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I – for Grantees Other Than Individuals," and Exhibit A-1 of RD Instruction 1940-Q, "Certification for Contracts, Grants, and Loans."

The vote was:

Yeas\_\_\_\_\_Nays\_\_\_\_\_Absent\_\_\_\_\_

SEAL

\_\_\_\_\_  
**John Thomas County Council Chairman**

Attest:

\_\_\_\_\_  
**Theresa Floyd, Clerk to Council**



**United States Department of Agriculture**  
**Rural Development**  
State Office  
Columbia, South Carolina

September 19, 2019

GEORGETOWN COUNTY  
ATTN: MR. SEL HEMINGWAY, COUNTY ADMINISTRATOR  
PO DRAWER 421270  
GEORGETOWN SC 29442

**Subject:** Letter of Conditions

Dear Mr. Hemingway:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given your application. This letter is not to be considered as grant and grant approval or as a representation as to the availability of funds. The docket may be completed on the basis of USDA, Rural Development administering a Rural Housing Service (RHS) grant not to exceed \$50,000.

The grant will be considered obligated on the date a signed copy of the Form RD 1940-1, "Request for Obligation of Funds", is mailed to you.

This project is for **Fire Protection Equipment for the Big Dam Swamp Station**. Any change in project cost, source of funds, scope of services, or any other significant changes in the project or Georgetown County must be reported to and approved by Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

Please execute and return to Rural Development the following completed items if you desire that further consideration be given to your application:

- Form RD 1942-46, "Letter of Intent to Meet Conditions"
- Form RD 400-1, "Equal Opportunity Agreement"
- Form RD 400-4, "Assurance Agreement"
- Form RD 442-7, "Operating Budget"
- Form RD 1940-1, "Request for Obligation of Funds"

If the conditions set forth in this letter are not met within 120 days from the date hereof, USDA, Rural Development, reserves the right to discontinue processing of the application. Rural Development funding is prioritized for projects that need and will use

Strom Thurmond Federal Building • 1835 Assembly Street • Suite 1007 • Columbia, SC 29201  
Phone: (803) 765-5163 • Fax: (855) 565-9479 • TDD: (803) 765-5697 • Web: <http://www.rurdev.usda.gov/sc>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."  
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14<sup>th</sup> and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

the funding immediately. We will require that every possible effort be made to meet all conditions within the one 120 days.

The conditions are as outlined below:

**1. ORGANIZATION'S AUTHORITY TO OBTAIN FUNDS, ETC.:**

Consideration for this grant is based on the Municipality of Georgetown County being properly created as a Public Body and chartered by the Secretary of State of South Carolina.

**2. PROJECT COST:**

**Breakdown of Costs:**

Construction	\$
Legal/Administration	\$
Architectural Services	\$
Equipment	\$71,934.00

**SUBTOTAL** \$

Contingencies \$

**TOTAL PROJECT COSTS** \$71,934.00

**Financing:**

CF Grant	\$50,000.00
Georgetown County Contribution	\$21,934.00

**TOTAL** \$71,934.00

These funds must be disbursed in accordance with the requirements of the sources of funds and must be available before proceeding with procurement. Rural Development will monitor the disbursement of all proceeds.

**3. ADOPTION OF FORM RD 3570-3, "COMMUNITY FACILITIES GRANT/GRANT AGREEMENT":**

The agreement requires review of this form. You will be required to execute the completed form at the time of closing.

- GEORGETOWN COUNTY understands that any property acquired or improved with Federal grant funds may have use and disposition conditions which apply to the property as provided by 7 CFR 3015, 3016, or 3019 in effect at this time and as may be subsequently modified.

- GEORGETOWN COUNTY understands that any sale or transfer of property is subject to the interest of the United States Government in the market value in proportion to its participation in the project as provided by 7 CFR 3015, 3016, or 3019 in effect at this time and as may be subsequently modified.

#### 4. BANK ACCOUNT:

All funds for this project will be handled through a bank account in a bank of your choice, separate from all other banking accounts. The bank account **shall be established prior to closing** and you must agree to make payments from this account only on request for payments, which are to be reviewed and concurred with by RD in advance of payment. You will establish adequate safeguards to assure that the funds from this account are used for authorized purposes only.

You must further agree to permit RD to examine your records and books during regular business hours or at other reasonable times.

#### 5. USE OF MINORITY OWNED BANKS:

You are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members) for deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D. C. 20230 or any RUS Office.

#### 6. TITLE OF PROPERTY:

Satisfactory evidence of title must be prepared and submitted to this office by you, with the assistance of your attorney, to include:

- A. Preliminary Title Opinion on Form RD 1927-9, on all real property now owned or to be acquired, executed by your attorney and **submitted to RD prior to closing**.
- B. Final Title Opinion on RD Form 1927-10, on all real property now owned or to be acquired, executed by your attorney at **closing**.
- C. A title insurance binder and title insurance policy, in an amount at least equal to the market value of the property as improved, may be substituted for requirements A and B.
- D. Where the right of use or control of real property not owned by you is essential to the successful operation of the facility during the life of the facility, such right will be evidenced by written agreements or contracts between the owner(s) of the property and the Georgetown County. Lease of the site or facility shall not contain forfeiture or summary cancellation clauses and shall provide for the right to transfer and lease without

restrictions. The lease agreements shall be written for a term at least equal to the life of the facility.

## **7. ENVIRONMENTAL:**

**Prior to grant approval**, you will be required to agree in writing to comply with all mitigation measures contained in the Environmental Assessment prepared by you or your consulting firm.

## **8. COORDINATION WITH FEDERAL, STATE AND LOCAL AGENCIES:**

A statement must be obtained from the responsible State Agency certifying that the proposed facility meets the minimum standards for design and construction, including compliance with all pertinent State and local laws, including local codes.

## **9. SPECIAL REQUIREMENTS:**

- a. A dedication ceremony is expected for this project. Any public information events are to be coordinated in advance with Rural Development. These events are to be planned in order for the public to be aware of this project and Rural Development's participation in the project.
- b. All documents requiring the signature of the officials will be executed by the County Council Chairman, attested by the Clerk to Council, and the impression of the GEORGETOWN COUNTY'S seal affixed thereon.
- c. GEORGETOWN COUNTY is to appoint one member of its governing body or management staff to serve as liaison with Rural Development.
- d. Furnish a certified list of the governing body (include addresses), samples of their signatures, and terms of their offices.
- e. A quorum of GEORGETOWN COUNTY'S governing body must convene at a meeting called by the Mayor and adopt Form RD 1942-8 "Resolution of Members or Stockholders".
- f. Prior to the approval of the grant, you will have certified on at least two different occasions as to your inability to finance this project from your own resources or other credit at reasonable rates and terms. This was based on prevailing private and cooperative rates and terms in or near your community for grants for similar purposes and periods of time.

- g. The GEORGETOWN COUNTY will operate its facilities on a fiscal year that begins 07/01 and ends 06/30.
- h. The GEORGETOWN COUNTY must adopt the attached Grant Resolution agreeing to the responsibilities of form RD 1940-1, "Request of Obligation of Funds", with attachment, and authorizing the execution of this and other forms related to the grant application.
- i. This financial assistance is subject to your compliance with the Civil Rights Act of 1964, and the Age Discrimination Act of 1975.
- j. Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Rural Development financial assistance.
- k. Prior to the closing of the grant, it will be necessary that our Rural Development Area Office conduct a compliance review. Your office's full cooperation will be necessary in accomplishing this certification and review. During the review, the representative of the Rural Development Area Office will complete and execute Form RD 400-8, "Compliance Review." So as to assist the Rural Development Area Office with the Compliance Review, you will need to have available a numerical breakdown of your agency's service area's population into the following categories: Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native, White, and Other. The nondiscrimination poster, "And Justice for All," is to be displayed at your offices and facilities.
- l. Unless the requirements of the Letter of Conditions have already been satisfied, Rural Development will request to meet with GEORGETOWN COUNTY'S officials, attorney, and any other parties that may be involved in the project during the 4<sup>th</sup> month after the date of Form RD 1942-46, "Letter of Intent to Meet Conditions." The purpose of this meeting will be to determine the progress that has been made in complying with the "Letter of Conditions" and to establish goals and a timetable for completing work on the conditions that have not yet been satisfied.
- m. If there is a significant reduction in project costs, GEORGETOWN COUNTY funding needs will be reassessed before grant closing. This reassessment will include the necessary revisions of the grant docket and the Letter of Conditions. The reassessment and revisions will be based on revised project costs and Rural Development regulations effective at the time the grant was approved. Grant funds not needed

to complete the proposed project will be returned to Rural Development.

- n. Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving RHS financial assistance.

## **10. LEGAL SERVICES:**

You must obtain a legal services agreement with your attorney for providing legal services for your project. It is suggested that ten percent of the cost be retained until the grant is closed and all legal requirements have been satisfied.

Prior to grant closing, the attorney must provide this office with a certification as to judgments and/or litigation of your agency. Such a certification must also be provided before closing instructions can be issued.

The closing instructions for this grant will be issued by the Rural Development Community Programs Director. These requirements must be met before the grant can be closed.

Report of Lien Search is to be prepared by your attorney using their standard reporting format. This report is needed to assist in obtaining our grant closing instructions. This report must also be brought current as of the date and time of the actual closing.

## **11. ACCOUNTING METHODS, MANAGEMENT REPORTS AND AUDIT REPORTS:**

- a. The business operations will be governed in accordance with the grant resolution and operating budget. Accounting records should be maintained on an accrual basis.

However, books may be kept on an accounting basis other than accrual and then adjustments made so that the financial statements are presented on the accrual basis. Your agency must retain all records, books, and supporting material for a period of three years after the issuance of the required audit reports and financial statements.

- b. Prior to grant closing or commencing with construction, whichever occurs first, your agency must provide and obtain approval from the Rural Development

Community Facility Program Director for its accounting and financial reporting system, including the required agreement for services with its auditor.

#### Audit Requirements:

Audits are required annually. Audits are to be conducted by an independent licensed certified public accountant (CPA). A CPA will be considered independent if the CPA meets the standards for independence contained in the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct in effect at the time the CPA's independence is under review, does not have any direct financial interest or any material indirect financial interest in the borrower during the period covered by the review; and is not, during the period of the audit, connected with the borrower as promoter, underwriter, trustee, director, officer or employee.

Audits are to be performed in accordance with generally accepted government auditing standards (GAGAS) issued by the Comptroller General of the United States, 1994 Revision, and any subsequent revisions.

Your agency is to be audited in accordance with the Office of Management and Budget (OMB) Circular A-133 in years it expends \$750,000 or more in Federal funds. The OMB will assign a cognizant Federal agency to oversee the implementation of this circular. If an agency is not assigned, you will be under the general oversight of the Federal agency that provided the most funds. Reports required by this circular must be submitted no later than 9 months after the end of your agency's fiscal year.

Your agency is to be audited in accordance with the generally accepted government auditing standards (GAGAS) and Rural Development requirements in years it expends less than \$750,000 in Federal funds. These audits are to be completed with two copies of the report submitted to the Rural Development Area Office no later than 150 days following the end of your agency's fiscal year.

## **12. INSURANCE REQUIREMENTS:**

A Certificate of Insurance evidencing that all the following required insurances have been obtained and is in force **must be provided to RD prior to closing.**

- A. Property Insurance: Fire and extended coverage on all structures in an amount equal to at least the depreciated replacement value.
- B. Liability and Property Damage Insurance: You must carefully review your overall operation to establish and obtain Public Liability and Property Damage Insurance coverage that will adequately protect you, your officers, your officials, and your employees. You may want to consult your attorney to determine the amount of this coverage.



- C. Workers' Compensation Insurance: You must carry suitable Workers' Compensation Insurance for all your employees in accordance with applicable state laws.

### **13. FIDELITY BOND:**

Fidelity Bond Coverage is required for all persons who have access to funds in accordance with RD regulations and **must be provided to RD prior to closing**. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. The amount of the Fidelity Bond should be sufficient to protect RD grant funds.

You may want to consult with your attorney to determine the amount of this coverage. Form RD 440-24, "Position Fidelity Schedule Bond", may be used, as may similar forms if determined acceptable to RD. Other types of coverage may be considered acceptable if it is determined by RD that they fulfill essentially the same purpose as a fidelity bond.

### **14. PROCUREMENT, BIDDING AND CONTRACT AWARDS:**

- a. Procurement transactions shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. The method of procurement must be approved by Rural Development.
- b. Request for Proposals/Specifications are to be approved by Rural Development. Rural Development is to concur before a proposal is accepted by the GEORGETOWN COUNTY.
- c. The seller of the EQUIPMENT is to be required to execute Form AD-1048. A copy is to be submitted to Rural Development prior to payment

### **15. OTHER CERTIFICATIONS:**

The following certifications must be **submitted to RD prior to closing**.

- A. Form AD- 1047, "Certification Regarding Debarment, Suspension, and other Responsibility Matters - Primary Covered Transactions," must be executed and **submitted to RD prior to closing** to certify that you have not been debarred or suspended for federal assistance.
- B. Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions", must be completed and **submitted to RD with any executed contracts prior to closing**. This form certifies that any person or entity you do

business with as a result of this federal assistance is not debarred or suspended.

- C. Form AD-1049, "Certification Regarding Drug-Free Requirements (Grants) Alternative I - For Grant/grantees Other than Individuals", must be executed and **submitted to RD prior to closing**.
- D. The "Certification for Contracts, Grant/grants and Grants", Exhibit A-1 of RD Instruction 1940-Q, must be completed at the time an application or bid proposal is submitted by a person or entity requesting a contract or grant/grant exceeding \$100,000. Any person or entity requesting contract or grant/grant exceeding \$100,000 at any tier under a covered contract, grant/grant or grant, must complete and submit a certification to the next higher tier.
- E. Standard Form (SF) LLL, "Disclosure of Lobbying Activities", must be completed by recipients of a contract, grant/grant, or grant which meet the conditions of RD Instruction 1940-Q, 1940.812. If there have been no such activities, you should strike through the form and write "Not applicable" on the page and sign the form.
- F. Funds will be requested by GEORGETOWN COUNTY in writing. Form RD 440-11, "Estimate of Funds Needed for 30 day Period Commencing \_\_\_\_\_," may be used for making this request. Funds are to be deposited in GEORGETOWN COUNTY equipment account and Partial Payment Estimates and invoices paid by GEORGETOWN COUNTY from this account, after prior approval by Rural Development. Funds required by Rural Development to be deposited in the equipment account are considered project funds and are to be used only for authorized purposes. A pledge of collateral should be obtained for any funds in the account in excess of \$100,000. Any funds remaining in this account after payment of all Rural Development approved project costs are to be handled as unused grant funds. If necessary, and approved by the Rural Development Community Programs Director, the grant and grant funds may be disbursed through a supervised bank account selected by GEORGETOWN COUNTY. This bank will pledge collateral security to be maintained at a level equal to the greatest amount on deposit at any one time, less \$100,000.

Each payment for project costs must be approved by GEORGETOWN COUNTY and Rural Development. Payment requests may be made on Form RD 1942-18, "Partial Payment Estimate," or similar form. Payment for equipment should coincide with the delivery of the equipment along with title to motorized vehicles that have been properly filed with the South Carolina Department of Transportation showing Rural Development as lien holder.

These conditions should be reviewed by you, legal counsel, consulting architect, and a representative from this agency at the scheduled Letter of Conditions meeting. At this meeting, you will receive specific instructions on the assembly and submittal of materials for review by the Office of General Counsel and issuance of closing instructions.

The necessary forms referred to in this letter will be supplied by Rural Development.

You will have the full cooperation of this agency and if we can be of any further assistance to you, please contact Area Specialist Nickie Toomes at 843-549-1822 ext. 123.

Sincerely,

MICHELE J. CARDWELL  
Community Programs Director

Attachments

Item Number: 6.f  
Meeting Date: 9/24/2019  
Item Type: CONSENT AGENDA

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** County Administrator

**ISSUE UNDER CONSIDERATION:**

Resolution No. 19-19 - Authorizing acceptance of USDA Rural Development Grant Funding in the amount of \$30,500 to be utilized for Yauhannah Fire Substation Personal Fire Protection Equipment and agreeing to responsibilities and administrative requirements of the grant.

**CURRENT STATUS:**

Georgetown County has made application to USDA, Rural Development for Grant Funding, and has been awarded \$30,500 the purchase of Fire Personal Protection Equipment for the Yauhannah Fire Sub-station.

**POINTS TO CONSIDER:**

Georgetown County has been awarded \$30,500 in United States Department of Agriculture Rural Development Grant Funding to be utilized for the Yauhannah Fire Substation (Personal Protection Equipment). The USDA establishes conditions which must be agreed to before additional action pertaining to the award of this funding may be considered.

**OPTIONS:**

1. Adoption of Resolution No. 19-19 authorizing acceptance of USDA Rural Development Grant Funding in the amount of \$30,500 to be utilized for Yauhannah Fire Sub-station (Personal Fire Protection Equipment) and agreeing to responsibilities and administrative requirements of the grant.
2. Do not adopt Resolution No. 19-19.

**STAFF RECOMMENDATIONS:**

Recommendation for the adoption of Resolution No. 19-19 authorizing acceptance of USDA Rural Development Grant Funding in the amount of \$30,500 to be utilized for Personal Fire Protection Equipment at the Yauhannah Fire Sub-station, and agreeing to responsibilities and administrative requirements of the grant.

**ATTACHMENTS:**

Description	Type
▫ Resolution Np. 19-19 USDA LOC Personal Fire Protection Equip Yauhannah	Resolution Letter

## COMMUNITY FACILITY GRANT RESOLUTION

State of South Carolina  
County of Georgetown

For funding for the **Yauhannah Personal Protection Equipment**, Georgetown County has made application to USDA, Rural Development for a Community Facility Grant in the amount of \$30,500.00 to assist in the need for essential community facilities in rural areas of South Carolina.

A meeting of the Georgetown County Council, governing body, was duly called and held. The governing body is composed of members of whom, constituting a quorum, were present at this meeting. At the meeting, the **Georgetown County** governing body, adopted a resolution agreeing to the responsibilities and requirements of Form RD1940-1, "Request for Obligation of Funds," with attachment and authorizing **John Thomas, County Council Chairman and Theresa E. Floyd, Clerk to Council**, to execute this form and Forms RD 400-1, "Equal Opportunity Agreement," 400-4, "Assurance Agreement," 442-7, "Operating Budget," and 1942-46, "Letter of Intent to Meet Conditions," RD 3570-3, "Agreement for Administrative Requirements for Community Facilities Grants," AD-1047, "Certification Regarding Debarment, Suspension and other Responsibility Matters – Primary covered Transactions," AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions," AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I – for Grantees Other Than Individuals," and Exhibit A-1 of RD Instruction 1940-Q, "Certification for Contracts, Grants, and Loans."

The vote was:

Yeas\_\_\_\_\_Nays\_\_\_\_\_Absent\_\_\_\_\_

SEAL

\_\_\_\_\_  
**John Thomas, County Council Chairman**

Attest:

\_\_\_\_\_  
**Theresa E. Floyd, Clerk to Council**



**United States Department of Agriculture**  
**Rural Development**  
State Office  
Columbia, South Carolina

September 19, 2019

GEORGETOWN COUNTY  
ATTN: MR. SEL HEMINGWAY, COUNTY ADMINISTRATOR  
PO DRAWER 421270  
GEORGETOWN SC 29442

Subject: Letter of Conditions

Dear Mr. Hemingway:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given your application. This letter is not to be considered as grant and grant approval or as a representation as to the availability of funds. The docket may be completed on the basis of USDA, Rural Development administering a Rural Housing Service (RHS) grant not to exceed \$30,500.

The grant will be considered obligated on the date a signed copy of the Form RD 1940-1, "Request for Obligation of Funds", is mailed to you.

This project is for **Yauhannah Fire Personal Protective Equipment**. Any change in project cost, source of funds, scope of services, or any other significant changes in the project or Georgetown County must be reported to and approved by Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

Please execute and return to Rural Development the following completed items if you desire that further consideration be given to your application:

- Form RD 1942-46, "Letter of Intent to Meet Conditions"
- Form RD 400-1, "Equal Opportunity Agreement"
- Form RD 400-4, "Assurance Agreement"
- Form RD 442-7, "Operating Budget"
- Form RD 1940-1, "Request for Obligation of Funds"

If the conditions set forth in this letter are not met within 120 days from the date hereof, USDA, Rural Development, reserves the right to discontinue processing of the application. Rural Development funding is prioritized for projects that need and will use

Strom Thurmond Federal Building • 1835 Assembly Street • Suite 1007 • Columbia, SC 29201  
Phone: (803) 765-5163 • Fax: (855) 565-9479 • TDD: (803) 765-5697 • Web: <http://www.rurdev.usda.gov/sc>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."  
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14<sup>th</sup> and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

the funding immediately. We will require that every possible effort be made to meet all conditions within the one 120 days.

The conditions are as outlined below:

**1. ORGANIZATION'S AUTHORITY TO OBTAIN FUNDS, ETC.:**

Consideration for this grant is based on the Municipality of Georgetown County being properly created as a Public Body and chartered by the Secretary of State of South Carolina.

**2. PROJECT COST:**

**Breakdown of Costs:**

Construction	\$
Legal/Administration	\$
Architectural Services	\$
Equipment	\$41,105.00

<b>SUBTOTAL</b>	<b>\$</b>
-----------------	-----------

Contingencies	\$
<b>TOTAL PROJECT COSTS</b>	<b>\$41,105.00</b>

**Financing:**

CF Grant	\$30,500.00
Georgetown County Contribution	\$10,605.00

<b>TOTAL</b>	<b>\$41,105.00</b>
--------------	--------------------

These funds must be disbursed in accordance with the requirements of the sources of funds and must be available before proceeding with procurement. Rural Development will monitor the disbursement of all proceeds.

**3. ADOPTION OF FORM RD 3570-3, "COMMUNITY FACILITIES GRANT/GRANT AGREEMENT":**

The agreement requires review of this form. You will be required to execute the completed form at the time of closing.

- GEORGETOWN COUNTY understands that any property acquired or improved with Federal grant funds may have use and disposition conditions which apply to the property as provided by 7 CFR 3015, 3016, or 3019 in effect at this time and as may be subsequently modified.

- GEORGETOWN COUNTY understands that any sale or transfer of property is subject to the interest of the United States Government in the market value in proportion to its participation in the project as provided by 7 CFR 3015, 3016, or 3019 in effect at this time and as may be subsequently modified.

#### 4. BANK ACCOUNT:

All funds for this project will be handled through a bank account in a bank of your choice, separate from all other banking accounts. The bank account **shall be established prior to closing** and you must agree to make payments from this account only on request for payments, which are to be reviewed and concurred with by RD in advance of payment. You will establish adequate safeguards to assure that the funds from this account are used for authorized purposes only.

You must further agree to permit RD to examine your records and books during regular business hours or at other reasonable times.

#### 5. USE OF MINORITY OWNED BANKS:

You are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members) for deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D. C. 20230 or any RUS Office.

#### 6. TITLE OF PROPERTY:

Satisfactory evidence of title must be prepared and submitted to this office by you, with the assistance of your attorney, to include:

- A. Preliminary Title Opinion on Form RD 1927-9, on all real property now owned or to be acquired, executed by your attorney and **submitted to RD prior to closing**.
- B. Final Title Opinion on RD Form 1927-10, on all real property now owned or to be acquired, executed by your attorney at **closing**.
- C. A title insurance binder and title insurance policy, in an amount at least equal to the market value of the property as improved, may be substituted for requirements A and B.
- D. Where the right of use or control of real property not owned by you is essential to the successful operation of the facility during the life of the facility, such right will be evidenced by written agreements or contracts between the owner(s) of the property and the Georgetown County. Lease of the site or facility shall not contain forfeiture or summary cancellation clauses and shall provide for the right to transfer and lease without



restrictions. The lease agreements shall be written for a term at least equal to the life of the facility.

## **7. ENVIRONMENTAL:**

**Prior to grant approval**, you will be required to agree in writing to comply with all mitigation measures contained in the Environmental Assessment prepared by you or your consulting firm.

## **8. COORDINATION WITH FEDERAL, STATE AND LOCAL AGENCIES:**

A statement must be obtained from the responsible State Agency certifying that the proposed facility meets the minimum standards for design and construction, including compliance with all pertinent State and local laws, including local codes.

## **9. SPECIAL REQUIREMENTS:**

- a. A dedication ceremony is expected for this project. Any public information events are to be coordinated in advance with Rural Development. These events are to be planned in order for the public to be aware of this project and Rural Development's participation in the project.
- b. All documents requiring the signature of the officials will be executed by the County Council Chairman, attested by the Clerk to Council, and the impression of the GEORGETOWN COUNTY'S seal affixed thereon.
- c. GEORGETOWN COUNTY is to appoint one member of its governing body or management staff to serve as liaison with Rural Development.
- d. Furnish a certified list of the governing body (include addresses), samples of their signatures, and terms of their offices.
- e. A quorum of GEORGETOWN COUNTY'S governing body must convene at a meeting called by the Mayor and adopt Form RD 1942-8 "Resolution of Members or Stockholders".
- f. Prior to the approval of the grant, you will have certified on at least two different occasions as to your inability to finance this project from your own resources or other credit at reasonable rates and terms. This was based on prevailing private and cooperative rates and terms in or near your community for grants for similar purposes and periods of time.

- g. The GEORGETOWN COUNTY will operate its facilities on a fiscal year that begins 07/01 and ends 06/30.
- h. The GEORGETOWN COUNTY must adopt the attached Grant Resolution agreeing to the responsibilities of form RD 1940-1, "Request of Obligation of Funds", with attachment, and authorizing the execution of this and other forms related to the grant application.
- i. This financial assistance is subject to your compliance with the Civil Rights Act of 1964, and the Age Discrimination Act of 1975.
- j. Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Rural Development financial assistance.
- k. Prior to the closing of the grant, it will be necessary that our Rural Development Area Office conduct a compliance review. Your office's full cooperation will be necessary in accomplishing this certification and review. During the review, the representative of the Rural Development Area Office will complete and execute Form RD 400-8, "Compliance Review." So as to assist the Rural Development Area Office with the Compliance Review, you will need to have available a numerical breakdown of your agency's service area's population into the following categories: Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native, White, and Other. The nondiscrimination poster, "And Justice for All," is to be displayed at your offices and facilities.
- l. Unless the requirements of the Letter of Conditions have already been satisfied, Rural Development will request to meet with GEORGETOWN COUNTY'S officials, attorney, and any other parties that may be involved in the project during the 4<sup>th</sup> month after the date of Form RD 1942-46, "Letter of Intent to Meet Conditions." The purpose of this meeting will be to determine the progress that has been made in complying with the "Letter of Conditions" and to establish goals and a timetable for completing work on the conditions that have not yet been satisfied.
- m. If there is a significant reduction in project costs, GEORGETOWN COUNTY funding needs will be reassessed before grant closing. This reassessment will include the necessary revisions of the grant docket and the Letter of Conditions. The reassessment and revisions will be based on revised project costs and Rural Development regulations effective at the time the grant was approved. Grant funds not needed

to complete the proposed project will be returned to Rural Development.

- n. Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving RHS financial assistance.

## **10. LEGAL SERVICES:**

You must obtain a legal services agreement with your attorney for providing legal services for your project. It is suggested that ten percent of the cost be retained until the grant is closed and all legal requirements have been satisfied.

Prior to grant closing, the attorney must provide this office with a certification as to judgments and/or litigation of your agency. Such a certification must also be provided before closing instructions can be issued.

The closing instructions for this grant will be issued by the Rural Development Community Programs Director. These requirements must be met before the grant can be closed.

Report of Lien Search is to be prepared by your attorney using their standard reporting format. This report is needed to assist in obtaining our grant closing instructions. This report must also be brought current as of the date and time of the actual closing.

## **11. ACCOUNTING METHODS, MANAGEMENT REPORTS AND AUDIT REPORTS:**

- a. The business operations will be governed in accordance with the grant resolution and operating budget. Accounting records should be maintained on an accrual basis.

However, books may be kept on an accounting basis other than accrual and then adjustments made so that the financial statements are presented on the accrual basis. Your agency must retain all records, books, and supporting material for a period of three years after the issuance of the required audit reports and financial statements.

- b. Prior to grant closing or commencing with construction, whichever occurs first, your agency must provide and obtain approval from the Rural Development

Community Facility Program Director for its accounting and financial reporting system, including the required agreement for services with its auditor.

Audit Requirements:

Audits are required annually. Audits are to be conducted by an independent licensed certified public accountant (CPA). A CPA will be considered independent if the CPA meets the standards for independence contained in the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct in effect at the time the CPA's independence is under review, does not have any direct financial interest or any material indirect financial interest in the borrower during the period covered by the review; and is not, during the period of the audit, connected with the borrower as promoter, underwriter, trustee, director, officer or employee.

Audits are to be performed in accordance with generally accepted government auditing standards (GAGAS) issued by the Comptroller General of the United States, 1994 Revision, and any subsequent revisions.

Your agency is to be audited in accordance with the Office of Management and Budget (OMB) Circular A-133 in years it expends \$750,000 or more in Federal funds. The OMB will assign a cognizant Federal agency to oversee the implementation of this circular. If an agency is not assigned, you will be under the general oversight of the Federal agency that provided the most funds. Reports required by this circular must be submitted no later than 9 months after the end of your agency's fiscal year.

Your agency is to be audited in accordance with the generally accepted government auditing standards (GAGAS) and Rural Development requirements in years it expends less than \$750,000 in Federal funds. These audits are to be completed with two copies of the report submitted to the Rural Development Area Office no later than 150 days following the end of your agency's fiscal year.

## **12. INSURANCE REQUIREMENTS:**

A Certificate of Insurance evidencing that all the following required insurances have been obtained and is in force **must be provided to RD prior to closing.**

- A. Property Insurance: Fire and extended coverage on all structures in an amount equal to at least the depreciated replacement value.
- B. Liability and Property Damage Insurance: You must carefully review your overall operation to establish and obtain Public Liability and Property Damage Insurance coverage that will adequately protect you, your officers, your officials, and your employees. You may want to consult your attorney to determine the amount of this coverage.

- C. Workers' Compensation Insurance: You must carry suitable Workers' Compensation Insurance for all your employees in accordance with applicable state laws.

### **13. FIDELITY BOND:**

Fidelity Bond Coverage is required for all persons who have access to funds in accordance with RD regulations and **must be provided to RD prior to closing**. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. The amount of the Fidelity Bond should be sufficient to protect RD grant funds.

You may want to consult with your attorney to determine the amount of this coverage. Form RD 440-24, "Position Fidelity Schedule Bond", may be used, as may similar forms if determined acceptable to RD. Other types of coverage may be considered acceptable if it is determined by RD that they fulfill essentially the same purpose as a fidelity bond.

### **14. PROCUREMENT, BIDDING AND CONTRACT AWARDS:**

- a. Procurement transactions shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. The method of procurement must be approved by Rural Development.
- b. Request for Proposals/Specifications are to be approved by Rural Development. Rural Development is to concur before a proposal is accepted by the GEORGETOWN COUNTY.
- c. The seller of the EQUIPMENT is to be required to execute Form AD-1048. A copy is to be submitted to Rural Development prior to payment

### **15. OTHER CERTIFICATIONS:**

The following certifications must be **submitted to RD prior to closing**.

- A. Form AD- 1047, "Certification Regarding Debarment, Suspension, and other Responsibility Matters - Primary Covered Transactions," must be executed and **submitted to RD prior to closing** to certify that you have not been debarred or suspended for federal assistance.
- B. Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions", must be completed and **submitted to RD with any executed contracts prior to closing**. This form certifies that any person or entity you do

business with as a result of this federal assistance is not debarred or suspended.

- C. Form AD-1049, "Certification Regarding Drug-Free Requirements (Grants) Alternative I - For Grant/grantees Other than Individuals", must be executed and **submitted to RD prior to closing**.
- D. The "Certification for Contracts, Grant/grants and Grants", Exhibit A-1 of RD Instruction 1940-Q, must be completed at the time an application or bid proposal is submitted by a person or entity requesting a contract or grant/grant exceeding \$100,000. Any person or entity requesting contract or grant/grant exceeding \$100,000 at any tier under a covered contract, grant/grant or grant, must complete and submit a certification to the next higher tier.
- E. Standard Form (SF) LLL, "Disclosure of Lobbying Activities", must be completed by recipients of a contract, grant/grant, or grant which meet the conditions of RD Instruction 1940-Q, 1940.812. If there have been no such activities, you should strike through the form and write "Not applicable" on the page and sign the form.
- F. Funds will be requested by GEORGETOWN COUNTY in writing. Form RD 440-11, "Estimate of Funds Needed for 30 day Period Commencing \_\_\_\_\_," may be used for making this request. Funds are to be deposited in GEORGETOWN COUNTY equipment account and Partial Payment Estimates and invoices paid by GEORGETOWN COUNTY from this account, after prior approval by Rural Development. Funds required by Rural Development to be deposited in the equipment account are considered project funds and are to be used only for authorized purposes. A pledge of collateral should be obtained for any funds in the account in excess of \$100,000. Any funds remaining in this account after payment of all Rural Development approved project costs are to be handled as unused grant funds. If necessary, and approved by the Rural Development Community Programs Director, the grant and grant funds may be disbursed through a supervised bank account selected by GEORGETOWN COUNTY. This bank will pledge collateral security to be maintained at a level equal to the greatest amount on deposit at any one time, less \$100,000.

Each payment for project costs must be approved by GEORGETOWN COUNTY and Rural Development. Payment requests may be made on Form RD 1942-18, "Partial Payment Estimate," or similar form. Payment for equipment should coincide with the delivery of the equipment along with title to motorized vehicles that have been properly filed with the South Carolina Department of Transportation showing Rural Development as lien holder.

These conditions should be reviewed by you, legal counsel, consulting architect, and a representative from this agency at the scheduled Letter of Conditions meeting. At this meeting, you will receive specific instructions on the assembly and submittal of materials for review by the Office of General Counsel and issuance of closing instructions.

The necessary forms referred to in this letter will be supplied by Rural Development.

You will have the full cooperation of this agency and if we can be of any further assistance to you, please contact Area Specialist Nickie Toomes at 843-549-1822 ext. 123.

Sincerely,

MICHELE J. CARDWELL  
Community Programs Director

Attachments

Item Number: 7.a  
Meeting Date: 9/24/2019  
Item Type: PUBLIC HEARINGS

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** County Council

**ISSUE UNDER CONSIDERATION:**

ORDINANCE NO. 19-16 - AN ORDINANCE TO REPEAL, REPLACE AND CREATE THOSE CERTAIN FEES PAYABLE TO THE PROBATE COURT OF GEORGETOWN COUNTY FOR THE ISSUANCE OF MARRIAGE LICENSES, AS MANDATED BY STATUTE

**CURRENT STATUS:**

Pending approval.

**POINTS TO CONSIDER:**

South Carolina legislature imposes a duty upon the Georgetown County Probate Court to issue marriage licenses to qualified applicants. Trained personnel are required to issue the licenses which involves funding, the burden of which is absorbed by the County taxpayers.

Public records indicate a large number of applicants reside outside of Georgetown County and/or the State of South Carolina, and it is the belief of Georgetown County Council that the local taxpayers should not bear the full burden of funding the issuance of licenses to out of County/State applicants.

To help alleviate the financial impact on local taxpayers, County Council is desirous of creating a tiered fee structure wherein applicants residing outside of the County and/or State are charged a higher fee for the license.

**OPTIONS:**

1. Approval of Ordinance No. 19-16.
2. Do not approve Ordinance No. 19-16.

**STAFF RECOMMENDATIONS:**

Recommendations regarding the adoption of Ordinance No. 19-16 provided under separate report.

**ATTACHMENTS:**

Description	Type
□ Ordinance No. 19-16 Marriage License Fees	Ordinance



STATE OF SOUTH CAROLINA       )  
  )  
COUNTY OF GEORGETOWN       )

**ORDINANCE NO: 19-16**

**AN ORDINANCE TO REPEAL, REPLACE and CREATE THOSE CERTAIN FEES PAYABLE TO THE PROBATE COURT OF GEORGETOWN COUNTY FOR THE ISSUANCE OF MARRIAGE LICENSES, AS MANDATED BY STATUTE**

**WHEREAS**, the South Carolina legislature imposes a duty upon the Georgetown County Probate Court to issue marriage licenses to qualified applicants; and

**WHEREAS**, trained personnel are required to issue the licenses which involves funding, the burden of which is absorbed by the County taxpayers; and

**WHEREAS**, public records indicate a large number of applicants reside outside of Georgetown County and/or the State of South Carolina; and

**WHEREAS**, it is the belief of Georgetown County Council that the local taxpayers should not bear the full burden of funding the issuance of licenses to out of County/State applicants; and

**WHEREAS**, to help alleviate the financial impact on local taxpayers, County Council is desirous of creating a tiered fee structure wherein applicants residing outside of the County and/or State are charged a higher fee for the license.

**NOW, THEREFORE**, Georgetown County Council, by majority vote, enacts the following fee structure:

**MARRIAGE LICENSE:**

CATEGORY 1:               \$50.00  
CATEGORY 2:               \$75.00  
CATEGORY 3:               \$115.00

1. Definitions:
  - a. Category 1:     Either or both applicants reside in Georgetown County.
  - b. Category 2:     Neither applicant resides in Georgetown County but at least one applicant resides in the State of South Carolina.
  - c. Category 3:     Both applicants reside outside of South Carolina. \*Active duty military members are deemed to reside in the County/State where the installation to which they are assigned is located.
2. The Georgetown County Probate Judge is vested with the authority to determine the residency of applicants.
3. This ordinance serves to supersede and replace any existing ordinance creating or mandating fees related to marriage licenses in Georgetown County.
4. Should any word or phrase in this ordinance be deemed invalid by a court, such word or phrase shall be deemed severable and the remaining portion of the ordinance shall continue to be in effect.

5. This ordinance shall become effective immediately upon its final approval.

Duly adopted in a scheduled meeting of Georgetown County Council this \_\_\_\_ day of September, 2019.

GEORGETOWN COUNTY COUNCIL

---

John Thomas, Chairman

ATTEST:

---

Theresa E. Floyd, Clerk

First Reading: \_\_\_\_\_, 2019

Second Reading: \_\_\_\_\_, 2019

Third Reading: \_\_\_\_\_, 2019

**Item Number:** 9.a  
**Meeting Date:** 9/24/2019  
**Item Type:** RESOLUTIONS / PROCLAMATIONS

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** County Administrator

**ISSUE UNDER CONSIDERATION:**

RESOLUTION NO. 19-20 - A RESOLUTION CONFIRMING CERTAIN MATTERS IN CONNECTION WITH THE ISSUANCE OF \$28,015,000 PRINCIPAL AMOUNT INSTALLMENT PURCHASE REFUNDING REVENUE BONDS (GEORGETOWN COUNTY PROJECT), SERIES 2019, BY SCAGO PUBLIC FACILITIES CORPORATION FOR GEORGETOWN COUNTY; AND PROVIDING FOR RELATED MATTERS.

**CURRENT STATUS:**

Pending.

**POINTS TO CONSIDER:**

Pursuant to Ordinance No. 2017-09 enacted by County Council on May 9, 2017, Council authorized the execution of a Term Loan Agreement dated July 6, 2017 among SCAGO Public Facilities Corporation for Georgetown County, the County and DNT Asset Trust, a wholly-owned subsidiary of JP Morgan Chase Bank, National Association, and the issuance by the Corporation of \$28,015,000 principal amount of its Installment Purchase Refunding Revenue Bonds, Series 2019.

The Bonds are scheduled to be issued by the Corporation and delivered to the Purchaser on December 1, 2019, the proceeds of which will be used to refund in full all of the outstanding principal amount of the Corporation's \$29,185,000 original principal amount Installment Purchase Revenue Bonds (Georgetown County Project) Series 2009B (Taxable Build America Bonds).

**OPTIONS:**

1. Adoption of Resolution No. 19-20.
2. Decline the adoption of Resolution No. 19-20.

**STAFF RECOMMENDATIONS:**

Recommendation for the adoption of Resolution No. 19.20.

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Resolution No 19-20 SCAGO Refunding Bonds	Resolution Letter

## **RESOLUTION NO. 2019-20**

### **A RESOLUTION CONFIRMING CERTAIN MATTERS IN CONNECTION WITH THE ISSUANCE OF \$28,015,000 PRINCIPAL AMOUNT INSTALLMENT PURCHASE REFUNDING REVENUE BONDS (GEORGETOWN COUNTY PROJECT), SERIES 2019, BY SCAGO PUBLIC FACILITIES CORPORATION FOR GEORGETOWN COUNTY; AND PROVIDING FOR RELATED MATTERS.**

**WHEREAS**, pursuant to Ordinance No. 2017-09 enacted by the County Council (the “Council”) of Georgetown County, South Carolina (the “County”), on May 9, 2017 (the “Ordinance”), the Council authorized the execution of a Term Loan Agreement dated July 6, 2017 (the “Agreement”) among SCAGO Public Facilities Corporation for Georgetown County (the “Corporation”), the County and DNT Asset Trust, a wholly-owned subsidiary of JP Morgan Chase Bank, National Association (the “Purchaser”), and the issuance by the Corporation of \$28,015,000 principal amount of its Installment Purchase Refunding Revenue Bonds (Georgetown County Project), Series 2019 (the “Bonds”); and

**WHEREAS**, the Bonds are scheduled to be issued by the Corporation and delivered to the Purchaser on December 1, 2019, the proceeds of which will be used to refund in full all of the outstanding principal amount of the Corporation’s \$29,185,000 original principal amount Installment Purchase Revenue Bonds (Georgetown County Project) Series 2009B (Taxable Build America Bonds) (the “Refunded Bonds”); and

**WHEREAS**, in addition to the authorizations described above, the Ordinance contains certain findings and representations necessary for the execution of the Agreement; pursuant to Section 3 of the Ordinance, the Council acknowledges that it may be required to take additional action prior to the issuance of the Bonds, including but not limited to the adoption by County Council of a resolution confirming the findings and representations contained therein;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council as follows:

Section 1. The County hereby ratifies, confirms and approves the Corporation, including its creation, existence, governance, purposes and activities, and the issuance and sale by the Corporation of the Bonds for the purposes of refunding the Refunded Bonds and paying certain costs of issuance of the Bonds.

Section 2. The County hereby confirms the findings and representations contained in the Ordinance.

Section 3. The County Administrator, Clerk to Council and County Attorney are authorized and directed to take all actions, including the execution and delivery of any agreements, certificates and other documents, in connection with the issuance of the Bonds and the transactions authorized by the Ordinance and this Resolution.

Section 4. All orders, resolutions and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This Resolution shall take effect and be in full force from and after its passage by the Council.

**DONE** in meeting duly assembled this 24th day of September, 2019.

**GEORGETOWN COUNTY, SOUTH CAROLINA**

---

Chairman of County Council

Attest:

---

Clerk to County Council

**Item Number:** 10.a  
**Meeting Date:** 9/24/2019  
**Item Type:** THIRD READING OF ORDINANCES

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** Legal

**ISSUE UNDER CONSIDERATION:**

ORDINANCE NO. 19-16 - AN ORDINANCE TO REPEAL, REPLACE AND CREATE THOSE CERTAIN FEES PAYABLE TO THE PROBATE COURT OF GEORGETOWN COUNTY FOR THE ISSUANCE OF MARRIAGE LICENSES, AS MANDATED BY STATUTE

**CURRENT STATUS:**

Pending approval.

**POINTS TO CONSIDER:**

South Carolina legislature imposes a duty upon the Georgetown County Probate Court to issue marriage licenses to qualified applicants. Trained personnel are required to issue the licenses which involves funding, the burden of which is absorbed by the County taxpayers.

Public records indicate a large number of applicants reside outside of Georgetown County and/or the State of South Carolina, and it is the belief of Georgetown County Council that the local taxpayers should not bear the full burden of funding the issuance of licenses to out of County/State applicants.

To help alleviate the financial impact on local taxpayers, County Council is desirous of creating a tiered fee structure wherein applicants residing outside of the County and/or State are charged a higher fee for the license.

**OPTIONS:**

1. Approval of Ordinance No. 19-16.
2. Do not approve Ordinance No. 19-16.

**STAFF RECOMMENDATIONS:**

Recommendation for third reading approval of Ordinance No. 19-16.

**ATTACHMENTS:**

Description	Type
□ Ordinance No. 19-16 Marriage License Fees	Ordinance

STATE OF SOUTH CAROLINA

)

)

COUNTY OF GEORGETOWN

)

ORDINANCE NO: 19-16

**AN ORDINANCE TO REPEAL, REPLACE and CREATE THOSE CERTAIN FEES PAYABLE TO THE PROBATE COURT OF GEORGETOWN COUNTY FOR THE ISSUANCE OF MARRIAGE LICENSES, AS MANDATED BY STATUTE**

**WHEREAS**, the South Carolina legislature imposes a duty upon the Georgetown County Probate Court to issue marriage licenses to qualified applicants; and

**WHEREAS**, trained personnel are required to issue the licenses which involves funding, the burden of which is absorbed by the County taxpayers; and

**WHEREAS**, public records indicate a large number of applicants reside outside of Georgetown County and/or the State of South Carolina; and

**WHEREAS**, it is the belief of Georgetown County Council that the local taxpayers should not bear the full burden of funding the issuance of licenses to out of County/State applicants; and

**WHEREAS**, to help alleviate the financial impact on local taxpayers, County Council is desirous of creating a tiered fee structure wherein applicants residing outside of the County and/or State are charged a higher fee for the license.

**NOW, THEREFORE**, Georgetown County Council, by majority vote, enacts the following fee structure:

**MARRIAGE LICENSE:**

CATEGORY 1:	\$50.00
CATEGORY 2:	\$75.00
CATEGORY 3:	\$115.00

1. Definitions:
  - a. Category 1: Either or both applicants reside in Georgetown County.
  - b. Category 2: Neither applicant resides in Georgetown County but at least one applicant resides in the State of South Carolina.
  - c. Category 3: Both applicants reside outside of South Carolina. \*Active duty military members are deemed to reside in the County/State where the installation to which they are assigned is located.
2. The Georgetown County Probate Judge is vested with the authority to determine the residency of applicants.
3. This ordinance serves to supersede and replace any existing ordinance creating or mandating fees related to marriage licenses in Georgetown County.
4. Should any word or phrase in this ordinance be deemed invalid by a court, such word or phrase shall be deemed severable and the remaining portion of the ordinance shall continue to be in effect.

5. This ordinance shall become effective immediately upon its final approval.

Duly adopted in a scheduled meeting of Georgetown County Council this \_\_\_\_ day of September, 2019.

GEORGETOWN COUNTY COUNCIL

---

John Thomas, Chairman

ATTEST:

---

Theresa E. Floyd, Clerk

First Reading: \_\_\_\_\_, 2019

Second Reading: \_\_\_\_\_, 2019

Third Reading: \_\_\_\_\_, 2019



**Item Number:** 10.b  
**Meeting Date:** 9/24/2019  
**Item Type:** THIRD READING OF ORDINANCES

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** Planning / Zoning

**ISSUE UNDER CONSIDERATION:**

Ordinance No. 19-17 - An Amendment to the County's Flood Damage Prevention Ordinance dealing with "temperature-controlled" prohibition for areas underneath a structure in the flood zone.

**CURRENT STATUS:**

The ordinance was last updated in 2018. The model ordinance provided by the state was the basis for this version.

**POINTS TO CONSIDER:**

1. Administration of the Flood Damage Prevention Ordinance has become increasingly difficult. Construction issues are highly technical. The County must have adopted such an ordinance to participate in the National Flood Insurance Program.
2. Today, the Flood Management Program in the County achieves a rating of 7 on the NFIP scale. On this scale, a rating of 10 receives no discount on individual flood insurance premiums. The County's rating of 7 grants each flood insurance policy holder in the County a fifteen (15)% discount on their premiums.
3. One issue that has arisen is the prohibition of temperature controlled space in a residence below the base flood elevation (BFE). This prohibition is in the County's ordinance and was taken from the State's model ordinance. It is not unusual for an elevated house in a flood zone to have an enclosed entrance way feature in which the BFE does not rise all the way to a ceiling. Homeowners wish to install a HVAC vent in the entrance way, but above the BFE. Currently, the County's ordinance prohibits this by saying no space in the enclosure can be "temperature controlled," regardless of the location of a vent.
4. Staff has determined that the term "temperature controlled" is not a FEMA requirement but was placed in the model code as someone at the State level believed it would be a good practice. Therefore, the County could remove the prohibition resulting from the term "temperature controlled" from the local ordinance and not be in violation of a FEMA mandate.
5. Removal of the "temperature controlled" prohibition would enable a homeowner to store certain equipment such as bicycles, golf clubs, fishing equipment, etc...in a better protected environment.

**FINANCIAL IMPACT:**

Not applicable. Staff will monitor the NFIP rating scale to assess if the removal of this provision would impact points relating to insurance premiums. If needed, points could be achieved in other areas.

**OPTIONS:**

1. Approve ordinance amendment
2. Deny ordinance amendment
3. Defer action for further study

**STAFF RECOMMENDATIONS:**

Approve Ordinance No. 19-17 to amend Georgetown County's Flood Prevention Ordinance.

**ATTORNEY REVIEW:**

Yes

**ATTACHMENTS:**

Description	Type
▫ Ordinance No. 19-17 Amendment to Flood Prevention Ordinance	Ordinance

AN ORDINANCE TO ~~DELETE~~ **AMEND** APPENDIX C, STORM WATER MANAGEMENT PROGRAM, PART II, FLOOD DAMAGE PREVENTION ORDINANCE OF THE CODE OF ORDINANCES OF GEORGETOWN COUNTY, SOUTH CAROLINA AND REPLACE SUCH ORDINANCE WITH THE BELOW ORDINANCE WHICH SHALL ALSO BE APPENDIX C, STORM WATER MANAGEMENT PROGRAM, PART II, FLOOD DAMAGE PREVENTION ORDINANCE

BE IT ORDAINED BY GEORGETOWN COUNTY COUNCIL, DULY ASSEMBLED, THAT APPENDIX C, PART II, FLOOD DAMAGE PREVENTION ORDINANCE OF THE CODE OF ORDINANCES OF GEORGETOWN COUNTY, SOUTH CAROLINA BE DELETED AND REPALCE WITH THE REVISED ORDINANCE FOUND BELOW.

Part II. FLOOD DAMAGE PREVENTION ORDINANCE

ARTICLE I GENERAL Standards

- Section A Statutory Authorization
- Section B Findings of Fact
- Section C Statement of Purpose and Objectives
- Section D Lands to Which this Ordinance Applies
- Section E Establishment of Development Permit
- Section F Compliance
- Section G Interpretation
- Section H Partial Invalidity and Severability
- Section I Warning and Disclaimer of Liability
- Section J Penalties for Violation

ARTICLE II DEFINITIONS

- Section A General

ARTICLE III ADMINISTRATION

- Section A Designation of Local Floodplain Administrator
- Section B Adoption of Letter of Map Revisions
- Section C Development Permit and Certification Requirements
- Section D Duties and Responsibilities of the Local Floodplain Administrator

- Section E Administrative Procedures

ARTICLE IV PROVISIONS FOR FLOOD HAZARD REDUCTION

- Section A General Standards

Section B	Specific Standards
	1 - Residential Construction
	2 - Non-Residential Construction
	3 - Manufactured Homes
	4 - Elevated Buildings
	5 - Floodways
	6 - Recreational Vehicles
	7 - Map Maintenance Activities
	8 - Accessory Structure
	9 -Swimming Pool Utility Equipment Rooms
	10 -Elevators
	11 -Fill
	12 -Standards for Subdivision Proposals
Section C	Standards for Streams without Base Flood Elevations and Floodways
Section D	Standards for Streams with Base Flood Elevations, but without Floodways
Section E	Standards for Areas of Shallow Flooding (AO Zones)
Section F	Coastal High Hazard Areas (V-Zones)
ARTICLE V	VARIANCE PROCEDURES
Section A	Establishment of Appeal Board
Section B	Right to Appeal
Section C	Historic Structures
Section D	Functionally Dependent Uses
Section E	Agricultural Structures
Section F	Considerations
Section G	Findings
Section H	Floodways
Section I	Conditions
ARTICLE VI	LEGAL STATUS PROVISIONS
Section A	Effect on Rights & Liabilities under the Existing Ordinance
Section B	Effect upon Outstanding Building Permits
Section C	Effective Date

## Article I. General Standards

### A. Statutory Authorization

**County** – The legislature of the State of South Carolina has in SC Code of Laws, Title 4, Chapters 9 (Article 1), 25, and 27, and amendments thereto, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Georgetown County Council, of Georgetown County, South Carolina does ordain as follows:

- B. Findings of Fact** - The Special Flood Hazard Areas of Georgetown County are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

Furthermore, these flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood proofed, or otherwise unprotected from flood damages.

- C. Statement of Purpose and Objectives** - It is the purpose of this ordinance to protect human life and health, minimize property damage, and encourage appropriate construction practices to minimize public and private losses due to flood conditions by requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction. Uses of the floodplain which are dangerous to health, safety, and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion are restricted or prohibited. These provisions attempt to control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters, and control filling, grading, dredging and other development which may increase flood damage or erosion. Additionally, the ordinance prevents or regulates the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

The objectives of this ordinance are to protect human life and health, to help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize flood blight areas, and to insure that potential home buyers are notified that property is in a flood area. The provisions of the ordinance are intended to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets and bridges located in the floodplain, and prolonged business interruptions. Also, an important floodplain management objective of this ordinance is to minimize expenditure of public money for costly flood control projects and rescue and relief efforts associated with flooding.

Floodplains are an important asset to the community. They perform vital natural

functions such as temporary storage of floodwaters, moderation of peak flood flows, maintenance of water quality, groundwater recharge, prevention of erosion, and habitat for diverse natural wildlife populations, recreational opportunities, and aesthetic quality. These functions are best served if floodplains are kept in their natural state. Wherever possible, the natural characteristics of floodplains and their associated wetlands and water bodies should be preserved and enhanced. Decisions to alter floodplains, especially floodways and stream channels, should be the result of careful planning processes that evaluate resource conditions and human needs.

**D. Lands to Which this Ordinance Applies** This ordinance shall apply to all areas of special flood hazard within the jurisdiction of Georgetown County as identified by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study, dated March 16, 1989 with accompanying maps and other supporting data that are hereby adopted by reference and declared to be a part of this ordinance.

Further, the area of the Santee Floodplain that would be affected by a breach of the Santee Dam defined as that shown on the Santee Cooper Dam Break Map, a copy of which shall be kept on file at the Department of Planning and Development, Building Division, shall require elevation to at least one (1) foot above the dam break elevation or execute a release waiver and covenant (a hold harmless agreement).

All applications for permits of new construction or substantial improvement occurring within the dam break flood zone shall be submitted to the South Carolina Public Service Authority.

It shall be required that the South Carolina Public Service Authority (Santee Cooper) provide to the Department of Planning and Development, Building Division, a list by County tax map number (TMS), all land parcels which fall within the dam break flood area. It shall further be require of Santee Cooper to furnish the ground elevation of the lots not covered by a release waiver and to place a Temporary Benchmark on the site for the purpose of verifying the finished floor elevation.

Upon annexation any special flood hazard areas identified by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study for the unincorporated areas of Georgetown County, with accompanying map and other data are adopted by reference and declared part of this ordinance.

**E. Establishment of Development Permit** A Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities.

**F. Compliance** No structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations. A Non-Conversion Agreement is required prior to the issuance of the certificate of occupancy for **All Structures** built in special flood hazard areas of the County. The Non-Conversion Agreement will be given to the property owner when the permit is issued. It must be signed by the property owner, witnessed and recorded with the **Register of Deeds**. Prior to the final inspection.

**G. Interpretation** In the interpretation and application of this ordinance all provisions shall be considered as minimum requirements, liberally construed in favor of the governing body, and deemed neither to limit nor repeal any other powers granted

under State law. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions, shall prevail.

- H. **Partial Invalidity and Severability** If any part of this Ordinance is declared invalid, the remainder of the Ordinance shall not be affected and shall remain in force.
- I. **Warning and Disclaimer of Liability** the degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Georgetown County or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.
- J. **Penalties for Violation** - Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 or imprisoned for not more than 30 days, or both. Each day the violation continues shall be considered a separate offense. Nothing herein contained shall prevent Georgetown County from taking such other lawful action as is necessary to prevent or remedy any violation.

## Article II. DEFINITIONS

- A. **General** - Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance it's most reasonable application.
  - 1. **Accessory Structure** (Appurtenant Structure) - structures that are located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory Structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.
  - 2. **Addition (to an existing building)** - an extension or increase in the floor area or height of a building or structure. Additions to existing buildings shall comply with the requirements for new construction regardless as to whether the addition is a substantial improvement or not. Where a firewall or load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and must comply with the standards for new construction.
  - 3. **Agricultural structure** - a structure used solely for agricultural purposes in

which the use is exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock. Agricultural structures are **not** exempt from the provisions of this ordinance.

4. **Appeal** - a request for a review of the local floodplain administrator's interpretation of any provision of this ordinance.
5. **Area of shallow flooding** - a designated AO or VO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.
6. **Area of special flood hazard** - the land in the floodplain within a community subject to a one percent or greater chance of being equaled or exceeded in any given year.
7. **Base flood** - the flood having a one percent chance of being equaled or exceeded in any given year.
8. **Basement** - means any enclosed area of a building that is below grade on all sides.
9. **Building** - see structure
10. **Coastal High Hazard Area** - an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to velocity wave action from storms or seismic sources.
11. **Critical Development** - development that is critical to the community's public health and safety, is essential to the orderly functioning of a community, store or produce highly volatile, toxic or water-reactive materials, or house occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of critical development include jails, hospitals, schools, fire stations, nursing homes, wastewater treatment facilities, water plants, and gas/oil/propane storage facilities.
12. **Development** - any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
13. **Elevated building** - a non-basement building built to have the lowest floor elevated above the ground level by means of solid foundation perimeter walls, pilings, columns, piers, or shear walls parallel to the flow of water.
14. **Executive Order 11988 (Floodplain Management)** - Issued by President Carter in 1977, this order requires that no federally assisted activities be conducted in or have the potential to affect identified special flood hazard areas, unless there is no practicable alternative.



15. **Existing construction** - means, for the purposes of determining rates, structures for which the start of construction commenced before May 9, 1978 in the Waccamaw Neck Special Flood Hazards District or March 1, 1984 for unincorporated Georgetown County.
16. **Existing manufactured home park or manufactured home subdivision** - a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before May 9, 1978 in the Waccamaw Neck Special Flood Hazards District or March 1, 1984 for unincorporated Georgetown County.
17. **Expansion to an existing manufactured home park or subdivision** - the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs).
18. **Flood** - a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, or the unusual and rapid accumulation of runoff of surface waters from any source.
19. **Flood Hazard Boundary Map (FHBM)** - an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.
20. **Flood Insurance Rate Map (FIRM)** - an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.
21. **Flood Insurance Study** - the official report provided by the Federal Emergency Management Agency which contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.
22. **Flood-resistant material** - any building material capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbars are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*, dated 8/08, and available from the Federal Emergency Management Agency. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

23. **Floodway** - the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
24. **Freeboard** - a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.
25. **Functionally dependent use**- a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.
26. **Highest Adjacent Grade** - the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.
27. **Historic Structure** - any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of the Interior (DOI)) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a State inventory of historic places; (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified (1) by an approved State program as determined by the Secretary of Interior, or (2) directly by the Secretary of Interior in states without approved programs. Some structures or districts listed on the State or local inventories **MAY NOT** be "Historic" as cited above, but have been included on the inventories because it was believed that the structures or districts have the **potential** for meeting the "Historic" structure criteria of the DOI. In order for these structures to meet NFIP historic structure criteria, it must be demonstrated and evidenced that the South Carolina Department of Archives and History has **individually determined** that the structure or district meets DOI historic structure criteria.
28. **Increased Cost of Compliance (ICC)** – applies to all new and renewed flood insurance policies effective on and after June 1, 1997. The NFIP shall enable the purchase of insurance to cover the cost of compliance with land use and control measures established under Section 1361. It provides coverage for the payment of a claim to help pay for the cost to comply with State or community floodplain management laws or ordinances after a flood event in

which a building has been declared substantially or repetitively damaged.

29. **Limited storage** - an area used for storage and intended to be limited to incidental items that can withstand exposure to the elements and have low flood damage potential. Such an area must be of flood resistant or breakaway material **and** void of utilities except for essential lighting. **and cannot be temperature-controlled.** If the area is located below the base flood elevation in an A, AE and A1-A30 zone it must meet the requirements of Article IV.A.4 of this ordinance. If the area is located below the base flood elevation in a V, VE and V1-V30 zone it must meet the requirements of Article IV.F of this ordinance.
30. **Lowest Adjacent Grade (LAG)** - is an elevation of the lowest ground surface that touches any deck support, exterior walls of a building or proposed building walls.
31. **Lowest Floor** - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.
32. **Manufactured home** - a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".
33. **Manufactured Home Park or subdivision** - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
34. **Mean Sea Level** - means, for the purpose of this ordinance, the Nations Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which the base flood elevations shown on a community's Flood Insurance Rate Maps (FIRM) are shown.
35. **National Geodetic Vertical Datum (NGVD) of 1929** - as corrected in 1929, elevation reference points set by National Geodetic Survey based on mean sea level.
36. **North American Vertical Datum (NAVD) of 1988** - vertical control, as corrected in 1988, used as the reference datum on Flood Insurance Rate Maps.
37. **New construction** - structure for which the start of construction commenced on or after May 9, 1978 in the Waccamaw Neck Special Flood Hazards District. The term also includes any subsequent improvements to such structure.
38. **New manufactured home park or subdivision** - a manufactured home park or subdivision for which the construction of facilities for servicing the lots on

which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs) is completed on or after May 9, 1978 in the Waccamaw Neck Special Flood Hazards District.

39. **Non-Conversion Agreement** – a document prepared by the County and provided to the owner(s) of property in a special flood hazard area that is signed and recorded with the Register of Deeds. In signing, the owner agrees to not convert or finish the interior of the allowed enclosed area, below the design flood elevation (DFE) for any purpose other than the allowed parking, storage or building access. The agreement also gives authority to the County to visit the property, upon notice, for verification of compliance.
40. **Primary Frontal Dune** - a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and subject to erosion and overtopping from high tides and waves during coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.
41. **Recreational vehicle** - a vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and, (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.
42. **Repetitive Loss** – a building covered by a contract for flood insurance that has incurred flood-related damages on 2 occasions during a 10 year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the building at the time of each such flood event.
43. **Section 1316 of the National Flood Insurance Act of 1968** - The act provides that no new flood insurance shall be provided for any property found by the Federal Emergency Management Agency to have been declared by a state or local authority to be in violation of state or local ordinances.
44. **Stable Natural Vegetation** - the first place on the oceanfront where plants such as sea oats hold sand in place.
45. **Start of construction** - for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not

include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

46. **Structure** - a walled and roofed building, a manufactured home, including a gas or liquid storage tank that is principally above ground.
47. **Substantial damage** - damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Such repairs may be undertaken successively and their costs counted cumulatively. Please refer to the definition of "substantial improvement".
48. **Substantial improvement** - any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred repetitive loss or substantial damage, regardless of the actual repair work performed. The term does not, however, include either:
- a) any project of improvement to a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or,
  - b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Permits shall be cumulative for a period of five years. If the improvement project is conducted in phases, the total of all costs associated with each phase, beginning with the issuance of the first permit, shall be utilized to determine whether "substantial improvement" will occur.

49. **Substantially improved existing manufactured home park or subdivision** - where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction, or improvement commenced.

50. **Variance** - is a grant of relief from a term or terms of this ordinance.

51. **Violation** – the failure of a structure or other development to be fully compliant with these regulations.

### Article III. ADMINISTRATION

A. **Designation of Local Floodplain Administrator** -The Building Official or a designee of the Building Official is hereby appointed to administer and implement the provisions of this ordinance.

B. **Adoption of Letter of Map Revisions (LOMR)** – All LOMRs that are issued in the areas identified in Article I Section D of this ordinance are hereby adopted.

#### C. **Development Permit and Certification Requirements.**

1. **Development Permit:** - Application for a development permit shall be made to the local floodplain administrator on forms furnished by him or her prior to any development activities. The development permit may include, but not be limited to, plans in duplicate drawn to scale showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures; and the location of fill materials, storage areas, and drainage facilities. Specifically, the following information is required:

a) A plot plan that shows the 100-year floodplain contour or a statement that the entire lot is within the floodplain must be provided by the development permit applicant when the lot is within or appears to be within the floodplain as mapped by the Federal Emergency Management Agency or the floodplain identified pursuant to either the Duties and Responsibilities of the local floodplain administrator of Article III.D.11 or the Standards for Subdivision Proposals of Article IV.B and the Standards for streams without Estimated Base Flood Elevations and Floodways of Article IV.C. The plot plan must be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by it. The plot plan must show the floodway, if any, as identified by the Federal Emergency Management Agency or the floodway identified pursuant to either the duties or responsibilities of the local floodplain administrator of Article III.D.11 or the standards for subdivision proposals of Article IV.B.12 and the standards for streams without estimated base flood elevations and floodways of Article IV.C.

b) Where base flood elevation data is provided as set forth in Article I.D or the duties and responsibilities of the local floodplain administrator of Article III.D.11 the application for a development permit within the flood hazard area shall show:

(1) the elevation (in relation to mean sea level) of the lowest floor of all new and substantially improved structures, and

(2) if the structure will be flood proofed in accordance with the Non-Residential Construction requirements of Article IV.B.2 the elevation (in relation to mean sea level) to which the structure will be flood proofed.

- c) Where base flood elevation data is **not** provided as set forth in Article I.D or the duties and responsibilities of the local floodplain administrator of Article III.D.11, then the provisions in the standards for streams without estimated base flood elevations and floodways of Article IV.C must be met.
- d) Alteration of Watercourse: Where any watercourse will be altered or relocated as a result of proposed development, the application for a development permit shall include a description of the extent of watercourse alteration or relocation, an engineering study to demonstrate that the flood- carrying capacity of the altered or relocated watercourse is maintained and a map showing the location of the proposed watercourse alteration or relocation.

## 2. Certifications

- a) Flood proofing Certification - When a structure is flood proofed, the applicant shall provide certification from a registered, professional engineer or architect that the non-residential, flood proofed structure meets the flood proofing criteria in the non-residential construction requirements of Article IV.B.2 and Article IV.E.2 (b).
- b) Certification During Construction - A lowest floor elevation or flood proofing certification is required after the lowest floor is completed. As soon as possible after completion of the lowest floor and before any further vertical construction commences, or flood proofing by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the local floodplain administrator a certification of the elevation of the lowest floor, or flood proofed elevation, whichever is applicable, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by it. Any work done prior to submission of the certification shall be at the permit holder's risk. The local floodplain administrator shall review the floor elevation survey data submitted. The permit holder immediately and prior to further progressive work being permitted to proceed shall correct deficiencies detected by such review. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.
- c) V-Zone Certification - When a structure is located in Zones V, VE, or VI-30, certification shall be provided from a registered professional engineer or architect, separate from submitted plans, that new construction and substantial improvement meets the criteria for the coastal high hazard areas outlined in Article IV.F.5.
- d) As-built Certification - Upon completion of the development a registered professional engineer, land surveyor or architect, in accordance with SC law, shall certify according to the requirements of

Article III.C.2a, 2b, and 2c that the development is built in accordance with the submitted plans and previous pre-development certifications.

**D. Duties and Responsibilities of the Local Floodplain Administrator** - shall include, but not be limited to:

1. **Permit Review** - Review all development permits to assure that the requirements of this ordinance have been satisfied.
2. **Requirement of Federal and/or state permits** - Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C 1334.
3. **Watercourse alterations** -
  - a) Notify adjacent communities and the South Carolina Department of Natural Resources, Land, Water, and Conservation Division, State Coordinator for the National Flood Insurance Program, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
  - b) In addition to the notifications required watercourse alterations per Article III.D.3a, written reports of maintenance records must be maintained to show that maintenance has been provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained. This maintenance must consist of a comprehensive program of periodic inspections, and routine channel clearing and dredging, or other related functions. The assurance shall consist of a description of maintenance activities, frequency of performance, and the local official responsible for maintenance performance. Records shall be kept on file for FEMA inspection.
  - c) If the proposed project will modify the configuration of the watercourse, floodway, or base flood elevation for which a detailed Flood Insurance Study has been developed, the applicant shall apply for and must receive approval for a Conditional Letter of Map Revision with the Federal Emergency Management Agency prior to the start of construction.
  - d) Within 60 days of completion of an alteration of a watercourse, referenced in the certification requirements of Article III.C.2.d, the applicant shall submit as-built certification, by a registered professional engineer, to the Federal Emergency Management Agency.
4. **Floodway encroachments** - Prevent encroachments within floodways unless the certification and flood hazard reduction provisions of Article IV.B.5 are met.



5. **Adjoining Floodplains** - Cooperate with neighboring communities with respect to the management of adjoining floodplains and/or flood-related erosion areas in order to prevent aggravation of existing hazards.
6. **Notifying Adjacent Communities** - Notify adjacent communities prior to permitting substantial commercial developments and large subdivisions to be undertaken in areas of special flood hazard and/or flood-related erosion hazards.
7. **Certification requirements** -
  - a) Obtain and review actual elevation (in relation to mean sea level) of the lowest floor of all new or substantially improved structures, in accordance with administrative procedures outlined in Article III.C.2.b or the coastal high hazard area requirements outlined in Article IV.F.5.
  - b) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been flood proofed, in accordance with the flood proofing certification outlined in Article III.C.2.a.
  - c) When flood proofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the non-residential construction requirements outlined in Article IV.B.2.
  - d) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in the coastal high hazard area requirements outlined in Article IV.F.4, Article IV.F.6, and Article IV.F.8 of this ordinance.
8. **Map Interpretation** - Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
9. **Prevailing Authority** - Where a map boundary showing an area of special flood hazard and field elevations disagree, the base flood elevations for flood protection elevations (as found on an elevation profile, floodway data table, etc.) shall prevail. The correct information should be submitted to FEMA as per the map maintenance activity requirements outlined in Article IV.B.7.b.
10. **Use Of Best Available Data** - When base flood elevation data and floodway data has not been provided in accordance with Article I.D, obtain, review, and reasonably utilize best available base flood elevation data and floodway data available from a federal, state, or other source, including data developed pursuant to the standards for subdivision proposals outlined in Article IV.B.12, in order to administer the provisions of this ordinance. Data

from preliminary, draft, and final Flood Insurance Studies constitutes best available data from a federal, state, or other source. Data must be developed using hydraulic models meeting the minimum requirement of NFIP approved model. If an appeal is pending on the study in accordance with 44 CFR Ch. 1, Part 67.5 and 67.6, the data does not have to be used.

11. **Special Flood hazard Area/topographic Boundaries Conflict** - When the exact location of boundaries of the areas special flood hazards conflict with the current, natural topography information at the site; the site information takes precedence when the lowest adjacent grade is at or above the BFE, the property owner may apply and be approved for a Letter of Map Amendment (LOMA) by FEMA. The local floodplain administrator in the permit file will maintain a copy of the Letter of Map Amendment issued from FEMA.
12. **On-Site inspections** - Make on-site inspections of projects in accordance with the administrative procedures outlined in Article III.E.1.
13. **Administrative Notices** - Serve notices of violations, issue stop-work orders, revoke permits and take corrective actions in accordance with the administrative procedures in Article III.E.
14. **Records Maintenance** - Maintain all records pertaining to the administration of this ordinance and make these records available for public inspection.
15. **Annexations and Detachments** - Notify the South Carolina Department of Natural Resources Land, Water and Conservation Division, State Coordinator for the National Flood Insurance Program within six (6) months, of any annexations or detachments that include special flood hazard areas.
16. **Federally Funded Development** - The President issued *Executive Order 11988, Floodplain Management May 1977*. E.O. 11988 directs federal agencies to assert a leadership role in reducing flood losses and losses to environmental values served by floodplains. Proposed developments must go through an eight-step review process. Evidence of compliance with the executive order must be submitted as part of the permit review process.
17. **Substantial Damage Determination** – Perform an assessment of damage from any origin to the structure using FEMA’s Residential Substantial Damage Estimator (RSDE) software to determine if the damage equals or exceeds 50 percent of the market value of the structure before the damage occurred.
18. **Substantial Improvement Determinations** – Perform an assessment of permit applications for improvements or repairs to be made to a building or structure that equals or exceeds 50 percent of the market value of the structure before the start of construction. Cost of work counted for determining if and when substantial improvement to a structure occurs shall be cumulative for a period of five years. If the improvement project is conducted in phases, the total of all costs associated with each phase, beginning with the issuance of the first permit, shall be utilized to determine whether “substantial improvement” will occur.

*The market values shall be determined by one of the following methods:*

- a) the current assessed building value as determined by the county's assessor's office or the value of an appraisal performed by a licensed appraiser at the expense of the owner within the past 6 months.
- b) one or more certified appraisals from a registered professional licensed appraiser in accordance with the laws of South Carolina. The appraisal shall indicate actual replacement value of the building or structure in its pre-improvement condition, *less the cost of site improvements and depreciation for functionality and obsolescence.*
- c) Real Estate purchase contract within 6 months prior to the date of the application for a permit.

#### **E. Administrative Procedures**

1. **Inspections of Work in Progress** - As the work pursuant to a permit progresses, the local floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.
2. **Stop-Work Orders** - Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
3. **Revocation of Permits** - The local floodplain administrator may revoke and require the return of the development permit by notifying the permit holder in writing, stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.
4. **Periodic Inspections** - The local floodplain administrator and each member of his/her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction

of the department at any reasonable hour for the purposes of inspection or other enforcement action.

5. **Violations to be Corrected** - When the local floodplain administrator finds violations of applicable state and local laws, it shall be his/her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law on the property he owns.
6. **Actions in Event of Failure to Take Corrective Action:** If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give him written notice, by certified or registered mail to his last known address or by personal service, that:
  - a) the building or property is in violation of the Flood Damage Prevention Ordinance,
  - b) a hearing will be held before the local floodplain administrator at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,
  - c) following the hearing, the local floodplain administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.
7. **Order to Take Corrective Action:** If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he/she shall make an order in writing to the owner, requiring the owner to remedy the violation within such period, not less than 60 days, the floodplain administrator may prescribe; provided that where the floodplain administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.
8. **Appeal:** Any owner who has received an order to take corrective action may appeal from the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within 10 days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
9. **Failure to Comply with Order:** If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

10. **Denial of Flood Insurance under the NFIP:** If a structure is declared in violation of this ordinance and after all other penalties are exhausted to achieve compliance with this ordinance then the local floodplain administrator shall notify the Federal Emergency Management Agency (FEMA) to initiate a Section 1316 of the National Flood insurance Act of 1968 action against the structure upon the finding that the violator refuses to bring the violation into compliance with the ordinance. Once a violation has been remedied the local floodplain administrator shall notify FEMA of the remedy and ask that the Section 1316 be rescinded.
11. The following **documents** are incorporated by reference and may be used by the local floodplain administrator to provide further guidance and interpretation of this ordinance as found on FEMA's website at [www.fema.gov](http://www.fema.gov):
  - a) FEMA 55 Coastal Construction Manual
  - b) All FEMA Technical Bulletins
  - c) All FEMA Floodplain Management Bulletins
  - d) FEMA 348 Protecting Building Utilities from Flood Damage
  - e) FEMA 499 Home Builder's Guide to Coastal Construction Technical Fact Sheets

#### Article IV. PROVISIONS FOR FLOOD HAZARD REDUCTION

##### A. General Standards

Development may not occur in the Special Flood Hazard Area (SFHA) where alternative locations exist due to the inherent hazards and risks involved. Before a permit is issued, the applicant shall demonstrate that new structures cannot be located out of the SFHA and that encroachments onto the SFHA are minimized. In all areas of special flood hazard the following provisions are required:

1. **Reasonably Safe from Flooding** - Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding
2. **Anchoring** - All new construction and substantial improvements shall be anchored to prevent flotation, collapse, and lateral movement of the structure.
3. **Flood Resistant Materials and Equipment** - All new construction and substantial improvements shall be constructed with flood resistant materials and utility equipment resistant to flood damage in accordance with Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*, dated 8/08, and available from the Federal Emergency Management Agency.
4. **Minimize Flood Damage** - All new construction and substantial

improvements shall be constructed by methods and practices that minimize flood damages,

5. **Critical Development** - shall be elevated to the 500 year flood elevation or be elevated to the highest known historical flood elevation (where records are available), whichever is greater. If no data exists establishing the 500 year flood elevation or the highest known historical flood elevation, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates 500 year flood elevation data,
6. **Utilities** - Electrical, ventilation, plumbing, heating and air conditioning equipment (including ductwork), and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of the base flood plus one (1) foot.
7. **Water Supply Systems** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system,
8. **Sanitary Sewage Systems** - New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters, On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding,
9. **Gas Or Liquid Storage Tanks** - All gas or liquid storage tanks, either located above ground or buried, shall be anchored to prevent floatation and lateral movement resulting from hydrodynamic and hydrostatic loads.
10. **Alteration, Repair, Reconstruction, Or Improvements** - Any alteration, repair, reconstruction, or improvement to a structure that is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance. This includes post-FIRM development and structures.
11. **Non-Conforming Buildings or Uses** - Non-conforming buildings or uses may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this ordinance. Provided, however, nothing in this ordinance shall prevent the repair, reconstruction, or replacement of an existing building or structure located totally or partially within the floodway, provided that the bulk of the building or structure below base flood elevation in the floodway is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance,
12. **Non-Conversion Agreement** - A Non-Conversion Agreement must be recorded with the Register of Deeds for all new construction and substantial improvement (SI)/ substantial damage (SD) permits.
13. **American with Disabilities Act (ADA)** - A building must meet the specific

standards for floodplain construction outlined in Article IV.B, as well as any applicable ADA requirements. The ADA is not justification for issuing a variance or otherwise waiving these requirements. Also, the cost of improvements required to meet the ADA provisions shall be included in the costs of the improvements for calculating substantial improvement.

## **B. Specific Standards**

In all areas of special flood hazard (Zones A, AE, AH, AO, A1-30, V, and VE) where base flood elevation data has been provided, as set forth in Article I.D or outlined in the Duties and Responsibilities of the local floodplain administrator Article III.D., the following provisions are required:

1. **Residential Construction** - New construction and substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor elevated no lower than one (1) foot above the base flood elevation. No basements are permitted. Should solid foundation perimeter walls be used to elevate a structure, flood openings sufficient to automatically equalize hydrostatic flood forces, shall be provided in accordance with the elevated buildings requirements in Article IV B.4.
2. **Non-Residential Construction**
  - a) New construction and substantial improvement of any commercial, industrial, or non-residential structure (including manufactured homes) shall have the lowest floor elevated no lower than one (1) foot above the level of the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, flood openings sufficient to automatically equalize hydrostatic flood forces, shall be provided in accordance with the elevated buildings requirements in Article IV B.4. No basements are permitted. Structures located in A-zones may be flood proofed in lieu of elevation provided that all areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.
  - b) A registered, professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in the flood proofing certification requirements in Article III.C.2.a. A variance may be considered for wet-flood proofing agricultural structures in accordance with the criteria outlined in Article V.E of this ordinance. Agricultural structures not meeting the criteria of Article V.E must meet the non-residential construction standards and all other applicable provisions of this ordinance. Structures that are flood proofed are required to have an approved maintenance plan with an annual exercise. The local floodplain administrator must approve the maintenance plan and notification of the annual exercise shall be provided to it.

## **3. Manufactured Homes**

- a) Manufactured homes that are placed or substantially improved on sites outside a manufactured home park or subdivision, in a new manufactured home park or sub-division, in an expansion to an existing manufactured home park or subdivision, or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated no lower than one (1) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
  - b) Manufactured homes that are to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions for residential construction in Article IV.B.1 of this ordinance must be elevated so that the lowest floor of the manufactured home is elevated no lower than one (1) foot above the base flood elevation, and be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement.
  - c) Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. For the purpose of this requirement, manufactured homes must be anchored to resist flotation, collapse, and lateral movement in accordance with Section 40-29-10 of the *South Carolina Manufactured Housing Board Regulations*, as amended. Additionally, when the elevation requirement would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height an engineering certification is required.
  - d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood-prone areas. This plan shall be filed with and approved by the local floodplain administrator and the local Emergency Preparedness Coordinator.
4. **Elevated Buildings** - New construction and substantial improvements of elevated buildings that include fully enclosed areas below the lowest floor that are usable solely for the parking of vehicles, building access, or limited storage in an area other than a basement, and which are subject to flooding shall be designed to preclude finished space and be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.
- a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet or exceed all of the following minimum criteria:



- (1) Provide a minimum of two openings on different walls having a *total net area* of not less than one square inch for every square foot of enclosed area subject to flooding.
  - (2) The bottom of each opening must be no more than one (1) foot above the higher of the interior or exterior grade immediately under the opening,
  - (3) Only the portions of openings that are below the base flood elevation (BFE) can be counted towards the required net open area.
  - (4) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
  - (5) Fill placed around foundation walls must be graded so that the grade inside the enclosed area is equal to or higher than the adjacent grade outside the building on at least one side of the building.
- b) Hazardous Velocities - Hydrodynamic pressure must be considered in the design of any foundation system where velocity waters or the potential for debris flow exists. If flood velocities are excessive (greater than 5 feet per second), foundation systems other than solid foundations walls should be considered so that obstructions to damaging flood flows are minimized.
- c) Enclosures Below Lowest Floor
- (1) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).
  - (2) The interior portion of such enclosed area shall not be finished or shall be constructed of flood resistant materials, must be void of utilities except for essential lighting as required for safety. ~~and cannot be temperature controlled.~~
  - (3) One wet location switch and/or outlet connected to a ground fault interrupt breaker may be installed below the required lowest floor elevation specified in the specific standards outlined in Article IV.B.1, 2 and 3.
  - (4) All construction materials below the required lowest floor elevation specified in the specific standards outlined in Article IV.B 1, 2, 3 and 4 should be of flood resistant materials.

5. **Floodways** - Located within areas of special flood hazard established in

Article I.D, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles and has erosion potential. The following provisions shall apply within such areas:

- a) No encroachments, including fill, new construction, substantial improvements, additions, and other developments shall be permitted unless:
  - (1) It has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood. Such certification and technical data shall be presented to the local floodplain administrator.
  - (2) A Conditional Letter of Map revision (CLOMR) has been approved by FEMA. A Letter of Map Revision must be obtained upon completion of the proposed development.
- b) If Article IV.B.5a is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article IV.
- c) No manufactured homes shall be permitted, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and the elevation standards of Article IV B.3 and the encroachment standards of Article IV.B.5 (a) are met.
- d) Permissible uses within floodways may include: general farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife, and related uses. Also, lawns, gardens, play areas, picnic grounds, and hiking and horseback riding trails are acceptable uses, provided that they do not employ structures or fill. Substantial development of a permissible use may require a no-impact certification. The uses listed in this subsection are permissible only if and to the extent that they do not cause any increase in base flood elevations or changes to the floodway configuration.

## **6. Recreational Vehicles**

- a) A recreational vehicle is ready for highway use if it is:
  - (1) on wheels or jacking system
  - (2) attached to the site only by quick-disconnect type utilities and security devices; and
  - (3) has no permanently attached additions

b) Recreational vehicles placed on sites shall either be:

- (1) on site for fewer than 180 consecutive days; or
- (2) be fully licensed and ready for highway use, or **Meet** the development permit and certification requirements of Article III.D, general standards outlined in Article IV.A, and manufactured homes standards in Article IV.B.3 and B.4.

7. **Map Maintenance Activities** – The National Flood Insurance Program (NFIP) requires flood data to be reviewed and approved by FEMA. This ensures that flood maps, studies and other data identified in Article I.D accurately represent flooding conditions so appropriate floodplain management criteria are based on current data. The following map maintenance activities are identified:

a) Requirement to Submit New Technical Data

- (1) For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical or scientific data reflecting such changes be submitted to FEMA as soon as practicable , but no later than six months of the date such information becomes available. These development proposals include; but not limited to::
  - (a) Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;
  - (b) Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area;
  - (c) Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and
  - (d) Subdivision or large scale development proposals requiring the establishment of base flood elevations in accordance with Article IV.C.1.
- (2) It is the responsibility of the applicant to have technical data, required in accordance with Article IV.B.7, prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision, and submitted to FEMA. Submittal and processing fees for these map revisions shall also be the responsibility of the applicant.
- (3) The local floodplain administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for:
  - (a) Proposed floodway encroachments that increase the

base flood elevation; and

(b) Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.

(4) Floodplain development permits issued by the local floodplain administrator shall be conditioned upon the applicant obtaining a Letter of Map Revision from FEMA for any development proposal subject to Article IV B.7.

b) Right to Submit New Technical Data - The floodplain administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or plan metric details. Such a submission shall include appropriate supporting documentation made in writing by the local jurisdiction and may be submitted at any time.

## 8. Accessory Structures

a) A detached accessory structure or garage, the cost of which is greater than \$20,000, must comply with the requirements as outlined in FEMA's Technical Bulletin 7-93 *Wet Flood proofing Requirements or be elevated in accordance with Article IV Section B (1) and B (4) or dry flood proofed in accordance with Article IV B (2).*

b) If accessory structures of \$20,000 or less are to be placed in the floodplain, the following criteria shall be met:

(1) Accessory structures shall not be used for any uses other than the parking of vehicles and storage,

(2) Accessory structures shall be designed to have low flood damage potential,

(3) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters,

(4) Accessory structures shall be firmly anchored to prevent flotation, collapse and lateral movement of the structure,

(5) Service facilities such as electrical and heating equipment shall be installed in accordance with Article IV.A.5,

(6) Openings to relieve hydrostatic pressure during a flood shall be provided below base flood elevation in conformance with Article IV.B.4a, and

(7) Accessory structures shall be built with flood resistance materials in accordance with Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*, dated 8/08, and

available from the Federal Emergency Management Agency. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

9. **Swimming Pool Utility Equipment Rooms** - If the building cannot be built at or above the BFE, because of functionality of the equipment then a structure to house the utilities for the pool may be built below the BFE with the following provisions:

- a) Meet the requirements for accessory structures in Article IV.B.8
- b) The utilities must be anchored to prevent flotation and shall be designed to prevent water from entering or accumulating within the components during conditions of the base flood.

10. **Elevators**

- a) Install a float switch system or another system that provides the same level of safety necessary for all elevators where there is a potential for the elevator cab to descend below the BFE during a flood per FEMA's Technical Bulletin 4-93 Elevator Installation for Buildings Located in Special Flood Hazard Areas.
- b) All equipment that may have to be installed below the BFE such as counter weight roller guides, compensation cable and pulleys, and oil buffers for traction elevators and the jack assembly for a hydraulic elevator must be constructed using flood-resistant materials where possible per FEMA's Technical Bulletin 4-93 Elevator Installation for Buildings Located in Special Flood Hazard Areas.

11. **Fill** - An applicant shall demonstrate that fill is the only alternative to raising the building to meet the residential and non-residential construction requirements of Article IV B(1) or B (2), and that the amount of fill used will not affect the flood storage capacity or adversely affect adjacent properties. The following provisions shall apply to all fill placed in the special flood hazard area:

- a) Fill may not be placed in the floodway unless it is in accordance with the requirements in Article IV.B.5a.
- b) Fill may not be placed in tidal or non-tidal wetlands without the required state and federal permits.
- c) Fill must consist of soil and rock materials only. A registered professional geotechnical engineer may use dredged material as fill only upon certification of suitability. Landfills, rubble fills, dumps, and sanitary fills are not permitted in the floodplain.
- d) Fill used to support structures must comply with ASTM Standard D-698, and its suitability to support structures certified by a registered, professional engineer.

- e) Fill slopes shall be no greater than two horizontal to one vertical. Flatter slopes may be required where velocities may result in erosion.
- f) The use of fill shall not increase flooding or cause drainage problems on neighboring properties.
- g) Fill may not be used for structural support in the coastal high hazard areas.
- h) Will meet the requirements of FEMA Technical Bulletin 10-01, *Ensuring That Structures Built on Fill in or Near Special Flood Hazard Areas Are Reasonable Safe from Flooding*.

## **12. Standards for Subdivision Proposals and other development**

- a) All subdivision proposals and other proposed new development shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations.
- b) All subdivision proposals and other proposed new development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- c) All subdivision proposals and other proposed new development shall have adequate drainage provided to reduce exposure to flood damage.
- d) The applicant shall meet the requirement to submit technical data to FEMA in Article IV B.7 when a hydrologic and hydraulic analysis is completed that generates base flood elevations.

### **C. Standards for Streams without Established Base Flood Elevations and Floodways**

- Located within the areas of special flood hazard (Zones A and V) established in Article I.D, are small streams where no base flood data has been provided and where no floodways have been identified. The following provisions apply within such areas:

1. In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and other proposed developments containing at least 50 lots or 5 acres, whichever is less.
2. No encroachments, including fill, new construction, substantial improvements and new development shall be permitted within 100 feet of the stream bank unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

3. If Article IV.C.1 is satisfied and base flood elevation data is available from other sources, all new construction and substantial improvements within such areas shall comply with all applicable flood hazard ordinance provisions of Article IV and shall be elevated or flood proofed in accordance with elevations established in accordance with Article III.E.11.
4. Data from preliminary, draft, and final Flood Insurance Studies constitutes best available data. Refer to FEMA Floodplain Management Technical Bulletin 1-98 *Use of Flood Insurance Study (FIS) Data as Available Data*. If an appeal is pending on the study in accordance with 44 CFR Ch. 1, Part 67.5 and 67.6, the data does not have to be used.
5. When base flood elevation (BFE) data is not available from a federal, state, or other source one of the following methods may be used to determine a BFE. For further information regarding the methods for determining BFEs listed below, refer to FEMA's manual *Managing Floodplain Development in Approximate Zone A Areas*:

a) Contour Interpolation

- (1) Superimpose approximate Zone A boundaries onto a topographic map and estimate a BFE.
- (2) Add one-half of the contour interval of the topographic map that is used to the BFE.

- b) Data Extrapolation - A BFE can be determined if a site within 500 feet upstream of a reach of a stream reach for which a 100-year profile has been computed by detailed methods, and the floodplain and channel bottom slope characteristics are relatively similar to the downstream reaches. No hydraulic structures shall be present.
- c) Hydrologic and Hydraulic Calculations- Perform hydrologic and hydraulic calculations to determine BFEs using FEMA approved methods and software.

**D. Standards for Streams with Established Base Flood Elevations but without Floodways** - Along rivers and streams where Base Flood Elevation (BFE) data is provided but no floodway is identified for a Special Flood Hazard Area on the FIRM or in the FIS.

1. No encroachments including fill, new construction, substantial improvements, or other development shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

**E. Standards for Areas of Shallow Flooding (AO Zones)** - Located within the areas of special flood hazard established in Article 1.D, are areas designated as shallow

flooding. The following provisions shall apply within such areas:

1. All new construction and substantial improvements of residential structures shall have the lowest floor elevated to at least as high as the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor shall be elevated at least three (3) feet above the highest adjacent grade.
2. All new construction and substantial improvements of non-residential structures shall:
  - a) Have the lowest floor elevated to at least as high as the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor shall be elevated at least three (3) feet above the highest adjacent grade; or,
  - b) Be completely flood-proofed together with attendant utility and sanitary facilities to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as stated in Article III.D.
3. All structures on slopes must have drainage paths around them to guide water away from the structures.

**F. Coastal High Hazard Areas (V-Zones)** Located within the areas of special flood hazard established in Article I.D or Article III.E.11 are areas designated as coastal high hazard areas. These areas have special flood hazards associated with wave wash. The following provisions shall apply within such areas:

1. All new construction and substantial improvements shall be located landward of the reach of mean high tide, first line of stable natural vegetation and comply with all applicable Department of Health and Environmental Control (DHEC) Ocean and Coastal Resource Management (OCRM) setback requirements.
2. All new construction and substantial improvements shall be elevated so that the bottom of the lowest supporting horizontal structural member (excluding pilings or columns) of the lowest floor is located no lower than one (1) foot above the base flood elevation.
3. All buildings or structures shall be securely anchored on pilings or columns, extending vertically below a grade of sufficient depth and the zone of potential scour, and securely anchored to the subsoil strata.



4. All pilings and columns and the attached structures shall be anchored to resist flotation, collapse, lateral movement and scour due to the effect of wind and water loads acting simultaneously on all building components.
5. A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in Article IV Section F 3, 4, 6 and 9 of this ordinance.
6. There shall be no fill used as structural support. Non-compacted fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided the fill will wash out from storm surge, thereby rendering the building free of obstruction prior to generating excessive loading forces, ramping effects, or wave deflection. Only beach compatible sand may be used. The local floodplain administrator shall approve design plans for landscaping/ aesthetic fill only after the applicant has provided an analysis by an engineer, architect, and/or soil scientist that demonstrates that the following factors have been fully considered:
  - a) Particle composition of fill material does not have a tendency for excessive natural compaction,
  - b) Volume and distribution of fill will not cause wave deflection to adjacent properties; and
  - c) Slope of fill will not cause wave run-up or ramping.
7. There shall be no alteration of sand dunes that would increase potential flood damage.
8. All new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Breakaway wall enclosures shall not exceed 299 square feet. Only flood resistant materials shall be used below the required flood elevation specified in Article IV.B. One wet location switch and/or outlet connected to a ground fault interrupt breaker may be installed below the required lowest floor elevation specified in Article IV.B.

Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

- a) Breakaway wall collapse shall result from water load less than that which would occur during the base flood.

b) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). The water loading shall be those values associated with the base flood. The wind loading values shall be those required by applicable IBC International Building Code.

c) Such enclosed space shall be useable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation, finished or partitioned into multiple rooms. ~~or temperature-controlled.~~

9. No manufactured homes shall be permitted except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and elevation standards of Article IV.B.3.

10. Recreational vehicles shall be permitted in Coastal High Hazard Areas provided that they meet the Recreational Vehicle criteria of Article IV B.6 and the Temporary Structure provisions of Article IV F.11

11. Accessory structures, below the required lowest floor elevation specified in Article IV F.2, are prohibited except for the following:

a) Swimming Pools

- (1) They are installed at-grade or elevated so long as the pool will not act as an obstruction
- (2) They must be structurally independent of the building and its foundation.
- (3) They may be placed beneath a coastal building only if the top of the pool and any accompanying decking or walkway are flush with the existing grade and only if the lower area remains unenclosed.
- (4) As part of the certification process for V-zone buildings the design professional must consider the effects that any of these elements will have on the building in question and any nearby buildings.

b) Access Stairs Attached to or Beneath an Elevated Building:

- (1) Must be constructed of flood-resistant materials.
- (2) Must be constructed as open staircases so they do not block flow under the structure in accordance with Article IV.F.2.

c) Decks

- (1) If the deck is structurally attached to a building then the bottom of the lowest horizontal member must be at or above the elevation of the buildings lowest horizontal member.
  - (2) If the deck is to be built below the BFE then it must be structurally independent of the main building and must not cause an obstruction.
  - (3) If an at-grade, structurally independent deck is proposed then a design professional must evaluate the design to determine if it will adversely affect the building and nearby buildings.
12. Parking areas should be located on a stable grade under or landward of a structure. Any parking surface shall consist of gravel or aggregate.
13. Electrical, ventilation, plumbing, heating and air conditioning equipment (including ductwork), and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of base flood event plus one (1) foot. This requirement does not exclude the installation of outdoor faucets for shower heads, sinks, hoses, etc., as long as cut off devices and back flow prevention devices are installed to prevent contamination to the service components and thereby minimize any flood damages to the building. No utilities or components shall be attached to breakaway walls.

## Article V. VARIANCE PROCEDURES

- A. **Establishment of Appeal Board** - The Building Code Board of Appeals as established by Georgetown County Council, shall hear and decide requests for variances from the requirements of this ordinance.
- B. **Right to Appeal** - Any person aggrieved by the decision of the appeal board or any taxpayer may appeal such decision to the Court.
- C. **Historic Structures** - Variances may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- D. **Functionally Dependent Uses** - Variances may be issued for development necessary for the conduct of a functionally dependent use, provided the criteria of this Article are met, no reasonable alternative exist, and the development is protected by methods that minimize flood damage and create no additional threat to public safety.
- E. **Agricultural Structures** - Variances may be issued to wet flood proof an agricultural structure provided it is used solely for agricultural purposes. In order to minimize flood damages during the base flood and the threat to public health and safety, the structure must meet all of the conditions and considerations of Article V.H, this section, and the following standards:

1. Use of the structure must be limited to agricultural purposes as listed below:
  - a) Pole frame buildings with open or closed sides used exclusively for the storage of farm machinery and equipment,
  - b) Steel grain bins and steel frame corncribs,
  - c) General-purpose barns for the temporary feeding of livestock that are open on at least one side;
  - d) For livestock confinement buildings, poultry houses, dairy operations, and similar livestock operations, variances may not be issued for structures that were substantially damaged. New construction or substantial improvement of such structures must meet the elevation requirements of Article IV.B.2 of this ordinance; and,
2. The agricultural structure must be built or rebuilt, in the case of an existing building that is substantially damaged, with flood-resistant materials for the exterior and interior building components and elements below the base flood elevation.
3. The agricultural structure must be adequately anchored to prevent flotation, collapse, or lateral movement. All of the structure's components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, hydrodynamic, and debris impact forces. Where flood velocities exceed 5 feet per second, fast-flowing floodwaters can exert considerable pressure on the building's enclosure walls or foundation walls.
4. The agricultural structure must meet the venting requirement of Article IV.B.4 of this ordinance.
5. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation (BFE), plus any required freeboard, or be contained within a watertight, flood proofed enclosure that is capable of resisting damage during flood conditions in accordance with Article IV.A.5 of this ordinance
6. The agricultural structure must comply with the floodway encroachment provisions of Article IV.B.5 of this ordinance.
7. Major equipment, machinery, or other contents must be protected. Such protection may include protective watertight flood proofed areas within the building, the use of equipment hoists for readily elevating contents, permanently elevating contents on pedestals or shelves above the base flood elevation, or determining that property owners can safely remove contents without risk to lives and that the contents will be located to a specified site out of the floodplain.

F. **Considerations** - In passing upon such applications, the appeal board shall

consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage, and the safety of access to the property in times of flood for ordinary and emergency vehicles;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;
6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
7. The compatibility of the proposed use with existing and anticipated development, and the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
8. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
9. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges; and
10. Agricultural structures must be located in wide, expansive floodplain areas, where no other alternative location for the agricultural structure exists. The applicant must demonstrate that the entire farm acreage, consisting of a contiguous parcel of land on which the structure is to be located, must be in the Special Flood Hazard Area and no other alternative locations for the structure are available.

**G. Findings** - Findings listed above shall be submitted to the appeal board, in writing, and included in the application for a variance. Additionally, comments from the Department of Natural Resources, Land, Water and Conservation Division, State Coordinator's Office, must be taken into account and included in the permit file.

**H. Floodways** - Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result unless a CLOMR is obtained prior to issuance of the variance. In order to ensure the project is built in compliance with the CLOMR for which the variance is granted the applicant must provide a bond for 100% of the cost to perform the development.

I. **Conditions** - Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance. The following conditions shall apply to all variances:

1. Variances may not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
2. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
3. Variances shall only be issued upon a showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship, and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
4. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk. Such notification shall be maintained with a record of all variance actions.
5. The local floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency (FEMA) upon request.
6. Variances shall not be issued for unpermitted development or other development that is not in compliance with the provisions of this ordinance. Violations must be corrected in accordance with Article III.E.5 of this ordinance.

## Article VI. **LEGAL STATUS PROVISIONS**

### A. **Effect on Rights and Liabilities under the Existing Flood Damage Prevention Ordinance**

- This Ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted on November 10, 2015 and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued there under are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of Georgetown County enacted on November 10, 2015, as amended, which are not reenacted herein, are repealed.

### B. **Effect upon Outstanding Building Permits** - Nothing herein contained shall require any change in the plans, construction, size or designated use of any building, structure or part thereof for which a building permit has been granted by the Chief Building Inspector or his authorized agents before the time of passage of

this ordinance; provided, however, that when start of construction has not occurred under such outstanding permit within a period of sixty (60) days subsequent to passage of this ordinance, construction or use shall be in conformity with the provisions of this ordinance.

Affix local Seal Here

DONE, RATIFIED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_  
2018.

\_\_\_\_\_  
Johnny Morant  
Chairman, Georgetown County

ATTEST:

\_\_\_\_\_  
Theresa Floyd  
Clerk to Council

This Ordinance, No. \_\_\_\_\_ has been reviewed by me and is hereby approved as to form and legality.

\_\_\_\_\_  
Wesley P. Bryant  
Georgetown County Attorney

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Third Reading: \_\_\_\_\_

**Item Number:** 11.a

**Meeting Date:** 9/24/2019

**Item Type:** SECOND READING OF ORDINANCES

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** Legal

**ISSUE UNDER CONSIDERATION:**

ORDINANCE NO. 19-18 - AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN GEORGETOWN COUNTY, SOUTH CAROLINA (THE "COUNTY") AND A COMPANY IDENTIFIED FOR THE TIME BEING AS PROJECT EAGLE, ACTING FOR ITSELF, ONE OR MORE AFFILIATES, AND/OR OTHER PROJECT SPONSORS (THE "COMPANY"), WITH RESPECT TO THE ESTABLISHMENT AND/OR EXPANSION OF OF CERTAIN FACILITIES IN THE COUNTY (COLLECTIVELY, THE "PROJECT"); (2) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; AND (3) OTHER MATTERS RELATING THERETO.

**CURRENT STATUS:**

Pending adoption.

**POINTS TO CONSIDER:**

Georgetown County, South Carolina, acting by and through its County Council is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended, particularly Title 12, Chapter 44 of the Code and Title 4, Chapter 1 of the Code and by Article VIII, Section 13(D) of the South Carolina Constitution:

*(i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State;*

*(ii) to covenant with such investors to accept certain fee in lieu of ad valorem tax ("FILOT") payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; and*

*(iii) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors.*

One or more companies identified for the time being, collectively, as Project Eagle, each acting for itself, one or more affiliates, and/or other project sponsors, proposes to establish and/or expand certain facilities at one or more locations in the County, and anticipate that, should their plans proceed as expected, they will invest, or cause to be invested, at least \$10,700,000 in the Project and will create, or cause to be created, at least 74 new, full-time jobs within the County.

**OPTIONS:**

1. Adoption of Ordinance No. 19-18.
2. Decline adoption of Ordinance No. 19-18.



**STAFF RECOMMENDATIONS:**

Adoption of Ordinance No. 19-18.

*NOTE: A motion to amend will be required at 2nd reading to incorporate proposed text, as Ordinance No. 19-18 was introduced by title only.*

**ATTACHMENTS:**

Description		Type
▣	Ordinance No 19-18 Authorizing a FILOT Agreement with Project Eagle	Ordinance
▣	FILOT Agreement Project Eagle	Backup Material

**GEORGETOWN COUNTY  
ORDINANCE NO. 19-18**

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN GEORGETOWN COUNTY, SOUTH CAROLINA (THE "COUNTY") AND ONE OR MORE COMPANIES IDENTIFIED FOR THE TIME BEING, COLLECTIVELY, AS PROJECT EAGLE, EACH ACTING FOR ITSELF, ONE OR MORE AFFILIATES, AND/OR OTHER PROJECT SPONSORS (THE "COMPANIES"), WITH RESPECT TO THE ESTABLISHMENT AND/OR EXPANSION OF CERTAIN FACILITIES IN THE COUNTY (COLLECTIVELY, THE "PROJECT"); (2) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANIES AND THE PROJECT; AND (3) OTHER MATTERS RELATING THERETO.

WHEREAS, Georgetown County, South Carolina (the "County"), acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act") (collectively, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; and (iii) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors; and

WHEREAS, one or more companies identified for the time being, collectively, as Project Eagle, each acting for itself, one or more affiliates, and/or other project sponsors (the "Companies"), proposes to establish and/or expand certain facilities at one or more locations in the County (the "Project"), and anticipate that, should their plans proceed as expected, they will invest, or cause to be invested, at least \$10,700,000 in the Project and will create, or cause to be created, at least 74 new, full-time jobs within the County, in the aggregate; and

WHEREAS, based on information provided to the County by the Companies, the County has determined that the Project would subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations, and in order to induce the Companies to locate the Project in the County, the Council is enacting this Ordinance, which Ordinance is also intended to serve as an "inducement resolution" for the purposes of Section 12-44-30(11) of the Negotiated FILOT Act, whereby the County has determined to provide the

benefits of a negotiated FILOT and a multi-county industrial or business park with respect to the Project; and

WHEREAS, the County and the Companies have agreed to the specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and between the County and the Companies with respect to the Project (the “Incentive Agreement”), the form of which Incentive Agreement is presented to this meeting, and which Incentive Agreement is to be dated as of \_\_\_\_\_, 2019 or such other date as the parties may agree; and

WHEREAS, it appears that the Incentive Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the Council, as follows:

Section 1. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Incentive Agreement. Additionally, as contemplated by Section 12-44-40(I) of the Negotiated FILOT Act, based on information provided to the County by the Companies with respect to the Project, the County makes the following findings and determinations:

- (a) The Project will constitute a “project” within the meaning of the Negotiated FILOT Act; and
- (b) The Project, and the County’s actions herein, will subserve the purposes of the Negotiated FILOT Act; and
- (c) The Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise provided locally; and
- (d) The Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; and
- (e) The purposes to be accomplished by the Project are proper governmental and public purposes; and
- (f) The benefits of the Project are greater than the costs.

Section 2.

(a) The County hereby agrees to enter into the Incentive Agreement, which agreement shall be in the form of a fee agreement, pursuant to the Negotiated FILOT Act, whereby the Companies will agree to satisfy, or cause to be satisfied, certain investment requirements with respect to the Project within certain prescribed time periods and the County will agree to accept certain negotiated FILOT payments with respect to the Project (the “Negotiated FILOT”), as set forth in **Section 2(b)** hereof and in accordance with the terms of the Incentive Agreement.

(b)

(i) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 6%, (2) a millage rate of \_\_\_ mills, which millage rate or millage rates shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the full term of the Negotiated FILOT; (3) the fair market value of the Project, as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act; and (4) such other terms and conditions as will be specified in the Incentive Agreement including, but not limited to, that the Companies and the Project shall be entitled to the maximum benefits allowable under the Negotiated FILOT Act with respect to the disposal and replacement of Project property.

(ii) The Negotiated FILOT shall be calculated as provided in this **Section 2(b)** for all Negotiated FILOT Property placed in service during the Investment Period. For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT payments shall be payable for a payment period of thirty (30) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a payment period of thirty (30) years up to an aggregate of thirty-five (35) years or, if the Investment Period is extended as set forth in the Incentive Agreement, up to an aggregate of forty (40) years.

Section 3. The County agrees to locate the Project and the Land within the boundaries of a multi-county industrial or business park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution, if not already so included, and agrees to maintain the Project and the Land within the boundaries of such a multi-county industrial or business park on terms which provide for all jobs created at the Project from January 1, 2020 through the end of the Investment Period, any additional jobs tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks, and on terms, and for a duration.

Section 4. The County will use its best efforts to assist the Companies in securing grants and other funding for infrastructure and other improvements in support of the Project, including, but not limited to, any State grant funding and funding now or hereafter provided by one or more utilities in support of the Project.

Section 5. The form, provisions, terms, and conditions of the Incentive Agreement presented to this meeting and filed with the Clerk to the Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement was set out in this Ordinance in its entirety. The Incentive Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon the advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Incentive Agreement now before this meeting.

Section 6. The Chairman of the Council is hereby authorized, empowered, and directed to execute the Incentive Agreement in the name and on behalf of the County; the Clerk to the Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the Council is further authorized, empowered, and directed to deliver the Incentive Agreement to the Companies. The Chairman of the Council, the County Administrator of the County, and the Clerk to the Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to Incentive Agreement, and to carry out the transactions contemplated thereby and by this Ordinance.

Section 7. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

Section 8. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall take effect and be in full force from and after its passage and approval.

[End of Ordinance]

Enacted and approved, in meeting duly assembled, this \_\_\_\_ day of \_\_\_\_\_, 2019.

GEORGETOWN COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
John Thomas, Chairman, County Council  
Georgetown County, South Carolina

[SEAL]

Attest:

By: \_\_\_\_\_  
Theresa Floyd, Clerk to County Council  
Georgetown County, South Carolina

First Reading: August 27, 2019  
Second Reading: September 24, 2019  
Public Hearing: October 8, 2019  
Third Reading: October 8, 2019

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

by and among

GEORGETOWN COUNTY, SOUTH CAROLINA,

and

PROJECT EAGLE I,

and

PROJECT EAGLE II.

Dated as of \_\_\_\_\_, 2019

---

## TABLE OF CONTENTS

	<b>Page</b>
ARTICLE I      DEFINITIONS.....	2
Section 1.01    Definitions.....	2
Section 1.02    References to Agreement.....	7
ARTICLE II      REPRESENTATIONS AND WARRANTIES.....	7
Section 2.01    Representations and Warranties by County.....	7
Section 2.02    Representations and Warranties by Project Eagle I.....	8
Section 2.03    Representations and Warranties by Project Eagle II.....	8
ARTICLE III      COVENANTS OF COUNTY .....	9
Section 3.01    Agreement to Accept Negotiated FILOT Payments.....	9
Section 3.02    Multi-County Park Designation.....	9
Section 3.03    Commensurate Benefits .....	9
Section 3.04    Funding Assistance .....	10
Section 3.05    County Lease Payment Obligation .....	10
ARTICLE IV      COVENANTS OF THE COMPANIES .....	10
Section 4.01    Investment in Project .....	10
Section 4.02    Payment of Administration Expenses.....	13
Section 4.03    Use of Project for Lawful Activities.....	13
Section 4.04    Maintenance of Existence .....	13
Section 4.05    Records and Reports .....	14
ARTICLE V      FEES IN LIEU OF TAXES.....	15
Section 5.01    Payment of Fees in Lieu of Ad Valorem Taxes.....	15
Section 5.02    Statutory Lien.....	20
ARTICLE VI      THIRD PARTY ARRANGEMENTS .....	20
Section 6.01    Conveyance of Liens and Interests; Assignment.....	20
Section 6.02    Sponsors and Sponsor Affiliates.....	22
ARTICLE VII      TERM; TERMINATION.....	22
Section 7.01    Term.....	22
Section 7.02    Termination.....	22
ARTICLE VIII    EVENTS OF DEFAULT AND REMEDIES .....	23
Section 8.01    Events of Default .....	23
Section 8.02    Remedies on Event of Default .....	23
Section 8.03    Defaulted Payments .....	24
Section 8.04    Default by County.....	24



**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
ARTICLE IX MISCELLANEOUS .....	24
Section 9.01 Rights and Remedies Cumulative.....	24
Section 9.02 Successors and Assigns.....	24
Section 9.03 Notices; Demands; Requests.....	24
Section 9.04 Applicable Law .....	26
Section 9.05 Entire Understanding .....	26
Section 9.06 Severability .....	26
Section 9.07 Headings and Table of Contents; References .....	26
Section 9.08 Multiple Counterparts .....	26
Section 9.09 Amendments .....	27
Section 9.10 Waiver.....	27
Section 9.11 Further Proceedings .....	27
EXHIBIT A LAND DESCRIPTION.....	A-1

## FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this “Agreement”) dated as of \_\_\_\_\_, 2019, by and among GEORGETOWN COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina and Project Eagle I, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, acting for itself, one or more affiliates, and/or other project sponsors (“Project Eagle I”), and Project Eagle II, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, acting for itself, one or more affiliates, and/or other project sponsors (“Project Eagle II”), both previously identified, collectively, as PROJECT EAGLE (Project Eagle I and Project Eagle II, each a “Company” as set forth herein, with respect to its respective portion of the Project, and collectively referred to herein as the “Companies”).

### W I T N E S S E T H:

WHEREAS, the County, acting by and through its County Council (the “Council”), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the “Code”), particularly Title 12, Chapter 44 of the Code (the “Negotiated FILOT Act”) and Title 4, Chapter 1 of the Code (the “Multi-County Park Act” and, together with the Negotiated FILOT Act, the “Act”) and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the “State”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax (“FILOT”) payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; and (iii) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors; and

WHEREAS, the Companies are considering the establishment and/or expansion of certain manufacturing and related facilities at one or more locations in the County (the “Project”), and anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, at least \$10,700,000 in the Project, in the aggregate, and will create, or cause to be created, at least 74 new, full-time jobs, in the aggregate, within the County, all by the end of the Compliance Period (as defined herein) as set forth in greater detail herein; and

WHEREAS, the County has determined that the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Companies to locate the Project in the County, the County has determined, amongst other things, to provide the benefits of a negotiated FILOT and a multi-county industrial or business park with respect to the Project; and

WHEREAS, the County has determined that it is in the best interests of the County to enter into this Agreement with the Companies, subject to the terms and conditions set forth herein, and, by Ordinance No. \_\_\_\_\_ enacted by the Council on \_\_\_\_\_, 2019, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Project.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, the above recitals which are incorporated herein by reference, the potential investment to be made, or caused to be made, and the potential jobs to be created, or caused to be created, by the Companies, in the aggregate, which contribute to the tax base and the economic welfare of the County, the respective representations and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Companies agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01 Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used herein and in the preambles hereto shall have the following meanings unless the context or use indicates another or different meaning or intent.

“*Act*” shall mean, collectively, the Negotiated FILOT Act and the Multi-County Park Act.

“*Administration Expenses*” shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable and necessary attorney’s fees at the hourly rates which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by any Company or any other Co-Investor under **Section 8.04** hereof; provided, however, that no such expense shall be considered an Administration Expense unless such Company, or other Co-Investor, required to pay such expense hereunder, shall have first agreed, prior to the County incurring such expense, as to the maximum amount thereof or as to the basis for which such expenses will be incurred, and the County shall have furnished to such Company, or other Co-Investor, as the case may be, an itemized statement of all such expenses incurred.

“*Affiliate*” shall mean, with respect to any Company or any other Co-Investor, any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of such Company or such other Co-Investor, as the case may be, or which is now or hereafter owned in whole or in part by such Company or such other Co-Investor, as the case may be, or by any partner, shareholder or owner of such Company or such other Co-Investor, as the case may be, and shall also include any subsidiary, affiliate or other Person,

individual, or entity who now or hereafter bears a relationship to such Company or such other Co-Investor, as the case may be, as described in Section 267(b) of the Internal Revenue Code.

*“Agreement”* shall mean this Fee in Lieu of Tax and Incentive Agreement as originally executed and, from time to time, supplemented or amended, as permitted herein.

*“Code”* shall mean the Code of Laws of South Carolina 1976, as amended, unless the context clearly requires otherwise.

*“Co-Investor”* shall mean any Company, any other Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act, any Affiliate of any Company or of any such other Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement or other leasing arrangement with respect to the Project, any lessor of equipment or other property comprising a part of the Project, and any financing entity or other third party investing in, or providing funds for, the Project. Any Company shall notify the County in writing of the identity of any other Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent such Company and any such other Sponsor, Sponsor Affiliate, or other Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by any Sponsor, Sponsor Affiliate, or such other Co-Investor pursuant to **Section 6.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Negotiated FILOT Act. As of the date of the original execution and delivery of this Agreement, **[the Companies are the only Co-Investors.]**

*“Company”* shall mean each of (i) Project Eagle I, and (ii) Project Eagle II, each with respect to their respective portions of the Project, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.04** or **6.01** hereof or any other assignee or transferee hereunder which is designated by each respective Company and approved by the County.

*“Compliance Period”* shall mean the period commencing with the first day that Project property is purchased or acquired, whether before or after the date of this Agreement, and ending on the fifth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Project is placed in service as set forth in Section 12-44-30(13) of the Negotiated FILOT Act. It is presently anticipated, but not required, that the initial Negotiated FILOT Property comprising all or a portion of the Project will be placed in service in the Property Tax Year ending on December 31, **[2020]**, and, in such event, the Compliance Period will end on December 31, **[2025]**.

*“County”* shall mean Georgetown County, South Carolina, a body politic and corporate and a political subdivision of the State, and its successors and assigns.

*“Council”* shall mean the governing body of the County and its successors.

*“Deficiency Payment”* shall have the meaning specified in **Section 5.01(e)** hereof.

*“Department of Revenue”* shall mean the South Carolina Department of Revenue and any successor thereof.

*“Event of Default”* shall mean an Event of Default, as set forth in **Section 8.01** hereof.

*“Existing Property”* shall mean property which will not qualify for the Negotiated FILOT pursuant to Section 12-44-110 of the Negotiated FILOT Act, including, without limitation, property which has been subject to *ad valorem* taxes in the State prior to commencement of the Investment Period and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not be required to include: (a) the Land; (b) property acquired or constructed by or on behalf of any Company or any other Sponsor or Sponsor Affiliate during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property, or property which has been placed in service in the State pursuant to an inducement agreement or other preliminary approval by the County prior to execution of this Agreement pursuant to Section 12-44-40(E) of the Negotiated FILOT Act, which property shall qualify as Negotiated FILOT Property; (c) property purchased by or on behalf of any Company or any other Sponsor or Sponsor Affiliate during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that such Company or such other Sponsor or Sponsor Affiliate invests at least an additional \$45,000,000 in the Project, exclusive of the property identified in this subsection (c); or (d) modifications which constitute an expansion of the real property portion of Existing Property.

*“FILOT”* shall mean fee in lieu of *ad valorem* property taxes.

*“FILOT Payment”* or *“FILOT Payments”* shall mean the FILOT payments to be made by any Company or any other Co-Investor with respect to the Project, whether made as Negotiated FILOT Payments pursuant to **Section 5.01** hereof or as FILOT payments made pursuant to the Multi-County Park Act.

*“Investment Period”* shall mean the period for completion of the Project, which shall initially be equal to the Compliance Period; provided, however, that, if the Minimum Statutory Investment Requirement is satisfied by the end of the Compliance Period, the Investment Period shall be automatically extended, without further action or proceedings of the County, by five (5) years beyond the Compliance Period to end on the tenth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Project is placed in service as set forth in Section 12-44-30(13) of the Negotiated FILOT Act; provided that there shall be no extension of the period for meeting the Minimum Statutory Investment Requirement beyond the Compliance Period, all determined as specified in Section 12-44-30(13) of the Negotiated FILOT Act. In the event that the initial Negotiated FILOT Property comprising all or a portion of the Project is, as presently anticipated, placed in service

in the Property Tax Year ending on December 31, [2020], and upon any such extension, the Investment Period will end on December 31, [2030].

*“Land”* shall mean the land upon which the Project has been or will be acquired, constructed and equipped, as described in **Exhibit A** attached hereto, as **Exhibit A** may be revised, modified, or supplemented from time to time in accordance with the provisions hereof.

*“Minimum Contractual Investment Requirement”* shall mean investment in the Project, within the period commencing on the first day that Project property comprising all or a portion of the Project is purchased or acquired, whether before or after the date of this Agreement, and ending at the end of Compliance Period, by the Companies and all Co-Investors, in the aggregate, of at least \$10,700,000 (without regard to depreciation or other diminution in value).

*“Minimum Jobs Requirement”* shall mean the creation of at least 74 new, full-time jobs in the County by the Companies and all Co-Investors, in the aggregate, within the period commencing on January 1, [2020] and ending at the end of the Compliance Period.

*“Minimum Statutory Investment Requirement”* shall mean investment in the Project of not less than \$2,500,000 within the Compliance Period, as set forth in Section 12-44-30(14) of the Negotiated FILOT Act, which investment amount shall be calculated in accordance with, and subject to, Section 12-44-130 of the Negotiated FILOT Act and **Section 6.02** hereof.

*“Multi-County Park”* shall mean the multi-county industrial or business park established pursuant to the Multi-County Park Act and the Multi-County Park Agreement, and any multi-county industrial or business park which now or hereafter includes the Project and which is designated by the County as such pursuant to any agreement, which supersedes or replaces the initial Multi-County Park Agreement.

*“Multi-County Park Act”* shall mean Title 4, Chapter 1 of the Code.

*“Multi-County Park Agreement”* shall mean that certain Agreement for Development of Joint County Industrial/Business Park (Georgetown County Project Eagle Park) by and between the County and Horry County, South Carolina dated as of \_\_\_\_\_, 2019 as supplemented, modified or amended, and, as such agreement may be further supplemented, modified, amended, or replaced from time to time.

*“Negotiated FILOT”* or *“Negotiated FILOT Payments”* shall mean the FILOT payments due pursuant to **Section 5.01** hereof with respect to the portion of the Project consisting of Negotiated FILOT Property qualifying under the Negotiated FILOT Act for the negotiated assessment ratio and millage rate or rates described in **Section 5.01(b)(ii)** hereof.

*“Negotiated FILOT Act”* shall mean Title 12, Chapter 44 of the Code.

*“Negotiated FILOT Property”* shall mean all property qualifying for the Negotiated FILOT as economic development property within the meaning of Section 12-44-30(6) of the

Negotiated FILOT Act, including, without limitation, each item of real and tangible personal property comprising the Project which is placed in service during the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Negotiated FILOT Act, together with all Replacement Property, but excluding any Non-Qualifying Property and any Released Property.

*“Non-Qualifying Property”* shall mean that portion of the real and personal property located on the Land, which does not qualify as Negotiated FILOT Property, such Non-Qualifying Property to include: (i) Existing Property; (ii) except as to Replacement Property, property which any Company or any other Sponsor or Sponsor Affiliate places in service after the end of the Investment Period; and (iii) any other property which fails or ceases to qualify for Negotiated FILOT Payments under the Negotiated FILOT Act or under this Agreement, including without limitation property as to which any Company or any other Sponsor or Sponsor Affiliate has terminated the Negotiated FILOT pursuant to **Section 4.01(e)(iii)** hereof.

*“Person”* shall mean and include any individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, or government or agency or political subdivision thereof.

*“Project”* shall mean: (i) the Land and all buildings, structures, fixtures and other real property improvements now or hereafter constructed on the Land; (ii) all machinery, equipment, furnishings and other personal property now or hereafter acquired by or on behalf of any Company or any other Co-Investor for use on or about the Land; and (iii) any Replacement Property; provided, however, except as to Replacement Property, the term Project shall be deemed to include any such real property improvements and personal property, whether now existing or hereafter constructed, improved, acquired or equipped, only to the extent placed in service during the Investment Period.

*“Property Tax Year”* shall mean the annual period which is equal to the fiscal year of any Company, or any other Co-Investor, as the case may be, which, with respect to the Companies is the annual period ending on December 31 of each year.

*“Released Property”* shall include property which was initially Negotiated FILOT Property but which is scrapped, sold, disposed of, or released from this Agreement by any Company or any other Sponsor or Sponsor Affiliate pursuant to **Section 4.01(e)** hereof and Section 12-44-50(B) of the Negotiated FILOT Act, any portion of the Negotiated FILOT Property constituting infrastructure which any Company or any other Sponsor or Sponsor Affiliate dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code, or property which is damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

*“Replacement Property”* shall mean all property placed in service on the Land in substitution of, or as replacement for, any Negotiated FILOT Property which becomes Released Property, regardless of whether such property serves the same function as the property it replaces and regardless of whether more than one piece of such property replaces a single piece of the

Negotiated FILOT Property, to the maximum extent that such property may be included in the calculation of the Negotiated FILOT pursuant to **Section 5.01(d)** hereof and Section 12-44-60 of the Negotiated FILOT Act.

*“Sponsor”* and *“Sponsor Affiliate”* shall mean an entity whose investment with respect to the Project will qualify for the Negotiated FILOT pursuant to **Section 6.02** hereof and Sections 12-44-30(19) or (20) and Section 12-44-130 of the Negotiated FILOT Act if the statutory investment requirements are met. As of the original execution and delivery of the Agreement, **[the only Sponsors are the Companies]** and there are **[no Sponsor Affiliates]**.

*“State”* shall mean the State of South Carolina.

*“Term”* shall mean the term of this Agreement, as set forth in **Section 7.01** hereof.

*“Transfer Provisions”* shall mean the provisions of Section 12-44-120 of the Negotiated FILOT Act.

Section 1.02 References to Agreement. The words “hereof”, “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations and Warranties by County. The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the Council, the County has duly authorized the execution and delivery of this Agreement and has duly approved the Negotiated FILOT and the inclusion and maintenance of the Project in the Multi-County Park, all as set forth herein, and any and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby.

(b) On the basis of information supplied to it by the Companies, the County has determined the Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.

(c) This Agreement has been duly authorized, executed and delivered on behalf of the County. The authorization, execution, and delivery of this Agreement and the performance by the County of its obligations hereunder will not, to the best



knowledge of the County, conflict with or constitute a breach of, or a default under, any South Carolina law, court or administrative regulation, decree, order, provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage, lease, or other instrument to which the County is subject or by which it is bound, nor, to the best knowledge of the County, any existing law or the provisions of the Constitution of the State.

(d) To the best knowledge of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, any of which to the best knowledge of the County could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

Section 2.02 Representations and Warranties by Project Eagle I. Project Eagle I makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Project Eagle I is a limited liability company validly existing and in good standing under the laws of the State of South Carolina, has all requisite power to enter into this Agreement and to carry out its obligations hereunder, and by proper action has been duly authorized to execute and deliver this Agreement. Project Eagle I's fiscal year end is **[December 31]** and it will notify the County of any changes in its fiscal year.

(b) Project Eagle I intends that the Project be operated as manufacturing and related facilities primarily for \_\_\_\_\_.

(c) The agreements with the County with respect to the Negotiated FILOT and the Multi-County Park were factors in inducing Project Eagle I to locate its portion of the Project within the County and the State.

(d) To the best knowledge of Project Eagle I, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting Project Eagle I in any court or before any governmental authority or arbitration board or tribunal, which would materially adversely affect this Agreement or which would, in any way, adversely affect the validity or enforceability of this Agreement, or the transactions contemplated hereby.

Section 2.03 Representations and Warranties by Project Eagle II. Project Eagle II makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Project Eagle II is a limited liability company validly existing and in good standing under the laws of the State of South Carolina, has all requisite power to enter into this Agreement and to carry out its obligations hereunder, and by proper action has

been duly authorized to execute and deliver this Agreement. Project Eagle II's fiscal year end is **[December 31]** and it will notify the County of any changes in its fiscal year.

(b) Project Eagle II intends that the Project be operated as manufacturing and related facilities primarily for \_\_\_\_\_.

(c) The agreements with the County with respect to the Negotiated FILOT and the Multi-County Park were factors in inducing Project Eagle II to locate its portion of the Project within the County and the State.

(d) To the best knowledge of Project Eagle II, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting Project Eagle II in any court or before any governmental authority or arbitration board or tribunal, which would materially adversely affect this Agreement or which would, in any way, adversely affect the validity or enforceability of this Agreement, or the transactions contemplated hereby.

### ARTICLE III

#### COVENANTS OF COUNTY

Section 3.01 Agreement to Accept Negotiated FILOT Payments. The County hereby agrees to accept Negotiated FILOT Payments in accordance with the provisions of **Section 5.01** hereof in lieu of *ad valorem* taxes with respect to that portion of the Project consisting of Negotiated FILOT Property until this Agreement expires or is sooner terminated.

Section 3.02 Multi-County Park Designation. The County agrees to locate the Project and the Land within the boundaries of the Multi-County Park, if not already so designated, and agrees to maintain the Project and the Land within the boundaries of the Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution on terms which provide for all jobs created at the Project from January 1, **[2020]** through the end of the Investment Period, any additional jobs tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks, and on terms, and for a duration.

Section 3.03 Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Companies and each other Co-Investor the benefits specified in this Article III in consideration of the Companies' decision to locate the Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Act is, in whole or in part, unconstitutional or this Agreement, the Multi-County Park Agreement, or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should any Company determine there is a reasonable doubt as to the validity or enforceability of this Agreement or the Multi-County Park Agreement in any material respect, then at the request of

any Company, the County agrees to use its best efforts, and to take such other steps as may be necessary, to extend to the Companies and each other Co-Investor the intended benefits of this Agreement, including, but not limited to, the Negotiated FILOT and agrees, if requested by any Company, to enter into a lease purchase agreement with each Company and each other Sponsor or Sponsor Affiliate pursuant to Section 12-44-160 of the Negotiated FILOT Act and Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable. In furtherance of this covenant, the County also agrees that, in the event that, for any reason, the Multi-County Park is declared by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the Companies and the County express their intentions that tax or FILOT payments be reformed so as to best afford each Company and each other Co-Investor benefits commensurate with, but not in excess of, those intended under this Agreement, as then permitted by law, including, without limitation, any benefits afforded under Title 12, Chapter 6, Title 4, Chapter 1 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. Each Company acknowledges, if a court of competent jurisdiction holds all or part of the Negotiated FILOT Act is unconstitutional or otherwise illegal, the Negotiated FILOT Act currently provides that each Company and each other Sponsor or Sponsor Affiliate must transfer their respective portion of the Negotiated FILOT Property to the County within one hundred eighty (180) days following such determination in order for the Negotiated FILOT benefits to continue to apply to such property.

Section 3.04 Funding Assistance. The County will use its best efforts to assist the Companies in securing grants and other funding for infrastructure and other improvements, comprising, or in support of, the Project, including, but not limited to, any State grant funding and funding now or hereafter provided by one or more utilities in support of the Project.

Section 3.05 County Lease Payment Obligation.

[To be inserted.]

ARTICLE IV

COVENANTS OF THE COMPANY

Section 4.01 Investment in Project.

(a) Each Company shall acquire, construct, equip, or improve or cause to be acquired, constructed, equipped, or improved, its respective portion of the Project, as the same shall be determined from time to time by such entity in its sole discretion. As required by Section 12-44-30(2) of the Negotiated FILOT Act, at least a portion of the Negotiated FILOT Property comprising the Project shall be placed in service no later than the end of the Property Tax Year which is three years from the year in which this Agreement is entered, *i.e.*, the Property Tax Year ending on December 31, [2022].

(b) Notwithstanding anything herein to the contrary, and to the maximum extent permitted by law, investment and job creation by any and all other Co-Investors shall together with investment and job creation by the Companies, count toward all

investment and job creation requirements, thresholds, and levels set forth in this Agreement, including, without limitation, the Minimum Contractual Investment Requirement, the Minimum Jobs Requirement, and, to the full extent permitted by the Negotiated FILOT Act, the Minimum Statutory Investment Requirement. Aggregate investment shall generally be determined by reference to the property tax returns of each Company and each other Co-Investor filed with respect to the Project, including without limitation, each such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act, without regard to depreciation or other diminution in value.

(c) To encourage increased investment in the Project, the County hereby agrees that in the event the Minimum Statutory Investment Requirement is satisfied by the end of Compliance Period, the Investment Period shall be automatically extended, without further action or proceedings of the County, by five (5) years beyond the end of the Compliance Period, and the County hereby agrees to such extension. There shall be no extension, however, beyond the Compliance Period of the period for meeting the Minimum Statutory Investment Requirement. In the event that the initial Negotiated FILOT Property comprising all or a portion of the Project is, as the parties presently anticipate, placed in service in the Property Tax Year ending on December 31, [2020], and upon any such extension, the Investment Period would extend through December 31, [2030].

(d) Subject to the provisions of **Sections 4.04 and 6.01** hereof, each Company and each other Co-Investor shall, retain title to, or other property rights in, its respective portion of the Project throughout the Term of this Agreement, and each Company and each other Co-Investor shall have full right to mortgage, lease, or encumber all or any portion of the Project, including without limitation, in connection with any financing transactions, all without the consent of the County.

(e) Each Company and each other Co-Investor shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) Each Company and each other Co-Investor may, at its own expense, add to the Project all such real and personal property as each Company, or such other Co-Investor, in its discretion deems useful or desirable, including, without limitation, Negotiated FILOT Property, without any limit as to the amount thereof.

(ii) Subject to the provisions of **Section 5.01(f)(ii)** hereof, in any instance when each Company or any other Co-Investor, in its discretion, determines any property included in the Project, including without limitation, any Negotiated FILOT Property, has become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, such Company or such other Co-Investor may remove such property from the Project and sell, trade in, exchange, or

otherwise dispose of them as a whole or in part without the consent of the County.

(iii) Any Company and any other Co-Investor may, at any time and in its discretion by written notice to the County, remove any of its Project property including, but not limited to, Negotiated FILOT Property, real or personal, from the Project or from the provisions of this Agreement including, but not limited to, the Negotiated FILOT arrangement set forth in this Agreement and retain such property for use as part of its operations in the County, whether or not such property remains as part of the Project, and effective as of the date of any such removal, such property will be subject to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be; provided, that, any such notice requirement may be, but shall not be required to be, satisfied by property tax returns filed with respect to the Project and any other such property, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act, and in such event, any such removal reflected by any such return shall be deemed to be effective as of the date of such removal.

(iv) If any Company or any other Co-Investor sells, leases, or otherwise disposes of any portion of, or adds to, the Land, or removes any portion of the Land from the Project while retaining such property for use as part of its operations in the County, all as permitted herein, such Company or such Co-Investor shall deliver to the County a revised **Exhibit A** to this Agreement or supplements to **Exhibit A** reflecting any such addition, disposal or removal and such revised or supplemented **Exhibit A** shall, effective as of the date of any such transaction, addition, disposal, or removal, be automatically made a part of this Agreement without further action or proceedings by the County; provided, that any requirement to provide such schedules or supplements to the County may be satisfied by property tax returns filed with respect to the Project and any other such property, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Negotiated FILOT Act, and in such event, any such addition, disposal, or removal reflected by any such return, shall be automatically deemed effective as of the date of any such addition, disposal, or removal.

(v) All Negotiated FILOT Property sold or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.

Section 4.02 Payment of Administration Expenses. Each Company and each other Co-Investor will reimburse, or cause reimbursement of, the County from time to time for the County's Administration Expenses incurred in the fulfillment of its obligations hereunder, or in the implementation of this Agreement's terms and provisions, with respect to such Company or such other Co-Investor, respectively and, as the case may be, promptly upon written request therefor, but in no event later than ninety (90) days after receiving written notice from the County specifying the nature of such expense and requesting the payment of the same. The County acknowledges that it imposes no charges in the nature of impact fees or recurring fees in connection with the Project or the incentives authorized by this Agreement, and the County anticipates no out of pocket expenses, including, but not limited to attorneys' fees, to be Administration Expenses hereunder for review of this Agreement, the Multi-County Park Agreement and all resolutions, ordinances and other documentation related thereto or the transactions authorized hereby.

Section 4.03 Use of Project for Lawful Activities. During the Term of this Agreement, each Company and each other Co-Investor may use its respective portion of the Project as it deems fit for any lawful purpose.

Section 4.04 Maintenance of Existence. Except in the event the resulting, surviving or transferee entity is any Company or an Affiliate of any Company, as to which such consolidation, merger, or transfer, the County hereby preapproves and consents, unless the County shall provide prior consent or subsequent ratification otherwise, which consent or ratification shall not be unreasonably withheld, conditioned or delayed, each Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of all or substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property unless:

(a) such Company shall be the continuing business entity, or the business entity formed by such consolidation or into which such Company is merged or the entity which acquires by conveyance or transfer all or substantially all of such Company's assets shall (i) be an entity organized and existing under the laws of the United States of America or any state thereof or the District of Columbia and qualified to do business in the State; (ii) have a net worth equal to or greater than the net worth of such Company immediately preceding the date of such merger, consolidation or transfer; and (iii) expressly and unconditionally assume, by written agreement supplemental hereto and acceptable to the County as to form and content, in its reasonable discretion, every payment obligation of such Company herein and the performance of every covenant of this Agreement on the part of such Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event of Default, and no event, which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(c) such Company shall have delivered to the County (i) a certificate of a duly authorized officer of such Company, accompanied by financial statements of the surviving company (if other than such Company) showing compliance with the net worth requirements specified in paragraph (a) above and (ii) an opinion of counsel for such Company and/or counsel to the transferee company, stating that such consolidation, merger, conveyance or transfer and such supplement to this Agreement comply with this Section and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any consolidation or merger or any conveyance or transfer of all or substantially all of any Company's assets in accordance with this Section, the successor entity formed by such consolidation or into which any such Company is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of any such Company under this Agreement with the same effect as if such successor entity had been named as a Company herein, and thereafter any such Company shall be relieved of all obligations and covenants under this Agreement.

If a consolidation, merger or conveyance or transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or conveyance or transfer shall be made except in compliance with the provisions of this Section.

Each Company acknowledges transfers of this Agreement or the Negotiated FILOT Property may cause the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by such Company with the Transfer Provisions.

Section 4.05 Records and Reports. Each Company and each other Co-Investor will maintain, or cause to be maintained, such books and records with respect to its respective portion of the Project as will permit the identification of those portions of the Project it places in service during the Investment Period, the amount of investment with respect thereto, and any computations of Negotiated FILOT Payments made by such entity hereunder, and will comply with all reporting requirements of the State and the County applicable to Negotiated FILOT Property under the Negotiated FILOT Act, including without limitation the reports required by 12-44-90 of the Negotiated FILOT Act (collectively, "Filings"); provided, however, that the parties hereby waive in its entirety the requirement under Section 12-44-55 of the Negotiated FILOT Act for a recapitulation of the terms of this Agreement. In addition, the following records shall be provided to the County:

(a) Upon direction of the governing body of the County, a County Official may request and obtain such financial books and records from any Company and any other Sponsor or Sponsor Affiliate that support the Negotiated FILOT returns of such Company or such other Sponsor or Sponsor Affiliate as may be reasonably necessary to verify the calculations of the Negotiated FILOT Payments by such Company or such

other Sponsor or Sponsor Affiliate. For purposes of this Agreement, the term “County Official” shall include the Administrator, Auditor, Assessor, or Treasurer of the County.

(b) Each year during the Term hereof, each Company and each other Sponsor or Sponsor Affiliate shall deliver to the County Auditor, the County Assessor and the County Treasurer a copy of any form or return it files with the Department of Revenue with respect to the Project at the same time as delivery thereof to the Department of Revenue.

(c) Each Company shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 required by the Department of Revenue, to be filed within thirty (30) days after the date of original execution and delivery hereof with the County Auditor, the County Assessor and the County Treasurer of the County and of each other county which is a party to the Multi-County Park Agreement, and with the Department of Revenue and shall update such Form PT-443 from time to time to the extent that the information therein is no longer accurate.

Notwithstanding any other provision of this Section, each Company and each other Co-Investor may, by clear, written designation, conspicuously marked, designate with respect to any Filings or other documents or information delivered to the County segments thereof that such Company or such other Co-Investor believes contains proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by any Company or any other Co-Investor with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, and unless the County has provided at least fifteen (15) days advance written notice to the disclosing Company or other Co-Investor, as the case may be, of such proposed release, the County shall not knowingly and voluntarily release any Filing, documents, or other information provided to the County by such Company or such other Co-Investor in connection with the Project, whether or not such information has been designated as confidential or proprietary by such Company or such other Co-Investor.

## ARTICLE V

### FEES IN LIEU OF TAXES

#### Section 5.01 Payment of Fees in Lieu of *Ad Valorem* Taxes.

(a) In accordance with the Negotiated FILOT Act, the parties hereby agree, during the Term hereof, that there shall be due annually with respect to that portion of the Project constituting Negotiated FILOT Property, whether owned by any Company or by any other Sponsor or Sponsor Affiliate, a Negotiated FILOT Payment calculated as set forth in this Section, at the places, in the manner and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* taxes. It is presently anticipated, but not required, that the initial Negotiated FILOT Payment, which



shall be due under current Code requirements on the January 15 following the year in which the County adds the initial Negotiated FILOT Property to its tax rolls, will be due on January 15, [2022]. If any Company designates any other Sponsor or Sponsor Affiliates as the same shall have been consented to by the County, if such consent is required pursuant to **Section 6.02** hereof, such Company must notify the County in writing at the time of such designation as to whether such additional Sponsor or Sponsor Affiliate shall be primarily liable for the Negotiated FILOT Payments due hereunder with respect to such Sponsor or Sponsor Affiliate's respective portion of the Negotiated FILOT Property. Unless and until such additional notification is received, such designating Company shall be primarily liable for all Negotiated FILOT Payments due with respect to such Negotiated FILOT Property.

(b) Subject to adjustment pursuant to the provisions of this **Section 5.01**, the Negotiated FILOT shall be calculated each year in accordance with the following provisions:

(i) For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall initially be payable for a payment period of thirty (30) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a payment period of thirty (30) years up to an aggregate of thirty five (35) years or, if the Investment Period is extended as set forth in **Section 4.01(c)** hereof, up to an aggregate of forty (40) years.

(ii) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 6%; (2) a millage rate of [ ] mills, which millage rate or millage rates shall be fixed in accordance with Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the entire term of the Negotiated FILOT; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that any Company or any other Sponsor or Sponsor Affiliate and the County may agree at a later date to amend this Agreement as to Negotiated FILOT Property owned by such Company or such other Sponsor or Sponsor Affiliate so as to determine the fair market value of any such real property in accordance with any other method permitted by the Negotiated FILOT Act.

(iii) All such calculations shall take into account all deductions for depreciation or other diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code.

(iv) For purposes of calculating the Negotiated FILOT, the Negotiated FILOT Property shall not include any Released Property or Non-Qualifying Property.

(c) The Negotiated FILOT Payments are to be recalculated:

(i) to reduce such payments in the event any Company or any other Sponsor or Sponsor Affiliate disposes of any part of the Negotiated FILOT Property within the meaning of Section 12-44-50(B) of the Negotiated FILOT Act and as provided in **Section 4.01(e)(ii)** hereof, by the amount applicable to the Released Property;

(ii) to reduce such payments in the event that the Negotiated FILOT Property or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings or otherwise removed from the Project as a result of circumstances beyond the control of any Company or any other Sponsor or Sponsor Affiliate;

(iii) to increase such payments in the event any Company or any other Sponsor or Sponsor Affiliate adds any Negotiated FILOT Property (other than Replacement Property) to the Project; or

(iv) to adjust such payments if any Company or any other Sponsor or Sponsor Affiliate elects to convert any portion of its Negotiated FILOT Property from the Negotiated FILOT to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, as permitted by **Section 4.01(e)(iii)**.

(d) Upon installation or placing in service of any Replacement Property for any Released Property, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by the Negotiated FILOT Act, subject to the following rules:

(i) Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated

FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Released Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* taxes, or to the FILOT payments pursuant to the Multi-County Park Act, as the case may be, which would have been paid on such property but for this Agreement. Replacement Property is entitled to the Negotiated FILOT Payments for the remaining portion of the Negotiated FILOT payment period set forth in **Section 5.01(b)(i)** hereof applicable to the Released Property.

(ii) Each Company and each other Sponsor or Sponsor Affiliate shall maintain, or cause to be maintained, records sufficient to identify all Replacement Property it places in service, and the Negotiated FILOT Payments with respect thereto shall be calculated using the millage rate and assessment ratio provided on the property it is replacing.

(e) In the event that, for any reason, the Negotiated FILOT Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Project consisting of Negotiated FILOT Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Companies and the County express their intentions that such payments be reformed so as to afford each Company and each other Sponsor or Sponsor Affiliate benefits commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 4, Chapter 12 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. Absent the legal authorization to effect such reformation, the Companies and the County agree that there shall be due hereunder with respect to the portion of the Negotiated FILOT Property affected by such circumstances *ad valorem* taxes or FILOT payments pursuant to the Multi-County Park Act, as the case may be, and that, to the extent permitted by law, each Company and each other Sponsor or Sponsor Affiliate shall be entitled: (1) to enjoy the five (5) year exemption from *ad valorem* taxes, or from FILOT payments pursuant to the Multi-County Park Act, as the case may be, provided by Article X, Section 3 of the Constitution of the State, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if each Company and each other Sponsor or Sponsor Affiliate were obligated to pay *ad valorem* taxes, or make FILOT payments pursuant to the Multi-County Park Act, as the case may be, hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable from

each Company and each other Sponsor or Sponsor Affiliate, as the case may be, with respect to such entity's portion of the Negotiated FILOT Property in question, an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid by such entity and the amount which would have been paid as *ad valorem* taxes, or as FILOT payments pursuant to the Multi-County Park Act, as the case may be, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code (a "Deficiency Payment").

(f)

(i) In the event that the Minimum Statutory Investment Requirement is not satisfied by the end of the Compliance Period, then all Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, calculated as set forth in paragraph (e) above, and a Deficiency Payment from each such owing entity shall be due and payable with respect to Negotiated FILOT Payments theretofore made. In the event that the aggregate investment in the Project by all Sponsors and Sponsor Affiliates does not exceed \$5,000,000 by the end of the Compliance Period and any Sponsor or Sponsor Affiliate does not satisfy the Minimum Statutory Investment Requirement solely through its own direct investment in the Project, then the Negotiated FILOT Payments with respect to that portion of the Project owned by such non-qualifying Sponsor or Sponsor Affiliate shall revert retroactively to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, and such Sponsor or Sponsor Affiliate shall owe a Deficiency Payment with respect to Negotiated FILOT Payments theretofore made as to such portion of the Project. To the extent necessary to collect a Deficiency Payment under this sub-paragraph (i) due to failure to satisfy the Minimum Statutory Investment Requirement, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

(ii) In the event that the Minimum Statutory Investment Requirement is satisfied by the end of the Compliance Period, but following the Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below the investment level set forth in the Minimum Statutory Investment Requirement, then the Project shall prospectively be subject to *ad valorem* taxes, or to FILOT Payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act, commencing with any Negotiated FILOT Payments due with respect to

Project property placed in service as of the end of the Property Tax Year in which such deficiency occurs.

(iii) If either or both of the Minimum Contractual Investment Requirement and the Minimum Jobs Requirement are not satisfied by the end of the Compliance Period, but the Minimum Statutory Investment Requirement is nevertheless satisfied by the end of the Compliance Period, each Company and each other Sponsor or Sponsor Affiliate shall continue to be eligible to take advantage of the Negotiated FILOT described in this **Section 5.01** hereof; provided, however \_\_\_\_\_.

(iv) In accordance with the provisions of **Sections 4.01(b)** and **6.02** hereof, except for Existing Property, the investment in all property utilized by any Company or any other Co-Investor as part of the Project, whether owned by any Company or any other Co-Investor outright or utilized by any Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with any Company or any other Co-Investor and whether or not subject to this Agreement, shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Negotiated FILOT Act.

(g) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County from any Company or any other Sponsor or Sponsor Affiliate under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid by such entity within one hundred eighty (180) days following receipt by such entity of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

Section 5.02 Statutory Lien. The parties acknowledge the County's right to receive Negotiated FILOT Payments hereunder and that the County is entitled to and shall have a statutory lien with respect to the Project pursuant to Section 12-44-90(E) of the Negotiated FILOT Act and Title 12, Chapter 54 of the Code relating to the collection and enforcement of *ad valorem* property taxes.

## ARTICLE VI

### THIRD PARTY ARRANGEMENTS

Section 6.01 Conveyance of Liens and Interests; Assignment. The County agrees that each Company and each other Co-Investor may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-

to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to any Company or any other Co-Investor or operates such assets for any Company or any other Co-Investor or is leasing all or a portion of the Project in question from any Company or any other Co-Investor. In the event of any such transfer, lease, financing, or other transaction described above, the rights and interests of such Company or such other Co-Investor under this Agreement, including, without limitation, the benefits of the Negotiated FILOT, with respect to any Project property so transferred, leased, financed, or otherwise affected shall be so transferred and preserved, automatically, without further action or proceedings of the County, subject to the following provisions: (i) except in connection with any transfer to any other Company or other Co-Investor or an Affiliate of such Company or any other Co-Investor, or transfers, leases, or financing arrangements pursuant to clause (b) above, as to all of which transfers and other transactions the County hereby consents, such transferor Company or any such other Co-Investor shall obtain the prior consent or subsequent ratification of the County to the extent required by the Transfer Provisions of the Negotiated FILOT Act, which consent or subsequent ratification of the County shall not be unreasonably conditioned, withheld, or delayed; (ii) except when a financing entity which is the income tax owner of all or part of the Project property is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of such Company or any such other Co-Investor hereunder, or when the County consents in writing or when the transfer relates to Released Property pursuant to **Section 4.01(e)** hereof, no such transfer shall affect or reduce any of the obligations of such Company or any such other Co-Investor hereunder; (iii) to the extent the transferee or financing entity shall become obligated to make Negotiated FILOT payments hereunder, the transferee shall assume the then current basis of the transferor Company or any such other Co-Investor (or prior transferee) in the Negotiated FILOT Property transferred; (iv) the transferor Company or any such other Co-Investor, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department of Revenue notice of any such transfer agreement; and (v) the transferor Company or any such other Co-Investor and the transferee shall comply with all other requirements of the Transfer Provisions in order to preserve the benefits of the Negotiated FILOT.

Subject to County consent when required under this **Section 6.01**, and at the expense of the transferor Company or any such other Co-Investor, the County agrees to take such further action and execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of the transferor Company or any other Co-Investor under this Agreement and/or any release of the transferor Company or any other Co-Investor pursuant to this **Section 6.01**.

Each Company acknowledges that any transfer of an interest under this Agreement or in the Negotiated FILOT Property may cause all or part of the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Negotiated FILOT Act absent compliance by the transferor Company or any such Co-Investor with the Transfer Provisions.

Section 6.02 Sponsors and Sponsor Affiliates. Each Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which Sponsors or Sponsor Affiliates shall be Persons who join with the Companies and make investments with respect to the Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement and who shall be Affiliates of any Company or any other Sponsor or Sponsor Affiliate or other Persons described in **Section 6.01(b)** hereof. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of Section 12-44-30 (19) or (20) and Section 12-44-130 of the Negotiated FILOT Act must be approved by Resolution of the Council. To the extent that a Co-Investor invests an amount equal to the Minimum Statutory Investment Requirement at the Project by the end of the Compliance Period all investment by such Sponsor or Sponsor Affiliate shall qualify for the Negotiated FILOT payable under **Section 5.01** hereof (subject to the other conditions set forth therein) in accordance with Section 12-44-30(19) of the Negotiated FILOT Act. To the extent that the aggregate investment in the Project by the end of the Compliance Period by the Companies, all Sponsors and Sponsor Affiliates and, to the extent provided by law, other Co-Investors, exceeds \$5,000,000, to the extent permitted by, Section 12-44-30(19) of the Negotiated FILOT Act, all investment by such Sponsors and Sponsor Affiliates during the Investment Period shall qualify for the Negotiated FILOT pursuant to **Section 5.01** of this Agreement (subject to the other conditions set forth therein) regardless of whether each such entity invested amounts equal to the Minimum Statutory Investment Requirement by the end of the Compliance Period. Any Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated by such Company pursuant to this **Section 6.02** within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

## ARTICLE VII

### TERM; TERMINATION

Section 7.01 Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Companies execute this Agreement, and ending at midnight on the day the last Negotiated FILOT Payment is made hereunder.

Section 7.02 Termination. In addition to the termination rights of the County under **Section 8.02(a)** hereof, the County and the Companies may jointly agree to terminate this Agreement at any time, or any Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or any part, of the Project in which event the Project, or such portion of the Project, as the case may be, shall be subject to *ad valorem* taxes, or to FILOT payments under the Multi-County Park Act, as the case may be, from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive *ad valorem* taxes, Deficiency Payments, interest or

penalties, and the same enforcement rights with respect to such obligations as it would have with respect to *ad valorem* taxes, and the County's rights arising under **Section 5.01** prior to the time of such termination shall survive any such termination.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

**Section 8.01 Events of Default.** Any one or more of the following events (herein called an "Event of Default", or collectively "Events of Default") shall constitute an Event of Default by any Company or any other Co-Investor (the "Defaulting Entity") but only with respect to such Defaulting Entity's rights, duties, and obligations contained herein:

(a) if default shall be made in the due and punctual payment of any Negotiated FILOT Payments, which default shall not have been cured within sixty (60) days following receipt of written notice of such default from the County; or

(b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing paragraph (a), and such default shall continue for ninety (90) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such default if the Defaulting Entity proceeds with due diligence to cure such default; provided however, that no Event of Default shall exist under this Agreement during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested the occurrence of such default.

Notwithstanding anything herein to the contrary, failure to meet any investment or job creation requirements, thresholds, or levels set forth in this Agreement shall not be deemed to be an Event of Default under this Agreement, but may terminate or adjust certain benefits hereunder or obligate one or more of the Companies or other Co-Investors, as the case may be, to make certain additional payments to the County, all as set forth in **Sections 4.02** and **5.01(f)** hereof.

**Section 8.02 Remedies on Event of Default.** Upon the occurrence of any Event of Default, the following remedies may be exercised by the County only as to the Defaulting Entity:

(a) the County may terminate this Agreement by delivery of written notice to the Defaulting Entity not less than sixty (60) days prior to the termination date specified therein;

(b) the County may have access to and inspect, examine, and make copies of the books and records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT as provided in **Section 4.05** hereof;



(c) the County may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County's rights hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* tax payments, including execution upon the lien referred to in **Section 5.02** hereof.

**Section 8.03 Defaulted Payments.** In the event any Company or any other Co-Investor should fail to make any of the payments required to be made by such entity under this Agreement, the item or installment so in default shall continue as an obligation of such entity until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, such entity shall pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Negotiated FILOT Act.

**Section 8.04 Default by County.** Upon the default of the County in the performance of any of its obligations hereunder, any Company and any other Co-Investor may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for *mandamus* or specific performance.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.01 Rights and Remedies Cumulative.** Each right, power, and remedy of the County or of the Companies or any other Co-Investor provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers, and remedies are sought to be enforced; and the exercise by the County or by the Companies or any other Co-Investor of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Companies or any other Co-Investor of any or all such other rights, powers, or remedies.

**Section 9.02 Successors and Assigns.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, any Co-Investor hereof, and their respective successors and assigns as permitted hereunder; provided, however, that notwithstanding anything herein to the contrary, the County may not assign any or all of its rights, duties, and obligations in, to, and under this Agreement without the written consent of the Companies, which consent may be provided by the Companies in their sole discretion.

**Section 9.03 Notices; Demands; Requests.** All notices, demands, and requests to be given or made hereunder to or by the County or any Company shall be in writing and shall be

deemed to be properly given or made if sent by United States first class mail, postage prepaid, or via facsimile transmission or reputable courier service, to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

(a) As to the County:

Georgetown County  
Attn: County Administrator  
716 Prince Street (29440)  
P.O. Drawer 421270  
Georgetown, South Carolina 29442  
Phone: (843) 545-3006  
Fax: (843) 545-3121

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

Wesley P. Bryant, Esquire  
Georgetown County Attorney  
716 Prince Street (29440)  
P.O. Drawer 421270  
Georgetown, South Carolina 29442  
Phone: (843) 545-3194  
Fax: (843) 545-3126

(b) As to Project Eagle I:

\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_\_

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

Tushar V. Chikhliker, Esq.  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700 (29201)  
P.O. Drawer 2426  
Columbia, South Carolina 29202  
Phone: (803) 540-2188  
Fax: (803) 727-1469

(c) As to Project Eagle II:

\_\_\_\_\_  
Attention: \_\_\_\_\_

\_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_

\_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_\_

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

Tushar V. Chikhliker, Esq.  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700 (29201)  
P.O. Drawer 2426  
Columbia, South Carolina 29202  
Phone: (803) 540-2188  
Fax: (803) 727-1469

Section 9.04 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

Section 9.05 Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other and supersedes all prior and contemporaneous discussions of the parties, whether oral or written, and neither party hereto has made or shall be bound by any agreement or any warranty or representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof. Unless as otherwise expressly set forth herein, this Agreement will not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and assigns as permitted hereunder.

Section 9.06 Severability. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 9.07 Headings and Table of Contents; References. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.

Section 9.08 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

Section 9.09 Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by all parties.

Section 9.10 Waiver. Any party may waive compliance by any other party with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 9.11 Further Proceedings. The parties intend any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the Chairman of the Council without necessity of further proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

[Execution Pages to Follow]

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Fee in Lieu of Tax and Incentive Agreement to be effective as of the date first written above.

GEORGETOWN COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
John Thomas, Chairman, County Council  
Georgetown County, South Carolina

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Theresa Floyd, Clerk to Council  
Georgetown County, South Carolina

PROJECT EAGLE I

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

PROJECT EAGLE II

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**LAND DESCRIPTION**

**[To be inserted]**

Applicable Negotiated FILOT Millage Rate: \_\_\_\_\_ mills

Item Number: 11.b

Meeting Date: 9/24/2019

Item Type: SECOND READING OF ORDINANCES

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** Legal

**ISSUE UNDER CONSIDERATION:**

ORDINANCE NO. 19-19 - AN ORDINANCE TO ESTABLISH A JOINT COUNTY INDUSTRIAL AND BUSINESS PARK PURSUANT TO SECTION 4-1-170 OF THE SOUTH CAROLINA CODE OF LAWS 1976, AS AMENDED, TO BE KNOWN AS THE GEORGETOWN COUNTY PROJECT EAGLE JOINT COUNTY INDUSTRIAL AND BUSINESS PARK (THE "PARK"), IN CONJUNCTION WITH HORRY COUNTY, SUCH PARK TO BE GEOGRAPHICALLY LOCATED IN GEORGETOWN COUNTY; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A WRITTEN PARK AGREEMENT WITH HORRY COUNTY AS TO THE REQUIREMENT OF PAYMENTS OF FEE IN LIEU OF AD VALOREM TAXES WITH RESPECT TO PARK PROPERTY AND THE SHARING OF THE REVENUES AND EXPENSES OF THE PARK; TO PROVIDE FOR THE DISTRIBUTION OF REVENUES FROM THE PARK WITHIN GEORGETOWN COUNTY; AND OTHER MATTERS RELATED THERETO.

**CURRENT STATUS:**

Pending adoption.

**POINTS TO CONSIDER:**

In order to promote economic development in Georgetown County and surrounding areas, including Horry County, through improvements to the tax base of Georgetown County and the provision of additional employment opportunities, Georgetown County and Horry County have agreed to create the Park to include property presently anticipated to be now or hereafter owned and/or operated by one or more companies identified for the time being, collectively, as Project Eagle, and/or one or more existing, or to be formed, affiliates or other related entities.

**OPTIONS:**

1. Adoption of Ordinance No. 19-19.
2. Decline adoption of Ordinance No. 19-19.

**STAFF RECOMMENDATIONS:**

Recommendation for adoption of Ordinance No. 19-19.

*NOTE: A motion to amend will be required at 2nd reading to incorporate proposed text, as Ordinance No. 19-19 was introduced by title only.*

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Ordinance No 19-190 - To Establish a Joint County Industrial Business Park	Ordinance
<input type="checkbox"/> Joint County Industrial Business Park Agreement (Project Eagle)	Backup Material

Georgetown County, South Carolina  
Joint County Industrial/Business Park

ORDINANCE NO. 19-19  
(GEORGETOWN COUNTY PROJECT EAGLE MULTI-COUNTY PARK)

AN ORDINANCE TO ESTABLISH A JOINT COUNTY INDUSTRIAL AND BUSINESS PARK PURSUANT TO SECTION 4-1-170 OF THE SOUTH CAROLINA CODE OF LAWS 1976, AS AMENDED, TO BE KNOWN AS THE GEORGETOWN COUNTY PROJECT EAGLE JOINT COUNTY INDUSTRIAL AND BUSINESS PARK (THE "PARK"), IN CONJUNCTION WITH HORRY COUNTY, SUCH PARK TO BE GEOGRAPHICALLY LOCATED IN GEORGETOWN COUNTY; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A WRITTEN PARK AGREEMENT WITH HORRY COUNTY AS TO THE REQUIREMENT OF PAYMENTS OF FEE IN LIEU OF *AD VALOREM* TAXES WITH RESPECT TO PARK PROPERTY AND THE SHARING OF THE REVENUES AND EXPENSES OF THE PARK; TO PROVIDE FOR THE DISTRIBUTION OF REVENUES FROM THE PARK WITHIN GEORGETOWN COUNTY; AND OTHER MATTERS RELATED THERETO.

WHEREAS, Georgetown County, South Carolina ("Georgetown County") and Horry County, South Carolina ("Horry County") (collectively, the "Counties"), as authorized under Article VIII, Section 13(D) of the South Carolina Constitution and Title 4, Chapter 1 of the Code of Laws of South Carolina 1976, as amended (the "Park Act"), and particularly Section 4-1-170 thereof, propose to establish a joint county industrial and business park (the "Park"); and

WHEREAS, in order to promote economic development in Georgetown County and surrounding areas, including Horry County, through improvements to the tax base of Georgetown County and the provision of additional employment opportunities, Georgetown County and Horry County have agreed to create the Park to include property presently anticipated to be now or hereafter owned and/or operated by one or more companies identified for the time being, collectively, as Project Eagle, and/or one or more existing, or to be formed, affiliates or other related entities (the "Project Property"); and

WHEREAS, the Park shall be known as the Georgetown County Project Eagle Joint County Industrial and Business Park; and

WHEREAS, the Counties have agreed to the specific terms and conditions of such arrangement as set forth in that certain Agreement for Development of Joint County Industrial and Business Park (Georgetown County Project Eagle Park) to be entered into by the Counties as of such date as the Counties may agree (the "Park Agreement"); and

WHEREAS, the Counties now desire to establish the Park to include the Project Property.



NOW, THEREFORE, BE IT ORDAINED BY THE GEORGETOWN COUNTY COUNCIL AS FOLLOWS:

**Section 1. Establishment of Georgetown County Project Eagle Joint County Industrial and Business Park; Approval of Park Agreement.** There is hereby authorized to be established in conjunction with Horry County a joint county industrial and business park to be known as the Georgetown County Project Eagle Joint County Industrial and Business Park, which is located on the land comprising the Project Property and more particularly described in the form of Park Agreement presented to this meeting. The form, provisions, terms and conditions of the Park Agreement now before this meeting and filed with the Clerk to Council be and they are hereby approved, and all of the provisions, terms and conditions thereof are hereby incorporated herein by reference as if the Park Agreement were set out in this Ordinance in its entirety.

The Park Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of Georgetown County, upon advice of counsel, thereunder and as shall be approved by the officials of Georgetown County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Park Agreement now before this meeting.

The Chairman of Georgetown County Council, for and on behalf of Georgetown County, is hereby authorized, empowered, and directed to do any and all things necessary or proper to effect the establishment of the Park and the execution and delivery of the Park Agreement and the performance of all obligations of Georgetown County under and pursuant to the Park Agreement and to carry out the transactions contemplated thereby and by this Ordinance.

**Section 2. Payment of Fees in Lieu of *Ad Valorem* Taxes.** Owners and lessees of property located in the Park will pay a fee in lieu of *ad valorem* taxes as provided for in the Park Agreement. The fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Georgetown County. That portion of such fee allocated pursuant to the Park Agreement to Horry County shall, upon receipt by the Treasurer of Georgetown County, be paid to the Treasurer of Horry County in accordance with the terms of the Park Agreement. Payments of such fees will be made on or before the due date for taxes for a particular year. Penalties for late payment will be at the same rate as late tax payment. Any late payment beyond said date will accrue interest at the rate of statutory judgment interest. The Counties, acting by and through the Treasurer of Georgetown County, shall maintain all liens and rights to foreclose upon liens provided for counties in the collection of *ad valorem* taxes.

**Section 3. Distribution of Revenue.**

(a) Revenues generated from the Park through the payment of fees in lieu of *ad valorem* taxes to be retained by Georgetown County pursuant to the Park Agreement shall be distributed within Georgetown County in accordance with this subsection:

- (1) First, unless Georgetown County elects to pay or credit the same from

only those revenues which Georgetown County would otherwise be entitled to receive as provided under item (3) below, to pay annual debt service on any special source revenue bonds issued by Georgetown County pursuant to, or to be utilized as a credit in the manner provided in, Section 4-1-175 of the Park Act;

(2) Second, at the option of Georgetown County, to reimburse Georgetown County for any expenses incurred by it in the administration, development, operation, maintenance and promotion of the Park or the industries and businesses located therein or for other economic development purposes of Georgetown County; and

(3) Third, to those taxing entities in which the property is located, in the same manner and proportion that the millage levied for the taxing entities would be distributed if the property were taxable but without regard to exemptions otherwise available pursuant to Section 12-37-220, Code of Laws of South Carolina 1976, as amended, for that year.

(b) Notwithstanding any other provision of this section:

(1) all taxing entities which overlap the applicable revenue generating properties within the Park shall receive at least some portion of the revenues generated from such properties; and

(2) all revenues receivable by a taxing entity in a fiscal year shall be allocated to operations and/or debt service as determined by the governing body of the taxing entity; provided, that any revenue which is to be allocated annually to a school district, shall, in accordance with the applicable law, be allocated by the Georgetown County Auditor between such school district's debt service and such school district's operations in the same proportion as the millage levied for the respective purpose bears to the millage levied for both purposes when combined.

**Section 4. Governing Laws and Regulations.** The ordinances and regulations of Georgetown County including, without limitation, those concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Georgetown County unless the properties are within the boundaries of a municipality in which case the municipality's ordinances and regulations apply.

**Section 5. Law Enforcement and Other Services.** Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties is vested with the Sheriff's Department of Georgetown County. If any of the Park properties are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is vested with the law enforcement officials of the municipality. Fire, sewer, water and EMS services will be provided by the service district or other political unit within whose jurisdiction the Park properties are located.

**Section 6. Savings Clause.** If any portion of this Ordinance shall be deemed unlawful, unconstitutional or otherwise invalid, the validity and binding effect of the remaining portions shall not be affected thereby.

**Section 7. General Repealer.** Any prior ordinance, the terms of which are in conflict herewith, is, only to the extent of such conflict, hereby repealed.

**Section 8. Effectiveness.** This Ordinance shall be effective after third and final reading.

DONE IN MEETING DULY ASSEMBLED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019.

GEORGETOWN COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
John Thomas, Chairman, County Council of  
Georgetown County, South Carolina

ATTEST:

\_\_\_\_\_  
Theresa Floyd, Clerk to Georgetown County Council  
Georgetown County, South Carolina

First Reading: August 27, 2019  
Second Reading: September 24, 2019  
Public Hearing: October 8, 2019  
Third Reading: October 8, 2019

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )  
COUNTY OF HORRY )

**THIS AGREEMENT** for the development of a joint county industrial and business park to be located within Georgetown County is made and entered into and to be effective as of \_\_\_\_\_, 2019, by and between Georgetown County, South Carolina (“Georgetown County”) and Horry County, South Carolina (“Horry County”).

## RECITALS

**WHEREAS**, pursuant to Title 4, Chapter 1 of the Code of Laws of South Carolina 1976, as amended (the “Park Act”), and particularly Section 4-1-170 thereof, and Article VIII, Section 13(D) of the South Carolina Constitution, as well as Ordinance No. 19-19 enacted by the County Council of Georgetown County and Ordinance No. \_\_\_\_\_ enacted by the County Council of Horry County, Georgetown County and Horry County have determined that, in order to further promote economic development and thus provide additional employment opportunities within both of said counties, there should be established in Georgetown County a joint county industrial and business park to be located in Georgetown County upon property presently anticipated to be now or hereafter owned and/or operated by one or more companies identified for the time being, collectively, as Project Eagle, and/or one or more existing, or to be formed, affiliates or other related entities, and described in Exhibit A hereto (the “Park”), which Park shall be known as the Georgetown County Project Eagle Joint County Industrial and Business Park and shall be in addition to previous joint county industrial and business parks previously established between the counties; and

**WHEREAS**, as a consequence of the establishment of the Park, property therein shall be exempt from *ad valorem* taxation, but the owners or lessees of such property shall pay annual fees in an amount equal to that amount for which such owner or lessee would be otherwise liable except for such exemption; and

**WHEREAS**, Georgetown County has agreed to accept responsibility for the costs of infrastructure, maintenance, management, promotional costs, and other appropriate costs associated with the establishment and operation of the Park as set forth herein;

**NOW, THEREFORE**, in consideration of the mutual agreement, representations and benefits contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Binding Agreement. This Agreement serves as a written instrument setting forth the entire agreement between the parties and shall be binding on Georgetown County and Horry County, their successors and assigns.

2. Authorization. Article VIII, Section 13(D) of the Constitution of South Carolina provides that counties may jointly develop an industrial or business park with other counties within the geographical boundaries of one or more of the member counties, provided that certain conditions specified therein are met and further provided that the General Assembly of the State of South Carolina provides by law a means by which the value of property in such park will be considered for purposes of bonded indebtedness of political subdivisions and school districts and for purposes of computing the index of taxpaying ability for school districts. Section 4-1-170 of the Park Act satisfies the conditions imposed by Article VIII, Section 13(D) of the Constitution and provides the statutory vehicle whereby a joint county industrial or business park may be created.

3. Location of the Park.

(A) As of the date of this Agreement, the Park consists of property located in Georgetown County, as further identified in Exhibit A hereto. It is specifically recognized that the Park may from time to time consist of non-contiguous properties within Georgetown County. The boundaries of the Park may be enlarged or diminished from time to time as authorized by ordinances of both Georgetown County and Horry County. If any property proposed for inclusion in the Park, in whole or in part, is located within the boundaries of a municipality, then the municipality must give its consent prior to the inclusion of such property.

(B) In the event of any enlargement or diminution of the boundaries of the Park, this Agreement shall be deemed amended and there shall be attached hereto a revised Exhibit A, which shall contain a legal description of the boundaries of the Park, as enlarged or diminished, together with a copy of the ordinances of Georgetown County Council and Horry County Council pursuant to which such enlargement or diminution was authorized.

(C) Prior to the adoption by Georgetown County Council and by Horry County Council of ordinances authorizing the diminution of the boundaries of the Park, a public hearing shall first be held by Georgetown County Council, as the county council of the county wherein the portion of the Park proposed to be enlarged or diminished is located. Notice of such public hearing shall be published in a newspaper of general circulation in Georgetown County at least once and not less than fifteen (15) days prior to such hearing. Notice of such public hearing shall also be served in the manner of service of process at least fifteen (15) days prior to such public hearing upon any owner and, if applicable, any lessee of any real property which would be excluded from the Park by virtue of the diminution.

(D) Notwithstanding anything in this Agreement to the contrary, to the extent that either Georgetown County or Horry County has outstanding contractual commitments to any owner or lessee of property located within the Park requiring inclusion of such property within a multi-county industrial or business park established pursuant to the Park Act and Article VIII, Section 13(D) of the South Carolina Constitution, Georgetown County and Horry County shall not be entitled to remove such property from within the Park unless Georgetown County shall first obtain the written consent of the owner or lessee of such property.

4. Fee in Lieu of Taxes. Property located in the Park shall be exempt from *ad valorem* taxation. The owners or lessees of any property situated in the Park shall pay in accordance with

this Agreement an amount equivalent to the *ad valorem* property taxes or other in-lieu-of-payments that would have been due and payable but for the location of such property within the Park.

5. Allocation of Park Expenses. Georgetown County and Horry County shall bear expenses, including, but not limited to, development, operation, maintenance and promotion of the Park and the cost of providing public services, in the following proportions:

A. Georgetown County	100%
B. Horry County	0%

6. Allocation of Park Revenues. Georgetown County and Horry County shall receive an allocation of revenues generated by the Park through payment of fees in lieu of *ad valorem* property taxes in the following proportions:

A. Georgetown County	99%
B. Horry County	1%

Any payment by Georgetown County to Horry County of its allocable share of the fees in lieu of taxes from the Park shall be made not later than thirty (30) days from the end of the calendar quarter in which Georgetown County receives such payment. In the event that the payment made by any owner or lessee of Park property is made upon protest or is otherwise in dispute, Georgetown County shall not be obligated to pay to Horry County more than Horry County's share of the undisputed portion thereof until thirty (30) days after the final resolution of such protest or dispute.

7. Revenue Allocation Within Each County.

(A) Revenues generated by the Park through the payment of fees in lieu of *ad valorem* property taxes shall be distributed to Georgetown County and to Horry County, as the case may be, according to the proportions established by Paragraph 6 of this Agreement. With respect to such revenues so allocable to Georgetown County, such revenue shall be distributed within Georgetown County in the manner provided by ordinance of the County Council of Georgetown County; provided, that (i) all taxing entities which overlap the applicable revenue-generating properties within the Park shall receive at least some portion of the revenues generated from such properties, and (ii) with respect to amounts received in any fiscal year by a taxing entity, the governing body of such taxing entity shall allocate the revenues received to operations and/or debt service of such entity; provided, that any revenue which is to be allocated annually to a school district, shall, in accordance with applicable law, be allocated by the Georgetown County Auditor between such school district's debt service and such school district's operations in the same proportion as the millage levied for the respective purpose bears to the millage levied for both purposes when combined. Georgetown County is specifically authorized to use a portion of the revenue for economic development purposes as permitted by law and as established by ordinance of the County Council of Georgetown County.

(B) Such revenues allocable to Horry County pursuant to Section 6 of this Agreement shall be distributed as deemed appropriate by Horry County in the manner provided by ordinance of the County Council of Horry County.

8. Fee in Lieu of Taxes Pursuant to Title 4 or Title 12 of the Code of Laws of South Carolina. It is hereby agreed that the entry heretofore or hereafter by Georgetown County into any one or more fee in lieu of tax agreements pursuant to Title 4 or Title 12 of the Code of Laws of South Carolina 1976, as may be amended from time to time ("Negotiated Fee-in Lieu of Tax Agreements"), with respect to Park property and the terms of such agreements shall be at the sole discretion of Georgetown County.

9. Assessed Valuation. For the purpose of calculating the bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant Section 59-20-20(3) of the Code of Laws of South Carolina 1976, as amended, allocation of the assessed value of property within the Park to Georgetown County and Horry County and to each of the taxing entities within the participating counties shall be identical to any allocation of revenue received and retained by each of the counties and by each of taxing entities within the participating counties, pursuant to Sections 6 and 7 of this Agreement.

10. Records. Georgetown County and Horry County each covenant and agree that, upon the request of Horry County, Georgetown County will provide to Horry County copies of the records of the annual tax levy and copies of the actual tax bills, for parcels of property included within the Park at the time of such tax levy, and will further provide copies to the Horry County Treasurer's collection records for the taxes so imposed, all as such records become available in the normal course of Georgetown County procedures. It is further agreed that Horry County shall not request such records from Georgetown County more frequently than once annually, absent compelling justification to the contrary.

11. No Liability of Horry County. It is expressly understood and agreed that by entering into this Agreement, Horry County assumes no liability whatsoever with respect to this Agreement, the establishment or existence of the contemplated Park, and no recourse shall be had for any claim based upon any obligation, covenant or agreement contained herein against Horry County or any council member, director, officer, employee, or agent of Horry County.

12. South Carolina Law Controlling. This Agreement has been entered into in the State of South Carolina and shall be governed by, and construed in accordance with South Carolina law.

13. Severability. In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision of this Agreement.

14. Counterpart Execution. This Agreement may be executed in multiple counterparts.

15. Termination. Notwithstanding any provision of this Agreement to the contrary, Georgetown County and Horry County agree that this Agreement may be terminated only upon approval of an ordinance to that effect by the county council of each county. Notwithstanding the foregoing, this Agreement may not be terminated to the extent that either Georgetown County or

Horry County has outstanding contractual commitments to any owner or lessee of property located in the Park requiring inclusion of such property within a multi-county industrial or business park established pursuant to the Park Act and Article VIII, Section 13(D) of the Constitution of South Carolina, unless such county shall first obtain the written consent of such owner or lessee.

[End of Agreement – Execution Page to Follow]



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and the year first above written.

GEORGETOWN COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
John Thomas, Chairman of County Council,  
Georgetown County, South Carolina

[SEAL]

Attest:

By: \_\_\_\_\_  
Theresa Floyd, Clerk to County Council  
Georgetown County, South Carolina

HORRY COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Johnny Gardner, Chairman, County Council,  
Horry County, South Carolina

[SEAL]

Attest:

By: \_\_\_\_\_  
Patricia Hartley, Clerk to County Council  
Horry County, South Carolina

**EXHIBIT A**  
**GEORGETOWN COUNTY PROJECT EAGLE PARK**  
**LAND DESCRIPTION**  
**[To be inserted]**

**Item Number:** 12.a  
**Meeting Date:** 9/24/2019  
**Item Type:** FIRST READING OF ORDINANCES

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** Legal

**ISSUE UNDER CONSIDERATION:**

Ordinance No. 19-21 - An Ordinance to authorize the expenditure of surplus Capital Project Sales Tax funds authorized under the Capital Project Sales Tax Act (S.C. Code Ann. Section 4-10-340, et seq.) previously collected pursuant to a majority vote on a referendum ordered by Georgetown County Ordinance 2014-28 held on November 4, 2014; further to designate the projects for which the surplus proceeds may be used; and to provide for other matters relating thereto.

**CURRENT STATUS:**

First Reading Introduction by Title

**Item Number:** 12.b  
**Meeting Date:** 9/24/2019  
**Item Type:** FIRST READING OF ORDINANCES

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** Legal

**ISSUE UNDER CONSIDERATION:**

ORDINANCE NO. 19-22 - AN ORDINANCE TO AMEND ORDINANCE 2007-06, "GEORGETOWN COUNTY ANIMAL CONTROL ORDINANCE", REGARDING THE STERILIZATION OF ANIMALS BEFORE RELEASE.

**CURRENT STATUS:**

Pending

**POINTS TO CONSIDER:**

There has been a recent increase in capture of privately owned dogs by the City of Georgetown and Georgetown County animal control officers. It is currently the policy of the local animal shelter, in accordance with Section 4-27(c) of Ordinance 2007-06, to spay or neuter all animals before being released, with the waiver of this requirement being at the discretion of the animal shelter.

Owners of privately owned animals that have been captured have presented opposition to Section 4-27(c) citing concerns over plans for breeding and other intentions for their animals.

SC Code of Laws, Section 47-3-480(B) expressly preempts the sterilization of privately owned animals in possession by an animal shelter. By adoption of Ordinance No. 19-22, Georgetown County Council will clarify its Animal Control Ordinance to mirror that of Section 47-3-480(B) to prohibit sterilization of privately owned animals held for any reasons in an animal shelter.

**OPTIONS:**

1. Adoption of Ordinance No. 19-22.
2. Decline adoption of Ordinance No. 19-22.

**STAFF RECOMMENDATIONS:**

Recommendation for adoption of Ordinance No. 19-22.

**ATTACHMENTS:**

Description		Type
<input type="checkbox"/>	Ordinance No. 19-22 Amendment to Animal Control Ordinance	Ordinance

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF GEORGETOWN    )

ORDINANCE NO. 19-22

**AN ORDINANCE TO AMEND ORDINANCE 2007-06, "GEORGETOWN COUNTY ANIMAL CONTROL ORDINANCE", REGARDING THE STERILIZATION OF ANIMALS BEFORE RELEASE**

**WHEREAS**, there has been a recent increase in capture of privately owned dogs by the City of Georgetown and Georgetown County animal control officers; and

**WHEREAS**, it is currently the policy of the local animal shelter, in accordance with Section 4-27(c) of Ordinance 2007-06, to spay or neuter all animals before being released with the waiver of this requirement being at the discretion of the animal shelter; and

**WHEREAS**, owners of privately owned animals that have been captured have presented opposition to Section 4-27(c) citing concerns over plans for breeding and other intentions for their animals; and

**WHEREAS**, SC Code of Laws, Section 47-3-480(B) expressly preempts the sterilization of privately owned animals in possession by an animal shelter; and

**WHEREAS**, Georgetown County Council, by action rendered herein, clarifies its Animal Control Ordinance to mirror that of Section 47-3-480(B) thereby prohibiting sterilization of privately owned animals held for any reasons in an animal shelter.

**NOW, THEREFORE**, be it ordained by Georgetown County Council that Section 4-27(c) of Ordinance 2007-06 be amended to state:

*4-27(c) Fees.* All fees associated with animal redemption, boarding, and adoption of impounded animals shall be set by the animal shelter. All animals received by the animal shelter **that are not privately owned** shall be spayed or neutered before being released. The animal shelter may waive such requirement at their discretion. **The requirement to spay or neuter shall not apply to a privately owned animal which the animal shelter, agency, society, or refuge may have in its possession for any reason if the owner of the animal claims or presents evidence that the animal is his property.**

1. This Ordinance shall take effect immediately upon adoption.
2. All provisions in other County Ordinances in conflict with this Ordinance are hereby repealed.
3. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application and to this end, the provisions of this Ordinance are severable.
4. This Ordinance shall become effective upon its adoption.

Adopted at the regular meeting of Georgetown County Council on \_\_\_\_\_.

ATTEST:

SIGNED:

\_\_\_\_\_  
Theresa E. Floyd, Clerk to Council

\_\_\_\_\_  
John Thomas, Chairman

REVIEWED BY: \_\_\_\_\_

Wesley P. Bryant, County Attorney

First Reading:

Second Reading:

Third Reading:

**Item Number:** 12.c  
**Meeting Date:** 9/24/2019  
**Item Type:** FIRST READING OF ORDINANCES

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** County Administrator

**ISSUE UNDER CONSIDERATION:**

ORDINANCE NO. 19-23 - AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF GEORGETOWN COUNTY, SOUTH CAROLINA, SERIES 2019, OR SUCH OTHER APPROPRIATE SERIES DESIGNATION, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$10,000,000; FIXING THE FORM AND DETAILS OF THE BONDS; AUTHORIZING THE COUNTY ADMINISTRATOR TO DETERMINE CERTAIN MATTERS RELATING TO THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS THEREOF; AND OTHER MATTERS RELATING THERETO.

**CURRENT STATUS:**

First Reading Introduction by Title Only

Item Number: 16.a  
Meeting Date: 9/24/2019  
Item Type: DEFERRED OR PREVIOUSLY SUSPENDED ISSUES

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** Planning / Zoning

**ISSUE UNDER CONSIDERATION:**

Ordinance No. 2017-23 - To amend the Pawleys Plantation Planned Development to add an additional two single family lots to the PD. TMS 04-0418-014-00-00. Case Number AMPD 6-17-18572.

On June 27, 2017 the Pawleys Plantation Property Owners Association applied to change the land use designation for two parcels along Green Wing Teal Lane from open space to single family. A change in land use is considered a major change to a Planned Development based on Section 619.3 of the Zoning Ordinance.

**CURRENT STATUS:**

The Pawleys Plantation PD is located east of Ocean Highway approximately 557 feet south of Hagley Drive in Pawleys Island. The PD contains a combination of single family units, patio lots and multi-family units along with a golf course and associated amenities.

**POINTS TO CONSIDER:**

1. The Pawleys Plantation Property Owners Association took ownership of the two parcels labeled as open space 9 and 10 on the attached map in 2010. The parcels were originally part of the golf course property.
2. According to the applicant both parcels were largely shown as wetlands on a 1987 Army Corps of Engineers survey. The POA's environmental consultant has indicated that the wetlands have receded significantly on these two parcels since the 1987 survey and both are now suitable building sites. The Army Corps has not yet confirmed the consultant's assertion.
3. The POA is seeking to sell the parcels in order to relieve the organization from the burden of maintaining both of these areas as well as provide additional income to be used for maintenance elsewhere on the property.
4. Open space #9 contains .25 acres and is approximately 72 feet wide. Open space #10 contains .29 acres is approximately 113 feet wide. Both parcels exceed the average lot size for the street with the exception of the large half-acre parcel located at the end of the cul de sac which was a combination of two original lots. Existing parcels on this street are considered patio lots and are designated as Tract D. Setbacks are 20' for the front, 7' and 3' for the side if a one-story home and 12' and 8' for the side if a two-story home and 20' in the rear.
5. The parcels back up to a large pond. The County's GIS infrared imagery shows significant uplands for both parcels. The attached wetland delineation from the applicant's consultant shows .004 of an acre of wetlands out of a total of .25 acres for Open Space #9 and .1 acre of wetlands out of a total of .29 acres for Open Space #10. Some fill will likely be required for Open Space #10.
6. The reduction in the amount of open space for the PD is minimal based on the large amount of open space provided for the PD as a whole. According to their engineer, the PD contains 62 acres of open space including the golf course. The POA currently owns 22.4 acres of open space.
7. Overall density for the PD will not be exceeded. At least one large tract originally shown as multi-family is being developed as single family and according to the POA, twelve different parcels have been combined also resulting in a density reduction.
8. The new owners for the parcels would be required to submit a tree removal plan to the Zoning Administrator prior to receiving a building permit.
9. According to the applicant, the POA met on August 28<sup>th</sup> and received the necessary approval from 80% of the members to remove these properties from the "common property" designation so that they can be sold by the POA.
10. The applicant met with several of those residents with drainage concerns. The existing swales on these parcels are currently functioning. The POA will either relocate the existing swales or install catch basins and pipes to handle the drainage.
11. Staff recommended approval of the request conditional on the following:
  - a. Approval from the Corps of Engineers for the attached wetlands delineation and any proposed fill.
  - b. Both new parcels will adhere to the PD requirements and setbacks for patio lots.

12. The Planning Commission held public hearings on this request on both August 17<sup>th</sup> and September 24<sup>th</sup>. After



12. The Planning Commission held public hearings on this request on both August 17th and September 21st. After receiving several comments from the neighbors regarding drainage, the Commission deferred action at the August meeting. Four property owners from this area spoke against the proposal with concerns about existing drainage problems, adding more run-off to the system and the promise of open space in these areas. One property owner spoke stating that the POA representative had addressed his concerns from the previous meeting. The POA representative responded by stating that the lots were not initially left for open space, but due to the wetlands which have now receded, the drainage situation will not be changed by virtue of this request and that the POA is attempting to work with the golf course on the issues with the existing ditch in this area.
13. The Commission voted 7 to 0 to recommend denial for this request.
14. Ordinance No. 2017-23 has been amended subsequent to previous report. Should Council choose to approve Ordinance No. 2017-23 with revised text, *a motion to amend* will be required.

**FINANCIAL IMPACT:**

Not applicable

**OPTIONS:**

1. Deny request as recommended by PC.
2. Approve request
3. Defer for further information
4. Remand to PC for further study

**STAFF RECOMMENDATIONS:**

Deferred pending internal review by County Attorney.

**ATTORNEY REVIEW:**

Yes

**Item Number:** 16.b  
**Meeting Date:** 9/24/2019  
**Item Type:** DEFERRED OR PREVIOUSLY SUSPENDED ISSUES

**AGENDA REQUEST FORM**  
GEORGETOWN COUNTY COUNCIL



**DEPARTMENT:** Legal

**ISSUE UNDER CONSIDERATION:**

Ordinance No. 19-20 - An Ordinance to authorize Georgetown County to lease a portion of a tract of property owned by Georgetown County, designated as Tax Map No. 04-0406-001-01-00, to JBs Celebration Park Inc. for the purposes of constructing a Celebration Park for general public access.

**CURRENT STATUS:**

Pending approval.

**POINTS TO CONSIDER:**

Georgetown County owns certain real estate on Wildcat Way in Pawleys Island, SC in Tax District No. 04 of Georgetown County identified as Tax Map No. 04-0406-001-01-00. JBs Celebration Park Inc. is desirous of leasing a portion of Tract 2 of said property for the purpose of constructing a Celebration Park for the general public to access utilize and enjoy for various public events and leisure.

Georgetown County Council has determined that it is in the best interest of the taxpayers and citizens of said County that the County enter into a lease agreement with the Lessee for a thirty (30) year rental period.

**OPTIONS:**

1. Adoption of Ordinance No. 19-20.
2. Deny approval of Ordinance No. 19-20.

**STAFF RECOMMENDATIONS:**

Recommendation to defer third reading approval of Ordinance No. 19-20.

**ATTACHMENTS:**

Description	Type
▢ Ordinance No 19-20 Authorizing Property Lease JBs Celebration Park	Ordinance
▢ Property Lease Agreement	Backup Material

STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF GEORGETOWN     )

**ORDINANCE NO: 19-20**

**AN ORDINANCE TO AUTHORIZE GEORGETOWN COUNTY TO LEASE TO JBs CELEBRATION PARK INC.  
A PORTION OF A TRACT OF PROPERTY, DESIGNATED AS TRACT 2 OF TMS NO. 04-0406-001-01-00,  
AND OWNED BY GEORGETOWN COUNTY**

**BE IT ORDAINED BY THE GEORGETOWN COUNTY COUNCIL AS FOLLOWS:**

**WHEREAS**, Georgetown County owns certain real estate situate in Tax District No. 04 of Georgetown County; whereon is situate a tract of property further identified as Tax Map No. 04-0406-001-01-00; and,

**WHEREAS**, the JBs Celebration Park Inc. is desirous of leasing a portion of Tract 2 of said property for the purpose of constructing a Celebration Park for the general public to access utilize and enjoy for various public events and leisure; and,

**WHEREAS**, Georgetown County Council has determined that it is in the best interest of the taxpayers and citizens of said County that the County enter into a lease agreement with the Lessee for a thirty (30) year rental period, ending on December 31, 2049.

**WHEREAS**, a public hearing on said lease agreement was held \_\_\_\_\_, 2019.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE GEORGETOWN COUNTY COUNCIL AND IT IS ORDAINED BY THE AUTHORITY OF SAID COUNCIL:**

That the following described property referred to in the Lease Agreement attached to this Ordinance as Exhibit A shall be leased unto the Georgetown County Water and Sewer District.

Should any word, phrase, clause or provision of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, such declaration shall not affect this ordinance as a whole or any part hereof except that specific provision declared by such court to be invalid or unconstitutional.

All ordinances or parts of ordinances in conflict with this ordinance or inconsistent with its provisions, are hereby repealed or superseded to the extent necessary to give this ordinance full force and effect.

This ordinance shall take effect upon final approval of this ordinance.

**DONE, RATIFIED, AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.**

\_\_\_\_\_  
Chairman, Georgetown County Council (Seal)

ATTEST:

\_\_\_\_\_  
Clerk to Council

This Ordinance, No. 19-20, has been reviewed by me and is hereby approved as to form and legality.

\_\_\_\_\_  
Wesley P. Bryant,  
Georgetown County Attorney

First Reading:

Second Reading:

Third Reading:

STATE OF SOUTH CAROLINA   )  
  )  
COUNTY OF GEORGETOWN    )

**LEASE and AGREEMENT**  
**(Portion of TMS No: 04-0406-001-01-00)**

**WHEREAS**, JBs Celebration Park Inc. (JBs), a South Carolina corporation is desirous of leasing a portion of TMS No: 04-0406-001-01-00 for the construction of a Celebration Park for the general public to access, utilize, and enjoy for various public events and leisure; and

**WHEREAS**, Georgetown County believes the Celebration Park and its proposed design/venue will benefit the recreational interests of the citizenry of Georgetown County; and

**WHEREAS**, JBs has a strong desire to move forward the design and construction of the park for which it will provide its funding; and

**WHEREAS**, the County, pursuant to the terms of this agreement will provide support in the form of a long term real property lease and grounds maintenance and upkeep for the park once it is finally completed.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants hereinafter contained, the Lessor and Lessee do mutually agree as follows:

THIS PROPERTY LEASE AGREEMENT ("Agreement" or "Lease") made and entered into this \_\_ day of July 30, 2019, by and between the **JBs CELEBRATION PARK INC.** (hereinafter referred to as Lessee) AND **GEORGETOWN COUNTY**, a body politic and corporate and organized under the laws of the State of South Carolina, (hereinafter referred to as Lessor).

**1. Leased Property.** The Lessor, in consideration of the rents, covenants and agreements hereinafter specified to be paid, kept and performed by Lessee, hereby leases Lessee that certain property located west of and adjacent to Wildcat Way, Pawleys Island, South Carolina known as a portion of Tract 2 TMS No: 04-0406-001-01-00 (hereinafter referred to as the Property) more fully depicted in Plat Slide 632, Page 1 and Plat Side 742, Page 4. Upon the final design of the park it is understood this Lease will be supplemented with a more definite depiction of the park.

TO HAVE AND TO HOLD unto Lessee for the time and upon the terms as hereinafter set forth.

**2. Representations of Lessor.** The Lessor represents that it leases the Property in an AS IS condition and that the title to the Property is free from encumbrances. Lessor further represents that it has the right and authority to make this Agreement.

**3. Term.** The Term of this Agreement shall be for 30 years until December 31, 2049.

**4. Renewal Term.** There shall be the option of a renewal term to be agreed upon in another writing utilizing terms to be negotiated at that time.

**5. Early Termination.** Lessee shall have the right to terminate this Agreement at any time during the term hereof in the event Lessee's activities become prohibited, is rendered practically unfunded and/or unprofitable, the property is no longer needed or the Lessee acquires fee simple title to the property.

Lessor shall have the right to terminate this Agreement at any time during the term hereof if it is determined by either party the subject park has been damaged beyond repair due to acts of God.

Nothing herein precludes the parties from mutually terminating this agreement early by an agreed upon written amendment to this document. If the Leased Property is subject to a Condemnation action by an entity other than the Lessor, or if a portion is condemned, then, if the Lessee so desires, the term of this Agreement shall automatically cease and terminate as of the date of such taking or condemnation.

**6. End of Term.** Upon expiration of the Initial Term, Renewal Term, or other termination of this Agreement, Lessee shall quit and surrender to Lessor the property in essentially the same condition as it was received. Lessee shall remove from the property all of its property, to include any improvements (unfixed) to the property prior to the expiration of the term or early termination date. Any fixed improvements shall remain on the property and be transferred to the Lessor by bill of sale.

**7. Holdover Occupancy.** Holdover occupancy shall not be allowed unless agreed to by both parties and evidenced in writing, executed by both parties, amending the terms of this agreement.

**8. Rent and Lease Payments.** Commencing on the date as written above, Lessee shall pay lessor Rent (as herein defined) at the address specified in Paragraph 28, or other such place as may be designated by Lessor. **The Rent shall be One Dollar a year.** Said rent shall be prorated for the initial month and/or any partial months due to early termination, if needed. Rent shall not be subject to deduction. FURTHER, the Lessee shall be responsible for any and all repairs, maintenance, and upkeep, regardless of cause, for restoring the property to the same state of condition it is in at the commencement of this lease agreement.

**9. Security Deposit.** A security deposit shall not be required for this agreement.

**10. Fees and Taxes.** Lessee's obligation under this paragraph shall include, without limitation, payments of any and all charges, taxes or fees imposed by Federal, State or Local governments, or any agencies thereof, on, in connection or resulting from or arising out of Lessee's use of occupancy of the Leased Property. Lessor shall timely pay all uniform fees and taxes, to include the Georgetown County Storm Water Fee if applicable, which may be assessed upon the Leased Property by all governing bodies with jurisdiction. The Lessee shall be responsible for and shall timely pay any and all personal property taxes which may be assessed by all governing bodies with jurisdiction upon Lessee's personal property located upon the Leased Property.

**11. Use of Leased Property.** During the Term of this Agreement, and any renewal period thereof, Lessee shall occupy and use the Leased Property for the purpose of conducting any and

all associated construction, maintenance, and use activities due to the establishment of a Celebration Park.

If necessary, Lessee shall be allowed to install reasonable exterior signs and graphic materials on the Leased Property and for advertisement and recognition so long as the signs conform to all applicable Sign and Zoning Ordinances for the County of Georgetown.

**12. Covenant of Quite Enjoyment.** The Lessee, upon the payment of Rent herein reserved and upon the performance of all other terms of this Agreement, shall at all times during the lease term, and during any extension term, peaceably and quietly enjoy the Leased Property without any disturbance from the Lessor or from any other person claiming through the Lessor.

**13. Maintenance.** Lessor, upon final completion of the construction of the park (to be evidenced in writing by JB's and delivered to the County) shall be responsible for all grounds maintenance and upkeep of the premises.

**14. Repairs.** Repairs that are needed due to any occurrence regardless of the cause or area needing repair shall be the responsibility of the Lessor during the term of this Lease Agreement.

**15. Sublease/Assignment.** Lessee agrees not to assign any interest of Lessee hereunder or sublet, license or permit any other party or parties to occupy any portion of the property without the express, written consent of the Lessor.

**16. Right of Entry.** Lessor shall have the right, upon adequate notice, to enter the real property for the purpose of maintenance, repair, inspecting or protecting such. This right includes, but is not limited to, safety checks in the time of natural disasters and any other emergencies. Lessee also expressly recognizes the property is owned by the public and held in trust by the County so entry must be made available to the general public; no individual person, group, or company is to solely utilize the premises to the exclusion of others.

**18. Compliance with Governmental Orders, Regulations, Etc.** The Lessee covenants and agrees to comply with all governmental rules, laws and ordinances during the term of its lease. Any failure to do so by the Lessee will result in a breach of this Agreement.

**19. Insurance.** Lessee agrees to maintain, at its own expense, general liability insurance policy or policies. The insurance required by this Agreement shall, at a minimum, be issued by insurance companies authorized to do business in the State of South Carolina. Lessee agrees to maintain a policy with at least \$300,000.00 in coverage for a single individual, \$600,000.00 per occurrence. Lessee agrees to furnish Lessor, upon request, with a copy of certificates and binders evidencing the existence of the insurance required herein. Lessor must receive at least ten (10) days prior written notice of any cancellation of Lessee's insurance coverage. Failure to maintain insurance coverage as stated above shall constitute a breach of this agreement. However, nothing herein shall preclude the Lessor from obtaining or maintaining its own property insurance, in whatever form, during the term of this Lease Agreement.

Lessor shall maintain general liability insurance over the premises for which it keeps ownership during the term of this agreement.

**20. Casualty.** In the event the Leased Property or the means of access thereto shall be damaged by fire or any other cause, the rent payable hereunder shall not abate provided that the leased property is not rendered untenable by such damage.

**21. Alterations and Improvements.** The Lessee shall be allowed to make any major alterations to the Leased Property so long as it comports with the public nature of the project. The Lessee agrees to meet with County representatives for a design review prior to the commencement of construction. Lessee shall indemnify and hold harmless the Lessor against any mechanic's liens or materialmen's liens, lawsuits, or any other lien or action whereby money is being claimed as owed, arising out of the making of any alteration or improvements by Lessee to the Leased Property as herein provided.

**22. Utilities.** The Lessee shall be responsible for any and all utility charges for connections during its construction under the terms of this lease. The Lessor shall be responsible for service charges throughout the term of this agreement.

**23. Default.** If Lessee shall file a voluntary petition in bankruptcy, or if Lessee shall file any petition or institute any proceedings under any insolvency or bankruptcy act (or any amendment thereto hereafter made) seeking to effect a reorganization or a composition with Tenant's creditors, or if (in any proceeding based on the insolvency of Lessee or relating to bankruptcy proceedings) a receiver or trustee shall be appointed for Lessee of the leased property, or if any proceeding shall be commenced for the reorganization of Lessee, or if the leasehold estate created hereby shall be taken on execution or by any process of the law of if Lessee shall admit in writing Lessee's inability to pay Lessee's obligations generally as they become due, or if there shall be a default in the payment of the rental reserved hereunder, or any part thereof for more than thirty (30) days after written notice of such default by the Lessor, or if there shall be a default in the performance of any other payment, covenant, agreement, condition, rule or regulation herein contained or hereafter established on the part of the Lessee for more than thirty (30) days after written notice of such default by the Lessor, or if the Lessee losses or dissolves its non-profit corporation status regardless of the circumstances surrounding the dissolution, then Lessor may, at Lessor's sole option, terminate this Agreement.

**24. DISCLAIMER OF LIABILITY AND HOLD HARMLESS AGREEMENT.** LESSOR HEREBY DISCLAIMS AND LESSEE HEREBY RELEASES LESSOR FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING BUT NOT LIMITED TO STRICT LIABILITY AND NEGLIGENCE) FOR ANY LOSS, DAMAGE OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY LESSEE, ITS EMPLOYEES, MEMBERS, AGENTS OR INVITEES DURING THE TERM (INITIAL OR RENEWAL OR MONTH-TO-MONTH) OF THIS AGREEMENT. THE PARTIES DO AGREE THAT UNDER NO CIRCUMSTANCES SHALL LESSOR BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT OR TORT, WHETHER CAUSED BY NEGLIGENCE OR GROSS NEGLIGENCE, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR OTHER DAMAGE RELATED TO THE PREMISES.

THE LESSOR SHALL NOT HOLD THE LESSEE RESPONSIBLE FOR ANY LIABILITIES THAT ARISE AS A RESULT OF THE LESSOR'S FAILURE TO COMPLY WITH THE AGREEMENT HEREIN OR ANY OTHER LIABILITY THAT MAY OCCUR PURSUANT TO A DIRECT ACT OR OMMISSION OF THE LESSOR, WHETHER IN CONTRACT OR TORT. THE LESSEE COVENANTS AND AGREES TO ACCEPT



RESPONSIBILITY FOR ALL BODILY INJURY AND PROPERTY DAMAGE THAT OCCURS PURSUANT TO ACTS OF THE LESSEE.

**25. Governing Law and Jurisdiction.** This Agreement shall be construed in accordance with the laws of the State of South Carolina. Any litigation arising out of this agreement shall be resolved through the 15<sup>th</sup> Judicial Circuit Court of South Carolina in Georgetown County only after non-binding mediation is held by a neutral mediator agreed to by both parties. **This agreement is not subject to arbitration.**

**26. Relationship of Parties.** The relationship between Lessor and Lessee shall always and only be that of Lessor and Lessee. Lessee shall never at any time during the term of this Agreement become the agent of the Lessor, and Lessor shall not be responsible for the acts or omissions of Lessee, its employees, or agents.

**27. Remedies Cumulative.** The rights and remedies with respect to any of the terms and conditions of this Agreement shall be cumulative and not exclusive, and shall be in addition to other rights and remedies available to either party in law or equity.

**28. Notices.** Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested and shall be deemed to have been given at the time it is duly deposited and registered in any US Mail Post Office or Branch Post Office:

If to Lessee:                      Sel Hemingway, Administrator  
Georgetown County  
PO Drawer 421270  
Georgetown, SC 29442

If to Lessor:                      JB's Celebration Park, Inc.  
1266 Parker Drive  
Pawleys Island, SC 29585

With a copy to:                  Wesley P. Bryant, Esq.  
Georgetown County Attorney  
716 Prince Street  
Georgetown, SC 29440

**29. Waiver.** The waiver by either party of any covenant or condition of this Agreement shall not thereafter preclude such party from demanding performance in accordance with the terms thereof.

**30. Successors Bound.** This Agreement shall be binding on and shall inure to the benefit of its successors or legal representatives of the parties hereto unless the Lessor and Lessee otherwise enact a written agreement stating otherwise.

**31. Severability.** If a provision hereof shall be finally declared void or illegal by any court of agency having jurisdiction over the parties to this Agreement, the entire Agreement shall not be

void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

**32. Gender and Singular.** In construing this agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.

**33. Captions.** The captions appearing in the beginning of each separate numbered section in this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms or provisions contained herein.

**34. Written Changes.** This Agreement may not be changed orally, but only by agreement in writing and signed by both parties.

**35. Acknowledged.** It is acknowledged by both parties that Georgetown County has not appropriated funding for the construction of this park and is not liable for construction costs. It is further acknowledged by both parties that if the park were to be destroyed or severely damaged due to an Act of God that Georgetown County may not have appropriations at that time to reconstruct the park and the parties will meet to determine any subsequent action related thereto.

**IN WITNESS WHEREOF,** the undersigned parties have hereunto set their hands and seals this the date and year first above written.

**WITNESSES**

**LESSOR: GEORGETOWN COUNTY**

\_\_\_\_\_

**BY:** \_\_\_\_\_

\_\_\_\_\_

**ITS: County Administrator**

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

I, \_\_\_\_\_, do hereby certify that Sel Hemingway personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: \_\_\_\_\_

WITNESSES

Rhonda Lee-Morris  
\_\_\_\_\_

LESSEE: JB's CELEBRATION PARK, INC.

BY: Cynthia G. Bindner  
ITS: Owner

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

I, Nancy Orman, do hereby certify that Cynthia G. Bindner personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 30 day of July, 2019.

Nancy Orman  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 4/29/2024