

**CITY OF WESTMINSTER SPECIAL CALLED MEETING**

**August 16, 2022 @ 4:00 PM**

**Westminster Depot**  
**135 E Main Street**

Call to Order

Invocation & Pledge of Allegiance

Certification of Quorum

Public Comments:

The floor is now open for public comments. Citizens of Westminster or others who have registered for time with the Clerk can now address Council for any matters on tonight's agenda or other matters you wish to bring before the Council. Speakers are allowed up to 3 minutes and possibly longer if that Speaker is recognized in advance as representing a larger group with similar concerns. In order to preserve the decorum of this public meeting, and to allow adequate time for discussion among the elected membership of City Council, this will be the only time we will receive unsolicited comments tonight from the public.

Comments from the Mayor and Council

**Old Business**

None

**New Business**

1. Second Reading of ORDINANCE NO. 2022-08-16-01 (*re-numbered from 2022-09-13-02*) AUTHORIZING AN EQUIPMENT LEASE PURCHASE AGREEMENT IN THE AMOUNT OF NOT EXCEEDING \$174,406 BETWEEN THE CITY OF WESTMINSTER, SOUTH CAROLINA, AND COMMUNITY FIRST NATIONAL BANK, TO DEFRAY THE COST OF ACQUIRING CERTAIN EQUIPMENT; AND OTHER MATTERS RELATING THERETO.

*(This ordinance is to authorize the financing agreement with Community First National Bank to lease/purchase the following fire service equipment. The Bank terms are updated from First Reading.*

*20 MSA G1 SCBA's; 42 Cylinders; 2 RIT Packs; and related equipment*

*The purchase of this equipment was approved in the FY2022-2023 Annual Budget.*

*Staff recommends approval.)*

2. Second Reading ORDINANCE NO. ORDINANCE NO. 2022-08-16-02 (*re-numbered from 2022-09-13-04*), AN ORDINANCE APPROVING THE EXECUTION AND DELIVERY OF A POLE ATTACHMENT LICENSE AGREEMENT BY AND BETWEEN THE CITY OF WESTMINSTER, SOUTH CAROLINA AND BLUE RIDGE ELECTRIC COOPERATIVE, INC. AND OTHER MATTERS RELATED THERETO.

*(City staff and Blue Ridge Electric Cooperative (BREC) staff have developed a pole attachment license agreement that will allow BREC to attached fiber optic lines to City poles. In the near term, this is intended to facilitate BREC's installation of fiber optic lines in the downtown district of Westminster. BREC is a partner of the Upcountry Fiber project that is*

*working throughout the upstate “to bridge the digital divide. Offering internet speeds up to 1 Gps over a fiber network...”*

*The Pole Attachment License Agreement is incorporated as Exhibit A of the ordinance. The ordinance enables the execution of the agreement with BREC.*

*Staff recommends approval.)*

3. Presentation by City Legal Counsel, Lawrence Flynn from Pope Flynn, regarding a draft economic development ordinance entitled:

AN ORDINANCE AUTHORIZING AND ESTABLISHING AN ECONOMIC DEVELOPMENT INCENTIVE PROGRAM TO ENCOURAGE PRIVATE INVESTMENT IN THE INCENTIVE AREA OF THE CITY OF WESTMINSTER, SOUTH CAROLINA; AUTHORIZING AND ESTABLISHING A PROGRAM TO GRANT SPECIAL PROPERTY TAX ASSESSMENTS TO CERTAIN REHABILITATED HISTORIC PROPERTIES; AND OTHER MATTERS RELATED THERETO.

*(Lawrence Flynn will present for discussion for City Council consideration a draft of an economic development ordinance. If adopted this ordinance will create an Economic Development Inventive Program that may allow for city-offered: Grant Incentives, Incentive Agreements, and South Carolina State Incentive Agreements for developments within a specified area(s) of the City. The Program may also allow for incentives for redevelopment projects.*

*A draft ordinance is provided for Council review and comment.*

*If the Council is inclined to adopt an economic development incentive ordinance, it is appropriate for the Council to consider the types of incentives it wishes to authorize (see Section 38.05 – Authorized Incentives), Eligibility Criteria (see Section 38.06 – Eligibility Criteria) and the geographic area(s) of the city limits it wishes to offer the incentives. Provided as a reference is a map showing the area for the ARC Downtown Master Plan Grant.)*

4. Presentation by the City Administrator, regarding modifications to the Hospitality Tax Guidelines, beginning FY2024.

*(City Council, from year to year as it determines at its sole discretion, allocates Hospitality Tax funds for a local grant program from which local tax-exempt organizations may apply. Each year the amounts of the grants are determined by the City Council during its budget development process. Staff requests input from the Council for additions to the guidelines that will ensure continued compliance with SC State Law and assist the City Council and City staff in managing the grant program.*

*Provided for the Council’s review are two attachments. The first is the existing policy and related documents. The second is guidelines from another South Carolina jurisdiction that offers a similar program.)*

5. Presentation by the City Administrator, regarding a draft resolution to adopt fees for off-duty city employees for special events.

*(Each year organizers plan special events in the City limits, often in the downtown area. Organizers are required to complete a Special Event Application for the City's consent to ensure the public is safeguarded. The current practice, whereby the City pays for police, fire and utility staff overtime, tasks the departmental budgets since the City does not control the timing nor the planning of the events. A policy similar to or the same as the draft policy will establish a practice for the special event organizers to pay for City staff overtime, thereby lessening the strain on the departmental budgets.*

*Council is asked to consider this policy and provide input for further development.)*

**Adjourn**

ORDINANCE NO. \_\_\_\_\_

AUTHORIZING AN EQUIPMENT LEASE PURCHASE AGREEMENT IN THE AMOUNT OF NOT EXCEEDING \$174,406 BETWEEN THE CITY OF WESTMINSTER, SOUTH CAROLINA, AND COMMUNITY FIRST NATIONAL BANK, TO DEFRAY THE COST OF ACQUIRING CERTAIN EQUIPMENT; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER, SOUTH CAROLINA, AS FOLLOWS:

SECTION 1. Findings and Determinations. The City Council (the "Council") of the City of Westminster, South Carolina (the "City"), hereby finds and determines:

(a) The City is an incorporated municipality located in Oconee County, South Carolina, and as such possesses all powers granted to municipalities by the Constitution and the laws of the State of South Carolina (the "State").

(b) Section 5-7-40 of the Code of Laws of South Carolina, 1976, as amended (the "S.C. Code"), empowers all municipalities to own and possess real and personal property and such municipalities may lease any such property.

(c) The City desires to enter into a lease-purchase agreement (the "Lease Agreement") with Community First National Bank (the "Lessor"), in the principal amount of not exceeding \$174,406 for the purpose of financing the acquisition of the equipment set forth on Exhibit A hereto (the "Equipment").

(d) The Lease Agreement will not constitute a "financing agreement" and the Equipment will not constitute an "asset" as such terms are defined in Section 11-27-110 of the S.C. Code. Thus, the amount of the Lease Agreement will not be included when calculating the City's constitutional debt limit under Article X, Section 14 of the Constitution of the State.

(e) The Lease Agreement will be subject to annual appropriation by the Council.

(f) It is in the best interest of the City to acquire the Equipment by entering into the Lease Agreement with the Lessor. The Lease Agreement will enable the City to purchase the Equipment which will provide services necessary or useful to the operations of the City government.

SECTION 2. Proposal of Lessor. The City Administrator is authorized to negotiate with the Lessor to provide financing for the Lease Agreement authorized by this Ordinance, and is further authorized to accept a proposal from the Lessor (a copy of which is attached hereto as Exhibit B) for such financing. The City Administrator of the City is hereby authorized to accept such proposals on behalf of the City.

SECTION 3. Approval of Lease-Purchase Financing. The Council of the City does hereby approve leasing of the Equipment by the City from the Lessor pursuant to the Lease Agreement in the principal amount of not exceeding \$174,406.

SECTION 4. Approval of Lease Agreement. Without further authorization, the City Administrator is hereby authorized to approve the form, terms and provisions of the Lease Agreement. The City Administrator is hereby authorized, empowered and directed to execute, acknowledge and deliver the Lease Agreement in the name and on behalf of the City. The Lease Agreement is to be in the form as shall be approved

by the City Administrator, the City Administrator's execution thereof to constitute conclusive evidence of such approval.

**SECTION 5. Execution of Documents.** The Mayor, Mayor Pro-Tempore, City Administrator and City Clerk are fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be reasonably requested by the Lessor to effect the delivery of the Lease Agreement, including any project fund or acquisition fund agreement, in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby, and the action of such officers in executing and delivering any of such documents, in such form as the Mayor, Mayor Pro-Tempore, City Administrator and City Clerk shall approve, is hereby fully authorized.

**SECTION 6. Federal Tax Covenant.** The City, as lessee, agrees and covenants that it will not take any action which will, or fail to take any action which failure will, cause interest components of the payments to be made under the Lease Agreement to become includable in the gross income of the Lessor or its successors or assignees for federal income tax purposes pursuant to the provisions of the Internal Revenue Code of 1986, as amended (the "Code") and regulations promulgated thereunder in effect on the date of original issuance of the Lease Agreement, and that it will comply with all applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder, to maintain the exclusion from gross income for federal income tax purposes of the interest portion of the payments to be made under the Lease Agreement; and to that end the City shall:

- (a) comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as the Lease Agreement is outstanding;
- (b) establish such funds, make such calculations and pay such amounts in the manner and at the times required in order to comply with the requirements of the Code relating to required rebates of certain amounts to the United States; and
- (c) make such reports of such information at the times and places required by the Code.

The City Administrator of the City is hereby authorized to adopt written procedures to ensure the City's compliance with federal tax matters relating to the Lease Agreement.

The City Administrator is authorized to determine whether to designate the Lease Agreement as a "qualified tax-exempt obligation" for purposes of Section 265 of the Code relating to the ability of financial institutions to deduct from income for federal income tax purposes interest expense that is allocable to carrying and acquiring tax-exempt obligations.

The City will timely file Form 8038-G in accordance with the applicable regulations of the Internal Revenue Service.

This Ordinance shall constitute the City's declaration of official intent pursuant to Regulation §1.150-2 of the Code to reimburse the City from all or a portion of the proceeds of the Lease Agreement for expenditures the City anticipates incurring (the "Expenditures") with respect to the Equipment prior to the execution and delivery of the Lease Agreement. Expenditures which may be reimbursed are limited to Expenditures which are: (a) properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of placed in service under Regulation §1.150-2 of the Code) under general federal income tax principals; or (b) certain *de minimis* or preliminary Expenditures satisfying the requirements of Regulation §1.150-2 of the Code. The source of funds for the Expenditures with respect to the Equipment will be the operating account of the City. To be eligible for reimbursement of the

Expenditures, the reimbursement allocation must be made not later than 18 months after the later of (a) the date on which the Expenditures were paid; or (b) the date the Equipment was placed in service, but in no event more than three (3) years after the original Expenditures.

SECTION 7. Filings with Central Repository. In compliance with Section S.C. Code Ann. § 11-1-85, the City covenants that it will file or cause to be filed with a central repository for further availability in the secondary bond market when requested: (a) a copy of the annual audit of the City within thirty (30) days of the City's receipt thereof; and (b) within thirty (30) days of the occurrence thereof, relevant information of an event which, in the opinion of the City, adversely affects more than five (5%) of the City's revenue or its tax base.

SECTION 8. Severability. All ordinances, orders, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the execution of the Lease Agreement are, to the extent of such conflict, hereby repealed.

SECTION 9. Effective Date; Binding. This Ordinance shall be effective upon its enactment by the City Council of the City, and shall be binding on the City Council of the City of Westminster, South Carolina, and its successors.

[Execution page follows]

This Ordinance shall be effective upon its enactment on August 16, 2022.

CITY COUNCIL OF THE CITY OF  
WESTMINSTER, SOUTH CAROLINA

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Exhibit A

Equipment

20 MSA G1 SCBAs  
42 Cylinders  
2 RIT Packs  
Related Equipment



Exhibit B

Copy of Proposal of Community First National Bank



Phone: 877.525.1776  
Fax: 888.777.7875  
Cell: 724.331.4982  
215 S. Seth Child Road  
Manhattan, KS 66502  
[www.clpusa.net](http://www.clpusa.net)

August 4, 2022

**Customer Name:** City of Westminster, SC

Equipment: (20) MSA G1 SCBAs with spare cylinders and related equipment (Quote #EST9683)  
Sales Representative: SAFE Industries, Lee Perkins  
Delivery: Equipment has been delivered

Community Leasing Partners, a Division of *Community First National Bank*, is pleased to present the following financing options for your review and consideration.

**Option 1**

Total Equipment Cost:	\$ 164,406.00	Payment Frequency:	Annual
City Legal Fees/Closing Cost:	\$ 10,000.00	First Payment:	September 15, 2022
Down Payment:	\$ -		
<b>Amount Financed:</b>	<b>\$ 174,406.00</b>		
Term in Years:	7		
Payment:	\$27,960.85		
Interest Rate:	4.02%		

- There are no documentation or closing fees associated with Community Leasing Partners and/or Community First National Bank.
- Fixed interest rate for the terms provided.
- The quoted interest rate is valid until September 15, 2022. This financing is to be executed & funded by September 15, 2022 or Lessor reserves the right to adjust the interest rate. The proposal is subject to mutually acceptable documentation.
- This proposal has been prepared assuming the lessee is bank qualified and that the proposed lease qualifies for Federal Income Tax Exempt Status for the Lessor under Section 103 of the IRS Code.

**Thank you** for allowing Community Leasing Partners the opportunity to provide this proposal. If you have any questions regarding the options presented, need additional options, or would like to proceed with a financing, please contact me at 1-877-525-1776.

Respectively,  
David R. Fike  
Director - Business Development  
[davefike@clpusa.net](mailto:davefike@clpusa.net)

**POLE ATTACHMENT LICENSE AGREEMENT**

Between

**CITY OF WESTMINSTER**  
("Owner")

and

**BLUE RIDGE ELECTRIC COOPERATIVE, INC.**  
("Licensee")

Adopted September 13, 2022

## **POLE ATTACHMENT LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (the “Agreement”), effective as of the latest date of execution below (the “Commencement Date”) by and between the City of Westminster, a municipality of the State of South Carolina (hereinafter called “Owner”), and Blue Ridge Electric Cooperative, Inc., a South Carolina nonprofit electric cooperative membership corporation (hereinafter called “Licensee”).

WHEREAS, Licensee constructs, owns and maintains middle-mile fiber optic facilities as part of its retail electric distribution system and to facilitate the provision of communications services to residents within its electric service territory and in such other areas authorized by South Carolina law, and desires to place and maintain aerial cables, wires and associated facilities and equipment on the poles of Owner in the area to be served, and

WHEREAS, Owner shall permit, to the extent it is lawfully and contractually required to do so, the attachment of said aerial cables, wires, and facilities to its poles subject to the terms and conditions of this Agreement and applicable law where Owner owns poles.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions herein contained the parties hereto do hereby mutually covenant and agree as follows:

### **ARTICLE 1 SCOPE OF AGREEMENT**

1.1 Subject to the provisions of this Agreement and applicable law, Owner agrees to issue to Licensee, for the attachment of Licensee’s facilities to Owner’s poles for the purpose of providing any and all lawful communications services, a revocable, non-exclusive license hereinafter referred to as a “Permit” authorizing the attachment of Licensee’s facilities to Owner’s poles. This Agreement governs the fees, charges, terms and conditions under which Owner issues such Permit(s) to Licensee. This Agreement is not in and of itself a license, and before making any attachment to any utility pole except as otherwise provided herein, Licensee must apply for and obtain a Permit.

1.2 This Agreement supersedes all previous agreements, if any, between Owner and Licensee for the attachment of Licensee’s facilities to the poles of Owner. This Agreement shall govern all existing licenses, permits, and other forms of permission for pole attachments of Licensee’s facilities to Owner’s Poles as well as all Permits issued subsequent to execution of this Agreement.

1.3 No use, however extended, of Owner’s pole or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in such poles, except as expressly provided by this Agreement.

1.4 Nothing contained in this Agreement shall be construed to require Owner to construct, retain, extend, place, upgrade, or maintain any pole or other facilities not needed for Owner’s own service requirements, except as otherwise required by applicable law or as agreed to by the parties.

1.5 Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against Owner entering into agreements with other parties regarding the poles covered by this Agreement, provided that Owner provide access to its poles at just, reasonable, and nondiscriminatory rates, terms, and conditions.

1.6 Owner may only deny Licensee's request for a Permit if, on a nondiscriminatory basis, the proposed attachment cannot be accommodated because of insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual expense of Licensee, except as otherwise provided herein.

1.7 Should Owner acquire ownership of poles through purchase or by relinquishment of ownership from another system or source and Licensee's facilities are already attached to said poles, the Owner shall notify Licensee of such acquisition and preclude said poles from questions of authorization during the next inventory and said poles and Licensee facilities shall be covered under this Agreement and considered authorized.

1.8 The eligibility of Licensee for and entitlement of Licensee to a Permit hereunder shall include within their scope the drops of WC Fiber, LLC, Licensee's co-venturer, that form part of Licensees communications facilities and that may from time to time be installed on Owner's poles. Such drops shall be subject to all terms and conditions set forth herein, and Licensee shall remain solely liable for any breach related to the permitting, location, installation maintenance and removal of such drops.

## **ARTICLE 2 TERM OF AGREEMENT**

2.1 This Agreement shall continue in force and effect for a period of five (5) years from and after the Commencement Date. Thereafter, the Agreement shall automatically extend on the same terms and conditions for successive one-year terms. Either party may terminate this Agreement by giving written notice to the other party no less than one hundred-eighty (180) days prior to the then-current term. All days referenced herein are calendar days. Notwithstanding any such termination, this Agreement shall continue in full force and effect to the extent the parties are entering into a replacement agreement but good faith negotiations have not yet concluded.

## **ARTICLE 3 SPECIFICATIONS**

3.1 Licensee's attachments constructed on Owner's poles shall be placed and maintained at all times in accordance with the requirements and specifications of the National Electrical Safety Code ("NESC") published by the Institute of Electrical and Electronics Engineers and with Owner's standards in effect on the date of the installation. Any standard adopted by Owner that exceeds the NESC shall be applied on a nondiscriminatory basis and shall be necessary for demonstrable safety purposes. Such requirements and specifications may be modified, revised, supplemented or replaced from time to time, upon sixty (60) days written notice to Licensee, but in all cases, including with respect to Owner's standards, NESC grandfathering provisions shall apply to Licensee and Licensee shall in no event be required to upgrade or retrofit existing facilities that were compliant when originally installed and all such revisions shall apply on a prospective basis.

3.2 Licensee acknowledges that other users, having similar services, have been granted and may hereafter be granted rights similar to those granted in this Agreement, and that this Agreement is not an exclusive contract for the grant of such rights to Licensee. Owner will maintain such agreements without favor to any particular party, service, or licensees, including Owner's communications affiliate, if any. Except as may be permitted pursuant to Article 12 of this Agreement with respect to Owner moving the facilities of Licensee, no provision of any such agreement, including this Agreement, shall permit any party thereto to move, remove, adjust or change the attachments of other parties to such agreements

without the written consent of all affected users and of Owner. In no event will Licensee be required to incur any cost to accommodate any other party, including Owner's communications affiliate, if any, except as otherwise provided by law, or to correct a violation of the NESC caused by any other party, including Owner and Owner's communications affiliate.

#### **ARTICLE 4 ATTACHMENT FEES**

4.1 Licensee shall pay an annual fee per pole ("Attachment Fees") in the amount shown in Exhibit A, attached hereto and made a part hereof by reference.

4.2 On or before the first day of January of each year, Owner shall invoice Licensee for the annual Attachment Fees, provided that Owner shall provide sixty (60) days' notice prior to imposing any increase in Attachment Fees from the previous year for Licensee's review and comment. No such increase shall exceed three percent (3%) of the previous year's annual Attachment Fee. The rental period shall cover the twelve-month period between January 1 and December 31 of the current year; and, the annual Attachment Fees shall be based upon the number of Owner poles occupied by Licensee's existing attachments as of December 31 of the prior year. Licensee shall pay any undisputed invoice within forty-five (45) days of receipt thereof. Interest on amounts included on any undisputed invoice shall accrue on the unpaid undisputed Attachment Fees at the rate set for that period by the IRS for individual underpayments pursuant to Section 6621 of the IRS Code.

4.3 Owner and Licensee shall promptly seek to resolve any invoice or payment dispute made in good faith. Any dispute claim must be presented within forty-five (45) days of a notice of increase or invoice. In the event either party determines that there is an error or erroneous charge in the amount billed in any statement rendered by Owner to Licensee, the error or erroneous charge shall be adjusted within thirty (30) days of a final determination of whether an error has occurred and the parties will be made whole accordingly. Notwithstanding the above, neither party shall be liable to the other for errors or erroneous charges in any bill or statement originally issued more than two years prior to the day on which the error is subsequently determined to have occurred. Each party reserves its rights to avail itself of any remedy at law or equity for any dispute that cannot be resolved by the parties.

#### **ARTICLE 5 PROCESS FOR PERMITTING ATTACHMENTS**

5.1 To obtain a Permit, Licensee must submit Exhibit B, Permit Application (the "Application"). Licensee's Application shall be accompanied by Licensee's construction plans and drawings.

5.2 Application Review and Survey: Owner shall review Applications in accordance with the following provisions:

5.2.1 *Application Completeness*. Owner shall review Licensee's Application for completeness, and notify Licensee of Owner's decision, within 15 business days of receiving the Application. An Application is complete if it provides the Owner with the information necessary to begin to survey affected poles. If the Owner does not respond within 15 business days or rejects the application without specifying a reason, the Application is deemed complete. If Owner timely notifies Licensee that its Application is not complete, then Owner must specify all reasons for finding it incomplete. Any resubmitted Application need only address Owner's reasons for incompleteness and shall be deemed complete within 5 business days of submission, unless Owner specifies which reasons were not addressed and how the resubmitted Application did not sufficiently address the reasons. Licensee may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a

bona fide attempt to correct the reasons identified by Owner, and in each case the deadline set forth in this paragraph shall apply to Owner's review.

5.2.2 *Survey.* Owner shall complete a survey of poles for which access has been requested within 45 days of receipt of a complete Application (or within 60 days for Applications including more than 300 poles). Owner must permit Licensee and any existing attachers to be present for the survey in order to ensure on-the-ground discussions. Owner shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than 3 business days of any field inspection as part of the survey and shall provide the date, time, and location of the survey, and name of the contractor performing the survey. If Owner fails to complete the survey within the applicable timeframe, Licensee may conduct a survey using its own approved contractor. In such situation, Licensee must (i) permit Owner and any existing attachers to be present for any field inspection conducted as part of the survey; and (ii) use commercially reasonable efforts to provide Owner and any affected existing attached with at least three (3) business days' notice with the date and time of the survey, a description of the work involved, and the name of the contractor being used for the survey. If Licensee provides the survey, Owner must grant, deny, or grant conditional access within 10 days of the date Licensee provides the survey.

5.2.3 *Application Review On the Merits.* Subject to the foregoing, Owner shall respond to Licensee's Application either by granting access or denying access within 45 days of receipt of a complete Application (or within 60 days for Applications including more than 300 poles). Access may not be denied based on preexisting violations caused by a party other than Licensee, including Owner, and the Owner may not charge Licensee to bring poles, attachments, or third-party equipment into compliance with the specifications set forth above if such poles, attachments, or third party equipment were out of compliance because of work performed by a party other than Licensee, including Owner or Owner's communications affiliate, if any, prior to the request for attachment. If access is denied, the denial must be specific, include all relevant evidence and information supporting the denial, and explain how that evidence and information relate to a denial of access for reasons of insufficient capacity, safety, reliability, or generally applicable engineering standards. If the response is that access is conditioned on the performance of make-ready, Owner shall present a detailed, itemized estimate, on a pole-by-pole basis, if requested, of charges to perform all necessary make-ready within 14 days of the response. Owner shall provide documentation that is sufficient to determine the basis for all charges, including any projected material, labor, and other related costs that form the basis of the estimate. Owner may not charge Licensee to replace any pole that was scheduled for removal, prior to Licensee's Application, except to the extent that the replacement pole must be upgraded from that which was otherwise planned in order to accommodate Licensee's facilities. In no event shall Owner be obligated to replace any pole.

5.3 Owner may withdraw an outstanding estimate beginning 14 days after the estimate is presented. Licensee may accept the estimate and make payment any time after receipt of the estimate, except after the estimate is withdrawn. If the final cost of the make-ready work is greater than the estimate, the Owner shall also send Licensee a detailed, itemized final invoice of the actual make-ready charges incurred, on a pole-by-pole basis. If the final invoice is less than the estimate, Owner shall refund any overages.

5.4 Make-Ready Work: Make-ready work shall be undertaken pursuant to the following provisions:

5.4.1 After Licensee pays Owner the amount specified in the estimate, Owner must commence the make-ready work within 30 days from payment and shall diligently pursue the completion of such make-ready work. Upon completion of the make-ready work, Owner shall sign and return a copy of the approved Application for Permit authorizing Licensee to make its Attachment(s). The parties may

mutually agree to an alternative process for addressing make-ready work, such as allowing the Licensee to hire approved contractors of the Owner for make-ready work.

5.4.2 When the make-ready work is complete, Owner shall notify Licensee, and Licensee shall then have the right to install its facilities in accordance with the approved Application. Except as otherwise agreed to by the parties, Licensee must make its attachments to Owner's poles within one hundred twenty (120) days of receipt of notification that the make-ready work is complete. Such timeframe may be extended by Owner provided Licensee makes a written request for such extension and is diligently pursuing its work.

5.4.3 If Owner does not commence the make-ready work within 90 days from payment, then Licensee may conduct the make-ready work instead, and hire a properly trained and qualified contractor to do the make-ready work. In such situation, Licensee must (i) permit Owner and any existing attachers to be present for any make-ready work; and (ii) use commercially reasonable efforts to provide Owner and any affected existing attached with at least five (5) days' notice with the date and time of the make-ready work, a description of the work involved, and the name of the contractor being used. Licensee shall notify Owner or an existing attacher immediately if make-ready work damages the equipment of Owner or an existing attacher or causes an outage that is reasonably likely to interrupt the service of Owner or existing attacher. Upon receiving notice from Licensee, Owner may (i) Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or (ii) require Licensee to fix the damage at its expense immediately following notice from Owner. Licensee shall notify Owner and existing attachers within 15 days after completion of the make-ready on a particular pole. The notice shall provide Owner and existing attachers at least 90 days from receipt in which to inspect the make-ready work. Owner has 14 days after completion of its inspection to notify Owner of any damage or code violations caused by make-ready work conducted by Licensee on their equipment. If Owner notifies Licensee of such damage or code violations, then Owner shall provide adequate documentation of the damage or the code violations. Owner may either complete any necessary remedial work and bill Licensee for the reasonable costs related to fixing the damage or code violations or require Licensee to fix the damage or code violations at its expense within 14 days following notice from Owner. In the event that Licensee or any contractor hired by Licensee conducts any make-ready work, Licensee shall indemnify, protect and save harmless Owner from and against any and all claims and demands for damages to property and injury or death to persons, including payments made under any Workers' Compensation Law or under any plan for employees' disability and death benefits, which may be caused by Licensee's or Licensee's contractor's negligence or willful misconduct in connection with such make-ready work.

5.4.4 Owner acknowledges that any contractor of Owner performing work within the City of Westminster must obtain a business license prior to performing such work, and Owner agrees to notify any such contractor of such requirement.

5.5 To the extent permitted under any other agreement with any other attacher, the costs of modifying a pole must be borne by all parties that obtain access to the pole as the result of the modification or that directly benefit from the modification. Each party that obtains access to a pole as a result of a modification and each party that directly benefits from the modification shall share proportionately in the cost of the modification. Except as otherwise provided in this subsection, a party with a preexisting attachment to the modified pole is considered to directly benefit from a modification if, after receiving notification of that modification, it adds to or modifies its attachment. A party with a preexisting attachment to a pole is not required to bear any of the costs of rearranging or replacing its attachment if that rearrangement or replacement is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another party, unless the modification is necessitated by Owner's core electric service, except as otherwise provided by law.



## **ARTICLE 6 OVERLASHING**

6.1 Licensee shall notify Owner at least 15 days prior to overlashing any existing attachment, which notice shall include the specific existing attachments to be overlashed and such additional information as may be reasonably requested by Owner.. Licensee shall notify Owner within 7 days of receipt of such notice if it believes the applicable overlash will cause damage to or result in code violations with respect to any applicable pole or facility of the Owner or if Owner requires additional information to make such determination. Licensee shall notify Owner upon the completion of any such overlash. There shall be no additional annual Attachment Fee for overlashing.

## **ARTICLE 7 EASEMENTS AND RIGHTS-OF-WAY FOR LICENSEE'S ATTACHMENTS**

7.1 Owner does not warrant or assure to Licensee any right-of-way privileges, uses or easements. Licensee shall be responsible, as required by law, for obtaining its own governmental permits and lawful easements from any third party property owner(s), lien holder(s), and other necessary and appropriate parties. Under no circumstances shall Owner be liable to Licensee or any other party in the event Licensee is prevented by a third party from placing and/or maintaining its attachments on Owner's poles. Accordingly, Owner's acceptance of Licensee's Application and issuance of a Permit shall never be construed otherwise.

7.2 Licensee will defend and hold harmless Owner against any claims by third parties that the necessary easements were not obtained, any third party claims for trespass, or any other third party-instituted cause of action, provided Owner provide prompt notice of such claims to Licensee. Should a final order be entered by a court of competent jurisdiction requiring Licensee to remove its attachments, Licensee shall do so forthwith, and upon its failure to do so within the timeframe required by such Order, Owner may remove Licensee's facilities at Licensee's expense without incurring any obligation to Licensee for loss or damage to Licensee's facilities except to the extent of Owner's gross negligence or willful misconduct.

## **ARTICLE 8 MAINTENANCE**

8.1 Owner shall, at its own expense, bear the responsibility to maintain, replace, reinforce, or repair poles.

8.2 Licensee shall require that all employees, contractors, or employees of contractors who work on Owner's poles on behalf of Licensee are properly qualified and trained in climbing and working on Owner's poles safely. Licensee shall specifically and adequately warn, by reasonable means, each and every employee and contractor of the inherent dangers of making contact with Owner's electrical conductors and/or electrical equipment before such employees or contractors are permitted to perform work on or near Owner's facilities.

8.3 Owner makes no express or implied warranty or representation regarding the condition or safety of the poles or other facilities of Owner. Licensee expressly assumes responsibility for determining the condition of all poles to be used by Licensee, whether for the placement of attachments, maintaining or rearranging attachments, or for any other reasons. Except for performing transfer work from unserviceable poles to replacement poles, Licensee shall not permit its employees or contractors to work

on poles that are known to be unserviceable until Owner has corrected the unserviceable condition or has determined that the pole is serviceable. Licensee will immediately notify Owner if any of Licensee's employees, agents, contractors, or employees of contractors become aware of unserviceable poles or other conditions, whether hazardous or otherwise, that require the attention of Owner for evaluation and possible correction.

## **ARTICLE 9 UNAUTHORIZED ATTACHMENTS AND INVENTORY**

9.1 Owner may assess a fee for any Licensee attachment that has not been authorized in accordance with this Agreement ("Unauthorized Attachment"). The fee for Unauthorized Attachments shall be equal to five (5) times the current annual Attachment Fee.

9.2 Owner may conduct an inventory of Licensee's attachments to verify the number of Licensee's billable attachments. Any such inventory may be conducted no more frequently than once every five years. Owner must provide at least ninety (90) days' notice of any such inventory so that Licensee may budget and prepare for and observe such inventory. All inventories shall include all attachers, including Owner's communications affiliate, if any. Prior to such inventory, the projected costs of the inventory shall be submitted to Licensee for approval. Licensee may provide input regarding the scope of the inventory and the selection of the contractor to perform the inventory, but the final decision regarding scope of the inventory and choice of the contractor shall rest with Owner unless the cost is above industry standard. All records, reports, and results of an inventory will be made available to Licensee. If the inventory discloses Licensee is attached to more poles than Licensee has been paying Annual Attachment Fees for, the excess attachments shall be deemed Unauthorized Attachments and subject to the Unauthorized Attachment fee described above. If Unauthorized Attachments amount to 10% or more of the total number of Licensee's attachments, Licensee shall bear the cost of such inventory.

9.3 In order to confirm that an Unauthorized Attachment has not been authorized in accordance with this Agreement under Section 9.1 above, and confirm that an Unauthorized Attachment fee is warranted under Section 9.2 above, Owner shall identify each Unauthorized Attachment in its notice by pole number and location and Licensee shall have a reasonable period of time to verify the results. Each party shall cooperate with the other during the verification period.

## **ARTICLE 10 SAFETY VIOLATIONS**

10.1 No more than once every five years, unless demonstrable safety conditions caused by Licensee requires more frequent inspections, Owner may require all attachers, including Owner and Owner's communications affiliate, if any, to participate in a joint safety inspection of all pole facilities to determine whether those facilities comply with the requirements of Section 3.1. Each party shall be responsible for its own costs in participating in any such inspection, and Owner shall not seek reimbursement from Licensee for the inspection. Owner shall provide at least ninety (90) days' advance notice of any such inspection so that all parties may budget, prepare for and fully participate in the inspection.

10.2 If Licensee's attachments are out of compliance with the safety specifications, whether discovered during a safety inspection or otherwise, then Owner will provide written notice to Licensee of the non-compliant attachment containing the pole number, location, and description of the problem. Licensee must either contest the notice of non-compliance in writing or correct them within 30 days of receipt of the written notice or such longer period as may be necessary under the circumstances.

10.3 The cost of correcting any violation shall be borne by the party that created the violation, including Owner and Owner's communications affiliate, if any, and in no event will Licensee be required to incur any cost necessary to correct a violation caused by any other party, including Owner or Owner's affiliate. In cases where Licensee assists in the correction of a violation caused by another party, including Owner, Owner shall reimburse Licensee for any and all costs incurred by Licensee, but only to the extent, and up to the amount of, any reimbursement that Owner receives from such party, the collection of which the Owner shall diligently pursue.

## **ARTICLE 11**

### **ATTACHMENTS REMAINING AT END OF TERM**

11.1 Licensee may make additional attachments to Owner's poles after this Agreement has been terminated provided that Owner and Licensee intend to enter into a replacement agreement and/or are engaged in good-faith negotiations to enter into a new Agreement.

11.2 If either party terminates this Agreement with both parties not intending to negotiate a new Agreement, Licensee shall remove its attachments from the poles of Owner within a mutually agreed upon schedule, which shall not exceed ninety (90) days.

## **ARTICLE 12**

### **TRANSFERS, RELOCATION AND RESERVATION OF SPACE BY OWNER**

12.1 Owner may replace or relocate poles for any reason, including without limitation when existing poles have deteriorated, when new attachers require additional pole space, and when poles must be relocated at the request of a governmental body or a private landowner. If any replacement or relocation is necessary, Owner will notify Licensee and the parties will promptly confer and coordinate performance of work. If the parties determine that Owner shall perform the work, Licensee shall reimburse Owner for Owner's actual costs therefor. If the parties determine that Licensee will perform the work but Licensee fails to complete such work within the timetable agreed to by the parties, Owner may perform the work on Licensee's behalf, and in such case Licensee shall reimburse Owner for Owner's actual costs therefor. Owner shall not be liable to Licensee relating to work performed by Owner under this section for any loss or damage except when caused by Owner's gross negligence or willful misconduct. If Owner opts not to transfer Licensee's attachments, Licensee shall become liable for and own the old pole.

12.2 Should Owner, at any time, reasonably require the space Licensee's attachments occupy on its poles for the provision of its core electric service, Licensee shall, upon receipt of sixty (60) days' notice (a) rearrange its attachments to other space if available on the pole, at its own expense (or authorize Owner to do so, subject to the cost reimbursement provisions set forth in Section 12.1), (b) vacate the space by removing its attachments at its own expense or (c) if no space is available and Licensee does not wish to remove its attachments, Licensee may request Owner replace the pole with a larger pole that can accommodate Licensee's attachments. Licensee shall bear its pro rata share of cost of such replacement, along with all other attachers benefitting from such replacement, and transfer its attachments to the new pole at its own expense; provided however, if a new pole is necessitated solely to accommodate Licensee's proposed attachments, Licensee shall be considered the sole benefitting attacher..

12.3 Existing Permit(s) shall remain valid and transfer with any attachment transfers to new poles when replacement or relocation is necessary.

**ARTICLE 13**  
**ABANDONMENT OF POLES**

13.1 Upon sixty (60) days' notice to Licensee, Owner may in its sole discretion abandon or remove any attached pole. Within this 60-day period, unless granted additional time by Owner, Licensee shall remove its Attachments and may place its facilities underground if authorized to place its facilities underground, transfer its facilities to the nearest facilities owned by Owner if authorized by Owner, or take other action not inconsistent with this Agreement. If, at the expiration of the 60-day period, Owner shall have no attachments on such pole but Licensee shall not have removed all of its attachments, Owner may remove Licensee's attachments and Licensee shall reimburse Owner for the actual costs of completing such work. If Owner elects to do such work, it shall not be liable to Licensee for any loss or damage except when caused by the Owner's gross negligence or willful misconduct. If Owner opts not to address Licensee's attachments, Licensee may become liable and own the old pole.

**ARTICLE 14**  
**RIGHTS OF OTHER PARTIES**

14.1 Nothing herein shall be construed to limit the right of Owner, by contract or otherwise, to confer upon others, not parties to this Agreement, nondiscriminatory rights or privileges to use the poles covered by this Agreement. Rights granted to third parties shall not infringe upon the rights of the Licensee in this Agreement.

14.2 If accommodating Licensee's new attachment requires rearranging any other existing attachment on Owner's pole(s), Owner shall give notice thereof to such existing attacher and such attacher shall cooperate with Licensee in the rearrangement of their facilities. Licensee shall bear the expense of necessary rearrangement of the existing attacher's attachment(s), provided such costs are reasonable and are no more than the actual cost of doing the work. Licensee does not have the right to rearrange the facilities of others except with written permission from that attacher.

14.3 If other users require the rearrangement of Licensee's Attachments in order to attach their facilities under the authority of Make Ready Construction plans approved by Owner for such other user's work, Licensee agrees to reasonably cooperate with such user in scheduling and performing the work and the other user shall bear the expense of such rearrangement, provided that any cost charged to the other user shall be reasonable and shall be no more than Licensee's actual cost of doing the work.

**ARTICLE 15**  
**ASSIGNMENT OF RIGHTS**

15.1 Licensee shall not assign or otherwise dispose of this Agreement, or of any of its rights or interests hereunder without the prior written consent of Owner, such consent not to be unreasonably withheld, conditioned or delayed. Provided, however, Licensee may assign or transfer this Agreement and the rights and obligations hereunder to any entity controlling, controlled by, or under common control with Licensee without the consent of Owner, so long as Licensee provides written notice to Owner within a reasonable timeframe thereafter. No such permitted assignment shall relieve Licensee, the permitted assignee, or any other party liable to Owner from any obligations, duties, responsibilities, or liabilities to Owner under this Agreement. This Agreement shall be binding upon the successors and/or assigns of both parties.

15.2 Nothing contained herein is intended to allow Owner to interfere with Licensee's leasing of or granting other use rights in dark fiber or capacity in its facilities, provided that the renting or leasing of dark fiber or capacity in Licensee's facilities does not give Licensee's customer the right of any kind to

physically access Owner's poles and Licensee's customer is specifically prohibited from climbing Owner's poles or otherwise working on the facilities that are attached to Owner's poles.

## **ARTICLE 16 WAIVER OF TERMS OR CONDITIONS**

16.1 The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

## **ARTICLE 17 PAYMENT OF TAXES**

17.1 Each party shall pay all taxes and assessments lawfully levied on its own poles or property attached to poles. Taxes and the assessments which are levied on its poles shall be paid by Owner thereof, but the portion of any tax (except income taxes), fee, or charge levied on Owner's poles solely because of their use by Licensee shall be paid by Licensee, except if those taxes are recovered in the Attachment Fee.

## **ARTICLE 18 INSURANCE**

18.1 Licensee shall take out and maintain throughout the period during which this Agreement shall remain in effect the following minimum insurance:

A. Workers' compensation insurance covering all employees of Licensee pursuant to South Carolina law. Contractors, employees of contractors, subcontractors and employees of subcontractors who shall perform any of the obligations of Licensee hereunder, shall be required by Licensee to take out and maintain such insurance, whether or not such insurance is required by the laws of the state governing the employment of any such employee. If any employee is not subject to the workers' compensation laws of such state, such insurance shall extend to such employee voluntary coverage to the same extent as though such employee were subject to such laws.

B. Commercial General Liability and property damage liability insurance covering all operations under this Agreement with limits for bodily injury or death in any one event not less than \$2,000,000.00 and limits for property damage not less than \$1,000,000.00.

C. Automobile liability insurance for owned and hired automobiles with limits of not less than \$2,000,000.00 for injury or death in any one event and limits for property damage not less than \$1,000,000.00.

18.2 The policies of insurance shall be in such form and issued by such insurer as shall be consistent with industry practices.

18.3 Licensee shall furnish to Owner, within thirty days of the Commencement Date and upon renewal a certificate evidencing compliance with the requirements of this Article 18. This certificate will list Owner as an additional insured and will provide that in the event of cancellation of any of the said policies of insurance, the insuring company shall give all parties named as insureds notice of such cancellation.

**ARTICLE 19**  
**SERVICE OF NOTICES**

19.1 It is expressly agreed and understood between Owner and Licensee that any notice required to be given to either Owner or Licensee pursuant to this Agreement shall be in writing and sent by US Mail, or by recognized national overnight delivery service, or electronic mail and shall be deemed received upon actual delivery or refusal of delivery as evidenced by the records of the US Postal Service or delivery service as the case may be.

19.2 Notices shall be sent addressed as follows:

If to Licensee: **Blue Ridge Electric Cooperative, Inc.**  
**734 W. Main St.**  
**Pickens, SC 29671**

**with a copy to:**

**The Tiencken Law Firm, LLC**  
**Attn: Chris McDonald**  
**234 Seven Farms Dr., Suite 114**  
**Daniel Island, SC 29492**

If to Owner: **City of Westminster**  
**Attn: City Manager**  
**PO Box 399**  
**Westminster, SC 29693**

or to such other address as either party may designate by notice to the other party from time to time in accordance with the terms of this Article.

**ARTICLE 20**  
**SUPPLEMENTAL AGREEMENTS**

20.1 Neither Owner nor Licensee is under any obligation, express or implied, to amend, supplement or otherwise change or modify any of the provisions of this Agreement, provided, however, that in the event of a change in law, the parties shall work in good faith to amend, supplement or otherwise change or modify any of the provisions of this Agreement as such law may require. If the parties agree to amend, supplement or otherwise change or modify any of the provisions of this Agreement, then any such amendment, supplement, change or modification, to be enforceable, must be evidenced by written documentation duly executed by both parties. Without any such duly executed, written documentation of any amendment, supplement, change or modification, any oral discussions relating thereto shall not be binding upon Owner or Licensee.

20.2 Nothing in the foregoing shall preclude the parties to this Agreement from preparing in writing such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement so long as each party has at least one copy of such operating routines and/or working procedures.

## ARTICLE 21 DEFAULT

21.1 Except in the event of a bona fide dispute, if either party is in material default under this Agreement and fails to correct such default within the cure period specified below, Owner/Licensee (as applicable) may, at its option:

- (a) declare this Agreement to be terminated in its entirety;
- (b) terminate the authorization covering the pole(s) with respect to which such default shall have occurred;
- (c) correct such default; and the defaulting party shall reimburse the other for the actual costs of doing the work; and/or
- (d) seek specific performance of the terms of this Agreement or applicable law through a court of competent jurisdiction or in the appropriate regulatory forum, upon the other party's default or failure to adhere to applicable law.

For a period of thirty (30) days following receipt of written notice from the non-defaulting party (or, for defaults of a nature not susceptible to remedy within this thirty (30) day period within a reasonable time period thereafter), the defaulting party shall be entitled to take all steps necessary to cure any defaults. The 30-day notice and cure period does not apply to any default by Licensee of its undisputed payment obligations under this Agreement.

Owner and Licensee shall schedule a meeting to resolve any alleged default within 10 days of receipt of the notice of default. If such alleged Default remains unresolved upon the expiration of the thirty (30) day period following a dispute notice (provided that the parties may mutually agree to extend such negotiation period), the parties may pursue remedies available under applicable law or equity.

21.2 The remedies set forth in this Article are cumulative and in addition to any and all other remedies either party may have at law or in equity.

## ARTICLE 22 INDEMNIFICATION

22.1 Indemnification of Owner. Licensee shall indemnify, protect and save harmless Owner from and against any and all claims and demands for damages to property and injury or death to persons, including payments made under any Workers' Compensation Law or under any plan for employees' disability and death benefits, which may be caused by Licensee's negligence or willful misconduct. The foregoing indemnity shall not apply to the extent of Owner's negligence or willful misconduct.

22.2 [Reserved].

22.3 The obligations of this Section 22 shall survive termination or non-renewal of this Agreement, to the extent of the applicable statute of limitations.

**22.4 NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR THE OTHER PARTY'S CUSTOMERS FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THE OTHER PARTY OR BY ANY CUSTOMER OF THE OTHER PARTY**

**FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY UPON WHICH ANY SUCH CLAIM MAY BE BASED.**

**ARTICLE 23  
FORCE MAJEURE**

23.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement resulting from acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay.

**ARTICLE 24  
MISCELLANEOUS PROVISIONS**

24.1 Nothing contained in this document, or in any amendment or supplement thereto, or inferable herefrom, shall be deemed or constructed to (1) make Licensee the agent, servant, employee, joint venturer, associate, or partner of Owner, or (2) create or establish any partnership, joint venture, agency relationship or other affiliation or association between Owner and Licensee. The parties hereto are and shall remain independent contractors. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

24.2 Each party represents that it has the full power and authority to enter into this Agreement and to convey the rights herein conveyed.

24.3 This Agreement is deemed executed in and shall be construed under the laws of the State of South Carolina.

24.4 Within this Agreement, words in the singular number shall be held and construed to include the plural, and words in the plural number to include the singular, and the use of any gender shall be applicable to all genders unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only. They do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall, unless the context dictates otherwise, refer to this entire Agreement and not to any particular paragraph or provision. The term "person" and words importing persons as used in this Agreement shall include firms, associations, partnerships (including limited partnerships), limited liability companies, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

24.5 Unless the context clearly indicates otherwise, as used in this Agreement, the term "Licensee" means the party or parties named on the first page hereof or any of them. The obligations of Licensee hereunder shall be joint and several. If any Licensee, or any signatory who signs on behalf of any Licensee, is a corporation, partnership, limited liability company, trust, or other legal entity, Licensee and any such signatory, and the person or persons signing for Licensee, represent and warrant to Owner that this instrument is executed by Licensee's duly authorized representatives.



**IN WITNESS WHEREOF**, the City of Westminster and Blue Ridge Electric Cooperative, Inc., by their duly authorized representatives have executed this Pole Attachment License Agreement as of the day and year first written above.

**CITY OF WESTMINSTER**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BLUE RIDGE ELECTRIC COOPERATIVE, INC.**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A**

### **Attachment Fee**

Licensee shall pay an initial annual Attachment Fee per pole to which Licensee has an attachment in the amount of \$21.00, which amount shall be subject to escalation year over year pursuant to Section 4.2 of the Agreement.

## EXHIBIT B

### Permit Application

Joint User Permit No. _____	Owner Permit No. _____
Location/Exchange _____	Date _____, 20__.
Westminster, South Carolina _____	
In accordance with the terms and conditions of the Pole Joint User Agreement between _____ (Owner) and _____ (Joint User) application is hereby made for (placement) (removal) of Attachments on Poles as indicated below and on the attached drawing and/or map. I hereby certify that, upon final inspection of completed work, all Attachments fully comply with the National Electrical Safety Code (NESC), edition in effect at the time of attachment and no Attachments will be in violation of NESC as the result of said Attachments.	
Joint User: _____	Number of Poles _____
By: _____	added _____
Title: _____	removed _____
Phone: _____	modified _____
Email: _____	overlash _____
Engineer Contact name: _____	
Phone: _____	
Email: _____	

Owner (conditionally approves) (denies) Joint User's Permit Application to place Attachments on Owner's Poles.
Owner: _____
By: _____
Title: _____
Phone: _____
Email: _____
Date: _____

Construction Completion Notification
All construction work has been completed and Attachments are ready for post-construction inspection.
Joint User: _____
Name: _____
Title: _____
Phone: _____
Email: _____
Date: _____

<i>Post-construction inspection has been completed and the status of this Permit Application is hereby changed from conditionally approved to approved.</i>
Owner: _____
Name: _____
Title: _____ Phone: _____
Date: _____

Pole Number

Comments

Added

Removed

Overlash

STATE OF SOUTH CAROLINA       )  
  )  
COUNTY OF OCONEE                )  
  )  
CITY OF WESTMINSTER            )

ORDINANCE #2022-XX-XX-XX

**AN ORDINANCE AUTHORIZING AND ESTABLISHING AN ECONOMIC DEVELOPMENT INCENTIVE PROGRAM TO ENCOURAGE PRIVATE INVESTMENT IN THE INCENTIVE AREA OF THE CITY OF WESTMINSTER, SOUTH CAROLINA; AUTHORIZING AND ESTABLISHING A PROGRAM TO GRANT SPECIAL PROPERTY TAX ASSESSMENTS TO CERTAIN REHABILITATED HISTORIC PROPERTIES; AND OTHER MATTERS RELATED THERETO.**

The City Council of the City of Westminster (the “*Council*”), the governing body of the City of Westminster, South Carolina, has made the following findings of fact:

**(A) Generally**

(1) The City is a municipal corporation created under the laws of the State of South Carolina.

(2) The Council has, through the approval of its Comprehensive Plan, established as a matter of policy that economic growth is needed to help create job opportunities, provide a variety of goods and services, and be the foundation for a tax base that can sustain a community through business cycles.

(3) The City believes that it can better accomplish the goals of its Comprehensive Plan by implementing programs to encourage investment within the City.

**(B) Economic Development Incentive Program**

(1) The City is duly empowered to enact ordinances, not inconsistent with the laws or Constitution of the State of South Carolina, 1895, as amended, exercising its powers related to the expenditure of public funds for public purposes and those other powers incident to, and necessary for the accomplishment of, the City’s express authorization to levy certain taxes and fees.

(2) It is essential to the City’s efforts to foster revitalization and redevelopment within the Incentive Area (as defined in Sec. 38.03 below) that the City offer certain Incentives (as defined in Sec. 38.03 below) that will encourage private investment in the Incentive Area. The goals of the City in offering the Incentives are as follows:

(a) to promote the construction of new buildings or the rehabilitation of existing buildings within the Incentive Area; and

(b) to support the establishment of the categories of new businesses that the Council determines will (i) significantly increase the overall commercial activity within the Incentive Area, (ii) attract the City's residents and tourists into the Incentive Area, and (iii) increase property values within the City as a whole.

(3) While the Incentives may benefit the Incentive Recipients (as defined in Sec. 38.03 below), the primary beneficiary of the Incentives will be the City and its citizens who shall realize the Benefits (as defined in Sec. 38.03 below).

(4) The Incentives, as provided for in an Incentive Agreement (as defined in Sec. 38.04(b) below), shall be structured in such a way that the value of the Benefits to the City will exceed their value to the Incentive Recipients.

(5) The financial benefit of the Incentives to the Incentive Recipients will only be realized at such time as certain Benchmarks (as defined in Sec. 38.07(c)(i) below) are met or continue to be met. Should all the Benchmarks be accomplished, the City believes that there is a high probability that the Benefits will be realized by the City and that the value of the Benefits will exceed the value of public funds expended on the Incentives.

**(C) The Bailey Bill**

(1) The City is authorized pursuant to Sections 5-21-140 and 4-9-195 of the Code of Laws of South Carolina 1976, as amended (collectively, the "***Bailey Bill***"), to grant special property tax assessments to real property that qualifies as a "rehabilitated historic property."

(2) The Bailey Bill provides for certain procedures that the City and the owner of qualifying historic property must follow in order to receive the benefits of the Bailey Bill.

(3) In furtherance of the City's policies regarding its historic resources, the Council has determined that the development and establishment of the Bailey Bill will achieve the following goals:

- (a) encourage the restoration of historic properties;
- (b) promote community development and redevelopment;
- (c) encourage sound community planning; and
- (d) promote the general health, safety and welfare of the City.

(4) The Council hereby finds that the value of the benefits that will accrue to the citizens of the City due to the achievement of these goals will exceed the value of the special property tax assessments to those who receive them.

(5) The Council further finds that the provisions of the Bailey Bill that permit the rescission of the special property tax assessments in certain instances ensures that the benefits will, in fact, accrue to the citizens of the City.

**NOW, THEREFORE, BEING DULY ASSEMBLED, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER THAT:**

**Section 1. Economic Development Incentive Program**

(a) There is hereby enacted by the City, for the purposes discussed above, the “Economic Development Incentive Program.” Amendments, modifications, and clarifications to the Economic Development Incentive Program or succeeding amendments, modifications, or clarifications to the Economic Development Incentive Program shall become effective if approved and enacted by the City. Prior to such effective date, the version of the Economic Development Incentive Program enacted by the terms hereof shall remain in full force and effect.

(b) The Economic Development Incentive Program shall be codified into the City’s Code of Ordinances. By and through the enactment of this ordinance, Chapter 38, entitled “ECONOMIC DEVELOPMENT INCENTIVE PROGRAM” shall be added to Title III “ADMINISTRATION” of the City’s Code of Ordinances. Title III “ADMINISTRATION,” Chapter 38 “ECONOMIC DEVELOPMENT INCENTIVE PROGRAM” shall be added to the City’s Code of Ordinances as follows:

**Sec. 38.01 - Title.**

This Ordinance shall be titled “Economic Development Incentive Program.”

**Sec. 38.02 - Authority.**

Subject to the realization of certain Benefits (as defined in Sec. 38.03 below), the Economic Development Incentive Program is enacted by the Council to meet its Goals (as defined in Sec. 38.03 below).

**Sec. 38.03 - Definitions.**

As used in this Chapter 38, unless the context shall otherwise require, the following terms shall have the following respective meanings:

“**Benefits**” means the value to the City of providing the Incentives, which generally includes: (a) increased property values within the Incentive Area and the City as a whole; (b) increased revenue from property taxes, business license fees and permit fees; (c) increased tourism and commercial activity within the Incentive Area and the City as a whole; and (d) the improvement of the character of the City by preserving existing buildings within the Incentive Area and promoting the construction of new buildings that are compatible with its City’s character.

***“Incentive Area”*** shall mean the area encompassed by the City limits shown and described in *Exhibit A* in which the Council has determined that the revitalization and redevelopment thereof is essential to preserving and improving the economy, society, and culture of the City and enhancing the quality of life of the citizens thereof.

***“Development”*** shall mean the activity of improving a real property to the extent of adding value to the tax base through real property improvements, and the creation of employment opportunities.

***“Goals”*** means the objectives of the City in offering the Incentives, which generally includes: (a) promoting the construction of new buildings or the rehabilitation of existing buildings within the Incentive Area; and (b) supporting the establishment of the categories of new businesses that will (i) significantly increase the overall commercial activity within the Incentive Area, (ii) attract the City’s residents and tourists into the Incentive Area, and (iii) increase property values within the City as a whole.

***“Incentive”*** shall mean a grant of any inducement having monetary value by the City that is offered to a person, firm or corporation to pursue a Development that encourages private investment and/or the creation/retention of jobs. The Incentive may also include grants from other entities that the City may be able to obtain.

***“Incentive Recipient”*** shall mean the private parties receiving the Incentives from the City.

***“Job”*** shall mean each new (i) full-time position, or (ii) each full-time equivalent position that is created as a direct result of the ongoing operation of a Development. For the purposes of calculating the number of Jobs created by a Development, only those employed at businesses directly associated with the Development in positions permanently located within the Incentive Area shall be considered.

#### Sec. 38.04 - Authorization

(a) Authorization to Grant Incentives.

The Council, at its discretion and on a case-by-case basis, but subject to the General Eligibility Criteria provided for in Sec. 38.06(a) herein, may enter into an Incentive Agreement (as defined herein) with a person, firm or corporation providing for Incentives in order to encourage and support the Development of real property within the Incentive Area.

(b) Incentive Agreements.

The Incentives shall only be provided to an Incentive Recipient after an agreement has been entered into between the City and such person, firm or corporation, which agreement shall set forth: the particulars of the Development; the Incentives to be provided; and sufficient assurances that the Benefits will accrue to the City and the Goals



will be met by the Development (an ***"Incentive Agreement"***). Pending the approval by the Council of any Incentive Agreement and subject to the provisions of Sec. 38.07 herein, the City Administrator of the City (or any person so delegated by the City Administrator) is authorized to discuss the provisions of this Economic Development Incentive Program, aid in the completion of any Proposal (as defined herein) and, subject to the final approval by the Council, negotiate with the potential Incentive Recipient on behalf of the City. Each Incentive Agreement shall be approved by Council by ordinance. Council is authorized to provide Incentives in any amounts and for any period of time within the thresholds provided for herein or within the time periods and thresholds provided for in any applicable statutory authorization.

Sec. 38.05 - Authorized Incentives.

(a) Multiple Incentives.

The Council may provide to an Incentive Recipient any combination of Incentives provided for herein; provided, however, that the total amount of Incentives given to a Development must be in keeping with the Goals and the value of the Benefits accruing to the City (and its citizens) and must be greater than the financial value of the Incentives to an Incentive Recipient.

(b) Incentives of the City.

All direct Incentives of the City shall be granted in the form of reimbursements and refunds of the fees and taxes that have been duly paid to the City, as set forth in this subsection (b). No upfront abatements of fees or taxes shall be permitted. Where Incentives continue for a period of more than one year, such Incentives may be graduated to increase or decrease year-to-year as the Council sees fit, but subject to monitoring by the City to ensure compliance with the terms of any Incentive Agreement. The Council may, at its discretion and on a case-by-case basis, enter into an Incentive Agreement to reimburse or refund any person, firm or corporation the following fees and taxes up to the amounts and percentages provided for herein:

- (i) Up to 100% of the applicable tap fees collected by the City;
- (ii) Up to 50% of the building permit fees collected by the City;
- (iii) Up to 50% of the business license fees collected by the City for as many as five (5) years;
- (iv) Up to 50% of the local hospitality taxes collected by the City for as many as five (5) years, but funds received through such Incentive are to be spent only for purposes that are related to tourism, pursuant to S.C. Code § 6-1-730, and which have been approved by Council and included in the Incentive Agreement;

- (v) Up to 50% of the local accommodations taxes collected by the City for as many as five (5) years, but funds received through such Incentive are to be spent only for purposes that are related to tourism, pursuant to S.C. Code § 6-1-530, and which have been approved by Council and included in the Incentive Agreement; and
- (vi) Such other Incentives that the Council, at its discretion on a case-by-case basis, determines are appropriate given the amount or type of investment made by the Incentive Recipient in the Incentive Area.

(c) State Incentive Programs.

The State programs that may be considered by Council to be included within any package of Incentives or as a stand-alone set of Incentives for in-City projects located City-wide, include, but are not limited to the following (as applicable and as may be amended from time to time):

- (i) Property tax credits authorized by the provisions of the South Carolina Abandoned Buildings Revitalization Act, codified at S.C. Code Ann. §§ 12-67-100 *et seq.* (collectively, the “***Abandoned Building Act***”). Incentive Recipients requesting consideration of the Abandoned Building Act by the Council shall submit an Abandoned Building Act Application form, a copy of which is attached hereto as *Exhibit B*.
- (ii) Property tax credits authorized by the provisions of the South Carolina Textiles Communities Revitalization Act, codified at S.C. Code Ann. §§ 12-65-10 *et seq.* (collectively, the “***Textiles Revitalization Act***”). Incentive Recipients requesting consideration of the Textiles Revitalization Act by the Council shall submit a Textiles Revitalization Act Application form, a copy of which is attached hereto as *Exhibit C*
- (iii) The South Carolina real property tax credit for the installation of a fire sprinkler system, codified at S.C. Code Ann. § 12-6-3622.

Sec. 38.06 - Eligibility Criteria.

(a) General Eligibility Criteria.

Except for those Incentives discussed in Sec. 38.05(c) above as authorized by the State and which are intended by the terms of this Economic Development Incentive Program to be applied City-wide, in order for a Development to be eligible to receive Incentives, the Council must determine that the Development meets, or upon completion will meet, each of the following criteria:

- (i) the Development is consistent with Westminster’s Comprehensive Plan (as it may be amended, revised, or updated from time to time, the

“*Comprehensive Plan*”), as well as the Goals;

- (ii) absent the provision of Incentives, the Development would be unlikely to occur or unlikely to occur at the level or scale contemplated by the developer thereof;
- (iii) the Development must be located within the Incentive Area;
- (iv) the minimum threshold investment is five hundred thousand dollars [\$500,000] (the “*Minimum Investment*”). The Minimum Investment may be comprised of any combination of (i) real property acquisition costs, (ii) the costs of physical improvements to real property, (iii) or the costs of capital improvements to City infrastructure. The Minimum Investment may be calculated based upon investment in a single property or the cumulative investment in multiple properties, each within the Incentive Area. Where multiple uses or businesses are to be located within a single Development as separate businesses, the Council may, at its discretion on a case-by-case basis, allocate appropriate portions of the total investment in the Development to such separate business in order to allow such business to meet the Minimum Investment eligibility requirement. In order to meet the threshold for the Minimum Investment, a Development may be given a credit towards the Minimum Investment of fifty thousand dollars (\$50,000) for each Job that will be created by the Development; and
- (v) The intended use of the Development must be for one or more of the following business purposes: (1) retail uses; (2) tourism-related businesses or activities; (3) cultural arts activities and associated businesses; (4) corporate headquarters; (5) research and development; (6) high-technology growth businesses; and (7) other uses, as may be determined by the Council, that are consistent with the Goals, and the Comprehensive Plan.

(b) Specific Criteria.

The Council may, in its discretion and on a case-by-case basis, include within an Incentive Agreement any other eligibility criteria that must be met upon completion of a Development in order to ensure that the Goals are met and that the Development provides Benefits to the City (and its citizens) in amounts that warrant the implementation of Incentives.

Sec. 38.07 - Administration and Terms of Delivery.

(a) Application for Incentives.

Except where an applicant seeks only Incentives authorized by the State Incentive

Programs listed in Sec. 38.05(c), in order to be eligible for Incentives, a person, firm or corporation must submit to the City Administrator a proposed set of Incentives for a Development (a ***“Proposal”***). A form of the Proposal is attached hereto as *Exhibit D*. The Proposal must include a sufficient description of the Development, to include, without limitation, the following information: (i) identification of the property or properties on which the Development is to be located (the ***“Subject Property”***) and any acquisition costs thereof; (ii) the estimated start date and completion date for any work to be performed on the Subject Property; (iii) a list of any physical improvements that are to be made to the Subject Property as part of the Development, including a good-faith estimate of the costs thereof; (iv) the then-current value of the Subject Property and a good-faith estimate of the value of the Subject Property upon completion of the improvements thereto; (v) a good faith estimate of the number of Jobs that the Development is projected to create, including an estimate of the date upon which the estimated number of Jobs will have been created; (vi) a statement affirming that, based upon any acquisition costs for the Subject Property, along with good-faith estimates for the costs of physical improvements and the number of Jobs created, the Development will meet or exceed the Minimum Investment requirements of Sec. 38.06(a)(iv); (vii) a good-faith estimate of other revenue for the City that will be created as a direct result of the Development, including anticipated business license fees, additional property tax revenue, capital improvements to City-owned infrastructure and utilities revenue; and (viii) any other additional information that the Incentive Recipient or the City Administrator deems may be necessary and helpful for the Council to evaluate and give due consideration to the Proposal.

(b) Determination of Incentive Amounts.

The amount of Incentives granted to a Development shall be based upon the amount of the capital investment in the Development, the amount of new revenue for the City directly created by the Development and the number of new Jobs that will be directly created by the Development. The amount of Incentives granted to a Development shall in no case exceed the value of the direct and indirect benefits of the Development to the City. These amounts shall be expressly included within any Incentive Agreement.

(c) Certification, Commencement and Continuation of Incentives.

- (i) No Incentive shall commence or be given until such time as the Development has been issued a Certificate of Occupancy and/or a business license as well as a certificate that all terms and benchmarks included within the applicable Incentive Agreement, including without limitation benchmarks for capital investment, property valuation, and Job creation (the ***“Benchmarks”***), have been fully achieved or otherwise completed.
- (ii) Where Benchmarks, such as the number of Jobs created, are to be met continuously over a period of time, the Incentive Recipient shall provide to the City, on an annual basis, satisfactory proof that the Development

has continuously achieved or otherwise complied with such Benchmarks.

- (iii) If, at any time after completion of a Development or at any time within the period of time during which a Development is granted Incentives, a Development fails to achieve or otherwise comply with a Benchmark, the Council may, at its discretion and on a case-by-case basis: (1) declare the Incentive Agreement null and void and cease the provision of any future Incentives; or (2) decrease the amount of Incentives based upon the actual direct and indirect Benefits of the Development to the City and its citizens.

#### Sec. 38.08 - Administration of Incentives and Incentive Agreements.

The administration of the application process, specifically including the drafting of any Proposal, and continuous monitoring of Developments pursuant to applicable Incentive Agreements shall be the responsibility of the City Administrator and any person designated to oversee such process by the City Administrator.

### **Section 2. The Bailey Bill Program**

(a) There is hereby enacted by the City, for the purposes discussed above, the Special Property Tax Assessment Program for Rehabilitated Historic Properties (the “***Bailey Bill Program***”). Absent some change to the Bailey Bill which affects or preempts the Bailey Bill Program established herein, any amendments, modifications and clarifications to the Bailey Bill shall become effective, only if approved and enacted by the City.

(b) The Bailey Bill Program shall be codified into the City’s Code of Ordinances. By and through the enactment of this ordinance, Chapter 39, entitled “SPECIAL PROPERTY TAX ASSESSMENT PROGRAM FOR REHABILITATED HISTORIC PROPERTIES” shall be added to Title III “ADMINISTRATION” of the City’s Code of Ordinances. Title III “ADMINISTRATION,” Chapter 39 entitled “SPECIAL PROPERTY TAX ASSESSMENT PROGRAM FOR REHABILITATED HISTORIC PROPERTIES” shall be added to the City’s Code of Ordinances as follows:

#### Sec. 39.01 – Title.

This ordinance shall be titled “Special Property Tax Assessment Program for Rehabilitated Historic Properties.”

#### Sec. 39.02 – Authority.

Pursuant to Sections 5-21-140 and 4-9-195 of the Code of Laws of South Carolina 1976, as amended (collectively, the “***Bailey Bill***”), the City is enacting and establishing its Special Property Tax Assessment Program for Rehabilitated Historic Properties (the “***Bailey Bill Program***”).

Sec. 39.03 – Definitions.

As used in this Chapter 39, unless the context shall otherwise require, capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Bailey Bill.

Sec. 39.04 – Creation of Special Tax Assessment; Term.

(a) Special Tax Assessment Created.

A special tax assessment is hereby created wherein real property that has complied with all provisions of the Bailey Bill Program shall receive a property tax assessment for such real property and any improvements thereon that is based upon the fair market value of such property during the year that Preliminary Certification of the historic rehabilitation of such property is granted (the “***Special Assessment***”). Only work that is performed after the Preliminary Certification is granted shall be considered for purposes of determining the Special Assessment.

(b) Term.

The “***Assessment Term***” means a period of up to 20 years. The Assessment Term is contingent upon the Expense Percentage (as defined below) of each qualifying property. “***Expense Percentage***” means the percentage determined by dividing the rehabilitation expenses occurring after the Preliminary Certification by the fair market value of the qualifying property as provided in the Preliminary Certification. If the Expense Percentage equals:

- (i) 20-29% - the Assessment Term shall be 5 years;
- (ii) 30-39% - the Assessment Term shall be 10 years;
- (iii) 40-49% - the Assessment Term shall be 15 years; and
- (iv) 50% over greater - the Assessment Term shall be 20 years.

Any Special Assessment granted pursuant to the provisions of this Bailey Bill Program shall remain the assessment applicable to such historic property for the purposes of *ad valorem* taxes for the applicable Assessment Term. If an application for Preliminary Certification is filed by May 1 of any year, or Preliminary Certification is granted by August 1 of any year, the first year of the Assessment Term shall be the year in which such application was filed or Preliminary Certification was granted, as applicable. Otherwise, the first year of the Assessment Term shall be the year following the year in which such application was filed or Preliminary Certification was granted, as applicable.

#### Sec. 39.05 – Eligibility.

In order to be eligible to receive the Special Assessment, a property must be granted a historic designation by the City Council based upon one or more of the following reasons (“***Eligible Property***” or “***Eligible Properties***”):

- (i) the property is listed on the National Register of Historic Places; or
- (ii) the property is at least fifty years old, and it also qualifies under the following:
  - (1) the property has been designated as an historic property by the City Council; or
  - (2) the property is located in a historic district, as may be designated from time to time, by the City Council.

#### Sec. 39.06 – Eligible Rehabilitation.

(a) In order to be eligible to receive the Special Assessment, a property must undergo a historic rehabilitation (a “***Historic Rehabilitation***”) that adheres to the Secretary of the Interior’s Standards for Rehabilitation, together with the City’s zoning standards, as generally authorized by Section 151.019 of the City’s zoning code, as may be amended from time to time (together, the “***Rehabilitation Standards***”).

(b) Rehabilitation Work to be Evaluated Based Upon the Rehabilitation Standards.

The following elements of any Historic Rehabilitation shall be reviewed according to the Rehabilitation Standards:

- (i) repairs to the exterior of the designated building;
- (ii) alterations to the exterior of the designated building;
- (iii) new construction on the property on which the building is located; and
- (iv) for public or commercial buildings, interior alterations for primary public spaces.

(c) Expenditures for Rehabilitation

Qualified expenditures for any Historic Rehabilitation include the actual costs of rehabilitation related to one or more of the following:

- (i) improvements located on or within the historic building as designated;

- (ii) improvements outside of and directly attached to the historic building that are necessary to make the building fully usable; such improvements shall not include rentable/habitable floor space attributable to new construction;
  - (iii) architectural and engineering services attributable to the design of the improvements; and
  - (iv) costs necessary to maintain the historic character or integrity of the building.
- (d) For purposes of Section 39.06(c)(iii) above, the costs of architectural or engineering services shall be limited to a maximum of twenty percent (20%) of the total qualified rehabilitation costs. To the extent that the architectural or engineering costs exceed 20% of the qualified rehabilitation costs of an Eligible Property, such additional costs shall not be includable when determining the Expense Percentage or the Minimum Expenditure (as defined below).

#### Sec. 39.07 – Minimum Expenditures; Fair Market Value.

In order to be eligible to receive the Special Assessment, the total expenditures that an owner of an Eligible Property must incur applicable to a Historic Rehabilitation shall equal or exceed 20 percent of the fair market value of the Eligible Property at the time in which Preliminary Certification is granted (the “***Minimum Expenditure***”). Fair market value shall be based upon (i) the appraised value of the Eligible Property as certified by a licensed real estate appraiser and as submitted as part of an application for Preliminary Certification; (ii) the sales price of the Eligible Property delineated in a bona fide, arms-length real estate transaction taking place within 12 months of the time that an application for Preliminary Certification is submitted; or (iii) the most recent appraised value determined by the Oconee County Assessor.

#### Sec. 39.08 – Reviewing Authority Designation; Jurisdiction.

The South Carolina Department of Archives and History (“***DAH***”) is hereby designated as the “Reviewing Authority,” as such term is used in the Bailey Bill, for the purposes of this Bailey Bill Program. Submittals hereunder shall comport to the rules, regulations and procedures of DAH associated with its role as the Reviewing Authority.

#### Sec. 39.09 – Approval Process.

##### (a) Application.

In order to be eligible to receive the Special Assessment, an Eligible Property proposing a Historic Rehabilitation must receive Preliminary Certification by the City Council using the application and review process provided for in this Section. Any owner of an Eligible Property may apply to the City for Preliminary Certification of a proposed Historic Rehabilitation by submitting an Application for Preliminary Certification (an “***Application***”), the form of which is attached hereto as *Exhibit E* to the planning



department of the City. In order to receive consideration, all Applications must be complete and must include the following fees and other information:

- (i) a completed Application, including any application fees that may be required in the discretion of the City's staff based upon the budget then in effect;
- (ii) an application fee (such amount to be determined in the City's annual budget process);
- (ii) a plan detailing the proposed Historic Rehabilitation detailing the scope of work that is to be performed and demonstrating compliance with the Rehabilitation Standards;
- (iv) sufficient evidence of the current fair market value of the Eligible Property (see Sec. 39.07 herein); and
- (v) the total amount that the owner anticipates will be expended on the Historic Rehabilitation.

(b) DAH Review.

Provided the finished Application (as to all form and content) has been filed with the City's planning department, the City shall thereafter submit the application to DAH for further review. DAH shall affirm that the Minimum Expenditure is expected to be met and that the property meets the standard for an Eligible Property. The DAH shall review each Application and proposed Historic Rehabilitation to ensure that the proposed scope of work complies with the Rehabilitation Standards. Upon confirmation by DAH that all criterion have been met, the Application shall be submitted to the City Council for approval. In the event that the DAH declines to recommend approval to the City Council, the City and the applicant shall work with DAH to determine the specific reasons for its denial and thereafter, and subject to DAH's procedures, the applicant may re-apply under the terms of this Section.

(c) City Council Preliminary Certification.

Upon an Application receiving a recommendation of approval by the DAH, the Application shall be considered at the next regularly scheduled meeting of the City Council, provided that sufficient time remains to include such an Application on the upcoming meeting agenda. City Council may, by ordinance, approve the Application and proposed Historic Rehabilitation and, in such event, shall make specific findings of the following facts regarding the following:

- (i) The property constitutes an Eligible Property;
- (ii) The Minimum Expenditures are expected to be met; and

- (iii) The fair market value of the Eligible Property that is to be used to calculate the Special Assessment and the Expense Percentage.

(e) Substantive Changes.

If at any time during the application process or after Preliminary Certification is granted, the scope of work considered or approved thereunder is substantively changed in any way, the applicant must promptly notify the City's planning department who shall make a determination as to whether such a change required the prior approval of the City Council. In the event that such approval is necessary, such a change may be brought directly before the City Council at its next available regularly scheduled meeting for consideration. Unapproved substantive changes are conducted at the risk of the property owner and may disqualify the property from eligibility for the Special Assessment.

(f) Assessment for Two Years During Work.

Once a proposed Historic Rehabilitation has received Preliminary Certification, the Eligible Property shall receive the Special Assessment for an initial period of two years during which the proposed Historic Rehabilitation is undertaken. Any such period shall apply towards the applicable Assessment Term in Section 39.04(b) herein. In the event that, after the expiration of two years, the Historic Rehabilitation is not complete but the Minimum Expenditure has been met, the Special Assessment shall continue for such time as it is necessary to complete the Historic Rehabilitation. In the event that after the expiration of two years, the Minimum Expenditures have not been met, the City Council may, at its discretion, disqualify the property from eligibility for the Special Assessment and any monies not collected due to the special assessment must be returned to the City and other affected taxing districts, as applicable.

Sec. 39.10 – Rehabilitation Monitoring; Final Certification.

(a) Monitoring.

During the period of time during which the Historic Rehabilitation is underway, staff of the City's planning department or code enforcement department, as applicable, may inspect the work in progress to ensure that the Historic Standards are met. Inspections of any exterior work may be made at any time and inspections of any interior work may be made upon 24-hours' notice. The refusal of an applicant to permit inspection shall serve as grounds for the disqualification of the property from eligibility for the Special Assessment. In the event that such an inspection shows substantive deviations from the approved scope of work or a failure to comply with the Historic Standards, the City Council may disqualify the property from eligibility for the Special Assessment.

(b) Final Certification.

Upon completion of the Historic Rehabilitation, the applicant must notify the planning department and request that the property be granted Final Certification. The planning department staff shall inspect the Eligible Property to ensure compliance with the approved scope of work and the Historic Standards. If compliance is found, the planning department staff shall grant Final Certification and shall provide the property owner with sufficient documentation of such Final Certification.

Sec. 39.11 – Notification of the Oconee County Tax Assessor.

Upon receipt of Final Certification, it shall be the responsibility of the property owner to provide such Final Certification to the Oconee County Assessor in order to secure the Special Assessment.

Sec. 39.12 – Additional Work; Decertification.

(a) For the remainder of the applicable Assessment Period, the property owner shall notify the planning department staff of any additional exterior work undertaken on the Eligible Property, other than ordinary maintenance. The planning department staff will present the proposed work to the DAH, as applicable, who will review the work and determine whether the overall project is consistent with the standards for rehabilitation. If the additional work is found to be inconsistent, the property owner shall withdraw his request and cancel or revise the proposed additional work.

(b) Once the Eligible Property has received Final Certification, it shall remain so certified and must be granted the Special Assessment until the property becomes disqualified by any one of the following:

- (i) the expiration of the applicable Assessment Term;
- (ii) written notice from the property owner to the planning department staff and the Oconee County Auditor requesting removal of the Special Assessment;
- (iii) removal of the historic designation by the City Council; or
- (iv) rescission of the approval of the Historic Rehabilitation by the DAH because of alterations or renovation by the owner or the owner's estate which causes the property to no longer possess the qualities and features which made it eligible for Final Certification.

(c) Notification of any change affecting eligibility must be given immediately to the Oconee County Assessor, Auditor, and Treasurer.

**Section 3.** If any section, subsection, sentence, clause or phrase of the Economic Development Incentive Program, the Bailey Bill Program, or this Ordinance is, for any reason, held or

determined to be invalid, such decision shall not affect the validity of the remaining portions of the Economic Development Incentive Program, the Bailey Bill Program, and/or this Ordinance.

**Section 4.** Nothing in this Ordinance, the Economic Development Incentive Program, or the Bailey Bill Program hereby enacted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause of causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

**Section 5.** All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this ordinance are hereby repealed to the extent of the conflict or inconsistency. This Ordinance and the provisions of the Economic Development Incentive Program and the Bailey Bill Program shall take effect immediately upon its enactment by the Council.

**DONE AND ENACTED IN COUNCIL ASSEMBLED**, this \_\_\_\_ day of \_\_\_\_\_ 2022.

CITY OF WESTMINSTER, SOUTH CAROLINA

\_\_\_\_\_  
Brian Ramey, Mayor

[SEAL]

\_\_\_\_\_  
Rebecca Overton, City Clerk

First Reading: \_\_\_\_\_, 2022

Second Reading: \_\_\_\_\_, 2022

Reviewed by City Attorney and approved as to form

\_\_\_\_\_  
*Andrew Holliday, City Attorney*

## **EXHIBIT A**

City of Westminster – Incentive Area Map

## EXHIBIT B

### Abandoned Building Act Application Form

#### CITY OF WESTMINSTER

#### ABANDONED BUILDINGS ACT APPLICATION FOR ELIGIBILITY AND CREDIT AGAINST REAL PROPERTY TAXES

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##### 1. PROPERTY INFORMATION

Building Site Address \_\_\_\_\_

City \_\_\_\_\_, South Carolina (ZIP) \_\_\_\_\_

TMS# \_\_\_\_\_

Have you filed a Notice of Intent to Rehabilitate with the City? Yes \_\_\_\_\_ No \_\_\_\_\_

*\*If No, include with this application a letter indicating your intent to rehabilitate the building site, the location of the building site, the amount of acreage involved in the building site, the amount of square footage of existing buildings involved in the building site and the buildings to be rehabilitated, any new construction at the building site, and the estimated expenses to be incurred in connection with the rehabilitation.*

When was the building site abandoned? \_\_\_\_\_

*\*You must provide documentation to support the information provided above. A letter from the City of Westminster's business licensing department indicating when the last business license was revoked is preferred.*

Has at least 66% of the building/structure been closed continuously to business or otherwise non-operational for income producing purposes for a period of at least five (5) years immediately preceding the date on which the Notice of Intent to Rehabilitate was filed? Yes \_\_\_\_\_ No \_\_\_\_\_

*\*This calculation is based on the total amount of square footage as certified by the Oconee County Tax Assessor.*

What was the building's use immediately preceding its abandonment? \_\_\_\_\_

*\*Buildings or structures with an immediately preceding use as a single-family residence are not deemed abandoned buildings.*

On what date did you become the owner of record? \_\_\_\_\_

Is the building on the National Register of Historic Places? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, will any portion of the building be demolished? Yes \_\_\_\_\_ No \_\_\_\_\_

What was the square footage at the time Notice of Intent is/was filed? \_\_\_\_\_

## 2. PROJECT INFORMATION

Estimated project start date \_\_\_\_\_

Estimated project completion date \_\_\_\_\_

Estimated rehabilitation costs \$ \_\_\_\_\_ (Total must be more than \$250,000 to qualify).

*\* Eligible expenses do not include cost of acquiring the site or cost of personal property at the site.*

*\*\* Expenses increasing the square footage of the site by more than 200% are not eligible.*

Do you plan to subdivide the building or structure into separate units or parcels? Yes \_\_\_\_ No \_\_\_\_

If yes, how many? \_\_\_\_\_

Will the rehabilitation work increase the square footage of the building site? Yes \_\_\_\_ No \_\_\_\_

If yes, how much additional square footage will be added? \_\_\_\_\_

Briefly describe your plans for the building site including the future planned use of the building site and structure(s).

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## 3. OWNER INFORMATION

Name \_\_\_\_\_ Signature \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_ Daytime Telephone \_\_\_\_\_

## 4. AFFIDAVIT

Please complete and sign the applicable attached affidavit.

### **FOR CITY USE ONLY**

DEPT SUBJECT TO REQUEST: \_\_\_\_\_ REQUEST ASSIGNED TO: \_\_\_\_\_

DATE OF ASSIGNMENT: \_\_\_\_\_ RECEIVED BY: \_\_\_\_\_

DATE OF COMPLETION: \_\_\_\_\_ DATE RESPONSE DUE: \_\_\_\_\_

(For Individual Property Owners)

# AFFIDAVIT

[illegible]

PERSONALLY APPEARED BEFORE ME, the undersigned, who first being duly sworn, deposes and says, subject to the penalties of perjury, that the information contained in the foregoing Application For Eligibility and Credit Against Real Property Taxes is true and correct.

Applicant(s)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public for South Carolina

My Commission Expires:\_\_\_\_\_



(For Entity Property Owners)

# AFFIDAVIT

[illegible]

PERSONALLY APPEARED BEFORE ME, \_\_\_\_\_ of \_\_\_\_\_,  
its \_\_\_\_\_, duly authorized, who first being duly sworn, deposes and says,  
subject to the penalties of perjury, that the information contained in the foregoing Application For  
Eligibility and Credit Against Real Property Taxes is true and correct.

Name of Entity

By: \_\_\_\_\_

Its: \_\_\_\_\_

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

Notary Public for South Carolina

My Commission Expires:\_\_\_\_\_

## EXHIBIT C

### Textiles Revitalization Act Application Form

#### CITY OF WESTMINSTER

#### TEXTILE COMMUNITIES REVITALIZATION ACT APPLICATION FOR ELIGIBILITY AND CREDIT AGAINST REAL PROPERTY TAXES

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##### 1. PROPERTY INFORMATION

Building Site Address \_\_\_\_\_  
City \_\_\_\_\_, South Carolina (ZIP) \_\_\_\_\_  
TMS # \_\_\_\_\_

Have you filed a Notice of Intent to Rehabilitate with the City? Yes \_\_\_\_ No \_\_\_\_

*\*If No, include with this application a letter indicating your intent to rehabilitate the textile mill, the location of the textile mill site, the amount of acreage involved in the textile mill site, and the estimated expenses to be incurred in connection with the rehabilitation.*

Was the building/structure used as a textile mill? Yes \_\_\_\_ No \_\_\_\_

*\*In order to be eligible, the building must have been initially used for textile manufacturing, dying, or finishing operations and for ancillary uses (pursuant to S.C. Code § 12-65-20(2)) to those operations.*

Has at least 80% of the textile mill been closed continuously to business or otherwise non-operational as a textile mill for income producing purposes for a period of at least one (1) year immediately preceding the date on which the Notice of Intent to Rehabilitate was filed?

Yes \_\_\_\_ No \_\_\_\_

*\*This calculation is based on the total amount of square footage as certified by the Oconee County Tax Assessor.*

When was the textile mill abandoned? \_\_\_\_\_

*\*You must provide documentation to support the information provided above. A letter from the City of Westminster's Business Licensing Department indicating when the last business license was revoked is preferred.*

On what date did you become the owner of record? \_\_\_\_\_

Were you the owner of record when the textile mill was operational immediately prior to the textile mill's abandonment? Yes \_\_\_\_ No \_\_\_\_

Has the textile mill previously received textile mill credits? Yes \_\_\_\_ No \_\_\_\_

## 2. PROJECT INFORMATION

Estimated project start date \_\_\_\_\_

Estimated project completion date \_\_\_\_\_

Estimated rehabilitation expenses \_\_\_\_\_

Acreage of the textile mill site \_\_\_\_\_

Do you plan to subdivide the site into separate units or parcels? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, how many? \_\_\_\_\_

Briefly describe your plans for the building site including the future planned use of the building site and structure(s).

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## 3. OWNER INFORMATION

Name \_\_\_\_\_ Signature \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_ Daytime Telephone \_\_\_\_\_

## 4. AFFIDAVIT

Please complete and sign the applicable attached affidavit.

### **FOR CITY USE ONLY**

DEPT SUBJECT TO REQUEST: \_\_\_\_\_ REQUEST ASSIGNED TO: \_\_\_\_\_

DATE OF ASSIGNMENT: \_\_\_\_\_ RECEIVED BY: \_\_\_\_\_

DATE OF COMPLETION: \_\_\_\_\_ DATE RESPONSE DUE: \_\_\_\_\_

(For Individual Property Owners)

# AFFIDAVIT

[illegible]

PERSONALLY APPEARED BEFORE ME, the undersigned, who first being duly sworn, deposes and says, subject to the penalties of perjury, that the information contained in the foregoing Application for Eligibility and Credit Against Real Property Taxes is true and correct.

Applicant(s)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

# Notary Public for South Carolina

My Commission Expires:\_\_\_\_\_

(For Entity Property Owners)

# AFFIDAVIT

[illegible]

PERSONALLY APPEARED BEFORE ME, \_\_\_\_\_ of \_\_\_\_\_,  
its \_\_\_\_\_, duly authorized, who first being duly sworn, deposes and says,  
subject to the penalties of perjury, that the information contained in the foregoing Application for  
Eligibility and Credit Against Real Property Taxes is true and correct.

Name of Entity

By: \_\_\_\_\_

Its: \_\_\_\_\_

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

Notary Public for South Carolina

My Commission Expires:\_\_\_\_\_

## EXHIBIT D

### Form of Proposal

#### CITY OF WESTMINSTER PROPOSAL FOR ECONOMIC DEVELOPMENT INCENTIVES

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The City of Westminster, South Carolina (the "City") has enacted its Economic Development Incentive Program, which is codified in Title III "ADMINISTRATION," Chapter 38 "ECONOMIC DEVELOPMENT INCENTIVE PROGRAM" of the City's Code of Ordinances (the "Economic Development Incentive Program"). Pursuant to the Economic Development Incentive Program, all requests for Incentives shall be made using this form. This form shall be signed and submitted, either in person at the Westminster City Hall, which is located at 100 E. Windsor Street, Westminster, SC 29693, or by mail to the City of Westminster, Attn: City Administrator, PO Box 399, Westminster, SC 29693. No e-mail or fax requests will be accepted. Terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Economic Development Incentive Program.

NAME: \_\_\_\_\_ DATE OF REQUEST: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_ EMAIL: \_\_\_\_\_

DESCRIPTION OF THE PROPERTY (please include tax identification number(s) and any current or expected acquisition costs, being as specific as possible and attach additional pages if needed): \_\_\_\_\_

\_\_\_\_\_

ESTIMATED START DATE FOR DEVELOPMENT \_\_\_\_\_

DESCRIPTION OF DEVELOPMENT (please include a good faith estimate of expected costs, being as specific as possible. Attach additional pages if needed): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

JOB CREATION (please include good faith estimate of jobs created and expected dates of implementation): \_\_\_\_\_

\_\_\_\_\_

ESTIMATES AS TO BENEFITS TO THE CITY FROM THE DEVELOPMENT (may include, but not limited to business license fees, property taxes, improvements to City-owned infrastructure or utilities, being as specific as possible and attach additional pages if needed):

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OTHER PERTINENT INFORMATION (please attach additional pages if needed):

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I, the undersigned, submit the above information to the City and certify that, to the best of my knowledge, the information supplied hereinabove is factually correct and contains no material misstatements or other misrepresentations. Additionally, I affirm and certify that, based on the acquisition costs of the property described above, the costs of the proposed improvements and the expected Jobs to be created or retained, the development shall meet or exceed the Minimum Investment requirements in Sec. 38.06(a)(iv) of the Economic Development Incentive Program.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**FOR CITY USE ONLY**

DEPT SUBJECT TO REQUEST: \_\_\_\_\_ REQUEST ASSIGNED TO: \_\_\_\_\_

DATE OF ASSIGNMENT: \_\_\_\_\_ RECEIVED BY: \_\_\_\_\_

DATE OF COMPLETION: \_\_\_\_\_ DATE RESPONSE DUE: \_\_\_\_\_

## EXHIBIT E

### Bailey Bill Program Application Form

#### City of Westminster Historic Preservation Commission

##### BAILEY BILL HISTORIC PROPERTY REHABILITATION APPLICATION

Property Address: \_\_\_\_\_

Property Owner: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Property Owner's Email Address: \_\_\_\_\_

Applicant: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Applicant's Mailing Address: \_\_\_\_\_

Applicant's Email Address: \_\_\_\_\_

Estimated Project Start Date: \_\_\_\_\_ Estimated Completion Date: \_\_\_\_\_

Fair Market Value of Property: \$ \_\_\_\_\_ (Please attach appraisal or other proof of value)

Estimated Project Cost \$ \_\_\_\_\_ (Must meet or exceed 20% of the fair market value)

##### Historic Designation Status

The property must have been granted a "historic designation" by the Westminster City Council. Check all that apply:

\_\_\_\_\_ The property is listed on the National Register of Historic Places

\_\_\_\_\_ The property has been designated as an historic property by the City Council

\_\_\_\_\_ The property is located within an area that has been designated as a historic district by the City Council

##### Attachments

The following information must be submitted along with a completed application:

\_\_\_\_\_ An original signed and completed application

\_\_\_\_\_ An application fee of \$ \_\_\_\_\_

\_\_\_\_\_ Plan detailing the proposed Historic Rehabilitation including the following: the areas of the structure or property that are to be rehabilitated; the scope of work to be done; and detailed information on the materials and techniques to be used to comply with the Rehabilitation Standards of the City.

Applicant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Owner's Signature (if not Applicant): \_\_\_\_\_

Co-Owner's Signature (if not Applicant): \_\_\_\_\_

The above signatures certify that the information in this application is accurate and complete, that the City may copy any drawings and materials necessary for review, and that pursuant to S.C. Code Ann. Section 6-29-1145 this property is not subject to a recorded covenant that is contrary to, conflicts with, or prohibits this activity.

##### FOR STAFF USE

Application #: \_\_\_\_\_ Tax Map #: \_\_\_\_\_ Zoning District: \_\_\_\_\_

\_\_\_\_\_ The work as described in this application and attachments appears to meet the Rehabilitation Standards and would likely receive final approval if completed as described.

\_\_\_\_\_ The work as described in this application and attachments would meet the Rehabilitation Standards if the Special Conditions on the attached sheet are met.

\_\_\_\_\_ The work as described in this application and attachments does not appear to meet the Rehabilitation Standards and is not approved for this property. The attached sheet describes the specific problems with the proposed work.

Authorized Signature \_\_\_\_\_ Date: \_\_\_\_\_



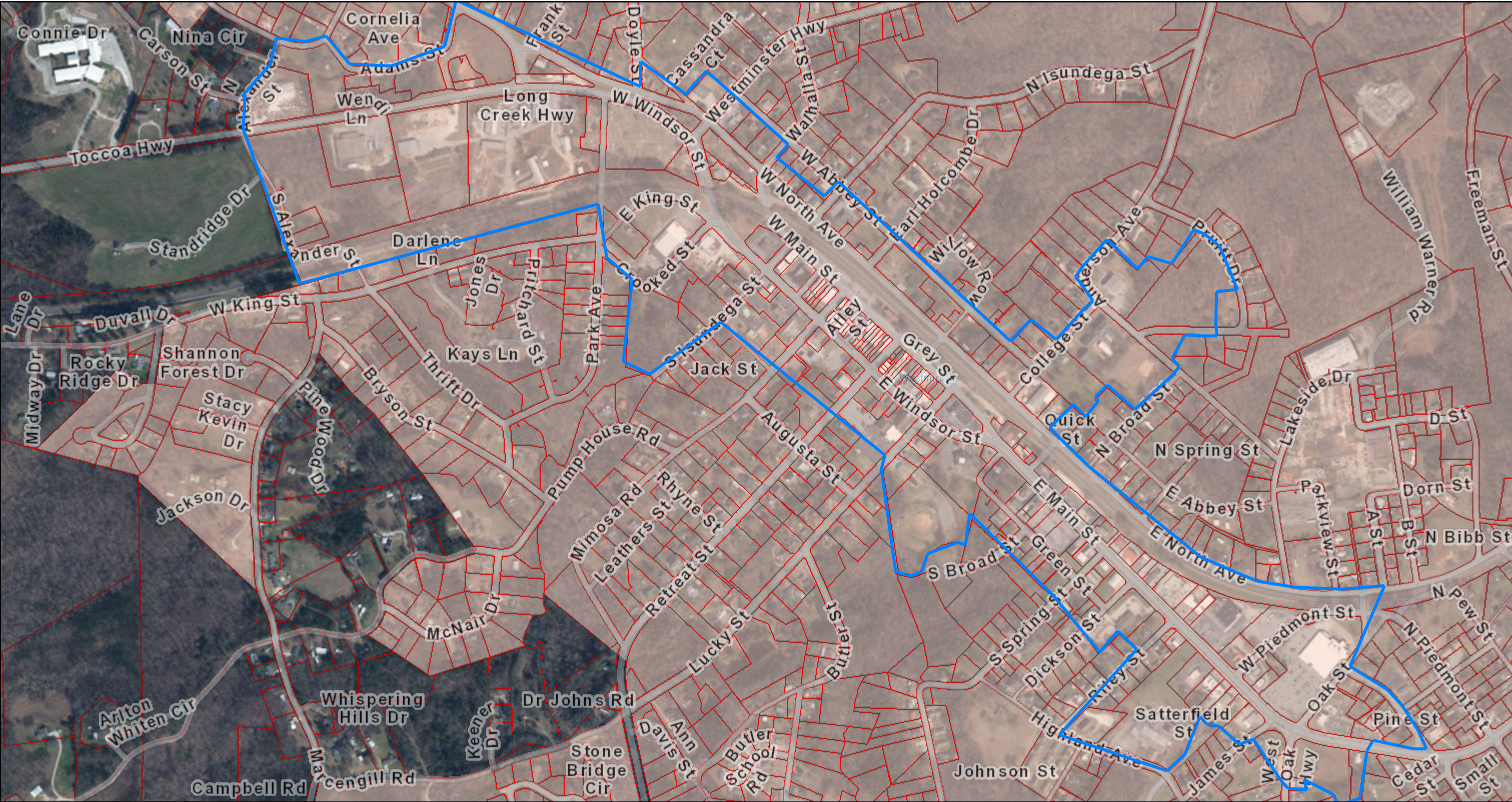
## DESCRIPTION OF PROPOSED WORK

Use the spaces below to describe the proposed work. Architectural features would include items such as: roof; exterior brick or siding; windows; doors; site/landscape features; entrance hall; main stair; parlors; fireplaces/mantles; floors/walls/ceilings; mechanical/ electrical/plumbing; etc. Please feel free to make copies of this sheet. Use as many spaces as necessary to fully describe your project.

Architectural feature____ Approximate date of feature _____ Describe feature and its condition       Photograph No._Drawing No.____	Describe work and impact on feature       
Architectural feature____ Approximate date of feature _____ Describe feature and its condition       Photograph No._Drawing No.____	Describe work and impact on feature       
Architectural feature____ Approximate date of feature _____ Describe feature and its condition       Photograph No._Drawing No.____	Describe work and impact on feature       
Architectural feature____ Approximate date of feature _____ Describe feature and its condition       Photograph No._Drawing No.____	Describe work and impact on feature       



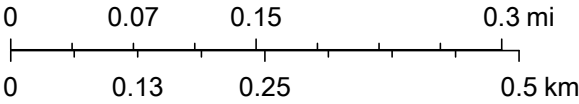
# Oconee County GIS



1/4/2022, 11:30:10 AM

1:9,028

- |            |                |             |
|------------|----------------|-------------|
| Roads      | Municipalities | Walhalla    |
| Land Hooks | Salem          | West Union  |
| Parcels    | Seneca         | Westminster |



Imagery Managed by Adam DeMars, South Carolina State GIS Coordinator

Imagery Collected by Kucera International





## Gateway to the Mountain Lakes Region

January 19, 2022

Enclosed you will find the application to apply for a hospitality tax fund grant for the upcoming fiscal year. Please fill out the application and return it to City Hall by **March 11, 2022**. Please read the attached guidelines for the hospitality tax fund grant.

If a hospitality tax fund grant was received last year, **please provide an annual report of activities/financial report with the application**. If awarded funding for your event or project, those funds will be available for disbursement **AFTER** July 1, 2022. To request your funds, you may mail an invoice to the address below or email [roverton@westminstersc.org](mailto:roverton@westminstersc.org) with your request.

There will be a meeting on Tuesday, April 12th to review the proposed budget for the new fiscal year. You are encouraged to attend the meeting to present your requests or to be available to answer any questions Council may have about your event or project. The meeting will be held at the Westminster Fire Department at 4 PM.

If you have any questions please contact me at the number listed below.

Sincerely,

Kiley Carter

864-647-3230



## HOSPITALITY TAX FUND GRANT

### GUIDELINES

As allowed by the S.C. Code of Laws, the City of Westminster collects Hospitality Tax (aka 2% Taxes) that are assessed on the sale of certain products within the City, mainly prepared food and beverages. The taxes collected can only be used for funding tourism-related or recreation-related projects. The City Council has the responsibility to ensure that such funds are spent in accordance with the State Law.

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#### **S.C. CODE OF LAWS**

**SECTION 6-1-730.** *Use of revenue from local hospitality tax.*

*(A) The revenue generated by the hospitality tax must be used exclusively for the following purposes:*

- (1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;*
- (2) tourism-related cultural, recreational, or historic facilities;*
- (3) beach access and renourishment;*
- (4) highways, roads, streets, and bridges providing access to tourist destinations;*
- (5) advertisements and promotions related to tourism development; or*
- (6) water and sewer infrastructure to serve tourism-related demand.*

*(B)(1) In a county in which at least nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, the revenues of the hospitality tax authorized in this article may be used for the operation and maintenance of those items provided in (A)(1) through (6) including police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities.*

*(2) In a county in which less than nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, an amount not to exceed fifty percent of the revenue in the preceding fiscal year of the local hospitality tax authorized pursuant to this article may be used for the additional purposes provided in item (1) of this subsection.*

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The Westminster City Council is willing to partner, on a limited basis, with organizations who through their own efforts are promoting tourism and recreation activities beneficial to the City. The Council desires to consider all requests but due to the funds for such partnering being limited, not all requests may receive full funding, or even partial funding.

**In addition to completing the application for funding, all applicants should be aware of the following guidelines:**

- **All Food & Beverage Tax Fund Grants awarded by the City are limited to a maximum of 50% of the project or event costs.**
- **All funds awarded must be used only for tourism-related expenses or recreation-related expenses.**
- **Final project reports are mandatory within 90 days after completion of the event.**
- **All unused funds must be returned to the City and accompany the Final Project Report.**

**Failure to adhere to any of the guidelines after being awarded a grant will disqualify the entity from being awarded future Food & Beverage Tax Fund Grants.**

**In order to provide for the timely budgeting of the funds for such partnering, applications must be submitted to the City Clerk during the month of January of each year. The Council will review the applications and invite some, or all, of the applicants to either make a formal presentation to the Council (or a committee of the Council) or just to answer questions. Applications that are approved for funding will have their funds included in the City's budget for the following fiscal year. The City's fiscal years are July 1 through June 30.**



## HOSPITALITY TAX FUND GRANT APPLICATION

### 1. APPLICANT

ORGANIZATION: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

EVENT NAME: \_\_\_\_\_

EVENT DATE: \_\_\_\_\_

TOTAL PROJECTED  
ATTENDANCE: \_\_\_\_\_

TOTAL AMOUNT  
REQUESTED: \_\_\_\_\_

TOTAL PROJECT  
COST: \_\_\_\_\_

### 2. PROJECT DESCRIPTION:

### 3. OTHER SOURCES OF FUNDING AND AMOUNT:

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

### 4. FUNDS REQUESTED:

a. Amount \$ \_\_\_\_\_

b. Specific use of City funds (elaborate as much as possible) \_\_\_\_\_

### 5. PROJECT TIMELINE:

a. Start date: \_\_\_\_\_

b. Start date: \_\_\_\_\_

c. Event date: \_\_\_\_\_

### ACKNOWLEDGEMENT:

To the best of my knowledge and belief, the statements contained in this report are true, correct, and represent the complete accounting of this event/project. I have the authority to sign and submit this application on behalf of this organization.

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Please remit to

City Clerk  
City of Westminster  
P.O. Box 399, Westminster, SC 29693  
Phone: 864-647-3202 Fax: 864-647-3229



## FOOD & BEVERAGE TAX FUND GRANT PROJECT REPORT

*This form is to be used as a Final Report on the spending of the City of Westminster Food & Beverage Tax Grant funding. Please note this report is due within 90 days of the completion of the event. A Final Report is required when the project has been completed. Reports submitted must be original no faxed copies will be accepted.*

ORGANIZATION:	<input type="text"/>		
EVENT NAME:	<input type="text"/>	EVENT DATES:	<input type="text"/>
CONTACT PERSON:	<input type="text"/>		
ADDRESS:	<input type="text"/>		
CONTACT NUMBER:	<input type="text"/>	EMAIL ADDRESS:	<input type="text"/>
TOTAL ATTENDANCE:	<input type="text"/>	DISBURSEMENT DATE:	<input type="text"/>
TOTAL AMOUNT AUTHORIZED:	<input type="text"/>	TOTAL AMOUNT BUDGETED:	<input type="text"/>
TOTAL AMOUNT EXPENDED:	<input type="text"/>	TOTAL AMOUNT RETURNED (If any):	<input type="text"/>

**SUBMITTAL CHECKLIST** (Please check the appropriate boxes and attach copies of the same):

- ☐ List all funding sources in addition to Westminster Food & Beverage Tax Fund Grant and amount received;
- ☐ Copies of paid invoices;
- ☐ Detailed expense reports and balance sheets;
- ☐ Guest logs, phone logs, accommodations contracts, website hits, advertising, demographics;
- ☐ Promotional materials, flyers;
- ☐ Pictures, news clippings, letters of endorsement; and/or
- ☐ Other materials that will be helpful in evaluating your project for future consideration.

*Note: All materials submitted become the property of the City of Westminster.*

**To the best of my knowledge and belief, the statements contained in this report are true, correct, and represent the complete accounting of this event/project. I have the authority to sign and submit this application on behalf of this organization.**

**SIGNATURE:**  **TITLE:**   
**DATE:**

Report forms are to be submitted to:

**City Clerk  
City of Westminster  
P.O. Box 399, Westminster, SC 29693  
Phone: 864-647-3202 Fax: 864-647-3229**

## Guideline for Hospitality Tax Grants

### Hospitality Tax Fund

Hospitality tax Grants are funded through Hospitality Tax (H-Tax) revenues collected in the city limits of Westminster. These funds may be used for tourism related events and programs in Westminster.

#### ALLOCATION REQUIREMENTS

Annually the City Council will set a budget for Hospitality Tax Grant funds.

For the amounts distributed under the County Promotions program, funds will be distributed with a goal of seventy-five percent (75%) dedicated **to organizations and projects that generate tourism in the unincorporated areas of Westminster and in municipal areas where Hospitality Tax revenues are collected by the county.** These shall include:

- Organizations that are physically located in the areas where the county collects Hospitality Tax revenues, provided the organization also sponsors projects or events within those areas;
- Organizations that are not physically located in the areas where the county collects Hospitality Tax Revenues; however, the organization sponsors projects or events within those areas; and
- Regional marketing organizations whose primary mission is to bring tourists to the region, including the areas where the county collects Hospitality Tax Revenues.

#### PROMOTIONS GRANT PROCESS

To be considered for funding, an application must be submitted in by the published funding deadline, **(Insert Date)**.

Once all applications for H-Tax Grant funds are received by the City Administrator and eligibility is verified, they will be forwarded to the City Council for review.

Applicants will be allowed to deliver a three (3) minute **presentation** on their program to the Council prior to Council's allocation deliberations.

#### PROMOTIONS GRANT TIMELINE

Request for applications:	DATE – DATE
Application due date:	DATE
HTax applicant presentations	TBD
Budget process:	DATE – DATE
Budget Public Hearing	DATE – DATE
Grant award notifications:	DATE – DATE
Grant Period:	DATE – DATE
Final Reports:	DATE – DATE

#### ORGANIZATION ELIGIBILITY REQUIREMENTS

- Applicant organizations **must** have been in existence for at **least one (1) year prior** to requesting funds.
- Applicants must provide proof of their non-profit status or fall into one of the following categories:
  - Organizations exempt from federal income tax under Section 501(C)(3) of the Internal Revenue Code and whose primary goal is to attract additional visitors through tourism promotion. The letter of exemption from the Internal Revenue Service must accompany the proposal.
  - Destination Marketing Organizations, which are recognized non-profit organizations charged with the responsibility of marketing tourism for their specific municipalities, counties or regions, such as Chambers of Commerce, Convention and Visitors Bureaus and Regional Tourism Commissions.
- Westminster will not award H-Tax Grants to individuals, fraternal organizations, or organizations that support and/or endorse political campaigns.
- Religious organizations may receive funding; however, Westminster may not sponsor nor provide financial support to a religious organization in a manner which would actively involve it in a religious activity (i.e. public



funds must not be used for a religious purpose). Thus, any funds provided must be solely utilized for secular purposes and the principal or primary goal of the sponsored activity must not be to advance religion.

- Grantee organizations may not re-grant City funds to other organizations. All funds must be spent on direct program expenditures by the organization that is granted the allocation.

#### **CRITERIA FOR PROJECT ELIGIBILITY**

As required by the Hospitality Tax Ordinance, projects to be funded by Hospitality Tax funds must result in the attraction of tourists to Westminster.

Per SC Code of Laws SECTION 6-1-730, projects must fall under one of the following to qualify for H-Tax funds:

(A) The revenue generated by the hospitality tax must be used exclusively for the following purposes:

- (1) ) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;
- (2) tourism-related cultural, recreational, or historic facilities;
- (3) ) beach access and re-nourishment;
- (4) ) highways, roads, streets, and bridges providing access to tourist destinations;
- (5) advertisements and promotions related to tourism development; or
- (6) water and sewer infrastructure to serve tourism-related demand.

(B)(1) In a county in which at least nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, the revenues of the hospitality tax authorized in this article may be used for the operation and maintenance of those items provided in (A)(1) through (6) including police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities.

(2) In a county in which less than nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, an amount not to exceed fifty percent of the revenue in the preceding fiscal

year of the local accommodations tax authorized pursuant to this article may be used for the additional purposes provided in item (1) of this subsection.

SECTION 6-1-760 states that "tourist" means a person who does not reside in but rather enters temporarily, for reasons of recreation or leisure, the jurisdictional boundaries of a municipality for a municipal project or the immediate area of the project for a county project.

Priority will be given to projects that demonstrate a benefit to the City of Westminster or regional marketing efforts that draw tourists to the area, especially those areas where Westminster collects Hospitality Tax.

Each application/proposed project will be reviewed individually to determine the potential impact it will have for tourism in the City of Westminster.

#### **FUNDING PRIORITIES**

**Priority will be given to projects that:**

- Promote dining at restaurants, cafeterias, and other eating and drinking establishments where Westminster collects Hospitality Tax;
- Generate overnight stay in Westminster's lodging facilities; and
- Promote and highlight Westminster's historic and cultural venues, recreational facilities and events and the uniqueness and flavor of the local community.

#### **APPLICATION COMPONENTS**

Applications must be submitted by the due date.

Please answer each question in the space provided on the application. All answers should be concise and to the point. No item should be left blank. Answers such as "See Attached" and "N/A" are not acceptable. Incomplete applications will not be considered.

**Total Meal and Overnight Justification** - In this section of the application, estimate the number of meals that will be consumed in restaurants and overnight stays in the **City**. Take the following items into consideration when making your estimations and provide a justification explaining how you came up with this number:

- How many people will attend your event?
- Of these, how many people live in Westminster? These attendees will more likely eat at home or in restaurants closer to where they live?
- How many of these people live in the unincorporated areas of Oconee County? Only a small portion of these may actually eat out. How many will eat at home?
- How many tourists are attending your event? How many hotel rooms are booked for your event? These are the people who will eat meals out.
- Estimate total hotel room nights will be booked due to your event. How will you track this number?

If awarded, organizations will be asked to provide actual attendance and tourism numbers as well as estimated meal and room numbers in their final report.

**Project Description** - Describe the project in its totality or at completion of the presently known ultimate stage, and/or the portion, phase or section of the total project for which funding is now being requested.

- Include a thorough, but concise description (Who, what, when, where and why).
- Include information about innovative ideas, community support and partnerships.
- Describe coordination that has been completed or will be needed with other organizations: if they are engaged in similar activities, or if they will be expected to be the beneficiary of this project.

**Economic Impact** - In this section, provide the income (sponsorship, grants, tickets, food sales and any other income generated from the event as well as expenses for the previous three years. Include this information even if the event did not receive H-Tax dollars in the past. If this is a new event, please place zeros in the years in which the event did not take place.

**How Will Your Organization Use Income, If Any, Generated by This Program/Event?** Describe how your organization uses any income that is generated from your event or project. If the net proceeds are zero, then indicate that the program/events do not generate income in this section.

**Benefit to Tourism** – How does your event promote and highlight unincorporated Westminster’s historic and cultural venues, recreational facilities and events and the uniqueness and flavor of the local community? Describe how your project will impact tourism in Westminster? Include support with data and other records or history. How are you working with local hotels and other hospitality businesses?

**Benefit to Community** – Describe how your project will benefit the community and Westminster. Include support with data and other records or history.

**Project Marketing Plan** – Outline your marketing, advertising, and promotional plans for your program. How will you track visitors and overnight stays? What methods are you using to track all visitors and count the number of tourists and residents that attend your event or participate in your program?

**Previous Success/Organization Capability** – Describe how your organization has successfully managed this program or similar programs in the past. Describe your organization’s capacity for managing the program described.

## **BUDGET/ELIGIBLE EXPENDITURES**

**H-Tax County Promotions grant funds must be used for tourism related expenses in the following categories only:**

- Advertising/Promotions/Marketing (including designing, printing, postage for items mailed to attract tourist).
- Security/Emergency Services (Fire Marshalls, police, sheriff deputies, etc.)
- Entertainment/Speakers/Guest Artist Instructor - Entertainment expenses should be no more than **50%** of the total requested amount of the grant.
- Venue fees or rentals
- Transportation or accommodations
- Food or beverages
- Staging or fencing
- of operational and maintenance of tourism related buildings and cultural, recreational, or historic facilities

**Some of the expenditures NOT eligible are:** Items given to tourists once they are here (T-shirts, cups, trophies. etc.), gift cards, insurance or licenses, invoices outside the funding year, salaries or decorations .

All grant funds must be expended by the recipient organization. *Re-granting* or *sub-granting* of funds is **NOT** allowed.

Expenditures **must** be consistent with the application budget. Only goods and services that comply with the H-Tax Guidelines and State Law are permitted. Project or event vendors will not be paid directly by Westminster.

The budget should reflect in financial terms the actual costs of achieving the objectives of the project(s) you propose in your application. A budget form is provided for you as part of the application.

Hospitality Tax Grant funds can account for up to **50%** of the total cost of the program/event you are applying for. Applicants must provide **50%** of the total cost of the project as either in-kind or cash match.

**Budget Narrative/Justification (H-Tax Grant Funds Only)** - Please include a detailed description for each category included in the budget. For example:

- Marketing/Advertising – \$5,000 for 6 billboards located in Charleston, Greenville, Aiken, Myrtle Beach and Landrum. \$1,000 for TV ads on WOLO. \$2,500 radio ads
- Security/Emergency Services: \$100 fire marshal, \$300 City of Westminster Police Officers
- Entertainment: \$9,000 for 3 bands
- Rentals: \$2,000 tents, \$500 sound system, \$1,000 stage

**Budget Tips:**

- Budgets **MUST** be entered on the budget section of the application and **MUST** include a narrative for H-Tax expenditures. This tells Westminster in detail how you plan to spend the grant funds.
- Grant funds should be used for tourism marketing first above any other expense. See the list of eligible expenditures above for more information.
- Be as detailed as possible in your budget narrative. If awarded, this information will be compared to your payment requests. Items in your payment requests must appear in your application budget.
- Signage and banners used at your event, directional signage, programs, volunteer T-shirts, and other items handed out at your event **do not** count as marketing expenses.

## **STATEMENT OF ASSURANCES**

By providing electronic initials and submitting the H-Tax County Promotions application, your organization is agreeing to the following Statement of Assurances:

- Upon grant application acceptance and funding award, applicant agrees that financial records, support documents, statistical records and all other records pertinent to Hospitality Tax funding shall be retained for a period of three years.
- All procurement transactions, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a matter so as to provide maximum open free competition.
- The funding recipient shall establish safeguards to prohibit employees from using their positions for a purpose that has the appearance of being motivated by a desire for private gain for themselves and others.
- All expenditures must have adequate documentation.
- All accounting records and supporting documentation shall be available for inspection by Westminster upon request.

- No person, based on race, color, national origin, religion, age, sex, ancestry, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, veteran status, military discharge status, citizenship status or reprisal or retaliation for prior civil rights activity should be excluded from participation in be denied the benefit of or be otherwise subjected to discrimination under the program or activity funding in whole or in part by Hospitality Tax funds.
- None of the funds, materials, property, or services provided directly or indirectly under Hospitality Tax funding shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.
- The applicant hereby certifies that the information submitted as part of this application is accurate and reliable.
- Any change and/or variation must be reported immediately, otherwise, funding may be withheld.

## APPLICATION EVALUATION

The Committee will use the following evaluation criteria to evaluate applications and proposed projects. The individual factors are important in project evaluation, as they are an indication of the degree to which the proposed project will contribute to the tourism in Westminster. Please ensure that you review these factors and include the elements in your application. These factors, with their corresponding point values, are:

### **Project Design and Benefit to Community:**

Benefit to Tourism - Does the project promote tourism in the City of Westminster? Will it promote a positive image for the City? Will it attract visitors, build new audiences and encourage tourism expansion in the areas of the City? Will it increase awareness of the City's amenities, history, facilities, and natural environment?

Reliable Tracking Mechanism and Marketing Plan – How will visitors and tourists would be tracked? (surveys, wristbands, ticketing, and etc.) Are these methods viable? Does the marketing plan describe how the organization will reach tourists? Is the expected number of tourists in line with the organization's marketing plan?

Benefit to Community - How will this project benefit the citizens of Westminster? Who will attend the event? How many visitors will the event serve?

Community Support and Partnerships - Does the project have broad-based community appeal or support? What is the evidence of need for this project in the City? What kind and degree of partnership does the project exhibit? Does it exhibit volunteer involvement or inter-jurisdictional, corporate, business, and/or civic support?

### **Economic Impact and Accountability**

Budget – Are all expenses that are to be paid with H-Tax funds eligible expenses? Did the budget and justification provide enough detail to show how funds will be spent?

Expected H-Tax Revenue Generated - What are the projected direct and indirect dollar expenditures by visitors/tourists? What is the estimated number of meals consumed? Are any overnight stays anticipated? Will this program drive business to those businesses that collect and remit Westminster H-Tax?

Reasonable Cost/Benefit Ratio - Does the benefit of the project (i.e. number of tourists estimated; expected revenue generated) exceed the cost of the project? Is this project "worth" its cost?

Management Capability - Does the applicant organization demonstrate an ability to successfully complete the project through effective business practices in the areas of finance, administration, marketing, and production? If this organization has received City Hospitality Tax funding previously, was the project successful?

#### **APPLICATION PACKAGE**

In order to be considered for funding, applicants must submit a **complete** application package for the H-Tax grant program. Incomplete applications will not be considered. Complete applications include:

- 1) Completed application:
  - Answer all questions and complete each section. "N/A" and "See Attached" are not valid responses.
- 2) Project budget and narrative (form included in the application)
- 3) Required Attachments:
  - **IRS determination letter** indicating the organization's 501 c 3 charitable status
  - **Proof of current registration as a charity with the SC Secretary of State's Office.** Visit <http://www.sos.sc.gov/PublicCharities> for more information.
  - **Current list of board of directors**
  - **Most recent 990 tax return or 990 post-card**
  - **Westminster business license or business license assessment survey form** (this form shows that a business license is not needed for your organization).

**Note:** You must submit one full 990 form (scheduled and attachments) with your application.

**Incomplete applications will not be considered.**

#### **AWARD NOTIFICATION**

The City will notify all applicant organizations of the funding outcome in writing in June. Awards will be available for reimbursement beginning July 1<sup>st</sup>. All Hospitality Tax Grants are reimbursable grants, organization's must submit for reimbursement. Final reports for the previous fiscal year, if applicable, must be received before current FY payments are released.

#### **REPORTING REQUIREMENTS**

Westminster requires grantees to complete a final report for H-Tax funds. Grantees are required to submit proof of grant expenditures (invoices and proof of payment).

Grantees are asked to report on attendance, room and meal numbers, event success or failure as well as the impact on Westminster, especially the unincorporated areas.

#### **GRANT ACKNOWLEDGEMENT**

Grantees must acknowledge the receipt of H-Tax funding by including the Westminster Government logo, or by stating that funds were provided by Westminster Government Hospitality Tax Funds on all program/project advertising, marketing and promotional materials. Examples of this must be included in your final report.

#### **Freedom of Information Act NOTICE**

Please be advised that all materials submitted for H-Tax grant funding are subject to disclosure based on the Freedom of Information Act (FOIA).

## CONTACT

(insert city staff contact information)

DRAFT

## **RESOLUTION #2022-xx-xx-xx**

### **A RESOLUTION TO ADOPT A SYSTEM OF SPECIAL EVENT PERMITTING, PROVIDE FOR OFF-DUTY STAFFING, AND OTHER MATTERS THERETO.**

**WHEREAS**, that special events are a valued part of social life for the residents and visitors alike and;

**WHEREAS**, the Westminster City Council finds that it must balance the peaceful enjoyment of one's residence and the public health, safety and welfare in relationship to the rights and interest of commercial activities that sustain and promote our local economy and;

**WHEREAS**, it is the intent of the City Council to protect the rights of its citizens and guest to engage in protected free and expressive activities and yet provide for the least restrictive and reasonable, time, place and manner of regulation of those activities within the overall context of rationally regulating commercial special events that have an impact upon public facilities and services, and other residents and guest and;

**WHEREAS**, it is the purpose of the City Council to establish a structured process for the permitting of special events conducted by the private sector that use public streets, facilities or services or occupy, impact or consume public resources as a result of the congregation of people and activities.

**BE IT ORDAINED** by the governing body of the City of Westminster in Council duly assembled and by the authority of the same:

#### **SECTION 1- Title**

The provisions embraced within the following sections shall constitute and be known and may be cited as "The Special Events Policy",

#### **SECTION 2- Authority**

The Special Event Permit is enacted pursuant to the powers conferred upon the municipality.



## **SECTION 3-Scope and Purpose**

The purpose is to ensure that the City and its residents and visitors will have adequate advance notice of a proposed special event and the cooperation of promoters, sponsors, organizers and enablers in order to properly plan for City services such as public safety, sanitation and traffic control.

By regulating special events frequency duration, intensity, time, place and manner, the City intends to strike this balance, and provide a predictable and coordinated process for applicants seeking to conduct a special event, and abate the cost thereof. The cost to recoup include, but are not limited to personnel, equipment, and supplies, sanitation, utilities, public facility maintenance and restoration, and monitoring

Nothing in this section shall be construed to prevent members of the public from assembling in public places for the purpose of making any speech or conveying any message to the public or to the government without holding a permit pursuant to this Section. Should any such person wish to assemble for such purposes and should they not holding a permit under this section, they shall not be prevented from doing so, provided that they have complied with all other Resolutions and law, if there be any, regulating such event or gathering and provided they are peaceable and not violation of any laws concerning public order.

## **Section 4- Applicability**

**Special events mean an outdoor event and can include:**

1. Any organized formation, parade, procession or assembly consisting of persons, and which may include animals, vehicles, or any combination thereof, which is to assemble or travel in unison on any street which does not comply with normal or usual traffic regulations or controls;
2. Outdoor musical concerts, festivals, fairs, carnivals, or rallies
3. Sporting events which require the use of temporary structures, including grandstands and tents
4. Examples of special events include but not limited to, filming, concerts, parades, circuses, fairs, festivals, rallies, block parties, community events mass participation, sporting competitions such as marathons and running events, bicycle races or tours, fishing tournaments or spectator sports such as football, basketball, baseball and soccer games, golf tournaments, or boat races. Excluded are City sponsored/organized events, funeral services and processions, lawful picketing on sidewalks, and

demonstrations that do not involve the use of vehicles, animals, fireworks, pyrotechnics or equipment (other than sound equipment) (provided that no fee or donation is charged or required for participation or attendance and the City Administrator's office is notified at least 48 hours in advance of the commencement of the demonstration.)

5. This provision applies to all grandstands, stages tents or groups of tents and use of mechanical amusement rides.

6. This section does not apply to activities within a permanent facility specifically approved and permitted for the proposed activity.

### **Section 5. Permits required**

1. Except as provided in this Resolution, no person may conduct, promote, sponsor, organize, or enable a special event as defined above, without having obtained a Special Event Permit from the City.

2. Any applicant who desires to conduct, promote, sponsor, organize or enables a special event is encouraged to submit a complete application for a Special Event Permit to include without limitation a site plan depicting existing facilities and proposed temporary facilities, a description of all activities which will be conducted, dates, times, and locations for proposed special event, and description of measures to be taken to ensure safety, health, and welfare of event goers as well as those in the surrounding community, as soon as possible prior to the schedule of the start of the event but such application no more than 2 years, and no less than 30 days prior to the scheduled start of the event.

3. Applicants for a Special Event Permit are required to acknowledge the responsibilities of hosting said event as it pertains to safety and security of staff members and prospective attendees. The City Administrators office may require the endorsement of the appropriate City department which has professional knowledge of potential issues that may be predicted for each specific event under consideration. General areas of consideration and regulation without limitation include: Security and Safety, Traffic Circulation and Parking, Waste Disposal, Temporary Structures, Lighting, Medical, Location, Activities, Hours of Operation, History, and Proximity to Residences, Churches, Schools and Other Special Events. Insurance and or posting of bond may be required as a conditioning of permitting,

4. The City Administrator may deny or revoke issuance of a Special Event Permit when among other things, the application contains a misrepresentation, false or misleading statement, evasion or suppression of material fact, does not comply with all other applicable City Resolutions, when the event for which a permit is sought is unlawful or constitutes a public nuisance, or when the applicant has not provided an adequate traffic plan or

traffic controls, an adequate parking plan, sufficient security, appropriate crowd control, health, safety or sanitation measures.

5. Any person aggrieved by the denial of the issuance, or conditional issuance of a Special Event Permit by the City Administrator may appeal the decision to the City Council by written request stating the reason thereof within ten (10) days after the notice of denial or conditional issuance is received.
6. The required permit must be displayed at the site in a conspicuous location for the duration of the event.

## **Section 6- Permit Fee**

A permit application must be accompanied by the payment of permitting fee as shown in Appendix A of the current approved budget document. The fee requirement may be waived for events which occur solely for the benefit of and are solely sponsored and operated by, or in which the entire proceeds accrue to, a governmental entity or nonprofit organization or entity. If due to inclement weather or other act of nature the entire event is cancelled the permit holder will not be required to repay these fees so long as the content and scope of the event remains the same and the event is rescheduled with the approval of the City Administrator. The permit fee is \$100.00.

## **Section 7- Code Enforcement**

1. All electrical wiring must be installed in compliance with the provisions set of the National Electric Code and the City's electrical code.
2. All tents and other temporary structures shall be erected in compliance with the provisions of Standard Building Code and Standard Fire Prevention Code.
3. It shall be the responsibility of the applicant to provide for the collection of solid waste and litter. Separate containers may be required for the collection of recyclable materials. All solid waste, litter and recyclable materials shall be removed from the site within 24 hours following the event. For multiple day events, the grounds shall be maintained during each day of the event with no on site accumulations which will create a nuisance or pose a health hazard.
4. Amusement rides must be in compliance with all local and state codes.
5. No event shall be conducted within the City unless in compliance with all applicable city Resolutions and applicable county and state laws, regulations or requirements.
6. Prior to event, the applicant shall call for inspection of to assure compliance with permitting conditions. If the building official, fire marshal or other city inspector finds that all permitting conditions have not been met, he shall notify the applicant indicating

corrections to be made and then inspect the work apparatus without further charge. If extra inspections are required a charge shall be made for each reinspection as shown in the current approved budget document.

## **Section 8- Off Duty Staffing/Details**

### **Section. 8-1. Off-duty police details.**

- (a) When used in this section 8, the word "department" shall mean the City of Westminster Police Department. When used in this section, the word "dispatcher" shall mean employees in the classification of records supervisor, communications/records manager and records specialist who are state certified telecommunicators.
- (b) The department may facilitate the employment of city police officers and public service aides and dispatchers by separate and independent private employers needing off-duty police, traffic control services or dispatch services. Such employment may be by either annual permit, contract, or both, as may be by the city attorney's office. No permit or contract shall in any way limit or restrict officers from discharging their primary law enforcement responsibilities or preventing and detecting crime. The department will maintain a roster of personnel who, at their sole option, wish to perform such work. The department will select the personnel for such off-duty details from the roster of those who wish to participate.
- (c) The city council shall establish rates for off-duty detail services and fees for the city's administrative expenses. The rates and administrative fees may be established by resolution. The department may require that the off-duty detail employer pay the charges for such services directly to the city and may establish procedures for the personnel to receive their pay for off-duty details through the city's payroll system. The department may require that private employers pay all charges in advance of services being performed. Should the private employer recognize that the off-duty police services for which it contracted will no longer be required, for any circumstances, the private employer agrees to notify the department no later than twenty-four (24) hours prior to the start of such requested services. In the event that the private employer fails to do so, the city shall charge a minimum two (2) hours for each officer who responds to the private employer's establishment. Should an investigation or arrest be initiated by an off-duty detail officer arising out of the performance of the services provided by the officer to the private employer, and the investigation or arrest requires the officer to work more than the allotted time as specified within the permit or contract, the private employer may be required to pay for the additional time at the city's established rates.
- (d) Off-duty personnel shall observe the department's normal standards of conduct, rules and regulations and other policies and procedures during such details and shall be subject to disciplinary action by the city for their failure to do so.

(e) In accordance with 29 C.F.R. Section 553.227 (the federal regulations implementing the Fair Labor Standards Act), an officer's, service aide's or dispatcher's hours of work for the off-duty detail employer shall not be combined with the hours worked for the city for purposes of overtime compensation.

(f) By enacting this section, the city has not agreed, and does not agree, to provide workers' compensation coverage for injuries sustained by off-duty personnel performing services for private employers. Such coverage shall be determined in accordance with this Resolution and comply with SC Code 23-24.

(g) This section in no way effects or, in any way limits, other city regulations governing outside employment by city employees.

(h) In consideration for the city allowing private employers to hire police personnel for off-duty details, the private employer shall indemnify and save harmless the city, its officers, agents and employees from or on account of any injuries or damages received or sustained by any person or persons during or on account of any negligent act of a police officer, public service aide or dispatcher while the police officer, public service aide or dispatcher is employed by the private employer regardless of whether the negligent act occurred while the officer, service aide or dispatcher was discharging his or her primary law enforcement responsibilities of preventing and detecting crime or controlling dispatching services. This requirement may be waived by the city council for off duty details on public property provided the city is named as an additional insured on the liability insurance of the owner or manager of the public property and provided the insurance coverage limits are at least as great as those maintained by the city.

## **Section 8-2. Off-duty fire-rescue details.**

(a) When used in this section, the word "department" shall mean the City of Westminster Fire Department. When the word "firefighter" is used it shall also mean "fire inspector," "paramedic," or "emergency medical technician." Off-duty details may include standby fire watches ordered by the fire chief pursuant to the South Carolina Fire Code.

(b) The department may facilitate the employment of city firefighters by separate and independent private employers needing off-duty fire-rescue services. Such employment may be by either permit, contract, or both, as may be approved by the city attorney's office, or by order of the fire chief in the case of a standby firewatch. No permit or contract shall in any way limit or restrict firefighters from discharging their primary responsibilities of preventing and detecting fires or other life-threatening conditions. The department will maintain a roster of firefighters who, at their sole option, wish to perform such work. The department will select the firefighters for such off-duty details from the roster of those who wish to participate.

(c) The city council shall establish rates for off-duty detail services and fees for the city's

administrative expenses. The rates and administrative fees may be established by resolution. The department may require that the off-duty detail employer pay the charges for such services directly to the city and may establish procedures for the firefighters to receive their pay for off-duty details through the city's payroll system.

(d) Firefighters shall observe the department's normal standards of conduct, rules and regulations and other policies and procedures during such details and subject to disciplinary action by the city for their failure to do so.

(e) In accordance with 29 C.F.R. Section 553.227 (federal regulations implementing the Fair Labor Standards Act), a firefighter's hours of work for the off-duty detail employer shall not be combined with the hours worked for the city for purposes of overtime compensation.

(f) By enacting this section, the city has not agreed, and does not agree, to provide workers' compensation coverage for injuries sustained by off-duty firefighters performing services for private employers.

(g) This section in any way effects or, in any way limits, other city regulations governing outside employment by city employees.

(h) In consideration for the city allowing private employers to hire firefighters for off-duty details, the private employer shall indemnify and save harmless the city, its officers, agents and employees from or on account of any injuries or damages received or sustained by any person or persons during or on account of any negligent act of a firefighter while the firefighter is employed by the private employer regardless of whether the negligent act occurred while the firefighter was discharging his or her primary responsibilities of preventing and detecting fires or other life threatening conditions. This requirement may be waived by the city council for off-duty details on public property provided the city is named as an additional insured on the liability insurance of the owner or manager of the public property and provided the insurance coverage limits are at least as great as those maintained by the city.

### **Section 8-3. Off-duty public works details,**

(a) When used in this section, the word "department" shall mean the City of Westminster Public Works Department.

(b) The department may facilitate the employment of city public works technicians by separate and independent private employers needing off-duty public works (sanitation, equipment, and/or road closure) services. Such employment may be by either permit, contract, or both, as may be approved by the city administrator's office. The department will maintain a roster of public works technicians who, at their sole option, wish to perform such

work. The department will select the technicians for such off-duty details from the roster of those who wish to participate.

(c) The city council shall establish rates for off-duty detail services and fees for the city's administrative expenses. The rates and administrative fees may be established by resolution. The department may require that the off-duty detail employer pay the charges for such services directly to the city and may establish procedures for the public works technicians to receive their pay for off-duty details through the city's payroll system.

(d) Public works technicians shall observe the department's normal standards of conduct, rules and regulations and other policies and procedures during such details and shall be subject to disciplinary action by the city for their failure to do so.

(e) In accordance with 29 C.F.R. Section 553.227 (federal regulations implementing the Fair Labor Standards Act), an employee's hours of work for the off-duty detail employer shall not be combined with the hours worked for the city for purposes of overtime compensation,

(f) By enacting this section, the city has not agreed, and does not agree, to provide workers' compensation coverage for injuries sustained by off-duty public works technicians performing services for private employers.

(g) This section in any way effects or, in any way limits, other city regulations governing outside employment by city employees.

(h) In consideration for the city allowing private employers to hire public works technicians for off-duty details, the private employer shall indemnify and save harmless the city, its officers, agents and employees from or on account of any injuries or damages received or sustained by any person or persons during or on account of any negligent act of a public works technician while the public works technician is employed by the private employer regardless of whether the negligent act occurred while the public works technician was discharging his or her primary responsibilities. This requirement may be waived by the city council for off-duty details on public property provided the city is named as an additional insured on the liability insurance of the owner or manager of the public property and provided the insurance coverage limits are at least as great as those maintained by the city.

### **Section 8-3. Staffing Matrix for selected events**

(a) For events from 200 to 500 attendees the City of Westminster may require staffing for events, depending on the nature of the event and other criteria as stated in Section 5.3.

Generally staffing is as follows:

Fire/EMS-2 FF/EMT's Police  
- 2 Officers  
Public Works- 1 Technician

(b) For Events over 500, staffing levels will depend on type of event and other criteria as listed in Section 5.3. The city reserves the right to require adequate staffing, at the organizers expense, to provide for safety of the event.

#### **Section 8-4. Fees and Payment to off duty detailers**

(a) The fees for off duty detailers shall be as shown in the current approved budget document Appendix A.

(b) Fees could be higher depending on the nature and complexity of the event.

(c) It is preferred that the event organizer pay the employee directly. However as stated in 8-1c, 8-2c, and 8-3c the city could require payment be made to the city for payment to the detailer.

#### **Section 9- Event Permit**

The event shall have a signed permit as attached in Exhibit A. *(not attached, will plan to use the existing special events application)*