

**CITY OF WESTMINSTER REGULARLY SCHEDULED MEETING**

**September 13, 2022 @ 6:00 PM**

**Westminster Fire Department**

**216 Emergency Lane**

**AMENDED AGENDA\***

**(\* items added to the Amended Agenda are noted with an “\*” and in red type.)**

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.

Public Hearing for Backflow Fees

Special recognition of City Utility Employee – Electric Department

Special Presentation by David McMahon of G Energy

Comments from the Mayor and Council

**Old Business**

1. Second Reading of ORDINANCE NO. 2022-09-13-01- AUTHORIZING AN EQUIPMENT LEASE PURCHASE AGREEMENT IN THE AMOUNT OF NOT EXCEEDING \$415,000 BETWEEN THE CITY OF WESTMINSTER, SOUTH CAROLINA, AND TRUIST BANK, A NORTH CAROLINA BANKING CORPORATION, TO DEFRAID THE COST OF ACQUIRING CERTAIN EQUIPMENT; AND OTHER MATTERS RELATING THERETO.

*(This ordinance is to authorize the financing agreement with Truist Bank to lease/purchase the following vehicles.*

- 1) *One electric line truck for \$265,000 for 8 years at 3.43% interest + \$7,500 closing costs*
- 2) *Two police vehicles and one fire vehicle for \$135,000 (total) at 3 years at 3.29% interest + \$7,500 closing costs*

*The purchase of these vehicles were approved in the FY2022-2023 Annual Budget. City Council authorized the purchase of the vehicles at the August 9, 2022 Regular City Council Meeting.*

*Staff recommends approval.)*

2. Second Reading ORDINANCE NO. 2022-09-13-03, AN ORDINANCE AMENDING THE CITY OF WESTMINSTER'S SCHEDULE OF FEES, REFERRED TO AS THE CLERKS RECORD, TO INCORPORATE BAKFLOW TESTING FEES

*(The South Carolina Department of Health and Environmental Control (SCDHEC) monitors the operations and maintenance of the City's sewer system. SCDHEC requires sewer lines to have backflow devices on customer sewer lines and requires periodic testing and proof of those tests to be maintained by the City. To better manage this process, City staff recently became certified to perform the required tests on the backflow devices. Customers may use an independent contractor certified in performing the tests. If Council agrees to the adoption of this fee, the customers will have an additional choice.*

*The fees requested are:*

*¾ -1" Residential ~~\$110.00~~ - \$150.00*

*2"-4" ~~\$120.00~~ - \$160.00*

*6"-18" ~~\$150.00~~ - \$200.00*

*Pits that Require Confined Space entry ~~\$120.00~~ \$140.00 plus testing cost for size of backflow*

*Average Cost for a plumber:*

*¾-1" \$60-\$150*

*2"-4" \$70-\$160*

*6"-18" \$80-\$200*

*Confined Space \$100-\$140*

*Staff recommends approval.)*

3. Second Reading ORDINANCE NO. 2022-09-13-05, AN ORDINANCE AMENDING THE CITY OF WESTMINSTER'S BUDGET ORDINANCE, AN ORDINANCE MAKING APPROPRIATIONS FOR CERTAIN EXPENSES, CAPITAL IMPROVEMENTS AND INDEBTEDNESS OF THE CITY OF WESTMINSTER, SOUTH CAROLINA FOR THE FISCAL YEAR BEGINNING JULY 1, 2022 AND ENDING JUNE 30, 2023

*(At the June 14, 2022 City Council Meeting, City Council discussed and consented to the utilization of unused Police Department salary funds to provide salary increases to Police Officers in order to incentivize Police Officer retention and recruitment. As a part of the same discussion City Council consented to utilize uncommitted funds from the Police Department salary line item to provide for increases to Fire Department firefighters. Again, this is to incentivize retention and recruitment, this time with the City's firefighters. In order to move the \$94,000 necessary to complete this plan, a budget amendment is required.*

*Staff recommends approval.)*

4. \* Second Reading AGREEMENT FOR THE TRANSFER OF WATER LINE BY AND BETWEEN PIONEER RURAL WATER DISTRICT OF OCONEE AND ANDERSON COUNTIES AND CITY OF WESTMINSTER

*(The City and Pioneer Water District have negotiated the sale by the City to Pioneer for a water line along SC HWY 24. At the June 6, 2022 City Council Meeting, Council passed first*

*reading of the agreement for a one-time, lump-sum payment for the water line in the amount of \$71,500 rather than a 10 year amortized payment. After the first reading, notes from both sides were incorporated into the agreement.*

*Staff recommends approval.)*

### **New Business**

5. First Reading of ORDINANCE NO. 2022-10-11-01; 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.

*(On August 16, 2022 City Council participated in a discussion with Attorney Lawrence Flynn of Pope Flynn to develop an Economic Development Incentive Program to encourage private investment within the City limits.*

*The ordinance contains multiple provisions. Of note are:*

*Adoption of the Bailey Bill which 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.*

*Authorization of incentives which include:*

- (i) Up to 100% of the applicable tap fees collected by the City;*
- (ii) Up to 50% of the building permit fees collected by Oconee County on behalf of 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)*

*Further:*

- (i) State Incentive Programs
  - a. The Abandoned Building Act*

- b. *Textiles Revitalization Act*
- (ii) *Minimum Investments for eligibility*
- (iii) *Length and amount of the incentives*
- (iv) *Area within the City limits to which incentives apply*
- (v) *Council authorization and certification of incentives*

*Staff recommends approval.)*

6. First Reading of ORDINANCE NO. 2022-10-11-02; AN ORDINANCE APPROVING THE EXECUTION AND DELIVERY OF A POLE ATTACHMENT LICENSE AGREEMENT BY AND BETWEEN THE CITY OF WESTMINSTER, SOUTH CAROLINA AND SPECTRUM SOUTHEAST, LLC AND OTHER MATTERS RELATED THERETO.

*(Spectrum Southeast, LLC requested the right to attached its communications equipment (aerial cables, wires and other facilities related thereto) to City-owned utility poles. This activity is presented to the Council for consideration as a Pole Attachment License Agreement. The agreement was negotiated by the City's legal representative Pope Flynn. The technical specifications were reviewed and approved by the City's Utility Director.*

*The term of the agreement is five (5) years. The technical specification detail considerations such as location on the pole, arrangement of the wires, insurance of the company and compensation to the City for each pole used, to name a few. The cost is \$21.00 per pole.*

*This is a non-exclusive attachment agreement. Currently, AT&T, Vyve and Blue Ridge electric Cooperative (for UpCountry Fiber) have pole attachment agreements with the City. These agreements are of benefit to the citizens of the City in that it promotes competition for communications services and compensates the City of the use of the City-owned poles.*

*Staff recommends approval.)*

7. **\*First Reading of ORDINANCE NO. 2022-10-11-03; AN ORDINANCE DELETING CERTAIN PROVISIONS OF TITLE III, CHAPTER 35 OF THE CITY OF WESTMINSTER CODE OF ORDINANCES PERTAINING TO ITS PURCHASING AND CONTRACTING POLICY; ADDING TITLE III, CHAPTER 38 TITLED "PROCUREMENT"; AND OTHER MATTERS RELATED THERETO.**

*(At the request of staff, Pope Flynn developed a revised Procurement Policy. Generally speaking, this policy provides for a modern approach to procuring goods and services as needed by the City, it complies with South Carolina state law. For the city staff, it adds flexibility and efficiencies to the procurement process. For additional security, the City Council is often the final decision maker. The policy adds additional language for performance bonds – which require a financial bond upfront to ensure a contractor completes the work to which it was hired.*

*The local vendor preferences is written to reflect the local nature of the upstate of South Carolina; however, City of Westminster businesses are given the greatest amount of preference then those in Oconee County. See section 38.22 Local vendor Preference. The Exceptions To Bidding, Section 38.26 incorporates flexibility to negotiate with prospective*

*contractors or consultants for the most efficient delivery of construction projects. These new provisions allow the City to keep pace with the modern environment for procuring and securing goods and services.*

*Staff recommends approval.)*

8. First Reading of AMENDMENT NO. 4 TO THE LOAN AGREEMENT; CONSERFUND LOAN NUMBER 4-201-19 BETWEEN THE CITY OF WESTMINSTER AND THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF ENTERED INTO ON THE 26<sup>TH</sup> DAY OF FEBRUARY 2019, AMENDED NOVEMBER 19, 2019, MAY 31, 2019 AND JANUARY 17, 2022; AMENDED FROM \$414,556.00 TO \$369,947.23; AND HEREBY AMENDED TO OCTOBER 31, 2022 FOR CERTAIN WATER SYSTEM IMPROVEMENTS TO INCREASE OPERATING EFFICIENCIES; AND OTHER MATTERS RELATED THERETO

*(In 2019, the City entered into a loan agreement with the South Carolina Office of Regulatory (SCORS) staff for the purchase and installation of six Variable Frequency Drive (VFD) pumps. The pumps are intended to increase the efficiency of the operations of the water system and save electricity. The final two VFD pumps were finally installed in August 2022 and are set to be operational within the next three weeks. SCORS is eager to close the loan agreement. The loan amortization schedule is provided as Exhibit A of the agreement. Repayment will take place at the rate of \$40,114.92 per year for the next ten (10) years.*

*The attached agreement provided in this agenda is Amendment No. 3. The final agreement, Amendment No. 4, will be provided at the second and final reading. The only terms expected to change between Amendment No. 3 and Amendment No. 4 is the closing date, referred to as "the completion of the construction phase to be June 30, 2022," which will amend to "the completion of the construction phase to be October 31, 2022."*

*Staff recommends approval.)*

9. Consideration of RESOLUTION NO. 09-13-2022-01; A RESOLUTION PLEDGING TO PRACTICE AND PROMOTE CIVILITY IN THE CITY OF WESTMINTSER

*(Members of City Council and city staff attended the MASC Annual Meeting in July. One of the themes of the meeting was the practice and promotion of civility in public discourse. This Resolution is provided by the MASC as a "best practice.")*

10. Consideration of RESOLUTION NO. 09-13-2022-02; A RESOLUTION AUTHORIZING THE CITY OF WESTMINSTER TO PASS THROUGH THE FEES FOR CREDIT CARDS, DEBIT CARDS AND ANY OTHER FEE-BASED FINANCIAL TRANSACTIONS TO THE USER; AND OTHER MATTERS RELATED THERETO

*(At some point in the last five years, the City stopped the pass-through of financial fee-based transactions (sometimes referred to as Convenience Fees) and began absorbing the costs of those financial transaction fees on behalf of the customer. An analysis of the last one-year period revealed the cost to all City customers to be more than \$58,000. As a result, all City customers pay a percentage of the cost whether they utilize a credit card, or similar device, or not.*

*The institutions offering the credit card services set the fees. Currently the City accepts MasterCard and Visa because the fees for other credit cards are higher than these two. Should Council adopt the resolution, any credit card type can be accepted since the cost of the transaction will be bore by the user. The transaction cost collected by the City will be cost-neutral to the City.*

*October 10, 2022 is set as the date to begin the pass-through of the fees. This timeframe allows time to notify customers of the change. Additionally, the logistics of programming City financial software to collect the appropriate fees will take coordination with the City's financial software provider. To ensure all collection methods (online payments, automated telephone payments and in-person payments) are synchronized, additional time may be needed past October 10<sup>th</sup>. For this reason the resolution contains language: "beginning October 10, 2022 or as soon thereafter as may be logistically practical."*

*Staff recommends approval.)*

#### 11. Consideration of LOAN RESOLUTION, RUS BULLETIN 1780-27

*(Since 2020 City staff and City Engineer, Troy Rosier, have worked to develop a water system improvement program. The program consists of upgrades to existing lines to include 33,200 linear feet (LF), 10", 42,200 LF 8", and 10,800 LF 6", throughout the City's water distribution system. A 40,000-gallon ground storage tank will be replaced with a 250,000-gallon ground tank. These improvements will increase access to City water, improve water flow to areas with low water flow, loop water lines which will increase water delivery reliability, replace lines that have maintenance issues, add a new water tank to provide better water pressure, along with other benefits to the customers.*

*The United States Department of Agriculture – Rural Development office (USDA-RD) recently approved the City's request for a low interest loan to fund the water system improvement program. The USDA-RD approved \$8,705,000.00 for the program.*

*The City is required to follow federal procurement guidelines, permitting and other applicable regulations. The project is required to be completed within three (3) years. The loan scheduled repayment is for 40 years at 2.625% interest. Annual payments, which will begin after the completion of the loan – after construction – will be \$352,032. A debt service reserve fund is required to be established with monthly payments of \$2,934 until \$352,032 has accumulated. This will take approximately 10 years. An interim financing loan from a local bank may be required to manage cash flow of the loan. The City Engineer, City Attorney and City Bond Counsel are required to sign off on the terms of the agreement with the USDA-RD. City Council is required to pass the resolution before next steps can begin. City Council does not have to agree to the terms, in its sole discretion it may reject the offer.*

*Staff recommends approval.)*

#### 12. Consideration of Bids for Coopers Mill Subdivision Sanitary Sewer Improvements Phase I:

*(The Windsor Aughttry Company is the developer for the Cooper Mills subdivision being constructed at the intersection of Mountain Road and Claremont Road. Cooper Mills is designed for 175 single-family housing units. The City executed an agreement with the*

*Windsor Aughtry Company in 2021 to provide water and sewer service to the subdivision. An annexation covenant has been executed and recorded as required by City Ordinance. On June 30, 2022, the Windsor Aughtry Company purchased 175 water and sewer taps.*

*The agreement to provide water and sewer service allows the City Engineer Troy Rosier to bid and recommend to City Council award of the water and/or sewer lines. Mr. Rosier managed the bid process for the sewer system component of the subdivision. Mr. Rosier in his memo dated August 30, 2022 recommends “that a contract be awarded to the low bidder, HDH Construction Group LLC, for the amount of Four Hundred Seventy-Four Thousand Thirty-Six & 00/100 Dollars, (\$474,036.00).”*

*City staff concurs.*

<i>HDH Construction Group, LLC</i>	<i>\$ 474,036.00</i>	<i>(recommended)</i>
<i>L.W. Inc.</i>	<i>\$ 498,386.00</i>	
<i>Tugaloo Pipeline, Inc.</i>	<i>\$ 624,941.80</i>	
<i>Cedar Farms &amp; Construction, Inc.</i>	<i>\$ 711,562.87</i>	
<i>Payne, McGinn and Cummins, Inc.</i>	<i>\$ 904,391.00</i>	
<i>Don Moorhead Construction, Inc.</i>	<i>No Bid.</i>	

13. Consider change order to Sammy Butts Grading and Landscaping for additional services at the Simpson Road fields.

*(On May 17, 2022, City Council approved a bid from Sammy Butts Grading and Landscaping for the clearing, grading, seeding and irrigation of the Simpson Road athletic fields. At the request of City staff, Sammy Butts Grading and Landscaping provided an amended contract to include additional items to enhance the outcome of the field construction.*

	<i>Original</i>	<i>Amended</i>	<i>difference</i>
<i>Grading</i>	<i>\$28,000</i>	<i>\$45,000</i>	<i>\$17,000</i>
<i>Clearing</i>	<i>\$ 6,500</i>	<i>\$ 0</i>	<i>(\$ 6,500)</i>
<i>Grassing</i>	<i>\$10,500</i>	<i>\$19,558</i>	<i>\$ 9,058</i>
<i>Irrigation</i>	<i>\$14,000</i>	<i>\$19,500</i>	<i>\$ 5,500</i>
<b><i>Total</i></b>	<b><i>\$59,000</i></b>	<b><i>\$84,058</i></b>	<b><i>\$25,058</i></b>

*Staff recommends approval.)*

14. Consider authorization for City stage use outside the City limits for Corinth Baptist Church at 1607 Toccoa Highway for an event on September 18 and 19, 2022.

*(Westminster has a mobile stage and a policy governing its use. Corinth Baptist Church submitted an application and required fees requesting the use of the stage. Only City Council may authorize the use of the stage outside the city limits.)*

15. Consider Appointment to the Oconee Joint Regional Sewer Authority Commission (OJRSA).

*(Utilities Director Leigh Baker currently serves as one of the City's two OJRSA Appointee's. With his departure from the City set for the end of September 2022, Council is asked to consider another appointee.*

*The motion for the appointee:*

***I move to appoint (insert first and last name) to the Oconee Joint Regional Sewer Authority Commission (OJRSA) for the City of Westminster with a start date to begin as soon as (she/he) may be sworn-in.)***

### **Routine Business**

1. Approval of the August 9, 2022 Public Hearing Meeting Minutes
2. Approval of the August 9, 2022 Regular Meeting Minutes
3. Approval of the August 16, 2022 Called Meeting Minutes
4. Approval of the August 25, 2022 Called Meeting Minutes
5. Comments from the Utility Director
  - a. Update on installation of water pumps at raw water intake
  - b. Update on upgrades to the City's electric system
  - c. Hall street water line update
  - d. Sidewalk repairs using C-Funds update
  - e. Other matters
6. Comments from City Administrator
  - a. Application to CDBG program through ACOG for Anderson Park Improvements.
  - b. Application to SCIIP and RIA for sewer infrastructure projects
  - c. Other matters

### **Executive Session**

None

### **Adjourn**



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

AUTHORIZING AN EQUIPMENT LEASE PURCHASE AGREEMENT IN THE AMOUNT OF NOT EXCEEDING \$415,000 BETWEEN THE CITY OF WESTMINSTER, SOUTH CAROLINA, AND TRUIST BANK, A NORTH CAROLINA BANKING CORPORATION, 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 Truist Bank, a North Carolina Banking Corporation (the "Lessor"), in the amount of not exceeding \$415,000 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. Attached as Exhibit B are proposals from Lessor to provide financing for the Lease Agreement. 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. The City Administrator is authorized to determine the quantity, type and cost of the items of Equipment financed with the Lease Agreement, provided the total amount of the Lease Agreement shall not exceed \$415,000.

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, including one or more repayment schedules, proposed by the Lessor. 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 September 13, 2022.

CITY COUNCIL OF THE CITY OF  
WESTMINSTER, SOUTH CAROLINA

(SEAL)

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Mayor

ATTEST:

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City Clerk

Exhibit A

Equipment

Electric Line Truck  
Police Vehicles  
Fire Vehicles

Exhibit B

Copy of Proposals of Truist Bank



**Truist Financial Corporation**

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**Governmental Finance**

2320 Cascade Pointe Blvd. Suite 600  
Charlotte, North Carolina 28208  
Phone (704) 954-1700  
Fax (704) 954-1799

July 19, 2022

Mr. Kevin Bronson  
City of Westminster, SC  
100 E Windsor St.  
Westminster, SC 29693

*Revised: August 4, 2022*

Dear Mr. Bronson:

Truist Bank ("Lender") is pleased to offer this proposal for the financing requested by the City of Westminster ("Borrower").

<b>PROJECT:</b>	Electric Line Truck
<b>AMOUNT:</b>	\$272,500.00
<b>TERM:</b>	8 years
<b>INTEREST RATE:</b>	3.43%
<b>TAX STATUS:</b>	Tax Exempt – Bank Qualified
<b>PAYMENTS:</b>	<u>Interest:</u> Annual <u>Principal:</u> Annual
<b>INTEREST RATE CALCULATION:</b>	30/360
<b>SECURITY:</b>	Vehicles and Equipment
<b>PREPAYMENT TERMS:</b>	Prepayable in whole at any time without penalty
<b>RATE EXPIRATION:</b>	September 16, 2022
<b>DOCUMENTATION/ LEGAL REVIEW FEE:</b>	N/A
<b>FUNDING:</b>	Proceeds will be deposited into an account held at Lender pending disbursement unless equipment is delivered prior to closing.

**DOCUMENTATION:** Lender proposes to use its standard form financing contracts and related documents for this installment financing. We shall provide a sample of those documents to you should Lender be the successful proposer.

The financing documents shall include provisions that will outline appropriate changes to be implemented in the event that this transaction is determined to be taxable or non-bank qualified in accordance with the Internal Revenue Service Code. All documentation must be deemed appropriate by Lender before closing.

**REPORTING**

**REQUIREMENTS:** Lender will require financial statements to be delivered within 270 days after the conclusion of each fiscal year-end throughout the term of the financing.

Should we become the successful proposer, we have attached the form of a resolution that your governing board can use to award the financing to Lender. If your board adopts this resolution, then Lender shall not require any further board action prior to closing the transaction.

Lender shall have the right to cancel this offer by notifying the Borrower of its election to do so (whether this offer has previously been accepted by the Borrower) if at any time prior to the closing there is a material adverse change in the Borrower's financial condition, if we discover adverse circumstances of which we are currently unaware, if we are unable to agree on acceptable documentation with the Borrower or if there is a change in law (or proposed change in law) that changes the economic effect of this financing to Lender.

Costs of counsel for the Borrower and any other costs will be the responsibility of the Borrower.

The stated interest rate assumes that the Borrower expects to borrow no more than \$10,000,000 in the current calendar year and that the financing will qualify as qualified tax-exempt financing under the Internal Revenue Code. Lender reserves the right to terminate this bid or to negotiate a mutually acceptable interest rate if the financing is not qualified tax-exempt financing.

We appreciate the opportunity to offer this financing proposal. Please call me at (803) 413-4991 with your questions and comments. We look forward to hearing from you.

Sincerely,

**Truist Bank**



Andrew G. Smith  
Senior Vice President



**Resolution Approving Financing Terms**

**WHEREAS:** The City of Westminster, SC ("Borrower") has previously determined to undertake a project for the financing of an electric line truck (the "Project"), and the Finance Officer has now presented a proposal for the financing of such Project.

**BE IT THEREFORE RESOLVED, as follows:**

1. The Borrower hereby determines to finance the Project through Truist Bank ("Lender") in accordance with the proposal dated July 19, 2022. The amount financed shall not exceed \$272,500.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.43%, and the financing term shall not exceed eight (8) years from closing.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the Borrower are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution.

3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by Borrower officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The Borrower shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The Borrower hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

5. The Borrower intends that the adoption of this resolution will be a declaration of the Borrower's official intent to reimburse expenditures for the Project that are to be financed from the proceeds of the Lender financing described above. The Borrower intends that funds that have been advanced, or that may be advanced, from the Borrower's general fund or any other Borrower fund related to the Project, for project costs may be reimbursed from the financing proceeds.

6. All prior actions of Borrower officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

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

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

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

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

SEAL

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City of Westminster, SC - Electric Line Truck (DRAFT)

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Compounding Period: Annual

Nominal Annual Rate: 3.430%

**Cash Flow Data - Loans and Payments**

	Event	Date	Amount	Number	Period	End Date
1	Loan	08/04/2022	272,500.00	1		
2	Payment	08/04/2023	39,526.65	8	Annual	08/04/2030

**TValue Amortization Schedule - Normal, 360 Day Year**

	Date	Payment	Interest	Principal	Balance
Loan	08/04/2022				272,500.00
<b>2023 Totals</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	
1	08/04/2023	39,526.65	9,346.75	30,179.90	242,320.10
<b>2024 Totals</b>		<b>39,526.65</b>	<b>9,346.75</b>	<b>30,179.90</b>	
2	08/04/2024	39,526.65	8,311.58	31,215.07	211,105.03
<b>2025 Totals</b>		<b>39,526.65</b>	<b>8,311.58</b>	<b>31,215.07</b>	
3	08/04/2025	39,526.65	7,240.90	32,285.75	178,819.28
<b>2026 Totals</b>		<b>39,526.65</b>	<b>7,240.90</b>	<b>32,285.75</b>	
4	08/04/2026	39,526.65	6,133.50	33,393.15	145,426.13
<b>2027 Totals</b>		<b>39,526.65</b>	<b>6,133.50</b>	<b>33,393.15</b>	
5	08/04/2027	39,526.65	4,988.12	34,538.53	110,887.60
<b>2028 Totals</b>		<b>39,526.65</b>	<b>4,988.12</b>	<b>34,538.53</b>	
6	08/04/2028	39,526.65	3,803.44	35,723.21	75,164.39
<b>2029 Totals</b>		<b>39,526.65</b>	<b>3,803.44</b>	<b>35,723.21</b>	
7	08/04/2029	39,526.65	2,578.14	36,948.51	38,215.88
<b>2030 Totals</b>		<b>39,526.65</b>	<b>2,578.14</b>	<b>36,948.51</b>	
8	08/04/2030	39,526.65	1,310.77	38,215.88	0.00
<b>2031 Totals</b>		<b>39,526.65</b>	<b>1,310.77</b>	<b>38,215.88</b>	
<b>Grand Totals</b>		<b>316,213.20</b>	<b>43,713.20</b>	<b>272,500.00</b>	



## Truist Financial Corporation

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### Governmental Finance

2320 Cascade Pointe Blvd. Suite 600  
Charlotte, North Carolina 28208  
Phone (704) 954-1700  
Fax (704) 954-1799

July 19, 2022

Mr. Kevin Bronson  
City of Westminster, SC  
100 E Windsor St.  
Westminster, SC 29693

*Revised: August 4, 2022*

Dear Mr. Bronson:

Truist Bank ("Lender") is pleased to offer this proposal for the financing requested by the City of Westminster ("Borrower").

<b>PROJECT:</b>	Police & Fire Vehicles
<b>AMOUNT:</b>	\$142,500.00
<b>TERM:</b>	3 years
<b>INTEREST RATE:</b>	3.29%
<b>TAX STATUS:</b>	Tax Exempt – Bank Qualified
<b>PAYMENTS:</b>	<u>Interest:</u> Annual <u>Principal:</u> Annual
<b>INTEREST RATE CALCULATION:</b>	30/360
<b>SECURITY:</b>	Vehicles and Equipment
<b>PREPAYMENT TERMS:</b>	Prepayable in whole at any time without penalty
<b>RATE EXPIRATION:</b>	September 16, 2022
<b>DOCUMENTATION/ LEGAL REVIEW FEE:</b>	N/A
<b>FUNDING:</b>	Proceeds will be deposited into an account held at Lender pending disbursement unless equipment is delivered prior to closing.

**DOCUMENTATION:** Lender proposes to use its standard form financing contracts and related documents for this installment financing. We shall provide a sample of those documents to you should Lender be the successful proposer.

The financing documents shall include provisions that will outline appropriate changes to be implemented in the event that this transaction is determined to be taxable or non-bank qualified in accordance with the Internal Revenue Service Code. All documentation must be deemed appropriate by Lender before closing.

**REPORTING**

**REQUIREMENTS:** Lender will require financial statements to be delivered within 270 days after the conclusion of each fiscal year-end throughout the term of the financing.

Should we become the successful proposer, we have attached the form of a resolution that your governing board can use to award the financing to Lender. If your board adopts this resolution, then Lender shall not require any further board action prior to closing the transaction.

Lender shall have the right to cancel this offer by notifying the Borrower of its election to do so (whether this offer has previously been accepted by the Borrower) if at any time prior to the closing there is a material adverse change in the Borrower's financial condition, if we discover adverse circumstances of which we are currently unaware, if we are unable to agree on acceptable documentation with the Borrower or if there is a change in law (or proposed change in law) that changes the economic effect of this financing to Lender.

Costs of counsel for the Borrower and any other costs will be the responsibility of the Borrower.

The stated interest rate assumes that the Borrower expects to borrow no more than \$10,000,000 in the current calendar year and that the financing will qualify as qualified tax-exempt financing under the Internal Revenue Code. Lender reserves the right to terminate this bid or to negotiate a mutually acceptable interest rate if the financing is not qualified tax-exempt financing.

We appreciate the opportunity to offer this financing proposal. Please call me at (803) 413-4991 with your questions and comments. We look forward to hearing from you.

Sincerely,

**Truist Bank**



Andrew G. Smith  
Senior Vice President

**Resolution Approving Financing Terms**

**WHEREAS:** The City of Westminster, SC ("Borrower") has previously determined to undertake a project for the financing of police and fire vehicles (the "Project"), and the Finance Officer has now presented a proposal for the financing of such Project.

**BE IT THEREFORE RESOLVED, as follows:**

1. The Borrower hereby determines to finance the Project through Truist Bank ("Lender") in accordance with the proposal dated July 19, 2022. The amount financed shall not exceed \$142,500.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.29%, and the financing term shall not exceed three (3) years from closing.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the Borrower are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution.

3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by Borrower officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The Borrower shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The Borrower hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

5. The Borrower intends that the adoption of this resolution will be a declaration of the Borrower's official intent to reimburse expenditures for the Project that are to be financed from the proceeds of the Lender financing described above. The Borrower intends that funds that have been advanced, or that may be advanced, from the Borrower's general fund or any other Borrower fund related to the Project, for project costs may be reimbursed from the financing proceeds.

6. All prior actions of Borrower officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

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

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

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

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

SEAL

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City of Westminster, SC - Police & Fire Vehicles (DRAFT)

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Compounding Period: Annual

Nominal Annual Rate: 3.290%

**Cash Flow Data - Loans and Payments**

	Event	Date	Amount	Number	Period	End Date
1	Loan	08/04/2022	142,500.00	1		
2	Payment	08/04/2023	50,659.22	3	Annual	08/04/2025

**TValue Amortization Schedule - Normal, 360 Day Year**

	Date	Payment	Interest	Principal	Balance
Loan	08/04/2022				142,500.00
<b>2023 Totals</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	
1	08/04/2023	50,659.22	4,688.25	45,970.97	96,529.03
<b>2024 Totals</b>		<b>50,659.22</b>	<b>4,688.25</b>	<b>45,970.97</b>	
2	08/04/2024	50,659.22	3,175.81	47,483.41	49,045.62
<b>2025 Totals</b>		<b>50,659.22</b>	<b>3,175.81</b>	<b>47,483.41</b>	
3	08/04/2025	50,659.22	1,613.60	49,045.62	0.00
<b>2026 Totals</b>		<b>50,659.22</b>	<b>1,613.60</b>	<b>49,045.62</b>	
<b>Grand Totals</b>		<b>151,977.66</b>	<b>9,477.66</b>	<b>142,500.00</b>	

**ORDINANCE NO. 2022-09-13-03**

**AN ORDINANCE AMENDING THE CITY OF WESTMINSTER'S SCHEDULE OF FEES, REFERRED TO AS THE CLERKS RECORD, TO INCORPORATE BACKFLOW TESTING FEES**

**WHEREAS**, the City of Westminster, South Carolina (the “*City*”) is a legally constituted municipal corporation incorporated by Act No. 744 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina for the year 1875, and maintains a combined utility system (the “*System*”), and

**WHEREAS**, the City maintains a schedule of fees, referred to as the Clerks Record, that lists fees approved by the City Council; and

**WHEREAS**, the South Carolina Department of Health and Environmental Control (SCDHEC) monitors the City’s sanitary sewer system, its operations and maintenance that includes back flow installation and backflow testing; and

**WHEREAS**, the City desires to offer its sewer customers an optional service of backflow testing at provided fees that are cost competitive.

**NOW, THEREFORE, BEING DULY ASSEMBLED, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF WESTMINSTER, AS FOLLOWS:**

There is hereby adopted an official Clerks Record, as amended to include Backflow Tests with fees, listing specific fees, business licenses, and utility rates charged by the City for:

- a) the use of City facilities and equipment for the purposes of making them available to public
- b) specific utility rates the proceeds of which are for the maintenance and expansion of its water and sewer system
- c) the reproduction of public records and other miscellaneous services to cover the actual cost of producing these documents and information under the provision of SC §30-4-30(B)
- d) Other various fees associated with enhanced direct services provided by the City.

The Clerk’s Record is incorporated and adopted by reference and placed on file in the Office of the City Clerk.

DONE AND ORDAINED, this 13th day of September 2022.

CITY OF WESTMINSTER,  
SOUTH CAROLINA

(SEAL)

By: \_\_\_\_\_  
Mayor Brian Ramey

Attest:

By: \_\_\_\_\_  
Rebecca Overton, City Clerk

First Reading:	_____	20
Second Reading:	_____	20



POLICE	FLAT FEE
ACCIDENT REPORTS	\$10
CIVIL CASE REPORTS	\$50-\$100
FAMILY COURT PAPERWORK	\$10

\*Family court paperwork consists of any documents pertaining to a specific case (disks, audio tapes, etc...)

RECREATION DEPARTMENT REGISTRATION FEES	FLAT FEE
RESIDENTS INSIDE CITY LIMITS	\$35
RESIDENTS OUTSIDE CITY LIMITS	\$60
LATE REGISTRATION FEE	\$10

RECREATION DEPARTMENT OTHER FEES	FLAT FEE
FOOTBALL EQUIPMENT DEPOSIT	\$20
INSURANCE	\$10
SPONSOR FEE	\$200
FOOTBALL SPONSOR FEE	\$300
NEW BANNER FEE	\$200
RENEWAL BANNER FEE	\$150

Insurance is optional

SIGN PERMITS	FLAT FEE
POLITICAL SIGN APPLICATION	\$250
SIGN PERMIT	\$50
	*NEEDED FOR ANY AND ALL SIGNS WITHIN CITY LIMITS
BANNER PERMIT	\$25
	*NEEDED FOR ANY AND ALL BANNERS WITHIN CITY LIMITS

ZONING PERMIT FEES	FLAT FEE
PLANNED UNIT DEVELOPMENT APPLICATION	\$200
BOARD OF APPEALS HEARING	\$75
PLANNING COMMISSION HEARING	\$75

\*Political sign application fees are 100% refundable when all signs are removed

\*There are limits and restrictions to signage in our zoning ordinance.

Please call City Hall (647-3200) for more information

**SOLID WASTE**

<b>GARBAGE</b>	<b>MONTHLY FEE</b>
GARBAGE/RES ROLL CAN INSIDE CITY LIMITS	\$20.29 for first one
<b>96 gallons roll cart; 1/2 cubic yard</b>	
	\$13.94 for each additional
GARBAGE/COM. ROLL CAN INSIDE CITY LIMITS	\$25.50
GARBAGE/RES ROLL CAN OUTSIDE CITY LIMITS	\$26.63
LOCK BAR FEE	\$5.25

<b>DUMPSTERS</b>	<b>MONTHLY FEE</b>
EXTRA DUMP	\$26.25
2 YRD 1X MONTH	\$32.97
2 YRD 1X WEEK	\$99.04
2 YRD 2X WEEK	\$118.05
2 YRD 3X WEEK	\$137.08
4 YRD 1X MONTH	\$39.30
4 YRD 1X WEEK	\$125.11
4 YRD 2X WEEK	\$213.61
4 YRD 3X WEEK	\$302.11
6 YRD 1X MONTH	\$45.64
6 YRD 1X WEEK	\$154.28
6 YRD 2X WEEK	\$302.45
6 YRD 3X WEEK	\$450.64
2) 6 YRD DUMPSTERS 1X WEEK	\$297.44
2) 6 YRD DUMPSTERS 2X WEEK	\$507.60
2) 6 YRD DUMPSTERS 3X WEEK	\$612.70
8 YRD 1X MONTH	\$51.99
8 YRD 1X WEEK	\$181.91
8 YRD 2X WEEK	\$355.96
8 YRD 3X WEEK	\$463.93
2) 8 YRD DUMPSTERS 1X WEEK	\$303.84
2) 8 YRD DUMPSTERS 2X WEEK	\$683.82
2) 8 YRD DUMPSTERS 3X WEEK	\$891.64
3) 8 YRD DUMPSTERS 2X WEEK	\$856.68
3) 8 YRD DUMPSTERS 3X WEEK	\$1,476.88

PARK RENTALS	FLAT FEE
PAVILION	\$35 for 3 hours
SMALL GAZEBO	\$25 for 3 hours
ADDITIONAL HOURS	\$5 per hour

- You will have access to power outlets, lights, and fans in the pavilion
- If the restrooms are locked, please call the Police department (647-3222)
- The city cannot guarantee the cleanliness of the restrooms
- You are responsible for garbage disposal
- If the grill is used, you must extinguish the charcoal
- If for any reason someone is at a shelter you reserved please call the Police department
- If you do not get an answer at the Police department, please call the Sheriff's office (638-4111) and have them page a Westminster police officer to the park



*The Pavilion at Anderson Park*

<b>ELECTRIC</b>	<b>MONTHLY</b>	<b>FLAT FEE</b>	<b>MONTHLY FEE</b>
	<b>BASE FEE</b>		<b>PER KW</b>
UNDERGROUND POWER (EXISTING)		TBD	
UNDERGROUND POWER (NEW)		TBD	
TEMPORARY POWER POLE		\$125	
RE ELECTRIC STND	\$15.44		\$0.15094
RE ELECTRIC GOOD NEIGHBOR RATE	\$14.70		\$0.14375
COM ELECTRIC TX STND	\$22.05		\$0.22736
			\$ .14539 after 3000 kw
COM ELECTRIC TX GOOD NEIGHBOR RATE	\$21.00		\$0.21653
			\$ .13847 after 3000 kw
DEMAND ELECTRIC TX STND	\$22.05		\$0.17552
			\$ .13164 after 3000 kw
DEMAND ELECTRIC TX GOOD NEIGHBOR RATE	\$21.00		\$0.16716
			\$ .12537 after 3000 kw
COM/DEM ELE NTX STND	\$22.05		\$0.17552
			\$ .13164 after 3000 kw
COM/DEM ELE NTX GOOD NEIGHBOR RATE	\$21.00		\$0.16716
			\$ .12537 after 3000 kw
COM DEMAND ELE TX	\$38.43		\$0.05342
YARD LIGHT 175W	\$12.24		
YARD LIGHT 400W	\$20.06		
YARD LIGHT MAIN SERVICE	\$40.10		

<b>WATER</b>	<b>MONTHLY</b>	<b>FLAT FEE</b>	<b>MONTHLY FEE</b>
	<b>BASE FEE</b>		<b>PER 1000 GAL</b>
WATER-3" METER	\$224.76		\$5.60
1. WATER - 6" METER	\$520.48		\$5.84
WATER - 4" METER	\$372.62		\$5.60
WI CITY 3/4" OR 1" METER (INSIDE)	\$12.70		\$3.49
2. WO CITY 3/4" OR 1" METER (OUTSIDE)	\$24.71		\$6.11
WATER - 2" METER	\$76.89		\$5.60
3/4" WATER TAP INSIDE		\$1,700	
3/4" WATER TAP OUTSIDE		\$1,900	
1" WATER TAP INSIDE		\$1,900	
1" WATER TAP OUTSIDE		\$2,100	
WATER LINE EXTENSION		TBD	
ROAD BORE		\$150	

<b>Backflow Tests</b>	<b>Price</b>
3/4-1" Residential	\$ 150.00
2-4"	\$ 160.00
6-18"	\$ 200.00
Confined Space Entry	\$140 plus

<b>SEWER</b>	<b>MONTHLY BASE FEE</b>	<b>MONTHLY FEE</b>
		<b>PER 1000 GAL</b>
SW NON-RES 3" WM	\$88.99	\$8.00
SW INSIDE RESIDENTIAL	\$21.54	\$8.72
SW OUTSIDE RESIDENTIAL	\$25.10	\$9.22
SW NON-RES 6" WM	\$192.41	\$8.00
SW NON-RES 4" WM	\$138.34	\$8.00
SW NON-RES 2" WM	\$39.64	\$8.00
TN SW NON-RES 4"WM MAIN	\$149.38	\$5.03
COUNTY SEWER ONLY	\$8.66	\$6.36
4" SEWER TAP INSIDE	\$1,300	
4" SEWER TAP OUTSIDE	\$1,500	
6" SEWER TAP INSIDE/OUTSIDE	COST + 30%	

•The sewer charge covers both collection and treatment of sewer

•The Oconee Joint Regional Sewer Authority provides treatment services

•Sewer billing is based on your water meter reading

# UTILITIES

UTILITY DEPARTMENT	FEE
LATE PENALTY	\$5 OR 5% OF BILL(whichever is greater)
DEPOSIT	\$0-\$250
SERVICE FEE	\$25
RETURN CHECK/DRAFT	\$30.00
NON PAYMENT FEE	\$50 applied at 8 AM on cutoff day
DHEC	\$0.35/MONTHLY
METER TAMPERING	\$150-\$500

- Late penalties are applied on the 15th of every month at 5 PM
- A deposit and a service fee is charged when utilities are connected
- Return check or draft fees must be paid in full within 10 days of the date of the certified letter
- Reconnect fees must be paid in full **PLUS** all past due balances before services can be restored
- DHEC is a regulatory fee recouped from each active water customer
- Meter tampering results in a call to police and a penalty of \$150-\$500

# WATER PLANT

BULK WATER	FLAT FEE
<b>SOLD AT THE WATER PLANT ONLY</b>	
0-5,000 GAL	\$20
5,000-25,000 GAL	\$50
25,001-50,000 GAL	\$100
50,001-100,000 GAL	\$200
100,001-500,000 GAL	\$500
500,000 GAL +	\$1,000

- All bulk water should be purchased at city hall and then picked up at the water plant at 735 Cornelia Avenue on any day between 7 AM and 3 PM

# RENTALS

DEPOT	FLAT FEE
DEPOT RENTAL	\$50 FOR FIRST HOUR -\$25 FOR EVERY HOUR AFTER THAT (MIN. OF 4 HOURS)
SECURITY DEPOSIT	\$100
•Security deposit is 100% refundable when depot key is returned	













**ORDINANCE NO. 2022-09-13-05**

**AN ORDINANCE AMENDING THE CITY OF WESTMINSTER'S BUDGET ORDINANCE, AN ORDINANCE MAKING APPROPRIATIONS FOR CERTAIN EXPENSES, CAPITAL IMPROVEMENTS AND INDEBTEDNESS OF THE CITY OF WESTMINSTER, SOUTH CAROLINA FOR THE FISCAL YEAR BEGINNING JULY 1, 2022 AND ENDING JUNE 30, 2023**

**WHEREAS**, the City of Westminster, South Carolina (the "**City**") is a legally constituted municipal corporation incorporated by Act No. 744 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina for the year 1875); and

**WHEREAS**, the City adopted Ordinance #2022-06-14-01, its Budget Ordinance for the year beginning July 1, 2022 and ending June 30, 2022; and

**WHEREAS**, the City desires to provide for salary increases in the Fire Department Budget; and

**WHEREAS**, the City Council desires to amend the Budget Ordinance to account to move \$94,000 from the Police Department Salary Line item to the Fire Department Line item; and

**NOW, THEREFORE, BEING DULY ASSEMBLED, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF WESTMINSTER, AS FOLLOWS:**

The Annual Budget is hereby amended and adopted:

	Original	Amended	Difference
General Fund, Police Dept, Personnel Services, Salaries	\$322,895	\$297,895	(\$25,000)
General Fund, Fire Dept, Personnel Services, Salaries	\$190,314	\$215,314	\$25,000

DONE AND ORDAINED, this 13th day of September 2022.

CITY OF WESTMINSTER,  
SOUTH CAROLINA

(SEAL)

By: \_\_\_\_\_  
Mayor Brian Ramey

Attest:

By: \_\_\_\_\_  
Rebecca Overton, City Clerk

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

First Reading: \_\_\_\_\_ 20\_\_  
Second Reading: \_\_\_\_\_ 20\_\_

**AGREEMENT FOR THE TRANSFER OF WATER LINE  
BY AND BETWEEN  
PIONEER RURAL WATER DISTRICT OF OCONEE AND ANDERSON COUNTIES  
AND  
CITY OF WESTMINSTER**

This **AGREEMENT FOR THE TRANSFER OF WATER LINE** (this “Agreement”) is entered into this \_\_\_ day of June, 2022, by and between **Pioneer Rural Water District of Oconee and Anderson Counties**, a body politic and corporate and a special purpose district organized under the laws of the State of South Carolina (“Buyer”), and **City of Westminster, Westminster, South Carolina**, a body politic and corporate and a political subdivision of the State of South Carolina (“Seller”). Each entity is a “Party” and together they are the “Parties.”

**WHEREAS**, Seller operates a water collection and transportation system that serves certain customers in Westminster, South Carolina;

**WHEREAS**, the Parties have agreed on terms for Buyer to purchase Seller’s water line running 3.7 miles from the intersection of Hwy 24 and S. Hampton St. (34.64830 – 83.07407) to the intersection of Fire Tower Rd. and Hwy 24. (34.61092 – 83.03943) in Westminster, South Carolina (the “Sale”), which include without limitation the transfer of the Seller’s Line and associated easements to Buyer and the transfer of certain infrastructure more particularly set forth herein; and other matters set forth below;

**NOW, THEREFORE**, in consideration of the premises and mutual covenants and obligations contained herein the receipt and sufficiency of which the parties hereby acknowledge, Buyer and Seller do hereby agree as follows:

**ARTICLE I  
DEFINITIONS AND RULES OF CONSTRUCTION**

**SECTION 1.1. Definitions.** The terms defined below are used in this Agreement with meanings ascribed thereto unless a different meaning is plainly intended.

“Agreement” means this Agreement for the Transfer of Water Line dated September \_\_\_, 2022 by and between Seller and Buyer.

“Environmental Laws” means any federal, state, local, or foreign law (including, without limitation, common law), treaty, judicial decision, regulation, rule, judgment, order, decree, injunction, permit, or governmental restriction or any agreement with any governmental body or other third party, whether now or hereafter in effect, relating to the environment, human health and safety, or to pollutants, contaminants, wastes, or chemicals or any toxic, radioactive, ignitable, corrosive, reactive, or otherwise hazardous substances, wastes, or materials.

“Seller’s Line” means the assets comprising the Seller’s water line, as further defined in **SCHEDULE 1.1**.

“Transfer Date” means that date for the transfer of ownership of the Seller’s Line from Seller to Buyer.

## **ARTICLE II AGREEMENT TO TRANSFER WATER LINE**

**SECTION 2.1. *Agreement to Transfer.*** Upon the terms and subject to the conditions set forth in this Agreement, on the Transfer Date, Seller shall sell, transfer, assign, convey, and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all of the assets comprising Seller’s Line.

### **SECTION 2.2. *Conditions to Closing.***

(a) To Seller. The following shall be conditions precedent to the obligation of Seller to proceed with the closing of the Sale (the “Closing”). Each condition may be waived in whole or part only by written notice of such waiver from Seller to Buyer.

- i. Approval of the Sale by all applicable governmental authorities;
- ii. Reserved;
- iii. Buyer shall have performed and complied in all material respects with all of the terms of this Agreement to be performed and complied with by Buyer prior to or at the Closing; and
- iv. On the Transfer Date, all representations and warranties of Buyer set forth in this Agreement shall be true, accurate and complete.

(b) To Buyer. The following shall be conditions precedent to the obligation of Buyer to proceed with the Closing. Each condition may be waived in whole or part only by written notice of such waiver from Buyer to Seller.

- i. Approval of the Sale by all applicable governmental authorities;
- ii. Reserved;
- iii. Seller shall have performed and complied in all material respects with all of the terms of this Agreement to be performed and complied with by Seller prior to or at the Closing; and
- iv. On the Transfer Date, all representations and warranties of Seller set forth in this Agreement shall be true, accurate and complete.

If the Closing shall fail to occur as the result of the failure of any condition precedent, each Party shall be responsible for its own costs.

(c) Due Diligence Period. Buyer shall have a period, commencing on the date of this Agreement through the date which is sixty (60) days after the date of this Agreement (the “Due Diligence Period”), to conduct or cause to be conducted any and all tests, studies, surveys, inspections, reviews, assessments, or evaluations of the Seller’s Line (the “Inspections”), as Buyer deems necessary, desirable, or appropriate in its sole and absolute discretion. Buyer shall have the unconditional right, for any reason or no reason whatsoever, to terminate this Agreement upon written notice to Seller delivered at any time prior to 11:59 p.m. EST on the last day of the Due Diligence Period. If Buyer does not timely notify Seller of its election to terminate this Agreement prior to 11:59 p.m. EST on the last day of the Due Diligence Period, Buyer shall be deemed to have elected to proceed to Closing, subject to the terms and conditions of this Agreement. If Buyer elects to terminate this Agreement as provided in this Section, this Agreement shall terminate, and the parties shall have no further liability hereunder (except with respect to those obligations hereunder which expressly survive the termination of this Agreement). Notwithstanding anything to the contrary contained in this Agreement, amendments to this Agreement to extend the Due Diligence Period may be agreed in writing or email by each party or each Party's respective attorney and notices to terminate this Agreement prior to the expiration of the Due Diligence Period may be given, by Buyer as provided in this Agreement or by Buyer or Buyer's attorney by fax or by email to Seller and/or Seller's attorney.

### **SECTION 2.3. *Transfer Date***

Buyer shall establish a Transfer Date and communicate the same to Seller in writing, which date shall be not more than thirty (30) days following the expiration of the Due Diligence Period and the satisfaction of the conditions to Closing.

### **SECTION 2.4. *Assets Transferred to Buyer.***

Seller shall transfer and Buyer accepts all the assets of the Seller’s Line as of the Transfer Date. The following provisions enumerate the assets constituting the Seller’s Line:

- (a) Fixed Assets, Easements and Rights-of-Way. Seller transfers to Buyer:
  - i. Fixed Assets. All pipes, valves, lines, meters, pressure regulatory devices, wells, tanks, pumps, fire hydrants, disinfectant units, and other property, plant, and fixed equipment used in the provision of water service or used in operating the Seller’s Line. Notwithstanding the foregoing, the master meter located on the line at the intersection of Hwy 24 and S. Hampton St. (34.64830 – 83.07407) and the water tank on Fire Tower Rd. shall remain the property of the Seller. A bill of sale of all the fixed assets transferred to Buyer is attached as **EXHIBIT A**.
  - ii. Reserved.
  - iii. Easements and Rights-of-Way. Rights-of-way, easements of record and prescriptive easements, if any, used in the provision of water service or in operating the Seller’s Line. An assignment of such easements and rights-of-way and non-exclusive lists of specifically enumerated easements and rights-of-way, is attached as **EXHIBIT B**.

(b) Non-Enumerated Real Property and other Interests. The Parties recognize and acknowledge that the list of rights-of-way, easements, and other interests in real property associated with the Seller's Line that is contained in the exhibits to this Agreement may not be exhaustive and that certain interests in real property associated with the Seller's Line and intended to be transferred hereunder may not be specifically enumerated therein. It is the express intention of the Parties to transfer to Buyer all Seller's rights-of-way, easements, and other interests in real property, including prescriptive rights, that are associated with the Seller's Line whether they are listed in the exhibits to this Agreement or not. Seller agrees to use its best efforts to maintain those records and documents in its possession that are related to rights-of-way, easements, and other interests in real property associated with the Seller's Line and will locate such documents and provide them to Buyer upon reasonable request. Seller agrees to execute any documents necessary or convenient to perfect the transfer or recording of the transfer of any such non-enumerated interests in real property to Buyer upon reasonable request of Buyer.

(c) Contracts, Permits, Records, Reports. Seller transfers to Buyer all existing or outstanding contracts, permits, permit files, drawings, engineering reports and other documents related to the Seller's Line as well as any warranty rights or claims against third parties related to the Seller's Line. The documents transferred include, without limitation, operating permits, regulatory and compliance reports, studies, maintenance records, reports and evaluations, engineering studies, and information related to capital improvement projects, insurance claims and other liabilities.

(d) Closing Costs. Buyer shall pay all recording fees and other costs associated with the recording of the real property interests granted herein.

(e) Other Liabilities; Indebtedness. Buyer does not assume responsibility for any other liabilities, loans or indebtedness of Seller or the Seller's Line.

**SECTION 2.5. *Purchase Price*** The purchase price due and payable on the day of Closing from Buyer to Seller shall be Seventy One thousand and Five Hundred Dollars and 00/100 Dollars and 00/100 (\$71,500).

**SECTION 2.6. *Liens.*** Seller shall transfer to Buyer title to Seller's Line free and clear of all liens recorded as a matter of public record as of the Transfer Date.

**SECTION 2.7. *Loss or Damage to the Seller's Line.*** If before the Transfer Date, the assets comprising the Seller's Line suffer loss or damage then all insurance proceeds related to the loss or damage shall be expended as directed by Buyer to repair the Seller's Line and the balance paid to Buyer at the Transfer Date.

**SECTION 2.8. *Capacity and Repairs.*** After Closing, Buyer will operate and maintain the Seller's Line according to its ordinary standards and practices, using sound engineering and operating practices.

### ARTICLE III REPRESENTATIONS AND WARRANTIES

**SECTION 3.1. *Representations and Warranties of Seller.*** Seller hereby represents and warrants to Buyer as follows:

(a) Due Authorization, Execution, and Delivery. Seller has full right, power, and authority (i) to enter into this Agreement, (ii) to transfer the Seller's Line to Buyer and convey the easements and other property as contemplated herein, and (iii) to perform all its obligations hereunder. Seller has taken all action necessary to authorize the execution and delivery of this Agreement and all other documents, instruments, or agreements necessary to effectuate the intent hereof. No further action, consent, or approval is required by Seller or by any governmental body to approve, consent to, or permit the performance by Seller of its obligations hereunder or transfer the real property interests as contemplated hereby.

(b) No Conflict, Breach, or Default. The execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with or constitute a breach of or default under (i) any contract or agreement to which Seller is a party or by which Seller is bound or to which its assets are subject, (ii) any law, regulation, administrative or judicial order, or any judgment or decree to which Seller or the Seller's Line is subject, or (iii) any act of Seller or any resolutions or ordinance of Seller.

(c) Litigation. There is no litigation, arbitration, or other legal or administrative suit, action, proceeding, or investigation pending or threatened against or involving Seller or the ownership or operation of the Seller's Line, including, but not limited to, any condemnation action relating to the Seller's Line.

(d) Title to Seller's Line. Seller has good, marketable and insurable legal title to all of the assets of the Seller's Line to be transferred hereunder, free and clear of all liens, claims and encumbrances.

(e) Contracts. Seller is not a party to any contracts related to the Seller's Line except for the contracts listed on **EXHIBIT C** attached hereto (the "Contracts"). Seller has performed all of its obligations under each of the Contracts and no fact or circumstance has occurred which, by itself or with the passage of time or the giving of notice or both, would constitute a default by any party under any of the Contracts. Seller has delivered to Buyer true, correct, and complete copies of all Contracts.

(f) Violations. Seller has not received notice of any material violation of any law or municipal ordinance, order, or requirement noted or issued against the Seller's Line by any governmental authority having jurisdiction over the Seller's Line, that has not been cured, corrected, or waived as of the date hereof.



(g) Hazardous Materials. Seller has not placed any, and to Seller's knowledge, there are no Hazardous Materials installed, stored in, or otherwise existing at, on, in, or under the real property or Seller's Line in violation of any Environmental Laws. "Hazardous Materials" means "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," and "Petroleum" and "Natural Gas Liquids," as those terms are defined or used in CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials.

(h) Continued Maintenance. Seller will maintain the Seller's Line pending transfer to Buyer according to its ordinary standards and practices, using sound engineering and operating practices, and in a safe, sanitary and environmentally sound manner, and take all actions necessary to prevent any undue degradation or damage to the assets comprising the Seller's Line.

(i) Continued Insurance. Seller will maintain property and casualty insurance on the entire Seller's Line in an amount equal to the reasonable replacement value of the Seller's Line pending transfer of the Seller's Line to Buyer and will cause Buyer to be listed as an additional insured on such policy.

**SECTION 3.2. *Representations and Warranties of Buyer.*** Buyer hereby represents and warrants to Seller as follows:

(a) Due Authorization, Execution, and Delivery. Buyer has full right, power, and authority (i) to enter into this Agreement, (ii) to acquire and operate the Seller's Line, and (iii) to perform all its obligations hereunder. Buyer has taken all action necessary to authorize the execution and delivery of this Agreement and all other documents, instruments, or agreements necessary to effectuate the intent hereof. No further action, consent, or approval is required by Buyer or by any governmental body to approve, consent to, or permit the performance by Buyer of its obligations hereunder or to acquire and operate the Seller's Line as contemplated hereby.

(b) No Conflict, Breach, or Default. The execution and delivery of this Agreement and the performance by Buyer of its obligations hereunder will not conflict with or constitute a breach of or default under (i) any contract or agreement to which Buyer is a party or by which Buyer is bound or to which the assets of the Seller's Line are subject, (ii) any law, regulation, administrative or judicial order, or any judgment or decree to which Buyer or the Seller's Line is subject, or (iii) any act of Buyer or any resolutions or the bylaws of Buyer.

**SECTION 3.3. *Default.*** In the event either Party discovers that any representation is untrue in any material respect or any warranty is breached in any material respect, the cost of correcting any problem resulting therefrom or of paying or responding to any resulting claims, including reasonable attorney's fees, shall be borne by the Party whose representation is untrue or whose warranty is breached. In the event either Party fails to timely perform its obligations hereunder, the other Party may initiate action to compel compliance in any court of competent jurisdiction. The costs of such action shall be recoverable from the defaulting Party.

## **ARTICLE IV MISCELLANEOUS**

**SECTION 4.1. *Counterparts.*** This Agreement may be executed in counterparts, which when assembled shall constitute but one original Agreement.

**SECTION 4.2. *Severability.*** The provisions hereof are severable and in the event any one or more of such provisions is void or unenforceable, the remainder of this Agreement shall constitute the agreement between the Parties as to the subject matter hereof.

**SECTION 4.3. *Effect of Dissolution of a Party.*** In the event either Buyer or Seller for any reason shall be dissolved, consolidated or its legal existence shall otherwise be terminated, all of the covenants, stipulations, obligations, and agreements contained in this Agreement by or on behalf of or for the benefit of such Party shall bind or inure to the benefit of the successor or successors thereof.

**SECTION 4.4. *Legal Holidays.*** In any case where the date of any action required hereunder shall be on a day which is a legal holiday in the State of South Carolina, performance shall be deemed timely if made on the next succeeding day that is not such a legal holiday with the same force and effect as if such act were performed on the date otherwise provided for herein.

**SECTION 4.5. *Manner of Giving Notice.*** All notices, demands, and requests to be given to or made hereunder by Buyer or Seller shall be given or made as indicated below or in writing and shall be deemed to be properly given or made if sent by United States certified mail, return receipt requested, postage prepaid, addressed as follows:

(a) As to Seller:

City of Westminster  
ATTN: Kevin Bronson  
100 E. Windsor St.  
Westminster, SC 29676

(b) As to Buyer:

Pioneer Rural Water District  
5500 West-Oak Hwy.  
Westminster, SC 29693  
Attention: Terry Pruitt

Copy to:

Nelson Mullins Riley & Scarborough LLP  
2 W. Washington Street, Suite 400

Greenville, SC 29601  
Attention: Rivers Stilwell

Any such notice, demand, or request may also be transmitted to the appropriate above-mentioned Party by email (to Seller at [kbronson@westminster.sc.org] or to Buyer at [tpruitt@pioneerwater.net](mailto:tpruitt@pioneerwater.net) with a copy to [rivers.stilwell@nelsonmullins.com](mailto:rivers.stilwell@nelsonmullins.com)) and shall be deemed to be properly given or made when sent.

Any of such addresses may be changed at any time upon written notice of such change sent by United States certified mail, return receipt requested, postage prepaid, or email to the other Party by the Party effecting the change.

**SECTION 4.6. *Parties Alone Have Rights under Agreement.*** There are no third-party beneficiaries to this Agreement. Except as herein otherwise expressly provided, nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation, other than Buyer and Seller any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof. This Agreement and each provision herein are intended to be and are for the sole and exclusive benefit of Buyer and Seller.

**SECTION 4.7. *Headings.*** Any heading preceding the text of the several articles hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.

**SECTION 4.8. *Choice of Forum.*** The Parties hereto agree that any suit, action, or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement of the transactions described herein may be brought only in the Court of Common Pleas for Oconee County, South Carolina, or in the original jurisdiction of the South Carolina Supreme Court.

**SECTION 4.9. *Rules of Construction.*** Words of masculine gender shall be deemed and construed to include correlative words of feminine and neuter genders and, unless the context shall otherwise indicate, words in singular shall also be plural and vice versa. In the event any one or more provisions hereof are determined to be void, invalid, or unenforceable, so long as the remainder of this Agreement is sufficient to accomplish its primary purpose, such void, invalid, or unenforceable provision shall be severed herefrom and the balance hereof shall constitute the agreement of the Parties hereto. Certain representations, warranties, rate matters, easement filings, and covenants are not verifiable or to be performed until after the Transfer Date; therefore the provisions hereof shall survive the Transfer Date and the transfers contemplated.

**SECTION 4.10. *Survival.*** Terms, covenants, and agreements contained herein shall survive the Closing of the transfer of the Seller's Line as appropriate to carry into effect the intent of the Parties as manifested in those terms.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, Buyer and Seller have caused this Agreement for the Transfer of Assets to be signed in their names by their duly authorized officers as of the date first hereinabove written.

**SELLER:**

**City of Westminster, Westminster, South  
Carolina**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**BUYER:**

**Pioneer Rural Water District of Oconee and  
Anderson Counties**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**LIST OF EXHIBITS AND SCHEDULES**

**EXHIBIT A – Bill of Sale for Water System and Fixed Assets**

**EXHIBIT B – Form of Assignment of Easements and Rights-of-Way**

**EXHIBIT C – Contractual Obligations**

**SCHEDULE 1.1 – Seller’s Line**

**EXHIBIT A**

STATE OF SOUTH CAROLINA     )

COUNTY OF OCONEE                     )

**BILL OF SALE FOR WATER LINE**

FOR AND IN CONSIDERATION of the sum of Seventy One Thousand and Five Hundred Dollars and 00/100 (\$71,500) paid to **City of Westminster, Westminster, South Carolina**, a body politic and corporate organized under the laws of the State of South Carolina (“Seller”), the receipt and sufficiency of which is hereby acknowledged, at and before signing and sealing of these presents, and the additional consideration hereinafter set forth, Seller does hereby sell, transfer and convey to **Pioneer Rural Water District of Oconee and Anderson Counties**, a body politic and corporate and a political subdivision of the State of South Carolina (“Buyer”), its successors and assigns forever, any rights, title and interest as it may have in all assets and equipment associated with the Seller’s Line, including but not limited to all pipes, valves, lines, meters, pressure regulatory devices, wells, tanks, pumps, fire hydrants, disinfectant units, and other property, plant, and fixed equipment used in the provision of water service or in operating the water collection and transportation facilities, as applicable, if any (collectively, the “Seller’s Line Assets”). Buyer shall make available to the Seller, at least annually, all fire hydrant flow reports for hydrants located along Seller’s Line for Seller’s Fire Department ISO reporting.

TO HAVE AND TO HOLD the Seller’s Line Assets unto Buyer, and Buyer’s successors and assigns forever, and Seller does hereby bind Seller, and Seller’s successors and assigns, to WARRANT and FOREVER DEFEND, all and singular the Seller’s Line Assets unto Buyer, and Buyer’s successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof by, through and under Seller but not otherwise.

The Parties agree to take all such further actions and execute, acknowledge and deliver all such further documents that are reasonably necessary or useful in carrying out the purposes of this Bill of Sale.

It is agreed that this Bill of Sale For Water Line and the related AGREEMENT FOR THE TRANSFER OF WATER LINE BY AND BETWEEN PIONEER RURAL WATER DISTRICT OF OCONEE AND ANDERSON COUNTIES AND COMMISSION OF PUBLIC WORKS, CITY OF WESTMINSTER (including all Exhibits, amendments, supplements and corrections thereto signed by both Parties, the “Transfer Agreement”) and the associated documents referenced therein, comprise all the agreements between the Parties and no representations or statements, verbal or written, have been made, modifying, adding to, or changing the terms of these agreements. Capitalized terms used herein and not otherwise defined shall have the meanings given in the Transfer Agreement.

[signature on following page]

IN WITNESS WHEREOF, the Seller hereunto has set its Hand and Seal on this  
\_\_\_\_ day of \_\_\_\_\_, 2022.

SIGNED, SEALED AND  
DELIVERED IN THE PRESENCE OF:

Witnesses:

**SELLER:**

**City of Westminster, Westminster, South  
Carolina**

\_\_\_\_\_  
Witness No. 1

By: \_\_\_\_\_ (SEAL)

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

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

\_\_\_\_\_  
Witness No. 2

## **EXHIBIT B**

### **ASSIGNMENT OF EASEMENTS AND RIGHTS-OF-WAY**

#### **ASSIGNMENT AND ASSUMPTION OF EASEMENTS AND RIGHTS OF WAY**

**THIS ASSIGNMENT AND ASSUMPTION OF EASEMENTS AND RIGHTS OF WAY** (the “Assignment”) is made as of this \_\_\_ day of \_\_\_\_, 2022 (the “Effective Date”), by and between **City of Westminster, Westminster, South Carolina**, a body politic and corporate and a special purpose district organized under the laws of the State of South Carolina (“Assignor”), and **Pioneer Rural Water District of Oconee and Anderson Counties**, a body politic and corporate and a political subdivision of the State of South Carolina (“Assignee”).

For Value Received, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby irrevocably and unconditionally assigns, conveys, transfers and sets over unto Assignee all of Assignor’s rights, title and interest in and to all rights-of-way, permits, easements of record and prescriptive easements, if any, used in the provision of water service or in operating the Seller’s Line, including without limitation the easements, rights of way, crossing permits, encroachment permits and similar rights more particularly described on Exhibit “A” attached hereto and incorporated herein by reference (collectively, the “Easements”), and Assignee does hereby accept and assume all of Assignor’s rights and obligations under the Easements that arise or accrue after the Effective Date, subject to the terms and provisions of the Easements. The parties to this Assignment agree to cooperate with one another in executing any additional documents or agreements reasonably necessary to carry out the intent of this Assignment.

This Assignment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Assignment shall be governed by and construed in accordance with the laws of the State of South Carolina. This Assignment shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. This Assignment may only be amended by an instrument in writing executed by the parties hereto.

It is agreed that this Assignment and the related AGREEMENT FOR THE TRANSFER OF WATER LINE BY AND BETWEEN PIONEER RURAL WATER DISTRICT OF OCONEE AND ANDERSON COUNTIES AND COMMISSION OF PUBLIC WORKS, CITY OF WESTMINSTER (including all Exhibits, amendments, supplements and corrections thereto signed by both Parties, the “Transfer Agreement”) and the associated documents referenced therein, comprise all the agreements between the Parties and no representations or statements, verbal or written, have been made, modifying, adding to, or changing the terms of these agreements. Capitalized terms used herein and not otherwise defined shall have the meanings given in the Transfer Agreement.

**[SIGNATURE PAGE ATTACHED]**

Executed under seal as of the day and year first written above.

Witnesses:

**ASSIGNOR:**

**City of Westminster, Westminster, South  
Carolina**

\_\_\_\_\_  
Witness No. 1

By: \_\_\_\_\_ (SEAL)

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

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

\_\_\_\_\_  
Witness No. 2

**ASSIGNEE:**

**Pioneer Rural Water District of Oconee and  
Anderson Counties**

\_\_\_\_\_  
Witness No. 1

By: \_\_\_\_\_ (SEAL)

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

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

\_\_\_\_\_  
Witness No. 2



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF OCONEE )

**ACKNOWLEDGMENT**

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, certify that \_\_\_\_\_, the duly authorized \_\_\_\_\_ of **City of Westminster, Westminster, South Carolina**, as Assignor, personally appeared before me this day and acknowledged the execution of the foregoing instrument on its behalf.

WITNESS my hand and official stamp or seal this \_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
Notary Public for South Carolina  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF OCONEE )

**ACKNOWLEDGMENT**

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, certify that \_\_\_\_\_, the duly authorized \_\_\_\_\_ of **Pioneer Rural Water District of Oconee and Anderson Counties**, as Assignee, personally appeared before me this day and acknowledged that he executed the foregoing instrument.

WITNESS my hand and official stamp or seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public for South Carolina  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT “A”**

All right, title and interest of Assignor under that certain \_\_\_\_\_ dated \_\_\_\_\_,  
between \_\_\_\_\_, as \_\_\_\_\_ and \_\_\_\_\_, as \_\_\_\_\_,  
recorded on \_\_\_\_\_ in the Office of the Register of Deeds for Oconee County in  
Deed Book \_\_\_\_ at Page \_\_\_\_.

[To Follow]

**EXHIBIT C**

**CONTRACTUAL OBLIGATIONS**

**The following is a list of all contractual obligations being assumed by Pioneer Rural Water  
District of Oconee and Anderson Counties:**

**SCHEDULE 1.1**

**SELLER'S Line**

The water line running 3.7 miles from the intersection of Hwy 24 and S. Hampton St. (34.64830 – 83.07407) to the intersection of Fire Tower Rd. and Hwy 24. (34.61092 – 83.03943) in Westminster, South Carolina. Less and excepting the master meter located at the intersection of Hwy 24 and S. Hampton St. (34.64830 – 83.07407) and the water tank and associated fixtures located on Fire Tower Rd.

STATE OF SOUTH CAROLINA                    )  
  )  
COUNTY OF OCONEE                         )       ORDINANCE #2022-10-11-01  
  )  
CITY OF WESTMINSTER                        )

**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 Oconee County on behalf of 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 one hundred thousand dollars \$100,000 (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) in the event at least one Job will be created and maintained 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; (7) professional services offices (doctors, dentists, lawyers, engineers, accountants and similar professional services); and (8) 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 11th day of October 2022.

CITY OF WESTMINSTER, SOUTH CAROLINA

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Brian Ramey, Mayor

[SEAL]

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Jennifer Adams, City Clerk

First Reading: September 13, 2022  
Second Reading: October 11, 2022

Reviewed by City Attorney and approved as to form

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*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\_\_.

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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\_\_.

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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: \_\_\_\_\_

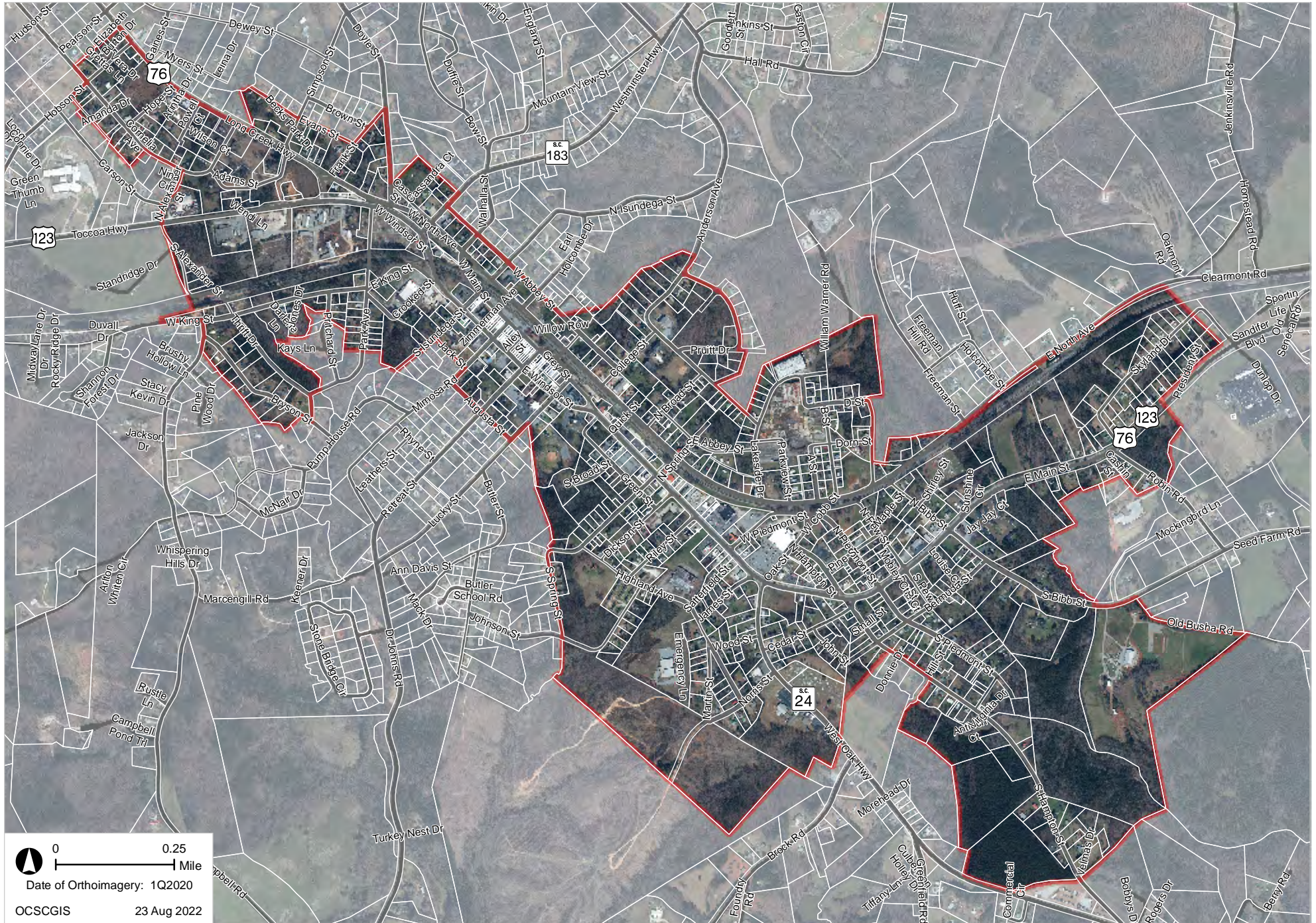
## DESCRIPTION OF PROPOSED WORK

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       



# City of Westminster - Incentive Area Map 2022





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

ORDINANCE #2022-10-11-02

**AN ORDINANCE APPROVING THE EXECUTION AND DELIVERY OF  
A POLE ATTACHMENT LICENSE AGREEMENT BY AND BETWEEN  
THE CITY OF WESTMINSTER, SOUTH CAROLINA AND SPECTRUM  
SOUTHEAST, LLC AND OTHER MATTERS RELATED THERETO.**

NOW THEREFORE, be it ordained by the City Council of the City of Westminster (the “*City Council*”), the governing body of the City of Westminster, South Carolina (the “*City*”), in a meeting duly assembled as follows:

**Section 1 Findings.** The City Council hereby makes the following findings of fact in connection with the enactment of this ordinance (this “*Ordinance*”):

(1) The City is a body politic and corporate located in Oconee County, South Carolina, entitled to exercise all the powers and privileges provided to municipal corporations in the State of South Carolina.

(2) Spectrum Southeast, LLC (the “*Company*”), a Delaware limited liability company and subsidiary of Charter Communications, Inc., furnishes lawful communications services to residents of the City and wishes to attach the aerial cables, wires, and facilities necessary therefor to poles owned by the City.

(3) The Company and the City desire to enter into an agreement (the “*Agreement*”) pursuant to which the City shall issue a non-exclusive license permitting the Company to attach aerial cables, wires, and facilities to poles owned by the City for the purpose of providing communications services.

**Section 2 Approval of the Agreement.** The Agreement, the form of which is attached to this Ordinance at **Exhibit A**, is hereby approved. The City Administrator is hereby authorized to execute and deliver the Agreement and, with the advice of counsel, to approve such changes to the final form of the Agreement as are necessary and convenient to carry out the intent of this Ordinance and that are not adverse to the interests of the City, and the execution and the delivery of the final form of the Agreement by the City Administrator is to serve as conclusive evidence of the approval thereof by the City.

**Section 3 Effective Date; Repealer.** This Ordinance is to be effective as of the date of its second and final reading. All prior ordinances and resolutions conflicting with the provisions of this Ordinance are hereby repealed.

**DONE AND ENACTED IN COUNCIL ASSEMBLED**, this 11th day of October 2022.

CITY OF WESTMINSTER, SOUTH CAROLINA

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Brian Ramey, Mayor

[SEAL]

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Rebecca Overton, City Clerk

First Reading:       September 13, 2022  
Second Reading:     October 11, 2022

Reviewed by City Attorney and approved as to form

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*Andrew Holliday, City Attorney*

**EXHIBIT A**

**POLE ATTACHMENT LICENSE AGREEMENT**

**POLE ATTACHMENT LICENSE AGREEMENT**

Between

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

and

**SPECTRUM SOUTHEAST, LLC**  
("Licensee")

## **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 Spectrum Southeast, LLC, a Delaware limited liability company and subsidiary of Charter Communications, Inc. (hereinafter called “Licensee”).

WHEREAS, Licensee furnishes lawful communications services to residents in the State of South Carolina 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.

## **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. The Agreement shall automatically extend on the same terms and conditions for successive one-year terms. Either party may terminate this Agreement after the initial five (5) year term or successive terms by giving no less than one hundred-eighty (180) days written notice to the other party. 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 thirty (30) 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 forty-five (45) 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 Permit Application (the "Application") attached at Exhibit B. 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, nor shall Licensee be required to bear costs, including for installing or changing out poles, that are not necessitated solely as a result of Licensee's Pole Attachments. In no event shall Owner be obligated to replace any Pole, and no provision of this Agreement shall be construed as compelling the City 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 proceed with the make-ready work and shall complete such work no later than 30 days from payment (or 75 days for Applications including 300 poles that require make ready), unless the Owner requests that Licensee approve a reasonable alternative deadline for performing such make-ready work, which Licensee shall not unreasonably deny. 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 Owner's 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 complete the make-ready work by the date specified in this paragraph (or the timeframe mutually agreed to by the parties), 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.

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**

### **FINING**

6.1 Licensee shall provide prior notice to Owner at least 15 days prior to overloading any existing attachment, including the specific existing attachments to be overloaded and sufficient information regarding its overload to allow the Owner to determine the impact of Licensee overload on the pole loading. Owner shall notify Licensee within 7 days of receipt of such notice if it believes the applicable overload 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. Absent such a

response, Licensee will proceed with overlash. 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 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 a proportionate share of the the cost of such inventory based on the number of poles it occupies.

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 for the inspection from Licensee. 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 180 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. In such cases, Licensee shall, within 30 days after receipt of written notice, or any other time prescribed by applicable law, transfer its attachments to the new poles. If Licensee's transfer is not timely performed, the Owner may, at its option transfer 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 Owner's 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, (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 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 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: **Spectrum Southeast, LLC  
Director, Field Engineering  
1511 South Batesville Road  
Greer, SC 29650**

**with a copy for Legal Notices to:**

**Charter Communications  
Legal Department-Operations  
12405 Powerscourt Drive  
St. Louis, MO 63131**

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. In no way limiting the foregoing, 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. 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 Spectrum Southeast, LLC 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: \_\_\_\_\_

**SPECTRUM SOUTHEAST, LLC**

By: Charter Communications, Inc., its Manager

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

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

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

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

## **EXHIBITS**

## **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

Licensee _____		
Location/Exchange _____		Date _____, 20__.
Westminster, South Carolina _____		
In accordance with the terms and conditions of the Pole Attachment License Agreement between the City of Westminster (Owner) and Spectrum Southeast, LLC (Licensee) application is hereby made for placement 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.		
Licensee: _____	Number of Poles _____	added _____
By: _____		removed _____
Title: _____		modified _____
Phone: _____		
Email: _____		
Engineer Contact name: _____		
Phone: _____		
Email: _____		

Owner (conditionally approves) (denies) Licensee'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.	
Licensee: _____	
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

**ORDINANCE NO. 2022-10-11-03**

**AN ORDINANCE DELETING CERTAIN PROVISIONS OF TITLE III, CHAPTER 35 OF THE CITY OF WESTMINSTER CODE OF ORDINANCES PERTAINING TO ITS PURCHASING AND CONTRACTING POLICY; ADDING TITLE III, CHAPTER 38 TITLED “PROCUREMENT”; AND OTHER MATTERS RELATED THERETO.**

**WHEREAS**, the City of Westminster, South Carolina (the “City”) intends to amend and restate its Purchasing and Contracting Policy (the “Purchasing Policy”) regarding the procurement of goods, services and facilities required by the City.

**WHEREAS**, the Purchasing Policy shall replace the prior policy located in Title III, Chapter 35 of the City’s Code of Ordinances (“City Code”) at Sections 35.20 through 35.35 (“Prior Policy”). The Prior Policy shall be deleted, and the Purchasing Policy shall be added to Title III and titled Chapter 38 “Procurement”.

**WHEREAS**, the provisions of S.C. Code Ann. Section 11-35-5320, require that the City, as a political subdivision of the State of South Carolina, adopt “procedures embodying sound principles of appropriately competitive procurement,” suitable for the unique needs of the City.

**WHEREAS**, the Purchasing Policy is intended to guide City employees and the public in the process and procedures for procuring goods and services required by the City and its various departments; and

**WHEREAS**, the Purchasing Policy will help ensure the fair and equitable treatment of all persons who desire to do business with the City by selling its goods or services, and will help maximize the purchasing value of public funds and provide safeguards for maintaining a purchasing system of quality and integrity.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Westminster, the governing body of the City, as set forth below:

**SECTION 1**

The City formally enacts the Purchasing Policy, a copy of which is attached hereto as Exhibit A. The provisions of the Purchasing Policy as provided at Exhibit A, shall be implemented in their entirety and shall be codified in the City’s code or ordinances, and filed with the City’s other formal policies and procedures. The Purchasing Policy shall be effective as of the date of enactment of this Ordinance.

**SECTION 2**

All ordinances and other provisions in conflict with this resolution are hereby repealed in their entirety, explicitly including the Prior Policy. To the extent the changes, modifications or restatements herein create or result in any inconsistencies in the structure or application of the Purchasing Policy, such inconsistencies shall be revised and corrected in the Purchasing Policy and its provisions shall control.

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

**CITY OF WESTMINSTER,  
SOUTH CAROLINA**

[SEAL]

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


ATTEST:

\_\_\_\_\_  
Clerk to City Council

First Reading:  
Second Reading:

**Exhibit A**

**Purchasing and Contracting Policy**

	<p style="text-align: center;"><b><u>Purchasing</u></b></p> <p style="text-align: center;"><b>Purchasing and Contracting Policy</b></p>	<p>Effective: _____, 2022</p>
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## **CHAPTER 38 - Procurement**

### **Introduction**

#### **Sec. 38.01 - General**

This Purchasing and Contracting Policy (this “Purchasing Policy”) of the City of Westminster, South Carolina (the “City”) is designed to describe and explain the responsibilities for the administration of the City’s purchasing and contracting program. This Purchasing Policy describes the procedures to be utilized in the daily administration and management of the procurement function.

It is the goal of the City to provide for the fair and equitable treatment of all parties involved in public purchasing for the City, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity for the City. The City does not discriminate against any vendor on the basis of race, color, religion, national origin, gender, age, disability, or veteran status in any area of the purchasing process.

This Purchasing Policy is subject to periodic revision as an administrative policy, subject to the final approval of the City Council. This Purchasing Policy shall be codified at Chapter 38 of the City’s code of ordinances.

### **Responsibilities of Purchasing Director**

#### **Sec. 38.02 – Purchasing Director**

1. The City Administrator shall serve as the Procurement Director.
2. The Procurement Director shall generally be responsible for establishing and administering this Purchasing Policy, which includes: initiating reports necessary to permit analysis of purchasing performance; negotiating and recommending contracts; consolidating purchases of like or common items; and analyzing prices paid for materials, equipment, and services.
3. The Procurement Director shall serve all departments and divisions, except for the acquisition of materials for use by the Utilities Department, the Procurement Director may delegate such procurement to the Utilities Department Warehouse Supervisor.

### Sec. 38.03 – Objectives

The primary objectives of this Purchasing Policy are to: (a) procure for the City the highest quality supplies, equipment, and/or services for the least possible cost; (b) promote an understanding of efficient and sound purchasing throughout all departments and divisions of the City; (c) determine the most efficient and economical means of obtaining an item and/or service without sacrificing the controls and principles of sound purchasing; (d) assist in developing competitive specifications for use by all departments and divisions; (e) promote competition and endeavor to obtain full and open competition on purchases, where applicable; (f) maintain forms as necessary for the successful operation of purchasing needs; (g) exchange ideas and information with other local government purchasing departments in an effort to solve common purchasing problems; (h) exercise control over surplus, excess, and junk materials; (i) coordinate with departments and divisions to maintain inventories at a satisfactory level commensurate with the budget; (j) work with departments and divisions to promote good will between the City and its vendors; (k) assist all departments and divisions during budget preparation; (l) comply with all local, state, and federal laws in the administration of purchasing and contracting functions; (m) ensure an insurance file is maintained on all City vehicles in compliance with requirements of the City's insurance carrier; (n) ensure property insurance files are maintained on all City buildings and structures in compliance with requirements of the City's insurance carrier; and (o) coordinate real estate appraisals as required.

### **Purchasing In General**

#### Sec. 38.10 – Purchasing Standards

1. All requests for prices and/or services, and all purchases shall be made under the terms of this Purchasing Policy. In certain instances, authority to request prices and purchase items may be delegated to others.
2. The Procurement Director shall have full authority to question or inquire as to the quality, quantity, and type of materials and services requested by any department head or division manager to ensure that the best interests of the City are served.
3. No person employed by the City, including the Procurement Director, shall receive any benefit or profit from any contract or purchase made by the City.
4. The Procurement Director shall buy for the needs of the City only.
5. The Procurement Director shall strive to maintain strong and enduring relationships with vendors of proven ability and with those who have a desire to meet the needs of the City. Purchasing activities shall be conducted so that vendors will value the City's business and will make every effort to furnish the City's requirements on the basis of quality, service, and pride.
6. The City will buy and/or contract only with those vendors who have adequate financial strength, high ethical standards, and a record of adhering to specifications, maintaining shipping promises, maintaining construction, and giving a full measure of service. New vendors will be

given due consideration as multiple sources are necessary to ensure availability of materials and/or services.

7. The City will strive to avoid unfair practices and give all qualified vendors an equal opportunity to do businesses with the City.

8. Notwithstanding other provisions of this Purchasing Policy, the Procurement Director or his or her designee shall act as the City's representative on all matters pertaining to purchasing and contracting activities.

9. The Procurement Director shall not knowingly issue a PO (as such term is defined herein) or execute a contract when there is evidence of a conflict of interest. In instances when a conflict of interest may exist, but its existence is not clearly established, the Procurement Director shall refer the matter to the City Attorney, whose opinion will be final.

10. Except for emergencies or other authorized exceptions, no procurement or commitment of monies shall be made by any department, or employee of the City unless monies have been appropriated and are available in the appropriate account. Monies can be transferred from other funds with the approval of the City Administrator, or designee.

#### Sec. 38.11 - Procurement Ethics

1. The following statements are applicable to all City employees who participate in the procurement process:

(a) City employees shall not obligate the City financially or otherwise by any means, including but not limited to POs and contracts, when the employee has a personal, material, financial or other interest in the obligation.

(b) Employees are prohibited from directly or indirectly soliciting or accepting any rebate, kickback, gift, gratuity, or favor for personal gain from any individual, corporation, organization, or group. Doing so may lead to disciplinary action, up to termination of employment.

(c) City employees shall not accept any form of gratuities, with the exception of non-consumable marketing or promotional mementos valued at \$25 or less, which may be accepted but shared with all City employees (i.e., pens, paper clip holders, pencils, cups, etc.). Accepting any other such form of gratuities, may lead to disciplinary action, up to termination of employment.

2. Every contract or duty imposes an obligation of good faith in the negotiation, performance or enforcement by City staff. Good faith means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

## **Purchasing/Contracting Procedures**

### **Sec. 38.20 – Procurement Thresholds**

#### **1. *\$1 to \$9,999 – Delegated Authority***

Competitive bidding is not required within the threshold captioned above. At the department head's discretion, a PO will be issued to the vendor recommended by the requesting department. The department manager, or his respective designees, must approve the purchase requisition in writing or through required financial software that authorizes the purchase. Each department should exercise good judgement when making purchases within this threshold. Each department manager, or designee, shall ensure funds are budgeted sufficient for the purchase. However, for any purchase in the range of \$5,000 - \$9,999, the Procurement Director (or her or his respective designee) must approve such purchase in writing or through required financial software before the purchase is made.

#### **2. *\$10,000 to \$24,999 – Written Quotations***

Competitive pricing is required within the threshold captioned above. Departments shall request written quotations from vendors in order to obtain competitive pricing. At minimum, two written quotes shall be solicited. Quotes received via fax or electronic mail shall be sufficient for purposes of establishing the writing requirement. If two quotes cannot be solicited, please see Sec. 38.26 below. Absent unique circumstances, the award will be made to the lowest responsible quote. The Procurement Director (or her or his respective designee) must approve of any purchase within this range in writing or through required financial software before the purchase is made.

#### **3. *\$25,000 to \$99,999 – Informal Solicitations for Bids or Proposals***

(a) Within the threshold captioned above, the City, acting through the Procurement Director, shall issue a written Invitation for Bids (IFB), a Request for Proposals (RFP), or a Request for Qualifications (RFQ), depending on the type of procurement. Typically, commodity items are procured using a bid process where an award is made to the lowest responsive and responsible bidder. However, in some instances a RFP may be used.

(b) In the case of an IFB, three written bids, at minimum, should be solicited. If three bids cannot be solicited, please see Sec. 38.26 below. Quotes received via fax or electronic mail shall be sufficient for purposes of establishing the writing requirement. Award shall be made to the lowest responsive and responsible bidder. For normal competitive purchases, the Procurement Director (or her or his respective designee) shall approve any such purchase in writing or through required financial software before the purchase is made.

(c) In the case of RFP/RFQ, award is made in accordance with the evaluation criteria, terms and conditions stated therein. Purchases, inclusive of grants, those with Federal funds, or those requiring contracts shall be referred to the Procurement Director for processing. For normal competitive purchases, the Procurement Director (or her or his respective designee) shall approve the purchase in writing or through required financial software before the purchase is made.



4. *\$100,000 and greater – Formal Bids or RFQ/RFPs*

(a) Except as otherwise provided herein, competitive, sealed bidding is required for all purchases of \$100,000 or more and the Procurement Director.

(b) Competitive bidding shall be implemented under the procedures set forth in Sec. 38.23 below.

(c) Procurements involving construction may use an alternative delivery method described in Sec. 38.26(3), which the City Administrator determines is most advantageous to the City and will result in the most timely, acceptable quality, economical, and successful completion of the construction project.

(d) It is anticipated that a contract or an agreement shall be executed and delivered by the City for all purchases in excess of \$100,000. All contracts or agreements for purchases in excess of \$100,000 shall be reviewed by the City Attorney and approved by the City Council.

5. To the extent any items in this Sec. 38.20(3) or (4) above have not been authorized in the City's approved budget ordinance, or such items exceed 25% of the amount budgeted for such item, such purchase shall additionally be approved by the City Council.

Sec. 38.21 - Sole Source Procurement

1. Sole source procurement is acceptable when, after a good faith review of all possible sources, it is determined there is only one viable source for material, supply, or service. To be a sole source, a vendor shall: (a) have the ability to deliver a unique material or service; (b) have technical expertise or qualifications; (c) have software license; (d) have the ability to deliver at a particular time; or (e) have the ability to fulfill the needs for a special purpose or situation from a qualified provider.

2. Sole source requests should not be made unless the department is confident the request (a) is reasonable, (b) appropriately justified to meet the City's requirements, and (c) can withstand a possible audit. Sole source minimizes or eliminates competition and should be prudently used.

3. (a) The department head (or designee) may use "delegated authority" practices for sole-source purchases \$9,999 and under. All sole-source purchases in the range of \$5,000 to \$9,999 shall be approved in writing or through required financial software by the Procurement Director before the purchase is made.

(b) For sole source purchases \$10,000 to \$24,999, the Procurement Director must approve the written sole source justification before the purchase may be made.

(c) For sole source purchases in excess of \$25,000, any sole source procurement authorization must be formally approved by the City Council.

## Sec. 38.22 – Local Vendor Preference

1. To qualify for a local vendor preference the following requirements must be certified by the vendor:

(a) The vendor must maintain an office within the legally defined boundaries of the City, the County of Oconee, the County of Anderson, the County of Pickens, the County of Greenville, the County of Abbeville, the County of Laurens, the County of Spartanburg, or the State of South Carolina;

(b) The vendor must have a majority of full-time employees, chief officers and managers regularly conducting work and business from the office listed in subsection (1)(a) above. If located in the City, the vendor must have held a valid city business license for a consecutive period of at least two years prior to the date of the application for certification. If not located in the City, the vendor must have maintained the eligible office for at least three consecutive years in addition to the qualifications under subsection (1)(a) above; and

(c) The vendor must submit a local preference certified application in a format and manner determined by the Procurement Director.

2. Use of the local vendor preferences during the bid evaluation process:

(a) For comparing bids, a vendor who meets certification criteria established in subsection (1) above and is otherwise a qualified vendor shall qualify for local vendor preference based on the location of the eligible office as follows:

(i) Eligible office located within the City limits will be entitled to a bid price reduction of seven percent, not to exceed a maximum of \$10,000.00.

(ii) Eligible office located within the County of Oconee (but not within the City limits) will be entitled to a bid price reduction of five percent, not to exceed a maximum reduction of \$8,000.00.

(iii) Eligible office located in the County of Anderson, the County of Pickens, the County of Greenville, the County of Abbeville, the County of Laurens, or the County of Spartanburg will be entitled to a bid price reduction by three percent, not to exceed a maximum reduction of \$4,000.00.

(iv) Eligible office located in the State of South Carolina that does not qualify for one of the higher percentage preferences will be entitled to a bid price reduction of two percent, not to exceed a maximum reduction of \$2,500.00.

(b) A vendor may claim only one preference based upon the location of the eligible office.

(c) A vendor with no eligible office may claim a local vendor preference in instances where subcontractors are proposed that would be eligible under subsection (1) above. In order

to claim a preference based upon eligible subcontractors, the proposer must certify the value of the subcontractor award compared to the total contract amount. The subcontractor must submit a certified application as required in subsection (1)(c) and be fully qualified under the provisions of this section. The preference will be the product of the percentage of the contract price certified to eligible subcontractors applied to the preference percentage for which the subcontractors would be eligible.

(d) A subcontractor preference may not exceed the dollar limits imposed in subsection (2)(a) based upon the eligible offices of the respective subcontractors.

(e) The final contract price will reflect the original bid amount before the local vendor preference was applied.

3. All requests for qualifications for professional services shall be excluded from the local vendor preference.

4. The Procurement Director shall maintain a registry of eligible vendors/contractors. Inclusion on the registry will be limited to those having submitted a request for inclusion and certified eligibility based upon the criteria established in subsection (2).

5. In instances where a contract price is anticipated to exceed \$100,000.00, and the use of subcontractors is reasonably anticipated, the Procurement Director shall require documentation by proposers of attempts to include local vendors/contractors. At minimum, the documentation shall substantiate attempts to include subcontractors eligible for a preference of three percent or greater to equal a goal amount of 15 percent or more of the proposed contract price. A proposer should provide an explanation of reasons that the local preference goals were not achieved. Documentary requirements shall be included in the bid specifications and only apply when the requirements are so documented. There shall be no penalty for failure to meet the 15 percent goal. However, failure to include required documentation shall be considered an informality in the bid.

6. The Procurement Director shall establish procedures to promote the various local vendor preferences and to provide notice in bid solicitations of the availability of the preferences. If a local vendor preference is not recited in a bid solicitation, it shall not be applicable to such bidding.

#### Sec. 38.23 – Competitive Bidding

1. *Competitive Sealed Bids.* Under this method, the City issues an IFB, and prospective bidders must submit bids in accordance with the bid invitation. The City shall select the bid from the responsible and responsive bidder who submits the lowest price and meets all of the requirements included in the bid invitation.

2. *Competitive Sealed Proposals.* Under this method, the City issues a RFP or RFQ, which contains a description of the project and the factors that will be used to evaluate submitted proposals. The RFP or RFQ may or may not require a final price or fee to be included with the proposal. Price may be one of the factors considered by the City when making its final decision,

but it will not be the only factor. All submitted proposals are evaluated in accordance with the criteria provided in the RFP or RFQ and the City must make its final selection based on such criteria.

3. *Minority and Women Owned Businesses.* The City is determined to provide minorities and women equal opportunity for participating in all aspects of the City's contracting and procurement activities, including, but not limited to, employment, construction projects, and lease agreements consistent with the laws of the State of South Carolina.

4. *Plans and Specifications*

(a) For construction projects, the City's Procurement Director or a third-party engineering firm, in concert with the affected department head, shall generate plans and create specifications. The date set for the bid opening must allow ample time for prospective bidders to prepare their bid. Public bid notices may be run in one or more newspapers of general circulation or trade journals as the Procurement Director deems necessary. The formal bid may also appear on the City's website and available trade journals. The Procurement Director or department head, acting on the advice of the City's engineer or other consultants, as necessary, will determine what construction trades will be involved on the project (e.g., subcontractors, drywall, electrical, fencing, grading, excavating/clearing, landscaping, masonry, painting, plumbing, etc.).

(b) The City should be able to evaluate bids solely using the information as supplied by the offeror's bid. However, it is sometimes determined that, for clarification and more professional evaluation, additional information is desirable and often necessary. Therefore, as provided in the IFB, RFP or RFQ, the City may reserve the right to hold discussions, review the specifications as believed offered, and request clarification or any additional technical information which may provide a fair and impartial evaluation by the City. All discussion shall be limited to the offeror's products, goods or services, and no discussion shall be permitted regarding offers by others.

(c) As may be provided in the IFB, RFP or RFQ, prior to any negotiations, discussion may be conducted with any offerors submitting a proposal, which appears to be eligible for contract award pursuant to the selection criteria as set forth in the respective solicitation for bids. All such discussions shall be of the nature of clarification of offeror's understanding of specifications, scope of work, goods or services, offeror's qualifications, availability of qualified personnel, proven experience, including referenced clients and the financial stability and responsibility of the offeror. In conducting any such discussions, there must be no disclosure of any information derived from proposals submitted by other competing offerors.

(d) Bids received late will not be accepted or considered for the award. Bids are opened publicly at a specific date and time. A bid tabulation shall be produced and made available to all interested bidders. No bid will be awarded until the Procurement Director, department head, and engineer have reviewed each bid. Any bids in excess of \$100,000 shall be submitted to City Council for final approval.

(e) In the event the Procurement Director or department head desire to award the contract to an offeror other than the lowest bidder, such party (upon the advice of a third-party

engineer or other consultant) shall submit a written request to City Council detailing reasons for the request. The request must be approved by City Council, before the contract can be awarded to a contractor other than the one determined to be the lowest responsible and responsive bidder.

(f) Upon proper authorization from the City Council, the agreements/contracts shall be negotiated and thereafter the purchasing agent will generate an “authorization-to-proceed” for the contractor.

#### 5. *Bid Security – Construction Projects*

The City may, at its discretion, require bid security deposits as stated in the invitation for bids on any projects. Construction projects valued at \$100,000 and over will be required to hold bid securities. These deposits may take the form of a certified check, a cashier’s check or bond executed by a surety company licensed under the laws of South Carolina to execute such bonds. Unless otherwise informed by one of the City’s consultants to provide a higher percentage, the bid security shall be in an amount equal to at least 5% of the amount of the bid. When the invitation for bids requires security, noncompliance requires that the bid be rejected. Bid deposits will be returned to the unsuccessful bidders after an award determination has been made. In the event the successful bidder shall fail to enter into a contract within the terms of the invitation after having been notified of the award, the bid security deposit shall, at the option of the City, be forfeited to the City and retained and deposited to the City’s account. In such an instance, the City may renegotiate with the second lowest, responsive and responsible bidder, or resolicit new bids; whichever is determined in the best interest of the City.

#### 6. *Performance Bonds*

(a) When construction contracts are awarded, labor, material, and performance payment bonds may be required at the option of the City and in all cases where the contract price exceeds the sum of \$50,000. These bonds, in such instances, shall be written by an acceptable surety company licensed in South Carolina and meet the requirements for issuing such bonds in accordance with South Carolina law.

(b) Bonds shall guarantee the performance by the bidder. The successful bidder shall provide bonds in accordance with the contract in an amount equal to or greater than 100% for contracts of \$50,000 or greater or such threshold as may be required by South Carolina law. All contract bonds shall be for a period of not less than one year from the date of the final payment.

(c) The City reserves the right to request bonds for projects under \$50,000, if it is in the best interest of the City to do so. Such requirement will be reflected within the bidding documents.

(d) In lieu of corporate surety, material, labor, and performance payment bonds, the successful bidder may request to post certified funds with the City in such amounts as may be agreed upon by the Procurement Director and which funds shall be held in accordance with the terms as agreed upon between the City and the successful bidder. Prior to approval of such request for bond alternate, a determination in writing must be made as to why the request should be

granted, the overall project risk and the responsibility of the offeror which has requested such an alternate, or any other factors which may weigh heavily on granting such an approval.

(e) Every person who has furnished labor or material to the contractor or its subcontracts for the work specified in the contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full before the expiration of a period of 90 days after the day on which the last of the labor was performed by such person or material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit, and to prosecute such action for the sum or sums justly due such person. Any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship expressed or implied with the contractor furnishing such payment bond, shall have a right of action on the payment bond, upon giving written notice to the contractor within 90 days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such written notice to the contractor shall be personally served or served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.

(f) Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or circuit in which the construction contract was to be performed, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

## **7.     *Retention***

Contracts that provide for installment progress payments that are based upon an estimated percentage of completion, with a percentage of the contract's proceeds to be retained by the City pending completion of the contract, the retained amount of each progress payment or installment shall be as agreed-upon by negotiation, but not less than 5%. When the work to be performed on a City project is by multiple prime contractors or by a prime contractor and multiple subcontractors, the work contracted to be done by each individual contractor or subcontractor may be considered a separate division of the contract for the purpose of retention. As each such division of the contract is certified as having been completed, that portion of the retained funds which is allocable to the completed division of the contract may be released forthwith to the prime contractor, who shall, within ten days of its receipt, release to the subcontractor responsible for the completed work the full amount of any retention previously withheld by the prime contractor.

## **8.     *Licensing***

All contractors and vendors must have the applicable licenses according to the requirements of the South Carolina Department of Labor, Licensing, and Regulation before being awarded a contract or other work by the City.

#### Sec. 38.24 – Tie Bids

If all bids received are for the same total amount or unit price - quality and service being equal - the contract shall be awarded according to local vendor preference. In the event that local vendor preference still has bids at the same total amount, the contract shall be awarded on the basis of a coin flip.

#### Sec. 38.25 - Purchase Orders; Change Orders

1. A purchase order (“PO”) authorizes the vendor to deliver materials or supplies in accordance with the terms and conditions specified thereon (or incorporated from a bid or other document by reference). It also acknowledges the obligation of the City to pay for goods or services ordered, upon the receipt and proper invoice. Unless a separate contract document is executed, the PO establishes the contractual relationship between the City and the vendor.

2. A PO is a legally binding contract. The PO is the City’s commitment for the value of the material or service ordered.

3. One-time POs are generally issued for a finite quantity of products, construction, or services. Once a PO has been issued, the City’s accounting system will automatically encumber, or set aside, the monies from the department’s budget. This allows the department to more closely monitor their budget. Once the goods or service have been received, and the invoice has been received and approved, payment may be applied.

4. A blanket PO may be used for purchases that are made on an “as-needed” basis. Only items, or services, that are described on the blanket PO may be purchased. Control of the use of the blanket PO is the responsibility of the Procurement Director (or her or his designee). A blanket PO allows departments to order as-needed items throughout the fiscal year without having to request a new PO for each purchase as well as the ability to qualify for lower, consolidated pricing. Any authorized City employee may issue a release for specific goods described by the blanket PO pursuant to its terms and conditions.

5. Because the contract or PO is a legal document that represents, or forms the basis of, the contractual relationship between the City and a vendor, any changes to that contract must be in writing, and approved by the department head and Procurement Director. When changes orders are needed, they must be approved in the same sequence as the initial PO up to and including necessary approvals. Any payments to the vendor will be delayed while proper documentation is completed. Furthermore, the contractual rights of the City and the vendor are jeopardized by such unauthorized changes.

#### Sec. 38.26 - Exceptions to Bidding

##### *1. Critical/Emergency Procurement*

The Procurement Director, or designee, may make or authorize procurements that in nature are critical to the City, and time does not permit for solicitation or re-solicitation, and that the procurement may be accomplished in such a method that provides the City’s best interest be

served. The Procurement Director, or designee, may make or authorize others to make, critical procurements when in nature, it is critical to the City and time does not permit for solicitation or re-solicitation and that the method provides that the City's best interest is served. In such cases, the department head must coordinate the procurement with the Procurement Director and receive written approval.

## 2. *Certain Construction Projects – Generally*

(a) Generally. When negotiating construction projects, the City understands and recognizes that competitive bidding may not be the best project delivery method. As a result, the Procurement Director, in consultation with qualified consultants, is authorized to determine the project delivery method deemed most advantageous to the City, which is the method which is intended to result in the most timely, economical, and successful completion of the construction project. The Procurement Director will have the final approval for the selection of the project delivery method.

(b) Alternative Methods. The following project delivery methods are authorized for procurements relating to construction of any public infrastructure facility: (i) Design-Build; (ii) Design-Bid-Build; (iii) Operation and Maintenance; (iv) Design-Build-Operate-Maintain; (v) Design-Build-Finance-Operate-Maintain; (vi) Construction Management At-Risk; (vii) Construction Management Services; and (viii) Other Special Project Delivery Methods permitted by the State of South Carolina.

## 3. *Alternative Methods – Construction Projects*

(a) Design-Build is a project delivery method in which the City enters into a single contract for design and construction of a construction project. Procurement of Design-Build services is appropriate when the City does not have the in-house capability to design and supervise the project, and when compliance with technical regulations and best practices for construction is critical. With the assistance of experts, the City may develop performance specifications for the desired infrastructure which can then be used to develop design requirements for submission to Design-Build firms for development. The Design-Build services may be awarded to either (a) the responsive, responsible bidder where price is a factor, or (b) the responsible contractor (selected from a group of pre-approved contractors) who is the low bidder. Errors and omissions insurance is required to cover the architectural and engineering services provided by the offeror.

(b) Design-Bid-Build is a project delivery method in which the City sequentially awards separate contracts, the first for Architectural and Engineering Services to design the project and the second, based on competitive bidding by the City, for construction of the project according to the final design. This is the traditional method of designing and constructing facilities. The procurement of Construction Management Services (see subsection 3(g) hereinbelow) for such a project would make this method a specialized method of procurement.

(c) Operation and Maintenance is a project delivery method whereby the City enters into a single contract for the routine operation, routine repair, and routine maintenance of an existing, or to-be-constructed, project. Operation and Maintenance services shall be procured from prequalified contractors by utilizing competitive sealed proposals submitted in response to



a RFP, which has established the supplies and services required to maintain and operate infrastructure facilities.

(d) Design-Build-Operate-Maintain is a project delivery method in which the City enters into a single contract for design, construction, operation and maintenance of a project over a contractually-defined period. Ownership of the facility may be in the name of the City or leased by the City from a non-profit corporation. All or a portion of the funds required to pay for the services provided by the contractor during the contract period are either appropriated by the City prior to award of the contract or secured by the City through fee or user charges or other sources of revenue. The City should not participate in financing any such project without an opinion from bond counsel or tax counsel. Errors and Omissions insurance is required to cover the architectural and engineering services provided by the offeror.

(e) Design-Build-Finance-Operate-Maintain is a project delivery method in which the City enters into a single contract for design, construction, finance, operation and maintenance of an project over a contractually defined period. No funds are appropriated to pay for any part of the services provided by the contractor during the contract period. Procurement of Design-Build-Finance-Operate-Maintain services shall generally follow procedures outlined above for Design-Build projects with the additional elements of financing and operation incorporated into the project. A preliminary determination by the City should have been made that project revenues would be sufficient, over the length of the proposed contract, to cover design, construction, finance, and operations, and that the traditional Design-Bid-Build approach is inappropriate or impracticable for this project. The City should not participate in financing any such project without an opinion from bond counsel or tax counsel. Errors and Omissions insurance is required to cover the architectural and engineering services provided by the offeror.

(f) Construction Management At-Risk is a project delivery method in which the City awards separate contracts, one for architectural and engineering services to design a project and the second to a construction manager at-risk for both preconstruction and construction of the project according to the design specifications of the architect or engineer. The contract with the construction manager at-risk may be awarded before completion of design. The construction manager at-risk shall assume the risk for construction, rehabilitation, alteration or repair of the project at a fixed or guaranteed maximum price.

(g) Construction Management Services is a project delivery process by which a qualified third-party provides construction leadership with a defined scope throughout various phases of the project (e.g. planning, design and construction). Construction Management Services are typically procured using competitive sealed bidding or competitive sealed proposals and bids may be awarded to either (a) the responsive, responsible bidder where price is a factor, or (b) the responsible contractor (selected from a group of pre-approved contractors) who is the low bidder. Construction Management Services, specifically including a construction manager at-risk, may be procured for any of the alternative delivery methods authorized herein. Errors and Omissions insurance may be required to cover any architectural and engineering services provided by the offeror.

(h) Other Special Project Delivery Methods or combinations of the above may be utilized provided that the City can demonstrate that the delivery methods meet the intent of this

Purchasing Policy and receives the approval of the Procurement Director. Insurance of various types may be required as additional security for the City for the particular method of project delivery.

4. Subject to the review and approval of the Procurement Director (or her or his delegate), purchases of gasoline, diesel fuel, alcohol fuel, propane, motor oil or fuel oil may be made using “delegated authority”, regardless of the size of the purchase.

5. Due to the City's dependence on and its need for continuous operation of its vehicle fleet, special provisions for securing supplies, parts and maintenance for use by City vehicles must be made. Each department head, subject to the review and approval of the Procurement Director (or her or his designee) is authorized to use whatever resources may be available to maintain the City's vehicular fleet, provided approval of the Procurement Director is obtained in writing or through required financial software.

#### Sec. 38.27 – Exempt Services

The following professions are exempt from competitive bidding requirements, although competitive bidding may be used when in the best interest of the City: professional services where the person employed is customarily employed on a fee basis rather than by competitive bidding. Examples would include, information technology providers, appraiser, architects, engineers, auditor, lawyers (and all legal services), physician, insurance, land-surveying, banking, certain consulting services and other professional services.

### **Procurement Administration**

#### Sec. 38.30 – Business License Requirement

It is required that each vendor, contractor, or subcontractor awarded a contract with the City either have a current business license or secure a business license for the contract amount of work to be performed for the City within the City limits. A copy of the business license must be submitted prior to execution of contract. No work shall be done by the contractor until a valid business license has been obtained.

#### Sec. 38.31 – Cooperative Contracts

1. The State of South Carolina enters into a variety of contracts with manufacturers and/or dealers utilized by the state and local governments at all levels. The Procurement Director may procure without competitive bids equipment, supplies, or services which are under current state contract. These commodities may include, but are not limited to, vehicles, tractors, backhoes, radar units, janitorial supplies, office supplies, traffic control equipment, and fuel.

2. General Services Administration (GSA) contract holders make their products available to state and local governments for the same prices charged to federal government agencies. Purchasing may procure without competitive bids, equipment or supplies under contract with GSA, also referred to as Federal Supply Schedules.

3. Various support agencies and organizations, including but not limited to, the Municipal Association of South Carolina, the National League of Cities, the International City/County Managers Association, the National Association of Counties, and Public Technology, Inc., have made available to local governments cooperative procurement programs. The programs are generally the result of a thorough competitive bidding process at the state or national level which fully satisfies the City's procurement requirements. The Procurement Director may utilize such cooperative procurement programs as needed.

#### Sec. 38.32 – Taxes

The City is exempt from Federal Excise Tax. The City's Tax Exemption Registry Number is available upon request. The City pays South Carolina state sales taxes on all applicable purchases.

#### Sec. 38.33 – Surplus Property

1. Surplus personal property means property which: (a) has reached or is rapidly approaching an expiration date or the end of its useful life; (b) is worn-out or otherwise no longer useful to the organization for its intended purposes; (c) is obsolete; or (d) too costly to maintain or operate.
2. Items which have little or no salvage value, considering the cost of disposing of same, such as older model computers and printers, may be offered to employees at nominal prices, as established by the Procurement Director, before other means of disposition are considered.
3. Items with salvage value, but which are likely to bring little at a conventional auction, may be sold through an internet site such as [www.govdeals.com](http://www.govdeals.com) or any other reputable internet site or auction service which the Procurement Director has determined will offer the most exposure to potential interested buyers, or which will likely result in the highest return for the City.
4. Surplus personal property with trade-in value may also be traded-in to a dealer or vendor in exchange for, or toward the purchase of, items needed by the City.
5. Surplus personal property may also be sold to, traded with, or donated to other governmental entities, if such is found to be in the best interests of the City.
6. Following review, the Procurement Director may request authorization from City Council to sell those real properties owned by the City under the terms and conditions approved by the City Council in accordance with the laws of the State of South Carolina.

#### Sec. 38.34 – Insurance

1. Except as may be waived in the discretion of the Procurement Director, all contracts awarded by the City shall require that the vendor or contractor agree to hold harmless, indemnify and defend the City, its agents and employees, from any claims for property damage or personal injury (including death resulting therefrom). Such claims shall include, but are not limited to, actual, consequential, incidental or punitive damages. The vendor or contractor shall agree to

maintain sufficient comprehensive general liability insurance, naming the City as additional insured, in the amounts of \$1,000,000.00 per occurrence and \$1,000,000.00 per person. Proof of such insurance shall be given to the Procurement Director by an appropriate certificate-of-insurance issued by the contractor's insurance agent.

2. Further, the vendor or contractor shall ensure prior to commencement of work, that all subcontractors, agents, assigns or employees of the vendor or contractor and subcontractors shall agree to hold harmless, indemnify and defend the City, its agents and employees from any claims for property damage or personal injury (including death resulting therefrom). Such claims include but are not limited to, actual, consequential, incidental or punitive damages. Further, prior to commencement of work, the vendor contractor shall ensure that all subcontractors, agents or assigns of the contractor, maintain sufficient comprehensive general liability insurance, naming the City, as additional insureds, in the amounts of \$1,000,000.00 per occurrence and \$1,000,000.00 per person. Proof of such insurance shall be given to the Procurement Director by an appropriate certificate-of-insurance issued by applicable entity's insurance agent and the appropriate endorsement issued by the insurance carrier.

3. Vehicle liability insurance with minimum combined single limits of \$1,000,000.00 per occurrence shall also be maintained by the vendor or contractor, with applicable endorsements establishing the additional-insured status provided to the City.

4. The vendor and/or contractor shall be required to maintain, during the life of any contract with the City workers' compensation and employer's liability insurance for all employees to be engaged in services on any project in an amount not less than the minimum allowed by South Carolina law, and in case any such services are sublet, the contractor shall require the subcontractor(s) similarly to provide workers' compensation and employer's liability insurance for all of the subcontractor's employees to be engaged in such services.

### **Specifications**

#### **Sec. 38.40 - Purpose**

Specifications are intended to assist the City in obtaining the best quality and value for funds expended. Specifications are not designed to deter, preclude, or prevent competition through the use of excessive technicalities or details.

#### **Sec. 38.41 – Responsibility for Specifications**

1. It shall be the primary responsibility of the requesting department head to furnish proper specifications. Because the responsibility for procurement rests with the Procurement Director, the Procurement Director may assist in the development of specifications jointly with the department heads as needed.

2. Prior to soliciting bids, the specifications furnished by a requesting department may be modified by the Procurement Director to comply with this Purchasing Policy and to provide for a level of quality commensurate with the intended use of the needed item. In the event the Procurement Director deems it necessary to alter the specifications from those originally

submitted, the Procurement Director will inform the requesting department head, describing the need for alteration to the specifications, and the extent and nature of the changes.

#### Sec. 38.42 – Types of Specifications

Each purchase, regardless of the dollar amount involved, is based on a specification. There are six basic types of specifications or methods used to describe what is to be purchased: (1) Performance: Function and use of the product are the basic definitions; (2) Design: Specific characteristics of the product and their arrangement are the basic definitions; (3) Approved Products List: Actual products have been tested or examined and approved prior to soliciting bids; (4) Questionnaire: The purchaser prepares a product information sheet to accompany the request for prices. Each bidder must complete and return the questionnaire as a part of the bid; (5) Sample: The purchaser requires vendors to furnish representative samples of products offered for comparison and evaluation in determining the successful bidder; and (6) Or Equal: One or more vendors' exact products or typical workmanship is identified as the level of quality desired, and the purchaser reserves the right to approve any other as equal or acceptable.

#### Sec. 38.43 – Level of Quality

In considering and developing specifications, purchases made from public sources and administered by public bodies should not be expected to provide for “deluxe” or luxurious levels of quality. Therefore, it is necessary to follow a general policy with regard to purchasing good, standard grades of merchandise which represent an optimum relationship between quality and price consistent with providing a satisfactory level of service.

#### Sec. 38.44 – Adequate Specifications

1. Adequacy and accuracy of specifications are very important. Specifications should not be written for the purpose of eliminating competition but should provide sufficient detail for full and fair competitive bidding.
2. In the manufacture of certain products, there is usually a price range covering similar products offered by more than one manufacturer representing a level of product quality and features offered—low, medium, and high. It is important to consider these levels in the development of specifications. For example, a lower priced, stripped automobile versus a medium-priced automobile or a higher deluxe model automobile. Each of these models has its own use and place, but without proper specifications when bid, the wrong automobile could be acquired for the use intended.

#### Sec. 38.45 – Change in Specifications

If it is determined, after bids have been opened, that a product with an alternate satisfactory specification provides for a lower price, all bids may be rejected at the discretion of the Procurement Director, with concurrence of the department head. The specifications should then be rewritten to allow all bidders an equal opportunity to submit proposals on an acceptable alternate.

#### Sec. 38.46 – Changes in Specifications by Bidder

When a decision has been reached on the specifications, all bids must be based on the same specifications and no bidder shall have the right to substitute other specifications for those contained in the bid.

#### Sec. 38.47 – Changes in Specifications After Bid Sent to Prospective Bidder

Once an Invitation-to-Bid has been sent, no changes in the specifications shall be made unless all prospective bidders are so notified by means of an addendum clearly noting such changes. The addendum shall instruct the bidder to acknowledge receipt of the addendum in the bid proposal.

### **Inventory Control Procedures**

#### Sec. 38.50 – Maintenance of Fixed Assets Inventory List

1. The City shall maintain an inventory of its fixed assets. The fixed assets list will be maintained to: (a) safeguard the City's capital investment; (b) fix responsibility for the custody of equipment; (c) assist in formulation of acquisition and retirement policies through accumulation of data regarding prices, sources of supply, and useful life; and (d) to provide data for financial reports.

2. Fixed assets are tangible assets of significant value having a useful life that extends beyond a reasonable time period as defined by the City. The fixed assets included in the City's accounting system are land, buildings, other improvements, infrastructure, and equipment.

#### Sec. 38.51 – Asset Types

1. *Land:* Land includes the investment, held fee simple in real estate other than buildings and/or other improvements. All land, as defined, regardless of value or cost, should be capitalized.

2. *Buildings:* Buildings include all City-owned buildings except those whose condition prevent their serving any present or future useful purpose. Permanently installed fixtures to or within a building, such as boilers, lighting fixtures, and plumbing are considered a part of the building. The subsequent addition or minor fixtures and/or equipment to a building should be recorded as equipment. The costs of major improvements to a building, renovation of the building, etc., should be capitalized and recorded as a part of the building asset value.

3. *Other Improvements:* Other improvements are physical property of a permanent nature, including storage tanks, reservoirs, parking areas, park facilities, etc.

4. *Infrastructure:* Infrastructure assets are long-lived capital assets that normally are stationary in nature and can be preserved for a significantly greater number of years than most other capital assets. Examples are roads, bridges, water and sewer systems, drainage systems, and lighting systems.

5. *Equipment:* Equipment includes movable property of a relatively permanent nature and of significant value, such as mobile equipment, office equipment, data processing equipment, machines, tools, and office furniture and fixtures. “Relatively permanent” is defined as a useful life of one year or longer. “Significant value” is defined as having an original cost of \$5,000.00 and over. The City may exercise the option to include other items for the purpose of maintaining appropriate accounting control. The cost may be applied in some instances to aggregates of units of similar type or purpose, such as groups of chairs, shelving, filing cabinets, etc., rather than to the individual unit itself. Exceptions to the \$5,000.00 value and the one-year life rule will be applied consistently.

#### Sec. 38.52 – Development and Assignment of Fixed Asset Control Numbers

1. Fixed assets shall be categorized into several classification groups based on type and use of the items. These groups shall be defined and maintained on file in the City Clerk’s office.

2. Fixed assets will be assigned control numbers and will be added to the fixed asset inventory list immediately following invoice payment to ensure that a current and accurate listing is maintained. Sequentially numbered fixed asset identification tags will be prepared. Following number assignment, the tag and supporting documentation will be issued to the relevant department. The department head is responsible for ensuring that the asset tag is physically attached to the fixed asset.

3. Only equipment items will be physically tagged with fixed asset control numbers. Equipment will be tagged in a manner and location which ensures ease of number identification and permanence.

#### Sec. 38.53 – Review of Fixed Asset Listing

On an annual basis, department heads will be issued a copy of the fixed asset listing for their respective department(s). This asset report should be thoroughly reviewed, noting changes, additions, or deletions to be made to the inventory system. The inventory system will be revised based on information received from each department.

### **Appeals**

#### Sec. 38.60 – Appeals

1. Any actual or prospective vendor, bidder, or contractor who is aggrieved in connection with the solicitation or award of a contract may formally protest in writing to the Procurement Director. The protest may be submitted at any time during the bidding process. However, if a prospective vendor, bidder, or contractor wishes to protest, the formal protest must be submitted in writing and must be received by the City no later than seven (7) days from the date that the aggrieved actual or prospective vendor, bidder, or contractor has been informed of the bid results by the Procurement Director. Protests received by the City following seven (7) days after bid results have been released by the Procurement Director will not be considered by the City.

2. The Procurement Director shall have the authority to settle and resolve a protest of a vendor, bidder, or contractor, actual or prospective, concerning the solicitation or award of a contract.
3. If the protest cannot be mutually resolved, the Procurement Director shall issue a decision in writing within a period not exceeding ten (10) days following receipt of a formal grievance notice. The decision shall state the reasons for the action taken. A copy of the decision shall be mailed to the protesting party and any intervening party immediately.
4. A decision rendered under Sec. 38.60(3) of this Section shall be final and conclusive, unless any person or party adversely affected by the decision appeals in writing to the City Council. The appeal must be submitted and must be received by the City no later than seven (7) days after the date of notification of a final decision by the Procurement Director. The appeal must outline the reasons the appellant is adversely affected by a decision and the desired outcome of the hearing. The request will be heard by Council at the next regularly scheduled City Council meeting; however, nothing herein shall prohibit the City Council from calling a special meeting to hear an appeal.
5. Any vendor, bidder, or contractor receiving an adverse decision may appeal such decision to the Court of Common Pleas, Non-Jury Term, for Oconee County, South Carolina within (10) ten days of the submission of an adverse decision by the City Council to the aggrieved party.



**STATE OF SOUTH CAROLINA**

**CONSERFUND LOAN**

**COUNTY OF RICHLAND**

**LOAN NUMBER 4-201-19**

**AMENDMENT NO. 3**

This Amendment No. 3 is made this 17<sup>th</sup> day of January, 2022 (the "Amendment Date"), by and between the **City of Westminster, 100 East Windsor Street, Westminster SC, 29693-1729** ("Borrower") and **South Carolina Office of Regulatory Staff** ("ORS").

**RECITALS**

**WHEREAS**, Borrower and ORS entered into a loan agreement dated the 26<sup>th</sup> day of February 2019, amended November 19, 2019, and May 31, 2021 (the "Loan Agreement");

**WHEREAS**, the Loan Agreement authorized disbursements to be made up to \$414,556.00 and amended to \$369,947.23;

**WHEREAS**, the Amortization Schedule attached as Appendix A to the Loan Agreement reflected payments to be made based on repayment commencing upon June 1, 2022, amended to July 1, 2023; and

**WHEREAS**, the parties now wish to modify the Loan Agreement to revise the completion of the construction phase to be June 30, 2022;

**NOW THEREFORE**, Borrower and ORS hereby agree to amend the Loan Agreement as follows:

1. Section 3 of the Loan Agreement is hereby modified by deleting Section 3 in its entirety and replacing it with the following Section 3.

In order to receive any disbursement on the Loan, Borrower must submit requests for disbursement to ORS, via an interdepartmental transfer, if applicable, and a completed ORS ConserFund Loan Disbursement Request Form (substantially as in the form of Attachment 1, attached hereto and incorporated herein) together with all relevant documentation verifying the disbursement request is for payments made on Project services rendered or cost incurred up to and including the completion of the construction phase on **June 30, 2022** (the "Completion Date"). ORS has no obligation to make disbursements for expenses not in accordance with this Agreement or not incurred as a result of the Project. All loan disbursement requests must be made within one year of the Completion Date. Absent a written amendment to this Agreement executed by both ORS and Borrower, the amortization schedule ("Amortization Schedule") attached hereto as Exhibit A, dictates when payment is due. In the event the ORS has not paid out the maximum principal of the Loan to Borrower within one year of the Completion Date, the Loan will be reduced to the amount actually paid out to Borrower for the Project and this Agreement will be amended to reflect such change.

2. Section 6 of the Loan Agreement is hereby modified by deleting Section 6 in its entirety and replacing it with the following Section 6.

Monitoring: ORS will conduct a Project on-site monitoring visit and complete a monitoring report prior to making the final payment/disbursement. An additional monitoring is required once Phase III – Chauga River Pump is fully operational. Notwithstanding any other provision herein, ORS may retain the balance of undisbursed loan funds until the

monitoring report is completed, and all findings or areas of concern are satisfactorily resolved.

3. Section 10 of the Loan Agreement is hereby modified by deleting Section 10 in its entirety and replacing it with the following Section 10.

In accordance with the amortization schedule, attached hereto as Exhibit A, Borrower promises to pay the Loan in **Ten (10)** annual equal installments of principal and interest, each in the amount of **Forty Thousand, One Hundred and Fourteen and 92/100 dollars (\$40,114.92)**, commencing July 1, 2023 and due annually thereafter on the first day of the month, beginning on July 1, 2024 until paid in full.

In addition to the scheduled payments outlined above, any amount outstanding on the Loan may be prepaid at any time without penalty. Unless otherwise advised by Borrower, ORS shall apply advanced Loan repayments to the principal owed. Advanced repayments will require issuance of an amended Amortization Schedule by ORS. Unless other arrangements are agreed to in writing, all payments of principal and interest shall be made by interdepartmental transfer or check, mailed or delivered to Office of Regulatory Staff, 1401 Main Street, Suite 900, Columbia, SC 29201.

4. Exhibit A to the Loan Agreement is hereby deleted and replaced with revised Exhibit A, attached hereto and incorporated herein.
5. Except as amended and/or modified by this Amendment No. 3, the Loan Agreement is hereby ratified and confirmed and all other terms of the Loan Agreement shall remain in full force and effect, unaltered and unchanged by this Amendment No. 3. Whether or not specifically amended by this Amendment No. 3, all of the terms and provisions of the Loan Agreement are hereby amended to the extent necessary to give effect to the purpose and intent of this Amendment No. 3.

Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 3 to be duly executed as of the date written above.

**City of Westminster**

**Witness:**

Kiley Carter

By: KW B (blue ink)  
(Signature)

Name: Kevin Branson  
(Typed/Printed)

Title: City Administrator  
(Typed/Printed)

**South Carolina Office of Regulatory Staff**

**Witness:**

Paulaigh Sawyer

By: Nanette Edwards (blue ink)  
(Signature)

Name: Nanette Edwards  
(Typed/Printed)

Title: Executive Director  
(Typed/Printed)

## SC Office of Regulatory Staff - Energy Office - ConserFund Loan Agreement

## AMORTIZATION SCHEDULE - AMENDMENT #3

Prepared by Ann Harmon

<b>Vendor#:</b>	<b>7000030183</b>	<b>Customer No.:</b>	<b>2960001</b>
<b>Name:</b>	<b>City of Westminster</b>	<b>Duns No.:</b>	<b>077994093</b>
<b>Loan #:</b>	<b>4-201-19</b>	<b>IO.:</b>	<b>10009900</b>
<b>Federal ID:</b>	<b>57-6001122</b>		
<b>Previous Completion Date:</b>	<b>5/31/2021</b>	<b>Amend #3 Revised:</b>	<b>6/30/2022</b>

<b>Principal</b>	<b>\$369,947.23</b>
<b>Interest</b>	<b>\$31,201.97</b>
<b>Term in Years</b>	<b>10</b>
<b>Beginning Interest Rate</b>	<b>1.50%</b>
<b>Annual Payment</b>	<b>\$40,114.92</b>
<b>Total Payments</b>	<b>\$401,149.20</b>

Payment Number	Payment Date	Annual Payments	Interest	Principal	Principal Balance
1	7/1/2023	\$40,114.92	\$5,549.21	\$34,565.71	\$335,381.52
2	7/1/2024	\$40,114.92	\$5,030.72	\$35,084.20	\$300,297.32
3	7/1/2025	\$40,114.92	\$4,504.46	\$35,610.46	\$264,686.86
4	7/1/2026	\$40,114.92	\$3,970.30	\$36,144.62	\$228,542.24
5	7/1/2027	\$40,114.92	\$3,428.13	\$36,686.79	\$191,855.45
6	7/1/2028	\$40,114.92	\$2,877.83	\$37,237.09	\$154,618.36
7	7/1/2029	\$40,114.92	\$2,319.28	\$37,795.64	\$116,822.72
8	7/1/2030	\$40,114.92	\$1,752.34	\$38,362.58	\$78,460.14
9	7/1/2031	\$40,114.92	\$1,176.90	\$38,938.02	\$39,522.12
10	7/1/2032	\$40,114.92	\$592.80	\$39,522.12	(\$0.00)
		<b>Payments</b>	<b>Interest</b>	<b>Principal</b>	
		<b>\$401,149.20</b>	<b>\$31,201.97</b>	<b>\$369,947.23</b>	

Page 1 of 1

## **RESOLUTION NO. 09-13-2022-01**

### **A RESOLUTION PLEDGING TO PRACTICE AND PROMOTE CIVILITY IN THE CITY OF WESTMINTSER**

**WHEREAS**, the City of Westminster, South Carolina (the “*City*”) is a legally constituted municipal corporation incorporated by Act No. 744 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina for the year 1875; and

**WHEREAS**, a recent national survey found that 93% of Americans believe that incivility is a problem, with 68% considering it a “major” problem and 74% believing that incivility is increasing in America; and

**WHEREAS**, the City Council of the City of Westminster (the “*Council*”), the governing body of the City, recognizes that robust debate and the right to self-expression, as protected by the First Amendment to the United States Constitution, are fundamental rights and essential components of democratic self-governance; and

**WHEREAS**, the Council further recognizes that the public exchange of diverse ideas and viewpoints is necessary to the health of the community and the quality of governance in the City; and

**WHEREAS**, the Members of Council, as elected representatives of the community and stewards of the public trust, recognize their special role in modeling open, free and vigorous debate while maintaining the highest standards of civility, honesty and mutual respect; and

**WHEREAS**, in order to publicly declare its commitment to civil discourse and to express its concern for the common good and well-being of all of its residents, the Council has determined to adopt this resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Westminster, the governing body of the City, in a meeting duly assembled:

The City pledges to practice and promote civility within the governing body.

The elected officials of the Council enact this civility pledge to build a stronger and more prosperous community by advocating for civil engagement, respecting others and their viewpoints, and finding solutions for the betterment of the City of Westminster.

This pledge ensures all communication — both spoken and written — to be open, honest and transparent as this is vital for cultivating trust and relationships.

This pledge ensures mutual respect to achieve municipal goals, recognizing that patience, tolerance and civility are imperative to success.

This pledge ensures opportunities for finding common ground and engaging in civil discussion to seek solutions while actively listening and thoughtfully participating.

**DONE AND ADOPTED IN COUNCIL ASSEMBLED**, this 13th day of September 2022.

CITY OF WESTMINSTER, SOUTH CAROLINA

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Brian Ramey, Mayor

[SEAL]

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Rebecca Overton, City Clerk

**RESOLUTION NO. 09-13-2022-02**

**A RESOLUTION AUTHORIZING THE CITY OF WESTMINSTER TO PASS THROUGH THE FEES FOR CREDIT CARDS, DEBIT CARDS AND ANY OTHER FEE-BASED FINANCIAL TRANSACTIONS TO THE USER; AND OTHER MATTERS RELATED THERETO**

**WHEREAS**, the City of Westminster, South Carolina (the “*City*”) is a legally constituted municipal corporation incorporated by Act No. 744 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina for the year 1875, and maintains a combined utility system (the “*System*”); and

**WHEREAS**, the City offers the ability to pay utility bills, recreation fees, and any other fees collected by the City with a credit card, debit card or other fee-based financial transactions; and

**WHEREAS**, the use of these financial devices are for convenience to the customer and to the City; and

**WHEREAS**, the City absorbed the cost of these convenience transactions which have cost more than \$58,000 in the last year; and

**WHEREAS**, the City cost of the convenience transactions cost all paying customers regardless of their utilization of the convenience; and

**WHEREAS**, the City desires to continue the usage of the convenience transactions while not penalizing those who do not utilize the convenience transactions.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Westminster (the “*Council*”), the governing body of the City, in a meeting duly assembled:

The cost for credit card, debit cards and any other fee-based financial transactions will be bore, or passed-through, to the customer utilizing device beginning October 10, 2022 or as soon thereafter as may be logistically practical.

[Remainder of Page Intentionally Left Blank]



**DONE AND ADOPTED IN COUNCIL ASSEMBLED**, this 13th day of September 2022.

CITY OF WESTMINSTER, SOUTH CAROLINA

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Brian Ramey, Mayor

[SEAL]

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Rebecca Overton, City Clerk

**LOAN RESOLUTION**  
(Public Bodies)

A RESOLUTION OF THE \_\_\_\_\_

OF THE \_\_\_\_\_  
AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A  
PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the \_\_\_\_\_

(Public Body)

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

pursuant to the provisions of \_\_\_\_\_; and

**WHEREAS**, the Association intends to obtain assistance from the United States Department of Agriculture,  
(herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921  
et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event  
that no other acceptable purchaser for such bonds is found by the Association:**NOW THEREFORE**, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal ly permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0121. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the Government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities and replacement of short lived assets.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
17. To accept a grant in an amount not to exceed \$ \_\_\_\_\_

under the terms offered by the Government; that the \_\_\_\_\_

and \_\_\_\_\_ of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

The vote was: Yeas \_\_\_\_\_ Nays \_\_\_\_\_ Absent \_\_\_\_\_

IN WITNESS WHEREOF, the \_\_\_\_\_ of the

\_\_\_\_\_ has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this \_\_\_\_\_, \_\_\_\_\_ day of \_\_\_\_\_

(SEAL)

By \_\_\_\_\_

Attest:

Title \_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_

**CERTIFICATION TO BE EXECUTED AT LOAN CLOSING**

I, the undersigned, as \_\_\_\_\_ of the \_\_\_\_\_  
hereby certify that the \_\_\_\_\_ of such Association is composed of  
\_\_\_\_\_ members, of whom , \_\_\_\_\_ constituting a quorum, were present at a meeting thereof duly called and  
held on the \_\_\_\_\_ day of \_\_\_\_\_ ; and that the foregoing resolution was adopted at such meeting  
by the vote shown above, I further certify that as of \_\_\_\_\_ ,  
the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been  
rescinded or amended in any way.

Dated, this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_

Title \_\_\_\_\_



**Rural Development**

August 19, 2022

State Office

City of Westminster

Strom Thurmond

PO Box 399

Federal Building

Westminster, SC 29693-0399

1835 Assembly

Street, Suite 1007,

Columbia, SC 29201

**SUBJECT:**

Letter of Conditions

Voice: 803.765.5163

Recipient Name: City of Westminster

Fax: 855.565.9482

Project Name: Water Infrastructure System Improvements

TDD: 803.765.5697

CFDA NUMBER – 10.760

RUS Loan: \$8,705,000

Dear Mayor Brian Ramey:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA Rural Development (RD), both of which are referred to throughout this letter as the Agency. Any changes in project cost, source of funds, scope of project, or any other significant changes in the project or applicant must be reported to and concurred with by the Agency by written amendment to this letter. This includes any significant changes in the Applicant's financial condition, operation, organizational structure or executive leadership. Any changes made without Agency concurrence shall be cause for discontinuing processing of the application.

This letter does not constitute loan approval, nor does it ensure that funds are or will be available for the project. The funding is being processed on the basis of a loan not to exceed **\$8,705,000.00**. The loan will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds" is signed by the Agency approval official.

The applicant will ensure projects are completed in a timely, efficient, and economical manner. You must meet all conditions set forth under Section III – Requirements Prior to Advertising for Bids within 1 year of this letter.

If you do not meet the conditions of this letter, the Agency reserves the right to withdraw Agency funding.

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following forms within 15 days:

Form RD 1942-46, "Letter of Intent to Meet Conditions"

Form RD 1940-1, "Request for Obligation of Funds"

USDA is an equal opportunity provider, employer and lender.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov).

All parties may access information and regulations referenced in this letter at our website located at <https://www.rd.usda.gov/programs-services/water-environmental-programs/water-waste-disposal-loan-grant-program>.

The conditions are as follows:

## **SECTION I - PROJECT SCOPE**

**Project Description** – Funds will be used to upgrade existing lines to include 33,200 LF 10", 42,200 LF 8", and 10,800 LF 6". A 40,000 gallon ground storage tank will be replaced with a 250,000 gallon ground tank.

Facilities will be designed and constructed in accordance with sound engineering practices and must meet the requirements of Federal, State, and local agencies. The proposed facility design must be based on the Preliminary Engineering Report (PER), prepared by Rosier Group, dated August 2020 and amended 7/29/2022, as concurred with by the Agency.

**1. Project Funding** – The Agency is offering the following funding for your project:

RUS Loan -	\$ 8,705,000.00
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TOTAL PROJECT COST -	\$ 8,705,000.00
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Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Prior to loan closing, any increase in non-Agency funding will be applied first as a reduction to Agency grant funds, up to the total amount of the grant, and then as a reduction to Agency loan funds.

The applicant must certify that they have exhausted all other funding avenues and have no pending funding considerations from any other sources. Further, the applicant must certify that they do not intend to apply anywhere else for funding for this project. If, after obligation of Agency funds, other funding becomes available, the Agency reserves the right to deobligate any and all funding for this project and to re-underwrite. This may result in the offering of a different funding package to for this project.

Prior to advertisement for construction bids, you must provide evidence of applicant contributions and other funding sources. This evidence should include a copy of the commitment letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

**2. Project Budget** – Funding from all sources has been budgeted for the estimated expenditures as follows:

<b><u>Project Costs:</u></b>	<b><u>Total Budgeted:</u></b>
Development	\$7,275,500
Contingency	727,500
Engineering Fees	
Includes:	
Design	410,000
Resident Project Representation (Inspection)	150,000
Additional Services	10,000
Interest - Interim	100,000
Legal Fees	32,000
 TOTAL	 \$ 8,705,000

Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. Obligated loan and/or grant funds not needed to complete the proposed project will be deobligated. Any reduction will be applied to Agency grant funds first. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. An “Amended Letter of Conditions” will be issued for any changes to the total project budget.

**3. Project Timeline** – To ensure that the project proceeds in a timely manner, key processing milestones have been established in accordance with the PER or other Agency approved documentation. **Projects should be completed, and Agency funds fully disbursed within three years of obligation.** By agreeing to the terms herein, you agree to comply with the milestones identified below. If, for any reason, one or more of the milestones cannot be met, you must notify the Agency in writing at least 30 days prior to the referenced date. Should your final completion date become more than three years after obligation the written request will follow the procedures outlined in Section VI of this letter, including the submission of not less than 90 days prior to the benchmark. The correspondence must contain a valid explanation as to why the milestone cannot be met and include a proposed revised project completion schedule. If the Agency agrees to the modification, a written confirmation will be issued. The Agency reserves the right to de-obligate loan and/or grant funds, or take other appropriate action, if the established or amended deadlines are not met.

<b><u>Milestone</u></b>	<b><u>Date</u></b>
Land & Easement Acquisition	06/01/2023
Plans & Specifications, and Design Complete	06/01/2023
Permits Acquisition Complete	06/01/2023
Initial Advertisement for Bids	08/01/2023
Award Contract(s)/Initiate Construction	10/01/2023
Substantial Completion	06/01/2025

Final Completion	08/01/2024
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## **SECTION II – RATES & TERMS**

**4. Interest Rates and Loan Terms** – The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing unless you request otherwise. Should the interest rate be reduced, the payment will be recalculated to the lower amount. The payment due date will be established as the day that the loan closes.

Your loan will be scheduled for repayment over a period of 40 years. Payments will be equal monthly amortized installments beginning one month after closing. For planning purposes, use a 2.625% interest which provides for a monthly payment of \$29,336. The precise payment amount will be based on the interest rate at which the loan is closed and may be different than the one above.

**5. Security** – The loan will be secured by a Revenue bond with first lien position in the amount of \$8,705,000. The bond will be fully registered as to both principal and interest in the name of the “United States of America, Acting through the United States Department of Agriculture.” Bond Counsel will be utilized in preparation of these documents.

The bond and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or associated laws. There must be no defeasance or refinancing clause in conflict with the graduation requirements of 7 U.S.C. 1983.

Additional security requirements are contained in RUS Bulletin 1780-27, “Loan Resolution (Public Bodies). A draft of all security instruments, including draft bond resolution, must be reviewed and concurred in by the Agency prior to advertising for bids. Bond/loan resolutions must be duly adopted and executed prior to loan closing.

**6. Reserves** – Reserves must be properly budgeted and set aside to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency repairs, to assist with debt service should the need arise, and for the replacement of assets which have a useful life less than the repayment period of the loan. The following reserves are required to be established as a condition of this loan:

- a. **Debt Service Reserve** – As a part of this Agency loan proposal, you must establish a debt service reserve fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment per year for ten years or until the balance is equal to one annual loan payment. For planning purposes, 10% of the proposed loan installment would equal \$2,934 per month; this amount should be deposited monthly until a total of \$352,032 has accumulated. Prior written concurrence from the Agency must be obtained before funds may be withdrawn from this account during the life of the loan. When funds are withdrawn during the life of the loan, deposits will continue as designated above until the fully funded amount is reached.



- b. **Short-Lived Asset Reserve** – In addition to the debt service reserve fund, you must establish a short-lived asset reserve fund. Based on the PER, you must deposit at least \$94,000 into the short-lived asset reserve fund annually for the life of the loan to pay for repairs and/or replacement of major system assets. It is your responsibility to assess your facility's short-lived asset needs on a regular basis and adjust the amount deposited to meet those needs.

### **SECTION III – REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS**

**7. Organization** – The Bond Counsel transcripts of proceedings must show that your organization is a duly incorporated public body and has continued legal existence. Your organization must have the authority to own, construct, operate, and maintain the proposed facility, as well as for borrowing money, pledging security and raising revenues.

**8. Suspension and Debarment Screening** – You will be asked to provide information on the principals of your organization. Agency staff must conduct screening for suspension and debarment of the entity, as well as its principals through the Do Not Pay Portal.

- a. Principal –
  - i. An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or
  - ii. A consultant or other person, whether or not employed by the participant or paid with federal funds, who –
    - 1. Is in a position to handle federal funds.
    - 2. Is in a position to influence or control the use of those funds; or,
    - 3. Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction. (2 CFR §180.995)

**9. Engineering Services** – You are required to complete an Agreement for Engineering Services, which should consist of the Engineers Joint Contract Documents Committee (EJCDC) documents as indicated in RUS Bulletin 1780-26, “Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance,” or other approved form of agreement. The Agency will provide concurrence prior to advertising for bids and must approve any modifications to this agreement.

**10. Contract Documents, Final Plans, and Specifications-** All development will be completed by contract in accordance with applicable provisions of RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Constructing and Inspections, (copy available upon request), and in compliance with all statutory requirements. You are responsible to share this with your engineer before pre-design.

- a. The plans and specifications and all proposals required by law must be approved by South Carolina Department of Health and Environmental Control.

- b. In preparing final design and providing service to the planned project area, you and your engineer will comply with all zoning and planning requirements of the appropriate governing bodies where service is to be provided.
- c. The Agency will need to concur in the plans and specifications prior to advertising for bids. The Agency may require an updated cost estimate if a significant amount of time has elapsed between the original project cost estimate and advertising for bids.
- d. The use of any procurement method other than competitive sealed bids must be requested in writing and approved by the Agency.
- e. The contract documents must consist of the EJCDC construction contract documents as indicated in RUS Bulletin 1780-26 or other Agency-approved forms of agreement.
- f. **American Iron and Steel Requirements.** Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference applies the American Iron and Steel (AIS) requirement to obligations made after May 5, 2017:
  - (1) No Federal funds made available for this fiscal year for the rural water, wastewater, waste disposal, and solid waste management programs authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 et seq.) shall be used for a project for the construction, alteration, maintenance, or repair of a public water or wastewater system unless all of the iron and steel products used in the project are produced in the United States.
  - (2) The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
  - (3) The requirement shall not apply in any case or category of cases in which the Secretary of Agriculture (in this section referred to as the “Secretary”) or the designee of the Secretary finds that—
    - (a) applying the requirement would be inconsistent with the public interest;
    - (b) iron and steel products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
    - (c) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.
  - (4) Owners are ultimately responsible for compliance with AIS requirements (as defined in RUS Bulletin 1780-35).
    - (a) **Sign** loan resolutions, grant agreements and letters of intent to meet conditions which include AIS language, accepting AIS requirements in those documents and in the letter of conditions.
    - (b) **Sign** agreements for engineering services, executed construction contracts and all other appropriate and necessary documents which include AIS language.

Change Orders and Partial Payment Estimates: **Acknowledge** responsibility for compliance with AIS requirements by signing change orders (EJCDC C-941) and partial payment estimates (EJCDC C-620).

- (c) Substantial completion of project: **Obtain** the certification letters from the consulting engineer and **maintain** this documentation for the life of the loan.
- (d) Special Cases
  - i. Where Owner provides their own engineering, the Owner's responsibilities will include items listed in Section 5 of RUS Bulletin 1780-35.
  - ii. Where Owner performs their own construction, the Owner's responsibilities will include items listed in Section 6 of RUS Bulletin 1780-35.
  - iii. Where Owner directly procures AIS products, Owner must **utilize** EJCDC Procurement Series standard contract documents following RUS Bulletin 1780-26 Exhibit D and **obtain** manufacturers' certifications and provide copies to Engineer and Contractor.

**11. Legal Services** –A legal services agreement is required with your attorney and bond counsel, if applicable, for any legal work needed in connection with this project. The agreement should stipulate an hourly rate for the work, with a “not to exceed” amount for the services, including reimbursable expenses. RUS Bulletin 1780-7, “Legal Services Agreement,” or similar format may be used. The Agency will provide concurrence prior to advertising for bids. Any changes to the fees or services spelled out in the original agreement must be reflected in an amendment to the agreement and have prior Agency concurrence.

**12. Property Rights** - Prior to advertising for bids, you and your legal counsel must furnish satisfactory evidence that you have adequate continuous and valid control over the lands and rights-of-way needed for the project. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Such control over the lands and rights will be evidenced by the following:

- a. **Right-of-Way Map** – Your engineer will provide a map clearly showing the location of all lands and rights-of-way needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
- b. **Form RD 442-20, “Right-of-Way Easement”** – This form, or similar format, may be used to obtain any necessary easements for the proposed project.
- c. **Form RD 442-21, “Right-of-Way Certificate”** – You will provide a certification on this form that all right-of-way requirements have been obtained for the proposed project.
- d. **Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way”** – Your attorney will provide a certification and legal opinion on this form addressing rights-of-way, easements, and title.
- e. **Preliminary Title Work (Title Opinion)** – When applicable, your attorney or title company will provide a preliminary title opinion for any property related to the facility, currently owned and to be acquired, along with copies of deeds, contracts or options for purchasing said property. Form RD 1927-9, “Preliminary Title Opinion,” may be used.

The approving official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the

facility. Any such waivers must be provided by the approving official in writing prior to closing or the start of construction, whichever occurs first.

You are responsible for the acquisition of all property rights necessary for the project and for determining that prices paid are reasonable and fair. The Agency may require an appraisal by an independent appraiser or Agency employee in order to validate the price to be paid.

**13. System Policies, Procedures, Contracts, and Agreements** – The facility must be operated on a sound business plan which involves adopting policies, procedures, and/or ordinances outlining the conditions of service and use of the proposed system. Mandatory connection policies should be used where enforceable. The policies, procedures, and/or ordinances must contain an effective collection policy for accounts not paid in full within a specified number of days after the date of billing. They should include appropriate late fees, specified timeframes for disconnection of service, and reconnection fees. A draft of these policies, procedures, and/or ordinances must be submitted for Agency review and concurrence, along with the documents below, before closing instructions may be issued unless otherwise stated.

- a. Conflict of Interest Policy** – Prior to obligation of funds, you must certify in writing that your organization has in place up-to-date written standards of conduct covering conflict of interest. The standards of conduct must include disciplinary actions in the event of a violation by officers, employees, or agents of the borrower. The standards identified herein apply to any parent, affiliate or subsidiary organization of the borrower that is not a state or local government, or Indian Tribe. Policies and accompanying documents shall be furnished to Rural Development upon request.

You must also submit a disclosure of planned or potential transactions related to the use of Federal funds that may constitute or present the appearance of personal or organizational conflict of interest. Disclosure must be in the form of a written letter signed and dated by the applicant's official. A negative disclosure in the same format is required if no conflicts are anticipated.

Sample conflict of interest policies may be found at the National Council of Nonprofits website, <https://www.councilofnonprofits.org/tools-resources/conflict-of-interest>, or in Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy," at <http://www.irs.gov/pub/irs-pdf/i1023.pdf>. Though these examples reference non-profit corporations, the requirement applies to all types of Agency borrowers.

Assistance in developing a conflict-of-interest policy is available through Agency-contracted technical assistance providers if desired.

- b. Contracts for Other Services/Lease Agreement** – Drafts of any contracts or other forms of agreements for other services, including audit, management, operation, and maintenance, or lease agreements covering real property essential to the successful operation of the facility, must be submitted to the Agency for review and concurrence prior to advertising for bids.

Fully executed copies of any policies, procedures, ordinances, contracts, or agreements above must be submitted prior to loan closing, with the exception of the conflict-of-interest policy, which must be in place prior to obligation of funds.

**14. Closing Instructions** – The Agency will prepare closing instructions as soon as the requirements of the previous paragraphs are complete, as well as a draft of the security instrument(s). Both your bond and legal counsel must comply with these instructions when closing the Agency loan/grant.

**15. System Users** – This letter of conditions is based upon your indication at application that there will be at least 3,335 residential users, 60 non-residential users, and 1 bulk / wholesale users on the existing system when construction is completed.

Before the Agency can agree to the project being advertised for construction bids, you must certify that the number of users indicated at application are currently using the system or signed up to use the system once it is operational.

If the actual number of existing and/or proposed users that have signed up for service is less than the number indicated at the time of application, you must provide the Agency with a written plan on how you will obtain the necessary revenue to adequately cash flow the expected operation, maintenance, debt service, and reserve requirements of the proposed project (e.g., increase user rates, sign up an adequate number of other users, reduce project scope, etc.). Similar action is required if there is cause to modify the anticipated flows or volumes presented following approval.

- a. **Positive Program to Encourage Connections** – You must provide a positive program to encourage connection by all users as soon as service is available. The program will be reviewed by the Agency prior to advertising for bids. A guide for developing your positive program is available from the Agency.
- b. **Water/Sewer User Agreements** – Users will be required to execute a Water/Sewer Users Agreement prior to advertising for construction bids. The amount of cash contributions required will be set by you and concurred with by the Agency. Contributions should be an amount high enough to indicate sincere interest on the part of the potential user, but not so high as to preclude service to low-income families, and must have a deadline for the contribution to be used or forfeited. RUS Bulletin 1780-9, “Water Users Agreement,” or similar agreement may be used.
- c. **Service Declination Statement** – Each potential user who is located along planned lines and declines the offered service will be provided an opportunity to sign a “Service Declination Statement.”

**16. Construction Account** – A separate construction account is not required for project funds. However, the recipient must be able to separately identify, report and account for all Federal funds, including the receipt, obligation and expenditure of funds, in accordance with 2 CFR 200.305. These funds must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage. **If the balances at the financial institution where federal funds will be deposited exceeds the FDIC insurance coverage, the excess amount must be**

**collaterally secured up to 100 percent of the highest amount of funds expected to be deposited in the account at any one time, per the Department of Treasury regulations and requirements.**

**17. Interim Financing** – The Agency’s policy is to utilize interim financing for all loans exceeding \$500,000. Prepayment penalties on interim financing are not allowed. Borrowers are required to seek interim financing initially from private or cooperative lenders if funds can be borrowed at reasonable interest rates on an interim basis from those sources for the construction period. The fact that a commercial lender’s rates are higher than current Agency interest rates does not necessarily mean that the commercial rate is not reasonable.

**18. Proposed Operating Budget** – You must establish and/or maintain a rate schedule that provides adequate income to meet the minimum requirements for operation and maintenance (O and M), debt service, and reserves. Prior to advertising for bids, you must submit a proposed annual operating budget to the Agency, as well as your proposed rate schedule. The operating budget should be based on a typical year cash flow after completion of the construction phase and should be signed by the appropriate official of your organization. Form RD 442-7, “Operating Budget,” or similar format may be utilized for this purpose. It is expected that O and M expenses will change over each successive year and user rates will need to be adjusted on a regular basis.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system. This assistance is available free to your organization. If you are interested, please contact our office for information.

**19. Permits** –The owner or responsible party will be required to obtain all applicable permits for the project, prior to advertising for bids. The consulting engineer must submit written evidence that all applicable permits required prior to construction have been obtained with submission to the Agency of the final plans, specifications, and bid documents.

**20. Risk and Resilience Assessment/Emergency Response Plan (RRA/ERP)** – The Agency requires all financed water and wastewater systems to have an RRA/ERP in place. New water or wastewater systems must provide a certification that an ERP is complete prior to the start of operation, and a certification that an RRA is complete must be submitted within one year of the start of operation. Borrowers with existing systems must provide a certification that an RRA/ERP has been completed prior to advertising for bids. Technical assistance is available in preparing these documents at no cost to you.

Before funds are drawn, you should have in place a cybersecurity plan, a supply chain plan, and a plan to comply with cybersecurity requirements of the National Institute of Science and Technology and the Cybersecurity and Infrastructure Security Administration. These items should be addressed in the RRA/ERP.

The RRA/ERP documents themselves are not submitted to the Agency. The RRA/ERP must address potential impacts from natural disasters and other emergency events. It should include

plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every five years at a minimum.

**21. Bid Authorization** - Once all the conditions outlined in Section III of this letter have been met, the Agency will authorize you to advertise the project for construction bids. Such advertisement must be in accordance with applicable State statutes.

#### **SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION**

**22. Disbursement of Agency Funds** - Agency funds will be disbursed electronically into the construction account as they are needed. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to commencement of construction.

The order of disbursement is as follows: 1) Applicant contribution, 2) other funding sources, 3) interim financing or Agency loan funds, and 4) Agency grant funds. Interim financing or Agency loan funds will be expended after all other funding sources unless a written agreement is reached with all other funding sources on how funds are to be disbursed prior the first disbursement. Interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds. Agency Grant funds must not be disbursed prior to loan funds except as authorized in 7 CFR 1780.45(d).

**23. Bid Tabulation** – Immediately after bid opening, you must provide the Agency with the bid tabulation and your engineer's evaluation of bids and recommendations for contract awards. If the Agency agrees that the construction bids received are acceptable, adequate funds are available to cover the total project costs, and all the requirements of Section III of this letter have been satisfied, the Agency will authorize you to issue the Notice of Award.

- a. **Cost Overruns** – If bids are higher than expected, or if unexpected construction problems are encountered, you must utilize all options to reduce cost overruns. Negotiations, redesign, use of bidding alternatives, rebidding or other means will be considered prior to commitment of subsequent funding by the Agency. Any requests for subsequent funding to cover cost overruns will be contingent on the availability of funds. Cost overruns exceeding 20 percent of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.
- b. **Excess Funds** - If bids are lower than anticipated at time of obligation, excess funds must be deobligated prior to start of construction except in the cases addressed in this paragraph. In cases where the original PER for the project included items that were not bid, or were bid as an alternate, the State Office official may modify the project to fully utilize obligated funds for those items. Amendments to the PER, ER, and Letter of Conditions may be needed for any work not included in the original project scope. In all cases, prior to start of construction, excess funds will be deobligated, with grant funds being deobligated first. Excess funds do not include contingency funds as described in this letter.

**24. Suspension and Debarment Screening** – In accordance with 2 CFR Part 180, Subpart C, as a condition of the transaction and the responsibilities to persons at the next lower tier with whom you enter into transactions, you must conduct screening for suspension and debarment of lower tier recipients (e.g., vendors, contractors, etc.).

**25. Contract Review** – Your attorney will certify that the executed contract documents, including performance and payment bonds, if required, are adequate and that the persons executing these documents have been properly authorized to do so in accordance with 7 CFR 1780.61(b).

Once your attorney has certified that they are acceptable, the contract documents will be submitted to the Agency for concurrence. Construction cannot commence until the Agency has concurred in the construction contracts.

**26. Final Rights of Way** – Your attorney or title company must furnish a separate final title opinion or Title Insurance Policy on all real property related to the facility, now owned and to be acquired for this project, as of the day of loan closing or start of construction, whichever occurs first. Form RD 1927-10, “Final Title Opinion” may be used.

If any of the right-of-way forms listed previously in this letter contain exceptions that do not adversely affect the suitability, successful operation, security value, or transferability of the facility, the approving official must provide a written waiver prior to the issuance of the Notice to Proceed.

**27. Insurance and Bonding Requirements** - Prior to the start of construction or loan closing, whichever occurs first, you must acquire and submit to the Agency proof of the types of insurance and bond coverage for the borrower shown below. The use of deductibles may be allowed, providing you have the financial resources to cover potential claims requiring payment of the deductible. The Agency strongly recommends that you have your engineer, attorney, and insurance provider(s) review proposed types and amounts of coverage, including any exclusions and deductible provisions. It is your responsibility and not that of the Agency to assure that adequate insurance and fidelity bond coverage is maintained.

- a. **General Liability Insurance** – Include vehicular coverage.
- b. **Workers’ Compensation** – In accordance with appropriate State laws.
- c. **Guaranty or Fidelity Insurance**—Coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through “blanket” coverage providing protection for all appropriate employees. Each position is to be insured in an amount equal to the maximum amount of funds expected to be under the control of that position at any one time. The minimum coverage allowed will be an amount equal to the total annual debt service payment on the Agency loans. The coverage may be increased during construction based on the anticipated monthly advances.
- d. **National Flood Insurance** - If the project involves acquisition or construction in a designated special flood area, the community in which the acquisition or construction is



situated must be currently participating in the national flood insurance program. Additionally, if the project involves acquisition or construction in designated special flood or mudslide prone areas, a flood insurance policy must be in place at the time of loan closing.

- e. **Real Property Insurance** – Fire and extended coverage will normally be maintained on all structures except reservoirs, pipelines and other structures if such structures are not normally insured, and subsurface lift stations except for the value of electrical and pumping equipment. The Agency will be listed as mortgagee on the policy when the Agency has a lien on the property. Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all facilities identified above.

The Agency is to be listed as “Other Insured” so as to receive notifications on all insurance, regardless of security. Insurance types described above are required to be continued throughout the life of the loan. See Section VII.

**28. Initial Civil Rights Compliance Review** – The Agency will conduct an initial civil rights compliance review of the borrower prior to loan closing or start of construction, whichever occurs first, in accordance with 7 CFR 1901, Subpart E. You are expected to comply with the completion of the review, including the furnishing of any documents, records, or other applicable material.

## **SECTION V – REQUIREMENTS PRIOR TO CLOSING**

**29. Interim Financing**. Interim financing is being used. Generally, loan closing will occur near the end of construction when interim funds are fully disbursed. Documents detailed above from Sections II and III regarding security, electronic payments (Form 3550-28), and system policies, procedures, contracts, and agreements must be adopted and/or executed and submitted to the Agency prior to loan closing.

**30. Electronic Payments** – Payments will be made through an electronic preauthorized debit system. You will be required to complete Form RD 3550-28, “Authorization Agreement for Preauthorized Payments,” for all new and existing indebtedness to the Agency prior to loan closing.

**31. Other Requirements** – All requirements contained in the Agency’s closing instructions, as well as any requirements of your bond counsel and/or attorney, must be met prior to loan closing.

- a. **System for Award Management**. You will be required to maintain a Unique Entity ID (UEI) and maintain an active registration in the System for Award Management (SAM) database. Renewal can be completed online at: <http://sam.gov>. This registration must be renewed and revalidated every 12 months for as long as there is an active loan, grant, or guaranteed loan with the Agency.

To ensure the information is current, accurate and complete, and to prevent the SAM account expiration, the review and updates must be performed within 365 days of the activation date,

commonly referred to as the expiration date. The registration process may take up to 10 business days. (See 2 CFR Part 25 and the “Help” section at <http://sam.gov>).

- b. **Litigation.** You are required to notify the Agency within 30 days of receiving notification of being involved in any type of litigation prior to loan closing or start of construction, whichever occurs first. Additional documentation regarding the situation and litigation may be requested by the Agency.
- c. **Certified Operator.** Evidence must be provided that your system has or will have a certified operator, as defined by applicable State or Federal requirements, available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

## **SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION**

**32. Construction Completion Timeframe** – Following the benchmarks established in Section I, Item 4, Project Timeline, all projects should be completed, and Agency funds fully disbursed within three years of the date of obligation. If funds are not disbursed within three years of obligation and you have not already done so per Section I, Item 4, you must submit a written request for extension of time to the Agency with adequate justification of the circumstances, including any beyond your control. The request must be submitted at least 90 days prior to the end of the three-year timeframe and include a revised estimated date of completion. The Agency will typically only allow one extension. Subsequent requests for waivers beyond the initial extension or requests that exceed five years from the initial date of obligation will be submitted to the RUS, Water and Environmental Programs for consideration. The Agency retains the right to de-obligate any loan and/or grant monies, or take other appropriate action, related to unliquidated funds that exceed the timeframes above and are not under an active extension.

**33. Resident Inspector(s)** – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must provide written concurrence. Inspection services are to be provided by the consulting engineer unless other arrangements are requested in writing and concurred with by the Agency. A resume of qualifications of any resident inspector(s) will be submitted to the owner and Agency for review and concurrence prior to the pre-construction conference. The resident inspector(s) must attend the preconstruction conference.

**34. Preconstruction Conference** – A preconstruction conference will be held prior to the issuance of the Notice to Proceed. The consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, other funders, and other interested parties, and will provide minutes of this meeting to the owner and Agency.

**35. Inspections** - The Agency requires a preconstruction conference, pre-final, final, and warranty inspections. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the one-year warranty period to address and/or resolve any outstanding warranty issues. The Agency will conduct an inspection with you of your records

management system at the same time and will continue to inspect the facility and your records system every three years for the life of the loan. See Section VII of this letter.

**36. Change Orders** – A Change Order must be submitted for all modifications to the approved scope of work, including existing contracts. This includes non-physical modifications such as any time extension requests. Prior written Agency concurrence is required for all Change Orders.

**37. Payments** – Prior Agency concurrence is required for all invoices and requests for payment before Agency funds will be released. Requests for payment related to a contract or service agreement will be signed by the owner, project engineer, and contractor or service provider prior to Agency concurrence. Invoices not related to a construction contract or service agreement will include the owner's written concurrence.

**38. Use of Remaining Funds** – As stated above, applicant contribution and connection or tap fees will be the first funds expended in the project. Funds remaining after all costs incident to the basic project have been paid or provided will be handled as follows:

- a. Funds remaining after the applicant contribution and connection fees may be considered in direct proportion to the amounts of funding obtained from each source. The use of Agency funding will be limited to eligible loan and grant purposes, provided the use will not result in major changes to the original scope of work and the purpose of the loan and grant remains the same.
- b. Any reductions in the Agency funding will be first applied to the grant funds.
- c. Grant funds not expended for authorized purposes will be cancelled (de-obligated) within 60 days of final completion of project. Prior to actual cancellation, you, your attorney and engineer will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.
- d. Under no circumstances is it appropriate to use remaining funds as contributions to a new project outside the scope of the funded project.
- e. Loan funds that are not needed will be cancelled (de-obligated) prior to loan closing.

**39. Technical, Managerial and Financial Capacity** - It is required that members of the Board of Directors, City Council members, trustees, commissioners and other governing members possess the necessary technical, managerial, and financial capacity skills to consistently comply with pertinent Federal and State laws and requirements. It is recommended members receive training within one year of appointment or election to the governing board, and a refresher training for all governing members on a routine basis. The content and amount of training should be tailored to the needs of the individual and the utility system. Technical assistance providers are available to provide this training for your organization, often at no cost. Contact the Agency for additional information.

**40. Reporting Requirements Related to Expenditure of Funds** -- An annual audit under 2 CFR 200 is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law and must be submitted within 9 months of your fiscal year end. Both the audit and accompanying management report must be submitted for review.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy of that agreement to the Agency prior to the advertisement of construction bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit to be completed, the time frame in which the audit will be completed, and how irregularities will be reported.

## **SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN**

**41. Prepayment and Extra Payments** - Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower, with no penalty.

Security instruments, including bonding documents, must contain the following language regarding extra payments, unless prohibited by State statute:

*Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of borrower to pay the remaining installments as scheduled in your security instruments.*

**42. Annual Financial Reporting/Audit Requirements** – You are required to submit an annual financial report at the end of each fiscal year. The annual report will be certified by the appropriate organization official, and will consist of financial information, a current rate schedule, and listing of board members with their terms. Financial statements must be prepared on an accrual basis of accounting in accordance with generally accepted accounting principles (GAAP). The annual report will include separate reporting for each water and waste disposal facility, and itemized cash accounts by type (debt service, short-lived assets, etc.) under each facility. All records, books and supporting material are to be retained for three years after the issuance of the annual report. Technical assistance is available, at no cost, with preparing financial reports.

The type of financial information that must be submitted is specified below:

- a. **Audits** – An audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

See Section VI for additional information regarding audits.

- b. **Financial Statements** – If you expend less than \$750,000 in Federal financial assistance per fiscal year, you may submit financial statements in lieu of an audit which include, at a minimum, a balance sheet and an income and expense statement. You may use Form RD 442-2, “Statement of Budget, Income and Equity,” and 442-3, “Balance Sheet,” or similar format to provide the financial information. The financial statements must be signed by the appropriate borrower official and submitted within 60 days of your fiscal year end.

**43. Annual Budget and Projected Cash Flow** - Thirty days prior to the beginning of each fiscal year, you will be required to submit an annual budget and projected cash flow to this office. The budget must be signed by the appropriate borrower official. Form RD 442-2, “Statement of Budget, Income and Equity,” or similar format may be used.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system, as well as completing the annual budget.

**44. Graduation** - By accepting this loan, you are also agreeing to refinance (graduate) the unpaid loan balance in whole, or in part, upon request of the Government. If at any time the Agency determines you can obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms, you will be requested to refinance. Your ability to refinance will be assessed every other year for those loans that are five years old or older.

**45. Security/Operational Inspections** – The Agency will inspect the facility and conduct a review of your operations and records management system and conflict of interest policy every three years for the life of the loan. You must participate in these inspections and provide the required information.

**46. System for Award Management**. You will be required to maintain a Unique Entity ID (UEI) and maintain an active registration in the System for Award Management (SAM) database. Further information can be found at paragraph 31 of this letter.

**47. Risk and Resiliency Assessment/Emergency Response Plan (RRA/ERP)** – The RRA/ERP is further outlined under Section III of this letter. You will be required to submit a certification to the servicing office every five years that the RRA/ERP is current and covers all sites related to the facility. The RRA/ERP documents themselves are not submitted to the Agency. The RRA/ERP must address potential impacts from natural disasters and other emergency events. It

should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. Technical assistance is available in preparing these documents at no cost to you.

**48. Insurance.** – Insurance requirements are further outlined in Section IV of this letter. You will be required to maintain insurance on the facility and employees as previously described in this letter for the life of the loan.

**49. Statutory and National Policy Requirements** – As a recipient of Federal funding, you are required to comply with U.S. statutory and public policy requirements, including but not limited to:

- a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.
- b. **Civil Rights Act of 1964** – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.
- c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.
- d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, “Improving Access to Services by Persons with Limited English Proficiency” and further affirmed in the USDA Departmental Regulation 4330-005, “Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA.”

- f. **Controlled Substances Act** - Even though state law may allow some activities, as a recipient of Federal funding, you are subject to the Controlled Substances Act. Specific questions about the Controlled Substances Act should be directed to the Servicing Official who will contact the Office of General Counsel, as appropriate.

**50. Compliance Reviews and Data Collection** – Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. You must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor your compliance with these requirements during regular compliance reviews.

The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36 CFR 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the security inspections described in this letter.

If beneficiaries (users) are required to complete an application or screening for the use of the facility or service that you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

## **SECTION VIII – REMEDIES FOR NON-COMPLIANCE**

Non-compliance with the conditions in this letter or requirements of your security documents will be addressed under the provisions of Agency regulations, statutes, and other applicable policies.

We look forward to working with you to complete this project. If you have any questions, please contact Bryan Jordan at 803-262-4477 or by e-mail at [bryan.jordan@usda.gov](mailto:bryan.jordan@usda.gov).

Sincerely,

Michele J. Cardwell  
Community Programs Director

Attachments

cc: Community Programs Director  
Accountant  
Attorney  
Bond Counsel  
Engineer

## FORMS and BULLETINS:

Form AD-3031 “Assurance Regarding Felony Convictions or Tax Delinquent Status for Corporate Applicants” – Item 30

Internal Revenue Service Form 1023, Appendix A, “Sample Conflict of Interest Policy” - Item 15

Form RD 440-22, “Promissory Note” – Item 6

Form RD 442-2, “Statement of Budget, Income and Equity” – Items 45 and 46

Form RD 442-3, “Balance Sheet” – Item 45

Form RD 442-7, “Operating Budget” – Item 20

Form RD 442-20, “Right-of-Way Easement” – Item 14

Form RD 442-21, “Right-of-Way Certificate” – Item 14

Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way” – Item 14

Form RD 1927-9, “Preliminary Title Opinion” – Item 14

Form RD 1927-10, “Final Title Opinion” – Item 28

Form RD 1940-1, “Request for Obligation of Funds” – Pages 1 and 2

Form RD 1942-8, “Resolution of Members or Stockholders” – Item 6

Form RD 1942-46, “Letter of Intent to Meet Conditions” – Page 2

Form RD 3550-28, “Authorization Agreement for Preauthorized Payments” – Items 32 and 33

Form UCC-1, “Financing Statement” – Item 6

Form UCC-1Ad, “UCC Financing Statement Addendum” – Item 6

SF 3881, “ACH Vendor/Miscellaneous Payment Enrollment Form” – Item 24

RUS Bulletin 1780-7, “Legal Services Agreement” – Item 13

RUS Bulletin 1780-9, “Water Users Agreement” - Items 15 and 17

RUS Bulletin 1780-12, “Water and Waste System Grant Agreement” – Item 6

RUS Bulletin 1780-26, “Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance” – Items 11 and 12

RUS Bulletin 1780-27, “Loan Resolution (Public Bodies)” – Item 6

RUS Bulletin 1780-28, “Loan Resolution Security Agreement” – Item 6



**BID TABULATION**


**PROJECT: COOPERS MILL S/D SANITARY SEWER IMPROVEMENTS - PHASE I**

BIDDER					1		2		3		4	
					HDH construction Group, LLC		L.W. Inc.		Tugaloo Pipeline, Inc.		Cedar Farms & Construction, Inc.	
ITEM	DESCRIPTION	QTY.	UNIT		UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
	<b>SEWER LINE</b>											
1	EQUIPMENT MOBILIZATION		LS			\$ 2,500.00		\$ 10,000.00		\$ 18,000.00		\$ 5,001.07
2	COLLECTOR MAIN TESTING		LS			2,750.00		2,500.00		6,000.00		12,001.07
3	COLLECTOR MANHOLE TESTING		LS			2,750.00		2,500.00		2,879.00		12,001.07
4	8" MANHOLE MAIN CONNECTION (TIE TO EX. MANHOLE)		LS			2,500.00		5,000.00		2,715.00		2,070.00
	<b>8" PVC (SDR 35) (COMPLETE INSTALLATION)</b>											
5	0'-6" DEPTH	3,773	LF	@	44.00	166,012.00	54.00	203,742.00	71.60	270,146.80	63.54	239,736.42
6	6'-8" DEPTH	245	LF	@	44.00	10,780.00	59.00	14,455.00	85.00	20,825.00	83.54	20,467.30
7	8'-10" DEPTH	125	LF	@	54.00	6,750.00	64.00	8,000.00	96.00	12,000.00	88.54	11,067.50
8	10'-12" DEPTH	56	LF	@	64.00	3,584.00	74.00	4,144.00	115.00	6,440.00	93.54	5,238.24
9	12'-14" DEPTH	55	LF	@	64.00	3,520.00	79.00	4,345.00	139.00	7,645.00	98.54	5,419.70
	<b>8" DIP (CL350) (COMPLETE INSTALLATION)</b>											
10	0'-6" DEPTH	220	LF	@	35.00	7,700.00	145.00	31,900.00	188.00	41,360.00	155.95	34,309.00
11	10'-12" DEPTH	20	LF	@	35.00	700.00	165.00	3,300.00	209.00	4,180.00	165.95	3,319.00
	<b>STANDARD 48" DIA MANHOLE (COMPLETE INSTALLATION)</b>											
12	0'-6" DEPTH	19	EA	@	3,500.00	66,500.00	2,700.00	51,300.00	2,561.00	48,659.00	4,140.00	78,660.00
13	6'-8" DEPTH	1	EA	@	3,500.00	3,500.00	3,500.00	3,500.00	3,045.00	3,045.00	7,354.00	7,354.00
14	10'-12" DEPTH	1	EA	@	3,500.00	3,500.00	4,900.00	4,900.00	4,033.00	4,033.00	7,835.50	7,835.50
	<b>STANDARD 48" DIA DROP MANHOLE (COMPLETE INSTALLATION)</b>											
15	12'-14" DEPTH	1	EA	@	4,500.00	4,500.00	7,500.00	7,500.00	13,575.00	13,575.00	5,710.00	5,710.00
	<b>MISCELLANEOUS ITEMS</b>											
16	SERVICE CONNECTION	99	EA	@	1,485.00	147,015.00	1,200.00	118,800.00	1,306.00	129,294.00	1,785.00	176,715.00
17	TRENCH ROCK EXCAVATION / HAUL OFF / SUITABLE BACKFILL	100	CY	@	150.00	15,000.00	65.00	6,500.00	1.00	100.00	253.40	25,340.00
18	REPLACEMENT OF UNSUITABLE SOIL WITH SUITABLE BACKFILL MATERIAL & COMPACTION	100	CY	@	80.00	8,000.00	20.00	2,000.00	1.00	100.00	58.15	5,815.00
19	BYPASS PUMPING		LS			2,500.00		1,000.00		8,141.00		26,751.00
20	STORMWATER MANAGEMENT (BMP's)		LS			5,000.00		1,000.00		12,931.00		5,351.00
21	PERFORMANCE & PAYMENT BOND		LS			8,975.00		12,000.00		12,873.00		21,401.00
<b>Total Amount of Bid</b>						\$ 474,036.00		\$ 498,386.00		\$ 624,941.80		\$ 711,562.87

Rosier Group  
110 West First Avenue, Suite D  
Easley, SC 29640

**L.W. Inc. submitted item # 16 Total \$120,000.00 and Total amount of Bid \$499,586.00. Was corrected as shown above.**

I hereby certify that this is a true and correct tabulation of the proposals received for subject project on **Tuesday, August 30, 2022 @ 2:00 PM.**

  
Troy D. Rosier, P.E.

City of Westminster  
P.O. Box 399 / 100 E. Windsor Street  
Westminster, SC 29693

Bidders 5-6

Page 2

### BID TABULATION

PROJECT: COOPERS MILL S/D SANITARY SEWER IMPROVEMENTS - PHASE I

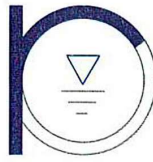
BIDDER					5		6	
					Payne, McGinn and Cummins, Inc.		Don Moorhead Construction, Inc.	
ITEM	DESCRIPTION	QTY.	UNIT		UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
	<b>SEWER LINE</b>							
1	EQUIPMENT MOBILIZATION		LS			\$ 3,600.00		No Bid
2	COLLECTOR MAIN TESTING		LS			21,270.00		No Bid
3	COLLECTOR MANHOLE TESTING		LS			5,040.00		No Bid
4	8" MANHOLE MAIN CONNECTION (TIE TO EX. MANHOLE)		LS			6,000.00		No Bid
	<b>8" PVC (SDR 35) (COMPLETE INSTALLATION)</b>							
5	0'-6' DEPTH	3,773	LF	@	124.00	467,852.00		No Bid
6	6'-8' DEPTH	245	LF	@	125.00	30,625.00		No Bid
7	8'-10' DEPTH	125	LF	@	132.00	16,500.00		No Bid
8	10'-12' DEPTH	56	LF	@	134.00	7,504.00		No Bid
9	12'-14' DEPTH	55	LF	@	140.00	7,700.00		No Bid
	<b>8" DIP (CL350) (COMPLETE INSTALLATION)</b>							
10	0'-6' DEPTH	220	LF	@	200.00	44,000.00		No Bid
11	10'-12' DEPTH	20	LF	@	230.00	4,600.00		No Bid
	<b>STANDARD 48" DIA MANHOLE (COMPLETE INSTALLATION)</b>							
12	0'-6' DEPTH	19	EA	@	4,000.00	76,000.00		No Bid
13	6'-8' DEPTH	1	EA	@	4,800.00	4,800.00		No Bid
14	10'-12' DEPTH	1	EA	@	5,200.00	5,200.00		No Bid
	<b>STANDARD 48" DIA DROP MANHOLE (COMPLETE INSTALLATION)</b>							
15	12'-14' DEPTH	1	EA	@	8,000.00	8,000.00		No Bid
	<b>MISCELLANEOUS ITEMS</b>							
16	SERVICE CONNECTION	99	EA	@	1,500.00	148,500.00		No Bid
17	TRENCH ROCK EXCAVATION / HAUL OFF / SUITABLE BACKFILL	100	CY	@	150.00	15,000.00		No Bid
18	REPLACEMENT OF UNSUITABLE SOIL WITH SUITABLE BACKFILL MATERIAL & COMPACTION	100	CY	@	57.00	5,700.00		No Bid
19	BYPASS PUMPING		LS			1,500.00		No Bid
20	STORMWATER MANAGEMENT (BMP's)		LS			5,000.00		No Bid
21	PERFORMANCE & PAYMENT BOND		LS			20,000.00		No Bid
	<b>Total Amount of Bid</b>					\$ 904,391.00		No Bid

Rosier Group  
110 West First Avenue, Suite D  
Easley, SC 29640

I hereby certify that this is a true and correct tabulation of the proposals received for subject project on **Tuesday, August 30, 2022 @ 2:00 PM.**

  
Troy D. Rosier, P.E.

110 WEST FIRST AVE., SUITE D  
EASLEY, SC 29640



**ROSIER GROUP**  
*Engineers & Surveyors*

PHONE: (864)-859-6900  
FAX: (864) 859-6980  
email: team@rosier.group

30 August 2022

CITY OF WESTMINSTER  
P.O. Box 399 / 100 E. Windsor Street  
Westminster, SC 29693  
Attn: Kevin Bronson

Re: **COOPERS MILL S/D SANITARY SEWER IMPROVEMENTS - PHASE I**

Dear Kevin Bronson,

Enclosed you will find a copy of the Bid Tabulation sheet for subject project. We have extended and tabulated all figures on said proposals and found them correct as tabulated or revised as necessary. (**See L.W. Inc. revision**).

We recommend that a contract be awarded to the low bidder, **HDH Construction Group LLC**, for the amount of **Four Hundred Seventy-Four Thousand Thirty-Six & 00/100 Dollars, (\$474,036.00)**.

Construction contracts will be prepared for implementation of the project upon receiving your approval and further instructions.

Sincerely,

Troy D. Rosier, P.E.

TDR/ch  
Enclosure

**S.E.B.****GRADING & LANDSCAPING  
FREE ESTIMATES**HAULING GRAVEL-DIRT-BARK-EXCAVATING-CLEARING  
HYDROSEEDING-SOD-LAND UNDERBRUSHING-BUSH HOGGING  
TREE SURGEON-CROSS TIE WORK-BOBCAT WORK145 FREEMAN RD.  
WESTMINSTER, SC

FULLY INSURED

(864)647-6491  
MOBILE 710-0823City of Westminster Rec. Dept.  
Soccer Field'sSeeding Field's & Slope's = 19558.<sup>00</sup>Grading All Field's & Slope's = 45000.<sup>00</sup>Irrigation Ties on Field's = 19500.<sup>00</sup>84058.<sup>00</sup>Subtract This First Bid From  
This

CUSTOMER SIGNATURE

DATE

CONTRACTOR SIGNATURE

DATE



**MINUTES**  
**WESTMINSTER CITY COUNCIL**  
**Public Hearing**  
**Tuesday, August 9, 2022 5:15 pm**

The City Council of the City of Westminster met in a called public hearing Tuesday August 9, 2022 at 5:15 pm at the Westminster Fire Department with Mayor Brian Ramey presiding. Those in attendance were:

Brian Ramey  
 Jimmy Powell

Dale Glymph  
 Audrey Reese

Adam Dunn

Daby Snipes

City Administrator, Kevin Bronson  
 City Clerk, Rebecca Overton  
 Members of the public and press

*Notice of the public hearing was posted on a window at the Fire Department twenty-four hours prior to the meeting and on westminstersc.org as well as advertised in the local media paper.*

**Public Hearing**

The City of Westminster is applying for a Community Development Block Grant (CDBG) to make improvements to Anderson Park. A part of the application process is to ask for the public's input on the proposed project.

The improvements to Anderson Park include a new playground with components for 6 months to 12 years of age, shade structures for passive enjoyment, an outdoor basketball court and various other additions such as park benches, trash receptacles and picnic tables.

A public hearing was held to solicit public input on community needs and priorities for housing, public facilities, and economic development. At this public hearing, a representative from SCACOG guided the public hearing asking various questions to gain public input on needs assessments.

The public hearing was closed at 5:50 pm.

(Minutes submitted by Rebecca Overton)

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Mayor Brian Ramey

---

Date

*August 9, 2022*

**MINUTES  
WESTMINSTER CITY COUNCIL  
Regular Scheduled Meeting  
Tuesday, August 9, 2022**

The City Council of the City of Westminster met in a regular scheduled meeting on Tuesday, August 9, 2022 at 6:00 pm at the Westminster Fire Department with Mayor Brian Ramey presiding. Those in attendance were:

Brian Ramey  
Jimmy Powell

Dale Glymph  
Yousef Mefleh

Daby Snipes  
Adam Dunn

Audrey Reese

City Administrator, Kevin Bronson  
City Clerk, Rebecca Overton  
Utility Director, Leigh Baker  
Police Chief, Matt Patterson  
Fire Chief, Michael Smith  
City Attorney, Andrew Holliday  
Members of the public and press

*Notice of the meeting and the agenda was posted on a window at the Fire Department and at westminstersc.org twenty-four hours prior to the meeting and all persons, organizations and local media requesting notification and the agenda were notified by email.*

**Call to Order**

Mayor Ramey called the meeting to order at 6:00 pm.

**Invocation and Pledge of Allegiance**

Mrs. Audrey Reese led the Council in the invocation and the Pledge of Allegiance.

**Certification of Quorum**

Rebecca Overton certified a quorum.

**Public Comments**

There were no public comments.

**Presentation by OJRSA Executive Director Chris Eleazer**

Mr. Eleazer was present to inform Council of a recent meeting to discuss consideration of a regionalization study for wastewater conveyance and treatment options within the OJRSA's service area. He was present to ask for Council support for proceeding with the assessment grant and stated that there is funding available through an RIA match free grant. Mr. Eleazer stated that he would need a letter of support from Westminster and that he already one from the other Municipalities. The memo regarding this matter is attached to these minutes.

August 9, 2022

### **Comments from the Mayor and Council**

Mayor Ramey asked Utility Director Leigh Baker to introduce the Supervisors of Sanitation and the Water/Sewer crews. Mr. Baker introduced Terry Reed as the Water and Sewer Supervisor and stated that he had come on board back in February and was doing a great job with the crews. Mr. Baker introduced Kevin Harbin as the new Supervisor of the Solid Waste and Public Works Departments and stated that Mr. Harbin had been doing a great job with crews and several projects that were ongoing.

Mrs. Reese stated that she had been to the PMPA and MASC Conferences in July and that both were very informative and she was thankful for the opportunity to be able to attend both.

Mr. Mefleh stated that he was very proud of the wonderful work crews had done on some recent outages. He expressed his gratitude to all crews and thanked them for their timely restoration of services.

Mayor Ramey introduced Rebecca Grubbs of the Oconee Chamber of Commerce and informed everyone in attendance that she had some other Chamber Representatives are now in City Hall during the week. He also stated that he would like to see Council adopt the MASC Civility Pledge. Mayor Ramey also informed Council that the OJRSA had voted to change the by-laws to allow any City employee to serve on the Board.

Mr. Bronson stated to Council that in review of the minutes from the OJRSA, the City should have been notified of the change but did not. He stated that the City should notify the Board of whether or not they support the by-law change. Council agreed for Mr. Bronson to draft a letter to the OJRSA board stating the City's approval of the change in the by-laws.

Mayor Ramey thanked crews for their swift response and quick repairs to the recent raw water pump change out incident.

### **New Business**

1. Discuss First Reading of ORDINANCE NO. 2022-09-13-01- AUTHORIZING AN EQUIPMENT LEASE PURCHASE AGREEMENT IN THE AMOUNT OF NOT EXCEEDING \$415,000 BETWEEN THE CITY OF WESTMINSTER, SOUTH CAROLINA, AND TRUIST BANK, A NORTH CAROLINA BANKING CORPORATION, TO DEFRAY THE COST OF ACQUIRING CERTAIN EQUIPMENT; AND OTHER MATTERS RELATING THERETO.

Mr. Bronson reminded Council that the current FY 22/23 Budget included the equipment listed in this Ordinance. He informed Council that they must authorize the financing with the bank by Ordinance, so that the vehicles can be purchased.

Upon a motion by Mrs. Reese and seconded by Mr. Mefleh, the motion to ***approve first reading of Ordinance No. 2022-09-13-01- authorizing an equipment lease purchase agreement in the amount of not exceeding \$415,000 between the City of Westminster, South Carolina, and Truist Bank,***

August 9, 2022

***a North Carolina banking corporation, to defray the cost of acquiring certain equipment; and other matters relating thereto*** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh	Second	Yes
Powell		Yes
Reese	Motion	Yes
Dunn		Yes
Snipes		Yes

2. First Reading of ORDINANCE NO. 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.

Mr. Bronson reminded Council that the current FY 22/23 Budget included the equipment listed in this Ordinance. He informed Council that they must authorize the financing with the Community First National Bank by Ordinance in order to purchase the equipment.

Upon a motion by Mr. Mefleh and seconded by Mrs. Reese, the motion to ***approve first reading of Ordinance No. 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*** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh	Motion	Yes
Powell		Yes
Reese	Second	Yes
Dunn		Yes
Snipes		Yes

3. First Reading ORDINANCE NO. 2022-09-13-03, AN ORDINANCE AMENDING THE CITY OF WESTMINSTER'S SCHEDULE OF FEES, REFERRED TO AS THE CLERKS RECORD, TO INCORPORATE BAKFLOW TESTING FEES



Mr. Bronson informed Council that DHEC requires sewer lines to have backflow devices on customer sewer lines and requires periodic testing and proof of those tests to be maintained by the City. He informed Council that City staff recently became certified to perform the required tests on the backflow devices. Mr. Bronson stated to Council that customers could use independent certified contractors to perform the tests, but that if Council agrees to the adoption of the fee schedule in the Ordinance, then customers would have an additional choice.

The fees requested are:

*¾ -1" Residential \$110.00*

*2"-4" \$120.00*

*6"-18" \$150.00*

*Pits that Require Confined Space entry \$120.00 plus testing cost for size of backflow*

*Average Cost for a plumber:*

*¾-1" \$60-\$150*

*2"-4" \$70-\$160*

*6"-18" \$80-\$200*

*Confined Space \$100-\$140*

Mr. Leigh Baker added that staff notifies customers of the due date of the backflow test and his suggestion is that if the customer does not comply with the due date, then City staff performs the test and charges the customer the set fee so that the City stays in compliance with the DHEC requirements.

Upon a motion by Mr. Powell and seconded by Mrs. Reese the motion **to approve the first Reading of Ordinance 2022-09-13-03 – An Ordinance amending the City of Westminster Schedule of Fees, referred to as the Clerks Record, to incorporate Backflow Testing Fees and that the fees be as follows**, passed unanimously.

**¾-1" -\$150**

**2"-4" -\$160**

**6"-18" -\$200**

**Confined Space -\$140**

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh		Yes
Powell	Motion	Yes
Reese	Second	Yes
Dunn		Yes
Snipes		Yes

4. First Reading ORDINANCE NO. ORDINANCE #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.

Mr. Bronson informed Council that City staff and Blue Ridge Electric have developed a Pole Attachment License Agreement that will allow Blue Ridge Electric to attach fiber optic lines attached to City poles.

Upon a motion by Mrs. Reese and seconded by Mr. Mefleh the motion ***to approve first reading of Ordinance 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*** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh	Second	Yes
Powell		Yes
Reese	Motion	Yes
Dunn		Yes
Snipes		Yes

5. First Reading ORDINANCE NO. 2022-09-13-05, AN ORDINANCE AMENDING THE CITY OF WESTMINSTER'S BUDGET ORDINANCE, AN ORDINANCE MAKING APPROPRIATIONS FOR CERTAIN EXPENSES, CAPITAL IMPROVEMENTS AND INDEBTEDNESS OF THE CITY OF WESTMINSTER, SOUTH CAROLINA FOR THE FISCAL YEAR BEGINNING JULY 1, 2022 AND ENDING JUNE 30, 2023

Mr. Bronson reminded Council that at the June 14<sup>th</sup> Council Meeting, Council consented to the utilization of unused Police Department salary funds to provide salary increases to Police Officers in order to incentivize Officer retention and recruitment. He stated to Council that at the same time, Council consented to utilize uncommitted funds from the Police Department salary line item to provide for increases to Fire Department firefighters. Mr. Bronson informed Council the Ordinance is to move \$94,000 from the Police Department salary line item to the Fire Department salary line item.

Upon a motion by Mr. Dunn and seconded by Mr. Mefleh, the motion ***to approve first reading of Ordinance No. 2022-09-13-05, An Ordinance amending the City of Westminster's Budget Ordinance, an Ordinance making appropriations for certain expenses, capital improvements and indebtedness of the City of Westminster, South Carolina for the fiscal year beginning July 1, 2022 and ending June 30, 2023*** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh	Second	Yes
Powell		Yes
Reese		Yes
Dunn	Motion	Yes
Snipes		Yes

6. Consideration of RESOLUTION NO. 08-09-2022-01, A RESOLUTION AUTHORIZING THE CITY OF WESTMINSTER TO PROVIDE FOR COST OVERRUNS FOR THE SOUTH CAROLINA INFRASTRUCTURE INVESTMENT PROGRAM; AND OTHER MATTERS RELATED THERETO

Mr. Bronson informed Council that this Resolution was at the request of staff and City Engineer Troy Rosier for application for South Carolina Infrastructure Investment Program Grants for water and/or sewer capital improvement projects. He added that with current economic inflation conditions, having the City commit to covering any cost differences would make the grant application stronger.

Upon a motion by Mr. Dunn and seconded by Mr. Mefleh the motion ***to approve Resolution No. 08-09-2022-01, A Resolution authorizing the City of Westminster to provide for cost overruns for the South Carolina Infrastructure Investment Program and other matters related thereto*** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh	Second	Yes
Powell		Yes
Reese		Yes
Dunn	Motion	Yes
Snipes		Yes

7. Consideration of RESOLUTION NO. 08-09-2022-02, A RESOLUTION AFFIRMING THE CITY OF WESTMINSTER'S COMMITMENT TO INCREASING EFFICIENCIES, IMPROVING PLANNING AND MANAGEMENT OF ASSETS AND LOWERING COST OF INFRASTRUCTURE INSTALLATION TO PROVIDE FOR A DIG ONCE POLICY

Mr. Bronson informed Council that a Dig Once policy is a proactive means to increase efficiencies, improve planning and management of assets, and lower costs. He added that a Dig Once policy would minimize disputes with other utility

or service providers, and reduce disruption in services. Mr. Bronson also added that this policy would enhance Westminster's competitiveness in its grant requests for SCIIP funds.

Upon a motion by Mrs. Reese and seconded by Mr. Mefleh, the motion **to approve Resolution No. 08-09-2022-02, a Resolution affirming the City of Westminster's Commitment to Increasing Efficiencies, Improving Planning and Management of assets and Lowering Cost of Infrastructure Installation to Provide For a Dig Once Policy** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh	Second	Yes
Powell		Yes
Reese	Motion	Yes
Dunn		Yes
Snipes		Yes

#### 8. Authorization to Purchase Equipment

In the FY2022-23 Budget, there are funds to purchase various equipment for City departments as described below.

- a. Capital Projects (Utilities) rock hammer and trailer for mini-x     \$30,000  
       \$8,980 for a rock hammer from Bennett Equipment of Westminster  
       \$11,860 for a drop deck trailer from Bennett Equipment of Westminster

Upon a motion by Mr. Mefleh and seconded by Mrs. Reese the motion **to purchase a rock hammer for \$8,980 from Bennett Equipment and a drop deck trailer for \$11,860 from Bennett Equipment** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh	Motion	Yes
Powell		Yes
Reese	Second	Yes
Dunn		Yes
Snipes		Yes

- b. Capital Projects (Utilities) water service truck     \$80,000  
       \$84,948.00 for a 2022 Ford Truck F450 from Ed Murdock

*\*There is \$9,160 unused funds from the rock hammer and trailer purchases to cover the overage of the water service truck\**

Upon a motion by Mr. Mefleh and seconded by Mr. Dunn, the motion **to purchase a 2022 Ford Truck F450 for \$84,948 from Ed Murdock** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh	Motion	Yes
Powell		Yes
Reese		Yes
Dunn	Second	Yes
Snipes		Yes

- c. Non-departmental account Fire Marshal vehicle \$45,000  
 \$45,998 for 2023 Chevrolet Tahoe 5W4 Special Services from Love Chevrolet  
*\*There are unused funds from the two police cruisers to cover the overage of the Fire Marshal vehicle\**

Upon a motion by Mr. Dunn and seconded by Mrs. Reese, the motion **to purchase a 2023 Chevrolet Tahoe 5W4 Special Services 4x4 for \$45,998** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh		Yes
Powell		Yes
Reese	Second	Yes
Dunn	Motion	Yes
Snipes		Yes

- d. Non-departmental account Police Cruisers (2) \$90,000  
 \$72,864 for two 2022 Chevrolet Tahoe PPV Pursuit 2WD from Love Chevrolet

Upon a motion by Mrs. Reese and seconded by Mr. Mefleh, the motion **to purchase two 2022 Chevrolet Tahoe PPV Pursuit 2WD from Love Chevrolet** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh	Second	Yes
Powell		Yes
Reese	Motion	Yes
Dunn		Yes
Snipes		Yes

- e. Non-departmental account Fire \$164,406  
 \$164,406 for twenty (20) MSA G1 SCBA's, forty-two (42) cylinders, two (2) RIT packs and related equipment from SAFE Industries

Upon a motion by Mr. Dunn and seconded by Mr. Mefleh, the motion ***to purchase twenty MSA G1 SBA's, forty-two cylinders, two RIT packs and related equipment from Safe Industries*** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh	Second	Yes
Powell		Yes
Reese		Yes
Dunn	Motion	Yes
Snipes		Yes

9. Consider authorization for City stage use outside the City limits for Hike for Hope event on September 24, 2022 at Blue Ridge Electric Cooperative.

Mr. Bronson reminded Council that there is a policy in place governing its use for events outside City Limits. He added that the Hike for Hope event is outside City Limits so Council approval is necessary. Mr. Bronson also added that there might be a conflict with the date in question since Music on Main may have already requested the stage for use.

Upon a motion by Mrs. Reese and seconded by Mr. Dunn, the motion ***to approve the request of Hike for Hope for use of the stage on September 24, 2022 if there is not a pre-existing conflict with Music on Main*** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh		Yes
Powell		Yes
Reese	Motion	Yes

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Dunn	Second	Yes
Snipes		Yes

### **Routine Business**

#### 1. Approval of the June 16, 2022 Regular Meeting Minutes

Upon a motion by Mr. Dunn and seconded by Mrs. Snipes, the motion to ***approve the June 16, 2022 Regular Meeting Minutes*** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh		Yes
Powell		Yes
Reese		Yes
Dunn	Motion	Yes
Snipes	Second	Yes

#### 2. Comments from the Utility Director

Mr. Baker informed Council that crews have put in over 120 poles since March 2021. He stated that crews had been smoking sewer lines. Mr. Baker also stated that solid waste crews are working on a new numbering system for garbage cans. He also informed Council that both water pumps have now been replaced. He added that there was some challenges and issues with the replacement process, but that all is working, as it should be.

Mr. Baker informed Council that the Hall Road water line project was scheduled to begin in about a week or two. He also added that the ball fields at Simpson Street were coming along well and that poles had been set and that hopefully by September they would be irrigated and seeded.

#### 3. Comments from City Administrator

Mr. Bronson informed Council that the Simpson Street Ball Field Contractor had recently broke a utility pole causing outages. He thanked crews for working through extreme heat conditions to restore power and thanked them for their compassion towards citizens to try to make restorations as quick as possible.

Mr. Bronson informed Council that the second reading of the Pioneer water line transfer was on hold due to some things in the contract needing to be refined.

Mr. Bronson informed Council that the CDBG Anderson Park Grant was coming along well. He stated that ACOG will be gathering public input and that the pre application is due next week. He added that once the pre application is received and reviewed, it will be determined if a full application will be requested. Mr. Bronson also informed Council that the SCIIP/RIA application process was

moving along well. He stated there is potentially \$5.6 million and the City would need \$850,000, which could be split between having \$350,000 from capital funds accounts and receiving the balance from RIA. Mr. Bronson also added that the Depot would be pressure washed beginning August 15<sup>th</sup>.

### **Executive Session**

Upon a motion by Mr. Mefleh and seconded by Mr. Dunn, the motion ***to enter into executive session for the purpose of a discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim and a discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body pursuant to S.C. Code Ann. 34-4-70 (1) and (2)***

- (a) ***Oconee Joint Regional Sewer Authority –***
1. ***Discuss potential contractual matter(s)***
  2. ***Discuss potential litigation***

Upon a motion by Mr. Mefleh and seconded by Mrs. Reese the motion to ***exit executive session*** passed unanimously.

### **Adjourn**

Upon a motion by Mayor Ramey and seconded by Mrs. Reese, the motion ***to adjourn the meeting at 8:30 pm*** passed unanimously.

(Minutes submitted by Rebecca Overton)

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Mayor Brian Ramey

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Date



**MINUTES  
WESTMINSTER CITY COUNCIL  
Called Meeting  
Tuesday, August 16, 2022 4:00 pm**

The City Council of the City of Westminster met in a called meeting on Tuesday August 16, 2022 at 4:00pm at the Westminster Depot with Mayor Brian Ramey presiding. Those in attendance were:

Brian Ramey	Dale Glymph	Daby Snipes
Jimmy Powell	Audrey Reese	

City Administrator, Kevin Bronson  
City Clerk, Rebecca Overton  
Members of the public and press

*Notice of the meeting and the agenda was posted on a window at the Depot and at westminstersc.org twenty-four hours prior to the meeting and all persons, organizations and local media requesting notification and the agenda were notified by email.*

**Call to Order**

Mayor Ramey called the meeting to order at 6:00 pm.

**Invocation and Pledge of Allegiance**

Mrs. Audrey Reese led the Council in the invocation and the pledge.

**Certification of Quorum**

Rebecca Overton certified a quorum.

**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.

Mr. Bronson reminded Council that the current FY 22/23 Budget included the equipment listed in this Ordinance. He informed Council that they must authorize the financing with the Community First National Bank by Ordinance in order to purchase the equipment.

August 16, 2022

Upon a motion by Mrs. Reese and seconded by Mr. Powell, the motion to ***approve second reading of Ordinance No. 2022-08-16-01 – 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*** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh		Absent
Powell	Second	Yes
Reese	Motion	Yes
Dunn		Absent
Snipes		Yes

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.

Mr. Bronson informed Council that City staff and Blue Ridge Electric have developed a Pole Attachment License Agreement that will allow Blue Ridge Electric to attach fiber optic lines to City poles.

Upon a motion by Mrs. Snipes and seconded by Mrs. Reese the motion ***to approve second reading of Ordinance 2022-08-16-02 – 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*** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Mefleh		Absent
Powell		Yes
Reese	Second	Yes
Dunn		Absent
Snipes	Motion	Yes

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.

Mr. Bronson informed Council that Attorney Lawrence Flynn was present to discuss consideration of an economic development ordinance.

Mr. Flynn went over various incentives an economic development ordinance could offer. He advised Council on different types of incentives and some of the eligibility criteria that would be in such an ordinance.

Council, along with Mr. Flynn, reviewed and discussed the draft ordinance that was available and noted some changes and asked for an updated version to reflect the desires of Council.

There was no action taken.

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

Mr. Bronson addressed Council for input for additions to the guidelines that of the HTAX Grant application process. He stated to Council that he felt like there was room to improve the process of application and receipt of monies awarded. Mr. Bronson explained to Council that there needs to be some accountability from the applicants and suggested that the HTAX Grant awards become a reimbursable program. He reminded Council that currently HTAX Grant recipients could request the awarded monies beginning July 1<sup>st</sup>, before the planned event.

Mayor Ramey added that he was concerned that they could be awarded the money and then the event be canceled for unforeseen reasons. Mr. Glymph added that he felt like it would hurt certain events, specifically Big Foot Festival if the program becomes reimbursable. Mrs. Snipes added that she is curious as to how other local areas distribute HTAX Grants.

Mr. Bronson added that changing the application process and procedures would make applicants accountable for providing the required information and then staff would review the application.

Council agreed for Mr. Bronson to draft a final version of the HTAX application and requirement process and incorporate modifications to it. This will be reviewed and presented at a later meeting.

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

Mr. Bronson informed Council that currently the City pays for police, fire and utility staff overtime for special events that occur within the City. He stated that event overtime cost is factored into the departmental budgets. Mr. Bronson added that adopting a Resolution would allow the City to establish a practice for the special event organizers to pay City staff overtime, thereby lessening the stain on the departmental budgets. He added that currently the budget includes about 25% in overtime costs related to special events.

Mr. Bronson added that the City could adopt a Resolution that could potentially set a flat fee for staff to provide services for the event or charge back the overtime costs to the event applicant. He added that the City could continue as it has been doing by absorbing the overtime costs with the departmental budgets, or build a fee schedule.

Mr. Glymph and Mrs. Reese stated that they would like to bring in the festival committees and get their feedback.

Mr. Bronson added that currently the City absorbs costs for event functions that other cities do pass on to the event applicants. He also stated that if it were the continued desire of Council to fund the Hall Street Park project, other HTAX expenses would need to go down. Mr. Bronson asked Council to consider all things that the City is currently absorbing costs on that could potentially be passed on, therefore somewhat reducing city costs. He added that any level of cost recovery would be beneficial to the City's budget.

No action was taken on this item.

### **Adjourn**

Upon a motion by Mayor Ramey and seconded by Mrs. Reese, the motion ***to adjourn the meeting at 6:15 pm*** passed unanimously.

(Minutes submitted by Rebecca Overton)

---

Mayor Brian Ramey

---

Date

August 16, 2022

**MINUTES  
WESTMINSTER CITY COUNCIL  
Called Meeting  
Thursday, August 25, 2022**

The City Council of the City of Westminster met in a called meeting on Thursday August 25, 2022 at 6:00 pm in the Conference Room at City Hall with Mayor Brian Ramey presiding. Those in attendance were:

Brian Ramey	Dale Glymph	Adam Dunn	Daby Snipes
Jimmy Powell	Audrey Reese		

City Administrator, Kevin Bronson  
City Clerk, Rebecca Overton  
Utility Director, Leigh Baker  
Members of the press

*Notice of the meeting and the agenda was posted on the door at City Hall and at westminstersc.org twenty-four hours prior to the meeting and all persons, organizations and local media requesting notification and the agenda were notified by email.*

**Call to Order**

Mayor Ramey called the meeting to order at 6:100pm.

**Invocation and Pledge of Allegiance**

Mrs. Audrey Reese led the Council in the invocation and the pledge.

**Certification of Quorum**

Rebecca Overton certified a quorum.

**Executive Session**

Executive Session for the purpose of section 30-4-70 (a) (1) a discussion of a personnel matter(s); employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body.

- a. *Personnel Matters related to the potential Staff Organizational Structure of the City Organization*
- b. *City Administrator*

Upon a motion by Mrs. Reese and seconded by Mr. Dunn, the motion **to enter into executive session** passed unanimously.

August 25, 2022

Upon a motion by Mrs. Reese and seconded by Mrs. Snipes, the motion **to exit executive session** passed unanimously.

Upon a motion by Mrs. Reese and seconded by Mr. Dunn, the motion **to reset the salary of the City Administrator to \$120,000 with a vehicle allowance of \$800 per month due to the added responsibilities that he will incur due to the Utility Director's departure** passed unanimously.

Member	Motion	Vote
Ramey		Yes
Glymph		Yes
Powell		Yes
Reese	Motion	Yes
Dunn	Second	Yes
Snipes		Yes

### **Adjourn**

Upon a motion by Mayor Ramey and seconded by Mrs. Reese, the motion **to adjourn the meeting at 5:24 pm** passed unanimously.

(Minutes submitted by Rebecca Overton)

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Mayor Brian Ramey

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Date

August 25, 2022