



CITY OF BEAUFORT
1911 BOUNDARY STREET
BEAUFORT MUNICIPAL COMPLEX
BEAUFORT, SOUTH CAROLINA 29902
(843) 525-7070
CITY COUNCIL REGULAR MEETING AGENDA
June 9, 2020

STATEMENT OF MEDIA NOTIFICATION

"In accordance with South Carolina Code of Laws, 1976, Section 30-4-80(d), as amended, all local media was duly notified of the time, date, place and agenda of this meeting."

REGULAR MEETING - Electronic Meeting - 7:00 PM

Please note, this meeting will be conducted electronically via Zoom and broadcasted via livestream on Facebook. You can view the meeting live via Facebook at the City's page City Beaufort SC.

I. CALL TO ORDER

- A. Billy Keyserling, Mayor

II. INVOCATION AND PLEDGE OF ALLEGIANCE

- A. Mike McFee, Mayor Pro Tem

III. PUBLIC COMMENT

IV. PUBLIC HEARING

- A. Program Performance and Accomplishments (Closeout) - Greenlawn Neighborhood Revitalization Project
- B. Johnny Morrall Circle Drainage Project Application
- C. FY 2021 Budget

V. MINUTES

- A. Special Council Meeting April 6, 2020

VI. OLD BUSINESS

- A. Ordinance amending certain provisions of the Code of Ordinances of the City of Beaufort, South Carolina, to authorize meetings to be held by telephonic or other electronic means, and matters related thereto - 2nd Reading
- B. Ordinance annexing parcel R100 025 000 012B 0000 into the Corporate Limits of the City of Beaufort, South Carolina - 2nd Reading
- C. Ordinance amending the City of Beaufort's Zoning Map to include parcel R100 025 000 012B 0000 to be zoned as RMX - 2nd Reading

VII. NEW BUSINESS

- A. Resolution - Johnny Morrall Circle Drainage Project

- B. Resolution asking for the community to join with them in recognizing the deep historical systematic oppression of black people in our city and worldwide, as we stand for solidarity and equality for all as we move forward
- C. Request for Street Closure for Father's Day March for Justice on Sunday, June 21, 2020 at 4pm
- D. Ordinance amending Chapter 10 Part 7 Section 10.7.3 of the Beaufort Code concerning membership to the Beaufort Historic District Review Board (Task Force Recommendations) - 1st Reading
- E. Ordinance setting election, related dates, and filing fee for the Mayor and Two (2) members of City Council Pursuant to sections 1-8001 through 1-8006 of the City of Beaufort Code of Ordinances - 1st Reading
- F. FY 2021 Budget Ordinance - 1st Reading
- G. Ordinance Approving Stormwater Intergovernmental Agreement (IGA) - 1st Reading
- H. 2020 Master Bond Ordinance providing for the issuance and sale of Stormwater System Revenue Bonds of the City of Beaufort, South Carolina; and other matters relating thereto - 1st Reading
- I. 2020 Series Ordinance providing for the issuance and sale of Stormwater System Improvements and Refunding Revenue Bonds of the City of Beaufort, South Carolina in the aggregate principal amount of not exceeding eight million dollars (\$8,000,000); and other matters relating thereto - 1st Reading
- J. Authorization to allow the City Manager to Enter into Contract on Playground Equipment
- K. Authorization to allow City Manager to Execute Contract for Mossy Oaks Basin 1
- L. Authorization to allow City Manager to Enter into Construction Contract related to Mossy Oaks Basin 2 pending Department of Commerce approval

VIII.REPORTS

- City Manager's Report
- Mayor Report
- Reports by Council Members

IX. ADJOURN



CITY OF BEAUFORT

DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

TO: CITY COUNCIL **DATE:** 6/3/2020

FROM: Barbara Johnson, Community and Economic Specialist - Lowcounty Council of Governments (LCOG)

AGENDA ITEM TITLE: Program Performance and Accomplishments (Closeout) - Greenlawn Neighborhood Revitalization Project

MEETING DATE: 6/9/2020

DEPARTMENT: City Managers Office

BACKGROUND INFORMATION:

PLACED ON AGENDA FOR:

REMARKS:

ATTACHMENTS:

Description	Type	Upload Date
Public Notice	Backup Material	6/3/2020

PUBLIC NOTICE
City of Beaufort
Community Development Block Grant
Public Hearing Concerning Program Performance
and Accomplishments

NOTICE IS HEREBY GIVEN that on June 9, 2020 at 7:05 p.m. the City of Beaufort will hold a virtual public hearing to review program performance and accomplishments conducted under a Community Development Block Grant (CDBG) project known as CDBG Project # 4-NR-16-001 City of Beaufort Greenlawn Neighborhood Revitalization Project, wherein the following activities were undertaken: The City of Beaufort expended \$500,000 in CDBG funds and \$2,233,487 in local funds to install sidewalk pathways, street paving, curb & gutter, ancillary drainage, parking and security lighting in accordance with the City of Beaufort's Civic Master Plan. Improvements were made along Greenlawn Drive in the City of Beaufort. As proposed, this project benefitted approximately 233 persons, of which 90% are considered low-to-moderate income.

The City of Beaufort will also review its Citizen Participation Plan to allow the use of virtual meetings in times of emergency. Due to Covid-19 concerns, a phone/video conference virtual application public hearing will be held for the safety of the public. This public hearing will be conducted electronically via Zoom and broadcasted via livestream on Facebook. You can view the meeting live via Facebook at the City's page (www.facebook.com/CityBeaufortSC/).

This public hearing and the matters to be discussed are subject to the provisions of the City of Beaufort's Citizen Participation Plan, developed in anticipation of participation in the State of South Carolina's Community Development Block Grant (CDBG) Program, providing for the participation of the citizens of the City of Beaufort in the planning and implementation of community and economic development projects which will involve CDBG funds. The Citizen Participation Plan is available for review at 1911 Boundary Street, Beaufort, SC, between the hours of 9:00 a.m. – 5:00 p.m., Monday through Friday. Persons with questions or comments concerning the public hearing or the Citizen Participation Plan may contact Barbara A. Johnson, Lowcountry Council of Governments, PO Box 98, Yemassee, SC 29945, (843) 726-5536.

The City of Beaufort does not discriminate on the basis of age, color, religion, sex, national origin, familial status or disability in the admission or access to, or treatment or employment in its federally assisted programs or activities. Ivette Burgess, 1911 Boundary Street, Beaufort, SC (843) 525-7024, has been designated to coordinate compliance with the nondiscrimination requirements contained in the U. S. Department of Housing and Urban Development's regulations.

Note: Assistance will be provided to accommodate the special needs of disabled and/or LEP persons, upon request.

Nota: Se proporcionará asistencia para acomodar las necesidades especiales de las personas con discapacidad y / o LEP, previa solicitud.



CITY OF BEAUFORT

DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

TO: CITY COUNCIL **DATE:** 6/3/2020
FROM: Barbara Johnson, Community & Economic Development Specialist - Lowcountry Council of Governments (LCO)
AGENDA ITEM TITLE: Johnny Morrall Circle Drainage Project Application
MEETING DATE: 6/9/2020
DEPARTMENT: City Managers Office

BACKGROUND INFORMATION:

PLACED ON AGENDA FOR:

REMARKS:

ATTACHMENTS:

Description	Type	Upload Date
Public Notice	Backup Material	6/3/2020

Notice of Public Hearing Concerning Application
City of Beaufort
Johnny Morrall Circle

NOTICE IS HEREBY GIVEN that on Tuesday, June 9, 2020, at 7:15PM in the City of Beaufort will hold a virtual public hearing concerning an application to be submitted to South Carolina Department of Commerce, Grants Administration on or about June 15, 2020, for a Community Development Block Grant. The City of Beaufort proposes to use \$1,300,000 to make drainage improvements in the Johnny Morrall Circle neighborhood. The project area borders Johnny Morrall Circle, Ribaut Road, and Oyster Cove Road. This project will benefit approximately 320 persons of which 51.6% are LMI.

The City of Beaufort will also review its Citizen Participation Plan to allow the use of virtual meetings in times of emergency. Due to Covid-19 concerns, a phone/video conference virtual application public hearing will be held for the safety of the public. This public hearing will be conducted electronically via Zoom and broadcasted via livestream on Facebook. You can view the meeting live via Facebook at the City's page (www.facebook.com/CityBeaufortSC/).

This public hearing and the matters to be discussed are subject to the provisions of the City's Citizen Participation Plan, developed in anticipation of participation in the State of South Carolina's Community Development Block Grant (CDBG) Program, providing for the participation of the citizens of the City of Beaufort in the planning and implementation of community and economic development projects which will involve CDBG funds. The Citizen Participation Plan is available for review at Beaufort City Hall, Monday through Friday from 8:00am – 5:00pm., Monday through Friday. Persons with questions or comments concerning the public hearing or the Citizen Participation Plan may contact Barbara Johnson, Lowcountry Council of Governments, Post Office Box 98, Yemassee, SC 29945, (843) 473-3951.

The City of Beaufort does not discriminate on the basis of age, color, religion, sex, national origin, familial status or disability in the admission or access to, or treatment or employment in its federally assisted programs or activities. Ivette Burgess, Clerk to Council, 843-525-7018, has been designated to coordinate compliance with the nondiscrimination requirements contained in the U. S. Department of Housing and Urban Development's regulations and implementing Section 5002 (24 CFR Part 8, dated June 2, 1988).

Note: Assistance will be provided to accommodate the special needs of disabled and/or LEP persons, upon request.

Nota: Se proporcionará asistencia para acomodar las necesidades especiales de las personas con discapacidad y/o LEP, previa solicitud.



CITY OF BEAUFORT

DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

TO: CITY COUNCIL **DATE:** 6/4/2020
FROM: Kathy Todd
AGENDA ITEM
TITLE: FY 2021 Budget
MEETING
DATE: 6/9/2020
DEPARTMENT: Finance

BACKGROUND INFORMATION:

PLACED ON AGENDA FOR: Discussion

REMARKS:



Special Council Meeting Meeting Minutes – Electronic Meeting

April 6, 2020

I. CALL TO ORDER

12:00PM

Mayor, Billy Keyserling - All members of Council in attendance (Mike McFee, Nan Sutton, Phil Cromer, Stephen Murray and Mayor Keyserling).

II. INVOCATION

A. Mike McFee, Mayor Pro Tem

III. NEW BUSINESS

- A. Emergency Ordinance of the City of Beaufort, South Carolina - Ordinance directing Citizens and Residents within the City of Beaufort to Shelter in Place during the COVID-19 Emergency Declaration: and matters related thereto; and severability.

Motion to approve made by Sutton and seconded by Murray.

City Manager, Bill Prokop, gave an overview of the proposed ordinance for approval, stating that the ordinance is asking our citizens to stay at home.

Councilman Murray stated that over the last 48 hours he has talked to a lot of residents and business owners about Shelter in Place and what Shelter in Place really means. South Carolina for all intents and purposes, is in a shelter in place environment currently, to include some restrictions that other states do not have in place. He continued to encourage citizens to stay home and read the details of the ordinance being proposed. This ordinance is not to supersede what the Governor has already put in place, but it will go hand in hand with his orders and any other orders the Governor may bring forward.

Mayor Pro Tem, Mike McFee, read the proposed Ordinance.

Councilman Cromer echoed Councilman Murray's sentiments. He stated that this is a unique situation we find ourselves in and I am very pleased so far with the vast majority of our citizens trying to shelter in place. This ordinance will help halt the spread of COVID-19.

Councilwoman Sutton stated that she is ready to vote on it and stop talking about it. We just need to do this, its unprecedented and it is about saving lives.

Mayor Pro Tem, Mike McFee said that the elements of this ordinance are encouraging all of us to use common sense and recognize that the CDC (Center for Disease Control) and SCDHEC (South Carolina Department of Health and Environmental Control) are giving us the best information available out there.

Mayor Keyserling stated that the City's will have a frequently asked questions document published on the City's website regarding COVID-19. He thanked the many in Beaufort that have been doing a good job and reiterated the purpose of the ordinance being proposed, which is to continue to stay home. The Mayor wanted to let citizens know that the goal is not to be heavy handed, but rather hold hands and tighten the circle where we all work together to do our best to flatten this thing out.

Motion to approve was unanimous.

IV. ADJOURN

12:34PM

Disclaimer: All City Council Worksession and Regular Meeting minutes are recorded. Live stream can be found on the City's website at www.cityofbeaufort.org (Agenda section). Audio recordings are available upon request by contacting the City Clerk, Ivette Burgess at 843-525-7018 or by email at iburgess@cityofbeaufort.org.



CITY OF BEAUFORT

DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

TO: CITY COUNCIL **DATE:** 6/3/2020
FROM: William Prokop, City Manager
AGENDA ITEM TITLE: Ordinance amending certain provisions of the Code of Ordinances of the City of Beaufort, South Carolina, to authorize meetings to be held by telephonic or other electronic means, and matters related thereto - 2nd Reading
MEETING DATE: 6/9/2020
DEPARTMENT: City Managers Office

BACKGROUND INFORMATION:

PLACED ON AGENDA FOR: Action

REMARKS:

1st Reading was held on May 26, 2020

ATTACHMENTS:

Description	Type	Upload Date
Ordinance	Cover Memo	6/3/2020

ORDINANCE

AN ORDINANCE AMENDING CERTAIN PROVISIONS OF THE CODE OF ORDINANCES OF THE CITY OF BEAUFORT, SOUTH CAROLINA, TO AUTHORIZE MEETINGS TO BE HELD BY TELEPHONIC OR OTHER ELECTRONIC MEANS, AND MATTERS RELATED THERETO.

WHEREAS, the City of Beaufort, South Carolina (the “City”) is a municipal corporation of the State of South Carolina (the “State”) located in Beaufort County, South Carolina, and as such possesses all general powers granted by the Constitution and statutes of the State to such public entities;

WHEREAS, Section 5-7-160 of the Code of Laws of South Carolina 1976, as amended (the “S.C. Code”) provides that “[a] majority of the total membership of the council shall constitute a quorum for the purpose of transacting council business”;

WHEREAS, the Freedom of Information Act, which is codified at Title 30, Chapter 4 of the S.C. Code defines a meeting as “convening a quorum¹ of the constituent membership of the public body, whether corporal or by means of *electronic equipment*, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power” [emphasis added];

WHEREAS, in keeping with the provisions of the S.C. Code, Section 1-3003(a) of the City’s Code of Ordinances (the “City Code”) defines and describes the requirements for a “quorum” of City Council of the City, the governing body thereof (the “City Council”) and further defines and describes the rules of procedure for the meetings of the City Council;

WHEREAS, the City Council recently enacted an emergency ordinance on March 19, 2020 (the “Emergency Ordinance”), the provisions of which temporarily suspended certain procedural rules of the City Council in response to social-distancing guidelines and executive orders and allowing for electronic and telephonic meetings; and

WHEREAS, such telephonic and other electronic meetings have proven successful and effective under the Emergency Ordinance and in light of the current public safety considerations associated with 2019 novel coronavirus, and the potential for future public safety considerations, including those attendant to the adverse weather events that seasonally affect coastal cities, the City Council finds that great benefit may be realized from authorizing meeting by telephonic or other electronic means whenever necessary and convenient for carrying out the business of the City, to include certain boards and commissions associated with the City.

NOW, THEREFORE, BE IT ORDAINED by City Council, duly assembled, and by authority of the same, as follows:

SECTION 1. Amendment to Part 1, Chapter 3, Article A, Section 1-3003. Part 1, Chapter 3, Article A, Section 1-3003 of the City Code is hereby amended and restated as follows (underlining

¹ Quorum is further defined by Section 30-4-20(e) of the S.C. Code as “a simple majority of the constituent membership of the public body.”

shows added language for illustrative purposes only; ~~strike-through~~ shows removed language for illustrative purposes only):

Sec. 1-3003. – Quorum and rules of order.

- (a) Three (3) council members serving shall constitute a quorum for the conduct of business at any meeting. The mayor is considered as a council member for this purpose. The mayor or mayor pro tempore shall preside, except that in the absence of both, the members present shall elect a presiding member. A member present but disqualified from voting on a question by state law due to a conflict of interest shall not be counted for purposes of a quorum. Council members may attend any regular, special, or emergency meeting of council by telephonic or other electronic means, and shall be considered present for all purposes, if the meeting has been properly noticed, and all council members and members of the public can hear the public proceedings and be heard. Any number of council members, including all, may attend telephonically or by other electronic means. Council members in attendance by telephonic or other electronic means shall have all rights, including, but not limited to, the right to make motions, second motions, and discuss and vote on all matters under consideration by council.
- (b) Except as otherwise required by state law or this Code, all proceedings shall be governed by Robert's Rules of Order, Newly Revised 11th–~~10th~~–Edition (hereinafter “Robert's Rules”), and the mayor or other presiding member shall act as parliamentarian. Questions of order shall be decided by the mayor without debate, subject to appeal to the council. To the extent Robert’s Rules require a physical presence of the council for purposes of constituting a quorum, such requirement is waived so long as the council maintains a quorum under Section 1-3003(a) hereinabove. Further, to the extent Robert’s Rules or any other procedural rules, procedures or regulations conflict with any other provision of this Code, the provisions of the code shall be controlling in all instances.

SECTION 2. Amendment to Part 1, Chapter 3, Article A, Section 1-3005. Part 1, Chapter 3, Article A, Section 1-3005 of the City Code is hereby amended and restated as follows (underlining shows added language for illustrative purposes only; ~~strike-through~~ shows removed language for illustrative purposes only):

Sec. 1-3005. – Voting requirements.

- (a) All actions of council shall be by majority vote of members present (either physically or by telephonic or other electronic means) at a public meeting.
- (b) Every member of council present shall vote on every question except when required to refrain from voting by state law.

- (c) The vote on every question shall be by voice vote unless a roll call vote is requested by any member and the vote by name shall be recorded in the council minutes by the clerk. For any meeting of council where one or more members of council are participating electronically, all votes shall be made by roll call vote.
- (d) No member of council may leave the council chamber (or the electronic forum, as applicable) while in public session without permission of the presiding officer.
- (e) Any member of the council may, if he desires, have his reasons for voting for or against any measure recorded in the minutes.
- (f) Consistent with the provisions of the South Carolina Ethics Act, No member of council shall vote on any matter ~~question of a private nature,~~ in the event of which he is has a conflict of personally or pecuniarily interested, ~~in accordance with the South Carolina Ethics Act.~~

SECTION 3. Amendment to Part 1, Chapter 3, Article A, Section 1-3008. Part 1, Chapter 3, Article A, Section 1-3008 of the City Code is hereby amended and restated as follows (underlining shows added language for illustrative purposes only; ~~strike-through~~ shows removed language for illustrative purposes only):

Sec. 1-3008. – Appearance of citizens; public participation.

- (a) Subject to the terms of the applicable agenda for any meeting, ~~Any~~ citizen of the city shall be entitled to make an appearance (either in person or via electronic means) before the mayor and council at any ~~regular~~ meeting concerning any ~~and~~ city matter, with the exception of personnel matters.
- (b) With respect to any electronic or virtual meeting of council and subject to the terms of the applicable agenda for such meeting, members of the public may also participate electronically, as follows:
 - (1) *Public Comments for Electronic Meetings.* Individuals wishing to provide written comments for any public comment period may submit written comments to the clerk no later than one hour prior to any meeting of council, and the mayor shall read such comments aloud during the applicable public comment period. Individuals wishing to speak during the public comment period may sign up with the clerk no later than one hour prior to the scheduled time for the public hearing. The clerk shall contact those who wish to speak at the public comment period by phone, in the order the requests were received, to admit them to the public comment period.

- (2) Public Hearings for Electronic Meetings. Individuals wishing to provide written comments for any such public hearing may email comments to the clerk no later than one hour prior to the scheduled time for such public hearing, and the mayor shall read such comments aloud during the public hearing. Individuals wishing to speak at the public hearing shall sign up with the clerk no later than one hour prior to the scheduled time for the public hearing. The clerk shall contact those who wish to speak at the public hearing by phone, in the order the requests were received, to admit them to the public hearing.
- (3) Electronic public comment periods and public hearings shall otherwise be conducted in accordance with all other rules and procedures of council. Notices of public hearings shall include detailed instructions regarding the manner in which the public hearing shall be held.

SECTION 4. Amendment to Part 1, Chapter 9, Article C, Section 1-9024(c). Part 1, Chapter 9, Article C, Section 1-9024(c) of the City Code is hereby amended and restated as follows (underlining shows added language for illustrative purposes only):

Sec. 1-9024. – Officers, meetings, quorum, liability.

- (c) Quorum. A simple majority of commissioners serving at the time of any meeting shall constitute a quorum. Commissioners may attend any regular, special, or emergency meeting of the commission by telephonic or other electronic means, and shall be considered present for all purposes, if the meeting has been properly noticed, and all commission members and members of the public can hear the public proceedings and be heard. Any number of commissioners, including all, may attend telephonically or by other electronic means. Commissioners in attendance by telephonic or other electronic means shall have all rights, including, but not limited to, the right to make motions, second motions, and discuss and vote on all matters under consideration by the commission. All procedural rules of the commission shall be revised in order to permit and allow for electronic meetings.

SECTION 5. Amendment to Part 1, Chapter 9, Article C, Section 1-9034. Part 1, Chapter 9, Article C, Section 1-9034 of the City Code is hereby amended and restated as follows (underlining shows added language for illustrative purposes only):

Sec. 1-9034. – Operation.

The board shall choose its own officers, make its own rules and regulations, and keep journal/minutes of its proceedings. A simple majority of the members shall constitute a quorum for the transaction of business. Board members may attend any regular, special, or emergency meeting of the board by telephonic or other

electronic means, and shall be considered present for all purposes, if the meeting has been properly noticed, and all board members and members of the public can hear the public proceedings and be heard. Any number of board members, including all, may attend telephonically or by other electronic means. Board members in attendance by telephonic or other electronic means shall have all rights, including, but not limited to, the right to make motions, second motions, and discuss and vote on all matters under consideration by the board. All procedural rules of the board shall be revised in order to permit and allow for electronic meetings.

SECTION 6. Amendment to Part 3, Chapter 3, Section 3-3006. Part 3, Chapter 3, Section 3-3006 of the City Code is hereby amended as follows (underlining shows added language for illustrative purposes only; ~~strike through~~ shows removed language for illustrative purposes only):

Sec. 3-3006. – Operation.

The commission shall elect a chairperson and a vice-chairperson from its members who shall serve for one year or until reelected, or until a successor is elected. The commission shall make its own rules and regulations and keep minutes of its proceedings. A simple majority of the available ~~seated~~ members shall constitute a quorum for the transaction of business. All meetings of the commission shall be open to the public. Commission members may attend any regular, special, or emergency meeting of the commission by telephonic or other electronic means, and shall be considered present for all purposes, if the meeting has been properly noticed, and all commission members and members of the public can hear the public proceedings and be heard. Any number of commission members, including all, may attend telephonically or by other electronic means. Commissioners in attendance by telephonic or other electronic means shall have all rights, including, but not limited to, the right to make motions, second motions, and discuss and vote on all matters under consideration by the commission. All procedural rules of the commission shall be revised in order to permit and allow for electronic meetings.

SECTION 7. Amendment to Part 5, Chapter 1, Article A, Section 5-1007. Part 5, Chapter 1, Section 5-1007 of the City Code is hereby amended as follows (underlining shows added language for illustrative purposes only; ~~strike through~~ shows removed language for illustrative purposes only):

Sec. 5-1007. – Quorum; number of votes required for affirmative action.

A simple majority of the ~~seated~~ available members of the building board of appeals shall constitute a quorum. The concurring vote of three (3) members of the building board of appeals shall be necessary to decide in favor of the applicant on any matter brought before the board. No board member shall act in a case in which he has a personal interest. Board members may attend any regular, special, or emergency meeting of the board by telephonic or other electronic means, and shall be considered present for all purposes, if the meeting has been properly

noticed, and all board members and members of the public can hear the public proceedings and be heard. Any number of board members, including all, may attend telephonically or by other electronic means. Board members in attendance by telephonic or other electronic means shall have all rights, including, but not limited to, the right to make motions, second motions, and discuss and vote on all matters under consideration by the board. All procedural rules of the board shall be revised in order to permit and allow for electronic meetings.

SECTION 8. Addition to Part 5, Chapter 1, Article G, Section 5-1207. Part 5, Chapter 1, Article G, Section 5-1207 of the City Code is hereby amended by adding Section 5-1207(c) (underlining shows added language for illustrative purposes only):

Sec. 5-1207. – Public hearings and notification.

(c) Any public hearing hereunder may be held electronically under the procedures applicable to council for electronic public hearings in Section 1-3008(b), *mutatis mutandis*.

SECTION 9. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, is held or determined to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 10. Conflicting Ordinances. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 11. Effective Date. This Ordinance shall be effective upon second reading and enactment.

CITY OF BEAUFORT, SOUTH CAROLINA

BILLY KEYSERLING, MAYOR

(SEAL)

Attest:

IVETTE BURGESS, CITY CLERK

1st Reading: May 26, 2020
2nd Reading & Enactment: June 9, 2020

Reviewed by: _____
WILLIAM B. HARVEY, III, CITY ATTORNEY



CITY OF BEAUFORT

DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

TO: CITY COUNCIL **DATE:** 6/3/2020
FROM: David Prichard, Community and Economic Development Director
AGENDA ITEM Ordinance annexing parcel R100 025 000 012B 0000 into the Corporate Limits of the
TITLE: City of Beaufort, South Carolina - 2nd Reading
MEETING
DATE: 6/9/2020
DEPARTMENT: Community and Economic Development

BACKGROUND INFORMATION:

Public Hearing and First Reading held on May 26, 2020.

PLACED ON AGENDA FOR: Action

REMARKS:

ATTACHMENTS:

Description	Type	Upload Date
Ordinance	Backup Material	6/3/2020

ORDINANCE

ANNEXING PARCEL R100 025 000 012B 0000 INTO THE CORPORATE LIMITS OF THE
CITY OF BEAUFORT, SOUTH CAROLINA

WHEREAS, an annexation petition for a portion R100 025 000 012B 0000 located in Beaufort County has been presented to the City Council; and

WHEREAS, the property is within the Northern Regional Plan growth boundary; and

WHEREAS, the property is contiguous to the boundaries of the City of Beaufort, South Carolina; and

WHEREAS, the petition sets forth that this proposed annexation is requested pursuant to § 5-03-150 of the *Code of Laws of South Carolina, 1976*, as amended and contains the signatures of all freeholders of the property to be annexed; and

WHEREAS, the petition contains a description of the parcel of land to be annexed.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Beaufort, South Carolina, duly assembled and by authority of same, that the described area is annexed into the City of Beaufort, South Carolina:

The petitioning area to be annexed includes all that certain piece, parcels, or tracts of land, together with improvements thereon, situate, lying, and being in Beaufort County, South Carolina, as follows:

- Approximately 1.42 acres shown in Attachment A.

This ordinance shall become effective immediately upon adoption.

(SEAL)

Attest:

BILLY KEYSERLING, MAYOR

IVETTE BURGESS, CITY CLERK

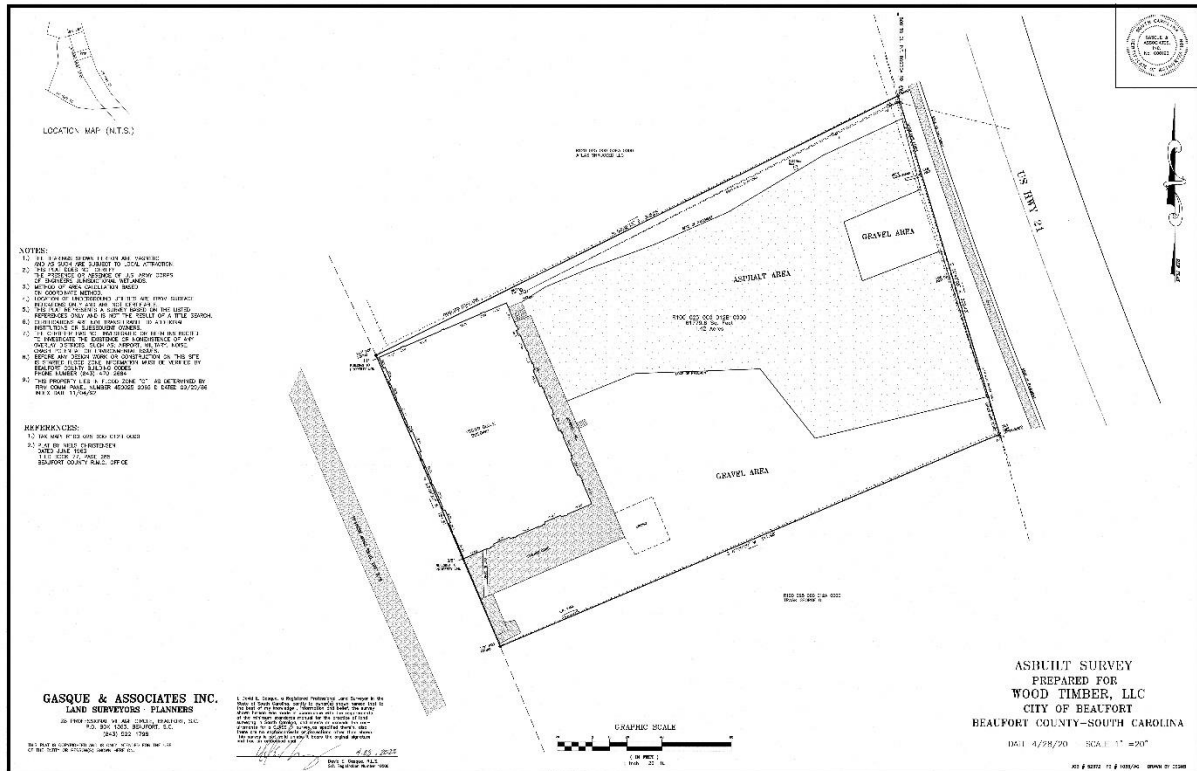
1st Reading

2nd Reading & Adoption

Reviewed by:

WILLIAM B. HARVEY, III, CITY ATTORNEY

Attachment "A"





CITY OF BEAUFORT

DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

TO: CITY COUNCIL **DATE:** 6/3/2020
FROM: David Prichard, Community and Economic Development Director
AGENDA ITEM Ordinance amending the City of Beaufort's Zoning Map to include parcel R100 025
TITLE: 000 012B 0000 to be zoned as RMX - 2nd Reading
MEETING
DATE: 6/9/2020
DEPARTMENT: Community and Economic Development

BACKGROUND INFORMATION:

Public Hearing and First reading was held on May 26, 2020

PLACED ON AGENDA FOR: Action

REMARKS:

ATTACHMENTS:

Description	Type	Upload Date
Ordinance	Backup Material	6/3/2020

ORDINANCE

AMENDING THE CITY OF BEAUFORT'S ZONING MAP TO INCLUDE PARCEL R100 025 000 012B 0000 TO BE ZONED AS RMX

WHEREAS, the State of South Carolina has conferred to the City of Beaufort the power to enact ordinances “in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it . . .” as set forth in *Code of Laws of South Carolina*, Section 5-7-20; and

WHEREAS, the City of Beaufort adopted the *Beaufort Code* by reference on June 27, 2017, as set forth in section 5-6001 of the *Code of Ordinances Beaufort, South Carolina*; and

WHEREAS, the amendment of the zoning map is “for the general purpose of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare” in accordance with *Code of Laws of South Carolina*, Section 6-29-710; and

WHEREAS, an annexation petition for a portion R100 025 000 012B 0000 located in Beaufort County has been presented to the City Council; and

WHEREAS, the zoning map amendment is compatible and in accordance with the vision and goals of the City of Beaufort; and

WHEREAS, this vision and these goals were established through a democratic process and with public input and public participation; and

WHEREAS, these goals were recorded in the form of a comprehensive plan for all to see and reference; and

WHEREAS, the comprehensive plan was created through the leadership of the planning commission, responsible for determining a specific plan for the future of the city; and

WHEREAS, the city council of the City of Beaufort adopted the comprehensive plan (and Civic Master Plan) by ordinance; and

WHEREAS, the change of zoning to RMX is consistent and compatible with adjacent zoning; and

WHEREAS, any future development of the property will be able to take advantage of existing infrastructure; and

WHEREAS, a public hearing before the Beaufort City Council was held regarding the proposed change to the ordinance on April 28, 2020, with notice of the hearing published in *The Beaufort Gazette* on March 31, 2020;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Beaufort, South

Carolina, duly assembled and by authority of same, pursuant to the power vested in the Council by Section 6-29-760, *Code of Laws of South Carolina, 1976*, that the zoning map of the City of Beaufort be amended by establishing the zoning designation of RMX on the annexed parcel of R100 025 000 012B 0000.

(SEAL)

Attest:

BILLY KEYSERLING, MAYOR

IVETTE BURGESS, CITY CLERK

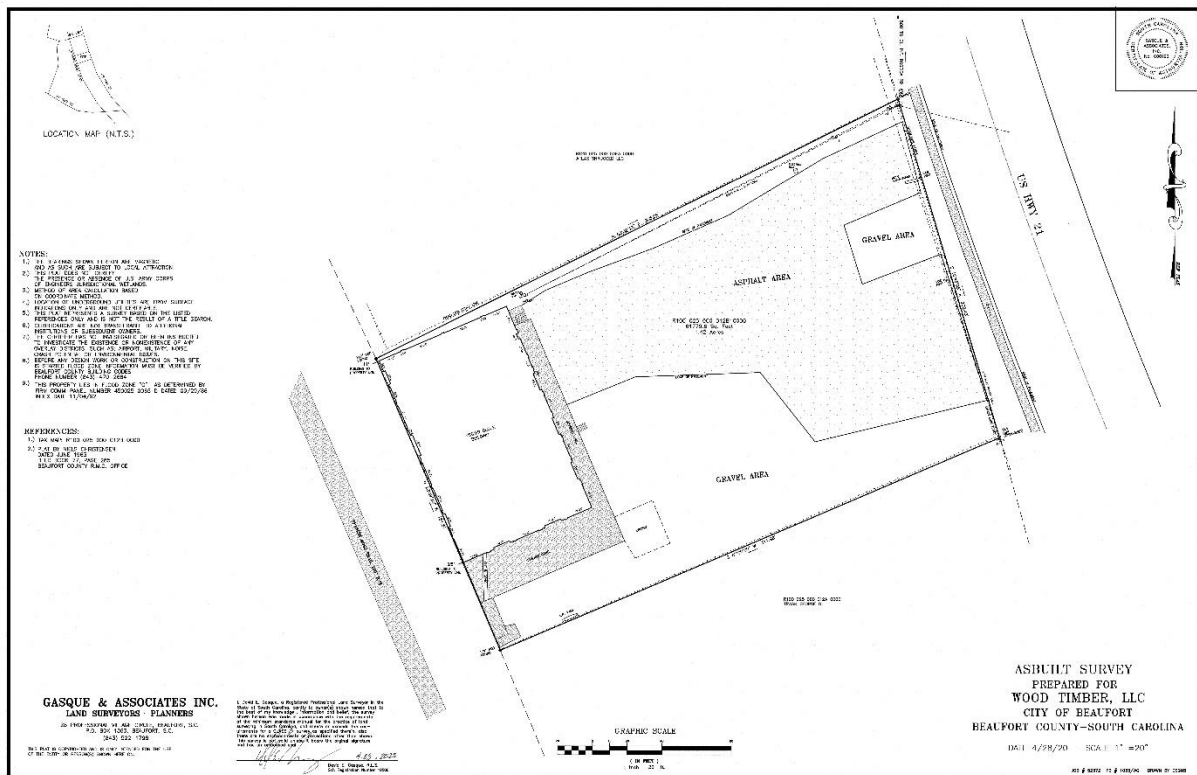
1st Reading

2nd Reading & Adoption

Reviewed by:

WILLIAM B. HARVEY, III, CITY ATTORNEY

1





CITY OF BEAUFORT

DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

TO: CITY COUNCIL **DATE:** 6/3/2020
FROM:
AGENDA ITEM
TITLE: Resolution - Johnny Morrall Circle Drainage Project
MEETING
DATE: 6/9/2020
DEPARTMENT: Finance

BACKGROUND INFORMATION:

PLACED ON AGENDA FOR:

REMARKS:

ATTACHMENTS:

Description	Type	Upload Date
Resolution	Backup Material	6/3/2020

RESOLUTION

WHEREAS, the need to address quality of life issues for the City of Beaufort and addressing the concerns and issues of LMI residents is a priority for the City. Neighborhood Revitalization has been identified as a priority community need for the City of Beaufort, and

WHEREAS, the City of Beaufort wishes to address this need by making application to the South Carolina Department of Commerce, Division of Grants Administration for Neighborhood Revitalization.

WHEREAS, the completion of this project would benefit approximately 320 persons, of which 51.6% qualify as having low-to-moderate incomes, in the City of Beaufort. The project area includes Johnny Morrall Drive.

NOW THEREFORE BE IT RESOLVED by the City Council of Beaufort, South Carolina, that

1. City Council hereby endorses the City of Beaufort's Johnny Morrall Drainage Project because it will greatly improve the quality of life for the residents of Beaufort.

2. The Mayor shall be and is authorized to prepare and submit a Community Development Block Grant (CDBG) Neighborhood Revitalization Application for the City of Beaufort's Johnny Morrall Drainage Project, to commit funds in the amount of 10% of the grant to meet the matching commitment of the Community Development Program along with \$372,238 in additional funds needed to complete this project and commit to sharing cost savings on a pro rata basis.

ADOPTED THIS 9th DAY OF June 2020.

**Mayor,
City of Beaufort**

ATTEST:

Clerk to Council



CITY OF BEAUFORT

DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

TO: CITY COUNCIL **DATE:** 6/9/2020
FROM: City Council
AGENDA ITEM TITLE: Resolution asking for the community to join with them in recognizing the deep historical systematic oppression of black people in our city and worldwide, as we stand for solidarity and equality for all as we move forward
MEETING DATE: 6/9/2020
DEPARTMENT: City Managers Office

BACKGROUND INFORMATION:

PLACED ON AGENDA FOR: Action

REMARKS:

ATTACHMENTS:

Description	Type	Upload Date
Resolution	Backup Material	6/9/2020

RESOLUTION

THE BEAUFORT CITY COUNCIL ASK THE COMMUNITY TO JOIN WITH THEM IN RECOGNIZING THE DEEP HISTORICAL SYSTEMATIC OPPRESSION OF BLACK PEOPLE IN OUR CITY AND WORLDWIDE, AS WE STAND FOR SOLIDARITY AND EQUALITY FOR ALL AS WE MOVE FORWARD.

WHEREAS, the most basic form of injustice and inequity occurs when a group of people feels their safety is placed into jeopardy by the very people entrusted with ensuring their safety; and

WHEREAS, racism against the Black community has been persistent in both the past and present across our nation. Systemic injustices, racism, and dehumanization are deeply rooted in our society; and

WHEREAS, the City of Beaufort is blessed to be a multiracial community, and we decided long ago that mutual understanding and respect develops a much healthier, safer, and caring community; and

WHEREAS, the work of dismantling systems of oppression requires an open and continuous dialogue between all members of our city; and

WHEREAS, our understanding of history and events is shaped by the stories we learn and the voices that tell them; and

WHEREAS, the intersectionality of oppression and privilege is unique to each of our citizens and neighborhoods; and

WHEREAS, cities should be engaged in creating pathways to freedom and justice for all people.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby affirm its commitment to stand in solidarity with the Black community and resolves as follows:

The City of Beaufort condemns racial inequity in general and violence against the Black community; and

The City of Beaufort does not tolerate discrimination, racial injustice, or police brutality; and

The City of Beaufort will continue to oppose any attempts to undermine the safety, security, and rights of members of our city and will work proactively to ensure the rights and privileges of everyone in the City—regardless of race; and

The City of Beaufort will continue to promote safety, a sense of security, and equal protection of constitutional and human rights, leading by example through equitable treatment of all by City officials and departments; and

The City of Beaufort will create a Citizens Academy to help provide a connection between the citizenry and their government. The Academy will provide training in government structure, policy, and procedure. The Academy will provide training in government structure, policy, and procedure. The academy will be free to the public and the City will work actively with city partners to ensure diverse participation; and

The City of Beaufort police department will establish a role for community members to evaluate department activities and provide input to the Chief; and

The City of Beaufort will continue to host an open dialogue between the black community and all disenfranchised communities to work together toward a more just and equitable City.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Beaufort this 9th day of June 2020.

*City / HBF Committee Report to
Beaufort City Council*

May 2020

RECOMMENDATIONS

1. Joint Education Programs –

City Manager and HBF Executive Director to coordinate planning and implementation of the following suggested programs on a bi-annual basis

- A. Annually hold training /education sessions for the Historic District Review Board, HBF Preservation Committee, City staff, City Council
- B. Consider expanding training /education programs for residents and specific interest groups, i.e., Realtors, Contractors.
- C. Historic District Review Board (HDRB), HBF Preservation Committee, City staff, City Council annually conduct on site review of previously approved projects to discuss design success and failures.
- D. City /HBF meet every 6 months for discussion of future development projects.

*Define Responsibility

*Add Action Items

2. Review of Beaufort Preservation Manual and Supplement

- A. Develop Executive Summary of the Milner Manuals
- B. Define Beaufort's Character
- C. Develop better summary of new construction
- D. Develop better summary of height, mass and scale
- E. Develop appropriate "New Materials" list

3. Contributing Structure Review

- A. Establish Ten Year Review Process

- B. Annually review the City's **Vacant & Abandoned List** to determine historically or architecturally contributing structures and develop plans for saving and /or rehabilitating. Create a "Must Be Saved List"
- C. Jointly develop a Rehabilitation Program and seek additional Partners.
- D. Develop a plan and program for the demolition of structures that are not on the list in "B" above or are a public safety hazard.

4. Resolve HBF Membership on the HDRB by having City Council adopt the attached ordinance that has been reviewed and approved by legal counsel for HBF and the City of Beaufort. (see attachment 1).

5. Investigate potential of GIS mapping for Historic District –
See Rob Montgomery's notes attached.

6. Investigate DOT approval to Grandfather Right of Ways in
National Historic Landmark District.

7. Clearly define authority and expertise of HDRB and city staff

- A. Clarify the roles of staff, consultants, the Review Board and HBF.
- B. Clarify with all applicants that choose [or elect] to have the HBF Preservation Committee to comment on their plans, which is not part of the City process but a service provided by HBF, that if the plans are changed or are new they must then submit their plans four (4) weeks in advance to the City's Community Development Office for staff review and then a meeting with the HDRB will be scheduled.
- C. Clarify with the HDRB that comments from the HFB on the application or the project shall be part of the Public comment section of their meeting.

8. Continue meetings between the City and HBF on a monthly /bimonthly basis in order to continue the dialogue and working together to improve the process.

ORDINANCE

Amending Chapter 10 Part 7 Section 10.7.3 of The Beaufort Code concerning membership to the Beaufort Historic District Review Board

WHEREAS, Section 10.7.3(A) of the Beaufort Code provides that one of the 5 members of the Historic Review Board “shall be a member of the board of directors of the Historic Beaufort Foundation, and shall be recommended by that organization”; and,

WHEREAS on April 13, 2020 the Office of the South Carolina Attorney General issued a letter opinion addressing this ordinance, and the designated membership language quoted above; and,

WHEREAS the AG opinion has ruled that the City’s Ordinance “cannot require the candidates [to the Historic Review Board] to be members of the private organization making the nomination”; and,

WHEREAS, it is in the best interest of the City, and its citizens, to bring the conditions of membership to the Historic Review Board in compliance with constitutional requirements; and,

WHEREAS, City Council recognizes and welcomes the valuable experience and insight that the Historic Beaufort Foundation provides in the field of historic preservation, practice and guidelines; and,

WHEREAS, City Council wishes to continue calling upon Historic Beaufort Foundation for recommendations for membership to the Historic Review Board;

NOW THEREFORE, be it ordained by the City Council of Beaufort, South Carolina, in Council duly assembled, and by the authority of the same, that the last sentence of Section 10.7.3 (A) of The Beaufort Code shall be amended to read as follows:

“One of the 5 members to the Historic Review Board shall be recommended by the Historic Beaufort Foundation.”

All other terms of Section 10.7.3 shall remain unchanged.

This Ordinance shall become effective upon adoption.

(SEAL)

Attest:

BILLY KEYSERLING, MAYOR

IVETTE BURGESS, CITY CLERK

1st Reading

2nd Reading & Adoption

Reviewed by:

WILLIAM B. HARVEY, III, CITY ATTORNEY

O R D I N A N C E

SETTING ELECTION, RELATED DATES, AND FILING FEE THE MAYOR AND TWO (2) MEMBERS OF CITY COUNCIL PURSUANT TO SECTIONS 1-8001 THROUGH 1-8006 OF THE CITY OF BEAUFORT CODE OF ORDINANCES

WHEREAS, Sections 1-8001 through 1-8006 of the Code of Ordinances, City of Beaufort, governs elections; and

WHEREAS, Council amended the Ordinance July 28, 1998 changing the election dates to even numbered years to coincide with national elections.

NOW, THEREFORE BE IT ORDAINED, by City Council of the City of Beaufort, South Carolina, duly assembled, and by authority of same that:

The filing fee for candidates running for council seats will be	\$150.00
The filing fee for candidates running for Mayor will be	\$250.00

The following dates are hereby established for the 2020 City General Election:

Filing Deadline for Statement of Candidacy and Statement of Economic Interest	August 14, 2020 12:00 NOON
Election Date	November 3, 2020
Challenge Ballot Hearing	November 6, 2020 11:00 a.m.
Newly Elected Officers Take Office	December 8, 2020

BILLY KEYSERLING, MAYOR

SEAL

ATTEST:

IVETTE BURGESS, CITY CLERK

1st Reading
2nd Reading
& Adoption _____

Reviewed by _____
William B. Harvey, III, City Attorney

ORDINANCE

AN ORDINANCE TO PROVIDE FOR THE LEVY OF TAXES FOR THE CITY OF BEAUFORT FOR FISCAL YEAR BEGINNING JULY 1, 2020 AND ENDING JUNE 30, 2021; TO PROVIDE FOR EXECUTION OF AND TO PUT INTO EFFECT THE CONSOLIDATED BUDGET; AND TO PROVIDE BUDGETARY CONTROL OF THE CITY'S FISCAL AFFAIRS

WHEREAS, pursuant to the provisions of the laws of the State of South Carolina, the City Manager is required to submit to the City Council a budget for the year beginning July 1, 2020 and ending June 30, 2021, and

WHEREAS, the City Manager has prepared and presented such proposed budget to the Council, such budget available for inspection at the office of the Finance Director, and

WHEREAS, the consolidated budget contains the budgets of the General Fund, the Parks and Tourism Fund, the Stormwater Utility Fund, the State Accommodations Fund, the newly authorized Fire Impact Fund and the Redevelopment Fund.

NOW, THEREFORE, BE IT ORDAINED by the governing body of the City of Beaufort, SC, in Council duly assembled, and by the authority of the same to provide for the levy of tax for corporate City of Beaufort for the fiscal year beginning July 1, 2020 and ending June 30, 2021, to make appropriations for said purposes, and to provide for budgetary control of the City's fiscal affairs.

SECTION 1. TAX LEVY

The City Council of Beaufort, SC hereby appropriates the funds as detailed in Sections 3 and 4 of this Ordinance. Further, that the City Council of Beaufort, SC hereby establishes the millage rates as detailed in Section 2 of this Ordinance. However, the City Council of Beaufort, SC reserves the right to modify these millage rates by resolution at its August 25, 2020 meeting.

SECTION 2. MILLAGE

The Beaufort County Auditor is hereby authorized and directed to levy the Fiscal Year 2020-2021 a tax of 79.3 mills on the dollar of assessed value of property within the City limits, in accordance with the laws of South Carolina. These taxes shall be collected by the Beaufort County Treasurer, as provided by law and distributed in accordance with the provisions of this Ordinance and subsequent appropriations hereafter passed by the City Council of Beaufort, SC.

City Operations	56.30
City Debt Service	20.00
City Reserve Mil	2.00
Emergency Mil	1.00

SECTION 3. CITY OPERATIONS APPROPRIATION

An amount of \$22,921,263 is appropriated to the City of Beaufort to fund City Operations as follows:

	<u>Appropriations</u>
<u>General Fund</u>	
Non-Departmental	\$ 183,610
City Council	119,115
City Manager	469,329
Finance	870,021
Human Resources	258,558
Information Technology	459,064
Municipal Court	493,764
Community & Economic Development	943,412
Police Operations	4,059,531
School Resource Officer	333,309
School Crossing Guard	27,712
Victims Rights	84,424
Beaufort Fire	5,468,876
Public Works	363,433
Streets & Traffic	877,840
Facilities Maintenance	511,645
Solid Waste	735,715
Debt Service	1,755,057
Total General Fund	<u>\$ 18,014,415</u>
<u>Parks & Tourism Fund</u>	
Police Operations	\$ 1,157,456
Marina Operations	77,775
Waterfront Park Operations	765,746
Parking	21,800
Other Parks & Tourism	765,282
Othe Downtown Operations	313,897
Tourism Marketing	99,144
Total Parks & Tourism Fund	<u>\$ 3,201,100</u>
<u>Stormwater Utility Fund</u>	
Stormwater Utility Operations	\$ 655,472
Debt Service	508,126
Total Stormwater Utility Fund	<u>\$ 1,163,598</u>
<u>State Accommodations Fund</u>	
Police Operations	\$ 23,926
Other Tourism Operations	50,000
Designated Marketing Organization	183,800
ATAX Grant Awards	166,724
Transfers out	47,300
Total State Accommodations Fund	<u>\$ 471,750</u>
<u>Fire Impact Fund</u>	<u>\$ 70,400</u>
<u>Redevelopment Fund</u>	<u>\$ -</u>
Total Appropriations	<u><u>\$ 22,921,263</u></u>

The detailed Operations budget containing line-item accounts by department is hereby adopted as part of this Ordinance.

Capital Project Appropriations shall not lapse at June 30, 2020, but each project appropriation shall remain in force for the life of the project and shall be closed out upon completion or other disposition of the project.

SECTION 4. CITY OPERATIONS REVENUE

The appropriations of the City Operations will be funded from the following revenue sources:

	Revenues
<u>General Fund</u>	
Property Taxes	\$ 7,754,527
Licenses & Permits	4,045,000
Intergovernmental Revenue	2,495,899
Franchise Fees	2,041,468
Charges for Services	1,404,771
Fines & Forfeitures	164,000
Miscellaneous	20,000
Interest	40,000
Transfers In	48,750
Total General Fund	<u>\$ 18,014,415</u>
<u>TIF II</u>	
Interest	\$ 35,000
Total TIF II	<u>\$ 35,000</u>
<u>Parks & Tourism Fund</u>	
Other Taxes	\$ 2,706,000
Charges for Services	490,100
Miscellaneous	5,000
Total Parks & Tourism Fund	<u>\$ 3,201,100</u>
<u>Stormwater Utility Fund</u>	
Charges for Services	\$ 1,100,000
Total Stormwater Utility Fund	<u>\$ 1,100,000</u>
<u>State Accommodations Fund</u>	
Other Taxes	\$ 471,750
Total State Accommodations Fund	<u>\$ 471,750</u>
<u>Fire Impact Fund</u>	
Fire Impact Fee	\$ 119,363
Total Fire Impact Fund	<u>\$ 119,363</u>
<u>Redevelopment Fund</u>	
Charges for Services	\$ 12,400
Total Redevelopment Fund	<u>\$ 12,400</u>
Total Revenues	<u>\$ 22,954,028</u>

SECTION 5. ESTABLISHMENT OF A MASTER FEE SCHEDULE

A Master Fee Schedule listing all fees charged by the City for Fiscal Year 2021 is included and incorporated for reference as Attachment A.

SECTION 5. CITY DEBT SERVICE APPROPRIATION

The revenue generated by a 20.0 mill levy is appropriated to defray the principal and interest payment on all City debt authorized to cover Capital expenditures.

SECTION 6. BUDGETARY ACCOUNT BREAKOUT

The foregoing City Operation appropriations have been detailed by the City Council into line-item accounts for each department. The detailed appropriation by account and budget narrative contained separately is hereby adopted as part of this Ordinance.

SECTION 7. FY 2019-2020 ENCUMBRANCES AND REMAINING GRANT AUTHORIZATIONS REAPPROPRIATED, RECORDING OF ASSIGNMENTS OF AMOUNTS APPROPRIATED FROM FUND BALANCE.

Encumbrances in each fund at June 30, 2020, representing obligations made against 2019-2020 appropriations outstanding as of that date, are hereby reappropriated and the appropriations shall be distributed to the budgetary accounts under which the expenditures will be charged during the FY 2020-2021 budget year as such obligations are satisfied, provided that such encumbrances, when taken together with the FY 2019-2020 expenditures, do not cause any fund to exceed its budgetary authorization for the year ended June 30, 2020.

For each fund in which a reappropriation occurs, the amount of funds appropriated hereunder shall be established in that fund as "Assigned Fund Balance for Encumbrances."

For each fund in which the balanced budget for FY 2020-2021 includes the use of fund balance; the amount of the fund balance so used shall be identified as "Assigned for Current Appropriations."

Appropriations for grants, the authorization for which extends beyond the end of the fiscal year, shall not lapse at the end of the fiscal year. Any such grant authorizations remaining at the end of a fiscal year shall be reappropriated pursuant to the conditions of the respective grant agreements.

Appropriations for active projects resulting in restrictions or commitments of fund balances shall be identified by appropriate titles in the financial statements of the affected funds.

SECTION 8. ADMINISTRATION OF THE BUDGET

The City Manager or his designee shall administer the budget and may authorize the transfer of appropriations within the allotments heretofore established and necessary to achieve the goals of the budget provided, however, that no such transfer shall be used to increase the total appropriation within any fund.

SECTION 9. AUTHORIZATION TO ENTER INTO CONTRACTS

The City Manager is authorized to enter into City contracts if the total contract amount is less than or equal to the budget line item or project budget as approved by City Council herein.

SECTION 10. ALLOCATION OF FUNDS

The City Manager is responsible for controlling the rate of expenditures of budgeted funds in order to assure that expenditures do not exceed funds on hand. To carry out this responsibility, the City Manager is authorized to allocate budgeted funds.

SECTION 11. MISCELLANEOUS RECEIPTS ABOVE ANTICIPATED REVENUES

Revenues other than, and/or in excess of, those addressed in Section 4 of this Ordinance, received by the City of Beaufort, which are in excess of the anticipated revenue as approved in the current budget, may be expended as directed by the revenue source, or for the express purposes for which the funds were generated without further approval of City Council. All such expenditures addressed in Section 3, in excess of \$10,000, shall be reported, in written form, to the City Council of Beaufort on a quarterly basis. Such funds include sales of products, services, rents, contributions, donations, special events, insurance and similar recoveries.

SECTION 12. TRANSFERS VALIDATED

All duly authorized transfers of funds heretofore made from one account to another, or from one fund to another during Fiscal Year 2021, are hereby approved.

SECTION 13. EFFECTIVE DATE

This Ordinance shall be effective July 1, 2020. Approved and adopted on the second and final reading this 23rd day of June 2020.

BILLY KEYSERLING, MAYOR

ATTEST:

IVETTE BURGESS, CITY CLERK

1ST Reading June 9, 2020

2nd Reading & Adoption _____

Reviewed by: William Harvey III, City Attorney, June 3, 2020

ATTACHMENT A
MASTER FEE SCHEDULE FOR FY 2020-2021

Special Duty Fee - Police	\$50/hour*
Special Duty Fee – Fire	\$38/hour*
Special Duty Fee – Public Works	\$36/hour*
* 4 hour minimum	
Park Rental Fee – Waterfront Park –	
as adopted in February 2011 and included in the Waterfront Park rental application	
Park Deposit Fee – Pigeon Point Park	\$50/day
Park Deposit Fee - Southside Park	\$100/day
Parking Fee for Special Events -	
Full Day Rate	\$6/day
Road Fee	\$20/vehicle
Stormwater Fee – Option E under the Beaufort	
County Stormwater Rate model	\$135/account
Refuse/Recycling Collection Fee – Residential	\$16.20/month
Refuse Collection Fee – Commercial:	
Tier 1 – 1 Cart/2 Day service	\$27.00/month
Tier 2 - 2 Carts/2 Day service	\$57.00/month
Tier 3 – 3 Carts/2 Day service	\$82.00/month
Tier 4 – 3 Carts/5 Day service	\$120.00/month
Tier 5 – 4 Carts/5 Day service	\$158.00/month
Tier 6 – 5 Carts/5 Day service	\$189.00/month
Tier 7 – 6 Carts/5 Day service	\$220.00/month
\$25.00 added to each monthly account requiring Saturday service	

APPENDIX A

RATE SCHEDULE

<u>RATE CLASS</u>	<u>INCOME: \$0 - \$2,000</u>	<u>INCOME OVER \$2,000</u>
	<u>BASE RATE</u>	<u>Rate per Thousand or fraction thereof</u>
1	\$25.00	\$0.95
2	\$35.00	\$1.37
3	\$45.00	\$1.79
4	\$55.00	\$2.21
5	\$65.00	\$2.63
6	\$75.00	\$3.05
7	\$85.00	\$3.47
8.1	\$60.00	\$1.75
8.2	\$ set by State statute	
8.3	MASC Telecommunications	
8.4	See detail below	
8.5	\$20.00	\$0.65
8.6	\$288.00	\$2.07
8.7	MASC Insurance	
8.8A	\$12.50 + \$12.50 per machine	
8.8B	\$64.00	\$2.52
8.8C	\$12.50 + \$180.00 per machine	
8.9	See detail below	
8.10	See detail below	

All other 08 Classifications – please contact the Business License Office.

NON-RESIDENT RATES

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

CLASS 8 RATES

Each NAICS Number designates a separate sub-classification. The businesses in this section are treated as separate and individual subclasses due to provisions of State law, regulatory requirements, service burdens, tax equalization considerations, etc., which are deemed to be sufficient to require individually determined rates. Non-resident rates do not apply except where indicated.

NAICS 230000 - Contractors, Construction, All Types

8.1 Having permanent place of business within the municipality
 Minimum on first \$2,000..... \$ 60.00 PLUS
 Each additional 1,000..... \$ 1.75

8.1A Not having permanent place of business within the municipality

Minimum on first \$2,000..... \$ 120.00 PLUS
Each additional \$1,000.....\$ 3.50
(Non-resident double rates do not apply)

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

The total tax for the full amount of the contract shall be paid prior to commencement of work and shall entitle contractor to complete the job without regard to the normal license expiration date. An amended report shall be filed for each new job and the appropriate additional license fee per \$1,000 of the contract amount shall be paid prior to commencement of new work. Only one base tax shall be paid in a calendar year.

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

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

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

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

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

8.3 NAICS 5171, 5172 - Telephone Companies:

A. Notwithstanding any other provisions of the Business License Ordinance, the business license tax for "retail telecommunications services", as defined in S. C. Code Section 58-9-2200, shall be at the maximum rate authorized by S. C. Code Section 58-9-2220, as it now provides or as provided by amendment. The business license tax year shall begin on January 1 of each year. Declining rates shall not apply.

B. In conformity with S.C. Code Section 58-9-2220, the business license tax for "retail telecommunications services" shall apply to the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality. For a

business in operation for less than one year, the amount of business license tax shall be computed on a twelve-month projected income.

C. The business license tax for "retail telecommunications services" shall be due on January 1 of each year and payable by January 31 of that year, without penalty.

D. The delinquent penalty shall be five percent (5 %) of the tax due for each month, or portion thereof, after the due date until paid.

E. Exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Properly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

F. Nothing in this Ordinance shall be interpreted to interfere with continuing obligations of any franchise agreement or contractual agreement in the event that the franchise or contractual agreement should expire after December 31, 2003.

G. All fees collected under such a franchise or contractual agreement expiring after December 31, 2003, shall be in lieu of fees or taxes which might otherwise be authorized by this Ordinance.

H. As authorized by S. C. Code Section 5-7-300, the Agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from telecommunications companies pursuant to S. C. Code Section 58-9-2200 shall continue in effect.

NAICS 22112 - Electric Power Distribution..... See Consent or Franchise

NAICS 22121 – Natural Gas Distribution See Consent or Franchise

NAICS 517110 – Television: Cable or Pay

Services using public streets See Franchise

8.4A NAICS 423930 - Junk or Scrap Dealers [Non-resident rates apply]

Minimum on first \$2,000\$ 41.00 PLUS

Per \$1,000, or fraction, over \$2,000 \$ 1.66

8.4B NAICS 522298 - Pawn Brokers - All Types

Minimum on first \$2,000 \$ 161.00 PLUS

Per \$1,000, or fraction, over \$2,000 \$ 2.88

8.5 NAICS 4411, 4412 - Automotive, Motor Vehicles, Boats, Farm Machinery or Retail
(except auto supply stores - see 4413)

Minimum on first \$2,000 \$ 20.00 PLUS

Per \$1,000, or fraction, over \$2,000 \$ 0.65

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

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

NAICS 454390 - Peddlers, Solicitors, Canvassers, Door-To-Door Sales

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

- 8.6** Regular activities [more than two sale periods of more than three days each per year]
Minimum on first \$2,000 \$ 288.00 PLUS
Per \$1,000, or fraction, over \$2,000 \$ 2.07

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

8.7 NAICS 5241 - Insurance Companies:

Except as to fire insurance, “gross premiums” means gross premiums written for policies for property or a risk located within the municipality. In addition, “gross premiums” shall include premiums written for policies that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by (1) the insurance company’s office located in the municipality, (2) the insurance company’s employee conducting business within the municipality, or (3) the office of the insurance company’s licensed or appointed producer (agent) conducting business within the municipality, regardless of where the property or risk is located, provided no tax has been paid to another municipality in which the property or risk is located based on the same premium.

Solicitation for insurance, receiving or transmitting an application or policy, examination of a risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit, or doing any act in connection with a policy or claim shall constitute conducting business within the municipality, regardless of whether or not an office is maintained in the municipality.

As to fire insurance, “gross premiums” means gross premiums (1) collected in the municipality, and/or (2) realized from risks located within the limits of the municipality.

Gross premiums shall include all business conducted in the prior calendar year.

Gross premiums shall include new and renewal business without deductions for any dividend, credit, returns premiums or deposit.

NAICS 52411 - Life, Health and Accident 0.75% of Gross Premiums

NAICS 524126 - Fire and Casualty (Licensed in SC)2% of Gross Premiums

NAICS 524127 - Title Insurance 2% of Gross Premiums

8.9A NAICS 713290 - Bingo halls, parlors –
Minimum on first \$2,000\$32.50 PLUS
Per \$1,000, or fraction, over \$2,000 \$1.26

8.9B NAICS 711190 - Carnivals and Circuses – Per Day
Minimum on first \$2,000 \$ 230.00 PLUS
Per \$1,000, or fraction, over \$2,000 \$ 5.76

8.9C NAICS 722410 – Full Service Restaurants (Alcoholic beverages consumed on premises) that may or may not provide entertainment.
Minimum on first \$2,000 \$ 115.00 PLUS
Per \$1,000, or fraction, over \$2,000 \$ 2.90
License must be issued in the name of the individual who has been issued a State alcohol, beer or wine permit or license and will have actual control and management of the business.

8.9D NAICS 722410 - Drinking Places, bars, lounges, cabarets (Alcoholic beverages consumed on premises) that may or may not provide entertainment.
Minimum on first \$2,000 \$ 272.00 PLUS
Per \$1,000, or fraction, over \$2,000 \$ 4.31
License must be issued in the name of the individual who has been issued a State alcohol, beer or wine permit or license and will have actual control and management of the business.

8.10A NAICS 713990 - Billiard or Pool Rooms, all types \$5.00 permit/table PLUS
Minimum on first \$2,000 \$ 32.00 PLUS
Per \$1,000, or fraction, over 2000..... \$ 1.26

2019 BUSINESS LICENSE CLASS SCHEDULE BY NAICS CODE

NAICS Sector/Subsector	Industry Sector	Class
11	Agriculture, forestry, hunting and fishing	3
113	Forestry and logging (including forest nurseries, timber tracts)	2
115	Support activities for agriculture and forestry	1
21	Mining	4
2211	Electric Power Generation, Transmission and Distribution	Franchise
2212	Natural Gas Distribution	Franchise
22	Utilities	1
23	Construction	8.1
31-33	Manufacturing	2
42	Wholesale trade	1
423930	Recyclable Material Merchant Wholesalers (Junk)	8.4A
44-45	Retail trade	1
441	Motor vehicle and parts dealers	1
4411	Automobile Dealers	8.5
4412	Other Motor Vehicle Dealers	8.5
442	Furniture and home furnishing stores	1
443	Electronic and appliance stores	1
444	Building material and garden equipment and supplies dealers	1
445	Food and beverage stores	1
446	Health and personal care stores	2
447	Gasoline stations	1
448	Clothing and accessories stores	2
451	Sporting goods, hobby, book, and music stores	1
452	General merchandise stores	1
453	Miscellaneous store retailers	2
454	Nonstore retailers	2
45439	Other Direct Selling Establishments (Peddlers)	8.6
48-49	Transportation and warehousing	2
482	Rail Transportation	8.2
484	Truck Transportation	2
486	Pipeline transportation	1
493	Warehousing and storage facilities	2
51	Information	3
511	Publishing industries (except internet)	2
512	Motion picture and sound recording	1
515	Broadcasting (except internet) and telecommunications	3
517	Telecommunications	3
5171	Wired Telecommunications Carriers	8.3
5172	Wireless Telecommunications Carriers (except Satellite)	8.3
518	Internet service providers, web search portals, and data processing	3
519	Other Information Services	5
52	Finance and insurance	6
522	Credit intermediation and related activities	4

NAICS Sector/Subsector	Industry Sector	Class
522298	Pawnshops	8.4B
523	Securities, commodity contracts, and other financial investments	7
524	Insurance agents, brokers, and related activities	6
5241	Insurance Carriers	8.7
52421	Insurance Brokers for non-admitted Insurance Carriers	8.7
525	Funds, trusts and other financial vehicles	7
53	Real estate and rental and leasing	7
531	Real estate	7
5311	Lessors of real estate (including miniwarehouses and self storage)	7
532	Rental and leasing services	1
533	Lessors of nonfinancial assets	7
54	Professional, scientific, and technical services	3
5411	Legal Services	7
5413	Architectural, engineering and related services	2
5416-9	Other professional, scientific, and technical services	4
55	Management of companies	6
56	Administrative and support and waste management and remediation services	3
561	Administrative and support services	3
562	Waste management and remediation services	1
61	Educational services	3
62	Health care and social assistance	3
623	Nursing and Residential Care Facility	1
71	Arts, entertainment, and recreation	3
71119	Other Performing Arts Companies (Carnivals and Circuses)	8.9B
712	Museums, Historical Sites and similar institutions	1
7131	Amusement Parks and Arcades	8.8
7132	Nonpayout Amusement Machines	8.8
713290	Bingo Halls	8.9A
713990	All Other Amusement and Recreational Industries (pool tables)	8.10
721	Accommodation	2
722	Food services and drinking places	2
72241	Drinking Places (Alcoholic Beverages)	8.9C
81	Other services	3
811	Repair and maintenance	1
8111	Auto repair and maintenance	2
812	Personal and laundry services	6
813	Religious, grantmaking, civic, professional, and similar organizations	4

Note: Class Schedule is based on 2014 IRS data.

**CITY OF BEAUFORT, SOUTH CAROLINA
DEVELOPMENT REVIEW CODES FEE SCHEDULE
Effective November 1, 2017**

(1) **OTHER FEES SUPERSEDED**

The following schedules and regulations regarding fees are hereby adopted and supersede all regulations and schedules regarding fees published in the most recent edition of the International Building Code or supplement thereof.

(2) **FEES MANDATORY**

No permit shall be issued until the fees prescribed in this section shall have been paid. Nor shall an amendment to a permit be approved until the additional fee, if any, due to an increase in the estimated cost of the building or structure, shall have been paid.

(3) **FAILURE TO OBTAIN PERMIT**

Where work for which a permit is required by this code is started or proceeded prior to obtaining said permit, the fees herein specified shall be tripled, but the payment of such tripled fee shall not relieve any persons from fully complying with the requirements of this code in the execution of the work nor from any other penalties prescribed herein.

(4) **RECORD OF FEES COLLECTED**

The Building Official shall keep a permanent and accurate accounting of all permit fees and other monies collected, the names of all persons upon whose account the same was paid, the full date and amount thereof.

(5) **MOVING A BUILDING/STRUCTURES**

For the moving of any building or structure, the fee shall be \$150.00

(6) **DEMOLITION OF BUILDING/STRUCTURE**

For the moving of any building or structure, the fee shall be \$150.00
For the demolition of any building or structure, the fees are as follows:

Complete Demolition Single-Family Structure \$100.00 Complete Demolition Commercial & Multifamily Structure \$200.00

(7) **BUILDING PERMIT FEES**

On all new buildings, structures or alterations requiring a building permit as set forth in the International Building Code and the International Residential Code, the fee shall be paid as required at the time of filing the application in accordance with the schedule shown below. Plan review fee is paid at the time the plans are submitted.

Building Permit Fee Schedule:

Total Valuation	Base Fee
\$500 or less	No fee, unless an inspection is required, in which case an inspection fee shall be charged.
>\$500 to \$50,000	\$35 for the first \$500, plus \$5.30 for each additional thousand or fraction thereof (round up)
>\$50,000 to \$100,000	\$300 for the first \$50,000, plus \$4 for each additional thousand or fraction thereof (round up)
>\$100,000 to \$500,000	\$500 for the first \$100,000, plus \$3 for each additional thousand or fraction thereof (round up)
>\$500,000 and up	\$1,700 for the first \$500,000, plus \$2 for each additional thousand or fraction thereof (round up)

(8) **PLAN CHECKING FEES**

When a plan is required to be submitted, all fees shall be paid to the building department at the time of submitting plans and specifications for checking. Said plan checking fee shall be equal to one-half of the base fee.

(9) **BUILDING PERMIT VALUATIONS**

If, in the opinion of the Building Official, the valuation of a building, alteration, or structure, appears to be underestimated, the permit shall be denied, unless the applicant can show detailed estimates to meet the approval of the Building Official. Final building permit valuation shall be set by the Building Official.

(10) **PROCEDURE FOR PERMIT REFUNDS**

- (a) Permit holder must return all applicable permit forms and receipts; copies will not be accepted.
- (b) Permit refund will be for total amount paid minus Plan Checking Fee--
- (c) A completed W-9 form is required.

(11) **INSPECTION FEES**

- (a) Plumbing Inspection Fees
 - \$30.00 for Residential
 - \$40.00 for Commercial

- (b) Electrical Inspection Fees
 - \$30.00 for Residential
 - \$40.00 for Commercial
- (c) Mechanical Inspection Fees
 - \$30.00 for Residential
 - \$40.00 for Commercial
- (d) Gas Inspection fees
 - \$30.00 for Residential
 - \$40.00 for Commercial
- (e) Miscellaneous Inspections (Includes re-roof, signs, windows, etc.) \$30.00
- (f) Swimming Pool Inspection Fees
 - Single-Family \$235.00
with \$200 to be refunded after pool inspection has been performed and approved
 - Multifamily and Commercial \$265.00
with \$200 to be refunded after pool inspection has been performed and approved
- (g) Safety Inspection
 - Home Occupation \$30.00
 - Commercial \$50.00

(12) **RE-INSPECTIONS**

If the Building Official or his duly authorized representative shall, upon his inspection after the completion of the work or apparatus, find the same does not conform to and comply with the provisions of this Code, he shall notify the contractor, indicating the corrections to be made, and then he shall again inspect the work or apparatus without further charge; but when extra inspections are due to any of the following reasons, a charge of \$100 for multifamily and commercial projects, and \$50.00 for all other projects shall be made for each re-inspection:

- (a) Wrong Address
- (b) Repairs or corrections not made when inspections are called
- (c) Work not ready for inspection when called

All re-inspection fees are required to be paid in advance prior to re-inspection.

(13) **TREE REMOVAL FEES**

For issuing each tree permit, the fee shall be as follows:

	<u>Single-Family Lots</u>	<u>Commercial and Multifamily Lots</u>
1 – 2 trees	\$ 20.00	\$ 35.00
	<u>Single-Family Lots</u>	<u>Commercial and Multifamily Lots</u>
3 – 5 trees	\$ 40.00	\$ 55.00
6 – 10 trees	\$ 60.00	\$ 75.00
11 – 15 trees	\$ 80.00	\$ 95.00
16 – 20 trees	\$100.00	\$115.00
21 – 40 trees	\$150.00	\$200.00
41 +	\$200.00	\$300.00

(14) **SIGN PERMITS**

For issuing each sign permit, the fee shall be as follows:

Permanent Sign	Building Permit Fee (see Section 7) plus Plan Checking Fee (see Section 8) plus Inspection Fee
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Master Sign Plan Review Fee	\$20.00 (2 – 4 tenants)
	\$50.00 (5 – 10 tenants)

Amendments to Master Sign Plan	\$20.00
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There shall be no fee for temporary Special Event Signs for non-profit agencies.

(15) **BANNER PERMITS**

Temporary Banner for 5 Days	\$25.00
Temporary Banner for 15 Days	\$50.00
Temporary Banner for 30 Days	\$75.00

(16) **TEMPORARY TENT PERMITS**

Temporary Tents over 500 Sq. Ft. \$150.00 Temporary Canopies over 700 Sq. Ft. \$150.00

(17) **LANDSCAPE IRRIGATION AND OR WELL PERMITS**

Single-Family Lot	\$50.00
Commercial or Multifamily Lot	\$75.00

(18) **SUBDIVISION FEES**

Lot Recombination/Lot Line Adjustment	\$50.00
Lot Consolidation	\$25.00

Major Subdivision that include New Streets:

6 to 49 lots:	\$1,000 + \$10/lot
50-100 lots:	\$1,500 + \$10/lot
101 to 300 lots:	\$2,000 + \$10/lot
301 + lots:	\$2,500 + \$10/lot

Minor Subdivision (≤ 5 lots and no new streets)	\$50.00
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(19) **STAFF DESIGN REVIEW FEES**

Fees for Staff Design Review:
Boundary and Bladen Redevelopment Districts
Certain Development Agreements
Development Design Review Minor
Certificates of Appropriateness Minor
Post facto applications shall be twice the normal fee.

Type 1

- Improvements not including additions, ≤ 50% of the value of the structure (not including single-family, or 2/3-unit buildings)

<u>Value</u>	<u>Fee</u>
Improvements ≤ \$5,000	\$50
Improvements > \$5,000 but ≤ \$25,000	\$75
Improvements > \$25,000 but ≤ \$50,000	\$125
Improvements > \$50,000 but ≤ \$100,000	\$150
Improvements > \$100,000 but ≤ \$250,000	\$500
Improvements > \$1250,000 but < 50% of the value of the structure	\$1,000

- Any single-family and 2/3-unit residential improvements not including additions, < 50% of the value of the structure: \$50

Type 2

- Any single-family and 2/3-unit residential addition: \$50
- All other projects: \$500 base fee + \$0.05/square foot of addition.

Type 3

Review for new construction and for improvements totaling over 50% of the value of the structure:

- Single-family and 2/3 unit residential: \$100
- ≤ 10,000 square feet: \$500 base fee + 0.05/square foot of building

- > \$10,000 square feet: \$1,000 base fee + \$0.05/square foot of building for the first 100,000 square feet of building. For additional square footage over 100,000, \$0.02/square foot.

(20) **REVIEW BOARDS: HISTORIC REVIEW BOARD & DESIGN REVIEW BOARD**

Single-family residential projects (board review)	\$100 per meeting
Multifamily and commercial projects (board review)	\$200 per meeting
Change After Certification	\$100
Demolition (whole structure)	\$250.00
Special Board Meeting	\$500.00

Post facto applications shall be twice the normal fee.

(21) **ZONING BOARD OF APPEALS**

(a) Variance:	Residential	\$200.00
	Commercial	\$300.00
(b) Special Exception:		\$300
(c) Administrator Appeal:		\$300

(22) **REZONING**

Rezoning to PUD	\$400
Rezoning, non-PUD	\$200 & \$10/per lot

(23) **TEXT AMENDMENT**

Beaufort Code Text Amendment	\$400
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(24) **OTHER FEES**

Trip to Storage (Request for documents from storage)	\$50.00 (plus copying fee)
Flood Hazard Area Verification Letter	\$25.00
Parking Meter Space Rental	\$5.00 per day per metered space (for construction projects only)
Fee for Copies (8 1/2 x 11)	30¢ per sheet
Zoning Review	\$50.00
Traffic Impact Analysis Report Review Fee	\$750.00
Design Exception	\$200.00
Accessory Dwelling unit	\$50.00

Administrative Adjustment	\$50.00
Home Occupation	\$25.00
Short Term Rentals	\$100.00
Zoning Compliance Letter	\$50.00
Development Code Interpretation	\$100.00
Development Code Text Amendment	\$400.00

FIRE IMPACT FEE SCHEDULE

Land Use Category	Service Units	Persons per Household	Employee Space Ratio	Cost per Person	Cost per Employee	Impact Fee per Service unit
Residential Uses						
Single Family (Attached or Detached)	d.u.	2.69	—	\$305.43	—	\$305.43
Mobile Home	d.u.	3.66	—	\$305.43	—	\$305.43
Multifamily (>2 Dwelling Units)	d.u.	1.25	—	\$305.43	—	\$305.43
Non-Residential Uses						
Hotel / Motel Uses						
Hotel	room	—	0.57	—	\$592.34	\$337.64
Business Hotel	room	—	0.1	—	\$592.34	\$59.23
Motel	room	—	0.71	—	\$592.34	\$420.56
Recreational Uses						
Golf Course	hole	—	1.74	—	\$592.34	\$1,030.68
Movie Theater (w/ Matinee)	1,000 s.f.	—	1.1	—	\$592.34	\$651.58
Institutional Uses						
Elementary School	1,000 s.f.	—	0.98	—	\$592.34	\$580.50
Middle/Junior High School	1,000 s.f.	—	0.84	—	\$592.34	\$497.57
High School	1,000 s.f.	—	0.65	—	\$592.34	\$385.02
Junior/Community College	1,000 s.f.	—	1.77	—	\$592.34	\$1,048.45
University/College	student	—	0.19	—	\$592.34	\$112.55
Daycare	1,000 s.f.	—	2.77	—	\$592.34	\$1,640.79
Library	1,000 s.f.	—	1.07	—	\$592.34	\$633.81
Medical Uses						
Hospital	bed	—	2.88	—	\$592.34	\$1,705.95
Nursing Home	bed	—	0.84	—	\$592.34	\$497.57
Clinic	1,000 s.f.	—	3.93	—	\$592.34	\$2,327.91
Medical/Dental Office	1,000 s.f.	—	4.05	—	\$592.34	\$2,398.99

FIRE IMPACT FEE SCHEDULE

Impact Fee Schedule for Fire Protection Facilities and Equipment						
Land Use Category	Service Units	Persons per Household	Employee Space Ratio	Cost per Person	Cost per Employee	Impact Fee per Service unit
General Office Uses						
< 50,000 s.f.	1,000 s.f.	—	4.14	—	\$592.34	\$2,452.30
50,001 – 100,000 s.f.	1,000 s.f.	—	3.72	—	\$592.34	\$2,203.52
100,001 – 150,000 s.f.	1,000 s.f.	—	3.55	—	\$592.34	\$2,102.82
150,001 – 200,000 s.f.	1,000 s.f.	—	3.44	—	\$592.34	\$2,037.66
> 200,001 s.f.	1,000 s.f.	—	3.26	—	\$592.34	\$1,931.04
Office Park Uses						
< 50,000 s.f.	1,000 s.f.	—	3.7	—	\$592.34	\$2,191.67
50,001 – 100,000 s.f.	1,000 s.f.	—	4.96	—	\$592.34	\$2,938.03
100,001 s.f. – 150,000 s.f.	1,000 s.f.	—	4.18	—	\$592.34	\$2,476.00
150,001 – 200,000 s.f.	1,000 s.f.	—	3.82	—	\$592.34	\$2,262.75
200,001 – 250,000 s.f.	1,000 s.f.	—	3.62	—	\$592.34	\$2,144.29
250,001 – 300,000 s.f.	1,000 s.f.	—	3.48	—	\$592.34	\$2,061.36
300,001 – 350,000 s.f.	1,000 s.f.	—	3.38	—	\$592.34	\$2,002.12
350,001 – 400,000 s.f.	1,000 s.f.	—	3.3	—	\$592.34	\$1,954.74
> 400,001 s.f.	1,000 s.f.	—	3.17	—	\$592.34	\$1,877.73
Business Park Uses						
< 100,000 s.f.	1,000 s.f.	—	2.44	—	\$592.34	\$1,445.32
100,001 s.f. – 150,000 s.f.	1,000 s.f.	—	2.79	—	\$592.34	\$1,652.64
150,001 – 200,000 s.f.	1,000 s.f.	—	2.95	—	\$592.34	\$1,747.41
200,001 – 250,000 s.f.	1,000 s.f.	—	3.03	—	\$592.34	\$1,794.80
250,001 – 300,000 s.f.	1,000 s.f.	—	3.09	—	\$592.34	\$1,830.34
300,001 – 350,000 s.f.	1,000 s.f.	—	3.12	—	\$592.34	\$1,848.11
350,001 – 400,000 s.f.	1,000 s.f.	—	3.15	—	\$592.34	\$1,865.88
> 400,001 s.f.	1,000 s.f.	—	3.2	—	\$592.34	\$1,895.50

FIRE IMPACT FEE SCHEDULE

Impact Fee Schedule for Fire Protection Facilities and Equipment						
Land Use Category	Service Units	Persons per Household	Employee Space Ratio	Cost per Person	Cost per Employee	Impact Fee per Service unit
General Retail Uses						
< 50,000 s.f.	1,000 s.f.	—	2.86	—	\$592.34	\$1,694.10
50,001 – 100,000 s.f.	1,000 s.f.	—	2.5	—	\$592.34	\$1,480.86
100,001 s.f. – 150,000 s.f.	1,000 s.f.	—	2.22	—	\$592.34	\$1,315.00
150,001 – 200,000 s.f.	1,000 s.f.	—	2.22	—	\$592.34	\$1,315.00
200,001 – 300,000 s.f.	1,000 s.f.	—	2.22	—	\$592.34	\$1,315.00
300,001 – 400,000 s.f.	1,000 s.f.	—	2.22	—	\$592.34	\$1,315.00
> 400,001 s.f.	1,000 s.f.	—	2.22	—	\$592.34	\$1,315.00
Specific Retail Uses						
Supermarket	1,000 s.f.	—	1.1	—	\$592.34	\$651.58
Building Materials/ Lumber Store	1,000 s.f.	—	1.41	—	\$592.34	\$835.21
Free Standing Discount Store	1,000 s.f.	—	1.98	—	\$592.34	\$1,172.84
Nursery/Garden Center	1,000 s.f.	—	3.12	—	\$592.34	\$1,848.11
New Car Sales Center	1,000 s.f.	—	1.53	—	\$592.34	\$906.29
Tire Store	1,000 s.f.	—	1.21	—	\$592.34	\$716.74
Furniture Store	1,000 s.f.	—	0.42	—	\$592.34	\$248.78
Industrial Uses						
General Light Industrial	1,000 s.f.	—	2.31	—	\$592.34	\$1,368.31
General Heavy Industrial	1,000 s.f.	—	1.83	—	\$592.34	\$1,083.99
Industrial Park	1,000 s.f.	—	2.04	—	\$592.34	\$1,208.38
Warehousing	1,000 s.f.	—	0.92	—	\$592.34	\$544.96
Mini-Warehouse	1,000 s.f.	—	0.04	—	\$592.34	\$23.69
Specific Service Uses						
Drive-In Bank	1,000 s.f.	—	4.79	—	\$592.34	\$2,837.33
High-Turnover Sit-Down Restaurant	1,000 s.f.	—	5.64	—	\$592.34	\$3,340.82
Fast Food w/ Drive Through	1,000 s.f.	—	5	—	\$592.34	\$2,961.72

CITY OF BEAUFORT
FY 2021 CAPITAL PROJECTS

Description	BUDGET		Active Capital Project and Fully Funded	FUNDING					
	Estimated Original Budget	Modified Budget		Grant Funding	Bond Funds	Partners	Committed Fund Balance	TIF II	Unfunded
City Facilities									
Carnegie Building	\$ 188,500	\$ 188,500	No ¹						\$ 188,500
Stormwater									
Mossy Oaks Basin 1	\$ 3,029,150	\$ 5,481,956	Yes	500,000	4,727,956	254,000			-
Mossy Oaks Basin 2	1,709,255	2,463,041	Yes	1,000,000	1,344,276	118,765			-
Lafayette Street Outfall - Engineering Only	16,714	16,714	Yes		16,714				-
Calhoun Street Drainage - Engineering Only	192,751	192,751	Yes		192,751				-
Kings Ridge Outfall - Engineering Only	19,061	19,061	Yes		19,061				-
Hay Street Outfall - Engineering Only	39,415	39,415	Yes		39,415				-
Streets									
SC 170 Sidewalk Extension - Engineering Only	25,169	25,169	Yes					25,169	-
Whitehall Boardwalk	300,000	300,000	Yes			300,000			-
Allison Road	1,930,536	1,940,088	Yes	1,000,000	765,088	175,000			
Marina & Parks									
Waterfront Park Foundation and Playground Equipment	\$ 620,000	1,000,000	Yes	500,000			500,000		-
	<u>\$ 7,882,051</u>	<u>\$ 11,478,195</u>		<u>\$ 3,000,000</u>	<u>\$ 7,105,261</u>	<u>\$ 847,765</u>	<u>\$ 500,000</u>	<u>\$ 25,169</u>	<u>\$ 188,500</u>

¹ Historic Preservation grant has been applied for. The grant does not require a match from City resources. Upon notification of award, this project will advance in FY 2021.

Summary of expenditure cuts/additions made since recommended budget presented Tuesday, May 26, 2020 that impacts all departments. I again want to emphasize that the cuts that have been made will require review within 6 months and we may need to make more cuts or add items that have been delayed. All will all be reviewed with Council. Items not cut will be explained as to reason why.

Expenses Reduced by Department	Amount Reduced \$
Non-Department (\$5000 from Misc. & \$10,000 BDC)	\$15,000
City Council (contracts/Dues/travel)	\$5,500
City Manager (visitors/office sup/travel)	\$2,700
Finance (Misc./postage/office sup)	\$2,500
Human Resources (testing/Christmas /misc.)	\$4,500
Tech Service (PC upgrades)	\$4,000
Court (prosecutor)	\$8,000
Planning (Office supplies)	\$1,000
Police (Fuel)	\$10,000
Fire (Vest/fuel/lease/telephone)	\$12,500
Public Works (Fuel/maintenance/supplies/sidewalks/CTC match	
Increase to Urban Forest \$7,825 for tree cutting) Net savings	\$32,800

SPECIFIC QUESTIONS ADDRESSED

Public Parks -5248

Marina building issues – general maintenance	\$2,000
Parks Furniture	\$1,000
Arbor Days – requirement of Tree City	0
Painting of all metal furniture	\$10,000
5257 - Bush hog – Bluff/parks	\$10,000
WFP Pavers	(\$5,000)
5302 -Water & Sewer	\$4,000
5522 – Southside park	\$5,000

Downtown Marina 5406, 5408, and 5412 All insurance cost 0

Seawall, 2- day docks, marina store and bathrooms, +liability.

Waterfront Park 32652

5214	Christmas decorations	\$3,000
5236	Cameras – we need immediate repair	0
5248	Clean & Oil furniture – annually done	0
5273	Replace Furniture	\$2500
5282	Flags	0

We annually replace 10-12 flags these are for park & municipal complex.

They are 5'X8' heavy duty. This year we replaced 5 US and 6 SC flags. The

Cost is US = \$72/each w/freight and SC = \$105/each w/freight. We are a military

City and must keep our flags in good condition. We normally purchase 3 times

Per year.

Parks & Tourism 32653

5257	Community Support	0
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This is for all downtown activities, Halloween, Art walk, support of PD movie Club, other Committee activities, and parades. In the past we have funded the old Main Street group with \$20-\$25,000 per year. This does not get spent if activity is cancelled, like Halloween activities were last year.

5278	This is program to assist retailers with better downtown signage – Part of Downtown improvement plans.	0
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5102	Pressure wash library compactor – agreement with library. This is done once Per month plus 2 times in summer.	0
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5110	Training for downtown merchants	\$3,000
------	---------------------------------	---------

The plan was to do 1 per quarter. Now reduce to 2X per year.

5516	Main Street Program – MASC training and planning program to help expand Our downtown.	0
------	--	---

As you can see, we went back to all departments and made cuts that we feel can be made and will need to be reviewed and possibly adjusted at mid-year or sooner. Also, our Departments have an excellent record of not spending all the budgeted money if it is not needed. We have not had to take money from our Fund Balance to cover unbudgeted expenses. Our staff will continue to operate that way.

Summary of Changes to FY 2021 Budget in Preparation of 1st Reading

		FY 2021				FY 2021
		Recommended				Recommended
		Budget - 1st Cut				Budget - 4th Cut -
		Budget - 2nd Cut				1st Reading on
		Budget - 3rd Cut				Budget Ordinance
<u>General Fund</u>		FY 2021 Requested Budget				
<u>Non Departmental</u>						
Operations		\$ 239,610	\$ 229,610	\$ 208,610	\$ 198,610	\$ 183,610
Total NonDepartmental		\$ 239,610	\$ 229,610	\$ 208,610	\$ 198,610	\$ 183,610
<u>City Council</u>						
Salaries		\$ 29,751	\$ 29,751	\$ 29,751	\$ 29,751	\$ 29,751
Benefits		10,413	10,413	10,413	10,413	10,413
Operations		126,051	110,451	94,451	84,451	78,951
Total City Council		\$ 166,215	\$ 150,615	\$ 134,615	\$ 124,615	\$ 119,115
<u>City Manager</u>						
Salaries		\$ 350,515	\$ 316,175	\$ 296,876	\$ 296,876	\$ 296,876
Benefits		122,680	110,661	103,907	103,907	103,907
Operations		100,222	84,222	69,246	71,246	68,546
Total City Manager		\$ 573,417	\$ 511,058	\$ 470,029	\$ 472,029	\$ 469,329
<u>Finance & Information Technology</u>						
Salaries		\$ 528,950	\$ 520,089	\$ 524,519	\$ 524,519	\$ 524,519
Benefits		185,133	182,031	183,582	183,582	183,582
Operations		667,633	628,252	622,284	627,484	620,984
Total Finance and IT		\$ 1,381,716	\$ 1,330,372	\$ 1,330,385	\$ 1,335,585	\$ 1,329,085
<u>Human Resources</u>						
Salaries		\$ 127,772	\$ 126,630	\$ 127,201	\$ 127,201	\$ 127,201
Benefits		44,720	44,321	44,520	44,520	44,520
Operations		124,231	116,176	94,337	91,337	86,837
Total Human Resources		\$ 296,723	\$ 287,127	\$ 266,058	\$ 263,058	\$ 258,558
<u>Municipal Court</u>						
Salaries		\$ 295,750	\$ 290,702	\$ 293,226	\$ 293,226	\$ 293,226
Benefits		103,513	101,746	102,629	108,199	108,199
Operations		132,365	123,540	122,995	100,339	92,339
Total Municipal Court		\$ 531,628	\$ 515,988	\$ 518,850	\$ 501,764	\$ 493,764

					FY 2021 Recommended Budget - 4th Cut - 1st Reading on Budget Ordinance
<u>General Fund</u>	FY 2021 Requested Budget	FY 2021 Recommended Budget - 1st Cut	FY 2021 Recommended Budget - 2nd Cut	FY 2021 Recommended Budget - 3rd Cut	
<u>Community & Economic Development</u>					
Salaries	\$ 553,590	\$ 544,500	\$ 549,045	\$ 523,294	\$ 523,294
Benefits	193,757	190,575	192,166	193,619	193,619
Operations	262,289	222,639	240,299	227,499	226,499
Total Community & Economic Development	\$ 1,009,636	\$ 957,714	\$ 981,510	\$ 944,412	\$ 943,412
<u>Police</u>					
Salaries	\$ 2,572,351	\$ 2,509,113	\$ 2,513,873	\$ 2,513,873	\$ 2,485,873
Benefits	900,323	878,190	879,856	884,531	884,532
Operations	1,133,642	1,133,642	1,119,642	1,119,642	1,109,642
Capital Outlay	27,395	27,395	24,930	24,930	24,930
Total Police	\$ 4,633,711	\$ 4,548,340	\$ 4,538,301	\$ 4,542,976	\$ 4,504,977
<u>Fire</u>					
Salaries	\$ 3,364,210	\$ 3,111,532	\$ 3,116,967	\$ 3,116,967	\$ 3,116,967
Benefits	1,177,474	1,089,036	1,090,938	1,184,447	1,184,447
Operations	1,368,282	1,367,862	1,180,088	1,180,088	1,167,462
Total Fire	\$ 5,909,966	\$ 5,568,430	\$ 5,387,993	\$ 5,481,502	\$ 5,468,876
<u>Public Works</u>					
Salaries	\$ 467,904	\$ 423,553	\$ 464,241	\$ 449,290	\$ 449,290
Benefits	163,766	148,244	162,484	170,730	170,730
Operations	2,395,757	2,225,157	1,915,288	1,905,288	1,868,613
Total Public Works	\$ 3,027,427	\$ 2,796,954	\$ 2,542,013	\$ 2,525,308	\$ 2,488,633
<u>General Obligation Debt</u>					
Principal	\$ 1,369,499	\$ 1,369,499	\$ 1,369,499	\$ 1,369,499	\$ 1,369,499
Interest	385,558	385,558	385,558	385,558	385,558
Total General Obligation Debt	\$ 1,755,057	\$ 1,755,057	\$ 1,755,057	\$ 1,755,057	\$ 1,755,057
Total General Fund Expenditures	\$ 19,525,106	\$ 18,651,265	\$ 18,133,421	\$ 18,144,916	\$ 18,014,416

					FY 2021 Recommended Budget - 4th Cut - 1st Reading on Budget Ordinance
	FY 2021 Requested Budget	FY 2021 Recommended Budget - 1st Cut	FY 2021 Recommended Budget - 2nd Cut	FY 2021 Recommended Budget - 3rd Cut	
<u>Parks & Tourism Fund</u>					
<u>Parking</u>					
Operations	\$ 9,300	\$ 9,300	\$ 9,300	\$ 9,300	\$ 9,300
Capital	25,000	25,000	12,500	12,500	12,500
Total Parking	\$ 34,300	\$ 34,300	\$ 21,800	\$ 21,800	\$ 21,800
Total Parking & Tourism Fund Expenditures	\$ 4,113,724	\$ 3,360,680	\$ 3,201,099	\$ 3,201,100	\$ 3,201,100
 <u>Stormwater Fund</u>					
Salaries	\$ 351,083	\$ 374,057	\$ 344,057	\$ 302,083	\$ 302,083
Benefits	122,879	130,920	120,420	111,771	111,771
Operations	305,189	305,189	281,618	177,618	177,618
Capital	192,000	192,000	64,000	64,000	64,000
Debt	508,126	508,126	508,126	508,126	508,126
Total Stormwater Fund	\$ 1,479,277	\$ 1,510,292	\$ 1,318,221	\$ 1,163,598	\$ 1,163,598
 <u>State Accommodations Fund</u>					
Salaries	\$ 17,723	\$ 17,723	\$ 17,723	\$ 17,723	\$ 17,723
Benefits	6,203	6,203	6,203	6,203	6,203
Operations	250,524	250,524	250,524	333,224	350,524
Capital	150,000	150,000	150,000	67,300	50,000
Transfers Out	47,300	47,300	47,300	47,300	47,300
Total State Accommodations Fund	\$ 471,750	\$ 471,750	\$ 471,750	\$ 471,750	\$ 471,750
Total	\$ 25,589,857	\$ 23,993,987	\$ 23,124,491	\$ 22,981,364	\$ 22,850,864

Decrease in Overall Budgets

General Fund	\$ 1,510,690
Parks & Tourism Fund	912,624
Stormwater Fund	315,679
Total Decrease in Overall Budget	\$ 2,738,993

130,500

Capital Improvement Plan
FY 2021 through FY FY 2024

Project		Budget								
Item	Description	Modified Budget	Funding Committed				Priority Tier Level			
City Facility Projects			Grant	Partnership	TIF II	Bond	Tier 1: 1 -2 years	Tier 2: 2 - 3 years	Tier 3: 3 - 4 years	Tier 4: 4+ years
1	Carnegie Window Refurshing	\$ 188,000	Applied For				\$ -			
2	Carteret Street Facility Improvements	\$ 230,000		\$ 198,000			\$ 230,000			
3	Upfit to 2nd Floor Police Department - pending tenant	\$ 400,000			\$ 400,000					\$ 400,000
4	Arsenal Walls Major Repair - can be phased	\$ 670,000						\$ 670,000		
5	Land Purchase for Parking at Municipal Complex	\$ 300,000					\$ 300,000			
Street Resurfacing Projects			Grant	Partnership	TIF II	Bond	Tier 1: 1 -2 years	Tier 2: 2 - 3 years	Tier 3: 3 - 4 years	Tier 4: 4+ years
FY 2019 CTC funded Projects										
6	Twin Lakes	\$ 125,000					\$ 25,000			
7	East Rd	\$ 85,000						\$ -		
8	Commerce Park - Schwatz Rd	\$ 230,000		\$ 50,000			\$ 50,000			
9	Commerce Park - Schork Rd	\$ 295,000		\$ 44,438			\$ 50,000			
Drainage Projects			Grant	Partnership	TIF II	Bond	Tier 1: 1 -2 years	Tier 2: 2 - 3 years	Tier 3: 3 - 4 years	Tier 4: 4+ years
10	Broad Street Drainage Ditch	\$ 1,197,923						\$ 1,197,923		
11	Battery Shores Drainage - In house project - remove	\$ 85,000					\$ 85,000			
12	Kings Ridge Outfall	\$ 120,000						\$ 120,000		
13	LaFayette Drainage	\$ 450,000		\$ 100,000			\$ 450,000			
14	Johnny Morral Pipe Outfall	\$ 1,802,238	Applied For			\$ 502,238	\$ 502,238			

Carteret Street Partnership Funding is committed as follows: \$18,000 from Hargray; \$130,000 from Beaufort County Economic Development Corporation and \$50,000 from the SC Alliance.

Drainage Projects			Grant	Partnership	TIF II	Bond	Tier 1: 1 - 2 years	Tier 2: 2 - 3 years	Tier 3: 3 - 4 years	Tier 4: 4+ years
15	Cottage Farm Drainage	\$ 28,000					\$ 28,000			
16	Hay Street Outfall	\$ 515,241						\$ 515,241		
17	The Point	\$ 3,969,156							\$ 3,969,156	
Other Projects			Grant	Partnership	TIF II	Bond	Tier 1: 1 - 2 years	Tier 2: 2 - 3 years	Tier 3: 3 - 4 years	Tier 4: 4+ years
19	Calhoun Streetscape & Drainage	\$ 3,000,000						\$ 3,000,000		
20	Parallel Road Ext to Hogarth	\$ 8,000,000			\$ 2,350,000		Preliminary Engineering - part of Beaufort County Sales Tax penny referendum planned for FY 2022			\$ 8,000,000
21	Duke Street - Phase III	\$ 650,000						\$ 150,000		
22	Green Street Streetscape - Phase I	\$ 650,000							\$ 150,000	
23	Green Street Streetscape - Phase II	\$ 650,000								\$ 150,000
24	Green Street Streetscape - Phase III	\$ 650,000								\$ 150,000
25	Washington Street Park - Park Improvements (Pavilion Only)	\$ 100,000						\$ 100,000		
26	Marina Bathrooms and Store	\$ 500,000							\$ 500,000	
27	Spanish Moss Trail Extension to Downtown - needs more discussion	\$ 200,000						\$ 200,000		
28	Baby Boundary - in discussion									
29	Parking Garage	\$ 8,000,000					Study and evaluation of need			\$ 8,000,000
Other Projects			Grant	Partnership	TIF II	Bond	Tier 1: 1 - 2 years	Tier 2: 2 - 3 years	Tier 3: 3 - 4 years	Tier 4: 4+ years
30	Marina Gas Tanks replacement	\$ 450,000					\$ 450,000			
31	Waterfront Park Seawall & Bulkhead Analysis	\$ 75,000					\$ 75,000			
32	Southside Park Improvements	\$ 100,000					Develop a Plan		\$ 100,000	

Total Capital Improvement Plan Projects

\$ 34,915,558

\$ 2,245,238

\$ 7,453,164

\$ 4,719,156

\$ 16,300,000

1



CITY OF BEAUFORT

DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

TO: CITY COUNCIL **DATE:** 6/4/2020
FROM: Kathy Todd
AGENDA ITEM
TITLE: Ordinance Approving Stormwater Intergovernmental Agreement (IGA) - 1st Reading
MEETING
DATE: 6/9/2020
DEPARTMENT: Finance

BACKGROUND INFORMATION:

PLACED ON AGENDA FOR: Action

REMARKS:

ATTACHMENTS:

Description	Type	Upload Date
Ordinance Approving Stormwater IGA	Cover Memo	6/4/2020

ORDINANCE NO. __

AN ORDINANCE RATIFYING CREATION AND ESTABLISHMENT OF THE CITY'S STORMWATER SYSTEM; AUTHORIZING THE EXECUTION AND DELIVERY OF A NEW STORMWATER MANAGEMENT AND UTILITY INTERGOVERNMENTAL AGREEMENT; AND OTHER MATTERS RELATING THERETO.

The City Council of the City of Beaufort (the "**Council**"), the governing body of the City of Beaufort, South Carolina (the "**City**"), has made the following findings of fact:

WHEREAS, the City is a municipal corporation of the State of South Carolina (the "**State**") located in Beaufort County, South Carolina, and as such possesses all general powers granted by the Constitution and statutes of the State to such public entities;

WHEREAS, in pursuance of the powers granted to the City, the City previously created and currently operates its stormwater and drainage system as a "Stormwater Management Division" within the City's public works department (the "**System**");

WHEREAS, the System coordinates projects designed to manage rainwater runoff in the City and services residents by maintaining stormwater retention areas and clearing and cleaning ditches, culverts and stormwater basins throughout the City;

WHEREAS, the City has previously entered into that certain "Stormwater Management and Utility Intergovernmental Agreement" dated September 21, 2001, as amended on January 26, 2004 and November 16, 2016 (the "**Original IGA**") with Beaufort County, South Carolina (the "**County**") to fund the operations of the System; and

WHEREAS, the City and the County have negotiated an "Amended and Restated Stormwater Management and Utility Intergovernmental Agreement" (the "**Agreement**"), the provisions of which amend and restate the Original IGA in its entirety, in the form attached hereto as Exhibit A.

NOW THEREFORE, BE IT ORDAINED, by the Mayor and the Council members of the City of Beaufort, South Carolina, in a meeting duly assembled, as follows:

Section 1 Recitals

Each finding or statement of fact set forth in the recitals hereto has been carefully examined and has been found to be in all respects true and correct.

Section 2 Ratification of the System

A. The Council hereby confirms, ratifies and approves the creation of the System and authorizes the System to carry out the purposes, functions, and responsibilities set forth below as all such powers are authorized by the Constitution and laws of the State. The System shall be

governed by and under the control of the Council.

B. The System shall be administered as a division of the City within the City's public works department.

C. The System shall perform the functions and duties herein set out, which as provided in Section 2(A) above shall not be deemed a limitation of the functions and duties of the System:

(i) Stormwater management planning and preparation of stormwater management plans;

(ii) Regular inspections of public and private stormwater management facilities and measures and the construction thereof;

(iii) Maintenance and improvement of sediment control, stormwater, drainage and surface water management facilities and components, the combination of which provides for the collection, management and disposal of sediment control, stormwater, drainage and surface water within the City;

(iv) Plan review and inspection of sediment control and stormwater management plans, measures and practices;

(v) Retro-fitting designated watersheds to reduce existing flooding problems to improve water quality;

(vi) Acquisition of interests in land, including easements;

(vii) Design and construction of stormwater management facilities and measures and acquisition of equipment;

(viii) Water quantity and water quality management, including monitoring surveillance; and

(ix) Any and all powers and duties delegated or granted to it as an implementing agency (as defined in Section 48-14-20(4) of the S.C. Code of Laws 1976, as amended) or a stormwater district of an implementing agency and under the laws and regulations of the State of South Carolina, and the ordinances of the City.

D. The provisions herein above, particularly Section 2(C) above may be codified in Part 3 of the City's code of ordinances wherein the power, roles, duties, and responsibilities of the City's public works department are recited.

Section 3 Approval of the Agreement

A. The Council has reviewed the Agreement, the form of which is attached to this

Ordinance as Exhibit A.

B. The Council approves of and authorizes the execution and delivery of the Agreement. The Agreement shall be executed and delivered on behalf of the City by the City Manager. Upon such execution, the Council shall be timely informed of the execution of the Agreement and advised of any changes to the Agreement from the form attached to this Ordinance. The consummation of the transactions and undertakings described in the Agreement, and such additional transactions and undertakings as may be determined by the City Manager in consultation with the Council to be necessary or advisable in connection therewith, are hereby approved.

Section 4 Other Documents; Ratification of Prior Actions

In connection with the execution and delivery of the Agreement, the City Manager is additionally authorized to prepare, review, negotiate, execute, deliver, and agree to such additional agreements, certifications, documents, closing proofs, and undertakings as he shall deem necessary or advisable. Any actions previously undertaken by the City Manager, Council or City staff in connection with the execution and delivery of the Agreement prior to the enactment of this Ordinance are ratified and confirmed.

Section 5 Severability

If any one or more of the provisions this Ordinance should be contrary to law, then such provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of the other provisions of this Ordinance.

Section 6 Repealer

Nothing in this Ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired or liability incurred, or any cause 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 7 Inconsistency

All ordinances, resolutions or parts of any ordinances or resolutions inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of the conflict or inconsistency.

Section 8 Effect

This Ordinance shall be enacted upon second reading by the Council.

DONE IN MEETING DULY ASSEMBLED, this 23d day of June 2020.

CITY OF BEAUFORT, SOUTH CAROLINA

BILLY KEYSERLING, MAYOR

(SEAL)

Attest:

IVETTE BURGESS, CITY CLERK

1st Reading: June 9, 2020
2nd Reading & Enactment: June 23, 2020

Reviewed by: _____
WILLIAM B. HARVEY, III, CITY ATTORNEY

EXHIBIT A

FORM OF AGREEMENT



CITY OF BEAUFORT

DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

TO: CITY COUNCIL **DATE:** 6/4/2020
FROM: Kathy Todd
AGENDA ITEM TITLE: 2020 Master Bond Ordinance providing for the issuance and sale of Stormwater System Revenue Bonds of the City of Beaufort, South Carolina; and other matters relating thereto - 1st Reading
MEETING DATE: 6/9/2020
DEPARTMENT: Finance

BACKGROUND INFORMATION:

In preparation for refinancing the 2018 General Obligation Bond secured to fund Stormwater Projects with the issuance of a Revenue Bond, the Master Bond Ordinance is required to effectuate that refinancing.

PLACED ON AGENDA FOR: Action

REMARKS:

ATTACHMENTS:

Description	Type	Upload Date
2020 Master Bond Ordinance	Cover Memo	6/4/2020

ORDINANCE NO. __

A MASTER BOND ORDINANCE

**PROVIDING FOR THE ISSUANCE AND SALE OF STORMWATER SYSTEM
REVENUE BONDS OF THE CITY OF BEAUFORT, SOUTH CAROLINA; AND
OTHER MATTERS RELATING THERETO.**

MASTER BOND ORDINANCE

Enacted June 23, 2020

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NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BEAUFORT, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED, THAT:

ARTICLE I

FINDINGS AND DETERMINATIONS

Section 1.01 Findings and Determinations.

Incident to the enactment of this bond ordinance (this “**Bond Ordinance**”), the City Council of the City of Beaufort (the “**City Council**”), the governing body of the City of Beaufort, South Carolina (the “**City**”), finds that the facts set forth in this Article exist, and the statements herein are in all respects true and correct:

(A) The City is a municipal corporation of the State of South Carolina (the “**State**”), located in Beaufort County, South Carolina (the “**County**”), and as such possesses all general powers granted by the Constitution and laws of the State to municipal corporations, including the power to operate utility systems both within and without the corporate limits of the City.

(B) Pursuant to State law, Ordinance No. ___ dated June 23, 2020, and the IGA (as defined herein), the City owns, operates, maintains and manages a system of sediment control, stormwater, drainage and surface water management facilities and components, the combination of which provides for the collection, management, and disposal of sediment control, stormwater, drainage and surface water within the City (the “**System**”).

(C) The System operates as an administrative division within the City’s public works department and is financially administered as special revenue fund within the City’s general fund.

(D) The System constitutes and qualifies as a “System” as such term is defined in Section 6-21-40 of the Enabling Act (as defined herein).

(E) The City, acting by and through the City Council, is responsible for the management of the System and the issuance of revenue bonds to defray the costs of capital improvements to the System.

(F) The revenues of the System are not presently pledged or hypothecated to secure the payment of any revenue bonds or other obligations of the City.

(G) Upon the enactment hereof, the provisions of this Bond Ordinance shall be in full force and effect.

[End of Article I]

ARTICLE II

DEFINITIONS, CONSTRUCTION AND INTERPRETATIONS

Section 2.01 Definition of Ordinance.

This ordinance may be hereafter cited and is hereinafter sometimes referred to as the Bond Ordinance; such term shall include all ordinances supplemental to, or amendatory of, this Bond Ordinance.

Section 2.02 Defined Terms.

In this Bond Ordinance, terms defined in Article I shall have the meaning assigned therein, and unless a different meaning clearly appears from the context, the following terms shall have the meanings assigned below:

“Accounting Principles” shall mean generally accepted accounting principles and practices applicable to governmental entities, including those applicable to governmentally owned and operating utility systems such as the System.

“Accreted Value” shall mean the amounts set forth in or the amounts determined in the manner set forth in, a Series Ordinance, authorizing the issuance of Bonds in the form of Capital Appreciation Bonds.

“Annual Budget” shall mean the budget or amended budget of the City, to include necessary appropriation for the System as provided in or required by provisions of this Bond Ordinance.

“Annual Principal and Interest Requirement” shall mean, with respect to any particular Fiscal Year and to a Series of Bonds Outstanding, an amount (other than amounts paid from proceeds of Bonds) equal to the sum of (1) all interest payable on such Series of Bonds during such Fiscal Year, plus (2) any Principal Installment of such Series of Bonds during such Fiscal Year, minus (3) any Interest Payment Subsidies received by or on deposit with the City for such Series of Bonds during such Fiscal Year and used to pay debt service on such Series of Bonds during such Fiscal Year.

For purposes of computing the Annual Principal and Interest Requirement:

(a) the rate of interest used to determine (1) above shall be a rate per annum equal to (i) with respect to any Series of Bonds which bear interest at a fixed rate, the rate of interest borne or to be borne by such Bonds, and (ii) with respect to any Series of Variable Rate Bonds, the actual rate of interest on the date of calculation; provided however, if the Variable Rate Bonds have been Outstanding for at least twelve (12) months, the average rate over the twelve months immediately preceding the date of calculation.

(b) the Principal Installments for each Series of Bonds used to determine (2) above will be the actual planned Principal Installments, except as for any Series of Bonds in which 25% or more of the Principal Installments are payable in a single Fiscal Year, the Principal Installment in such year will be assumed to be the result derived by dividing (A) the aggregate outstanding principal due on such Series of Bonds by (B) the number of full years in the remaining term of such Series of Bonds, but if the date of calculation is within twelve (12) months of the final maturity date of such Series of Bonds and a binding commitment by an institutional lender or municipal underwriting firm exists to provide money to refinance the outstanding aggregate principal amount of such Series of Bonds then Outstanding, the payment terms contained in the commitment are to be used for purposes of calculating the Principal Installments for such Series of Bonds.

(c) the amounts available in the Debt Service Reserve Fund established for a Series of Bonds may be applied against the interest payable on and the Principal Installments due on such Series of Bonds in the last Fiscal Year that such Series of Bonds is Outstanding.

“Auditor” shall mean an independent firm of certified public accountants of suitable standing selected by the City who audit the books, records, and accounts of the City.

“Authorized Investments” shall mean, within the limitations set forth herein, any investments now or hereafter permitted under Section 6-5-10 of the South Carolina Code, or any successor or similar statute, and shall also include the South Carolina Pooled Investment Fund established at Sections 6-6-10 to 6-6-40 of the South Carolina Code or any successor or similar statute and as the same may be further limited pursuant to the provisions of a Series Ordinance.

“Authorized Officers” means the Mayor, the City Manager, the Assistant City Manager, the Finance Director, or any other official authorized by the City Council to act on behalf of the City.

“Bond Counsel” shall mean an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal, state and public agency financing, selected by the City.

“Bondholder” or **“Holder”**, or any similar term, when used with reference to a Bond or Bonds, shall mean any person who shall be the registered owner of any Outstanding Bond.

“Bond Ordinance” shall mean this Bond Ordinance.

“Bond Payment Date” shall mean each date as shall be prescribed by any applicable Series Ordinance on which interest on any of the Bonds shall be payable or on which both principal and interest shall be payable on any of the Bonds according to their respective terms.

“Bonds” shall mean any indebtedness or obligations (issued as tax-exempt or taxable obligations) including those entered into under the provisions of long-term contracts payable from the revenues of the System, issued in accordance with the provisions of the Enabling Act,

this Bond Ordinance and a Series Ordinance, excluding indebtedness incurred in accordance with Article VI hereof.

“Business Day” shall mean, except as set forth in a Series Ordinance with respect to the Series of Bonds issued thereunder, any day other than a Saturday, a Sunday, a day on which banking institutions in the State or in the State of New York are required or authorized by law (including executive orders) to close or a day on which the United States federal reserve payment system is not operational.

“Capital Appreciation Bonds” shall mean Bonds that bear interest payable only at maturity or payable prior to maturity only on the redemption dates set forth in, and in the amounts determined by reference to the Accreted Value established in accordance with the provisions of the Series Ordinance authorizing the issuance of such Capital Appreciation Bonds.

“City” means the City of Beaufort, South Carolina.

“City Council” means the City Council of the City of Beaufort, the governing body of the City.

“City Manager” shall mean the City Manager of the City or in the absence of the City Manager, the Assistant City Manager or the interim City Manager.

“Clerk” shall mean the City Clerk. The term shall include the acting City Clerk or such other person designated by City Council to fulfill such role whenever, by reason of absence, illness or other reason, the person who is the City Clerk is unable to act.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and the Treasury Regulations issued thereunder, in each case, as from time to time in force.

“Contingent Fund” shall mean the fund herein so designated and designed to provide for contingencies and for improvements, betterments and extensions of the System, as established by the provisions of Section 7.07 hereof.

“Date of Issue” shall mean that date established in any Series Ordinance from which interest shall accrue on the Bonds of the applicable Series.

“Debt Service Fund” shall mean the fund of that name established pursuant to Section 7.03 of this Bond Ordinance, which fund is designed to provide for the payment of the principal of, premium, if any, and interest on all Bonds Outstanding and issued pursuant hereto, as the same respectively fall due.

“Debt Service Fund Account” shall mean the account of that name created in the Debt Service Fund and established for each Series of Bonds issued under the terms hereof. Within each Debt Service Fund Account, the Trustee may, but is not required, to further create an interest account, principal account and bond redemption account with respect to each such series of Bonds.

“Debt Service Reserve Fund” shall mean the funds, if any, so designated and designed (1) to secure the timely payment of the principal of and interest on the respective Series of Bonds Outstanding and issued pursuant to this Bond Ordinance and the applicable Series Ordinance, and (2) to provide for the redemption of such Series of Bonds Outstanding prior to their stated maturity, as established by the provisions of Section 7.04 hereof.

“Defeasance Obligations”, unless otherwise provided in a Series Ordinance for a particular Series of Bonds, shall mean non-callable: (i) Government Obligations; (ii) evidences of ownership of a proportionate interest in specified Government Obligations, which Government Obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian; and (iii) non-callable, U.S. Treasury Securities – State and Local Government Series Securities.

“Depository” shall mean any bank or trust company selected by the City as a depository of moneys or securities held under the provisions of this Bond Ordinance and may include the Trustee.

“Depreciation Fund” shall mean the fund herein so designated and designed to provide for the replacement of depreciated or obsolete parts of the System and for improvements, betterments and extensions of the System, as established by the provisions of Section 7.06 hereof.

“Electronic Means” shall mean the following communications methods: S.W.I.F.T., e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

“Enabling Act” shall mean (i) as to the initial Series of Bonds issued hereunder, Chapter 21 of Title 6, and (ii) as for any subsequent issuance, any of Chapter 21 of Title 6, Chapter 17 of Title 6, or Chapter 21 of Title 11 of the South Carolina Code, or any combination thereof, and all other statutory authorizations as may be available from time to time authorizing and enabling the City to enact this Bond Ordinance and issue Bonds hereunder, all as may be amended from time to time.

“Events of Default” shall mean those events set forth in Section 13.01 of this Bond Ordinance.

“Facilities” shall mean (i) all of the physical assets of the System, and all parts thereof, now existing; (ii) any physical assets which may thereafter be added to the System, or any part thereof, by any additions, replacements, or betterments; and (iii) any capacity incremental to that of the then existing System acquired by the City in physical assets not owned by it.

“Fiduciary” or ***“Fiduciaries”*** shall mean the Trustee and any Registrar and any other agent of the City appointed pursuant to the authorizations of this Bond Ordinance or any Series Ordinance or any or all of them, as may be appropriate.

“Finance Director” shall mean the Finance Director of the City, as the person responsible for supervising and maintaining records and accounts relating to the collection and disbursement of the revenues derived from the operation and maintenance of the System.

“Fiscal Year” shall mean the period of 12 calendar months, beginning on July 1 of each year, and ending on June 30 of the following year, unless the same shall have been changed pursuant to the authorization of Section 3.01 hereof.

“Government Obligations” shall mean: (a) direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America are pledged; (b) obligations, the payment of the principal (if any), or the interest (if any) on which is fully guaranteed as a full faith and credit obligation of the United States of America; and (c) obligations issued by the Federal Home Loan Bank and/or the Federal National Mortgage Association as permitted by Section 6-5-10(a)(2) of the South Carolina Code, as amended.

“Gross Revenues” or **“Gross Revenues of the System”** shall mean:

- (a) all Stormwater Utility User Fees;
- (b) all other receipts and revenues (other than Stormwater Utility User Fees) derived from the operation of the System, but excluding receipts and revenues allocable to the operation of Special Facilities to the extent the same have been pledged to the payment of Special Facilities Bonds;
- (c) all proceeds from the sale or other disposition of any property owned directly or beneficially by the City in connection with the operation of the System;
- (d) all interest and other income received directly or indirectly by the City from the investment of moneys or accounts relating to the System; excluding, however, investment income restricted to a purpose inconsistent with the payment of operating expenses or debt service, and specifically excluding (whether or not so restricted) interest earned on any Project Fund created with the proceeds of borrowing by the City;
- (e) all other unencumbered money to which the City may become entitled from any source whatsoever in connection with the operation of the System, but specifically excluding any amounts received by way of one-time revenues (to the extent not otherwise permitted), government grants, developer contributions, and aids-to-construction; and
- (f) all Interest Payment Subsidies to the extent such monies are not otherwise used to pay debt service on a Series of Bonds. Any Interest Payment Subsidies received by the City and used to pay debt service on a Series of Bonds shall not be included in Gross Revenues.

All amounts received as *ad valorem* taxes shall not be included in Gross Revenues.

“**IGA**” means that certain “Amended and Restated Stormwater Management and Utility Intergovernmental Agreement Between Beaufort County, South Carolina and the City of Beaufort, South Carolina” dated June 23, 2020, the provisions of which amended and restated “A Stormwater Management and Utility Intergovernmental Agreement between Beaufort County, South Carolina and the City of Beaufort, South Carolina” dated September 21, 2001, as amended on January 26, 2004, and November 11, 2016.

“**Independent Consultant**” shall mean such firm or firms, professional engineers, architects, financial advisors, accountants, rate consultants or other professionals who are nationally recognized and have a favorable reputation for consulting services for utility systems similar to the System. Such Independent Consultant shall not be an employee of the City and shall be engaged by the City to perform the tasks set forth to be performed by such Independent Consultant under the provisions of this Bond Ordinance.

“**Insurance Consultant**” shall mean a person or firm who is not, and no member, director, officer or employee of which is, an officer or employee of the City, which is qualified to survey risks and to recommend insurance coverage for public utilities and services and organizations engaged in such operations. The Insurance Consultant shall be selected by the City.

“**Insurer**”, with respect to any Series of Bonds, shall mean an insurance company that has written a Municipal Bond Insurance Policy covering such Series of Bonds.

“**Interest Payment Subsidies**” shall mean the refundable tax credit subsidies payable to the City from the federal government under any section of the Code that authorizes such tax credits or sums borrowed in a Series of Bonds for the purpose of paying all or a portion of the interest due on a Series of Bonds on specific Bond Payment Dates, as applicable.

“**Junior Lien Bonds**” shall mean any revenue bonds, long-term contracts, or other obligations issued by the City which are secured by pledges of the revenues of the System which are junior and subordinate in all respects to the pledges made to secure Bonds and to the payment by the City of all Operation and Maintenance Expenses.

“**Mayor**” shall mean the Mayor of the City. The term shall include the acting Mayor or the Mayor Pro Tempore whenever, by reason of absence, illness or other reason, the person who is the Mayor is unable to act.

“**Municipal Bond Insurance Policy**” shall mean any municipal bond insurance policy insuring the payment, when due, of the principal of and interest on a Series of Bonds.

“**Net Earnings**” shall mean, for the period in question, Gross Revenues of the System, less Operation and Maintenance Expenses, as otherwise adjusted by (a) and (b) below:

(a) Net Earnings shall include amounts transferred into the Operation and Maintenance Fund from the Rate Stabilization Fund.

(b) Net Earnings shall not include: (i) amounts transferred from the Rate Stabilization Fund into any other fund, excluding the Operation and Maintenance Fund as provided in (a) above; and (ii) amounts transferred into the Rate Stabilization Fund.

“Office of State Treasurer” shall mean the Office of State Treasurer of the State.

“Operation and Maintenance Expenses” shall mean, for the period in question and acting according to Accounting Principles, all expenses incurred in connection with the administration and the operation of the System and its Facilities, including, without limiting the generality of the foregoing, such expenses as may be reasonably necessary to preserve the System in good repair and working order, principal and interest payments with respect to capital lease or other lease financing arrangements under Section 6.03 hereof, the fees and charges of the Trustee and the custodian or trustee of any fund, the costs of audits required hereunder, the costs of computation and payment of any arbitrage rebate, and the premiums for all insurance and fidelity bonds required by this Bond Ordinance. Operation and Maintenance Expenses shall not include:

- (a) depreciation and amortization (including Bond principal) allowances;
- (b) amounts paid as interest on Bonds, Junior Lien Bonds, or Special Facilities Bonds;
- (c) amounts expended for extraordinary repairs and capital improvements to the System;
- (d) amounts paid from government grants or aids-to-construction;
- (e) unfunded net pension liabilities, other post-employment benefit liabilities or similar accounting determinations under Accounting Principles that do not result in any actual disposition of cash;
- (f) any financing expenses, underwriting discounts, call premiums, gains or losses on the extinguishment of debt due to the refinancing of the same, and other related or incidental non-recurring expenses resulting from the issuance or refinancing of Bonds;
- (g) losses on the sale or disposition of investments or fixed or capital assets not resulting from the ordinary course of the City’s business; and
- (h) any transfers out of the Stormwater Fund to another general fund account (which shall only be payable out of surplus revenues under Section 8.08 herein).

“Operation and Maintenance Fund” shall mean the fund established by the provisions of Section 7.05 hereof and which is designed to provide for the payment of all Operation and Maintenance Expenses.

“Outstanding”, when used with reference to any Bonds, subject to Section 17.01 hereof, and except as may be modified for any Series of Bonds pursuant to the provisions of a Series Ordinance, shall mean, as of any date, all such Bonds theretofore or then being authenticated and delivered except:

- (a) Bonds cancelled at or prior to such date;
- (b) Bonds in lieu of or in substitution for which other Bonds shall have been executed and delivered;
- (c) Bonds deemed to have been paid as provided in Article XVI hereof; and
- (d) for purposes of any consent or other action to be taken by the holders of a specified percentage of Bonds, Bonds, as to which a Responsible Officer (as defined herein) has actual knowledge, held by, or for the account of, the City, or by any person controlling, controlled by, or under common control with the City (unless all Bonds are so held).

“Paying Agent” shall mean the financial institution which is authorized by the City Council to pay the principal of or interest on and redemption premium, if any, on any Bonds and having the duties, responsibilities and rights provided for in this Bond Ordinance and any Series Ordinance, and its successor or successors and any other corporation or association which at any time may be substituted in its place pursuant to this Bond Ordinance. Pursuant to the provisions of Section 15.02 of this Bond Ordinance, the Trustee serves as the Paying Agent.

“Principal Installment” shall mean, as of any date of calculation, (i) the aggregate principal amount of Outstanding Bonds due on a Bond Payment Date, reduced by the aggregate principal amount of such Bonds which would be retired by reason of the payment when due of, and application in accordance with, any mandatory sinking fund payment payable before such future date, plus (ii) any mandatory sinking fund payment due on such certain future date, together with the aggregate amount of the premiums, if any, applicable to such mandatory sinking fund payments, plus (iii) with respect to any Capital Appreciation Bonds required to be paid on such certain date, the Accreted Value as of such certain date of such Capital Appreciation Bonds; and in this latter respect, any reference to “principal” of Bonds in this Bond Ordinance shall mean, with respect to Capital Appreciation Bonds, the Accreted Value of such Capital Appreciation Bonds as of the date of calculation.

“Project Fund” shall mean any fund created by and designated as such in a Series Ordinance, in accordance with Section 7.09 hereof.

“Rate Stabilization Fund” shall mean the fund designed to provide for the stabilization of stormwater rates and charges by carrying forward surplus revenues.

“Record Date” shall mean the 15th day of the month immediately preceding each Bond Payment Date (or such other time or times as shall be prescribed by any applicable Series Ordinance).

“Redemption Price” shall mean, with respect to Bonds of any Series or a portion thereof, the principal amount of such Bonds or portion thereof plus the applicable premium, if any, and accrued interest payable upon redemption thereof in the manner contemplated in accordance with its terms, this Bond Ordinance and the applicable Series Ordinance.

“Registrar” shall mean the Trustee or any bank, trust company, or national banking association which is authorized by the City to maintain an accurate list of those who from time to time shall be the Holders of Bonds of a particular Series and to effect the transfer of such Bonds in accordance with the provisions of this Bond Ordinance and having the duties, responsibilities, and rights provided for in this Bond Ordinance and any Series Ordinance, and its successor or successors and any other corporation or association which at any time may be substituted in its place pursuant to this Bond Ordinance; however, the City Council may, pursuant to a Series Ordinance, authorize the City to serve as Registrar for the applicable Series of Bonds, in lieu of the institutions referred to above.

“Reserve Requirement” shall mean as of any date of calculation, the debt service reserve requirement, if any, established by a Series Ordinance authorizing a Series of Bonds.

“Responsible Officer” means, when used with respect to the Trustee, any vice president, assistant vice president, senior associate, associate or other officer of the Trustee having direct responsibility for the administration of this Bond Ordinance.

“Securities Depository” shall mean The Depository Trust Company, New York, New York, or any other recognized securities depository selected by the City, which securities depository maintains a book-entry system in respect of the Bonds of any Series, and shall include any substitute for or successor to the securities depository initially acting as Securities Depository.

“Securities Depository Nominee” shall mean, as to any Securities Depository, such Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the registration books maintained by any Registrar, the Bond certificates to be delivered to and immobilized at such Securities Depository during the continuation with such Securities Depository of participation in its book-entry system.

“Serial Bonds” shall mean the Bonds of any Series which are stated to mature in installments and for which there are no mandatory sinking fund provisions.

“Series” shall mean all of the Bonds authenticated and delivered on original issuance in a simultaneous transaction and designated as a single Series by the authorizing Series Ordinance, and any Bonds thereafter authenticated and delivered in lieu of or in substitution for (but not to refund) such Bonds as herein provided, regardless of variations in maturity, interest rate or other provisions.

“Series Ordinance” shall mean an ordinance of City Council authorizing the issuance of a Series or multiple Series of Bonds pursuant to this Bond Ordinance in accordance with the terms and provisions hereof, enacted by City Council in accordance with Article IV hereof.

“South Carolina Code” shall mean the Code of Laws of South Carolina 1976, as from time to time amended.

“Special Facilities” shall mean those facilities financed with the proceeds of Special Facilities Bonds as described in Section 6.02 hereof.

“Special Facilities Bonds” shall mean those obligations issued in accordance with Section 6.02 hereof.

“State” shall mean the State of South Carolina.

“Stormwater Fund” shall mean the special revenue fund of the City as established and maintained within the City’s general fund (except as provided by Section 7.02(C)), wherein all Gross Revenues, expressly including all Stormwater Utility User Fees, shall be deposited and maintained pursuant to Section 7.02 hereof.

“Stormwater Utility User Fee” shall mean the service fee imposed for the purpose of funding costs related to programs, service, and facilities of the System pursuant to, and subject to the terms and conditions of, the IGA.

“System” shall have the meaning given in Section 1.01 hereof as the same is now, or in accordance with Sections 11.02 and 11.03 of this Bond Ordinance may be constituted, all property real and personal, used and useful therefor, all apparatus and equipment used in connection therewith, and all acquisitions, replacements, enlargements, improvements, extensions, additions and betterments that may be made thereto at any time hereafter; provided, that during such time as any Special Facilities Bonds issued to finance Special Facilities are outstanding, the term “System” shall not include such Special Facilities.

“Term Bonds” shall mean the Bonds of any Series which are stated to mature in a single year and which are subject to mandatory sinking fund redemption prior to the stated maturity date.

“Trustee” shall mean the financial institution serving as Trustee pursuant to this Bond Ordinance and which shall have such other duties, privileges and functions as are set forth herein. Such term shall include any successor and any corporation or association resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at the time serving as successor trustee hereunder.

“Variable Rate Bonds” shall mean, for any period of time, any Bonds which during such period bear interest at a variable rate; provided that Bonds, the interest rate on which has been fixed for the remainder of the term thereof, shall no longer be Variable Rate Bonds.

“Water Quality Authority” shall mean the South Carolina Water Quality Revolving Fund Authority.

Section 2.03 Interpretations.

In this Bond Ordinance, unless the context otherwise requires:

(A) Articles, Sections and paragraphs referred to by number shall mean the corresponding Articles, Sections and paragraphs of this Bond Ordinance.

(B) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations, or other legal entities, including public bodies, as well as natural persons.

(C) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder”, and any similar terms, as used in this Bond Ordinance refer to this Bond Ordinance or Sections or paragraphs of this Bond Ordinance and the term “hereafter” shall mean any date after the date of enactment of this Bond Ordinance.

(D) Unless otherwise specified herein, all accounting terms used herein without definition shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with Accounting Principles. In the event of changes to Accounting Principles which become effective after the date of enactment of this Bond Ordinance, the City may in good faith effect appropriate amendments to this Bond Ordinance so as to perpetuate the meaning and effect of Accounting Principles as in effect on the date of enactment of this Bond Ordinance.

(E) References to the payment of principal of Bonds shall be deemed to include payment of principal both at maturity and by mandatory redemption pursuant to any sinking fund payment obligations.

(F) Any Fiduciary shall be deemed to hold an Authorized Investment in which money is invested pursuant to the provisions of this Bond Ordinance, even though such Authorized Investment is evidenced only by a book entry or similar record of investment.

[End of Article II]

ARTICLE III

FISCAL YEAR

Section 3.01 Establishment and Modification of Fiscal Year.

The System shall be operated on a Fiscal Year basis, which, until changed, shall commence on the 1st day of July of each year and shall end on the 30th day of June of the following year. The City may, by ordinance duly enacted by City Council, change the Fiscal Year at any time from that then existing to a different twelve (12) month period.

[End of Article III]

ARTICLE IV

THE BONDS

Section 4.01 Authorization for Bonds in Series.

(A) From time to time and for the purposes of:

(1) Obtaining funds for the acquiring, purchasing, constructing, improving, enlarging, and repairing of the System and improvements and additions thereto, including the recoupment or reimbursement of funds already so expended;

(2) Providing funds for the payment of any bond anticipation note or notes issued in order to defray the costs of expansions, additions and improvements to the System and that were issued in anticipation of the issuance and sale of Bonds;

(3) Refunding Bonds or other obligations issued to provide land or facilities or equipment which are or are to become a part of the System or which are or were payable in whole or in part from revenues of the System;

(4) Providing funds for the payment of interest due on any Bonds;

(5) Funding any Debt Service Reserve Fund or restoring the value of the cash and securities in any Debt Service Reserve Fund to the amount equal to its Reserve Requirement, and reimbursing amounts owed to any providers of a surety bond, line of credit, insurance policy or letter of credit established pursuant to Section 7.04(E) hereof; and

(6) Paying the costs of issuance of Bonds, including any credit enhancement therefor;

but subject to the terms, limitations and conditions herein, the City Council may authorize the issuance of a Series of Bonds by the enactment of a Series Ordinance, and the Bonds of any such Series may be issued and delivered upon compliance with the provisions of this Article. The Bonds of each Series shall be issued in fully registered form, without coupons, and may be issued in the form of book-entry bonds. The Bonds shall, in addition to the title “City of Beaufort, South Carolina, Stormwater System Revenue Bonds”, bear a letter or number Series designation as may be necessary to distinguish them from the Bonds of every other Series and shall designate the year in which the Series is issued. Bonds of any Series may be authorized to be issued in the form of Serial Bonds or Term Bonds, with or without mandatory sinking fund payments, or Capital Appreciation Bonds, or a combination of any of them, and may bear interest in whatever manner and payable at whatever frequency as shall be prescribed by the applicable Series Ordinance.

(B) Each Series Ordinance shall include a determination to the effect that the issuance of such Series of Bonds is necessary to provide funds to be used and expended for one or more of the purposes enumerated in paragraph (A) above. In addition, in each Series Ordinance the

City Council shall specify and determine, including, as applicable, necessary delegations to an Authorized Officer or other person:

- (1) The then period of usefulness of the System;
- (2) The Date of Issue of such Series of Bonds or the manner or method for determining the same;
- (3) The maximum authorized principal amount of such Series of Bonds, and the manner or method of determining the precise principal amount and the officials authorized to make such determination;
- (4) Bond Payment Dates, the Record Dates, and the date or dates of maturity and the amounts thereof for the Bonds authorized thereby, or the manner of determining such dates and amounts and the officials authorized to make such determinations, and further provided that the Series Ordinance shall specify a date beyond which the final maturity of such Series shall not extend, which date shall not be longer than forty-five (45) years from the Date of Issue;
- (5) The purposes for which such Series of Bonds are being issued;
- (6) The title and designation of such Series of Bonds;
- (7) The manner in which such Series of Bonds are to be sold and provisions for the sale thereof;
- (8) The interest rate or rates, or the manner of determining such rate or rates, of the Bonds of such Series, including whether and on what terms there shall be entered by the City an agreement for any form of interest rate swap or similar transaction with respect to such Series or manner or method of making such determination;
- (9) The portion of such Series that are Serial Bonds and that are Term Bonds and that are Capital Appreciation Bonds, if any, including the amount and date of each mandatory redemption or sinking fund installment, if any, required by such Series Ordinance to be paid for the retirement of any such Bonds, or the manner or method of making such designations and determinations;
- (10) The Redemption Price or Redemption Prices and the redemption date or redemption dates and other terms of redemption, if any, applicable to any of the Bonds of such Series for such payments, or the manner or method of determining such dates and prices;
- (11) The Trustee, the Paying Agent, the Registrar and escrow agent (as applicable) for such Bonds and, if other than the Trustee, the manner of determining the Paying Agent, the Registrar and the escrow agent, if such Bonds are refunding Bonds;
- (12) The form or forms of the Bonds of such Series;

(13) The manner of numbering and lettering, and the denomination or denominations of the Bonds of such Series or the manner or method of determining such matters;

(14) Whether the Bonds of such Series shall be issued in book-entry form pursuant to Section 4.20 hereof or the manner or method of determining the same;

(15) That the then applicable Reserve Requirement, if any, for all Series of Bonds Outstanding have been met;

(16) The Reserve Requirement, if any, for the Series of Bonds authorized thereby, or method for determining the same;

(17) The disposition or application of the proceeds of the sale of the Bonds of such Series and the manner of their application;

(18) That a Debt Service Fund Account (within the Debt Service Fund) shall be established and a Debt Service Reserve Fund may be established for the Series of Bonds, and that a Project Fund be established if the proceeds of the Bonds of any Series are intended to be used for the expansion or improvement of the System, and that a capitalized interest account and/or a cost of issuance account be established as a standalone account or within any such Project Fund or applicable Debt Service Fund Account, as set forth in a Series Ordinance, if interest for any period is to be paid from proceeds of such Series of Bonds;

(19) An estimate of the cost of the purchasing, constructing, improving, enlarging, or repairing of the System, or any combination thereof, to be undertaken in connection with the proceeds of the Bonds of such Series; and

(20) Any other provisions or funds deemed advisable by the City for the Bonds and any other applicable redemption requirement for the Bonds of such Series and the method of satisfying the same and not in conflict with or in substitution for the provisions of this Bond Ordinance.

Section 4.02 Conditions to Issuance of Bonds of a Series.

All Bonds shall be issued in compliance with the following provisions of this Section 4.02:

(1) Bonds shall be stated to mature and/or have mandatory or sinking fund redemptions on such day or days in the years and amounts prescribed or determined in the manner approved by the Series Ordinance.

(2) Bonds shall bear interest at the rate or rates and be payable on the occasions, prescribed or determined in the manner approved by the Series Ordinance.

(3) Bonds shall be issued for a purpose or purposes set forth in Section 4.01(A) herein.

(4) There shall exist, on the occasion of the issuance of the Bonds, no default in the payment of the principal of or interest on any Bonds or any Junior Lien Bonds then Outstanding.

(5) Unless on the date of delivery of such Series of Bonds there shall be on deposit in each Debt Service Reserve Fund the amount equal to the applicable Reserve Requirement, there shall be deposited in such Debt Service Reserve Funds such amounts as may be necessary to make the value of the moneys and securities in each Debt Service Reserve Fund equal to the applicable Reserve Requirement, unless:

(a) the Series Ordinance and any previous Series Ordinances shall have provided for successive monthly payments beginning in the first month following the date of the issuance of the Bonds of any such Series in substantially equal monthly amounts (the “*Monthly Series Payments*”) so that within 10 years from the date of issuance of such Series of Bonds, or such shorter period of time as set forth in the Series Ordinance, there shall be in the applicable Debt Service Reserve Fund an amount equal to the applicable Reserve Requirement with respect to such Bonds; and

(b) there shall be no unremedied defaults of any Monthly Series Payments required to have been made.

(6) Except in the case of the initial Series of Bonds issued under this Bond Ordinance or in the event no Bonds are Outstanding:

(a) Net Earnings during the most recent Fiscal Year for which audited financial statements of the System are completed shall not be less than 120% of the maximum Annual Principal and Interest Requirements on all Bonds Outstanding and on such proposed Series of Bonds, with such calculation to be made by the Finance Director or other Authorized Officer upon the basis of the audited financial statements of the City for the most recent Fiscal Year that such audited financial statements are available; provided that for purposes of this Section 4.02(6)(a), such Net Earnings may be adjusted to reflect any rate increases in Stormwater User Utility Fees currently adopted and to be in effect prior to, coincident with or during the current Fiscal Year of the issuance of such proposed Series of Bonds and determined pro forma as though such rate increases had been in continuous effect during such recent Fiscal Year; or

(b) for each of the three Fiscal Years following the later of (i) the date of delivery of the proposed Series of Bonds, or (ii) the period (if any) for which interest is funded from the proceeds of such Bonds, Net Earnings, as has been forecasted by the Finance Director or other Authorized Officer, taking into account such circumstances and factors as

he finds appropriate including, without limitation, rate adjustments, or acquisitions or improvements to expand the System, will not be less than 120% of the maximum Annual Principal and Interest Requirements on all Bonds Outstanding and on such proposed Series of Bonds.

In the event that a Series of Bonds is Outstanding and the City determines to issue a note or other obligation in anticipation of the issuance of a Series of Bonds, for the purposes of complying with the additional bonds test established in this Section 4.02(6) above, the Finance Director or other Authorized Officer shall project the maturity schedule (including rate, term and principal maturities) of the future Series of Bonds that will be used to pay the note or other obligation at maturity; such future Series of Bonds and the accompanying projections shall qualify as a proposed Series of Bonds for purposes of the additional bonds test in Section 4.02(6) herein. The Finance Director or other Authorized Officer making the calculations described in this Section 4.02(6) may, but is not required to, rely on a report or calculation of the Auditors or Independent Consultants.

Whenever this Section 4.02(6) requires a calculation based on the most recent Fiscal Year for which audited financial statements are available, the City may, in its discretion, provide for a special audit and based upon such special audit, in lieu of the audit for such Fiscal Year, provided such special audit covers twelve (12) consecutive calendar months of the eighteen (18) full consecutive calendar months preceding the date of issuance of the proposed Series of Bonds.

(7) Notwithstanding Section 4.02(6) hereinabove, in the case of Bonds issued for the purpose of refunding any Bonds, Series of Bonds, or a portion of a Series of Bonds:

(a) the Annual Principal and Interest Requirement of the refunding Bonds shall not exceed 110% of the Annual Principal and Interest Requirement of the refunded Bonds for any Fiscal Year until a time subsequent to the last maturity of Bonds issued prior to the issuance of such refunding Bonds which are not refunded and which remain Outstanding following the issuance of the refunding Bonds;

(b) the additional bonds test prescribed by paragraph (6) herein shall be complied with; or

(c) as certified by an Independent Consultant, an overall net present value savings results from the issuance of the refunding Bonds.

(8) If any Series of Bonds shall contain Variable Rate Bonds:

(a) The Series Ordinance shall provide for and specify a maximum interest rate on (i) such Bonds and (ii) any reimbursement obligation to a liquidity provider for such Bonds; and

(b) The liquidity provider for such Bonds shall be rated within the highest two short term rating categories by any rating agency then rating any Series of Bonds.

(9) All amounts then due under a reimbursement agreement with any provider of a surety bond, line of credit, insurance policy or letter of credit as contemplated under Section 7.04(D) hereof shall have been paid.

(10) Any Series Ordinance authorizing a Series of Bonds may prescribe, in addition to the requirements set forth in Sections 4.02(6) and 4.02(7) hereof, further requirements that must be met for the issuance of Bonds on a parity with all Series of Bonds then Outstanding.

Section 4.03 Reliance on Certificates.

Each of the City, the Trustee and any purchaser of any Bonds shall be entitled to conclusively rely upon certificates or reports of the Auditors, an Authorized Officer, an Independent Consultant and any Insurance Consultant, made in good faith, pursuant to any provision of this Bond Ordinance.

Section 4.04 Execution of Bonds.

(A) Unless otherwise prescribed by any Series Ordinance, the Bonds shall be executed in the name of and on behalf of the City by the Mayor or in his absence another Authorized Officer, the corporate seal of the City shall be impressed or reproduced thereon and the same shall be attested by the Clerk. Such officers may employ facsimiles of their signatures and also a Series Resolution may specify the manner of executing the bond by electronic signature.

(B) In case any officer whose signature or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of any Bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office.

Section 4.05 Authentication.

Only such Bonds as shall have endorsed thereon a certificate of authentication duly executed by the Trustee or the Registrar shall be entitled to any right or benefit under this Bond Ordinance. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee or Registrar, and such executed certificate of the Trustee or Registrar upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Bond Ordinance. The Trustee's certificate of authentication on any Bond shall be deemed to have been duly executed if signed by any authorized signatory of the Trustee or by any authorized officer of the Registrar.

Section 4.06 Medium of Payment.

The Bonds shall be payable with respect to principal, interest, and premium, if any, in lawful money of the United States of America, unless otherwise provided in a Series Ordinance.

Section 4.07 Mutilated, Lost, Stolen or Destroyed Bonds.

In the event any Bond is mutilated, lost, stolen or destroyed, the City may execute and the Trustee may authenticate a new Bond of the same Series of like date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the City and to the Trustee evidence of or affidavit as to such loss, theft or destruction satisfactory to the City and the Trustee together with indemnity satisfactory to them. In the event any such Bond shall have matured, instead of issuing a duplicate Bond, the City shall pay the same. The City and the Trustee may charge the Holder or owner of such Bond with their reasonable fees and expenses (including reasonable attorney's fees, costs and expenses) in connection with such actions.

Section 4.08 Transfer and Registry; Persons Treated as Owners.

(A) As long as any Bonds shall be Outstanding, the City shall cause books for the registration and for the transfer of Bonds to be kept. Such books shall be kept by the Trustee unless there shall have been appointed a Registrar other than the Trustee to keep the books of registration for any particular Series of Bonds, in which case such Registrar shall promptly notify the Trustee in writing of any registration or transfer of the Bonds. The transfer of each Bond may be registered only upon the registration books of the City kept for that purpose by the registered owner thereof in person or by his duly authorized attorney upon surrender thereof and an assignment with a written instrument of transfer satisfactory to the Trustee or the Registrar, as the case may be, duly executed by the registered owner or his duly authorized attorney. Upon the registration or transfer of any Bond, the City shall cause to be issued, subject to the provisions of Section 4.11 hereof, in the name of the transferee a new Bond or Bonds of the same aggregate principal amount, maturity and interest rate as the surrendered Bond.

(B) The City, the Trustee, and any Registrar may deem and treat the person in whose name any Bond shall be registered upon the registration books of the City as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of, premium (if any) and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or, upon his order, shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid; and none of the City, the Trustee and any Registrar shall be affected by any notice to the contrary.

(C) Notwithstanding anything in paragraphs (A) and (B) of this Section 4.08 to the contrary, Bonds may be issued in the form of contractual obligations which are not instruments and which may be transferred as provided in such contracts.

Section 4.09 Date and Payment Provisions.

Unless otherwise provided in any Series Ordinance with respect to Bonds issued thereunder, each Bond of a Series shall be authenticated on such dates as they shall, in each case, be delivered. Each Bond shall bear interest from the Date of Issue if no interest has yet been paid; otherwise from the last date to which interest has been paid and which date is on or prior to the date of such Bond's authentication.

Holders of at least \$1,000,000 principal amount of a Series of Bonds may, by written notice containing wiring instructions filed with the Trustee at least 20 days prior to any Bond Payment Date, provide for the payment of the interest on such Bonds by wire transfer to an account at a bank located in the continental United States.

Section 4.10 Transferability of Bonds.

Bonds of a Series, upon surrender thereof at the office of the Trustee or the Registrar, as the case may be, for the Bonds of such Series with a written instrument of transfer satisfactory to the Trustee or the Registrar, duly executed by the Holder or his duly authorized attorney, may, at the option of the Holder and upon payment by such Holder of any charges made pursuant to Section 4.11 hereof, be exchanged for an equal aggregate principal amount of Bonds of such Series of like maturity and interest rate of any other authorized denominations.

Section 4.11 Regulations With Respect to Exchanges and Transfer.

In all cases in which the privilege of exchanging or transferring Bonds is exercised, the City shall execute and the Trustee or the Registrar, as the case may be, shall authenticate and deliver Bonds in accordance with the provisions of this Bond Ordinance. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled and destroyed and shall not be reissued, and a counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Trustee or the Registrar, as the case may be, to the City. All Bonds so destroyed shall thereafter no longer be considered Outstanding for any purposes of this Bond Ordinance. There shall be no charge to the Holder for such exchange or transfer of Bonds except that the Trustee or the Registrar, as the case may be, may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer. Neither the City nor the Trustee or the Registrar, as the case may be, shall be required to register, transfer or exchange Bonds of a Series during the period between a Record Date and its related Bond Payment Date, or to register, transfer or exchange any Bonds called for redemption after the mailing of any notice of redemption of such Bond.

Section 4.12 Cancellation and Destruction of Mutilated, Paid or Surrendered Bonds.

Upon the surrender of mutilated Bonds pursuant to Section 4.07 hereof, or Bonds paid or surrendered, the same shall be cancelled and destroyed and shall not be reissued, and a counterpart of the certificate evidencing such destruction shall be furnished by the Trustee or the Registrar, as the case may be, to the City. All Bonds so destroyed shall thereafter no longer be considered Outstanding for any purposes of this Bond Ordinance.

Section 4.13 Notice of Redemption.

If any of the Bonds, or portions thereof, are called for redemption, the Trustee, shall give written notice to the Holders of any Bonds to be redeemed, in the name of the City, of the redemption of such Bonds, or portions thereof. Notice of each redemption of Bonds is required to be mailed by the Trustee by first class mail, postage prepaid, at least 30 but no more than 60 days prior to the redemption date to each registered owner of Bonds to be redeemed, at the address of such owner recorded on the bond register and to be otherwise given in accordance with, among others, the following requirements:

(1) notices must contain, at a minimum, the complete official name of the Bonds, CUSIP numbers (if any), Bond numbers, principal amount of each Bond to be redeemed (if less than all), publication date, redemption date, Redemption Price, redemption agent's name and address and phone number, Trustee's name and address, date of the Bonds, interest rate, maturity date, the place or places where amounts due will be payable, and any other descriptive information deemed necessary by the Trustee;

(2) notices must be sent to Bondholders of \$1,000,000 or more, to the Municipal Securities Rulemaking Board, if necessary (via its Electronic Municipal Market Access (EMMA) system, or its successor, as may be amended or modified), and any Securities Depository (if such Bonds are registered in the name of a Securities Depository or the nominee of such Securities Depository) by such method or such other method as is standard in the industry; in addition, any Bondholder holding in excess of \$1,000,000 principal amount of Bonds may request the Trustee to send notices to any additional addressee specified;

(3) a second notice to registered owners of the Bonds must be mailed by the means specified above to any registered owner of Bonds who has not presented Bonds for redemption 60 days after the redemption date;

(4) notice of redemptions effected by advance refundings must also be given notice in accordance with the above requirements at least 30 days but no more than sixty (60) days prior to the actual redemption date; and

(5) CUSIP number identification, if any, with appropriate dollar amounts for each CUSIP number must accompany all redemption payments and interest payments, whether by check or by wire transfer.

The obligation to provide notice shall not be conditioned upon the prior payment to the Paying Agent of money or the delivery to the Paying Agent of Authorized Investments or Government Obligations sufficient to pay the Redemption Price of the Bonds to which such notice relates or the interest thereon to the redemption date.

If at the time of mailing of a notice of redemption, there shall not have been deposited with the Trustee or Paying Agent moneys sufficient to redeem all the Bonds or portions thereof called for redemption, which moneys are or will be available for redemption of such Bonds, such notice is required to state that it is conditional on the deposit of the redemption moneys with the Trustee or Paying Agent not later than the opening of business on the redemption date, and such notice shall be of no effect unless such moneys are so deposited.

The failure of the Trustee to give notice to a Bondholder or any defect in such notice shall not affect the validity of the redemption of any other Bonds for which notice is properly given. Any Bondholder may waive notice of redemption by delivery of a written waiver to the Trustee, or delivery of the Bond for payment on the redemption date.

Any Series Ordinance providing for the issuance of Bonds consisting of contractual obligations not in the form of an instrument or not registered in the name of a Securities Depository or the nominee of such Securities Depository or providing for Bonds in bearer form may provide alternative methods for delivery of notice of redemption, and the Trustee shall be entitled to conclusively rely on such Series Ordinance as being consistent with the provisions of this Bond Ordinance.

Provided sufficient funds for such redemption are on deposit with the Trustee, all Bonds so called for redemption shall cease to bear interest on the specified redemption date and shall no longer be deemed to be Outstanding hereunder. If said money shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

Section 4.14 Cancellation of Bonds Which Have Been Redeemed.

All Bonds which have been redeemed shall be cancelled and destroyed by the Trustee and shall not be reissued, and a counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Trustee to the City. All Bonds so destroyed shall thereafter no longer be considered Outstanding for any purposes of this Bond Ordinance.

Section 4.15 Restriction on Optional Redemption.

Notwithstanding anything in this Bond Ordinance to the contrary, no optional redemption of Bonds may occur unless all amounts payable by the City owing under a reimbursement agreement with any provider of a surety bond, line of credit, insurance policy or letter of credit as contemplated under Section 7.04(D) hereof shall have been paid in full.

Section 4.16 Selection of Bonds to be Redeemed.

In the event that less than all of the Bonds of any Series are to be redeemed at the option of the City, Bonds to be redeemed shall be in such order of maturity as selected by the City. In the event of redemption of less than all of the Bonds of a Series of any maturity, the Bonds or portions of Bonds to be redeemed, shall be selected by lot by the Trustee. The portion of any Bond of a denomination which is larger than the minimum denomination for the Bonds of such Series shall be in the principal amount of such minimum denomination or a multiple thereof, and that, in selecting portions of such Bonds for redemption, the Trustee shall treat each such Bond as representing that number of Bonds of minimum denomination which is obtained by dividing the principal amount of such Bond to be redeemed in part by the amount of the minimum denomination; provided further that, if less than all of the beneficial interests in a Bond of a single maturity registered in the name of a Securities Depository or a Securities Depository Nominee are to be redeemed, the beneficial interests to be redeemed shall be selected by lot or in such manner as may be directed by the Securities Depository. If there shall be drawn for redemption less than all of a Bond, the City shall execute and the Trustee shall authenticate and deliver, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed balance of the principal amount of the Bond so surrendered, Bonds of the same Series in any authorized denomination. The procedures for selection of Bonds of a Series for redemption set forth in this Section 4.16 are subject, however, to any alternative provisions set forth in a Series Ordinance applicable to such Series of Bonds.

Section 4.17 Purchase of Bonds.

The Trustee shall, if and to the extent practicable, purchase Bonds at the written direction of the City at such time, in such manner and at such price as may be specified by the City. The Trustee may so purchase Bonds with any money then held by the Trustee which is available for the redemption or purchase of Bonds and in excess of that set aside for the payment of Bonds called for redemption; provided, that the Trustee is provided with an opinion of Bond Counsel to the effect that such redemption or purchase complies with any limitations or restrictions on such redemption or purchase contained in this Bond Ordinance.

Section 4.18 Bonds Issued as Taxable Obligations.

Notwithstanding anything in this Bond Ordinance to the contrary, the City may from time to time, pursuant to one or more Series Ordinances, provide for the issuance of Bonds the interest on which may be includable in gross income of the Holders of such Bonds for federal income taxation purposes.

Section 4.19 Security for Payment of Bonds; Priority of Lien.

The Bonds, together with the interest thereon, shall be payable solely from and secured equally and ratably by a pledge of the Gross Revenues. Such pledge securing the Bonds shall at all times and in all respects be and remain superior to pledges made and given to secure any other bonds or other obligations payable from the revenues of the System. The Bonds shall not constitute an indebtedness of the City within the meaning of any provision, limitation or restriction of the Constitution or the laws of the State, other than those provisions authorizing

indebtedness payable solely from a revenue-producing project not involving revenues from any tax or license, and the faith, credit and taxing power of the City are expressly not pledged therefor. The City is not obligated to pay any of the Bonds or the interest thereon except from the Gross Revenues.

Pursuant to the provisions of Section 6-21-330 of the Enabling Act and as additional security for the payment of Bonds, a statutory lien on the System is granted. Such lien shall extend to the entirety of the System as currently constituted and as expanded from time to time unless otherwise provided in the Series Ordinance authorizing a Series of Bonds for a specific improvement to or expansion of the System. Any holder of any of such Bonds may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce such statutory lien and may, by suit, action, mandamus or other proceedings, enforce and compel performance of all duties of the officials of the City, including the fixing of sufficient rates, the collection of Gross Revenues, the proper segregation of the Gross Revenues of the System and the proper application thereof. But such statutory lien shall not be construed to give any such Bondholder authority to compel the sale of the System or any part thereof.

Section 4.20 Bonds in Book-Entry Form.

Notwithstanding any other provision of this Bond Ordinance with respect to the form of Bonds to the contrary, a Series Ordinance may provide for the issuance of one or more Series of Bonds solely in fully registered form registerable to a Securities Depository, a Securities Depository Nominee or the beneficial owner of the Bonds. The Series Ordinance may further provide that such Series of Bonds shall be evidenced by one or more certificates or by a system of book entries in a form satisfactory to the Finance Director and to provide for payment, redemption, notices and like provisions in a manner consistent with such system of registration.

Section 4.21 Waiver of Certain Provisions.

Notwithstanding anything in this Bond Ordinance to the contrary, whenever all of the debt issued or all of the obligations incurred by the City under a Series Ordinance are acquired by and are held by a single entity, that single entity, at its sole option, may waive in writing (provided to the City and the Trustee) any provision or requirement of this Bond Ordinance that relates separately to the governance of such Series and is for the protection and benefit of such single entity only and not for the protection or benefit of any other Holder or Holders of Bonds; provided that if such Series of Bonds is insured by an Insurer, then any such waiver shall require the prior written approval of such Insurer.

Section 4.22 Bonds Not in the Form of an Instrument.

In the event that the City issues any Series of Bonds which are contractual obligations not in the form of an instrument, the provisions regarding redemption or prepayment of such Bonds, notices to Bondholders and transfers of such Bonds contained herein may be altered or supplemented by the provisions of the Series Ordinance pursuant to which such Bonds are issued or the contract pursuant to which such obligations are created.

[End of Article IV]

ARTICLE V
RATES AND CHARGES

Section 5.01 Rate Covenant.

(A) It is hereby determined that the rates for services and facilities furnished by the System shall, until otherwise revised, be as now established. Said rates and charges are determined to be sufficient to meet the requirements of this Bond Ordinance but they shall be revised by the City Council whenever necessary in order that they shall at all times be maintained on a basis sufficient to meet the requirements of this Bond Ordinance. The City specifically covenants and agrees to maintain rates and charges for all services furnished by the System which shall at all times be sufficient:

(1) To provide for the punctual payment of the Principal Installments of and interest on all Bonds that may from time to time hereafter be Outstanding, and to that end, to maintain the Debt Service Fund and the Debt Service Fund Accounts established thereunder and thus provide for the punctual payment of the principal of and interest on the Bonds;

(2) To maintain the Debt Service Reserve Funds in the manner prescribed herein and in any applicable Series Ordinance;

(3) To provide for the payment of the Operation and Maintenance Expenses as may be necessary to preserve the same in good repair and working order;

(4) To pay all amounts owing under a reimbursement agreement with any provider of a surety bond, insurance policy or letter of credit as contemplated under Section 7.04(D) hereof;

(5) To provide for the punctual payment of the principal of and interest on all Junior Lien Bonds that may from time to time hereafter be outstanding;

(6) To build and maintain a reserve for depreciation of the System, for contingencies and for improvements, betterments and extensions to the System other than those necessary to maintain the same in good repair and working order; and

(7) To discharge all obligations imposed by the Enabling Act and by this Bond Ordinance and any applicable Series Ordinance.

(B) The City covenants and agrees that it will, at all times, prescribe and maintain and thereafter collect rates and charges for the services and facilities furnished by the System which, together with other income, are reasonably expected to yield annual Net Earnings in the current Fiscal Year equal to at least the sum of 120% of the Annual Principal and Interest Requirement in such Fiscal Year for all Bonds Outstanding. Promptly upon any material change in the circumstances which were contemplated at the time such rates and charges were most recently

reviewed, but not less frequently than once in each Fiscal Year, the City, with or without the aid of an Independent Consultant, shall review the rates and charges for its services and shall promptly revise such rates and charges as necessary to comply with the foregoing requirement. Prior to the beginning of each Fiscal Year, the City shall adopt an Annual Budget including amended rate schedules for such Fiscal Year which shall set forth in reasonable detail the estimated revenues and operating expenses and other expenditures of the System for such Fiscal Year which shall include the amount to be deposited during such Fiscal Year in the Depreciation Fund and Contingent Fund. The City may at any time adopt an amended Annual Budget for the remainder of the then current Fiscal Year.

(C) If the City, in adopting the Annual Budget, determines that revenues may not be sufficient to meet the rate covenant established hereinabove or if the audited financial statements of the City indicate that the City did not satisfy the rate covenant for the prior year, the City shall, within 45 days of such determination or indication, engage an Independent Consultant to prepare a report recommending such actions which will provide sufficient revenues in the following Fiscal Year to permit the City to meet the rate covenant. The Trustee shall be promptly notified of the engagement of the Independent Consultant. Copies of such report shall be made available to the City and the Trustee no later than 60 days after the engagement of the Independent Consultant.

The City agrees that it shall use its best efforts to effect such changes recommended by the Independent Consultant in its report. So long as the City uses its best efforts to comply with such recommendations, failure to comply with the rate covenant shall not constitute an Event of Default under Article XIII hereof; provided however, a failure to comply with the rate covenant for a period of two consecutive Fiscal Years following the date of receipt of the Independent Consultant's report shall constitute an Event of Default. The Trustee has no duty or obligation to monitor the City's compliance with any recommendations of the Independent Consultants and shall be entitled to rely on a certification of the City that it is using its best efforts to comply with any such recommendations.

[End of Article V]

ARTICLE VI

JUNIOR LIEN BONDS AND SPECIAL FACILITIES BONDS

Section 6.01 Right to Issue Junior Lien Bonds; Accession Thereof to Status of Bonds.

(A) Notwithstanding that Bonds may be Outstanding, the City may at any time, and without limitation and free of all conditions issue Junior Lien Bonds, in such amount as it may from time to time determine, payable from the revenues of the System, provided that the pledge of revenues of the System granted for the protection of said Junior Lien Bonds, shall at all times be and remain subordinate and inferior in all respects to the pledges of revenues made or authorized for the Bonds and to the payment of all Operation and Maintenance Expenses; and provided, further, that the maturity of Junior Lien Bonds may not be accelerated and paid in full unless all of the Bonds shall have been paid or provision therefor has been made pursuant to Article XVI hereof.

(B) By proceedings authorizing the issuance of Junior Lien Bonds, the City may provide for the accession of such Junior Lien Bonds to the status of Bonds provided all of the following conditions are met. Any such subsequent proceedings adopted by the City Council providing for such accession shall make the findings provided in subparagraphs (1) through (4) and state whether and to what extent a Debt Service Reserve Fund shall be established as set forth in subparagraph (5).

(1) The Junior Lien Bonds were issued for a purpose or purposes set forth in Section 4.01(A) hereof.

(2) There shall exist on the date of accession (a) no default in the payment of the principal of or interest on any Bonds or any Junior Lien Bonds then Outstanding, (b) no default in the performance of any duties required under the provisions of this Bond Ordinance, and (c) no amount owed by the City with respect to the full funding of a Debt Service Reserve Fund, either by way of cash or reimbursement of any other funding mechanism, except in accordance with Section 4.02(5)(a) hereof.

(3) There shall be deposited in the Debt Service Fund Account for such Series of newly-acceded Bonds the amounts which would have been required under the provisions of Section 8.02 hereof to be accumulated therein on the date of accession if said Junior Lien Bonds had originally been issued as Bonds.

(4) On the date of accession, the earnings tests prescribed by Section 4.02(6) hereof shall have been met.

(5) In the event such proceedings require a Reserve Requirement to be maintained for such Series of newly-acceded Bonds, then in such event, there shall be on deposit on the date of accession in a Debt Service Reserve Fund an amount equal to the Reserve Requirement established for such Junior Lien Bonds which are being acceded to the status of Bonds.

(6) The City shall obtain an opinion of Bond Counsel to the effect that: (a) this Bond Ordinance and the proceedings authorizing such Junior Lien Bonds have been duly adopted and are in full force and effect; (b) the Junior Lien Bonds have been duly and lawfully authorized and executed by the City and are valid and binding upon, and enforceable against, the City (except to the extent that the enforceability thereof may be limited by the operation of bankruptcy, insolvency and similar laws affecting rights and remedies of creditors); and (c) this Bond Ordinance creates the valid pledge which it purports to create of the revenues and of moneys and securities on deposit in any of the funds established hereunder subject to the application thereof to the purposes and on the conditions permitted by this Bond Ordinance.

(7) In the event such Junior Lien Bonds were issued with variable rates, the provisions of subparagraph (8) of Section 4.02 shall have been met.

Section 6.02 Right to Issue Special Facilities Bonds.

(A) The City shall have at all times the right to enter into contracts, leases or other agreements pursuant to which it will agree to construct, operate and pay the costs of Special Facilities to be financed by its issuance of Special Facilities Bonds, subject to the following conditions:

(1) It shall have been determined to the satisfaction of the City that the rents, revenues or receipts to be derived from the Special Facilities shall be at least equal to the principal, interest and any reserve requirements contained in the ordinance authorizing such Special Facilities Bonds and to pay all operation, maintenance and other costs and expenses applicable to such Special Facilities;

(2) The revenues derived from Special Facilities need not be deposited in the Stormwater Fund, and may be pledged to secure Special Facilities Bonds; but no debt service or other costs or expense related to any Special Facilities may be paid from System revenues deposited in the Stormwater Fund except pursuant to Section 8.08 hereof; and

(3) The City Council shall have determined that the issuance of the Special Facilities Bonds and the application of revenues from the Special Facilities to the payment thereof shall not have a detrimental effect on the System or the Bondholders.

(B) For purposes of this Section 6.02, the term "Special Facilities" shall include all or a portion of the Facilities (or those enterprises, if any referred to in Section 11.02 hereof) and rights to all or a portion of the use of, or the capacity available from, any such Facilities.

Section 6.03 Lease Financing Agreements.

The City shall have at all times the right to enter into capital leases or other lease financing agreements secured by a lien on the property, plant and equipment comprising a part

of the System, which may or may not be limited to the property, plant or equipment acquired or improved by such capital lease or other lease financing arrangement; provided, however, that: (1) the aggregate principal amount of such capital lease or other lease financing arrangement outstanding at any time shall not exceed 10% of the value of the property, plant and equipment of the System, less accumulated depreciation, as shown on the audited balance sheet of the City for the most recent Fiscal Year for which audited financial statements are available; and (2) the loss of the property secured by the lien related to the capital lease or lease financing arrangement will not materially adversely affect the ability of the City to meet its financial obligations under this Bond Ordinance.

[End of Article VI]

ARTICLE VII

ESTABLISHMENT OF FUNDS

Section 7.01 Requirement for Special Funds.

For so long a time as any sum remains due and payable by way of principal or interest on Bonds, the following funds or accounts relating to the Gross Revenues of the System shall be established and maintained, and deposits shall be made therein in the manner herein required.

Section 7.02 The Stormwater Fund.

(A) There shall be established and maintained a special fund or account designated as the “Stormwater Fund” held and administered by the City within the City’s general fund. This account shall be so maintained as to accurately reflect:

- (1) the Gross Revenues of the System; and
- (2) Net Earnings.

(B) Except as otherwise specifically directed or permitted herein, all Gross Revenues of the System shall be deposited or credited in accordance with and in the manner prescribed by Article VIII hereof into this fund. Money in the Stormwater Fund shall be withdrawn and made use of only in the manner and in the order of priority specified in Article VIII hereof. So long as the City establishes, under Accounting Principles, proper records of receipts and disbursements from the Stormwater Fund, the Stormwater Fund may be used for the purposes of the Operation and Maintenance Fund, the Depreciation Fund, and Contingent Fund, subject to the prior applications of the amounts in the Stormwater Fund for the purposes set forth in Sections 7.03 and 7.04 hereof.

(C) Upon a determination by City Council, acting by Ordinance, that no Bondholders shall be materially affected or any security for any Outstanding Bonds being diminished in any way, the Stormwater Fund associated therewith may be transferred from the general fund and established as a standalone enterprise fund of the City under Accounting Principles.

Section 7.03 The Debt Service Fund.

(A) There shall be established and maintained a Debt Service Fund held by the Trustee. Within the Debt Service Fund, there shall be established a Debt Service Fund Account for each Series of Bonds Outstanding. Each Debt Service Fund Account is intended to provide for the ratable payment of the principal of, redemption premium, if any, and interest on the respective Series of Bonds as the same respectively fall due. Payments into the Debt Service Fund shall be made in the manner prescribed by this Bond Ordinance, including the applicable provisions of Article VIII hereof, and, except as herein provided, all money in the respective Debt Service Fund Accounts shall be used solely to pay the principal of, redemption premium, if any, and interest on the respective Series of Bonds, and for no other purpose. Each Debt Service

Fund Account shall bear a numeric or alphanumeric Series designation as may be necessary to distinguish each Debt Service Fund Account from all others.

(B) The Debt Service Fund and each Debt Service Fund Account thereunder shall be kept in the complete custody and control of the Trustee and withdrawals from each Debt Service Fund Account shall be made only by such Trustee who shall transmit to each Bondholder, at such times as may be appropriate, the sums required to pay the principal of, redemption premium, if any, and interest on the respective Series of Bonds. Amounts held by the Trustee due to non-presentment of Bonds on any redemption date must be retained by the Trustee for a period of at least one year after the final maturity of such Bonds. After such one-year period, funds retained in the Debt Service Account for more than one year shall be remitted to the Office of the State Treasurer as unclaimed property. Further, subject to the written consent of the City, payment on a Series of Bonds may be made without presentation and surrender of the physical Bond; in such event, the Trustee assumes no liability to any person and no obligation shall be imposed on the Trustee to seek the return of such Series of Bonds from the Holder thereof.

(C) Moneys in the Debt Service Fund shall be invested and reinvested by the Trustee at the written direction of an Authorized Officer or his designee in Authorized Investments, maturing not later than the date on which such money is required to pay the principal of, premium, if any, and interest on the next occurring maturity of the Bonds. The Trustee shall have no responsibility for the investment of money in the Debt Service Fund that is not held by the Trustee. Unless otherwise provided in a Series Ordinance, all earnings from such investments shall be added to and become a part of the Debt Service Fund Account in which such investments are held, but shall be credited against payments that would otherwise be made to such Debt Service Fund Account pursuant to the provisions of Section 8.02 hereof.

(D) All monies received by the Trustee as Interest Payment Subsidies shall be deposited in the Debt Service Fund Account for such Series of Bonds and used to pay debt service on the Series of Bonds with respect to which such Interest Payment Subsidy was received.

(E) There may be established in the applicable Debt Service Fund Accounts from time to time a capitalized interest account to provide for the payment of interest on the Bonds of a particular Series. Any such account shall be created by the Series Ordinance relating to the issuance of such Series of Bonds. Any earnings from the investment of funds in the capitalized interest account not required to pay interest on the Bonds of any Series during the period for which interest on the Bonds of such Series is capitalized shall be deposited in the Project Fund created by the Series Ordinance relating to such Bonds or, if such Project Fund has been terminated or no such fund was created, such earnings shall be retained in the appropriate Debt Service Fund Account.

(F) Within each Debt Service Fund Account, the Trustee, or as otherwise provided in the Series Ordinance, is authorized to create sub-accounts, as it determines necessary for the timely payment of the principal of, interest on, and sinking fund installments due on the Bonds.

Section 7.04 The Debt Service Reserve Funds.

(A) Each Series Ordinance may create a Debt Service Reserve Fund for the Series of Bonds authorized thereby. Any such Debt Service Reserve Fund shall be for the equal and ratable benefit only of Bonds of that Series. Each such Debt Service Reserve Fund is intended to insure the timely payment of the principal of, and premium, if any, and interest on, that Series of Bonds, and to provide for the redemption of such Bonds prior to their stated maturities. Any Debt Service Reserve Fund shall be maintained in an amount equal to the Reserve Requirement for such Series of Bonds. Unless otherwise provided in a Series Ordinance, money in a Debt Service Reserve Fund shall be used for the following purposes, and for no other:

(1) To prevent a default in the payment of the principal of or interest on the applicable Series of Bonds, by reason of the fact that money in its Debt Service Fund Account is insufficient for such purposes;

(2) To pay the Redemption Price of the Bonds of that Series in the event that all Outstanding Bonds of such Series be redeemed as a whole; or

(3) To effect partial redemption of the applicable Series of Bonds; but subject to the restrictions of Section 4.15 hereof and provided that subsequent to said partial redemption, the market value of the cash and securities in the Debt Service Reserve Fund shall be not less than the Reserve Requirement therefor.

Notwithstanding the provisions of Section 7.04(A)(1-3) above and as permitted by the Code and Section 4.21 hereof, if the Debt Service Reserve Fund was funded with cash generated by the System, then, upon the written consent of the Holder of such Series of Bonds secured by such Debt Service Reserve Fund, the monies in such Debt Service Reserve Fund may be returned to the City prior to the final maturity of such Series. The requirements for and provisions governing any Debt Service Reserve Fund in the remainder of this Bond Ordinance shall, in references to “the Debt Service Reserve Fund,” “the Reserve Requirement” and “the Bonds,” be deemed to refer to each such Debt Service Reserve Fund created by a Series Ordinance, if any, and in each case to the respective Reserve Requirement for the respective Series of Bonds, and to Bonds only of that respective Series and not to any other Bonds.

(B) (1) Except as provided in (B)(2) below, each Debt Service Reserve Fund shall be kept in the complete custody and control of the Trustee and withdrawals therefrom shall be made only by the Trustee who shall transmit to the Bondholders, at such times as may be appropriate, the sums required to pay the principal of, redemption premium, if any, and interest on the Bonds.

(2) If a Series of Bonds is held by the Water Quality Authority, then the Debt Service Reserve Fund for such Series of Bonds may be kept in the custody and control of the Office of State Treasurer and invested in Authorized Investments. Withdrawals therefrom shall be made only as directed by the Water Quality Authority at such times as may be required to pay the principal and interest on such Series of Bonds. Any withdrawal of the monies in a Debt Service Reserve Fund that exceeds the Reserve

Requirement shall be transferred in accordance with the provisions of Section 7.04(C) hereof.

(C) Except as provided in Section 7.04(B)(2) herein, money in a Debt Service Reserve Fund shall be invested and reinvested by the Trustee at the written direction of an Authorized Officer or his designee in Authorized Investments. Subject to the remaining provisions of this paragraph (C), the earnings from such investments shall be added to and become a part of that Debt Service Reserve Fund. Except as provided in a Series Ordinance, if as of any date of calculation, the value of the securities and money in a Debt Service Reserve Fund shall exceed its Reserve Requirement, such excess shall, at the written direction of the City, either be used to effect partial redemption of Bonds of that Series, or shall be removed from such Debt Service Reserve Fund and, either (i) transferred into the applicable Debt Service Fund Account, or (ii) transferred to the Stormwater Fund, as permitted by the provisions of the Code.

(D) In the event a Series Ordinance requires a Debt Service Reserve Fund to be established for a Series of Bonds, unless otherwise required by such Series Ordinance, the City, in lieu of the deposit of moneys into a Debt Service Reserve Fund, may alternatively satisfy the applicable Reserve Requirement by causing to be so credited to such Debt Service Reserve Fund an irrevocable and unconditional surety bond, line of credit, letter of credit or insurance policy equal to the Reserve Requirement therefor.

(E) In the event the amount credited to a Debt Service Reserve Fund under a surety bond, letter of credit, or insurance policy (the “**Original Funding Instrument**”) also includes amounts available under another surety bond, letter of credit, or insurance policy (the “**Additional Funding Instrument**”), draws on the Original Funding Instrument and the Additional Funding Instrument shall be made on a pro rata basis to fund any insufficiency in the Debt Service Fund Account. In the event a Debt Service Reserve Fund is funded with both monies and a surety bond, letter of credit, or insurance policy (1) any withdrawals from such Debt Service Reserve Fund shall be made first from such monies (or the liquidation of investments made therewith) and second from such surety bond, line of credit, letter of credit, or insurance policy, and (2) cash deposits to such Debt Service Reserve Fund shall be used first to restore the cash balance and second to reinstate the surety bond, line of credit, letter of credit, or insurance policy. The surety bond, line of credit, letter of credit, or insurance policy shall be payable (upon the giving of notice as required thereunder) on any Bond Payment Date on which moneys will be required to be withdrawn from such Debt Service Reserve Fund and applied to the payment of the principal of or interest on the Outstanding Series of Bonds to which such surety bond, line of credit, letter of credit, or insurance policy relates when such payments cannot be made by amounts otherwise credited to such Debt Service Reserve Fund.

Section 7.05 The Operation and Maintenance Fund.

(A) There shall be established and maintained an Operation and Maintenance Fund held and administered by the City. The Operation and Maintenance Fund is intended to provide for the payment of the Operation and Maintenance Expenses.

(B) Withdrawals from the Operation and Maintenance Fund shall be made by or on the order of an Authorized Officer in accordance, as nearly as may be practicable, with the Annual Budget then in effect.

Section 7.06 The Depreciation Fund.

(A) There shall be established and maintained a Depreciation Fund held and administered by the City. This fund shall be maintained in an amount to be established not less frequently than annually by the City Council in order to provide a reasonable reserve for depreciation of the System.

(B) Money in this fund shall be used solely:

- (1) For the purpose of restoring depreciated or obsolete items of the System;
- (2) To prevent defaults of Bonds and Junior Lien Bonds; and
- (3) For optional redemption of Bonds or Junior Lien Bonds.

(C) Withdrawals from this fund shall be made by or on order of the City.

Section 7.07 The Contingent Fund.

(A) There shall be established and maintained a Contingent Fund held and administered by the City. This fund shall be maintained in an amount to be established not less frequently than annually by the City Council in order to provide a reasonable reserve for contingencies and for improvements, betterments and extensions of the System.

(B) Money in this fund shall be used solely:

- (1) For improvements, betterments and extensions to the System, other than for those things which are reasonably necessary to maintain the System in good repair and working order;
- (2) To defray the cost of unforeseen contingencies and extraordinary repairs to the System;
- (3) To prevent defaults of Bonds and Junior Lien Bonds; and
- (4) For optional redemption of Bonds or Junior Lien Bonds.

(C) Withdrawals from this fund shall be made by or on order of an Authorized Officer.

Section 7.08 The Rate Stabilization Fund.

The City Council may establish a Rate Stabilization Fund, as needed, and, if created, shall administer such fund under the provisions of this Bond Ordinance and State law.

Section 7.09 Establishment of Project Funds.

With respect to each Series of Bonds issued for the purposes set forth at Section 4.01(A)(1) hereof, there shall be established a Project Fund pursuant to the respective Series Ordinance to be held by the Trustee, unless otherwise provided in such Series Ordinance. The moneys in the respective Project Fund shall be used to defray the costs of and to pay any costs incurred or to be incurred with respect to the project so financed and costs of issuance incurred in connection therewith. The City may, but shall not be required to establish a capitalized interest account and a cost of issuance account in any Project Fund so created. On the occasion of the delivery of any such Series of Bonds, the proceeds therefrom shall be paid into the Project Fund established for such Series as set forth in the Series Ordinance authorizing their issue. Withdrawals from a Project Fund and the accounts, if any, therein shall not be made except as provided in the Series Ordinance establishing such Project Fund.

Section 7.10 Investments of Funds.

Whenever, in the opinion of the City, it becomes desirable to invest money in any of the funds established by this Article (other than the Debt Service Reserve Funds, the Debt Service Fund, and any capitalized interest account) the City may make Authorized Investments. Earnings resulting from the investment of money in a particular fund shall be deposited into the Stormwater Fund (i) except as otherwise provided in Sections 7.03 and 7.04 hereof, and (ii) unless the City Council shall have determined pursuant to the Annual Budget that any such earnings on amounts in the Depreciation Fund and Contingent Fund shall remain therein.

Notwithstanding anything contained herein to the contrary and as limited solely to the funds held and invested by the Trustee, the Trustee shall have no obligation to enter into any repurchase agreement, investment agreement or any similar agreements with respect to the investment of any monies held under this Bond Ordinance unless (i) such agreement is in form and content acceptable to the Trustee in its sole discretion, (ii) any liability of the Trustee under such agreement is limited to loss occasioned by the negligence or willful misconduct of the Trustee, and (iii) the City shall pay to the Trustee an additional fee established by the Trustee in accordance with its customary practices.

[End of Article VII]

ARTICLE VIII

DISPOSITION OF REVENUES

Section 8.01 Deposits to Stormwater Fund; Dispositions Therefrom.

The Gross Revenues of the System are declared to be a part of the Stormwater Fund and shall from time to time be promptly deposited in a bank or depository in an account which will reflect the fact that they are a part of the Stormwater Fund. If Bonds are Outstanding, the dispositions from the Stormwater Fund required by the remaining Sections of this Article shall be made on or before the last Business Day of each month following the delivery of the first Series of Bonds issued hereunder. Payments from the Stormwater Fund shall be made in the order of priority established by the sequence of the remaining Sections of this Article.

Section 8.02 Payments for Bonds.

Provision shall be made for the payment of principal of, premium, if any, and interest on all Bonds then Outstanding without priority of any other Bonds but ratably as to each Series of Bonds. To that end:

(1) There shall be deposited into the Debt Service Fund and thereafter transferred into the respective Debt Service Fund Account (and thereafter to the respective interest sub-account, if any) the monthly fraction of the aggregate amount of interest to become due on the respective Series of Bonds on the next ensuing Bond Payment Date; provided, however, that if provision has been made for the payment of all or part of the next installment of interest to become due on any Bonds, or the Trustee is in receipt of any Interest Payment Subsidies, pursuant to any other provision of this Bond Ordinance, or any Series Ordinance, or by reason of investment earnings or otherwise, then, in such event, the deposits required by this paragraph may be omitted, or reduced accordingly.

(2) There shall be deposited into the Debt Service Fund and thereafter transferred into the respective Debt Service Fund Account (and thereafter to the respective principal sub-account, if any) the monthly fraction of the Principal Installment of the respective Series of Bonds next becoming due and payable (whether at stated maturity or by sinking fund installments), so that on each principal maturity date, the amount of principal to be paid shall have been accumulated and be on hand; provided, however, that if provision has been made for the payment of all or part of the next installment of principal to become due on the respective Series of Bonds, pursuant to any other provision of this Bond Ordinance, or any Series Ordinance, or by reason of investment earnings or otherwise, then, in such event, the deposits required by this paragraph may be omitted, or reduced accordingly.

(3) If, on the occasion when the deposits required by paragraphs (1) and (2) of this Section, are to be made, the sum total of the deposits required thereby plus previous monthly deposits and the remaining deposits to be made prior to the next succeeding

principal and interest payment dates, will be less than the sum required to effect the payment of the next succeeding installment of either principal or interest, or both on the respective Series of Bonds, as the case may be, a sum equal to such deficiency shall be added to the deposits so to be made.

Section 8.03 Deposits for the Debt Service Reserve Funds—Valuation.

Deposits shall next be made in the amounts required by this Section 8.03 or Section 4.02(5) into the respective Debt Service Reserve Funds. Except as provided in Section 7.04(B)(2), the Trustee shall calculate the value of the cash and securities in each Debt Service Reserve Fund 45 days prior to each Bond Payment Date in order to determine if each Debt Service Reserve Fund contains the Reserve Requirement therefor, and the extent to which payments therefor or withdrawals must be made therefrom, and the timing thereof, pursuant to this Bond Ordinance and the respective Series Ordinances. To the extent the Trustee determines that a deficiency exists, but such deficiency is solely the result of accounting practices governing the valuation of securities in the Debt Service Reserve Fund, the Trustee may alternatively calculate the value of the securities in each Debt Service Reserve Fund as of the maturity date of such securities, so long as such securities mature on or prior to the Bond Payment Date. Unless a Debt Service Reserve Fund is being funded pursuant to Section 4.02(5)(a) of this Bond Ordinance or otherwise contains cash and securities (or a surety bond, insurance policy, or letter of credit as herein described) in an amount at least equal to its Reserve Requirement, unless otherwise provided in the Series Ordinance, there shall be paid into such Debt Service Reserve Fund on the last Business Day of each of the 24 months following a determination of a deficiency in such Debt Service Reserve Fund one-twenty-fourth (1/24) of the amount necessary to re-establish in such Debt Service Reserve Fund its Reserve Requirement; provided, however, nothing herein shall preclude the City from fully re-establishing such Reserve Requirement in a more timely fashion than as so prescribed. Any surety bond, line of credit, insurance policy or letter of credit being used to meet the Reserve Requirement of a Debt Service Reserve Fund shall be valued at the amount still remaining to be drawn thereon; and in the event that any such surety bond, line of credit, insurance policy or letter of credit has been drawn upon, the amount necessary to restore the principal balance thereof shall be paid by the City in the same manner and on a parity with the payments described in this Section 8.03 or as provided in an insurance agreement or applicable Series Ordinance.

The market value of any Authorized Investments in a Debt Service Reserve Fund shall be calculated as follows:

- (1) as to investments the bid and asked prices of which are published on a regular basis in *The Wall Street Journal* (or, if published therein, then in *The New York Times*): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;
- (2) as to investments the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal* or *The New York Times*: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the

time making a market in such investments or the bid price published by a nationally recognized pricing service;

(3) as to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and

(4) as to any investment not specified above, the value thereof established by prior agreement between the City and the Trustee.

Section 8.04 Deposits to the Operation and Maintenance Fund.

There shall be deposited in the Operation and Maintenance Fund, either from the Stormwater Fund or the Rate Stabilization Fund, the amounts budgeted for Operation and Maintenance Expenses for the ensuing month and any amounts required for an operational reserve.

Section 8.05 Reimbursement of Interest on Amounts Advanced by Credit Providers for the Debt Service Reserve Fund.

Provision shall then be made for payment of interest and any fees or penalties on amounts advanced by the provider of any surety bond, line of credit, letter of credit or insurance policy as contemplated in Section 7.04(D) hereof.

Section 8.06 Payments for Junior Lien Bonds.

Provision shall then be made for the payment of any other indebtedness which is junior and subordinate to the Bonds in the order of priority contemplated by the proceedings authorizing their issuance.

Section 8.07 Deposits for the Depreciation Fund and Contingent Fund.

A. There shall be deposited into the Depreciation Fund that sum which is one-twelfth (1/12) of the sum which has been currently determined by the City Council to be the budgeted requirement therefor for the then current Fiscal Year.

B. There shall be deposited into the Contingent Fund that sum which is one-twelfth (1/12) of the sum which has been currently determined by the City Council to be the budgeted requirement therefor for the then current Fiscal Year.

Section 8.08 Use of Surplus Money.

All money remaining after making the payments required by Sections 8.01 to 8.07, shall be disposed of for any lawful purpose in such manner as the City Council shall from time to time determine.

The City may determine, at any time, to deposit any percentage or any set amount of surplus money under this Section 8.08 into the Rate Stabilization Fund. Amounts on deposit in the Rate Stabilization Fund may, at the direction of an Authorized Officer, be used to make deposits into the Operation and Maintenance Fund required by Section 8.04 hereof. Amounts on deposit in the Rate Stabilization Fund may, at the option of the City Council, be withdrawn and used for any other required purpose of the System, but in such event, such withdrawal, if for a purpose other than the payments of Operation and Maintenance Expenses, shall be excluded from Net Earnings.

[End of Article VIII]

ARTICLE IX

AGREEMENT TO FURNISH INFORMATION WITH RESPECT TO SYSTEM

Section 9.01 Keeping Records.

The City recognizes that those who may from time to time hereafter be Bondholders will, throughout the life of the Bonds, require full information with respect to the System, the fiscal affairs of the System, and all matters incident to each. To that end, the City hereby covenants and agrees that it will install and thereafter at all times maintain proper books of records and accounts, separate and distinct from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the System, and all revenues and receipts derived therefrom, directly or indirectly. Such books and records shall be kept in such fashion as to reveal in detail:

- (A) The Gross Revenues of the System and the source from whence derived;
- (B) All Operation and Maintenance Expenses;
- (C) The Net Earnings of the System and a schedule demonstrating compliance with Section 5.01(B) hereof for such Fiscal Year;
- (D) All expenditures made from the several funds established by this Bond Ordinance, and Series Ordinances authorizing the issuance of the Bonds; and
- (E) The rate schedules that may from time to time be in force.

Section 9.02 Audit Required.

The City further covenants and agrees that so long as any Bonds are Outstanding, it will, not later than seven months after the close of each Fiscal Year, cause to be made and completed by the Auditors, an audit of the records, books and accounts pertaining to the System, made in accordance with Accounting Principles, showing, among other things, Gross Revenues and Net Earnings; and that it will furnish a copy of such audit to the Trustee. Such audit shall comment upon any violation of any provision of any resolution authorizing the issuance of any Bonds or Junior Lien Bonds and any violation of any provision of this Bond Ordinance noted by the Auditors, and such other matters as to them seem pertinent. The cost of such audit shall be treated as an Operation and Maintenance Expense. Any audits made available to the City shall not otherwise be restricted as to their subsequent dissemination to any party.

Pursuant to the Enabling Act, the City will make available, upon request, for inspection during regular business hours an unaudited balance sheet and income statement and other information required thereby within six months of the close of the Fiscal Year.

[End of Article IX]

ARTICLE X

INSURANCE

Section 10.01 Requirement of Insurance.

(A) The City covenants and agrees that so long as any Bonds are Outstanding:

(1) To the extent insurance coverage is available, that it will insure and at all times keep the System insured against physical loss or damage with a responsible insurance company or companies, authorized and qualified under the laws of the State, to assume the risks insured against, in such amount as private corporations engaged in similar endeavors would customarily insure for;

(2) That it will secure adequate fidelity bonds (blanket or individual) of a surety company doing business in the State, indemnifying the City against defalcation of all persons handling money derived from the System or signing checks on any bank accounts relating to the System, other than the Trustee or any Registrar;

(3) That all premiums on all bonds or insurance policies shall be deemed an Operation and Maintenance Expense and paid out of Gross Revenues of the System;

(4) That all insurance policies shall be open to the inspection of any Bondholder at any reasonable time;

(5) That all money received by the City as a consequence of any defalcation, covered by any fidelity bond, shall be used to restore the fund depleted by the defalcation. All sums received by the City from insurance policies covering the System may, to the extent necessary, be applied to the repair and replacement of the damaged or destroyed property, but, in the event that such money is not used for such purposes, then the same shall be deposited in the Depreciation Fund or Contingent Fund; and

(6) That it will comply with the requirements of State law regarding the mandatory purchase of liability insurance contained in Section 15-78-140(b) of the South Carolina Code.

(B) Insurance required by this Section 10.01 may be provided through the South Carolina Insurance Reserve Fund. The City may obtain or adopt alternative risk management programs which an Insurance Consultant determines to be reasonable, including, without limitation, self-insurance in whole or in part individually or in connection with other institutions, participation in programs of captive insurance companies; participation with other governmental entities in mutual or other cooperative insurance or other risk management programs, participation in state or federal insurance programs, taking advantage of state or federal laws now or hereafter in existence limiting liability, or establishing or participating in other alternative risk management programs; all as may be approved by the Insurance Consultant as reasonable and appropriate risk management by the City. If the City shall be self-insured for any coverage,

the City shall obtain a report of an Insurance Consultant stating whether the anticipated funding of any self-insurance fund is actuarially sound, and if not, the required funding to produce such result and such coverage shall be reviewed by the Insurance Consultant not less frequently than annually. Any self-insurance program shall be subject to annual review by the Insurance Consultant who shall provide a written report to the City which shall include recommendations relating to such self-insurance program. The City shall provide to the Trustee annual certification evidencing compliance with the Insurance Consultant's recommendations. The Trustee has no duty or obligation to make any determination as to the sufficiency of the insurance required to be maintained hereunder.

[End of Article X]

ARTICLE XI

ADDITIONAL COVENANTS

Section 11.01 Additional Covenants to Secure Bonds.

The City further covenants and agrees:

(A) That neither the System, nor any part thereof, nor any of the revenues derived from the System, have been or will be hypothecated, mortgaged, otherwise pledged or encumbered, save and except in accordance with the provisions hereof;

(B) That it will permit no free service to be rendered, or use to be made of the services and facilities of the System, and for the services and facilities of the System used by the City, the reasonable cost and value of such services and facilities shall be paid as such services accrue. The revenue so received from the City shall be deemed revenue derived from the operation of the System, and shall be accounted for in the same manner as other revenues of the System;

(C) That it will do all things necessary to maintain and enforce the provisions of the IGA and the levy and collection of Stormwater Utility User Fees thereunder; however, nothing shall prohibit the amendment, revision, adjustment or cancellation of the IGA so long as the City maintains the ability to levy and collect Stormwater Utility User Fees in an amount necessary to meet the coverage requirements in Section 5.01(B) herein.

(D) That so long as there are any Bonds Outstanding and unpaid, it will perform all duties with reference to the System required by the Constitution of the State and the South Carolina Code;

(E) That it will not pledge, mortgage, or otherwise encumber the System or any portion thereof, or any revenues therefrom except in the manner herein authorized, and (except as provided in Section 11.03 herein) it will not sell, lease or otherwise dispose of any portion of the System, necessary or useful in the operation of the System, until all Bonds shall be paid in full, or unless and until provision shall have been made for the payment of all Bonds and the interest thereon in full, and the City further obligates itself and covenants and agrees with the Bondholders to maintain in good condition and to operate said System, and to collect and charge such rates for the services and facilities of the System so that the income and revenues of the System will be sufficient at all times to meet the requirements of this Bond Ordinance. If, pursuant to this Section, anything belonging to the System which is not deemed by the City to be necessary or useful therefor shall be sold or disposed of, the proceeds of such sale or disposition shall be deposited in the Depreciation Fund or Contingent Fund;

(F) That it will permit, so long as there are any Bonds Outstanding, any Bondholder to inspect the System and all records and accounts thereof under reasonable terms and conditions and after reasonable notice has been given;

(G) That it will not make any use, and it shall direct the Trustee and each Fiduciary not to make any use of the proceeds of any Series of Bonds which Bonds were intended upon the issuance thereof to be exempt from federal income taxation, which, if such use had been reasonably expected on the date of the issuance of the Bonds of such Series would have caused such Bonds or any other Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and will observe and not violate the requirements of Section 148 of the Code;

(H) That, as to any Series of Bonds that was intended at the time of their issuance to be exempt from federal income taxation, it will take all actions required of it under the Code that are necessary to preserve the tax-exempt status of such Series of Bonds, including without limitation, actions necessary to comply with all information reporting requirements and any obligation to rebate arbitrage earnings on the proceeds of such Bonds to the United States Government;

(I) That it will make all payments or deposits required under Articles VII and VIII of this Bond Ordinance in a timely manner; and

(J) That no payments on account of appropriations to the general fund of the City shall be made except as permitted under Section 8.08 hereof.

Section 11.02 Acquisition of Additional Utilities.

No provision of this Bond Ordinance shall prevent the combining of the System with any other utility system or enterprise of whatever type if such combination then be permitted or authorized by the provisions of the South Carolina Code and if the requirements set forth below are met; but no such combination shall impair the validity or priority of the pledge of revenues and the lien thereon created by this Bond Ordinance. The City shall have the right, from time to time, to add other utilities, enterprises, activities and facilities (which at the date of enactment of this Bond Ordinance were not included in the definition of System hereunder) to the definition of System hereunder, provided that:

(A) the City Council shall have determined that such utilities, enterprises, activities or facilities are of a similar public utility nature as are the utilities now constituting the System;

(B) if necessary, the City Council shall have adopted an appropriate amendatory ordinance to this Bond Ordinance;

(C) the City shall have received an opinion of Bond Counsel to the effect that such action to be taken under this Section is authorized under this Bond Ordinance and the laws of the State and will not adversely affect the excludability of interest on the Bonds which were intended upon their issuance to be exempt from federal income taxation; and

(D) for each of the five (5) Fiscal Years following the date of the additions to the System, Net Earnings, as shall have been forecasted either by Independent Consultants with a reputation for expertise in the type of enterprise being added to the System, by the Auditors or by the Finance Director, will be not less than 120% of the Annual Principal and Interest

Requirements on all Bonds then proposed to be Outstanding in each of such five (5) Fiscal Years; provided, however, that in the event that Bonds are being issued to acquire or improve the acquired utility, this paragraph (D) shall not apply and the City shall meet the requirements of Article IV hereof before issuing such Bonds and acquiring such utility.

Section 11.03 Sale, Exchange, Removal or Disposal of Component of System.

(A) The City may from time to time sell, exchange, remove or dispose of (but not lease, contract or agree for the use thereof) an entire component comprising a part of the System, if it determines by ordinance:

(1) that the sale, exchange, removal or other disposition thereof would not materially reduce Net Earnings; or

(2) that the sale, exchange, removal or other disposition thereof (1) would not materially adversely affect the ability of the City to comply with the rate covenant, set forth in Section 5.01 hereof, for the current and next succeeding Fiscal Year, and (2) would be for a consideration of not less than reasonable value as may be determined in the sole discretion of the City Council.

(B) In addition to the provisions of Section 11.03(A) hereof, if the City determines to sell, exchange, remove or dispose of an entire component comprising a part of the System the following conditions shall also be met:

(1) the City shall obtain an opinion of Bond Counsel to the effect that the sale, exchange, removal or disposal of a component of the System from the System has been effected in accordance with the terms of this Bond Ordinance; and

(2) notice shall be provided by the City to any rating agency, if any, then rating any Series of Bonds regarding the sale, exchange, removal or disposal of such component from the System.

(C) If the City sells, exchanges, removes or otherwise disposes a component of the System, the proceeds, if any, of such transaction may be applied, at the discretion of the City, as follows:

(1) to the payment or satisfaction, in whole or in part, of (1) Bonds associated with or related to such component and (2) any other type of indebtedness of the City associated with or related to such component; or

(2) to the payment or satisfaction, in whole or in part, of the amount due under any type of contractual obligations of the City associated with or related to such component; or

(3) to the payment of the construction or purchase of additional improvements or expansions to the System.

[End of Article XI]

ARTICLE XII

MODIFICATION OF ORDINANCE

Section 12.01 Modification without Bondholder Approval.

(A) Provided always that the security of the Bonds shall not be diminished, or in any manner impaired, the City Council may for any one or more of the following purposes at any time, or from time to time, enact an ordinance, amending or supplementing this Bond Ordinance, which supplemental ordinance shall be fully effective in accordance with its terms:

(1) to provide for the issuance of a Series of Bonds in accordance with Article IV of this Bond Ordinance;

(2) to add to the covenants and agreements of the City in this Bond Ordinance, other covenants and agreements thereafter to be observed;

(3) to surrender any right, power or privilege reserved to or conferred upon the City by this Bond Ordinance;

(4) to cure, correct and remove any ambiguity or inconsistent provisions contained in this Bond Ordinance;

(5) to implement an addition to the System pursuant to Section 11.02 hereof; and

(6) for any other purpose which, in the opinion of Bond Counsel, does not materially affect the interests of the Bondholders.

(B) It is further provided that such supplemental ordinance shall not become effective until a copy thereof, duly certified, shall have been filed in the office of the Clerk of Court for the County. Further, regarding amendments under Section 12.01(A)(2), (3) or (4), there shall be filed with the Trustee an opinion of bond counsel stating that such amendatory or supplemental ordinance has been duly and lawfully enacted by the City in accordance with this Bond Ordinance and is valid and binding upon the City. At the written direction of the City, the Trustee will promptly give notice of enactment and a copy of any modification made hereunder to any Insurer.

Section 12.02 Modification with Bondholder Approval.

The rights and duties of the City and the Bondholders and the terms and provisions of this Bond Ordinance may be modified or altered in any respect by an ordinance enacted by the City Council with the consent of the Holders of 51% or more in principal amount of all Bonds of each Series which would be affected by such modification or alteration then Outstanding and the prior written consent of the Insurer, if any, of each such Series of Bonds, such consent to be evidenced

in such manner as may be acceptable to the Trustee, however no such modification or alteration shall, without the consent of the Holders of all Bonds affected by such change or modification:

(A) Effect a change as to the type of currency in which the City is obligated to effect payment of the principal, interest and redemption premium of any Bond;

(B) Permit the creation of a pledge of the revenues of the System prior to or equal to the Bonds except as may be permitted under the provisions of this Bond Ordinance;

(C) Permit preference or priority of any Bonds to others;

(D) Alter or modify the provisions of Section 4.02 or of Articles V, VII, and VIII hereof; or

(E) Reduce the percentage required for the written consent to the modification or alteration of the provisions of this Bond Ordinance.

Section 12.03 Procedure for Procuring Bondholder Approval.

The City and the Trustee may rely upon the registry books maintained by the Registrar to determine who are the Holders of the Bonds. Any and all modifications made pursuant to Section 12.02 shall not become effective until (1) there has been filed with the Clerk of Court for the County and with the Trustee a copy of such amendatory ordinance hereinabove provided for, duly certified, (2) there has been filed with the Trustee an opinion of bond counsel stating that such amendatory or supplemental ordinance has been duly and lawfully enacted by the City in accordance with this Bond Ordinance and is valid and binding upon the City, and (3) proof of consent to such modification by the Holders (depending on the type of modification) of (A) 51% in principal amount of the Bonds of each Series then Outstanding or (B) all Bonds Outstanding, shall be filed with the Trustee. In the event that any Series of Bonds are held under a book-entry system pursuant to Section 4.20, the approvals of Bondholders may be obtained in the manner provided in the agreement with the Securities Depository.

Section 12.04 Notice to Rating Agencies.

Any rating agency rating a Series of Bonds shall be provided notice by the City and a copy of any amendment to this Bond Ordinance or to any Series Ordinance within 15 days of its execution or enactment; notice electronically filed on the Municipal Securities Rulemaking Board's EMMA system shall be deemed sufficient upon such filing for purposes of this Section 12.04.

[End of Article XII]

ARTICLE XIII
EVENTS OF DEFAULT

Section 13.01 Events of Default.

(A) Each of the following events is hereby declared to be an “*Event of Default*”:

(1) Payment of the principal of any of the Bonds shall not be made when the same shall become due and payable, either at maturity or by proceedings for redemption;

(2) Payment of any installment of interest on any Bonds shall not be made when the same becomes due and payable;

(3) Payment of any installment of either interest or principal on any Junior Lien Bonds shall not be made when the same becomes due and payable or any other event of default shall exist with respect to any Junior Lien Bonds;

(4) Except as provided in Section 5.01(C) hereof, the City shall not comply with the rate covenant in Section 5.01(B) herein;

(5) The City shall for any reason be rendered incapable of fulfilling its obligations hereunder;

(6) An order or decree shall be entered with the consent or acquiescence of the City appointing a receiver, or receivers, of the System, or of the revenues thereof, or any proceedings shall be instituted with the consent or acquiescence of the City for the purpose of effecting a composition between the City and its creditors whose claims relate to the System, or for the purpose of adjusting claims of such creditors, pursuant to any federal or State statute now or hereafter enacted, or if such order or decree, having been entered without the consent or acquiescence of the City, shall not be vacated or discharged or stayed on appeal within sixty (60) days after entry thereof, or if such proceeding having been instituted without the consent or acquiescence of the City, shall not be withdrawn or any orders entered shall not be vacated, discharged, or stayed on appeal within sixty (60) days after the institution of such proceedings, or the entry of such orders;

(7) The City shall fail to operate the System in an efficient and businesslike fashion so as to materially impair the operations of the System or shall default in the due and punctual performance of any other of the covenants, conditions, agreements or provisions contained in the Bonds or in this Bond Ordinance, and such default as to efficient operation or otherwise shall continue for thirty (30) days after written notice, specifying such default and requiring the same to be remedied, shall have been given to the City by any Bondholder, provided that in the case of default specified in this paragraph (7), if the default be such that it cannot be corrected within the said thirty (30) day period, it shall not constitute an event of default if corrective action is instituted by

the City within said thirty (30) day period and diligently pursued until the default is corrected;

(8) The occurrence of an event of default on the part of the City under any reimbursement agreement between the City and a provider of a surety bond, insurance policy or letter of credit as contemplated under Section 7.04(D) hereof; and

(9) Such other events of default as may be specified in a Series Ordinance.

In determining whether a default in payment has occurred under paragraphs (1) or (2) of this subsection (A) and in determining whether a payment on Bonds has been made under any other provision of this Bond Ordinance, no effect shall be given to payments made under a Municipal Bond Insurance Policy.

(B) The foregoing provisions of paragraphs (4), (5) and (6) of the preceding subsection (A) are subject to the following limitations: If by reason of “force majeure” the City is unable in whole or in part to carry out its agreements herein contained (other than the obligations on the part of the City contained in any of Section 4.02 or Articles V, VII and VIII hereof as to which this paragraph shall have no application), the City shall not be deemed in default during the continuance of such inability. The term “force majeure” as used herein shall mean, without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States or of the State or any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquake; fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, tunnels or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the City, it being agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the City, and the City shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the City unfavorable to the City.

[End of Article XIII]

ARTICLE XIV

REMEDIES

Section 14.01 Acceleration; Annulment of Acceleration.

(A) Upon the occurrence of an Event of Default, the Trustee may, and shall, upon the written request of the Holders of not less than 51% in aggregate principal amount of Bonds Outstanding, by notice in writing to the City, declare all Bonds Outstanding immediately due and payable, and such Bonds shall become and be immediately due and payable, anything in the Bonds or in this Bond Ordinance to the contrary notwithstanding. In such event, there shall be due and payable on the Bonds an amount equal to the total principal amount of all such Bonds, plus all interest accrued thereon and which will accrue thereon to the date of payment.

(B) At any time after the principal of the Bonds shall have been so declared to be due and payable and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Bond Ordinance, the Trustee shall annul such declaration and its consequences with respect to any Bonds not then due by their terms if:

(1) Moneys shall have been deposited in Debt Service Fund sufficient to pay all matured installments of interest and principal (other than principal then due only because of such declaration) of all Outstanding Bonds;

(2) Moneys shall have been deposited with the Trustee sufficient to pay the charges, compensation, expenses, disbursements, advances and liabilities of the Trustee;

(3) All other amounts then payable by the City hereunder shall have been paid or a sum sufficient to pay the same shall have been deposited with the Trustee; and

(4) Every Event of Default known to the Trustee (other than a default in the payment of the principal of such Bonds then due only because of such declaration) shall have been remedied to the satisfaction of the Trustee.

No such annulment shall extend to or affect any subsequent Event of Default or impair any right consequent thereon.

Section 14.02 Additional Remedies and Enforcement of Remedies.

(A) Upon the occurrence and continuance of any Event of Default, subject to the provisions of Section 17.01 hereof, the Trustee may, and upon the written request of the Holders of not less than 51% in aggregate principal amount of the Bonds Outstanding, together with indemnification of the Trustee to its satisfaction therefor, shall proceed forthwith to protect and enforce its rights and the rights of the Bondholders under this Bond Ordinance by such suits, actions or proceedings as the Trustee, being advised by counsel, shall deem expedient, including but not limited to:

(1) Seeking a *writ of mandamus*, requiring the City to carry out its duties and obligations under the terms of this Bond Ordinance and under the Enabling Act;

(2) Suit upon all or any part of the Bonds;

(3) Civil action to require the City to account as if it were the trustee of an express trust for the Holders of Bonds;

(4) Civil action to enjoin any acts or things which may be unlawful or in violation of the rights of the Holders of the Bonds; or

(5) Enforcement of any other right of the Bondholders conferred by law or by this Bond Ordinance including the right to make application for the appointment of a receiver to administer and operate the System.

(B) Regardless of the happening of an Event of Default, the Trustee, if requested in writing by the Holders of not less than 51% in aggregate principal amount of the Bonds then Outstanding, and upon receipt of assurances of indemnification of the Trustee, the sufficiency of which shall be determined in the Trustee's sole discretion, shall institute and maintain such suits and proceedings as it may be advised by counsel shall be necessary or expedient:

(1) To prevent any impairment of the security under this Bond Ordinance by any acts which may be unlawful or in violation of this Bond Ordinance; or

(2) To preserve or protect the interests of the Bondholders, provided that such request is in accordance with law and the provisions of this Bond Ordinance and, in the sole judgment of the Trustee, is not unduly prejudicial to the interests of the Holders of Bonds not making such request.

(C) When the Trustee incurs costs or expenses (including legal fees, costs and expenses) or renders services after the occurrence of an Event of Default, such costs and expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

Section 14.03 Application of Revenues and Other Moneys after an Event of Default.

(A) The City covenants that if an Event of Default shall happen and shall not have been remedied, the City, upon demand of the Trustee, shall pay or cause to be paid over to the Trustee:

(1) Forthwith, all moneys and securities then held by the City which are credited to any fund under this Bond Ordinance. Any moneys and securities in any Project Fund created with proceeds of Bonds if construction of the projects to be paid for thereby has been completed or terminated but exclusive of any amounts remaining in

such Project Fund that are in dispute between the City and any contractor; provided, however, any monies in a Debt Service Fund Account or Debt Service Reserve Fund shall be applied only toward a Series of Bonds for which such Debt Service Fund Account or Debt Service Reserve Fund was established; and

(2) As promptly as practicable after receipt thereof, all Gross Revenues.

(B) During the continuance of an Event of Default, the Trustee shall apply all moneys, securities, Gross Revenues, payments and receipts in its possession and the income therefrom as follows and in the following order:

(1) To the payment of the reasonable and proper charges of the Trustee and its reasonable counsel fees and expenses;

(2) To the payment of the interest and principal (and redemption premium, if any) then due on the Bonds, as follows:

(a) Unless the principal of all of the Bonds shall have become or have been declared due and payable,

(i) First: To the payment of the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the persons entitled thereto, without any discrimination or preference;

(ii) Second: To the payment to the persons entitled thereto of the unpaid Principal Installments (and redemption premiums, if any) of any Bonds which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the amounts of principal (plus redemption premium, if any) due on such date, to the persons entitled thereto, without any discrimination or preference.

(b) If the principal of all of the Bonds shall have become or have been declared due and payable, to the payment of the principal and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any differences as to the respective rates of interest specified in the Bonds;

(3) To the payment of the amounts required by Section 8.03, ratably, according to the amounts due thereon to the persons entitled thereto;

(4) To the payment of necessary Operation and Maintenance Expenses;

(5) To the payment of the amounts required by Section 8.05, ratably, according to the amounts due thereon to the persons entitled thereto;

(6) To the payment of the amounts required by Section 8.06, ratably, according to the amounts due thereon to the persons entitled thereto; and

(7) To the payment of the amounts required by Section 8.07(A), ratably, according to the amounts due thereon to the persons entitled thereto.

(8) To the payment of the amounts required by Section 8.07(B), ratably, according to the amounts due thereon to the persons entitled thereto.

Section 14.04 Remedies Not Exclusive.

No remedy by the terms of this Bond Ordinance conferred upon or reserved to the Trustee or the Bondholders or any Insurer is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Bond Ordinance or existing at law or in equity or by statute (including the Enabling Act) on or after the date hereof.

Section 14.05 Remedies Vested in Trustee.

All rights of action (including the right to file proof of claims) under this Bond Ordinance or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto. Any such suit or proceedings instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds. Subject to the provisions of Section 14.03 hereof, any recovery of judgment shall be for the equal benefit of the Holders of the Outstanding Bonds.

Section 14.06 Majority of Bondholders Control Proceedings.

If an Event of Default shall have occurred and be continuing, notwithstanding anything in this Bond Ordinance to the contrary, the Holders of at least a majority in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting any proceeding to be taken in connection with the enforcement of the terms and conditions of this Bond Ordinance or for the appointment of a receiver or any other proceedings hereunder, provided that such direction is in accordance with law and the provisions of this Bond Ordinance (including indemnity to the Trustee) and, in the sole judgment of the Trustee, is not unduly prejudicial to the interests of the Bondholders not joining in such direction and provided further

that nothing in this Section 14.06 shall impair the right of the Trustee in its discretion to take any other action under this Bond Ordinance which it may deem proper and which is not inconsistent with such direction by Bondholders.

Section 14.07 Individual Bondholder Action Restricted.

(A) No Holder of any Bond shall have any right to institute any suit, action, or proceeding in equity or at law for the enforcement of this Bond Ordinance or for the execution of any trust hereunder or for any remedy under this Bond Ordinance unless:

(1) An Event of Default has occurred:

(a) under paragraph (1) or (2) of subsection (A) of Section 13.01 hereof;

(b) as to which a Responsible Officer of the Trustee has actual notice; and

(c) as to which the Trustee has been notified in writing.

(2) The Holders of at least 25% in aggregate principal amount of Bonds Outstanding shall have made written request to the Trustee to proceed to exercise the powers granted in this Bond Ordinance or to institute such action, suit or proceeding in its own name; and

(3) Such Bondholders shall have provided assurances of indemnification of the Trustee, the sufficiency of which shall be determined in the Trustee's sole discretion; and

(4) The Trustee shall have failed or refused to exercise the powers herein granted or to institute such action, suit or proceedings in its own name for a period of 60 days after receipt by it of such request and offer of indemnity.

(B) No one or more Holders of Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the security of this Bond Ordinance or to enforce any right hereunder except in the manner herein provided and for the equal benefit of the Holders of all Bonds Outstanding.

(C) Nothing contained in this Bond Ordinance shall affect or impair, or be construed to affect or impair, the right of the Holder of any Bond:

(1) To receive payment of the principal of or interest on such Bond on the due date thereof; or

(2) To institute suit for the enforcement of any such payment on or after such due date.

Section 14.08 Termination of Proceedings.

In case any proceeding taken by the Trustee or any Bondholder on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Bondholders, the City, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee and the Bondholders shall continue as if no such proceeding had been taken.

Section 14.09 Waiver and Nonwaiver of Event of Default.

(A) No delay or omission of the Trustee or of any Holder of the Bonds to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given by this Article XIV to the Trustee and the Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

(B) The Trustee may waive any Event of Default which in its opinion (and in reliance on the opinion of legal counsel as necessary) shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Bond Ordinance, or before the completion of the enforcement of any other remedy under this Bond Ordinance.

(C) Notwithstanding anything contained in this Bond Ordinance to the contrary but subject to the provisions of Section 17.01 hereof, the Trustee, upon the written request of the Holders of at least a majority of the aggregate principal amount of Bonds then Outstanding (including, if more than one Series of Bonds shall at the time be Outstanding, the Holders of a majority in principal amount of all Bonds then Outstanding of each such Series), shall waive any Event of Default hereunder and its consequences; provided, however, that except under the circumstances set forth in subsection (B) of Section 14.01 hereof or subsection (B) of this Section 14.09, a default in the payment of the principal of, premium, if any, or interest on, any Bond, when the same shall become due and payable by the terms thereof or upon call for redemption, may not be waived without the written consent of the Holders of all the Bonds at the time Outstanding.

(D) In case of any waiver by the Trustee of an Event of Default hereunder, the City, the Trustee, each Insurer and the Bondholders shall be restored to their former positions and rights under this Bond Ordinance, respectively, but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon. The Trustee shall not be responsible to anyone for waiving or refraining from waiving any Event of Default in accordance with this Section 14.09.

Section 14.10 Notice of Events of Default.

(A) Within 30 days after:

(1) The receipt of notice of an Event of Default as provided in Section 14.07(A)(1)(b) or (c) hereof; or

(2) The occurrence of an Event of Default under paragraphs (1) or (2) of subsection (A) of Section 13.01 hereof, as to which the Trustee shall be deemed to have notice,

the Trustee shall, unless such Event of Default shall have theretofore been cured, give written notice thereof by first class mail to each Insurer of any Series of Bonds then Outstanding, if any, and to each Holder of Bonds then Outstanding, provided that, except in the case of a default in the payment of principal of, together with premium, if any and interest on any of the Bonds, the Trustee may withhold such notice if, in its sole judgment, it determines that the withholding of such notice is in the best interests of the Bondholders.

(B) The Trustee shall immediately notify the City and each Insurer of any Series of Bonds then Outstanding of any Event of Default actually known to a Responsible Officer of the Trustee.

Section 14.11 Rights of Insurers.

Any Series Ordinance may provide that any Insurer, insuring the applicable Series of Bonds, upon the occurrence of an Event of Default and with respect to all remedies provided herein, may prevent the acceleration of the Bonds of all Series or may prevent the annulment of the acceleration of the Bonds of all Series. Such Insurer may be subrogated to the rights to payment of the Holders of any Bonds with respect to which it pays any principal or interest on the Bonds owned by that Holder.

[End of Article XIV]

ARTICLE XV

TRUSTEE AND ITS FUNCTIONS; OTHER FIDUCIARIES

Section 15.01 Appointment and Vesting of Powers in Trustee; Limitation of Rights of Bondholders to Appoint Trustee.

Prior to the delivery of any Bonds pursuant to this Bond Ordinance, the City shall appoint the Trustee. Such appointment shall be made by means of the Series Ordinance enacted by the City Council in connection with the issuance of the first Series of Bonds pursuant to this Bond Ordinance. The Trustee shall be and is hereby vested with all rights and powers necessary to enable it to discharge its duties hereunder but the right of the Bondholders to appoint a Trustee hereunder is limited to the circumstances contemplated by Section 15.10 hereof.

Section 15.02 Functions of Trustee.

The Trustee shall have the following additional functions:

- (A) To authenticate the Bonds of all Series that may be issued;
- (B) To act as custodian of the Debt Service Fund;
- (C) Except as otherwise provided herein, to act as custodian of the Debt Service Reserve Funds, if any;
- (D) Except as otherwise provided herein, to act as Paying Agent for the Bonds;
- (E) Unless otherwise prescribed by any Series Ordinance, to act as Registrar for the Bonds, and to maintain a set of registration books therefor, which shall at all times accurately reflect the names and addresses of all those who may be Holders of any Bonds;
- (F) To make reports to the City on a monthly or such other basis as may be requested by the City, but not less often than semi-annually:
 - (1) Establishing balances on hand;
 - (2) Listing investments made for any fund handled by the Trustee;
 - (3) Establishing the market value of the Debt Service Reserve Funds; and
 - (4) Listing all securities, if any, pursuant to Section 15.13 hereof.

Section 15.03 Duty of Trustee with Respect to Deficits in the Debt Service Fund.

It shall be the further duty of the Trustee to give written notice to the City three Business Days prior to each Bond Payment Date, if there is any deficiency in any Debt Service Fund

Account which would result in a need for further moneys to meet the payment of interest and/or principal falling due on the next ensuing Bond Payment Date, and the extent, if any, to which resort must be had to the respective Debt Service Reserve Fund to meet such deficiency.

Section 15.04 Acceptance by Trustee Required.

Prior to the delivery of any Bonds, the Trustee appointed pursuant to Section 15.01 hereof shall signify its acceptance of the powers, duties and obligations conferred and imposed upon it by this Bond Ordinance, by executing and delivering to the City a written acceptance thereof.

Section 15.05 Liability as to Recitals in Bond Ordinance and Bonds.

The recitals of fact made in this Bond Ordinance and in the Bonds shall be taken as statements of the City, and the Trustee shall not be deemed to have made any representation as to the correctness of the same, nor shall the Trustee be deemed to have made any representation whatsoever as to the validity or sufficiency of this Bond Ordinance or of the Bonds issued hereunder except with respect to the authentication of any Bonds. Nor shall the Trustee be under any responsibility or duty with respect to the issuance of said Bonds, or the application of the proceeds thereof, except to the extent provided for herein. Nor shall the Trustee be liable in connection with the performance of its duties hereunder, except for its own negligence or default.

Section 15.06 Trustee May Rely on Notices, Certificates, and other Documents.

The Trustee shall at all times be protected in acting upon any notice, resolution, request, consent, order, certificate, statement, opinion, bond, or other paper or document believed to be genuine and to have been signed by the proper party or parties.

Section 15.07 Trustee Permitted to Resign.

The Trustee may, at any time, resign and be discharged of its duties and obligations hereunder by giving to the City and the Bondholders written notice of such resignation, specifying a date (not less than 60 days after such notice) when such resignation is intended to take effect. Such resignation shall take effect immediately upon but not before the appointment and qualification of such successor. If after 60 days no successor has been appointed, the Trustee may petition a court of competent jurisdiction to appoint a successor.

Section 15.08 Removal of Trustee.

(A) The Trustee may be removed at any time by the Holders of not less than 51% of the principal amount of Bonds at such time Outstanding upon 30 days written notice to the Trustee.

(B) Provided an Event of Default has not occurred and is not continuing, the Trustee may be removed at any time by the City upon 30 days written notice to the Trustee.

(C) Any such removal shall take effect immediately (after the 30 day notice period) upon, but not before the appointment and qualification of such successor.

Section 15.09 Appointment of Successor Trustee Upon Resignation or Removal of Trustee.

(A) In case at any time the Trustee shall resign, or be removed or become incapable of acting, or be adjudged bankrupt or insolvent, or a receiver of its property shall be appointed, or any public officer shall take charge or control of its property or affairs, a successor thereto shall be promptly appointed by an ordinance of the City duly enacted. Such successor shall in all instances be a bank or a trust company, and duly chartered pursuant to the laws of the United States or of any state and shall have a combined capital and surplus of not less than \$500,000,000.

(B) Immediately following such appointment the City shall give written notice of such appointment to the Bondholders and any Registrar other than the Trustee.

Section 15.10 When Bondholder May Seek Successor Trustee.

If, in a proper case, no appointment of a successor Trustee shall be promptly made pursuant to Section 15.09, any Bondholder, the resigning or removed Trustee may make application to any court of competent jurisdiction for the appointment of a successor and said court may thereupon, after such notice, if any, as such court may prescribe, appoint a successor.

Section 15.11 Acceptance by Successor Trustee.

Any successor Trustee appointed hereunder shall execute and deliver to its predecessor and to the City a written acceptance of such appointment, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of its predecessor hereunder with like effect as if originally named as such Trustee and its predecessor shall be obligated to pay over, transfer, assign and deliver all moneys, securities and other property held by it to its successor, and on the written request of the City, or the successor, shall execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may be reasonably required for the vesting and confirming in such successor all the right, title and interest of the predecessor in and to any property held by it.

Section 15.12 Effect of Trustee Merging with another Bank.

Any bank or trust company into which the Trustee may be merged, or with which it may be consolidated, or any bank or trust company resulting from any merger or consolidation to which it shall be a party, or any bank or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, shall become the successor without the execution or filing of any paper or the performance of any further act; provided, always, that if the City shall be dissatisfied with the institution resulting from the merger, consolidation or other action spoken of above, then the City may at any time within 30 days after such action name a

new Trustee (with the qualifications prescribed by Section 15.09 hereof) in lieu of the Trustee then acting.

Section 15.13 Trustee to Secure Funds and Securities Held in Trust.

Unless the same be secured as trust funds in the manner provided by the regulations of the Comptroller of the Currency as from time to time in effect, all funds or securities in the custody of the Trustee, in excess of the amount of such deposit insured by the Federal Deposit Insurance Corporation, shall be invested in Authorized Investments at the written direction of the City.

Section 15.14 Disposition of Paid Bonds.

It shall be the duty of the Trustee to cancel all Bonds which shall have been paid, whether upon their maturity or redemption prior to maturity; such cancellation shall be done in such fashion as to render such Bonds incapable of further negotiation or hypothecation. In any event it shall furnish appropriate certificates or other documentation acceptable to the City indicating the disposition of such Bonds.

Section 15.15 Appointment of Substitute Registrar.

The City may, from time to time, appoint a Registrar or Registrars to act in the place and stead of the Trustee as Registrar of the Bonds of one or more Series. The City shall cause written notice of such appointment to be mailed to the Holders of all Bonds affected by such appointment 30 days prior to the effective date of such appointment.

Section 15.16 Additional Provisions Regarding the Trustee.

The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Bond Ordinance, and no implied covenants or obligations should be read into this Bond Ordinance against the Trustee. If any Event of Default under this Bond Ordinance shall have occurred and be continuing, the Trustee shall exercise such of the rights and powers vested in it by this Bond Ordinance and shall use the same degree of care as a prudent person would exercise or use in the circumstances in the conduct of such prudent person's own affairs.

The Trustee agrees to perform the trust functions provided herein upon and subject to the following expressed terms and conditions:

(A) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents or receivers appointed with due care.

(B) The permissive items assigned to the Trustee as enumerated herein shall not be construed as a duty.

(C) The Trustee shall not be accountable for the use or application by the City of any money paid over by the Trustee in accordance with the provisions of this Bond Ordinance.

(D) Before taking any action under this Bond Ordinance relating to an Event of Default or in connection with its duties under this Bond Ordinance other than making payments of principal and interest on the Bonds as they become due or causing an acceleration of the Bonds whenever required by this Bond Ordinance, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all costs and expenses to which it may be put (including legal fees, costs and expenses) and to protect it against all liability, including, but not limited to, any liability arising directly or indirectly under any federal, state or local statute, rule, law or ordinance related to the protection of the environment or hazardous substances and except liability which is adjudicated to have resulted from its own negligence or willful misconduct in connection with any action so taken.

(E) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material, including continuing disclosure material, prepared or distributed with respect to the Bonds and shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

(F) None of the provisions of this Bond Ordinance shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds cannot be assured to the Trustee's satisfaction.

(G) So long as investments are made in Authorized Investments, the Trustee may conclusively rely upon the City's written instructions as to both the suitability and legality of all investments directed hereunder. To the extent invested in Authorized Investments, the Trustee shall have no responsibility to monitor the ratings of investments after the initial purchase of such investments. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge reasonable fees for such trades, including cash sweep accounts. Notwithstanding anything to the contrary herein, in the absence of written investment instructions from the City, the Trustee shall not be responsible or liable for keeping moneys held by it hereunder fully invested. While invested in Authorized Investments, the Trustee shall not be liable for any losses or diminution in value from such investments executed pursuant to a written direction of the City. Broker confirmations of investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered.

(H) The Trustee shall have no duty to review or analyze any financial statements delivered to it hereunder (including the audit required by Section 9.02 hereof) or verify the accuracy thereof and shall hold such financial statements solely as a repository for the benefit of the Bondholders; the Trustee shall not be deemed to have notice of any information contained therein or Event of Default which may be disclosed therein.

(I) The City shall pay to the Trustee reasonable compensation for all services performed by it hereunder and also its reasonable expenses, charges and other disbursements and the fees, costs, and expenses of its attorneys, agents and employees incurred in and about the administration and the performance of its powers and duties hereunder. If the Trustee is required by governmental agency or court proceeding initiated by a third party to undertake efforts beyond that which is set forth herein but related thereto, the Trustee shall notify the City of same in writing. Payment for such extraordinary fees, costs and expenses (including but not limited to reasonable attorney's fees, costs and expenses) shall be made promptly by the City only after said notice.

(J) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Bond Ordinance arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation: acts of God; earthquakes; fire; flood; hurricanes or other catastrophic storms; wars; terrorism; similar military disturbances; sabotage; epidemic; pandemic; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communications services; labor disputes; acts of civil or military authority or governmental action; it being understood that the Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

(K) Upon request from any Bondholder and absent any further direction or consent of the City, the Trustee shall disseminate a copy of the financial statements to such requester.

(L) Notwithstanding anything to the contrary herein, to the extent that the Trustee is not otherwise acting in the capacity as dissemination agent, the Trustee shall not have any liability to any party in connection with any failure to timely file any notice with the Municipal Securities Rulemaking Board (via its EMMA system).

(M) The Trustee shall have the right to accept and act upon directions or instructions delivered using Electronic Means; provided, however, that the City shall provide to the Trustee an incumbency certificate listing Qualified Officers with the authority to provide such directions or instructions (each a "*Qualified Officer*") and containing specimen signatures of such Qualified Officers, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the City elects to give the Trustee directions or instructions using Electronic Means, the Trustee's understanding of such directions or instructions shall be deemed controlling. The City understands and agrees that the Trustee cannot determine the identity of the actual sender of such directions or instructions and that the Trustee shall conclusively presume that directions or instructions that purport to have been sent by an Qualified Officer listed on the incumbency certificate provided to the Trustee have been sent by such Qualified Officer. The City shall be responsible for ensuring that only Qualified Officers transmit such directions or instructions to the Trustee and that all Qualified Officers treat applicable user and authorization codes, passwords and/or authentication keys as confidential and with extreme care. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such directions or instructions notwithstanding such directions or instructions conflict or are inconsistent with a subsequent written direction or written instruction. The City agrees: (i) to assume all risks

arising out of the use of Electronic Means to submit directions or instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized directions or instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting directions or instructions to the Trustee and that there may be more secure methods of transmitting directions or instructions and (iii) that the security procedures (if any) to be followed in connection with its transmission of directions or instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

[End of Article XV]

ARTICLE XVI

DEFEASANCE

Section 16.01 Defeasance Generally.

Subject to the provisions of any Series Ordinance, if all of the Bonds issued pursuant to this Bond Ordinance and any other amounts required to be paid to a provider of a surety bond, line of credit, insurance policy or letter of credit hereunder shall have been paid and discharged, then the obligations of the City under this Bond Ordinance, the pledge of Gross Revenues made hereby, and all other rights granted hereby shall cease and determine. Subject to the provisions of any Series Ordinance, Bonds shall be deemed to have been paid and discharged within the meaning of this Article under each of the following circumstances:

(A) The Trustee shall hold, at the stated maturities of such Bonds, in trust and irrevocably appropriated thereto, sufficient money for the payment thereof.

(B) If default in the payment of the principal of such Bonds or the interest thereon shall have occurred and thereafter tender of such payment shall have been made, and the Trustee shall then hold in trust and irrevocably appropriated thereto, sufficient money for the payment thereof to the date of the tender of such payment.

(C) If the City shall have deposited with the Trustee, or any other bank or trust company which would otherwise meet the chartering and capital and surplus requirements contained in Section 15.09(A) hereof (after properly establishing an escrow account therefor), in irrevocable trust money or Defeasance Obligations, the principal of and interest on which when due (without reinvestment thereof) will, as certified in a verification report provided by an independent entity providing such services and selected by the City, provide money which, together with the money, if any, deposited at the same time, shall be sufficient to pay, when due, the principal, interest and redemption premium, if any, due and to become due on and prior to the maturity, or, if the City has irrevocably elected to redeem Bonds, on and prior to the redemption date, of such Bonds.

Section 16.02 Money to be Held in Trust—When Returnable to the City.

Any money which at any time shall be deposited with the Trustee or other escrow holder authorized under Section 16.01(C), by or on behalf of the City, for the purpose of paying and discharging any Bonds or the interest thereon, shall be and is hereby assigned, transferred and set over to the Trustee or such other escrow holder in trust for the respective Holders of the Bonds, and such money shall be and is hereby irrevocably appropriated to the payment and discharge thereof. But if, through lapse of time or otherwise, the Holders of said Bonds shall no longer be entitled to enforce payment of their obligations, then, in such event, it shall be the duty of the Trustee or such other escrow holder to forthwith return said funds to the City.

Section 16.03 Deposits with Trustee Subject to Conditions of Article XVI.

The City covenants and agrees that any money which it shall deposit with the Trustee shall be deemed to be deposited in accordance with, and subject to, the applicable provisions of this Article, and that whenever it shall have elected to redeem Bonds it will irrevocably bind and obligate itself to give notice of redemption thereof, and will further authorize, empower and direct the Trustee to cause the publication of such notice of redemption in its name and on its behalf.

Section 16.04 No Defeasance of Series of Bonds Paid by Insurer.

In the event that the principal and/or interest due on a Series of Bonds shall be paid by an Insurer pursuant to a Municipal Bond Insurance Policy, such Series of Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the City until the Insurer has been reimbursed in full therefor in accordance with the terms of the Municipal Bond Insurance Policy, and the assignment and pledge of the Gross Revenues of the System and all covenants, agreements and other obligations of the City to the registered Holders shall continue to exist and shall run to the benefit of the Insurer, and the Insurer shall be subrogated to the rights of such registered Holders.

[End of Article XVI]

ARTICLE XVII

MISCELLANEOUS

Section 17.01 Miscellaneous Rights of an Insurer.

(A) Notwithstanding any provision of this Bond Ordinance to the contrary, each Insurer shall be deemed the exclusive Holder of all Bonds insured by that Insurer, for the purposes of all approvals, consents, waivers, institution of any action, and the direction of all remedies. No rights granted to an Insurer by this Bond Ordinance shall be effective at any time that such Insurer is in breach of its obligations under the Municipal Bond Insurance Policy, has committed a default under the Municipal Bond Insurance Policy, or is subject to bankruptcy or receivership proceedings.

(B) Any provision of this Bond Ordinance expressly recognizing or granting rights in or to an Insurer may not be amended in any manner which affects the rights of such Insurer hereunder without the prior written consent of each such Insurer.

(C) To the extent that an Insurer makes payment of the principal of or interest on any Bonds, it shall become the owner and Holder of such Bonds, appurtenant coupons or right to payment of such principal of or interest on such Bonds and shall be fully subrogated to all of the registered Holders' rights thereunder, including the registered Holders' rights to payment thereof. To evidence such subrogation (i) in the case of subrogation as to claims for past due interest, the Trustee shall note Insurer's rights as subrogee on the registration books of the City maintained by the Trustee or Registrar upon receipt of proof from the Insurer as to payment of interest thereon to the registered Holders of the Bonds, and (ii) in the case of subrogation as to claims for past due principal, the Trustee shall note the Insurer's rights as subrogee on the registration books of the City maintained by the Trustee or Registrar upon surrender of the Bonds by the registered Holders thereof to the Insurer or its agent.

(D) In the event that the principal of and/or interest on any Bonds shall be paid by the Insurer pursuant to the terms of its Municipal Bond Insurance Policy, (i) such Bonds shall continue to be "Outstanding" under this Bond Ordinance and (ii) the assignment and pledge of the Gross Revenues and all covenants, agreements and other obligations of the City to the registered Holders shall continue to exist, and the Insurer shall be fully subrogated to all of the rights of such registered Holders in accordance with the terms and conditions of subparagraph (C) above and the Insurer's Municipal Bond Insurance Policy.

(E) The terms and provisions of this Bond Ordinance or of any applicable Series Ordinance may not be terminated as long as there are any moneys owed to an Insurer under such terms and provisions of this Bond Ordinance or the applicable Series Ordinance or any agreement between such Insurer and the City.

Section 17.02 Purpose of Covenants in Bond Ordinance.

Every covenant, undertaking and agreement made on behalf of the City, as set forth in this Bond Ordinance and any Series Ordinance is made, undertaken and agreed to, for the proper securing of the payment of the principal of and interest on the Bonds. Each shall be deemed to partake of the obligation of the contract between the City and the Bondholders and shall be enforceable accordingly. In this connection, any provider of a surety bond, line of credit, insurance policy or letter of credit as contemplated under Section 7.04(D) hereof may enforce the terms, conditions and obligations under this Bond Ordinance as a third party beneficiary hereunder. Nothing in this Bond Ordinance or any Series Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, an Insurer, the Trustee, and the registered owners of the Bonds, any right, remedy or claim under or by reason of this Bond Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Bond Ordinance or a related Series Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, an Insurer, the Trustee, and the registered owners of the Bonds.

Section 17.03 Severability.

If any Section, paragraph, clause or provision of this Bond Ordinance shall be held invalid, the invalidity of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 17.04 Remedies Granted by Ordinance Not Being Available to Holders of Other Bonds.

If it shall be held by any court of competent jurisdiction that any right or remedy granted by the Bond Ordinance or any Series Ordinance to the Holders of any Bond is not available to the Holders of all other Bonds, then such rights and remedies are herewith conferred upon the Holders of such other Bonds.

Section 17.05 Authorization to Sign.

For purposes of all consents and other necessary documentation associated with the issuance of Bonds, the Authorized Officers and the Clerk shall be authorized to sign on behalf of the City.

Section 17.06 Repealing Clause.

All ordinances or resolutions, or parts thereof, inconsistent herewith shall be and the same are hereby repealed to the extent of such inconsistencies.

Section 17.07 Governing Law.

The provisions of this Bond Ordinance shall be governed by the laws of the State, without regard to conflict of law principles.

Section 17.08 Date Effective.

The provisions of this Bond Ordinance shall become effective as of enactment.

[End of Article XVII]

DONE IN MEETING DULY ASSEMBLED, this 23rd day of June 2020.

CITY OF BEAUFORT, SOUTH CAROLINA

BILLY KEYSERLING, MAYOR

(SEAL)

Attest:

IVETTE BURGESS, CITY CLERK

1st Reading: June 9, 2020
2nd Reading & Enactment: June 23, 2020

Reviewed by:

WILLIAM B. HARVEY, III, CITY ATTORNEY



CITY OF BEAUFORT

DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

TO: CITY COUNCIL **DATE:** 6/4/2020
FROM: Kathy Todd
AGENDA ITEM TITLE: 2020 Series Ordinance providing for the issuance and sale of Stormwater System Improvements and Refunding Revenue Bonds of the City of Beaufort, South Carolina in the aggregate principal amount of not exceeding eight million dollars (\$8,000,000); and other matters relating thereto - 1st Reading
MEETING DATE: 6/9/2020
DEPARTMENT: Finance

BACKGROUND INFORMATION:

In order to refinance the 2018 General Obligation Bond secured to fund Stormwater Projects with a Revenue Bond, the 2020 Series Ordinance is required.

PLACED ON AGENDA FOR: Action

REMARKS:

ATTACHMENTS:

Description	Type	Upload Date
2020 Series Ordinance	Cover Memo	6/4/2020

ORDINANCE NO. __

A SERIES ORDINANCE

PROVIDING FOR THE ISSUANCE AND SALE OF STORMWATER SYSTEM IMPROVEMENT AND REFUNDING REVENUE BONDS OF THE CITY OF BEAUFORT, SOUTH CAROLINA IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING EIGHT MILLION DOLLARS (\$8,000,000); AND OTHER MATTERS RELATING THERETO.

2020 SERIES ORDINANCE

Enacted June 23, 2020

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NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BEAUFORT, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED, THAT:

ARTICLE I

FINDINGS OF FACT

Section 1.01 Findings.

Incident to the enactment of this series ordinance (this “**2020 Series Ordinance**”), and the issuance of the bonds provided for herein, the City Council of the City of Beaufort (the “**City Council**”), the governing body of the City of Beaufort, South Carolina (the “**City**”), finds that the facts set forth in this Article exist and the following statements are in all respects true and correct:

(A) The City Council has made general provision for the issuance from time to time of Stormwater System Revenue Bonds (the “**Bonds**”) of the City by a bond ordinance entitled “A MASTER BOND ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF STORMWATER SYSTEM REVENUE BONDS OF THE CITY OF BEAUFORT, SOUTH CAROLINA; AND OTHER MATTERS RELATING THERETO” enacted by the City Council on June 23, 2020 (the “**Bond Ordinance**”). Terms with initial capitals and not otherwise defined herein shall have the meanings ascribed thereto in the Bond Ordinance.

(B) It is provided in and by the Bond Ordinance that, upon enactment of a “Series Ordinance,” there may be issued one or more Series of Bonds for the purpose of, among other things: (1) obtaining funds for the acquiring, purchasing, constructing, improving, enlarging, and repairing of the System and improvements and additions thereto, including the recoupment or reimbursement of funds already so expended; (2) providing funds for the payment of any bond anticipation notes; (3) refunding Bonds or other obligations; (4) providing funds for the payment of interest due on any Bonds; (5) funding a Debt Service Reserve Fund, if any, in an amount equal to the Reserve Requirement; and (6) paying the costs of issuance of Bonds, including any credit enhancement therefor.

(C) The City currently has no indebtedness payable from the revenues derived from the System.

(D) The City has determined to issue the Series 2020 Bonds (as defined herein) to: (1) recoup or defray all or a portion of the costs of planning, developing, and constructing stormwater system renovations and improvements located in the City, to include new, renovated or replaced stormwater lines and related infrastructure (the “**2020 Project**”); (2) provide for the refunding of all or a portion of its \$6,000,000 General Obligation Bond, Series 2018, dated December 10, 2018 (the “**Refunded Bond**”); (3) fund, if necessary, the 2020 Debt Service Reserve Fund (as defined herein) in a manner permitted by the Bond Ordinance; and (4) pay the costs of issuance of the Series 2020 Bonds.

(E) The Series 2020 Bonds shall be issued under the terms of the Bond Ordinance as the initial Series of Bonds thereunder.

(F) By reason of the foregoing, the City has determined to enact this 2020 Series Ordinance in accordance with the terms and provisions of the Bond Ordinance in order to issue bonds for the purposes described in Paragraph (D) above.

Section 1.02 Determinations Required by Section 4.01(B) of the Bond Ordinance.

(A) The City Council hereby specifies and determines that:

(1) The current period of usefulness of the System is as set forth in Article III hereof;

(2) the Date of Issue of the Series 2020 Bonds shall be the date that the Series 2020 Bonds are executed and delivered, or as otherwise determined by an Authorized Officer pursuant to Article V hereof;

(3) the maximum authorized principal amount of the Series 2020 Bonds is set forth at Section 4.01 hereof, and the exact principal amount of the Series 2020 Bonds shall be determined by an Authorized Officer at the closing of the Series 2020 Bonds pursuant to Article V hereof;

(4) the Bond Payment Dates, the Record Dates, and the dates and amounts of maturity of such Series 2020 Bonds, shall be determined by an Authorized Officer at the closing of such Series 2020 Bonds pursuant to Article V hereof, provided, however, no such Series 2020 Bonds shall mature later than 30 years from the Date of Issue of the initial Series of Series 2020 Bonds;

(5) Series 2020 Bonds are necessary to provide funds to be used and expended for purposes set forth in Section 4.01(A) of the Bond Ordinance, as such purposes are particularly described at Section 4.02 hereof;

(6) the title and designation of the Series 2020 Bonds shall be as set forth at Section 4.01 hereof or as otherwise determined by an Authorized Officer pursuant to Article V hereof;

(7) Series 2020 Bonds shall be sold in accordance with Article VIII hereof in the manner determined by an Authorized Officer as authorized by Article V hereof;

(8) Series 2020 Bonds shall bear interest at rates as determined by an Authorized Officer through the sale procedures of Article VIII hereof, and the City will not enter into any interest rate swap or similar transaction with respect to the Series 2020 Bonds;

(9) Series 2020 Bonds may be issued as either Serial Bonds or Term Bonds (with appropriate mandatory redemption provisions) as determined by an Authorized Officer pursuant to Article V hereof;

(10) the Redemption Prices and dates applicable to any Series of Series 2020 Bonds shall be as determined by an Authorized Officer at the closing of such Series 2020 Bonds pursuant to Article V hereof;

(11) U.S. Bank National Association (the “*Trustee*”) shall serve as Trustee, Paying Agent and Registrar for the Series 2020 Bonds;

(12) Series 2020 Bonds shall be in the form as provided at Section 4.09 hereof, with such revisions as may be approved by an Authorized Officer pursuant to Article V hereof upon the advice of Bond Counsel, the execution thereof being conclusive evidence of such approval;

(13) The initial maturity of the Series 2020 Bonds shall be numbered R-1 and any other Series 2020 Bonds thereafter shall be sequentially numbered “R-” thereafter;

(14) The Series 2020 Bonds shall be issued in denominations of \$5,000 or any integral multiple thereof in one or more Series in the denomination of the principal amount of such Series of Series 2020 Bonds;

(15) Series 2020 Bonds may be issued in book-entry form as permitted by Section 4.20 of the Bond Ordinance determined by an Authorized Officer at the closing of such Series 2020 Bonds pursuant to Article V hereof;

(16) no Bonds are currently Outstanding and thus there is no Reserve Requirement currently applicable to any Bonds;

(17) no 2020 Debt Service Reserve Fund is contemplated to be established in connection with the Series 2020 Bonds, and thus no Series Reserve Requirement is anticipated to be established, however if the Authorized Officer determines that a Series Debt Service Reserve Fund shall assist the City in obtaining more advantageous terms, he may establish both a Series Debt Service Reserve Fund and establish a Series Reserve Requirement;

(18) the proceeds of Series 2020 Bonds shall be applied as set forth at Article VII hereof;

(19) the 2020 Debt Service Fund Account is established pursuant to Section 4.06 hereof; the 2020 Project Fund and 2020 COI Account are established pursuant to Section 7.02 hereof; and

(20) the City estimates that the cost of the 2020 Project, exclusive of financing and related costs, will be \$1,125,000.

[End of Article I]

ARTICLE II

DEFINITIONS AND CONSTRUCTION

Section 2.01 Definitions.

(A) Except as provided in subsection (B) below, all capitalized terms which are defined in Section 2.02 of the Bond Ordinance shall have the meanings given the same in this 2020 Series Ordinance.

(B) As used in this 2020 Series Ordinance, unless the context shall otherwise require, the following terms shall have the following respective meanings:

“2020 COI Account” shall mean that account created within the 2020 Project Fund pursuant to Section 7.02 hereof.

“2020 Debt Service Fund Account” shall mean the account of that name established by this 2020 Series Ordinance pursuant to Section 7.03 of the Bond Ordinance.

“2020 Debt Service Reserve Fund” shall mean the fund of that name authorized to be established by this 2020 Series Ordinance pursuant to Section 7.04 of the Bond Ordinance.

“2020 Project” shall mean the project defined at Section 1.01(D) hereof.

“2020 Project Fund” shall mean the fund created at Section 7.02 hereof.

“2020 Reserve Requirement” if any, shall mean an amount determined by the Authorized Officer in compliance with the provisions and requirements of the Code.

“2020 Series Ordinance” shall mean this ordinance of the City Council.

“Authorized Officer” shall have the meaning ascribed thereto in the Bond Ordinance, but for purposes of making the determinations provided for under Article V of this 2020 Series Ordinance, the City Manager shall constitute the sole Authorized Officer.

“Escrow Deposit Agreement” shall have the meaning given such term in Section 5.03 hereof.

“Governmental Unit” means a state or local governmental unit within the meaning of Section 141(b) of the Code.

“Nongovernmental Person” means any Person other than a Governmental Unit.

“Refunded Bond” means the \$6,000,000 General Obligation Bond, Series 2018, of the City dated December 10, 2018.

“***Series 2020 Bonds***” shall mean the one or more Series of Bonds authorized and designated by Section 4.01 of this 2020 Series Ordinance.

“***Trustee***” shall mean U.S. Bank National Association, its successors and assigns.

Section 2.02 Authority for this 2020 Series Ordinance.

This 2020 Series Ordinance is enacted pursuant to the provisions of the Bond Ordinance.

[End of Article II]

ARTICLE III - USEFUL LIFE

Section 3.01 Determination of the Useful Life of the System.

The period of usefulness of the System is hereby determined to be not less than forty (40) years from the date of enactment of this 2020 Series Ordinance.

[End of Article III]

ARTICLE IV

AUTHORIZATION AND TERMS OF THE SERIES 2020 BONDS

Section 4.01 Principal Amount; Designation of Series 2020 Bonds.

(A) Pursuant to the provisions of the Bond Ordinance, one or more Series of Bonds of the City entitled to the benefits, protection, and security of the provisions of the Bond Ordinance is hereby authorized in the aggregate principal amount of not exceeding Eight Million Dollars (\$8,000,000); such Series of Bonds so authorized shall be designated as the “City of Beaufort, South Carolina Stormwater System Improvement and Refunding Revenue Bond[s], Series 2020” (the “**Series 2020 Bonds**”) and shall bear a numeric or alphanumeric Series designation as may be necessary to distinguish them from the Bonds of every other Series, and shall designate the year in which the Series is issued. The Series 2020 Bonds may be sold as a single Series or from time to time as multiple Series bearing any such designation as appropriate. References herein to the Series 2020 Bonds shall include all Series of Bonds authorized by this 2020 Series Ordinance. As authorized by Section 9.01(G) hereof, any Series of the Series 2020 Bonds may be issued as taxable obligations, and in such event it shall bear an appropriate designation so as to distinguish its tax status.

(B) Should the Series 2020 Bond not be issued in calendar year 2020, the designation for the Series 2020 Bond and all other references to “2020” recited herein shall be changed to appropriately reflect the year of such actual issuance. References herein to the Series 2020 Bond shall include all Series of Bonds.

Section 4.02 Purposes of the Series 2020 Bonds.

The Series 2020 Bonds are authorized for the principal purposes of:

(A) Defraying all or a portion of the cost of the 2020 Project, including the recoupment of costs previously paid or incurred in connection with the 2020 Project;

(B) Effecting a refunding of all or a portion of the Refunded Bond;

(C) Funding the 2020 Debt Service Reserve Fund, if any, in an amount equal to the 2020 Reserve Requirement in a manner permitted by the Bond Ordinance; and

(D) Paying certain costs and expenses relating to the issuance of the Series 2020 Bonds.

Section 4.03 Date of Issue; Interest Rates; Maturity; Redemption.

(A) The Date of Issue of each Series of Series 2020 Bonds shall be the date of delivery thereof, or such other date as designated by the Authorized Officer. Series 2020 Bonds shall mature in such principal amounts and shall bear interest at such rates as may be determined

by an Authorized Officer provided that the final maturity of the Series 2020 Bonds shall not extend beyond 30 years from the Date of Issue of the initial Series of Series 2020 Bonds issued hereunder. Series 2020 Bonds shall mature as Serial or Term Bonds, with such mandatory sinking fund installments as are set forth in a schedule approved by the Authorized Officer prior to or simultaneously with the issuance of such Series 2020 Bonds.

(B) Interest on any Series of Series 2020 Bonds shall be payable on such Bond Payment Dates as are determined by the Authorized Officer. The Record Dates for the payment of interest on Series 2020 Bonds shall be the 15th day of the month prior to each Bond Payment Date.

(C) Series 2020 Bonds may be subject to redemption prior to maturity, upon such terms and conditions, and at such prices, as may be established by an Authorized Officer prior to or simultaneously with the issuance of the applicable Series of Series 2020 Bonds.

Section 4.04 Authentication; Payment of Series 2020 Bonds.

(A) The Series 2020 Bonds shall be authenticated on such date as it shall, in each case, be delivered. Each of the Series 2020 Bonds shall bear interest from the Date of Issue if no interest has yet been paid; otherwise from the last date to which interest has been paid and which date is on or prior to the date of such Series 2020 Bonds' authentication.

(B) The interest on the Series 2020 Bonds shall be paid by check or draft mailed from the office of the Trustee to the person in whose name each of the Series 2020 Bonds is registered at the close of business on the Record Date; provided, however, that any Holder of such Series 2020 Bonds in the aggregate principal amount of \$1,000,000 or more may request (in writing, delivered to the paying agent), prior to the applicable Record Date, that interest payments be made by wire transfer to such Holder at an account maintained by a financial institution located in the continental United States specified in such request.

(C) Presentment of the Series 2020 Bonds for payment shall not be required, except for the final payment of the principal and interest thereon or upon such other condition or indicia of satisfaction as may be mutually agreed-upon by the City and the Holder of such Series 2020 Bonds.

Section 4.05 Denomination of the Series 2020 Bond.

Series 2020 Bonds shall be issued in denomination of \$5,000s or any multiple thereof. Each Series 2020 Bond shall be numbered by the Trustee in such a fashion as to reflect the fact that it is one of the Series 2020 Bonds, and to identify the owner thereof on the books kept by the Registrar. The initial maturity of the Series 2020 Bonds shall be numbered R-1, and thereafter sequentially "R-" numbered for identification.

Section 4.06 Establishment of 2020 Debt Service Fund Account.

In accordance with Section 7.03 of the Bond Ordinance, the 2020 Debt Service Fund Account is hereby directed to be established by the Trustee within the Debt Service Fund on the date of original delivery of the Series 2020 Bonds for the benefit of the Holders of the Series 2020 Bonds. In the event that more than one Series of Bonds is issued pursuant to the terms of this 2020 Series Ordinance, a Debt Service Fund Account shall be established for each such Series.

Section 4.07 2020 Debt Service Reserve Fund.

In accordance with Section 7.04 of the Bond Ordinance and the terms of this 2020 Series Ordinance, if an Authorized Officer determines that the 2020 Debt Service Reserve Fund is necessary and desirable, he shall direct the Trustee to establish such 2020 Debt Service Reserve Fund. If established, the 2020 Debt Service Reserve Fund shall be maintained by the Trustee in accordance with the provisions of the Bond Ordinance in an amount equal to the 2020 Reserve Requirement, as may be determined in accordance with Article V hereof. The 2020 Debt Service Reserve Fund, if established, may be funded by cash or another method permitted by Section 7.04(D) of the Bond Ordinance, such method of funding to be determined by an Authorized Officer.

Section 4.08 Appointment of Trustee, Paying Agent and Registrar.

U.S. Bank National Association is hereby appointed as Trustee, Paying Agent, and Registrar under the Bond Ordinance and this 2020 Series Ordinance. The Trustee shall signify its acceptance of the duties of Trustee, Paying Agent and Registrar upon delivery of the Series 2020 Bonds. The City shall pay to the Trustee from time to time reasonable compensation based on the then-standard fee schedule of such parties for all services rendered under the Bond Ordinance and this 2020 Series Ordinance, and also all reasonable expenses, charges, counsel fees, and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under the Bond Ordinance and this 2020 Series Ordinance.

The Series 2020 Bonds shall be presented for registration of transfers and exchanges, and notices and demands to or upon the Trustee and the City in respect of the Series 2020 Bonds may be served, at the corporate trust office of the Trustee.

The Trustee shall be a member of the Federal Deposit Insurance Corporation (the “**FDIC**”) and shall remain such a member throughout the period during which it shall act as Trustee, Paying Agent, and Registrar. The Trustee, in its capacity as Trustee, Paying Agent, and Registrar, shall accept its appointment by a written instrument embodying its agreement to remain a member of the FDIC. Unless the same be secured as trust funds in the manner provided by the applicable regulations of the Comptroller of the Currency of the United States of America, and unless otherwise provided for in the Bond Ordinance and in this 2020 Series Ordinance, all moneys in the custody of the Trustee in excess of the amount of such deposit insured by the FDIC, shall be secured by Government Obligations at least equal to the sum on deposit and not insured by the FDIC.

Section 4.09 Form of Series 2020 Bond.

Series 2020 Bonds, together with the certificate of authentication, certificate of assignment and/or statement of insurance, if any, are to be in substantially the form attached hereto as Exhibit A with such necessary and appropriate variations, omissions and insertions as permitted or required upon advice of Bond Counsel and as determined by an Authorized Officer, or as otherwise authorized by the Bond Ordinance or this 2020 Series Ordinance. The execution of the Series 2020 Bonds shall constitute conclusive evidence of the approval of any changes to the form of any Series 2020 Bond.

[End of Article IV]

ARTICLE V

CERTAIN DELEGATIONS AND AUTHORIZATIONS

Section 5.01 Certain Delegations.

The City Council hereby expressly delegates to an Authorized Officer the authority, with respect to the Series 2020 Bonds, to determine, in connection with any Series of Series 2020 Bonds issued hereunder:

(A) whether to issue the Series 2020 Bonds as a single Series or from time to time in several Series;

(B) the manner of sale of such Series 2020 Bonds in accordance with Article VIII hereof;

(C) whether to create and distribute preliminary and final Official Statements in connection with the issuance of such Series 2020 Bonds;

(D) the award of such Series 2020 Bonds in accordance with Article VIII hereof;

(E) the final form of such Series 2020 Bonds, whether to modify the Series designation in accordance with Section 4.01 hereof, and the exact principal amount of such Series 2020 Bonds, not to exceed \$8,000,000 in the aggregate together with any other Series of Series 2020 Bonds;

(F) whether and the extent to which such Series of Series 2020 Bonds shall be issued as Term Bonds or Serial Bonds;

(G) the Date of Issue, Bond Payment Dates, rate or rates of interest obtained using the sale procedures of Article VIII hereof, maturity schedule, and the final maturity of each Series of Series 2020 Bonds, not to exceed 30 years from the Date of Issue of the initial Series of Series 2020 Bonds issued hereunder;

(H) whether such Series 2020 Bonds shall be subject to optional or mandatory redemption prior to maturity, and if so, the Redemption Prices applicable thereto;

(I) whether such Series 2020 Bonds shall be issued in book-entry form as permitted by Section 4.20 of the Bond Ordinance;

(J) whether to use bond insurance, and if so, to make appropriate arrangements therefor;

(K) whether to establish a 2020 Reserve Requirement for such Series 2020 Bonds and to establish a 2020 Debt Service Reserve Fund in accordance with Section 4.07 hereof;

(L) whether such Series 2020 Bonds will be designated as “qualified tax-exempt obligations” pursuant to the Code;

(M) whether such Series 2020 Bond (or any Series thereof) shall be issued on a taxable basis; and

(N) such other matters regarding the Bonds as are necessary or appropriate.

Section 5.02 Authorization to Redeem the Refunded Bond.

The City Council does hereby determine that the Refunded Bond to be refunded by the Series 2020 Bonds may be irrevocably called for redemption on such date as determined by the Authorized Officer. The Authorized Officer is hereby authorized to (i) determine, upon the advice of the Financial Advisor (as defined herein), how the Refunded Bond shall be redeemed (under Section 5.01 above), (ii) determine and select which maturities of the Refunded Bond are to be refunded with a portion of the proceeds of the Series 2020 Bonds, and (iii) acting alone or through the Trustee, provide for the notice of defeasance and notice of redemption, respectively and as applicable, in such manner, forms and times as required by the proceedings authorizing the issuance of the Refunded Bond and the Enabling Act.

Section 5.03 Authorization to Execute Escrow Deposit Agreement.

An Authorized Officer is authorized to execute and deliver an escrow deposit agreement in such form as he may deem expedient and necessary in order to establish an escrow deposit account and effect the refunding of the Refunded Bond (the “*Escrow Deposit Agreement*”). An Authorized Officer, in consultation with Bond Counsel, is hereby authorized to determine the type of investments that shall be made in such escrow deposit agreement and to select the escrow agent in accordance with the proceedings authorizing the Refunded Bond. The Authorized Officer is further hereby authorized to (i) determine the type of investments that shall be made in the Escrow Deposit Agreement, (ii) select an escrow agent (which may be the Trustee), (iii) give or direct the giving of any notice filings that may be required, (iv) take such action to properly redeem or defease or provide for the redemption or defeasance of the Refunded Bond, and (v) determine whether or not to use one or more Escrow Deposit Agreements for the Refunded Bond.

[End of Article V]

ARTICLE VI

EXECUTION; NO RECOURSE

Section 6.01 **Execution of the Series 2020 Bonds.**

The Series 2020 Bonds shall be executed and attested by the Mayor and the Clerk, respectively, in accordance with the applicable provisions of the Bond Ordinance; however, in the absence of the Mayor or the Clerk for any reason, an Authorized Officer shall be authorized to either execute the Series 2020 Bonds or attest to the execution of the Series 2020 Bonds on behalf of the absent party; however, in no event shall the same Authorized Officer be permitted to both execute and attest to the Series 2020 Bonds. If acting on behalf of an absent person, such Authorized Officer shall be authorized to execute, sign, certify or attest any documentation otherwise required of the Mayor or Clerk respecting the issuance and delivery of the Series 2020 Bonds.

Facsimiles or electronic signatures by the Mayor, the Clerk or any Authorized Officer are expressly authorized and permitted with respect to the Series 2020 Bonds and all closing documents and certificates associated therewith.

Section 6.02 **No Recourse on the Series 2020 Bonds.**

All covenants, stipulations, promises, agreements and obligations of the City contained in the Bond Ordinance or in this 2020 Series Ordinance shall be deemed to be the covenants, stipulation, promises, agreements and obligations of the City and not those of any officer or employee of the City in his or her individual capacity, and no recourse shall be had for the payment of the principal or redemption price of or interest on the Series 2020 Bonds or for any claim based thereon or on the Bond Ordinance or on this 2020 Series Ordinance, either jointly or severally, against any officer or employee of the City or any person executing the Series 2020 Bonds.

[End of Article VI]

ARTICLE VII

APPLICATION OF BOND PROCEEDS

Section 7.01 Use and Disposition of Bond Proceeds.

Upon the delivery of the Series 2020 Bonds and receipt of the proceeds thereof, net of underwriter's discount or premium, such funds shall be disposed of as follows:

(A) if an Authorized Officer determines to fund the 2020 Debt Service Reserve Fund, the sum or instrument equal to the 2020 Reserve Requirement, whether in cash or otherwise, shall be deposited into the 2020 Debt Service Reserve Fund;

(B) the sum necessary to redeem the Refunded Bond shall be distributed by the purchaser, either (i) directly to the holder of the Refunded Bond, or (ii) to the Trustee, for ultimate distribution to the holder of the Refunded Bond. Any payoff directly to the holder of the Refunded Bond shall be made in accordance with the terms and conditions of closing memoranda dated as of the date of closing of the Series 2020 Bonds. Any payoff provided to the Trustee shall be made in accordance with the terms and conditions of closing memoranda and/or the Escrow Deposit Agreement; and

(C) all remaining funds shall be deposited with the Trustee in the 2020 Project Fund and used to defray the costs of the 2020 Project and the costs of issuance of the Series 2020 Bonds. Amounts representing the costs of issuance of the Series 2020 Bonds shall be kept in an account within the 2020 Project Fund.

Section 7.02 Establishment of 2020 Project Fund and 2020 COI Account.

There is hereby established, in accordance with Section 4.01 and 7.09 of the Bond Ordinance, the "2020 Project Fund," and the "2020 COI Account" within the 2020 Project Fund. There shall be paid into the 2020 Project Fund the sums prescribed by Section 7.01(C) hereof. The 2020 Project Fund shall be held and controlled by the Trustee, unless otherwise determined by the Authorized Officer at the closing of the Series 2020 Bond. Withdrawals for the payment of costs of issuance from the 2020 COI Account shall be made upon written order of the City by any Authorized Officer. The City shall requisition funds, including any funds required for the reimbursement of costs previously incurred, from the 2020 Project Fund upon written request to the Trustee. The Trustee shall be fully protected in releasing moneys from the 2020 COI Account and 2020 Project Fund based upon such written orders of the City.

Subject to Section 15.13 of the Bond Ordinance, moneys in the 2020 Project Fund shall be invested and reinvested at the written direction of the City in Authorized Investments. Upon written notification from the City by any Authorized Officer that the payment of all costs of issuance for the Series 2020 Bonds have been paid, the remaining sums therein shall be transferred by the Trustee and applied to the 2020 Debt Service Fund Account. If there are any funds remaining in the 2020 Project Fund upon completion of the 2020 Project, such funds shall

be transferred to the 2020 Debt Service Fund Account and used to pay principal of and interest on the Series 2020 Bonds as the same come due.

[End of Article VII]

ARTICLE VIII

SALE OF BONDS

Section 8.01 Sale of Bonds.

The Series 2020 Bonds may be sold on a competitive basis as set forth at Section 8.02 hereof, or on a negotiated basis as set forth at Section 8.03 hereof, as determined by an Authorized Officer.

Section 8.02 Competitive Sale.

The Series 2020 Bonds may be sold at a date and time certain after public notice thereof. Bids may be received at such time and date and in such manner as determined by an Authorized Officer. Unless all bids are rejected, the award of the Series 2020 Bonds may be made by an Authorized Officer to the bidder offering the most advantageous terms to the City, with the basis of such award and the date and time certain for opening bids to be set forth in a request for proposals used in connection with the sale of the Series 2020 Bonds (the “**RFP**”).

Any Series of Series 2020 Bonds sold on a competitive sale basis may be sold pursuant to either of the following methods as determined by an Authorized Officer:

- (A) *Competitive Direct Placement.* Any Series 2020 Bonds may be sold to an institution or institutions as a single instrument as a means of making a commercial loan (a “**Direct Placement Purchaser**”). The City Council authorizes an Authorized Officer to distribute the RFP to prospective purchasers of Series 2020 Bonds and award such Series 2020 Bonds to a Direct Placement Purchaser on the basis of the terms and conditions contained therein. Such Series 2020 Bonds shall be issued as a single Bond (or separate single Bonds if the Series 2020 Bonds are sold in multiple Series), without CUSIP identification (unless otherwise agreed by the Direct Placement Purchaser and an Authorized Officer on behalf of the City), shall not be issued in book-entry-only form, and no official statement shall be prepared in connection with the sale of such Series 2020 Bonds. The Direct Placement Purchaser of any such Series 2020 Bonds shall execute an investor letter to the City acknowledging its purchase of such Bonds as a means of making a commercial loan.
- (B) *Competitive Public Offering.* Any Series 2020 Bonds may be sold in the public capital markets to an underwriter for the purpose of reselling such Series 2020 Bonds. In such case, the City Council hereby authorizes an Authorized Officer to prepare, or cause to be prepared, a preliminary official statement and distribute the preliminary official statement and the RFP (or official notice of sale) to prospective purchasers of Series 2020 Bonds. The City Council authorizes an Authorized Officer to designate the preliminary official statement as “final” for purposes of Rule 15c2-12 of the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (“**Rule**

15c2-12”). The Authorized Officer is further authorized to see to the completion of the final form of the official statement upon the sale of such Series 2020 Bonds so that it may be provided to the underwriter of such Series 2020 Bonds.

Section 8.03 Negotiated Sale.

Any Series 2020 Bonds sold on a negotiated basis may be sold pursuant to either of the following methods as determined by an Authorized Officer.

- (A) *Negotiated Direct Placement.* Any Series 2020 Bonds may be sold to a Direct Placement Purchaser as a means of making a commercial loan pursuant to negotiation, with or without providing for distribution of an RFP. In such case, the City Council authorizes an Authorized Officer to solicit, or cause to be solicited, financing proposals from prospective purchasers of Series 2020 Bonds and award the Series 2020 Bonds after negotiation with prospective purchasers. Such Series 2020 Bonds shall be issued as a single Series (or separate single Bonds if the Series 2020 Bonds are sold in multiple Series), without CUSIP identification (unless otherwise agreed by the Direct Placement Purchaser and an Authorized Officer on behalf of the City). The Direct Placement Purchaser of such Series 2020 Bonds shall execute an investor letter to the City acknowledging its purchase of the Series 2020 Bonds as a means of making a commercial loan.
- (B) *Negotiated Public Offering.* Any Series 2020 Bonds may be sold to an underwriter pursuant to the terms of a bond purchase agreement for resale in the public capital markets. The underwriter shall be selected after soliciting proposals for the same and the bond purchase agreement shall be executed by an Authorized Officer upon advice of Bond Counsel and the Financial Advisor. The execution of the bond purchase agreement by such Authorized Officer shall constitute conclusive evidence of his or her approval thereof. In such case, the City Council hereby authorizes an Authorized Officer to prepare, or cause to be prepared, a preliminary official statement and authorize the distribution of the preliminary official statement by the underwriter. The City Council authorizes an Authorized Officer to designate the preliminary official statement as “final” for purposes of Rule 15c2-12. Such Authorized Officer is further authorized to see to the completion of the final form of the official statement upon the sale of such Series 2020 Bonds so that it may be provided to the underwriter.

Section 8.04 Certain Financial Information to be Provided to Purchaser.

As requested by a Direct Placement Purchaser of the Series 2020 Bonds, the City may furnish or arrange to provide all other financial information related to or affecting the System as the Direct Placement Purchaser may reasonably request or require. Upon reasonable notice, the City shall permit the any Holder of the Series 2020 Bonds, or its agents and representatives, to inspect during regular business hours the City's books and records relating to or affecting the System and to make extractions therefrom.

[End of Article VIII]

ARTICLE IX

TAX AND SECURITIES LAW COVENANTS

Section 9.01 Tax Covenants.

(A) *General Tax Covenant.* The City will comply with all requirements of the Code in order to preserve the tax-exempt status of the Series 2020 Bonds, including without limitation, (i) the requirement to file Form 8038-G, *Information Return for Tax-Exempt Government Obligations*, with the Internal Revenue Service, and (ii) the requirement to rebate certain arbitrage earnings to the United States Government pursuant to Section 148(f) of the Code. In this connection, the City covenants to execute any and all agreements or other documentation as it may be advised by Bond Counsel will enable it to comply with this Section 9.01, including its certification on reasonable grounds that the Series 2020 Bonds are not “arbitrage bonds” within the meaning of Section 148 of the Code.

(B) *Tax Representations.* The City hereby represents and covenants that it will not take any action which will, or fail to take any action which failure will, cause interest on the Series 2020 Bonds to become includable in the gross income of the Holders thereof for federal income tax purposes pursuant to the provisions of the Code and the United States Treasury Regulations (the “**Regulations**”). Without limiting the generality of the foregoing, the City represents and covenants that:

(1) All property financed or refinanced with the proceeds of the Series 2020 Bonds will be owned by the City or another political subdivision of the State so long as the Series 2020 Bonds are Outstanding in accordance with the rules governing the ownership of property for federal income tax purposes.

(2) The City shall not use, and will not permit any party to use, the proceeds of the Series 2020 Bonds, or any bonds refunded thereby, in any manner that would result in (i) 10% or more of such proceeds being considered as having been used directly or indirectly in any trade or business carried on by any Nongovernmental Person, (ii) 5% or more of such proceeds being considered as having been used directly or indirectly in any trade or business of any Nongovernmental Person that is either “unrelated” or “disproportionate” to the governmental use of the financed facility by the City or by any other Governmental Unit (as the terms “unrelated” and “disproportionate” are defined for purposes of Section 141(b)(3) of the Code) or (iii) 5% or more of such proceeds being considered as having been used directly or indirectly to make or finance loans to any Nongovernmental Person.

(3) The City is not a party to, and will not enter into or permit any other party to enter into, any contract with any person involving the management of any facility financed or refinanced with the proceeds of the Series 2020 Bonds or by notes paid by the Series 2020 Bonds that does not conform to the guidelines set forth in Revenue Procedure 2017-13, or a successor revenue procedure, Code provision or Regulations.

(4) The City will not sell, or permit any other party to sell, any property financed or refinanced with the Series 2020 Bonds to any person unless it obtains an opinion of nationally recognized bond counsel that such sale will not affect the tax-exempt status of the Series 2020 Bonds.

(5) The Series 2020 Bonds will not be “federally guaranteed” within the meaning of Section 149(b) of the Code. The City shall not enter into, or permit any other party to enter into, any leases or sales or service contract with any federal government agency with respect to any facility financed or refinanced with the proceeds of the Series 2020 Bonds and will not enter into any such leases or contracts unless it obtains the opinion of nationally recognized bond counsel that such action will not affect the tax-exempt status of the Series 2020 Bonds.

(C) *Arbitrage Bonds, Rebate.* The City covenants that no use of the proceeds of the sale of the Series 2020 Bonds shall be made which, if such use had been reasonably expected on the date of issue of such Bonds would have caused the Series 2020 Bonds to be “arbitrage bonds” as defined in the Code, and to that end the City shall:

(1) comply with the applicable regulations of the Treasury Department previously promulgated under Section 103 of the Internal Revenue Code of 1954, as amended, and any regulations promulgated under the Code, so long as the Series 2020 Bonds are Outstanding;

(2) 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 and Regulations relating to required rebate of certain amounts to the United States Government;

(3) make such reports of such information at the time and places required by the Code and Regulations; and

(4) take such other action as may be required to assure that the tax-exempt status of the Series 2020 Bonds will not be impaired.

(D) *Tax Certificate.* An Authorized Officer is hereby authorized and directed to execute, at or prior to delivery of any Series of Bonds, a certificate or certificates specifying actions taken or to be taken by the City, and the reasonable expectations of such officials, with respect to such Series of Bonds, the proceeds thereof, or the City.

(E) *Bank Qualified.* Series 2020 Bonds may be designated by an Authorized Officer pursuant to Article V hereof as “qualified tax-exempt obligations” in accordance with Section 265(b)(3)(B) of the Code.

(F) *Reimbursement Declaration.* The City hereby declares its intention to reimburse itself for a portion of the costs of the 2020 Project with the proceeds of Series 2020 Bonds. To that end, the City Council determines and declares as follows:

(1) no funds from any sources other than the Series 2020 Bonds are or are reasonably expected to be, reserved, allocated on a long-term basis or otherwise set aside by the City pursuant to the budget or financial policies of the City for the financing of the portion of the costs of acquisition, construction, and equipping of the 2020 Project to be funded with the Series 2020 Bonds;

(2) the City reasonably expects that all or a portion of the expenditures incurred for the 2020 Project and the issuance of the Series 2020 Bonds will be paid prior to the issuance of the Series 2020 Bonds;

(3) the City intends and reasonably expects to reimburse itself for all such expenditures paid by it with respect to the 2020 Project prior to the issuance of the Series 2020 Bonds from the proceeds of the Series 2020 Bonds, and such intention is consistent with the budgetary and financial circumstances of the City;

(4) all of the costs to be paid or reimbursed from the proceeds of the Series 2020 Bonds will be for costs incurred in connection with the issuance of the Series 2020 Bonds, or will, at the time of payment thereof, be properly chargeable to the capital account of the 2020 Project (or would be so chargeable with a proper election) under general federal income tax principles; and

(5) this 2020 Series Ordinance shall constitute a declaration of official intent under United States Department of the Treasury Regulation Section 1.150-2.

(G) *Taxable Bonds.* Prior to the issuance of a Series of Bonds, an Authorized Officer may, in consultation with Bond Counsel, designate a Series of Bonds as taxable under the Code. The election to issue a Series of Taxable Bonds shall be clearly indicated by including the phrase “Taxable Series,” or words to that effect, in the series designation of such Taxable Bonds. The above provisions of this Section 9.01 shall not be applicable to any Series of Taxable Bonds.

Section 9.02 Securities Law Covenants.

(A) The City hereby covenants and agrees that it will comply with and carry out all of the provisions of any continuing disclosure certificate or agreement, executed by an Authorized Officer and dated the date of delivery of the Series 2020 Bonds, which will meet the requirements, as applicable, of Section 11-1-85 of the South Carolina Code, which may require, among other things, that the City file with a central repository when requested:

- (1) a copy of its annual independent audit within 30 days of its receipt and acceptance, and
- (2) event-specific information, within 30 days of an event adversely affecting more than five percent of its revenues or five percent of its tax base.

The only remedy for failure by the City to comply with the covenants in this Section 9.02 shall be an action for specific performance of this covenant. The City specifically reserves the right to

amend this covenant to reflect any change in Section 11-1-85 of the South Carolina Code, without the consent of any Bondholder.

(B) The City hereby covenants and agrees that it will comply with and carry out all of the provisions of any continuing disclosure certificate, executed by an Authorized Officer and dated the date of delivery of the Series 2020 Bonds, which will meet the requirements, as applicable, of Rule 15c2-12 (the “*Continuing Disclosure Undertaking*”). Notwithstanding any other provision of this 2020 Series Ordinance, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an event of default hereunder; however, any Bondholder may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under this Section. The execution of the Continuing Disclosure Undertaking shall constitute conclusive evidence of the approval by the person executing the same of any and all modifications and amendments thereto. Additionally, an Authorized Officer is authorized to contract with a dissemination agent for certain dissemination services associated with the execution and delivery of the Continuing Disclosure Undertaking.

(C) In the event any Series 2020 Bonds are not sold as securities, but rather sold to a Direct Placement Purchaser as a commercial loan, no Continuing Disclosure Undertaking shall be required as to such Series 2020 Bonds, but the City may covenant to provide information to the purchaser of such Series of Series 2020 Bonds as may be mutually agreed.

[End of Article IX]

ARTICLE X
MISCELLANEOUS

Section 10.01 Severability.

If any one or more of the covenants or agreements provided in this 2020 Series Ordinance on the part of the City or any fiduciary to be performed should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this 2020 Series Ordinance.

Section 10.02 Further Action.

The City Council authorizes the Authorized Officers to execute and sign all other documents, certificates, and agreements necessary or convenient to effect the purchase and sale of the Series 2020 Bonds.

Section 10.03 Professional Services.

The City Council hereby authorizes, approves or ratifies, as applicable, the engagement of Stephens, Inc. to act as Financial Advisor (the “***Financial Advisor***”) and Pope Flynn, LLC to act as Bond Counsel and Disclosure Counsel (if applicable) in connection with the issuance of the Series 2020 Bonds and authorizes (or ratifies, as applicable) an Authorized Officer to engage the services of such other professionals and institutions of a type and in a manner customary in connection with the issuance of municipal bonds, including, but not limited to, contractual arrangements with other professionals, rating agencies, verification agents, financial and trust institutions, printers and the suppliers of other goods and services in connection with the sale, execution and delivery of the Series 2020 Bonds, as is necessary and desirable.

Section 10.04 Table of Contents and Section Headings Not Controlling.

The Table of Contents and the headings of the several articles and sections of this 2020 Series Ordinance have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this 2020 Series Ordinance.

Section 10.05 Ordinance to Constitute Contract.

In consideration of the purchase and acceptance of Series 2020 Bonds by those who shall purchase and hold the same from time to time, the provisions of this 2020 Series Ordinance shall be deemed to be and shall constitute a contract between the City and the Holder from time to time of the Series 2020 Bonds, and such provisions are covenants and agreements with such Holder which the City hereby determines to be necessary and desirable for the security and payment thereof. The pledge hereof and the provisions, covenants and agreements herein set

forth to be performed on behalf of the City shall be for the benefit, protection and security of the Holder of the Series 2020 Bonds.

Section 10.06 Ratification of Prior Action.

All prior actions of Authorized Officers in furtherance of the purposes of this 2020 Series Ordinance (including, but not limited to, any negotiated sale of Series 2020 Bonds or any solicitation of bids under the provisions of Article VIII hereof) are hereby approved, ratified and confirmed.

[End of Article X]

DONE IN MEETING DULY ASSEMBLED, this 23rd day of June 2020.

CITY OF BEAUFORT, SOUTH CAROLINA

BILLY KEYSERLING, MAYOR

(SEAL)

Attest:

IVETTE BURGESS, CITY CLERK

1st Reading: June 9, 2020
2nd Reading & Enactment: June 23, 2020

Reviewed by:

WILLIAM B. HARVEY, III, CITY ATTORNEY

EXHIBIT A

(FORM OF BOND)

[WITH THE CONSENT OF THE PURCHASER, AND NOTWITHSTANDING ANY CONTRARY PROVISION CONTAINED IN THE 2020 SERIES ORDINANCE, THIS SERIES 2020 BOND MAY BE SOLD OR TRANSFERRED ONLY TO PURCHASERS WHO EXECUTE AN INVESTMENT LETTER DELIVERED TO THE CITY, IN FORM SATISFACTORY TO THE CITY, CONTAINING CERTAIN REPRESENTATIONS, WARRANTIES AND COVENANTS AS TO THE SUITABILITY OF SUCH PURCHASERS TO PURCHASE AND HOLD THIS SERIES 2020 BOND. SUCH RESTRICTION SHALL BE COMPLIED WITH BY EACH TRANSFEREE OF THIS SERIES 2020 BOND.]

**CITY OF BEAUFORT
STATE OF SOUTH CAROLINA
STORMWATER SYSTEM IMPROVEMENT AND
REFUNDING REVENUE BONDS
SERIES 2020**

No. R-1

\$ _____

THE CITY OF BEAUFORT, SOUTH CAROLINA (the “*City*”), acknowledges itself indebted and for value received hereby promises to pay, solely from the sources and as hereinafter provided, to _____, or registered assigns (the “*Purchaser*”), as purchaser of this Stormwater System Improvement and Refunding Revenue Bond, Series 2020 (this “*Series 2020 Bond*”), the principal amount of _____ DOLLARS AND 00/100 (\$ _____), at the corporate trust offices of U.S. Bank National Association (the “*Trustee*”) in the manner provided below. This Series 2020 Bond shall be dated and bear interest from _____, the date of delivery hereof, and at the rate of _____ per centum (____%) per annum (computed on the basis of a 360-day year consisting of twelve 30-day months). Interest on this Series 2020 Bond is initially payable on _____, and thereafter on each _____ 1 and _____ 1 of each year (each a “*Bond Payment Date*”) until _____, the final maturity date hereof (“*Final Maturity*”) in accordance with the schedule set forth at Exhibit A and which is incorporated herein by reference. The payments of principal, interest, or both, payable on a Bond Payment Date shall be payable to the person in whose name this Series 2020 Bond is registered at the close of business on the _____ 15 or _____ 15 immediately preceding such Bond Payment Date (each a “*Record Date*”). [The City and the Purchaser have mutually agreed to waive all requirements for presentation and surrender of this Series 2020 Bond in connection with the payment thereof. Upon the final payment of this Series 2020 Bond, the Purchaser will execute and deliver a certificate to the City and the Trustee certifying that (i) such payment represents the final payment due on this Series 2020 Bond and (ii) the City owes no further obligation to the Purchaser respecting this Series 2020 Bond.] This Series 2020 Bond shall not be valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been duly executed by the Trustee, as Registrar.

Both the principal of and interest on this Series 2020 Bond are payable by check or draft from the principal office of the Trustee to the person in whose name this Series 2020 Bond is registered on the Record Date at the address shown on the registration books. The principal of, redemption premium, if any, and interest on this Series 2020 Bond are payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

[This Series 2020 Bond is subject to redemption at the option of the City prior to maturity, in part or in whole, at any time, at [100]% of the then outstanding principal amount of this Series 2020 Bond, plus accrued interest to the redemption date.]

If this Series 2020 Bond is called for redemption, the Trustee will give notice to the Holder of this Series 2020 Bond in the name of the City, of the redemption of such Series 2020 Bonds, or portions thereof. Notice and redemption conditions shall otherwise comply with Section 4.13 of the Bond Ordinance.

This Series 2020 Bond is issued pursuant to and in accordance with the Constitution and statutes of the State of South Carolina (the “*State*”) including particularly Chapter 21, Title 6, Code of Laws of South Carolina 1976, as amended (the “*South Carolina Code*”), and by an ordinance entitled, “A MASTER BOND ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF STORMWATER SYSTEM REVENUE BONDS OF THE CITY OF BEAUFORT, SOUTH CAROLINA; AND OTHER MATTERS RELATING THERETO,” enacted by the City Council of the City of Beaufort (the “*City Council*”), the governing body of the City, on June 23, 2020 (the “*Bond Ordinance*”), and a series ordinance entitled, “A SERIES ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF STORMWATER SYSTEM IMPROVEMENT AND REFUNDING REVENUE BONDS, TO BE DESIGNATED SERIES 2020, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING EIGHT MILLION DOLLARS (\$8,000,000), OF THE CITY OF BEAUFORT, SOUTH CAROLINA; AND OTHER MATTERS RELATING THERETO” (the “*2020 Series Ordinance*”) duly enacted by the City Council on June 23, 2020 (the Bond Ordinance and the 2020 Series Ordinance are hereinafter together referred to as the “*Ordinances*”).

The Series 2020 Bonds are issued for the principal purposes of obtaining funds to (a) defray the costs of the 2020 Project (as defined in the 2020 Series Ordinance), (b) effect a current refunding of the Refunded Bond, [(c) fund the 2020 Debt Service Reserve Fund,] and (d) pay the costs and expenses related to the issuance of the Series 2020 Bonds.

For the payment of the principal of and interest on this Series 2020 Bond issued pursuant to the Bond Ordinance, there are hereby irrevocably pledged the Gross Revenues. As permitted by the Enabling Act, the payment of the principal of and interest on this Series 2020 Bond shall be additionally secured by a statutory lien upon the System. Such pledge securing this Series 2020 Bond shall have priority over all other pledges except those made to secure any Bonds (as defined hereinbelow) as may be currently outstanding or issued from time to time in the future.

THIS SERIES 2020 BOND SHALL NOT IN ANY EVENT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY PROVISION, LIMITATION OR RESTRICTION OF THE CONSTITUTION OR STATUTES OF THE STATE, OTHER THAN THOSE PROVISIONS AUTHORIZING INDEBTEDNESS PAYABLE SOLELY FROM A REVENUE-PRODUCING PROJECT NOT INVOLVING REVENUES FROM ANY TAX OR LICENSE; AND THE FAITH, CREDIT AND TAXING POWER OF THE CITY ARE EXPRESSLY NOT PLEDGED THEREFOR. THE CITY IS NOT OBLIGATED TO PAY THIS SERIES 2020 BOND, OR THE INTEREST HEREON, SAVE AND EXCEPT FROM THE GROSS REVENUES.

The Bond Ordinance authorizes the issuance of additional bonds on a parity with the Series 2020 Bonds and any outstanding parity bonds which, when issued in accordance with the provisions of the Bond Ordinance, will rank equally and be on a parity herewith and therewith (“*Additional Bonds*” and together with this Series 2020 Bond and any parity bonds, collectively the “*Bonds*”).

The City has covenanted to continuously operate and maintain the System and fix and maintain such rates for the services and facilities furnished by the System as shall at all times be sufficient (a) to maintain the Debt Service Fund and Debt Service Fund Accounts and thus provide for the punctual payment of the principal of and interest on all Bonds, (b) to maintain the Debt Service Reserve Funds, if any, in the manner prescribed in the applicable Series Ordinance, (c) to provide for the payment of Operation and Maintenance Expenses, (d) to pay all amounts owing under a reimbursement agreement with any provider of a surety bond, insurance policy or letter of credit as contemplated under Section 7.04(D) of the Bond Ordinance, (e) to provide for the punctual payment of the principal of and interest on all Junior Lien Bonds that may from time to time hereafter be outstanding, (f) to build and maintain a reserve for depreciation of the System, for contingencies and for improvements, betterments and extensions to the System other than those necessary to maintain the same in good repair and working order and (g) to discharge all obligations imposed by the Enabling Act and by the Bond Ordinance and any applicable Series Ordinance.

The Bond Ordinance provides that, in addition to other remedies, upon a default in payment of principal of or interest on any Bond, the Trustee may, and upon the written request of the Holders of not less than fifty-one percent (51%) in aggregate principal amount of Bonds Outstanding shall, declare all Bonds Outstanding immediately due and payable.

This Series 2020 Bonds and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments imposed within the State, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer and certain franchise taxes.

This Series 2020 Bond is transferable, as provided in the Bond Ordinance, only upon the registration books of the City kept for that purpose and maintained by the Registrar, by the holder hereof in person or by his duly authorized attorney, upon (a) surrender of this Series 2020 Bond and an assignment with a written instrument of transfer satisfactory to the Trustee or

any other Registrar, as the case may be, duly executed by the Holder hereof or his duly authorized attorney and (b) payment of the charges, if any, prescribed in the Ordinances. Thereupon a new Series 2020 Bond of the then outstanding principal amount, then current maturity schedule and interest rate shall be issued to the transferee in exchange therefor as provided in the Bond Ordinance. The City, the Trustee and the Registrar may deem and treat the person in whose name this Series 2020 Bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal or redemption price hereof and interest due hereon and for all other purposes.

For every exchange or transfer of the Series 2020 Bonds, the City or the Trustee or Registrar, as the case may be, may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.

Certain capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Ordinances (as such term is defined below). Certified copies of the Ordinances are on file in the office of the Trustee and in the offices of the Clerk of Court for Beaufort County, South Carolina.

It is hereby certified and recited that all conditions, acts and things required by the Constitution and statutes of the State to exist, be performed or happen precedent to or in the issuance of this Series 2020 Bond, exist, have been performed and have happened, that the amount of this Series 2020 Bond, together with all other indebtedness of the City, does not exceed any limit prescribed by such Constitution or statutes.

IN WITNESS WHEREOF, THE CITY OF BEAUFORT, SOUTH CAROLINA, has caused this Series 2020 Bond to be signed by the signature of the Mayor of the City, its corporate seal to be reproduced hereon and the same to be attested by the signature of the City Clerk.

CITY OF BEAUFORT, SOUTH CAROLINA

(SEAL)

By: _____
Mayor

Attest:

City Clerk

CERTIFICATE OF AUTHENTICATION

This Series 2020 Bond is the Series 2020 Bond described in the within mentioned Ordinances.

U.S. BANK NATIONAL ASSOCIATION, as Registrar

By: _____
Authorized Officer

Date: _____, 2020

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(please print or type name and address of Transferee and Social Security or other identifying number of Transferee)

the within Bond and all rights and title thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____
(Signature Guaranty)

Authorized Individual or Officer

NOTICE: Signature(s) to the assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or any change whatever.

Signature(s) must be guaranteed by an institution which is a participant in the Securities Transfer Agents Medallion Program ("STAMP") or similar program enlargement.

Exhibit A

Debt Service Schedule for the Bonds



CITY OF BEAUFORT

DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

TO: CITY COUNCIL **DATE:** 5/29/2020
FROM: Kathy Todd
AGENDA ITEM Authorization to allow the City Manager to Enter into Contract on Playground
TITLE: Equipment
MEETING
DATE: 6/9/2020
DEPARTMENT: Finance

BACKGROUND INFORMATION:

On May 12, 2020, City Council authorized negotiations with the recommended contractor, Great Southern Recreation, on RFP 2020-112 - Waterfront Park Playground equipment. The negotiations were successful and the design was solidified, reducing the overall cost of the project from the proposed price of \$298,682 to \$274,654.30.

Additional background on this project is related to a \$500,000 Land Water Conservation Grant, requiring a \$500K match from the City. This grant was awarded in November 2018. City resources for the grant were set aside at that time in the Capital Projects fund as required on the grant. The scope of the grant funded project was: major repairs to the waterfront park pilings, new playground equipment and improvements to the Scott Street entrance.

The major repairs to the Waterfront Park pilings is complete and with the negotiated cost for the playground equipment there are sufficient remaining resources of the project available to complete the Scott Street entrance, thereby satisfying the grant compliance on the overall scope of the project.

The grant closeout and project is required to be complete in totality by September 30, 2020.

PLACED ON AGENDA FOR: Action

REMARKS:

Authorize the City Manager to enter into contract with Great Southern Recreation on the Waterfront Park Playground Equipment.

ATTACHMENTS:

Description	Type	Upload Date
Draft Contract	Cover Memo	6/2/2020



William Prokop
CITY MANAGER
843-525-7070
FAX 843-525-7013

COUNCIL MEMBERS:
Billy Keyserling, Mayor
Mike McFee, Mayor Pro Tem
Stephen Murray
Phillip Cromer
Nan Sutton

CITY OF BEAUFORT
1911 Boundary Street
BEAUFORT, SOUTH CAROLINA 29902

Standard Agreement Between

City of Beaufort and Great Southern Recreation

where the basis of payment is a STIPULATED SUM

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AGREEMENT made as of the _____ day of **May** in the year **2020**

BETWEEN the Owner:

**CITY OF BEAUFORT
1911 BOUNDARY STREET
BEAUFORT, SOUTH CAROLINA 29902**

and the Contractor:

**GREAT SOUTHERN RECREATION
2441-Q OLD FORT PARKWAY
MURFREESBORO, TN 37128**

The Project is:

RFP 2020-112 WATERFRONT PARK PLAYGROUND

The Owner and Great Southern Recreation agree as follows:

ARTICLE 1 - THE DOCUMENTS

The contract Documents consist of this Agreement, (**City of Beaufort and Great Southern Recreation**) Conditions of the Contract (General, Supplementary and other Conditions), the Request for Proposal (RFP #2020-112) and the Proposal Submitted by Great Southern Recreation in response to this RFP, Drawings, Specifications, addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Document, other than Modifications appears in Article 8.

ARTICLE 2 - THE WORK OF THIS AGREEMENT-

Great Southern Recreation shall fully execute the Work described in the Agreement, except to the extent specifically indicated in the Agreement to be the responsibility of others.

ARTICLE 3 - DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below, or provision is made for the date to be fixed in a notice to proceed issued by the Owner.



William Prokop
CITY MANAGER
843-525-7070
FAX 843-525-7013

COUNCIL MEMBERS:
Billy Keyserling, Mayor
Mike McFee, Mayor Pro Tem
Stephen Murray
Phillip Cromer
Nan Sutton

CITY OF BEAUFORT
1911 Boundary Street
BEAUFORT, SOUTH CAROLINA 29902

NOTICE TO PROCEED WILL BE ISSUED WITHIN (1) DAY OF SIGNED AGREEMENT.

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

SEVEN (7) DAYS

3.2 Great Southern Recreation: Time shall be measured from the date of commencement.

3.3 Great Southern Recreation shall achieve Substantial Completion of the entire Work not later than **July 31, 2020** or as follows, subject to adjustments of this Agreement as provided in the Contract Documents.

ARTICLE 4 - CONTRACT SUM

4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be:

(\$274,654.30) Two Hundred Seventy-Four Thousand, Six Hundred Fifty-Four Dollars and Thirty Cents.

subject to additions and deductions as provided in the Agreement.

ANY ADDITIONS ABOVE THE ORIGINAL DOLLAR AMOUNT WILL BE THE RESPONSIBILITY OF THE OWNER.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Agreement and are hereby accepted by the Owner: **None.**

4.3 Unit prices, if any, are as follows:

\$274,652.30 LUMP SUM

ARTICLE 5 - PAYMENTS

5.1 PROGRESS PAYMENTS

Not Applicable

5.2 FINAL PAYMENT

5.2.1 Final payment, constituting the entire balance of the Contract Sum, shall be made by the Owner to **Great Southern Recreation** when:

Great Southern Recreation has fully performed the Agreement except for the City's responsibility to correct Work, and to satisfy other requirements, if any, which extend beyond final payment

5.2.2 The Owner's final payment to **Great Southern Recreation** shall be made no later than (5) five days after the acceptance and completion of work, by the City.



William Prokop
CITY MANAGER
843-525-7070
FAX 843-525-7013

COUNCIL MEMBERS:
Billy Keyserling, Mayor
Mike McFee, Mayor Pro Tem
Stephen Murray
Phillip Cromer
Nan Sutton

CITY OF BEAUFORT
1911 Boundary Street
BEAUFORT, SOUTH CAROLINA 29902

ARTICLE 6 - TERMINATION OR SUSPENSION

- 6.1** The Agreement may be terminated by the Owner or **Great Southern Recreation** prior to work commencing.
- 6.2** The work may be suspended by the Owner

ARTICLE 7 - MISCELLANEOUS PROVISIONS

- 7.1** The Owner's representative is:
LINDA ROPER, DIRECTOR OF DOWNTOWN OPERATIONS
CITY OF BEAUFORT
500 CARTERET STREET
BEAUFORT, SOUTH CAROLINA 29902
- 7.2** **Great Southern Recreation** representative is
GREG TAYLOR
GREAT SOUTHERN RECREATION
2441-Q OLD FORT PARKWAY
MURFREESBORO, TN 37128

- 7.3** Neither the Owner's nor the **Great Southern Recreation** representative shall be changed without ten days' written notice to the other party.

ARTICLE 8 - ENUMERATION OF CONTRACT DOCUMENTS

- 8.1** The Agreement, except for Modifications issued after execution of this Agreement, are enumerated as follows:
- 8.1.1** The Agreement is this executed Standard Form of Agreement Between the City of Beaufort and (Owner) and Great Southern Recreation (Contractor)
- 8.1.2** The General Conditions are the General Conditions of the Agreement for Construction.
- 8.1.3** The Supplementary and other Conditions of the Contract are those contained in the Project Manual and are as follows:
- 1. NONE**
- 8.1.4** The Specifications are those contained in the Project Manual dated as in Subparagraph 8.1.3, and are as follows:
SEE SCOPE OF WORK CONTAINED IN THE RFP 2020-112
- 8.1.5** The Contractors record drawings, survey, and photos are to be part of this contract and due to the City upon contract completion.



William Prokop
CITY MANAGER
843-525-7070
FAX 843-525-7013

COUNCIL MEMBERS:
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CITY OF BEAUFORT
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BEAUFORT, SOUTH CAROLINA 29902

8.1.6 The Addenda, if any, are as follows:

1. ADDENDA 1-8

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

**THE REQUEST FOR PROPOSAL: RFP# 2020-112, AND THE PROPOSAL SUBMITTED
IN RESPONSE TO THE RFP ARE ATTACHED HERETO AND BY THIS REFERENCE**



William Prokop
CITY MANAGER
843-525-7070
FAX 843-525-7013

COUNCIL MEMBERS:
Billy Keyserling, Mayor
Mike McFee, Mayor Pro Tem
Stephen Murray
Phillip Cromer
Nan Sutton

CITY OF BEAUFORT
1911 Boundary Street
BEAUFORT, SOUTH CAROLINA 29902

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Director Downtown Operations, one to the Contractor for use in the administration of the Agreement, and the remainder to the Owner.

WITNESS

(Signature)

(Printed Name)

CITY OF BEAUFORT

(Signature)

(Printed name and title)

WITNESS

(Signature)

(Printed name)

WITNESS

(Signature)

(Printed Name)

GREAT SOUTHERN RECREATION

(Signature)

(Printed name and title)

WITNESS

(Signature)

(Printed name)



CITY OF BEAUFORT

DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

TO: CITY COUNCIL **DATE:** 6/5/2020
FROM: Kathy Todd
AGENDA ITEM
TITLE: Authorization to allow City Manager to Execute Contract for Mossy Oaks Basin 1
MEETING
DATE: 6/9/2020
DEPARTMENT: Finance

BACKGROUND INFORMATION:

See attached Recommendation Memo and Contract. The Contract has been reviewed by Rural Infrastructure Authority (Grantor) and given approval to execute pending Council Approval.

PLACED ON AGENDA FOR: Action


REMARKS:

ATTACHMENTS:

Description	Type	Upload Date
Recommendation Memo	Cover Memo	6/5/2020
Construction Contract	Cover Memo	6/5/2020

CITY OF BEAUFORT - INTERNAL MEMORANDUM

TO: WILLIAM PROKOP
FROM: JAY PHILLIPS
SUBJECT: IFB 2020-109 MOSSY OAKS DRAINAGE IMPROVEMENTS BASIN 1 & BASIN 2 WEST
DATE: 06/02/2020
CC: MATT ST. CLAIR, JARED FRALIX, KATHY TODD



The City solicited an Invitation For Bid, IFB 2020-109 Mossy Oaks Drainage Improvements Basin 1 & Basin2 West on April 9, 2020. The public notice was posted on the City's website, the State of South Carolina (SCBO) procurement website and was advertised in the Island News on April 9 and April 16, 2020. A non-mandatory pre-bid meeting was held on April 21, 2020. Questions were received by the April 28 deadline and answers were posted on the City website on May 1. The City received (6) bids by the submittal deadline of April 15, 2020, at 2:00 PM. The bids were opened during a public meeting at 2:01 PM on that day.

Truluck Construction, Inc.	\$4,579,598.02
Quality Enterprises USA, Inc.	\$4,967,522.25
Nix Construction	\$5,196,737.51
Palmetto Site Work Services	\$5,414,218.98
JH Hiers Construction	\$5,453,943.82
Gulfstream Construction	\$5,736,542.96
Engineer Cost Estimate:	\$3,896,450.75

On May 18, 2020, the selection committee met to review the bids and determined Truluck Construction Inc. to be the lowest responsive bidder. Although the bid by Truluck is \$683,147.27 above the cost estimate, Jackie Mack, at the SC Rural Infrastructure Authority (RIA) stated that the bid would be acceptable provided the City would be responsible for providing the additional funds. Upon your approval, a Notice of Intent to Award, subject to approval by the RIA and City Council and will be sent to Truluck. And the contract draft and supporting procurement documentation, including a statement that the City will be committed to providing the additional funds will sent to the RIA, for review and approval.

Section 2 – Contract Documents

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT, SOUTH CAROLINA

CITY OF BEAUFORT CONTRACT for MOSSY OAKS DRAINAGE IMPROVEMENTS BASIN 1

THIS AGREEMENT made by and between City of Beaufort in Beaufort County, SC hereinafter called “**OWNER**” a contractor doing business as an individual, a partnership, or corporation of the County of **Beaufort** and state of **South Carolina**, hereinafter called “**CONTRACTOR**”.

This **AGREEMENT** is made and executed in four (4) original copies on this the _____ day of June 2020 and between the City of Beaufort, South Carolina and Truluck Construction, Inc. for the term specified herein.

WITNESSETH: that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Owner and Contractor hereby agrees to commence and complete the construction described as follows: **Furnishing of all materials, labor and equipment for the complete construction of:**

Mossy Oaks Drainage Improvements Basin 1 and 2 West

hereinafter called the “**Project**”, for the sum of **Four Million Five Hundred Seventy-Nine Thousand Five Hundred Ninety-Eight Dollars and 02/100. (\$4,579,598.02)** as stated in the General Conditions, Supplemental Conditions, General Provisions, Special Provisions and Technical Specifications of the Contract, and at his/her/its/their own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools superintendence, labor, insurance, bonds, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the proposal, the General Conditions, Special Provisions and Detailed Specifications of the Contract, the Plans, which include all explanatory matter thereof, as prepared by the City of Beaufort here entitled the “**Engineers**”, the specifications and contract documents as enumerated in Section 105.03 of the General Conditions, all of which are made a part hereof and collectively constitute the Contract.

The Contractor further proposes and agrees hereby to promptly commence the work with adequate force and equipment within ten (10) calendar days from receipt of Notice to Proceed, or as may be specified by Special Provision, and to complete the work within **210** consecutive calendar days from the Notice to Proceed date or the date work begins, whichever comes first.

Article 1. CONTRACT TIME AND DAMAGES

1.1 Contract Time. The Work required under the Contract Documents shall be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **180** consecutive calendar days from the date when the Contract Time commences to run as provided in Paragraph 2.03 of the General Conditions. This Contract Time is hereby made of the essence.

1.2 Damages. If the **CONTRACTOR** fails to have the work completed and ready for final payment on or before the Contract time specified in Article 1.1 of the Contract Documents (above), plus any extensions thereof allowed in accordance with Article 12.02 of the General Conditions, **OWNER** shall receive from **CONTRACTOR** a sum of money calculated according to Article 3.3 of the Contract Documents.

Said damages for delay or failure to achieve substantial completion are to be determined in accordance with Section 108 “Prosecution and Progress” as found in the South Carolina

Department of Transportation, Standard Specifications for Highway Construction, Edition of 2007, and latest supplements and listed in Section 108.09 as, for original contract amounts with values of \$ 500,000.00 to \$ 1,000,000.00, then liquidated damages shall be \$ 600.00 per calendar day and for original contract amounts with values of \$ 1,000,000.00 to \$ 2,000,000.00, then liquidated damages shall be \$ 800.00 per calendar day

The above sum is agreed upon to include intangible losses suffered by **OWNER** for matters such as public health and welfare, and the like. It is mutually agreed between the parties that this sum of money shall not preclude the **OWNER** from instituting an action for actual damages above and beyond the sum set forth above.

If monies due or to become due to the **CONTRACTOR** exceed the sum as set forth above, said sum shall be deducted from monies due, or to become due to the **CONTRACTOR**. In case the sum as set forth above shall exceed the amount of all monies due or to become due, then **CONTRACTOR** or his surety shall pay the balance to the **OWNER**.

Article 2. CONTRACT PRICE

- 2.1 **OWNER** shall pay **CONTRACTOR** for performance of the Work as Bid with any alternates authorized herein in accordance with the Contract Documents in current funds at the prices set forth in the Bid Form which is attached hereto made a part hereof; and in accordance with any amendments made to the Contract Documents subsequent to execution of this Agreement in accordance with Paragraph 3.04 of the General Conditions.
- 2.2 The Contract Price as shown in the Schedule of Items, Section 1.8 (Schedule of Values) of the Bid Form is

Four Million Five Hundred Seventy-Nine Thousand Five Hundred Ninety-Eight Dollars and 02/100 (\$4,579,598.02)

Sub-Project Price - Basin 1: Three Million Thirty-One Thousand Four Hundred Twenty-One Dollars and 52/100 (\$3,031,421.52)

Sub-Project Price – Basin 2 West: One Million Five Hundred Forty-Eight Thousand One Hundred Seventy-Six Dollars and 50/100 (\$1,548,176.50)

Article 3. PAYMENT PROCEDURES

CONTRACTOR shall submit separate applications for each sub-project for payment in accordance with Article 14.02.A of the General Conditions. Applications for payment will be processed by **ENGINEER** as provided in the Article 14.02.B of the General Conditions of the Contract.

- 3.1 **Progress Payments:** **Owner** shall make progress payments on account of each sub-project price on the basis of Contractor's Monthly Payment Applications for payment as 9 Applications for Payment shall be submitted on the 1st working day of each month for the duration of the Contract (The 1st working day shall be defined as the first Monday of the month if or when the first calendar day of the month falls on a weekend)
- A. Each progress payment shall represent the completed work of the contract for the period in question with a value as identified from the established schedule of values as provided for in Paragraph 14.01 of the General Conditions (and in the case of Unit Price Work based on the number of units completed)
- B. Prior to Substantial Completion, progress payments shall be made in an amount equal to the percentage indicated below in the qualifying section of Section 3.2 (Retainage) but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall

SECTION 2 – CONTRACT DOCUMENTS (Cont'd)

determine or Owner may withhold, in accordance with Paragraph 14.07.D of the General Conditions and; or including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- C. Upon the completion, submittal and acceptance that ninety percent (90%) of the Work of the Contract (as determined from the schedule of values) has been attained, the progress payments may be amended to reflect the value of retainage as indicated, below, in Section 3.2.A or 3.2.B

3.2 Retainage: Retainage on monthly payment applications, beginning with the Contractor's initial monthly payment application for Work of the Contract in place and/or stored materials shall be ten percent (10%) of the value of the work submitted for payment in accordance with the schedule of values, or

- A. If when 90 percent of Work of the Contract, by value, has been completed and accepted for payment (with the balance being retainage), then if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, then retainage henceforth for monthly progress payments shall be reduced to five percent (5%) as determined by the schedule of values provided for in Paragraph 14.01 of the General Conditions; and
- B. If when the condition whereby ninety percent (90%) of value of materials and/or equipment stored, but not yet incorporated into the Work of the Contract, occurs (with the balance being retainage), then if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, then retainage henceforth for monthly progress payments for material or equipment stored may be reduced to five percent (5%) of the value as determined by the schedule of values provided for in Paragraph 14.01 of the General Conditions.
- C. Upon Substantial Completion, with substantial completion being defined as per Section 101.3.76 of the SCDOT - 2007 Standard Specifications for Highway Construction, Owner shall pay an amount sufficient to increase total payments to Contractor to a value of ninety-five percent (95%) of the Work completed as based on the quantities and values in the schedule of values, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 100 percent (100%) of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

3.2 Final Payment: Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, **OWNER** shall pay the remainder of the Contract Price as recommended by **ENGINEER** as provided in said Paragraph 14.07.C

3.3 Liquidated Damages: If the Contractor fails to substantially complete the work of the Contract by the specified completion date, then the Contractor is liable for liquidated damages for each calendar day past the contract specified completion date. The daily liquidated damages rate shall be as specified in Section 108.9 of the SCDOT- 2007 Standard Specifications for Highway Construction; or most current edition in place at the award of the Contract. (See Article 1.2-Damages of this section of Contract for detailed description of values for liquidated damages.)

Article 4 CONTRACTOR'S REPRESENTATIONS

In order to induce **OWNER** to enter into this Agreement **CONTRACTOR** makes the following representation:

- 4.1 CONTRACTOR** has familiarized himself with the nature and extent of the Contract Documents, Work, local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

SECTION 2 – CONTRACT DOCUMENTS (Cont'd)

- 4.2 CONTRACTOR** has studied carefully all reports of exploration and test of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions, and accepts the determination set forth in Paragraph SC - 4.2.A & SC – 4.2.B of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which **CONTRACTOR** is entitled to reply.
- 4.3 CONTRACTOR** has obtained and carefully studied (**or assumes responsibility for obtaining and carefully studying**) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Paragraph 4.02 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as **CONTRACTOR** considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract time and in accordance with the other terms and conditions for the Contract Documents, including specifically the provisions of Paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by **CONTRACTOR** for such purposes.
- 4.4 CONTRACTOR** has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect to said Underground Facilities are or will be required by **CONTRACTOR** in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.03 of the General Conditions (Differing subsurface or physical conditions).
- 4.5 CONTRACTOR** has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 4.6 CONTRACTOR** has given **ENGINEER** written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by **ENGINEER** is acceptable to **CONTRACTOR**.

Article 5. CONTRACT DOCUMENTS

- 5.1** The Contract Documents which comprise the entire Agreement between **OWNER** and **CONTRACTOR** concerning the Work consists of the following:

Addenda Numbers ____1____ to ____9____ inclusive

Advertisement for Bid

Bid Documents. Sec 1.0 through Sec 1.10, inclusive

Contract Documents

Sec 2.0 - Contract

Sec 2.1A - Notice of Intent to Award

Sec 2.1B - Notice of Award

Sec 2.1C - Notice to Proceed

Sec 2.1D - Change Order

Sec 2.1E - Certificate of Acknowledgement

Sec 2.1F - Certificate of Owner's Attorney

Sec 2.2 - Construction Performance Bond

Sec 2.3 - Labor & Material Payment Bond

- Sec 2.4 - Non-Collusion Affidavit of Sub-Contractor
- Sec 2.5 - Final Affidavit
- Sec 3.0- General Conditions
- Sec 4.0- Supplemental Conditions
- Sec 5.0- General Provisions
 - General Requirements, Part A & B - Schedule of Insurance Requirements
- Sec 6.0- Special Provisions
- Sec 6.1- Special Provisions-CDBG- Department of Commerce Contract
- Sec 6.2- General Special Provisions
- Sec 6.3- Special Provisions – Supplemental Specifications
- Drawings – 42 sheets-bound separately (as applicable)

5.2 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Paragraphs 3.04 and 3.05 of the General Conditions.

5.3 The documents listed (above) in Article 5.1 of the Contract are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 5 of the Contract. The Contract Documents may only be amended, modified or supplemented as provided in Paragraphs 3.04 and 3.05 of the General Conditions.

Article 6. MISCELLANEOUS

6.1 Terms used in this Agreement, which are defined in Article 1 of General Conditions will have the meanings indicated in the General Conditions.

6.2 No assignment by a party hereto of any right under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

6.3 **OWNER** and **CONTRACTOR** each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

6.4 The **City of Beaufort (Owner)** agrees to pay the **CONTRACTOR** in current funds for the performance of the Contract subject to additions and deductions as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in Sections 103.11 and 109 of the State of South Carolina Highway Division, Standard Specifications for Highway Construction, 2007 Edition, as modified in the General Conditions and Special Provisions.

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SECTION 2 – CONTRACT DOCUMENTS (Cont'd)

SECTION 2 – CONTRACT DOCUMENTS
(Cont'd)

IN WITNESS WHEREOF, the parties to these presents have executed this Contract in **four (4)** counterparts, each of which shall be deemed an original.

Executed This _____ day of **June** 2020.

CITY of BEAUFORT (Owner)
BEAUFORT COUNTY, SOUTH CAROLINA

CONTRACTOR

By: _____
William A. Prokop
(City Manager)

By : _____
Signature

Name & Title, Typed or Printed

Name of Company Corp., etc.

Mailing Address

City, State and Zip Code

Area Code/Telephone Number

OWNER'S WITNESSES:

CONTRACTOR'S WITNESSES:

1) _____

1) _____

2) _____

2) _____



CITY OF BEAUFORT

DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

TO: CITY COUNCIL **DATE:** 6/5/2020
FROM: Kathy Todd
AGENDA ITEM Authorization to allow City Manager to Enter into Construction Contract related to
TITLE: Mossy Oaks Basin 2 pending Department of Commerce approval
MEETING
DATE: 6/9/2020
DEPARTMENT: Finance

BACKGROUND INFORMATION:

See Recommendation Memo and Draft Contract under review by SC Department of Commerce

PLACED ON AGENDA FOR: Action

REMARKS:

Request approval by City Council authorizing the City Manager to enter into the Contract with the Recommended Construction Company pending approval of the contract by the SC Department of Commerce.

ATTACHMENTS:

Description	Type	Upload Date
Recommendation Memo	Cover Memo	6/5/2020
Construction Contract, Draft	Cover Memo	6/5/2020

CITY OF BEAUFORT - INTERNAL MEMORANDUM

TO: WILLIAM PROKOP
FROM: JAY PHILLIPS
SUBJECT: IFB 2020-113 MOSSY OAKS DRAINAGE IMPROVEMENTS BASIN 2 EAST CDBG
DATE: 05/28/2020
CC: MATT ST. CLAIR, JARED FRALIX, KATHY TODD

The City solicited an Invitation For Bid, IFB 2020-113 Mossy Oaks Drainage Improvements Basin 2 East CDBG on April 9, 2020. The public notice was posted on the City's website, the State of South Carolina (SCBO) procurement website and was advertised in the Island News on April 9 and April 16, 2020. A non-mandatory pre-bid meeting was held on April 21, 2020. Questions were received by the April 28 deadline and answers were posted on the City website on May 1. The City received (5) bids by the submittal deadline of April 15, 2020, at 3:00 PM. The bids were opened during a public meeting at 3:01 PM on that day.

Gulfstream Construction Company, Inc.	\$1,762,781.88
Palmetto Site Work Services	\$1,938,875.88
Truluck Construction, Inc.	\$1,995,369.55
Quality Enterprises USA, Inc.	\$2,094,261.74
JH Hiers Construction	\$2,127,877.59
 Cost Estimate	 \$2,041,721.00

On May 18, 2020, the selection committee met to review the bids and determined that Gulfstream Construction is the lowest responsive bidder. Upon your approval, a Notice of Intent to Award, will be sent to Gulfstream Construction and a copy along with the contract draft will be sent to Barbara Johnson at Lowcountry Council of Governments, for review and approval by the Community Development Block Grant Administration at SC Department of Commerce (Grantor Agency). Execution of the Contract will occur upon final approval by the grantor agency.

Section 2 – Contract Documents

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT, SOUTH CAROLINA

CITY OF BEAUFORT CONTRACT MOSSY OAKS DRAINAGE IMPROVEMENTS BASIN 2 EAST CDBG

THIS AGREEMENT made by and between City of Beaufort in Beaufort County, SC hereinafter called “**OWNER**” a contractor doing business as an individual, a partnership, or corporation of the County of **Beaufort** and state of **South Carolina**, hereinafter called “**CONTRACTOR**”.

This **AGREEMENT** is made and executed in four (4) original copies on this the _____ day of **June, 2020** and between the City of Beaufort, South Carolina and Gulfstream Construction Company, Inc. the term specified herein.

WITNESSETH: that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Owner and Contractor hereby agrees to commence and complete the construction described as follows: **Furnishing of all materials, labor and equipment for the complete construction of:**

Mossy Oaks Drainage Improvements Basin 2 East

hereinafter called the “**Project**”, for the sum of **One Million Seven Hundred Sixty-Two Thousand Seven Hundred Eighty-One Dollars and 88/100. (\$1,762,781.88)** as stated in the General Conditions, Supplemental Conditions, General Provisions, Special Provisions and Technical Specifications of the Contract, and at his/her/its/their own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools superintendence, labor, insurance, bonds, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the proposal, the General Conditions, Special Provisions and Detailed Specifications of the Contract, the Plans, which include all explanatory matter thereof, as prepared by the City of Beaufort here entitled the “**Engineers**”, the specifications and contract documents as enumerated in Section 105.03 of the General Conditions, all of which are made a part hereof and collectively constitute the Contract.

The Contractor further proposes and agrees hereby to promptly commence the work with adequate force and equipment within ten **(10)** calendar days from receipt of Notice to Proceed, or as may be specified by Special Provision, and to complete the work within **180** consecutive calendar days from the Notice to Proceed date or the date work begins, whichever comes first.

Article 1. CONTRACT TIME AND DAMAGES

1.1 Contract Time. The Work required under the Contract Documents shall be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **180** consecutive calendar days from the date when the Contract Time commences to run as provided in Paragraph 2.03 of the General Conditions. This Contract Time is hereby made of the essence.

1.2 Damages. If the **CONTRACTOR** fails to have the work completed and ready for final payment on or before the Contract time specified in Article 1.1 of the Contract Documents (above), plus any extensions thereof allowed in accordance with Article 12.02 of the General Conditions, **OWNER** shall receive from **CONTRACTOR** a sum of money calculated according to Article 3.3 of the Contract Documents.

Said damages for delay or failure to achieve substantial completion are to be determined in accordance with Section 108 “Prosecution and Progress” as found in the South Carolina Department of Transportation, Standard Specifications for Highway Construction, Edition of 2007,

and latest supplements and listed in Section 108.09 as, for original contract amounts with values of \$ 500,000.00 to \$ 1,000,000.00, then liquidated damages shall be \$ 600.00 per calendar day and for original contract amounts with values of \$ 1,000,000.00 to \$ 2,000,000.00, then liquidated damages shall be \$ 800.00 per calendar day

The above sum is agreed upon to include intangible losses suffered by **OWNER** for matters such as public health and welfare, and the like. It is mutually agreed between the parties that this sum of money shall not preclude the **OWNER** from instituting an action for actual damages above and beyond the sum set forth above.

If monies due or to become due to the **CONTRACTOR** exceed the sum as set forth above, said sum shall be deducted from monies due, or to become due to the **CONTRACTOR**. In case the sum as set forth above shall exceed the amount of all monies due or to become due, then **CONTRACTOR** or his surety shall pay the balance to the **OWNER**.

Article 2. CONTRACT PRICE

- 2.1** **OWNER** shall pay **CONTRACTOR** for performance of the Work as Bid with any alternates authorized herein in accordance with the Contract Documents in current funds at the prices set forth in the Bid Form which is attached hereto made a part hereof; and in accordance with any amendments made to the Contract Documents subsequent to execution of this Agreement in accordance with Paragraph 3.04 of the General Conditions.
- 2.2** The Contract Price as shown in the Schedule of Items, Section 1.8 (Schedule of Values) of the Bid Form is

One Million Seven Hundred Sixty-Two Thousand Seven Hundred Eighty-One Dollars and 88/100 (\$1,762,781.88)

Article 3. PAYMENT PROCEDURES

CONTRACTOR shall submit applications for payment in accordance with Article 14.02.A of the General Conditions. Applications for payment will be processed by **ENGINEER** as provided in the Article 14.02.B of the General Conditions of the Contract.

- 3.1 Progress Payments:** **Owner** shall make progress payments on account of the Contract Price on the basis of Contractor's Monthly Payment Applications for payment as submitted in accordance with paragraph 14.02.A.1 of the General Conditions.
- A. Applications for Payment shall be submitted on the 1st working day of each month for the duration of the Contract (The 1st working day shall be defined as the first Monday of the month if or when the first calendar day of the month falls on a weekend)
 - B. Each progress payment shall represent the completed work of the contract for the period in question with a value as identified from the established schedule of values as provided for in Paragraph 14.01 of the General Conditions (and in the case of Unit Price Work based on the number of units completed)
 - C. Prior to Substantial Completion, progress payments shall be made in an amount equal to the percentage indicated below in the qualifying section of Section 3.2 (Retainage) but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine or Owner may withhold, in accordance with Paragraph 14.07.D of the General Conditions and; or including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
 - D. Upon the completion, submittal and acceptance that ninety percent (90%) of the Work of the Contract (as determined from the schedule of values) has been attained, the progress payments may be amended to reflect the value of retainage as indicated, below, in Section 3.2.A or 3.2.B

SECTION 2 – CONTRACT DOCUMENTS (Cont'd)

- 3.2 Retainage:** Retainage on monthly payment applications, beginning with the Contractor's initial monthly payment application for Work of the Contract in place and/or stored materials shall be ten percent (10%) of the value of the work submitted for payment in accordance with the schedule of values, or
- A. If when 90 percent of Work of the Contract, by value, has been completed and accepted for payment (with the balance being retainage), then if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, then retainage henceforth for monthly progress payments shall be reduced to five percent (5%) as determined by the schedule of values provided for in Paragraph 14.01 of the General Conditions; and
 - B. If when the condition whereby ninety percent (90%) of value of materials and/or equipment stored, but not yet incorporated into the Work of the Contract, occurs (with the balance being retainage), then if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, then retainage henceforth for monthly progress payments for material or equipment stored may be reduced to five percent (5%) of the value as determined by the schedule of values provided for in Paragraph 14.01 of the General Conditions.
 - C. Upon Substantial Completion, with substantial completion being defined as per Section 101.3.76 of the SCDOT - 2007 Standard Specifications for Highway Construction, Owner shall pay an amount sufficient to increase total payments to Contractor to a value of ninety-five percent (95%) of the Work completed as based on the quantities and values in the schedule of values, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 100 percent (100%) of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.
- 3.2 Final Payment:** Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, **OWNER** shall pay the remainder of the Contract Price as recommended by **ENGINEER** as provided in said Paragraph 14.07.C
- 3.3 Liquidated Damages:** If the Contractor fails to substantially complete the work of the Contract by the specified completion date, then the Contractor is liable for liquidated damages for each calendar day past the contract specified completion date. The daily liquidated damages rate shall be as specified in Section 108.9 of the SCDOT- 2007 Standard Specifications for Highway Construction; or most current edition in place at the award of the Contract. (See Article 1.2-Damages of this section of Contract for detailed description of values for liquidated damages.)

Article 4 CONTRACTOR'S REPRESENTATIONS

In order to induce **OWNER** to enter into this Agreement **CONTRACTOR** makes the following representation:

- 4.1 CONTRACTOR** has familiarized himself with the nature and extent of the Contract Documents, Work, local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

SECTION 2 – CONTRACT DOCUMENTS (Cont'd)

- 4.2 CONTRACTOR** has studied carefully all reports of exploration and test of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions, and accepts the determination set forth in Paragraph SC - 4.2.A & SC – 4.2.B of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which **CONTRACTOR** is entitled to reply.
- 4.3 CONTRACTOR** has obtained and carefully studied (**or assumes responsibility for obtaining and carefully studying**) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Paragraph 4.02 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as **CONTRACTOR** considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract time and in accordance with the other terms and conditions for the Contract Documents, including specifically the provisions of Paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by **CONTRACTOR** for such purposes.
- 4.4 CONTRACTOR** has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect to said Underground Facilities are or will be required by **CONTRACTOR** in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.03 of the General Conditions (Differing subsurface or physical conditions).
- 4.5 CONTRACTOR** has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 4.6 CONTRACTOR** has given **ENGINEER** written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by **ENGINEER** is acceptable to **CONTRACTOR**.

Article 5. CONTRACT DOCUMENTS

- 5.1** The Contract Documents which comprise the entire Agreement between **OWNER** and **CONTRACTOR** concerning the Work consists of the following:

Addenda Numbers ____1____ to ____8____ inclusive

Advertisement for Bid

Bid Documents. Sec 1.0 through Sec 1.10, inclusive

Contract Documents

Sec 2.0 - Contract

Sec 2.1A - Notice of Intent to Award

Sec 2.1B - Notice of Award

Sec 2.1C - Notice to Proceed

Sec 2.1D - Change Order

Sec 2.1E - Certificate of Acknowledgement

Sec 2.1F - Certificate of Owner's Attorney

Sec 2.2 - Construction Performance Bond

Sec 2.3 - Labor & Material Payment Bond

**SECTION 2 – CONTRACT DOCUMENTS
(Cont'd)**

- Sec 2.4 - Non-Collusion Affidavit of Sub-Contractor
- Sec 2.5 - Final Affidavit
- Sec 3.0- General Conditions
- Sec 4.0- Supplemental Conditions
- Sec 5.0- General Provisions
 - General Requirements, Part A & B - Schedule of Insurance Requirements
- Sec 6.0- Special Provisions
- Sec 6.1- Special Provisions-CDBG- Department of Commerce Contract
- Sec 6.2- General Special Provisions
- Sec 6.3- Special Provisions – Supplemental Specifications
- Drawings – 42 sheets-bound separately (as applicable)

5.2 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Paragraphs 3.04 and 3.05 of the General Conditions.

5.3 The documents listed (above) in Article 5.1 of the Contract are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 5 of the Contract. The Contract Documents may only be amended, modified or supplemented as provided in Paragraphs 3.04 and 3.05 of the General Conditions.

Article 6. MISCELLANEOUS

6.1 Terms used in this Agreement, which are defined in Article 1 of General Conditions will have the meanings indicated in the General Conditions.

6.2 No assignment by a party hereto of any right under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

6.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

6.4 The **City of Beaufort (Owner)** agrees to pay the **CONTRACTOR** in current funds for the performance of the Contract subject to additions and deductions as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in Sections 103.11 and 109 of the State of South Carolina Highway Division, Standard Specifications for Highway Construction, 2007 Edition, as modified in the General Conditions and Special Provisions.

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SECTION 2 – CONTRACT DOCUMENTS
(Cont'd)

IN WITNESS WHEREOF, the parties to these presents have executed this Contract in **four (4)** counterparts, each of which shall be deemed an original.

Executed This _____ day of _____, 20____.

CITY of BEAUFORT (Owner)
BEAUFORT COUNTY, SOUTH CAROLINA

CONTRACTOR

By: _____
William A. Prokop
(City Manager)

By : _____
Signature

Name & Title, Typed or Printed

Name of Company Corp., etc.

Mailing Address

City, State and Zip Code

Area Code/Telephone Number

OWNER'S WITNESSES:

CONTRACTOR'S WITNESSES:

1) _____

1) _____

2) _____

2) _____