

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “**Agreement**”) is made and entered into as of this ____ day of _____, 2019 (the “**Effective Date**”) by and among the **CITY OF GREENVILLE**, a political subdivision of the State of South Carolina (the “**City**”), the **COUNTY OF GREENVILLE**, a political subdivision of the State of South Carolina (“**County**”) and **NEXSEN PRUET, LLC**, a South Carolina limited liability company (“**Escrow Agent**”).

RECITALS

- A. Earlier this year, the State of South Carolina (the “**State**”), via action taken by the legislature of the State, approved an appropriation in the amount of \$7,000,000 (the “**Initial State Appropriation**”) to help provide funds for a contemplated museum/conference center project to be developed in Greenville, South Carolina (the “**Project**”).
- B. The City and the County are in the process of discussing ways to work together to support and pursue the Project. However, the Project is conceptual in nature and the parties, two of which are public bodies, have significant due diligence to perform before making a financial commitment to the Project. The foregoing notwithstanding, the Initial State Appropriation must be drawn down and placed in trust or it might be jeopardized, along with any such future State appropriations.
- C. The Initial State Appropriation was evidenced via the issuance of a check from the State made payable to the Community Foundation of Greenville (the “**CFG**”) intended as a pass-through allocation via the State’s Art Commission (the “**Arts Commission**”), an agency of the State, to be used for the Project in conjunction with the City and County’s support of and involvement in the Project.
- D. The Initial State Appropriation, together with any future State appropriations for the Project need to be placed in a separate and standalone account for the sole benefit of the Project (the “**State Project Account**”).
- E. The State Project Account has not yet been created and established by the City and the County, and the City and the County, as political subdivisions of the State, desire that Escrow Agent hold the Initial State Appropriation and any future appropriations of the State for the Project in an trust escrow account until such time as the City and County have jointly given instructions to Escrow Agent with respect to the disbursement of the Initial State Appropriation (and possibly any future State funds appropriated for the Project hereafter deposited with Escrow Agent) from Escrow Agent’s trust escrow account into a separate State Project Account for the Project after the State Project Account has been created and established by the City and the County.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained in this Agreement and for other good and valuable considerations, the parties hereto agree as follows:

1. Recitals. The recitals set forth above are true and correct and hereby incorporated into this Agreement.
2. Deposit in Escrow. The State’s check for the Initial State Appropriation via an endorsement of such check by CFG to Escrow Agent shall be delivered to Escrow Agent (the “**Escrow**”).

Funds”). The City and County also understand that the Arts Commission, as an agency of the State, shall direct CFG to endorse the State’s check for the Initial State Appropriation to Escrow Agent for Escrow Agent’s deposit into the Escrow Agent’s trust account with Bank of America. Upon the request and direction of the City and the County, any future state appropriations for the Project may be paid to Escrow Agent and in such event such additional funds shall also be deemed as Escrow Funds under this Agreement. The City and the County hereby affirm that the CFG and the Arts Commission are entitled to rely upon this Agreement.

3. Escrow Funds. Escrow Agent shall hold the Escrow Funds in an interest-bearing fiduciary or trust account with Bank of America subject to the terms and conditions set forth herein.

4. Disbursement of Escrow Funds. As a condition for the disbursement and transfer of the Escrow Funds into a designated account for the Project, proper governance and administrative arrangements and authorizations must be established and approved by the City, County and other public and private entities involved in the Project including, but in no way limited to, the appropriation of funds by the City and the County (the “Escrow Release Condition”). Upon satisfaction of the Escrow Release Condition, the City, County and any other public or private entities involved in the transaction shall notify Escrow Agent in writing that the Escrow Release Condition has been satisfied and shall direct Escrow Agent in writing to disburse and transfer the Escrow Funds to a designated payee to be deposited by such designated payee into a designated account or shall direct Escrow Agent to wire the Escrow Funds pursuant to wiring instructions given to Escrow Account for an account of such designated payee (the “Disbursement Instructions”). Upon satisfaction of the Escrow Release Condition and receipt of the Disbursement Instructions, Escrow Agent shall disburse and transfer the Escrow Funds in accordance with the Disbursement Instructions, which disbursement and transfer shall be made by Escrow Agent within three (3) business days after satisfaction of the Escrow Release Condition and Escrow Agent’s receipt of the Disbursement Instructions. **Escrow Agent shall not charge any fees for holding and disbursing the Escrow Funds or for serving as Escrow Agent.**

5. Recognition of Project Status and the Nature of the City and County Involvement. It is recognized and agreed the Project remains in a conceptual status and that the County and City (and others) must conduct significant due diligence before making a financial commitment to this Project. The entry into this Agreement is, therefore, an expression of significant interest in the Project and a recognition that the Initial State Appropriation could be in jeopardy absent the escrow arrangement contemplated hereunder. In no way does the entry into the Agreement create a financial commitment to the Project by the City or the County; any such commitment can only be created by the appropriation of funds by the governing public bodies of the City and County at a later date in accordance with the laws of the State of South Carolina. Nothing herein shall in any event constitute an indebtedness of the City or the County within the meaning of any provision, limitation or restriction of the Constitution or statutes of the State of South Carolina, and the full faith, credit and taxing power of the City or the County are expressly not pledged therefor.

6. Duties and Adverse Claims. The duties and obligations of Escrow Agent hereunder shall be determined solely by the provisions of this Agreement. No implied duties of Escrow Agent shall be read into this Agreement and Escrow Agent shall not be subject to or obliged to recognize any other agreement between, or direction or instruction of, any or all of the other parties hereto even though reference thereto is made herein. In the event of any disagreement or the presentation of any adverse claim or demand in connection with the disbursement of the proceeds, Escrow Agent shall, at its option, be entitled to refuse to comply with any such claims or demands during the continuance of such disagreement and may refrain from delivering any item affected hereby, and in so doing, Escrow Agent shall not become liable to anyone, due to its failure to comply with such adverse claim or demand. Escrow Agent shall be entitled to continue, without liability, to refrain and refuse to act:

(a) Until authorized to disburse by a court order from a court having jurisdiction of the parties and the Escrow Funds, after which time Escrow Agent shall be entitled to act in conformity with such adjudication; or

(b) Until all differences have been resolved by executed written agreement, by and between the undersigned Parties and any persons making adverse claims or demands against the Escrow Funds, the Escrow Agent shall have been notified thereof and shall have received such written, signed agreement at which time Escrow Agent shall be protected in acting in compliance therewith.

In no event shall Escrow Agent be required to (i) notify or obtain the consent, approval, authorization or order of any court or governmental body with respect to the transactions contemplated by this Agreement, and/or (ii) release any funds which now constitute the proceeds of a check or other instrument deposited in escrow under this Agreement until Escrow Agent has received the final irrevocable immediately available collected funds in respect thereof.

Escrow Agent may file suit in interpleader in the proper court in Greenville County for the purpose of having the respective rights of County and the City adjudicated. Escrow Agent, upon initiation of such suit, may deposit with the court the funds held hereunder less the costs and expenses due Escrow Agent and upon giving notice thereof to County and the City, Escrow Agent shall be fully released and discharged from all further obligations hereunder with respect to the funds held in escrow.

The City acknowledges that Escrow Agent is legal counsel but Escrow Agent does not represent either the County or the City. Escrow Agent is serving solely in a stakeholder capacity.

7. Escrow Agent's Liability Limited. Escrow Agent shall not be liable to anyone whatsoever by reason of any error of judgment or for any act done or step taken or omitted by it in good faith or for any mistake of fact or law or for anything which it may do or refrain from doing in connection herewith unless caused by or arising out of its own negligence or willful misconduct. Escrow Agent shall not be required to institute legal proceedings of any kind. Escrow Agent shall be under no responsibility in respect to any of the items deposited herewith other than to faithfully follow instructions contained herein. Escrow Agent shall be fully protected in acting in accordance with any written instructions given to it hereunder and believed by it to have been signed by the proper parties.

8. Reliance by Escrow Agent on Documents, Etc. Escrow Agent shall be entitled to rely on and shall be protected in acting in reliance upon any instructions or directions furnished to it in writing or pursuant to any provisions of this Agreement and shall be entitled to treat as genuine, and as the document it purports to be, any letter, paper, facsimile or other document furnished to it and believed by it to be genuine and to have been signed and presented by the proper party or parties.

9. Escrow Agent Disclaimer. The parties hereto agree that Escrow Agent does not assume any responsibility for the failure of any of the parties to make payments or perform the conditions of this Agreement as set forth herein, nor shall Escrow Agent be responsible for the collection of any monies provided to be paid to it. Escrow Agent may consult with counsel of its own choice. The provisions of this Section 8 shall survive termination of the escrow arrangement contemplated hereby.

10. Resignation. Escrow Agent shall have the right to resign as escrow agent at any time by giving written notice of its resignation, specifying the effective date thereof, to the parties hereto other than the Escrow Agent. Within thirty (30) days after the giving of such notice, the parties hereto, other than Escrow Agent, shall appoint a successor escrow agent to which Escrow Agent may distribute the funds then held hereunder. If a successor escrow agent is not appointed and has not accepted such

appointment by the end of the aforesaid thirty (30) day period, Escrow Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent and the fees, costs, and expenses (including counsel fees and expenses) which it incurs in connection with a proceeding shall be paid by the parties other than Escrow Agent. The City and the County at any time may jointly appoint a substitute party to serve as successor escrow agent.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

12. Counterparts. This Agreement may be executed in separate counterparts, which, when assembled together, shall constitute one document and agreement. This Agreement may be executed and delivered via electronic means, including via email.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the day and year first above written.

“City”:

City of Greenville, a political subdivision of the State of South Carolina

Witness

By: _____
Name: John F. McDonough
Title: City Manager

City’s address for notice purposes:

City of Greenville
206 S. Main Street, 10th Floor
Greenville, SC 29601
Attn: City Manager

“County”:

County of Greenville, a political subdivision of the State of South Carolina

Witness

By: _____
Name: Joseph Kernell
Title: County Administrator

County’s address for notice purposes:

Greenville County
301 University Ridge
Greenville County Square, Suite 2400
Greenville, South Carolina 29601
Attn: County Administrator

“Escrow Agent”:

Nexsen Pruet, LLC, a South Carolina limited liability company

Witness

By: _____
Name: Jim Warren
Title: Member

Escrow Agent’s address for notice purposes:

55 East Camperdown Way, Suite 400
Greenville, South Carolina 29601
Attn: Jim Warren