

**Cooperative Intergovernmental Agreement Between
The County of Greenville, The City of Greenville, and
The South Carolina Department of Transportation
Regarding the Swamp Rabbit Trail Pedestrian Bridge Project**

This Agreement is made this _____ day of _____, 2022, by and between the County of Greenville (hereinafter "County"), the City of Greenville (hereinafter "City"), and the South Carolina Department of Transportation (hereinafter "SCDOT") (collectively "the Parties").

WITNESSETH THAT:

WHEREAS, SCDOT owns an easement and/or a fee simple interest for highway purposes for [Haywood Rd (S—273)] (hereinafter "Haywood Rd") in Greenville, South Carolina, in the Area of Encroachment more particularly described herein; and

WHEREAS, County has requested that SCDOT allow County to build and maintain, at County's sole cost and expense, a County-owned and operated Pedestrian Bridge ("Bridge") over and above Haywood Rd in the Area of Encroachment in a manner that will not interfere with the primary use of Haywood Rd for highway purposes; and

WHEREAS, County has entered into an agreement with City pursuant to which City has agreed to take over the construction of the Bridge, at City's sole cost and expense, provided that County shall continue to be solely responsible for the ownership, operation, and maintenance of the Bridge at County's sole cost and expense; and

WHEREAS, SCDOT is willing to permit the Bridge to be constructed by City, and owned, operated, and maintained by County, over Haywood Rd provided it is at no cost to SCDOT and in accordance with the conditions set forth in this Agreement; and

WHEREAS, pursuant to South Carolina Code of Laws Section 57-5-600, 1976 (as amended), SCDOT has authority to grant written permits to encroach upon highway right-of-way under such rules as SCDOT may establish; and

WHEREAS, the use of the airspace over Haywood Rd for the Bridge is in the public interest because it will allow pedestrians to cross the highway without interference to traffic on Haywood Rd or the surrounding highway network; and

WHEREAS, despite the fact that some of the Bridge structure may be constructed outside of SCDOT's right-of-way, the Parties specifically intend that all portions of the Bridge will be subject to the terms of this Agreement with regard to ownership, design, construction, inspection, maintenance, operation, repair, replacement, reconstruction, and removal; and

WHEREAS, SCDOT is an agency of the State of South Carolina with the authority to enter into contracts necessary for the proper discharge of its functions and duties; and

WHEREAS, both County and City are bodies politic with the authority to enter into contracts necessary for the proper discharge of their respective functions and duties; and

WHEREAS, the Parties wish to set forth herein the terms of their relationship to accomplish the purpose set forth above;

NOW THEREFORE, in consideration of the mutual benefits accruing to each and to the State of South Carolina, the Parties agree as follows:

I. DESCRIPTION

This Agreement is for the ownership, design, construction, inspection, maintenance, operation, repair, replacement, reconstruction, and removal of County's Bridge over Haywood Rd. The encroachment permitted pursuant to this Agreement is a publicly-owned and operated pedestrian bridge, with its associated structures and approaches.

The Area of Encroachment means the Haywood Rd right-of-way, to include both sides of the highway, as well as over and across the highway, located at approximate station 94+50 to 94+71.4 (File 23.644). The actual location of the Bridge superstructure and piers, abutments and other structures will be determined by the specific design of the Bridge as prepared and constructed by City subject to SCDOT's approval as provided herein. The Release for Construction (RFC) and as-built plans, including as-built utility plans, shall be provided to SCDOT and such final plans will be incorporated into this Agreement by written amendment signed by the Parties hereto.

The primary use of Haywood Rd shall remain for highway purposes, including, but not limited to: the operation, use, construction, maintenance, reconstruction, or improvement of Haywood Rd for public use.

Additional Project details and location information are included in Exhibit A, attached hereto and incorporated herein.

II. LIMITED RIGHTS OF USE AND OCCUPANCY

- A. City shall have the limited right to use and occupy the air and surface space within the Area of Encroachment as defined above and as shown in Exhibit A and further detailed in the RFC and as-built plans for the Bridge for the purpose of construction of the Bridge, subject to the terms of this Agreement and the associated Encroachment Permit.
- B. County shall have the limited right to use and occupy the air and surface space within the Area of Encroachment as defined above and as shown in Exhibit A and further detailed in the RFC and as-built plans for the Bridge for the purposes of inspection, maintenance, control, operation, repair, replacement, reconstruction,

and removal of the Bridge, subject to the terms of this Agreement and the associated Encroachment Permit

- C. For the avoidance of doubt, upon closeout of the construction of the Bridge, City shall have no further responsibilities with respect to the Bridge, and County shall be solely responsible for the ownership, operation, and maintenance of the Bridge, at County's sole cost and expense, in accordance with this Agreement; provided, however, that (1) City shall continue to be responsible for any unpaid costs and expenses associated with the construction of the Bridge, including any reimbursements owed to SCDOT for its reasonable labor and expenses during construction as set forth below, and (2) City shall transfer all warranties with respect to the work performed during construction of the Bridge to County.
- D. Except as granted to City and County in this Agreement, SCDOT specifically reserves all other rights to and control over the airspace and surface space of the Area of Encroachment, including control of access.
- E. City's and County's uses shall be subordinate at all times to SCDOT's primary use of Haywood Rd for highway purposes, and County shall use and maintain the Bridge at all times in a manner that will not interfere with SCDOT's use of Haywood Rd for highway purposes.

III. OWNERSHIP

- A. SCDOT warrants that it has property rights for highway purposes at the Area of Encroachment.
- B. County warrants that it owns or will obtain any necessary property interests adjacent to and outside of the Area of Encroachment sufficient for City to construct, and for County to own, operate, and maintain, the Bridge. Furthermore, County agrees that it will maintain ownership of the Bridge throughout the term of this Agreement, and for so long as the Bridge remains within the Area of Encroachment, unless otherwise specifically agreed to in writing by SCDOT.

IV. COSTS AND EXPENSES

- A. City shall be solely responsible for all costs and expenses associated with the construction of the Bridge, including, but not limited to: project management, planning, design, environmental assessments or determinations, permitting costs and fees, construction, construction engineering, inspections, and utility placement/movement/removal, except that County shall be solely responsible for all costs and expenses associated with the acquisition of necessary easements or property interests. In addition, any work required to satisfy or implement environmental requirements in relation to the design or construction of the Bridge will be accomplished at the sole cost of the County for as long as the Bridge is located within the Area of Encroachment.

- B. County shall be solely responsible for all costs and expenses associated with the ownership, operation, maintenance, inspection, control, repair, reconstruction, replacement, and removal of the Bridge and its support structures to ensure ongoing compliance with this Agreement for as long as the Bridge is located within the Area of Encroachment.
- C. County shall be solely responsible for all costs and expenses associated with the removal of the Bridge at or before termination of this Agreement, including all costs and expenses associated with restoring the Area of Encroachment to its condition as of the date of execution of this Agreement.
- D. During construction, City shall reimburse SCDOT for its reasonable labor and expenses necessary to: review design plans; review and inspect City's work progress and activities for compliance with this Agreement and approved plans, permits, and authorizations; and any time it is necessary for SCDOT to provide a designated representative during construction which may impact the free flow of traffic or the safety of the traveling public. Following closeout of the construction of the Bridge, County shall assume such reimbursement obligations.
- E. County shall also reimburse SCDOT for its reasonable labor and expenses for SCDOT personnel and equipment in the event it is necessary to impede traffic lanes or detour existing traffic in response to emergency events. If it is necessary for SCDOT to intercede in any activities, County shall reimburse SCDOT for its reasonable labor and expenses for SCDOT personnel and equipment and any other expense that may be incurred as part of this action. County understands that highway traffic may not be restricted or impeded except as specifically authorized in advance by SCDOT.
- F. City shall install all protective guardrails, attenuators, and/or other protective devices on the Area of Encroachment, including at or near the Bridge piers, as required by SCDOT's design standards. City shall install, and County shall maintain and repair, the roadside safety hardware in accordance with SCDOT Engineering Directive #42, then current at the time of the installation, maintenance, or repair. Any repair or maintenance of roadside safety hardware on the roadway shall be coordinated with and communicated to SCDOT District Three's District Engineering Administrator in writing and performed in accordance with the then-current SCDOT policies, including any restrictions on lane closures. Written approval must be obtained from the District Three Engineering Administrator prior to the initiation or performance of any traffic control set up or work.
- G. SCDOT shall submit a written, itemized invoice to either City or County, as applicable, within 60 days from the date that: (1) SCDOT incurs a cost or expense for which it seeks reimbursement from City or County as set forth above, or (2) SCDOT provides a service for which it is entitled to be reimbursed under the terms of this Agreement. Unless the Parties have previously agreed in writing upon a

specified rate, unit price, or fixed sum for any material, equipment, or service for which SCDOT will seek reimbursement, SCDOT shall document its actual cost or expense and the method or basis for calculating the amount of such cost or expense on or before the date SCDOT submits its invoice or request for payment for the cost or expense. Except in the event of emergency services or equipment, SCDOT shall provide a Rough Order of Magnitude to City or County upon City's or County's written request for any material, equipment, service, or other reimbursable cost or expense to be incurred by SCDOT in excess of \$5,000.00. SCDOT covenants that it shall substantially comply with the terms of this Section in good faith as a condition of its right to be reimbursed by City or County, as applicable, for costs, expenses, and services in accordance with this Agreement. City or County, as applicable, shall remit payment to SCDOT within 30 days of receipt of SCDOT's invoice or request for payment.

V. DESIGN REQUIREMENTS

- A. City shall design the Bridge in accordance with SCDOT's design standards and specifications. SCDOT shall have the right to review and approve the design plans, but this review shall not absolve City of its responsibility to design and build the Bridge in accordance with the design requirements or shift any responsibility for such design to SCDOT. All final design plans issued for construction shall be signed and sealed by a professional engineer licensed in the State of South Carolina.
- B. Bridge design shall adhere to all SCDOT Bridge Design Criteria. This includes, but is not limited to: geotechnical, structural, and seismic design requirements. The design shall assure the future safety of the highway facility and of the airspace use.
- C. Use of airspace beneath the established gradeline of the Bridge shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation, and safety of the highway facility.
- D. The proposed use of airspace above the established gradeline of the highway shall not, at any location between two points established two feet beyond the two outer edges of the shoulder extend below a horizontal plane which is at least 17 feet above the gradeline of the highway, or the minimum vertical clearance plus six inches as approved by SCDOT, except as necessary for columns, foundations, or other support structures.
- E. Where control and directional signs needed for the highway are to be installed beneath an overhead structure, vertical clearance will be at least 20 feet from the gradeline of the highway to the lowest point of the soffit of the overhead structure, unless otherwise specifically agreed upon in advance by SCDOT.
- F. Piers, columns, or any other portion of the airspace structure shall not be erected in a location which will interfere with visibility or reduce sight distance or in any other

way interfere materially with the safety and free flow of traffic on the highway facility.

- G. The structural supports for the Bridge shall be located to clear all horizontal and vertical dimensions established by SCDOT. Supports shall be clear of the shoulder or safety walks of the outer roadway. However, supports may be located in the median or outer separation when SCDOT determines that such medians and outer separations are of sufficient width.
- H. All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to SCDOT. If on a controlled access road, no supports shall be located in the ramp gores, or in a position so as to interfere with the signing necessary for the proper use of the ramp, unless otherwise specifically agreed upon in advance by SCDOT.
- I. Under no conditions shall airspace be used for the manufacture or storage of flammable, explosive, or hazardous material for any occupation which is deemed by SCDOT to be a hazard to highway or non-highway users. This would include the storage of gas in the airspace under, above, or near the highway facility. This prohibition shall not be construed to preclude the transverse or longitudinal installation of such items as petroleum pipelines that have been approved by SCDOT.
- J. The design, occupancy, and use of any structure over or under the highway facility shall not interfere with the use, safety, appearance, or the enjoyment of the facility, nor produce fumes, vapors, odors, drippings, droppings, or discharges of any kind.
- K. The use of airspace shall not result in either highway or non-highway users being unduly exposed to hazardous conditions because of highway location, design, maintenance, and operation features.
- L. Appropriate safety precautions and features must be incorporated in the design to minimize the possibility of injury to users of either the highway facility or airspace due to highway or non-highway incidents.
- M. The Bridge shall be fire resistant in accordance with standards acceptable to SCDOT. The placement of aesthetic items, structures, or facilities which utilize combustible materials that may be fire hazards are prohibited on the Bridge. Bridge access must be provided for emergency response, as may be needed.
- N. Adequate security measures shall be in place to ensure the safety of the facility from both natural disasters and human actions, whether accidental or intentional. Examples of such measures include: the use of bollards to restrict vehicular traffic, pier protection devices, and sufficient caging to avoid the accidental or intentional dropping of materials from the Bridge and its support structures deck onto the highway right-of-way below.

- O. Each of City and County understands and agrees to cooperate with the coordination required by and between multiple divisions of SCDOT to obtain the necessary and required approvals to proceed with construction of the Bridge and its support structures, and also to perform future maintenance and inspections upon the Bridge and its support structures, as more specifically set forth in this Agreement. Such divisions include, but are not limited to: SCDOT's planning, design, bridge, environmental, traffic, operations, and maintenance divisions / districts. City's and County's primary point of contact with SCDOT, designated in Section XXI. G. of this Agreement, shall facilitate City's and County's coordination with such divisions as required.
- P. The underside and any supports for the Bridge and its support structures shall have smooth and easily cleanable surfaces. Supports for the Bridge shall leave as much open space on the sides of the highway as feasible. Such space shall be appropriately graded where deemed necessary or desirable by SCDOT.
- Q. Construction of the Bridge above or below a highway facility shall not require any temporary or permanent change in alignment or profile of an existing highway without prior approval by SCDOT.
- R. City or County, as applicable, shall be solely responsible for any hazardous waste contamination that may result from the construction, maintenance, operation, and use of the Bridge, without liability to SCDOT.
- S. To the extent required by law, City shall design and construct, and County shall operate, the Bridge in compliance with the Americans with Disabilities Act.

VI. CONSTRUCTION REQUIREMENTS

- A. All work shall conform to SCDOT's standards of construction and shall be performed in a workman-like manner. It is expressly understood that the encroachment shall be constructed in accordance with the approved plans. City and County agree to comply with and be bound by SCDOT's "Policy for Accommodating Utilities on Highway Right of Way," then current at the time of construction, maintenance, or repair and "2007 Standard Specifications for Highway Construction," as supplemented, including all Supplemental Technical Specifications, then current at the time of construction, maintenance, or repair. City shall make adequate provisions for maintaining the proper drainage of Haywood Rd as it may be affected by the construction of the Bridge. Any utilities attached to the Bridge at any time will require an SCDOT Utility Permit in accordance with SCDOT's "Policy for Accommodating Utilities on Highway Right of Way." No wet, gas, or electric utilities, except for electricity for lights on the Bridge, will be allowed to be attached to the Bridge. All work shall be subject to the satisfaction of SCDOT.

- B. City shall provide a complete set of City's plans and specifications for construction for SCDOT's review. These plans and specifications shall set forth all aspects of the project, including the coordination and timing of phasing, and shall also provide such additional and further documentation as requested by SCDOT so that it may complete its review. City's plans must be prepared and signed by a professional engineer licensed in the State of South Carolina. SCDOT will promptly review the City's construction plans and agrees that its approval will not be unreasonably withheld, delayed, or denied so long as the plans conform to all applicable SCDOT requirements as well as applicable federal, state, and local laws, ordinances, rules, and regulations. If a fundamental disagreement occurs with regard to City's plans and specifications for construction, City agrees to make such reasonable modifications as can be made to the plans such that the project may proceed with SCDOT's approval.
- C. Prior to the commencement of any work on SCDOT right-of-way, City shall provide a Performance Bond or Letter of Credit to SCDOT to secure the performance of its obligations to construct the Bridge pursuant to this Agreement. The Performance Bond or Letter of Credit shall be in the full amount of the estimate for the construction of the Bridge. The Performance Bond or Letter of Credit shall be presented to SCDOT's District Three Office prior to the issuance of the Notice to Proceed.
- D. SCDOT shall document the conclusion of its pre-construction review and approval process by providing City a written notice to proceed. No occupation, construction, or alteration of the Area of Encroachment may occur until SCDOT has issued the Notice to Proceed.
- E. Commencement of Construction; Obligations.
 - 1. Upon receipt of SCDOT's Notice to Proceed, City shall be entitled to commence construction of the Bridge in a manner consistent with City's properly submitted and accepted construction plans and consistent with all SCDOT-issued permits and approvals.
 - 2. City shall provide for proper project management, inspection, oversight, and control of all elements of construction.
 - 3. City shall ensure that the Bridge is constructed in strict compliance with the accepted construction plans and specifications, or as amended by any change orders approved in advance by SCDOT.
 - 4. City shall complete all necessary material testing in accordance with SCDOT requirements.
- F. SCDOT Review / Limitations.

1. During construction, SCDOT will rely on the professional performance and ability of City, its agents and representatives, and its selected contractors.
2. Examination by SCDOT, or any acceptance or use of the work product, will not be considered to be a full and comprehensive examination and will not be considered an approval of the work which would relieve City from its liability or expense for the work to be accomplished by City pursuant to this Agreement.
3. Acceptance or approval of any of the work by SCDOT will not constitute a waiver of any rights of SCDOT to seek to recover damages from City that are caused by any error, omission, or negligence of City in the performance of the design or construction of the Bridge. Further, if due to error, omission, or negligence of City, the plans, specifications, and estimates are found to be in error, or there are omissions therein revealed during the construction of the Bridge and revision or reworking of the plans is necessary, City shall make all such revisions without expense to SCDOT.
4. Acceptance or approval of any of the work by SCDOT will not constitute a waiver of any rights of SCDOT to seek to recover damages from County that are caused by any error, omission, or negligence of County in the performance of maintenance, inspection, or repair of the Bridge. Further, if due to error, omission, or negligence of County, the plans, specifications, and estimates are found to be in error, or there are omissions therein revealed during the maintenance, inspection, or repair of the Bridge and revision or reworking of the plans is necessary, County shall make all such revisions without expense to SCDOT.
5. City's legal liability for all damages incurred by SCDOT or third parties caused by error, omission, or negligent acts of City, or City's employees, in the design or construction of the Bridge will be borne solely by City without liability or expense to SCDOT; provided that nothing herein creates any obligation for City to indemnify, defend, or hold SCDOT or any third party harmless.
6. County's legal liability for all damages incurred by SCDOT or third parties caused by error, omission, or negligent acts of County or County's employees in the maintenance, inspection, repair, or use of the Bridge will be borne solely by County without liability or expense to SCDOT; provided that nothing herein creates any obligation for County to indemnify, defend, or hold SCDOT or any third party harmless.

VII. TRAFFIC CONTROL RESPONSIBILITIES

City shall construct, and County shall own, control, operate, maintain, repair, inspect, reconstruct, and remove the Bridge in a manner that does not impact the safety of traffic on Haywood Rd and will cause no unreasonable interference with the use of the highway by the travelling public or by SCDOT. Neither City nor County shall close, restrict, or impede the free flow of traffic on

Haywood Rd except in a manner consistent with SCDOT's Standard Drawings, The Rule on Work Zone Safety and Mobility, Policy and Guidelines, Hourly Restrictions for Lane Closures found at SCDOT's website, and the Manual on Uniform Traffic Control Devices (MUTCD), then current at the time of closure, restriction, or impediment of the free flow of traffic. In no event shall closure, restriction, or impediment of the free flow of traffic occur unless specifically approved in advance by SCDOT. All traffic control shall comply with SCDOT Standards for Traffic Control.

VIII. PROTECTION OF UTILITIES

This Agreement is subject to all existing utilities and rights of such utility providers. City shall be responsible for identifying the location of existing utilities that may be affected by the construction of the Bridge, establish whether SCDOT or the utility has prior rights, obtain all necessary utility agreements, and pay for the cost of any required relocations in accordance with SCDOT's "Utility Accommodations Manual."

IX. ALTERATIONS

Once constructed, County shall not make any alterations, modifications, or changes to the Bridge without the advance written permission of SCDOT.

X. MAINTENANCE AND INSPECTION REQUIREMENTS

- A. County shall be solely responsible for the ownership, operation, maintenance, control, repair, inspection, reconstruction, and removal of the Bridge, all of which shall occur at no expense to SCDOT. County shall comply with SCDOT's bridge maintenance and inspection specifications.
- B. County shall take special precautions to prevent and provide for the adequate and appropriate removal of water, snow, ice, and other elements or materials from the Bridge on an ongoing basis to avoid any impact on the safety or free flow of traffic travelling on Haywood Rd. Adequate drainage facilities and snow removal activities are required by County such that there is no overflow or dropping of accumulated water, snow, or other materials from the Bridge upon the highway right-of-way below.
- C. Prior to opening the Bridge to the public, City shall conduct a structural inspection of the Bridge in compliance with the National Bridge Inspection Standard ("NBIS"), then current at the time of inspection. Thereafter, County shall conduct such inspections subsequently every 24 months, or more frequently if required by law, and more frequently where structural damage or deterioration becomes evident or in the event of emergency circumstances that could potentially impact the integrity of the structure. These inspections shall be performed by a Professional Structural Engineer licensed in the State of South Carolina and shall include written reports that shall be submitted to SCDOT. Inspections and reports shall meet all requirements outlined in the SCDOT Bridge Inspection Guidance Document, then current at the time of inspection. City and County agree that SCDOT has no duty

to inspect, report, or remedy observed conditions (even if SCDOT has notice of said conditions) on the Bridge. City or County, as applicable, shall promptly and adequately address any critical finding and other safety concerns that are identified during inspections.

- D. A load rating must be performed during the design phase of the Bridge construction project and subsequent load rating analyses performed as conditions warrant in accordance with the then current version of the SCDOT Load Rating Guidance Document. A copy of each load rating report must be submitted to SCDOT upon completion of the load rating analysis. Load restrictions shall be placed on the Bridge by City and at the expense of City as dictated by the load rating report. Any load traversing the Bridge shall not exceed the allowable limits as specified in the load rating report.
- E. County shall obtain written approval from SCDOT prior to engaging in maintenance, repair, or inspection activities on the Bridge from SCDOT right-of-way. County shall be responsible for providing public notice and appropriate signage in the event that the Bridge is temporarily closed due to maintenance, repair, or inspection.
- F. SCDOT shall have the right, but not the duty, to access the Bridge at all reasonable times, without prior notice to County to view all portions of the Bridge for compliance with this Agreement and to notify County of any issues identified.
- G. In the event SCDOT discovers disrepair or deterioration to the Bridge which has not been addressed by County, SCDOT shall have the right, but not the obligation, to notify County of such condition, and to require correction of same within a reasonable time period specified by SCDOT. Significant disrepair or deterioration which could impact or interfere with public safety shall be addressed by County immediately. SCDOT shall have the right, but not the obligation, to perform necessary repairs or maintenance upon the Bridge after reasonable notice to County and a failure of County to correct the issue within the timeframe specified by SCDOT. County shall reimburse SCDOT for all labor and expenses incurred by SCDOT to complete any such repairs or maintenance.
- H. County shall be solely responsible for the prompt repair and cost of any damage to the Bridge caused by vehicle crashes, vandalism, or other acts or omissions by third parties. County shall be solely responsible for collecting reimbursement for any and all damages from the entity / entities that caused such damage. In an emergency event, SCDOT will take such actions as may be required to protect the travelling public. County shall reimburse SCDOT for any such emergency expenses. SCDOT shall notify County of any emergency activities within 24 hours of their completion.
- I. All repair and rehabilitation work shall be subject to the prior approval of SCDOT and in accordance with its standard design and construction requirements and specifications. The work must be designed and approved by a professional engineer

licensed in the State of South Carolina. Records of all repair and rehabilitation work shall be retained by County and shall be subject to inspection by SCDOT. County shall use contractors identified on SCDOT's Contractor Prequalification List for any such work.

XI. LIGHTING

- A. City, County, and/or their respective agents shall only install lighting or illumination devices approved in advance by SCDOT. Such lighting shall not shine or direct any light upon the highway right-of-way in any direction in a manner that could cause distraction or impairment to travelers on the highway.
- B. SCDOT shall have the right to remove any unapproved, non-conforming, or improperly installed lighting or illumination devices placed on the Bridge or within the Area of Encroachment. Alternatively, SCDOT may direct County in writing to remove same. If County fails to comply with SCDOT's request within 24 hours, SCDOT shall proceed with removal, which shall be done at County's expense.

XII. OUTDOOR ADVERTISING

County shall not erect, display, or allow or cause to be erected or displayed any outdoor advertising, including, but not limited to: signs, banners, bridge art, or devices of any kind on the Bridge or Area of Encroachment or within the Haywood Rd right-of-way. To the extent that some portions of the Bridge are outside of SCDOT right-of-way, County must comply with applicable state, federal, and local laws, rules, and regulations pertaining to outdoor advertising.

XIII. CONDITION OF THE AREA OF ENCROACHMENT

City and County acknowledge that they have examined and are familiar with the condition of the Area of Encroachment, and that no representations as to the condition or repair of the Area of Encroachment have been made to City or County by SCDOT. SCDOT makes no warranties or representations as to the condition of the Area of Encroachment or the Haywood Rd right-of-way or its fitness for County's intended use. SCDOT shall not be liable to City or County for any claims or damage occasioned by reason of the condition of the Area of Encroachment during the term of this Agreement.

XIV. ENVIRONMENTAL

County shall be solely responsible for the clean-up of any environmental contamination caused by its use of the Area of Encroachment. County shall not be responsible for contamination existing prior to its occupancy and use of the Area of Encroachment.

XV. PROTECTION OF SCDOT PROPERTY AND FACILITIES

- A. During construction, City shall have the obligation to protect SCDOT property and facilities that may be impacted by City's activities or use of the Bridge or Area of

Encroachment, and City shall be responsible for the expense, coordination, and undertaking of measures necessary to repair and restore any damaged property to its prior condition as approved by SCDOT, including the purchase of new materials where restoration using existing materials is not feasible or consistent with applicable requirements.

- B. Thereafter, and for so long as the Bridge is located within the Area of Encroachment, County shall have the obligation to protect SCDOT property and facilities that may be impacted by County's activities or use of the Bridge or Area of Encroachment, and County shall be responsible for the expense, coordination, and undertaking of measures necessary to repair and restore any damaged property to its prior condition as approved by SCDOT, including the purchase of new materials where restoration using existing materials is not feasible or consistent with applicable requirements.

XVI. RESPONSIBILITY FOR CLAIMS

- A. Within the limitations of the South Carolina Tort Claims Act, City shall be responsible for any loss resulting from bodily injuries (including death) or damages to property arising out of any negligent act or negligent failure to act on City's part, or the part of any employee of City in performance of the work undertaken pursuant to this Agreement.
- B. Within the limitations of the South Carolina Tort Claims Act, County shall be responsible for any loss resulting from bodily injuries (including death) or damages to property arising out of any negligent act or negligent failure to act on County's part, or the part of any employee of County in performance of the work undertaken pursuant to this Agreement.
- C. Notwithstanding any provision of this Agreement to the contrary, SCDOT shall, within the limitations of the South Carolina Tort Claims Act, be responsible for any loss resulting from bodily injuries (including death) or damages to property arising out of any negligent act or negligent failure to act on SCDOT's part, or the part of any employee of SCDOT in performance of the work undertaken pursuant to this Agreement.

XVII. INSURANCE

- A. City and County shall require all contractors constructing, maintaining, repairing, replacing, reconstructing, or removing the Bridge to comply with the insurance requirements in SCDOT's Standard Specifications, then current at the time of work.
- B. City and County shall require all consultants performing work on or related to the Bridge to indemnify and hold harmless City or County, as applicable, and SCDOT from claims and liability due to negligent acts of consultants in connection with the

Bridge. Consultants shall meet insurance requirements listed in Exhibit "B," attached hereto and incorporated herein.

- C. SCDOT shall be named as an additional insured on applicable policies and shall be given the same rights and insurance coverage as normally granted to additional insureds. In the event that any insurer issues a reservation of rights for SCDOT as an additional insured, SCDOT shall be entitled to employ independent counsel, of its choice, at consultant's expense.

XVIII. FUTURE MOVING OF ENCROACHMENT

- A. If it becomes necessary for County to alter or remove the Bridge to accommodate SCDOT's needs for the primary use of Haywood Rd or its expansion, such alteration or removal shall be done at the sole expense of County. If and when the Bridge and its associated approaches and structures must be altered or removed, the highway and facilities shall be immediately restored to their original condition at County's expense.
- B. In the event it becomes necessary to terminate this Agreement because of a new highway project, neither City nor County will be entitled to any relocation or acquisition benefits pursuant to federal or state laws, and both City and County specifically waive any such claims or rights in order to enter into this Agreement.

XIX. TERMINATION

- A. SCDOT shall have the right to terminate this Agreement in the event that the Area of Encroachment is necessary for SCDOT's use of Haywood Rd for its primary use as a State highway or for future widening purposes.
- B. SCDOT shall have the right to terminate this Agreement if City fails to construct the Bridge, or once constructed, if County ceases to use the Bridge for the purposes contemplated herein.
- C. SCDOT shall have the right to terminate this Agreement if City or County fails to fulfill the material terms thereof, and such breach is not corrected, or City or County has not commenced to correct, within 15 business days after written notice of non-compliance has been given to City or County by SCDOT. If City or County cannot reasonably complete the correction or cure of such breach within the 15 day cure period, City or County shall be entitled to such additional time as necessary (not to exceed six months unless SCDOT agrees to a longer period in writing) to complete the correction or cure of the breach, provided that City or County commences correction within the initial 15 day cure period and thereafter pursues completion of the correction with reasonable diligence.

- D. Upon termination of this Agreement, County shall remove the Bridge and restore the Area of Encroachment to its pre-encroachment condition to the satisfaction of SCDOT at County's sole cost and expense.

XX. AGREEMENT SUBJECT TO OTHER RIGHTS

- A. This Agreement is being made subject to any and all existing public utility rights of user, reservations, easements, rights-of-way, control-of-access, zoning ordinances, and restrictions or protective covenants that may appear of record or by an onsite examination of the Area of Encroachment.
- B. It is distinctly understood that this Agreement does not in any way grant or release any rights lawfully possessed by the property owners abutting Haywood Rd or who may own the underlying fee simple interest if SCDOT has only an easement interest. It is County's responsibility to secure any such rights, as may be necessary to construct the Bridge.

XXI. GENERAL TERMS

- A. This Agreement shall take effect upon its execution and shall terminate upon the earlier of written notification for cause from one Party to the others, or satisfaction of all terms and conditions of this Agreement.
- B. The Parties hereto agree to conform to all applicable SCDOT policies, all state, federal, and local laws, rules, regulations, and ordinances governing agreements or contracts relative to the acquisition, design, construction, maintenance, and repair of roads and bridges, and other services covered under this Agreement.
- C. The Parties, or their authorized agents, shall agree to hold consultations with each other as may be necessary with regard to the execution of supplements, modifications, or amendments to this Agreement during the course of the Project for the purpose of resolving any unforeseen issues that may arise or items that may have been unintentionally omitted from this Agreement. Such supplements, modifications, or amendments shall be subject to the approval and proper execution of the Parties hereto. No supplement, modification, or amendment to this Agreement shall be effective or binding on any Party hereto unless such supplement, modification, or amendment has been agreed to in writing by the Parties hereto.
- D. Any and all reviews and approvals required of the Parties herein shall not be unreasonably denied, delayed, or withheld.
- E. No waiver of any event of default by a Party hereunder shall be implied from any delay or omission by the other Parties to take action on account of such event of default, and no express waiver shall affect any event of default other than the event of default specified in the waiver and it shall be operative only for the time and to

the extent therein stated. Waivers of any covenants, terms, or conditions contained herein must be in writing and shall not be construed as a waiver of any subsequent or other breach of the same covenant, term, or condition. The consent or approval by a Party of any act by the other requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act. No single or partial exercise of any right or remedy of a Party hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy.

F. In the event a dispute or claim in connection with this Agreement shall arise between the Parties, the Parties shall meet in good faith and attempt to resolve any issues prior to taking legal or equitable action. Any lawsuit arising out of or relating to this Agreement shall be filed for non-jury proceedings in Greenville County.

G. All notices and other correspondence will be officially delivered as follows:

As to SCDOT:

SCDOT District Three
Attn.: District Engineering Administrator
252 S. Pleasantburg Dr.
Greenville, South Carolina 29607

As to County:

County of Greenville
Attn: Director of Greenways, Natural and Historic Resources
4806 Old Spartanburg Road
Taylors, South Carolina 29687

As to City:

City of Greenville
Attn: Director of Public Works
206 South Main Street
Greenville, South Carolina 29601

H. The Parties each bind themselves, their respective successors, executors, administrators, and assigns to the other Party with respect to these requirements, and also agree that no Party shall assign, sublet, or transfer its respective interest in this Agreement without the written consent of the other Parties.

I. This Agreement is made and entered into for the sole protection and benefit of SCDOT, County, City, and their respective successors and assigns. No other persons, firms, entities, or parties shall have any rights or standing to assert any rights under this Agreement in any manner.

- J. Invalidation of any one or more of the provisions of this Agreement by a court of competent jurisdiction shall in no way affect any of the other provisions herein, all of which shall remain in full force and effect.
- K. This Agreement may be executed and delivered in counterparts, and if so executed, shall become effective when a counterpart has been executed and delivered by all Parties hereto. All counterparts taken together shall constitute one and the same Agreement and shall be fully enforceable as such. Delivery of counterparts via facsimile transmission or via email with scanned attachment shall be effective as if originals thereof were delivered.
- L. By executing this Agreement, the undersigned each affirm and certify that he or she has the authority to bind his or her principal thereto and that all necessary acts have been taken to duly authorize this Agreement under applicable law.
- M. This Agreement with attached Exhibits and Certifications constitutes the entire Agreement between the Parties. This Agreement is to be interpreted under the laws of the State of South Carolina.

[Signature blocks on next page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on their behalf

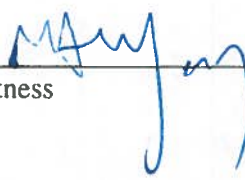
**SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF**

COUNTY OF GREENVILLE

Witness

By: _____

Title



Witness

CITY OF GREENVILLE

By: _____
City Manager




Approved as to form:



City Legal Department

Reviewed:




City Director of ~~Public Works~~ Engineering Services

Reviewed:




City Director of OMB

Reviewed:



City Risk Manager

Received:



City Purchasing Administrator

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION


Witness

By: _____
Secretary of Transportation

RECOMMENDED BY:



Deputy Secretary for Finance and Administration



Deputy Secretary for Engineering *ATL*

**EXHIBIT A
ADDITIONAL PROJECT DETAILS**

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**EXHIBIT B
INSURANCE REQUIREMENTS**

City and County, as applicable, shall require consultants to take out and maintain as a normal business expense the following insurance policies:

1. Commercial General Liability (CGL) which shall include (Public Liability and Property Damage (PLPD) Insurance) and Completed Operations coverage,
2. Professional Errors and Omissions (E&O) Insurance,
3. Automobile Liability (Auto),
4. Worker's Compensation and Employer's Liability Insurance (Statutory Limits Required), and
5. Pollution Liability Insurance (for those consultants performing environmental services, drilling services, excavation services, or if the project involves the risk of environmental contamination) with coverage in the amount not less than customarily carried by any party in the performance of similar work and in such form and with such insurance carriers as are available to it and acceptable to SCDOT.

Consultant will secure and maintain such insurance as will protect it from:

1. Claims under worker's compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees, and for claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom;
2. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;
3. Claims involving contractual liability insurance applicable to Consultant's obligations under the indemnity provisions of this contract;
4. Claims involving professional liability, to include errors, omissions, or negligent acts in the performance, by Consultant or by any entity for which Consultant is legally responsible, of professional services included in the work.
5. Claims involving information security risks, including without limitation: failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;
6. Claims involving privacy risks, including: failure to properly handle, manage, store, dispose of, destroy, or otherwise control non-public personally identifiable information in any format; loss of, unauthorized access to, or disclosure of confidential information; and any form of invasion, infringement, or interference with rights of privacy, including breach of security/privacy laws or regulations;

Consultant shall purchase and maintain insurance from a company or companies that maintain an A.M. Best rating of not less than A-VII with coverage forms acceptable to City or County, as applicable.

Certificates of Insurance acceptable to City or County, as applicable, will be provided to City or County prior to execution of this Agreement. These certificates shall:

1. List City or County, as applicable, and SCDOT as additional insureds under the CGL, PLPD, and Auto policies;
2. Contain that the policies have a Per Project Endorsement;
3. Reference the Project to which the certificate applies;
4. Contain a provision that coverage afforded will not be canceled or reduced until at least 30 days prior written notice has been given to City or County and that the policies cannot be canceled for non-payment of premiums until at least 10 days prior written notice has been provided to City or County; and
5. Show approved deductible amounts.

Consultant shall maintain continual additional insured status for City or County, as applicable, and SCDOT for the time period required to satisfy the statute of limitations for South Carolina. Make certain that the policies are endorsed to reflect this requirement. Verification of additional insured status shall be furnished to City by including a copy of the endorsements with the Certificate of Insurance. CGL, PLPD, Pollution Liability, and Auto insurance shall apply as primary and noncontributory insurance with respect to any other insurance or self-insurance programs, including any deductibles afforded to or maintained by City. Consultant's deductibles shall not exceed \$250,000 without written consent of City, and certificates must show the deductible amounts. Consultant shall provide evidence of financial ability to cover the amount of this deductible at the time of execution of this Agreement and for every year thereafter until the insurance obligations set forth herein ends.

Consultant's CGL, PLPD, Pollution Liability, and Auto insurance policies shall contain no provision providing that the limits available to an additional insured are less than the limits available to Consultant. City and SCDOT shall be given all the same rights and insurance coverage as normally granted to additional insureds. In the event that any Insurer issues a reservation of rights for SCDOT as an additional insured, SCDOT shall be entitled to employ independent counsel, of its choice, at Consultant's expense.

There shall be no endorsements or modifications of the CGL limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or work performed by Consultant.

Consultant shall waive its rights against City and SCDOT, other additional insured parties, and their respective agents, officers, directors, and employees for recovery of damages, or any other claims, to the extent these damages are covered by the CGL, PLPD, Auto, and workers' compensation policies maintained pursuant to this section of the Agreement.

After Final Invoice of the work, Consultant shall maintain E&O, CGL, Pollution Liability, and PLPD insurance coverage to include liability coverage for damage to insured's completed work equivalent to that provided under ISO CG 00 01 for three years.

Consultant accepts the responsibility to provide the liability insurance policies and endorsements as specified herein. Failure of City to identify a deficiency in the Certificate of Insurance submitted by Consultant as evidence of the specified insurance or to request other evidence of full compliance with the liability insurance specified shall not be construed as a waiver by City of Consultant's obligation to provide and maintain the required insurance for the duration of the contract.