



Richland County Council
Regular Session
MINUTES
October 15, 2024 – 6:00 PM
Council Chambers
2020 Hampton Street, Columbia, SC 29204

COUNCIL MEMBERS PRESENT: Jesica Mackey, Chair; Derrek Pugh, Vice-Chair; Jason Branham, Derrek Pugh, Yvonne McBride, Paul Livingston, Allison Terracio, Don Weaver, Gretchen Barron, Overture Walker, Cheryl English, and Chakisse Newton

OTHERS PRESENT: Leonardo Brown, Anette Kirylo, Susan O’Cain, Patrick Wright, Judy Carter, Jackie Hancock, Jennifer Wladischkin, Ashiya Myers, Aric Jensen, Kyle Holsclaw, Michael Maloney, Tamar Black, Synithia Williams, Sandra Haynes, Ashley Fullerton, Michelle Onley, Angela Weathersby, Michael Byrd, John Thompson, Quinton Epps, Venyke Harley, Phil Harris, and Geo Price

1. **CALL TO ORDER** – Chairwoman Jesica Mackey called the meeting to order at approximately 6:00 PM.

2. **INVOCATION** – The Invocation was led by Dr. George Ashford, Journey United Methodist Church.

3. **PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance was led by the Honorable Overture Walker.

POINT OF PERSONAL PRIVILEGE – Ms. Mackey recognized Judge Donald Simons, Judge Valerie Strom, Judge Harold Cuff, Colleton County Vice-Chair Phillip Taylor, Chief Jenkins, and members of the Columbia-Richland Fire Service were in the audience.

Ms. McBride noted that Mr. Taylor is also the President of the South Carolina Coalition of Black County Officials.

4. **PRESENTATION OF PROCLAMATION**

a. **A Proclamation Recognizing October as Fire Prevention Month in Richland County** – Ms. Mackey presented the proclamation recognizing October as Fire Prevention Month.

POINT OF PERSONAL PRIVILEGE – Ms. English thanked those who contributed to the success of the Hopkins Magistrate’s Renaming Ceremony.

5. **APPROVAL OF MINUTES**

a. **Regular Session: October 1, 2024** – Ms. Barron moved to approve the minutes as distributed, seconded by Ms. McBride.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

6. **ADOPTION OF AGENDA** – Mr. Patrick Wright, County Attorney, requested to add Rescreen v. Richland County, pursuant to SC Code 30-4-70(a)(2).

Ms. Terracio moved to adopt the agenda as amended, seconded by Ms. Barron.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

7. **REPORT OF THE ATTORNEY FOR EXECUTIVE SESSION (Pursuant to SC Code 30-4-70)** – County Attorney Patrick Wright noted the following item was eligible for Executive Session:

- a. Legal Update: Randolph v. Richland County [Pursuant to SC Code of Laws, Sec. 30-4-70(a)(2)]
- b. Property Inquiry – Capital Project: Columbia Place Mall [Pursuant to SC Code of Laws, Sec. 30-4-70(a)(2)]
- c. Fire Services Agreement between the City of Columbia and Richland County [Pursuant to SC Code of Laws, Sec. 30-4-70(a)(2)]
- d. Rescreen v. Richland County [Pursuant to SC Code of Laws, Sec. 30-4-70(a)(2)]

8. **CITIZENS' INPUT**

- a. For Items on the Agenda Not Requiring a Public Hearing – No one signed up to speak.

9. **CITIZENS' INPUT**

- a. Must Pertain to Richland County Matters Not on the Agenda (Items for which a public hearing is required or a public hearing has been scheduled cannot be addressed at this time)

- 1. Phillip Taylor, 301 Simmons Street, Walterboro, SC 29488 – Expressed appreciation for Ms. McBride, Mr. Pugh, and Mr. Livingston attending the SC Coalition of Black County Officials meeting on October 5, 2024. He presented a Certificate of Appreciation to the Clerk of Council, Anette Kirylo, for her service to the SC Coalition of Black County Officials.

Mr. Pugh thanked Mr. Taylor for his leadership of the SC Coalition of Black County Officials.

Ms. McBride expressed her appreciation for Ms. Kirylo's assistance in coordinating the meeting.

10. **REPORT OF THE COUNTY ADMINISTRATOR**

- a. Updates for Consideration:

- 1. *Soil and Water Conservation District – Annual Report* – Mr. Kenny Mullis, Soil and Water Conservation District Chair, presented their annual report to Council.
- 2. *Independent Accountant's Report – Transportation Sales and Use Tax for the Fiscal Year Ended June 30, 2023* – The County Administrator, Mr. Leonardo, indicated it was their understanding the information provided in this report was internal and could not be shared with the general public. In speaking with the audit company, they maintained the report could not be used for external purposes, but we could make it public. (“*This report is intended solely for the information and use of Richland County, South Carolina, and is not intended to be and should not be used by anyone other than this specified party.*”)

Mr. Brown stated the report says, “We have examined Richland County, South Carolina’s assertion that the County has expended its proceeds from its local transportation sales and use tax in compliance with the requirements of South Carolina Department of Revenue, Revenue Ruling #22-2, and the South Carolina Code of Laws, Chapter 37, Title 4, for the fiscal year ended June 30, 2023. Management of the County is responsible for its assertion. Our responsibility is to express an opinion on the County’s compliance with the specified requirements associated with the use of its local transportation sales and use tax based on our examination.”

“In our opinion, the County complied, with all material respects, with the requirements of South Carolina Department of Revenue, Revenue Ruling #22-2, and the South Carolina Code of Laws, Chapter 37, Title 4, relating to its expenditures of its local transportation sales and use tax for the fiscal year ended June 30, 2023.”

Mr. Brown noted this report is another way the County gets an independent audit of its use of the penny by a third-party provider. The provider determines whether the use of the sales and use tax complies with the revenue ruling.

Mr. Walker inquired how many consecutive years the County has received a similar report.

Mr. Brown responded since the revenue ruling, the County has received an annual audit with similar information.

Mr. Weaver inquired if there are plans to provide the report to the media.

Mr. Brown replied the purpose of releasing the report was to inform the public of the responsibility taken by the Council, through staff, to be responsible for the expenditures of the Penny Program. If the media chose to utilize this information, they could do so. It was not necessarily about telling the media but informing the public through its elected body about the work that staff has done to commit to fiscal responsibility through the sales and use tax.

- 3. *Comprehensive Plan Update* – Ms. Synthia Williams, Community Planning & Development Director, stated the planning team met on October 3rd. At that meeting, they finalized their plans for an engagement strategy, including three (3) large public forums during each phase of the project, combined with in-person and virtual meetings to gain public feedback. The Nealon Planning recommended that we put together an advisory committee to work with us to advise staff and the consulting team on the best ways

to reach the public and look at the outreach materials. The advisory committee will not take the place of the Planning Commission. The Planning Commission will still make the final recommendation to Council. The agenda packet includes a letter detailing what we are looking for as you consider advisory committee members. We are requesting that each Council member provide us with two names: a prospective appointee and an alternate in the event the prospective appointee is unable to serve. We would like to have a diverse group. For example, long-time residents vs. newcomers, those looking for growth vs. those who do not wish to see a lot of growth, and business people vs. residents. The plan is to have at least four (4) in-person meetings over the course of the year that we work on the Comprehensive Plan. The advisory committee members will be asked to attend any community or town hall meetings to hear directly from the public. If possible, they would like to have advisory committee member recommendations by the end of October so they can have an initial welcome meeting before the holidays. In addition, they are working to establish a separate website that will have information about what the Comprehensive Plan is and when the public hearings will be held. There will also be surveys on the website that will allow individuals unable to attend the public meetings to provide feedback.

Ms. Newton inquired if we will be asking citizens for general input on the Comprehensive Plan or for them to review materials and talk about outreach.

Ms. Williams indicated that the feedback from public meetings will be brought back to the advisory committee for review.

Ms. Barron asked if each Council member's advisory committee recommendation would be placed on the advisory committee or if it was merely a recommendation.

Ms. Williams replied that the individual the Council member recommends will become a member of the advisory committee. Alternate recommendations will only be utilized if the initial person recommended is unable to serve.

Ms. Barron inquired if the advisory committee member needed to live in the respective district or if the individual could be a business owner in said district.

Ms. Williams responded that if the person is a business owner in the district, they are welcome to represent the district.

Mr. Livingston voiced concern regarding diversity on the advisory committee if each Council member recommends a representative for their district. He suggested having three (3) at-large members.

Ms. Williams stated she would take Mr. Livingston's recommendation to the planning committee. In addition, if the council recommendations did not include enough diversity, they could come back to Council.

Ms. Mackey inquired when they anticipate holding the first public forum.

Ms. Williams said they would like the first public forum before the Christmas holidays.

4. *South Carolina Association of Counties: Fall Advocacy Meeting, Institute of Government, and Awards – October 16-17, 2024* – Mr. Brown stated he and Ms. Mackey had been requested to serve on a panel for the upcoming Institute of Government: Strategic Planning class.
 5. *General Updates* – Mr. Brown pointed out that the County was again awarded "Excellence in Financial Reporting" from the Government Finance Officers Association of the United States and Canada.
- b. Administrator's Nomination: (Items in this section require action that may prejudice the County's interest in a discernible way [i.e., time-sensitive, exigent, or of immediate importance])
1. *Midlands Workforce Development Board – Local Workforce Development Area Subsequent Designation Petition* – Mr. Brown noted this is a recurring request for the Chair to sign the designation petition and corresponding consortium agreement. He noted the agreement says, "The parties to this agreement concur to an equitable delineation of responsibility, duty, and partnership with regard to the implementation and execution of WIOA. This partnership includes the selection of a fiscal agent and administrative entity for the purposes of oversight, management, and operation of Adult, Dislocated Worker, and Youth activities, as well as the One-Stop delivery system."

Ms. Barron moved to authorize the Chair to execute the designation petition and corresponding consortium agreement, seconded by Ms. Newton.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Ms. Barron moved to reconsider this item, seconded by Ms. Newton.

Opposed: Branham, Pug, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The motion for reconsideration failed.

2. *Construction Contract Approval – Olympia Magistrate* – Mr. Brown stated Items 10(b)(2) & (3) have been before the body. They are a part of the process Council requested the magistrates to go through to identify their priorities for the magistrate facilities. The funds have been allocated for the projects. The recommendation is to approve the construction contracts for the Olympia and Pontiac Magistrate facilities.

3. *Construction Contract Approval – Pontiac Magistrate*

Ms. McBride moved to approve Items 10(b)(2) and (3), seconded by Ms. Barron.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Ms. English moved to reconsider Items 10(b)(2) and (3), seconded by Ms. Newton.

Opposed: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The motion for reconsideration failed.

4. *New Employee Probationary Period* – Ms. Venyke Harley, Human Resource Services Director, stated the request is to change our new employee probationary policy to have our language align with industry best practices. Currently, we use the language of “probationary period.” Oftentimes, this can convey a special employment right, so we would like to change the language to “introductory period.” Our current probationary period is one (1) year. Industry standards are between 90 days and six (6) months. We propose reducing the probationary period to six (6) months. We are hoping this will assist with recruitment and retention. This will also help us to align with the Strategic Plan’s Goal 6: “Operational Excellence”. To be eligible for the step-plan, an employee must complete their probationary period. As it currently stands, without reducing our “introductory period,” we could have employees waiting approximately twenty-seven (27) months before they get an increase.

Ms. Barron inquired when the changes would go into effect.

Ms. Harley responded that the changes would be effective November 1, 2024. She noted they are currently working to get the first step increases approved and implemented.

Mr. Weaver inquired if there is funding in the current budget to implement the change.

Ms. Harley responded in the affirmative.

Ms. McBride moved to approve this item, seconded by Ms. Barron.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Ms. Barron moved to reconsider this item, seconded by Mr. Branham.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The motion for reconsideration failed.

11. **REPORT OF THE CLERK OF COUNCIL**

- a. Proposed 2025 Council Meeting Schedule – Ms. Anette Kirylo, Clerk to Council, indicated the proposed 2025 Council meeting schedule could be found on pp.155-156 of the agenda packet.

Mr. Weaver moved to amend the calendar to move the July 1st meeting to July 8th and then approve the proposed calendar, seconded by Mr. Branham.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Ms. Barron moved to reconsider this item, seconded by Mr. Livingston.

Opposed: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The motion for reconsideration failed.

- b. Transportation Penny Town Halls – The Clerk of Council, Anette Kirylo, noted that several town hall meetings have been scheduled to keep the community informed. The meetings are as follows:
1. Districts 1 and 2 Town Hall – October 21, 6:00-7:30 PM, Friarsgate Park
 2. Districts 8 and 9 Town Hall – October 23, 6:00-7:30 PM, R2i2 Conference Center
 3. Districts 2 and 7 Town Hall – October 24, 6:00-7:30 PM, Doko Manor
 4. Districts 10 and 11 Town Hall – October 28, 6:00-7:30 PM, TBD

12. **REPORT OF THE CHAIR** – No report was given.

13. **APPROVAL OF CONSENT ITEMS**

- a. Case #24-007MA, Gunil G. Kim, R3 to GC (.24 Acres), 105 Weir Road, TMS #R19902-02-07 {District 7} [THIRD READING] {Ordinance #036-24HR}
- b. Case #24-019MA, Bonnie Joshi, HM to RT (5.17 Acres), E/S Windsorwood Court, TMS #R32400-06-23 {District 10} [THIRD READING] {Ordinance #037-24HR}
- c. Case #24-022MA, Kevin Meetze, PD to RT (3.17 Acres), 1925 Kennerly Road, TMS #R04200-06-13 {District 1} [THIRD READING] {Ordinance 038-24HR}
- d. Case #24-023MA, Madison Pickrel, GC to R5 (21.07 Acres), E/S Northeastern Freeway, TMS #R17003-01-04 {District 7} [THIRD READING] {Ordinance 039-24HR}
- e. Case #24-025MA, Mike Crandall, INS to GC (1.3 Acres), 1765 Dutch Fork Road, TMS #R02408-01-01 {District 1} [THIRD READING] {Ordinance 040-24HR}
- f. Case #24-029MA, Lindsay S. Van Slambrook, Esq., GC to MU3 (2.36 Acres), 1335 Garner Lane, TMS #R07406-1-05 {District 4} [THIRD READING] {Ordinance 041-24HR}
- g. Case #031MA, Pastor Levern McKenny, R2 to MU1, 438 Rabon Road, TMS #R17209-01-06 {District 7} [THIRD READING] {Ordinance 042-24HR}
- h. Operational Services – Upper Ballentine Fire Station Architectural Services

Ms. Terracio moved to approve Items 13(a)-13(g), seconded by Mr. Walker.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Ms. Newton moved to reconsider Items 13(a)-13(g), seconded by Ms. Terracio.

Opposed: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The motion for reconsideration failed.

14. **SECOND READING ITEMS**

- a. An Ordinance authorizing the execution and delivery of an amendment to the infrastructure credit agreement by and between Richland County, South Carolina, and Gable Oaks Housing Associates, LP; and other related matters – Ms. McBride moved to defer this item until the November 12th Council meeting, seconded by Ms. Barron.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

- b. An Ordinance authorizing a deed to the City of Columbia to waterlines running under and along the dirt road paving project at Summer Haven Drive from Haven Circle to Dead End; Richland County TMS #01312-02-02 & 03, 01312-03-03 & 04, & 01315-01-07 (portion); CF #354-47 – Ms. Newton moved to approve this item, seconded by Mr. Branham.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

15. **OTHER ITEMS**

- a. FY25 – District 2 Hospitality Tax Allocations (Blythewood Historical Society - \$10,000; Auntie Karen Foundation - \$3,000) – Ms. Newton moved to approve this item, seconded by Ms. McBride.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Ms. Barron moved to reconsider this item, seconded by Ms. Newton.

Opposed: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The motion for reconsideration failed.

16. **EXECUTIVE SESSION** – Mr. Walker moved to go into Executive Session, seconded by Ms. Barron.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

*Council went into Executive Session at approximately 7:09 PM
and came out at approximately 7:56 PM*

Ms. Terracio moved to come out of Executive Session, seconded by Mr. Livingston.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Ms. Mackey indicated Council entered into Executive Session to receive legal advice. No action was taken in Executive Session.

- a. Legal Update: Randolph v. Richland County [Pursuant to SC Code of Laws, Sec. 30-4-70(a)(2)] – No action was taken.
- b. Property Inquiry – Capital Projects: Columbia Place Mall [Pursuant to SC Code of Laws, Sec. 30-4-70(a)(2)] – Ms. McBride moved to authorize the Administrator to explore property interests, as discussed in Executive Session, seconded by Ms. Barron.

In Favor: Branham, McBride, Livingston, Terracio, Barron, Walker, Mackey, English, and Newton

Opposed: Weaver

Not Present: Pugh

The vote was in favor.

- c. Fire Services Agreement between the City of Columbia and Richland County [Pursuant to SC Code of Laws, Sec. 30-4-70(a)(2)] – No action was taken.

- d. Rescreen v. Richland County – No action was taken.

17. **MOTION PERIOD**

- a. For the purpose of preserving the historical character of the Olympia neighborhood, I move to within 12 months create a neighborhood character overlay in tandem with an update to the neighborhood plan for the Olympia neighborhood. During this time a moratorium on new construction, rezoning, demolition, and substantial rehabilitation (50% or more of lot area, building square footage, change in use) will be in place. [TERRACIO and ENGLISH] – Ms. Mackey referred the motion to the Development & Services Committee.

22. **ADJOURNMENT** – Ms. Newton moved to adjourn the meeting, seconded by Ms. Barron.

In Favor: Branham, McBride, Livingston, Weaver, Barron, Walker, Mackey, English, and Newton

Not Present: Pugh

The vote in favor was unanimous.

The meeting adjourned at approximately 7:59 PM.

State of South Carolina
Workforce Innovation and Opportunity Act

Local Workforce Development Area Subsequent Designation Petition

This Petition must be used by any entity requesting subsequent designation as a Local Workforce Development Area pursuant to Public Law 113-128, the Workforce Innovation and Opportunity Act (WIOA).

Section I. Petitioning Jurisdiction(s)

- A. Designation as a Workforce Development Area is requested for the following county(ies).

Richland

Lexington

Fairfield

- B. Specify the name of the proposed Workforce Development Area.

Midlands

C. List the names of the chief elected officials (CEOs) representing the units of general local government on whose behalf this petition is being submitted.

| <u>County</u> | <u>Name</u> |
|---------------|----------------|
| Richland | Jesica Mackey |
| Lexington | Beth Carrigg |
| Fairfield | Douglas Pauley |
| | |
| | |
| | |
| | |

D. List the name, title, mailing address, telephone number, fax number and e-mail address of the primary contact person regarding this petition.

| | |
|-------------------|-------------------------------|
| Name: | Tammy Beagen |
| Title: | Director |
| Mailing Address: | 100 Executive Center Drive |
| | Suite 218 |
| | Columbia, SC 29210 |
| Telephone Number: | (803) 744-1670 x303 |
| Fax Number: | n/a |
| E-Mail Address: | tbeagen@midlandsworkforce.org |

Section II. Consortium Agreement

If the local area includes more than one unit of general local government, the chief elected officials must negotiate a consortium agreement in order to establish a workforce development area to deliver WIOA funded services. Such agreement must be included as an attachment to this subsequent designation petition.

Section III. Existing Workforce Area

A. In the tables below, provide the final WIOA performance data for each of the last two (2) consecutive years.

| Program Year 2023 (July 1, 2023 – June 30, 2024) | | | | | | | |
|--|-----------|--------------------|--------------------|-----------------|-----------------|------------------------|-----------------------|
| Performance Measure | | Employment Rate Q2 | Employment Rate Q4 | Median Earnings | Credential Rate | Measurable Skill Gains | Overall Program Score |
| Title I Adult | Goal | 77.1 | 79 | \$6600 | 54.5 | 55.2 | 111.1 |
| | Actual | 79.1 | 76.5 | \$8526 | 64.8 | 59.5 | |
| | % of Goal | 102.6 | 96.8 | 129.2 | 118.9 | 107.8 | |
| Title I DW | Goal | 82.8 | 83.7 | \$8258 | 66.2 | 57.1 | 108.0 |
| | Actual | 87.5 | 85.7 | \$8728 | 77.8 | 62.1 | |
| | % of Goal | 105.7 | 102.4 | 105.7 | 117.5 | 108.8 | |
| Title I Youth | Goal | 82.6 | 78.9 | \$4241 | 65.0 | 52.8 | 111.2 |
| | Actual | 75.2 | 80.0 | \$6007 | 66.7 | 63.1 | |
| | % of Goal | 91.0 | 101.4 | 141.6 | 102.6 | 119.5 | |
| Overall Indicator Score | | 99.8 | 100.2 | 125.5 | 113.0 | 112.0 | |

| Program Year 2022 (July 1, 2022 – June 30, 2023) | | | | | | | |
|--|-----------|--------------------|--------------------|-----------------|-----------------|------------------------|-----------------------|
| Performance Measure | | Employment Rate Q2 | Employment Rate Q4 | Median Earnings | Credential Rate | Measurable Skill Gains | Overall Program Score |
| Title I Adult | Goal | 77.1 | 79.0 | \$6600 | 54.5 | 55.2 | 109.1 |
| | Actual | 75.5 | 76.4 | \$7182 | 67.5 | 65.3 | |
| | % of Goal | 97.9 | 96.7 | 108.8 | 123.9 | 118.3 | |
| Title I DW | Goal | 85.8 | 83.7 | \$8258 | 66.2 | 57.1 | 108.4 |
| | Actual | 76.3 | 80.3 | \$9143 | 59.6 | 87.5 | |
| | % of Goal | 92.1 | 95.9 | 110.7 | 90.0 | 153.2 | |
| Title I Youth | Goal | 82.6 | 78.9 | \$4241 | 65.0 | 52.8 | 115.2 |
| | Actual | 80.3 | 83.4 | \$6496 | 54.7 | 71.7 | |
| | % of Goal | 97.2 | 105.7 | 153.2 | 84.2 | 135.8 | |
| Overall Indicator Score | | 95.8 | 99.5 | 124.2 | 99.3 | 135.8 | |

For each measure, the US Department of Labor defines performance as follows:

- Meets performance =
 - Individual Indicator Score—50% of goal for each individual measure
 - Overall Indicator Score—90% of goal for overall individual measure
 - Overall Program Score—90% of goal for overall program performance
- Does not meet performance =
 - Individual Indicator Score—less than 50% of goal for an individual measure
 - Overall Indicator Score—less than 90% of overall individual measure
 - Overall Program Score—less than 90% of overall program performance

If any measure was not met in either program year, address the reasons, corrective action measures taken, and current status.

N/A

B. Address fiscal integrity regarding funds provided under WIOA.

Has the Secretary made a formal determination, during either of the last 2 consecutive years, that WIOA funds provided to the area were misexpended due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration?

No

Section IV. Local Board Information

Using Attachment A, provide a list of local board members, to include composition categories and contact information.

Section V. Grant Recipient/Fiscal Agent

Using Attachment B, designate the grant recipient/fiscal agent for the area. Signature of the lead official is required. Signatures of each chief elected official are also required. The use of electronic signatures is permissible.

Section VI. Public Comment

Attach documentation that public input was solicited and provide all comments received.

Submit Petition to WorkforceSupport@dew.sc.gov by 5:00 p.m., October 31, 2024.

WIOA Local Workforce Development Board Membership

Total Seats 24 Seats Occupied 24 Seats Vacant 0

| Business (per Section 107(b)(2)(A)) | | | | |
|--|-------------------|---|--|---|
| No. | Name | Affiliation and Title | Contact Phone and Email | Address |
| 1 | Jimmy Burroughs | Fairfield Property, Realtor | (803) 936-3870 cwinnsboro@truvista.net | 3531 US Hwy 321 N Winnsboro, SC 29180 |
| 2 | Danielle Diaz | Apex Tool Group, HR Manager | (800) 845-5629 Danielle.diaz@apextoolgroup.com | 670 Industrial Drive Lexington, SC 29072 |
| 3 | Jennifer Hathcock | Hitachi Rail, HR Manager | (803) 532-4432 Jennifer.hathcock@hitachirail.com | 645 Russell St Batesburg-Leesville, SC 29006 |
| 4 | Carl Kennedy | Element TV Company, LP, Vice President | (803) 815-1400 Carl.K@elementtv.com | PO Box 581 Winnsboro, SC 29180 |
| 5 | Michelle Kershaw | Humanitics, LLC, Owner | (803) 546-6659 Monk3300@gmail.com | 4210 Handelwood Court Columbia, SC 29206 |
| 6 | Cecilia Kusnirak | Global Tissue Group, Human Resources Manager | (304) 886-7751 barnwelltissueapplications@gmail.com | 239 Battery Creek Dr Gaston, SC 29053 |
| 7 | Laura McKinney | First Community Bank, Community Development Officer | (803) 951-0570 lmckinney@firstcommunitysc.com | 2830 Sunset Blvd West Columbia, SC 29169 |
| 8 | Kevin McNerney | Colite, Executive Vice President | (803) 212-8569 kmcnerney@colite.com | 5 Technology Circle Columbia, SC 29205 |
| 9 | Ritchie Monteith | Blanchard Machinery, Training and Development Manager | (803) 718-2403 jmonteith@blanchardmachinery.com | 3151 Charleston Hwy West Columbia, SC 29172 |
| 10 | Reggie Murphy | Keller Williams Realty, Broker in Charge | (803) 348-1699 regmurph@bellsouth.net | 701 Cornhill Rd Columbia, SC 29210 |
| 11 | Harry Plexico, Jr | Intertape Polymer Group, Plant Management | (803) 348-7404 hplexico@hotmail.com | PO Box 654 White Rock, SC 29177 |
| 12 | Michael Ray | Training Concepts, Sr Account Manager | (803) 765-9070 Michael@trainingconcepts.com | 250 Berryhill Rd Ste 502 Columbia, SC 29210 |
| 13 | Sheena Thompson | Mark Anthony Brewing, People Operations Business Partner | (803) 917-9184 sthompson@markanthony.com | 3160 Shop Road Columbia, SC 29209 |
| 14 | Jami Turner | Lexington Medical Center, Assistant Director Business Partner | (803) 791-2357 jturner@lexhealth.org | 2720 Sunset Blvd West Columbia, SC 29169 |

Not Less Than 20% (per Section 107(b)(2)(B))

| No. | Name | Affiliation and Title | Contact Phone and Email | Address |
|-----|-----------------|---|--|---|
| 1 | Ben Mauldin | SC Youth Advocate, Transportation Coordinator | (803) 779-5500 benimauldin@gmail.com | 140 Stoneridge Dr Suite 350 Columbia, SC 29210 |
| 2 | Tim Miller | Walker White, Program Director (Apprenticeship) | (803) 691-0918 tmiller@walker-white.com | 7402 Fairfield Road Columbia, SC 29203 |
| 3 | David Prigge | Lexington/Richland School District Five Career & Technical Education Director | (803) 735-3332 dprigge@lexrich5.org | 6671 St Andrews Rd Columbia, SC 29212 |
| 4 | Laura Reeder | SC Teachers Association, Member Associate | (803) 767-8684 Lfreeder@gmail.com | 111 Huffstetler Street Columbia, SC 29210 |
| 5 | Debra Stripling | Communication Workers Association 3706, President | (803) 807-0083 debracstripling@bellsouth.net | PO Box 2508 West Columbia, SC 29171 |

Education & Training (per Section 107(b)(2)(C))

| No. | Name | Affiliation and Title | Contact Phone and Email | Address |
|-----|------------------|---|--|--|
| 1 | Bobby Cunningham | Richland County School District Two Adult Education Director | (803) 736-8787 bcunningham@richland2.org | 750 Old Clemson Rd Columbia, SC 29229 |
| 2 | Lauren Holland | Midlands Technical College, Vice Provost for Corp & Cont. Education | (803) 691-3880 HollandL@midlandstech.edu | PO Box 2408 Columbia, SC 29202 |

Governmental, Economic, and Community Development (per Section 107(b)(2)(D))

| No. | Name | Affiliation and Title | Contact Phone and Email | Address |
|-----|---------------|---|--|---|
| 1 | Donna Earley | SC Commission for the Blind, Administrative Coordinator | (803) 898-1049 Donna.earley@sccb.sc.gov | 1430 Confederate Avenue Columbia, SC 29201 |
| 2 | Jeff Ruble | Richland County Director, Economic Development | (803) 576-1368 Ruble.jeffrey@richlandcountysc.gov | 1201 Main St Ste 910 Columbia, SC 29201 |
| 3 | Fabian Zalewa | SC Dept of Employment & Workforce Area Manager | (803) 737-4365 fzalewa@dew.sc.gov | PO Box 995 Columbia SC 29202 |

Others as Chief-Elected Officials Determine Appropriate (per Section 107(b)(2)(E))

| No. | Name | Affiliation and Title | Contact Phone and Email | Address |
|-----|------|-----------------------|-------------------------|---------|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |

Denote multiple representation with an asterisk (*).

| | |
|---|-------|
| Total Number of Seats Filled | 24 |
| Number of Seats Filled Representing Business | 14 |
| Percentage of Seats Filled Representing Business | 58.3% |
| Number of Seats Filled Representing Not Less than 20% | 5 |
| Percentage of Seats Filled Representing Not Less than 20% | 20.8% |
| Number of Seats Filled Representing Education & Training | 2 |
| Number of Seats Filled Representing Gov't, Economic & Comm. Dev. | 3 |
| Number of Seats Filled Representing Others by Chief Elected Officials | 0 |

MIDLANDS WORKFORCE DEVELOPMENT AREA INTERLOCAL CONSORTIUM AGREEMENT

This Agreement is mutually reached among the following parties: Elected Officials of Fairfield, Lexington and Richland Counties; Midlands Workforce Development Board; and Central Midlands Council of Governments.

WHEREAS, the State of South Carolina Workforce Development Board, pursuant to Public Law 113-128, the Workforce Innovation and Opportunity Act (WIOA), has designated the Midlands Workforce Development Area (MWDA) to include Fairfield, Lexington and Richland Counties; and

WHEREAS, the Midlands Workforce Development Area has a local Workforce Development Board, the Midlands Workforce Development Board (hereinafter, MWDB) established in accordance with WIOA criteria at section 107 (b) (1) (2) (3) (4) (5) (6) of the Workforce Innovation and Opportunity Act of 2014;

Now, therefore, the respective county councils, the MWDB and the Central Midlands Council of Governments (hereinafter, CMCOG) enter into the following agreement for the provision of programs and services authorized by WIOA;

1. Purpose. MWDB, a workforce development planning entity, will implement and carry out the provisions of the Workforce Innovation and Opportunity Act for Fairfield, Lexington, and Richland counties and such other workforce initiatives as may result from cooperative and collaborative relationships fostered by MWDB in carrying out its responsibilities for workforce development in the Midlands Workforce Development Area.

2. Consortium Structure. The parties to this agreement concur to an equitable delineation of responsibility, duty, and partnership with regard to the implementation and execution of WIOA. This partnership includes selection of the fiscal agent and administrative entity for the purposes of oversight, management, and operation of Adult, Dislocated Worker, and Youth activities, as well as the One-Stop delivery system.

3. Designation of Chief Local Elected Official (CLEO). The CLEO is the Chief Local Elected Official selected among the consortium of Local Elected Officials and represents the Local Elected Officials in the Workforce Development Area. The CLEO shall be a rotating position, serving a term of one (1) year, to be filled by a consortium member County Council Chair on a rotating basis. The service order for CLEO shall be by alphabetical order of the county name. To avoid any conflict of interest (actual or perceived), the CLEO shall not serve as the highest ranking officer on any Board or other entity that governs the fiscal agent or service delivery provider(s). The CLEO shall be the designated authority to execute documents, agreements, transactions, make decisions and execute time sensitive issues.

4. Fiscal Agent. All funds allocated by the Governor to any of the MWDA counties, under the Workforce Innovation and Opportunity Act shall be received by CMCOG as the fiscal agent of the grant recipient and disbursed as provided in Attachment A to this agreement and in accordance with state and federal WIOA requirements and conditions.

5. Administrative Entity. CMCOG will serve as Administrative Entity and carry out the functions described in Attachment A to the agreement.

6. Liability. In accordance with WIOA the Local Elected Officials of the Consortium counties retain financial liability for the MWDA even when designating the Administrative Entity as the fiscal agent for WIOA funds. Fiscal responsibilities will be allocated among the Consortium counties based on the ratio of funds received each year through the Act.

7. Board Appointment. The parties to this agreement shall establish and maintain a Local Workforce Development Board in accordance with federal and state guidelines. The WDB shall be comprised of the mandatory partners and maintain a majority of membership by business representatives from the private sector, as identified in WIOA. Appointments to the board will be conducted by the respective counties in accordance with the accepted processes and guidelines generally followed for board, commission or other service positions. To maintain consistency and effectiveness of leadership, the service term of seats on the board shall expire on a staggered or alternating basis.

8. Amendments. This interlocal consortium agreement is dynamic in nature, and can be modified or amended, if the need arises and the respective signatories agree.

9. Duration. Subject to its execution by all parties, the agreement shall become effective and continue indefinitely; unless it is amended or terminated under the terms of this document.

10. Termination. Any County that is part of this agreement may withdraw from it rendering it null and void by giving 180 calendar days written notice prior to the end of the then existing program year. The same conditions for termination of the agreement shall apply to CMCOG and the MWDB.

Signed for and on behalf of:

FAIRFIELD COUNTY

By: _____
Its: Chairman

Date: _____

LEXINGTON COUNTY

By: _____
Its: Chairman

Date: _____

RICHLAND COUNTY

By: _____
Its: Chairman

Date: _____

MIDLANDS WORKFORCE DEVELOPMENT BOARD

By: _____
Its: Chairman

Date: _____

CENTRAL MIDLANDS COUNCIL OF GOVERNMENTS

By: _____
Its: Executive Director

Date: _____

ATTACHMENT A

ROLES AND RESPONSIBILITIES

CHIEF LOCAL ELECTED OFFICIALS (CLEO), MWDB, FISCAL AGENT AND ADMINISTRATIVE ENTITY

I. Role of Midlands Workforce Area Chief Elected Officials (CLEOs)

CLEOs shall be responsible for:

- A. **Fiscal Liability:** In accordance with WIOA, the Local Elected Officials of the Consortium counties retain financial liability for the MWDA (even when designating the Administrative Entity as the fiscal agent for) WIOA funds. Fiscal responsibilities will be allocated among the Consortium counties based on the ratio of funds received each year through the Act (**Ref. Item 6**).
- B. **Local Grant Recipient/Fiscal Agent Selection:** All funds allocated by the Governor to any of the MWDA counties, under the Workforce Innovation and Opportunity Act shall be received by CMCOG as the fiscal agent of the grant recipient and disbursed as provided in Attachment A to this agreement and in accordance with state and federal WIOA requirements and conditions (**Ref Items 4, 5**).
- C. **Appointment of MWDB members:** The MWDB will be comprised of membership in Accordance with WIOA Sec. 107, and compliance with criteria established by the Governor, and State Workforce Development Board (SWDB).

Appointments to the board will be conducted by the respective counties in accordance with the accepted processes and guidelines generally followed for board, commission or other service positions. To maintain consistency and effectiveness of leadership, the service term of seats on the board shall expire on a staggered or alternating basis (**Ref Item 7**).
- D. **Designation of Chief Elected Official (CLEO).** The CLEO is the Chief Local Elected Official selected among the consortium of Local Elected Officials and representing the Local Elected Officials in the Workforce Development Area. The CLEO shall be a rotating position, serving a term of one (1) year, to be filled by a consortium member County Council Chair on a rotating basis. The service order for CLEO shall be by alphabetical order of the county name. To avoid any conflict of interest (actual or perceived), the CLEO shall not serve as the highest ranking officer on any Board or other entity that governs the fiscal agent or service delivery provider(s). The CLEO shall be the designated authority to execute documents, agreements, transactions, make decisions and execute time sensitive issues (**Ref. Item 3**).

II. Role of the MWDB

MWDB (in partnership with CLEO) shall be responsible for:

- A. Approving policies and providing oversight of WIOA-funded and other workforce-funded activities in the three-county workforce development area;
- B. Providing oversight of the day-to-day operation of the Workforce Development system, and ensure that all activities comply with the provisions of the Act, MWDB policies and directives, federal state and county regulations to include:
 - 1. Implementing Board workforce system policies and directives;
 - 2. Maintaining a management information system;
 - 3. Providing monthly programmatic and financial reports;
 - 4. Implementing customer grievance procedures as established by MWDB and CMCOG;
 - 5. Implementing Board approved procedures to ensure appropriate conduct and performance of programs and services;
 - 6. Conducting monitoring and providing technical assistance to promote and enhance optimal performance; and
 - 7. Providing technical assistance to service providers as required.
- C. Developing and modifying the five-year local workforce development plan and conducting oversight of the One-Stop system, WIOA-funded Adult, Dislocated Worker, and Youth employment and training activities;
- D. Selecting of Director and staff to serve the MWDB in compliance with the Administrative Entities policies and applicable available to work criteria, as well as within the means of MWDB budget. Additionally, this shall include determination of staff location, movement, replacement and/or termination of the staff that serve under the periphery of the MWDB Staff within the policies and criteria of the Administrative Entity;
- E. Coordinating workforce development activities with economic development strategies and cultivating employer linkages by promoting private sector involvement in the workforce development system through effective connecting, brokering, leveraging and partnership-building activities;
- F. Selecting operators and providers of WIOA services in the MWDA in accordance with the provisions of WIOA sections inclusive of One-Stop Operators, Youth providers, eligible providers of training services and eligible providers of career services;
- G. Developing a budget for the purpose of carrying out Board activities including an annual budget and any required modifications thereto for the Administrative Entity's

MWDB staff, in accordance with WIOA section 107(d)(12) (A); and forwarding this budget to the CMCOG Board for adoption;

- H. Ensuring that all contracts with service providers establish clear goals and obligations in unambiguous terms;
- I. Negotiating and reaching agreement on local performance measures with the chief elected officials and the Governor;
- J. Designate and maintain standing committees for planning, operation, management, etc., in accordance with WIOA that include:
 - 1. Operation and management of the One-Stop delivery system;
 - 2. Youth services;
 - 3. Services to individuals with disabilities.
- K. Scheduling and staffing all board and committee meetings; and
- L. Attending federal, state and local meetings, conferences and training as needed.

III. Role of the Administrative Entity and Fiscal Agent: Central Midlands Council of Governments

- A. Support activities of the MWDB and carry out WIOA grant requirements and policy directives, including;
 - 1. Staying abreast of and keeping MWDB apprised of federal and state policy directives and pending changes;
 - 2. Providing information regarding anticipated and pending legislation;
 - 3. Ensuring compliance with federal, state and local directives, as required by WIOA; and
 - 4. Attending federal, state and local meetings, conferences and training as needed
- B. Utilization of contracting system which includes:
 - 1. Employing an MWDB-approved system for the award and monitoring of contracts with eligible service providers, said contracts containing acceptable standards for ensuring accountability and ensuring the CMCOG Executive Director's approval, by signature, as designated agent for MWDB, of each MWDB contract;
 - 2. Acting with due diligence to monitor the implementation of the contracts, including carrying out appropriate fiscal monitoring activities (including audits) at regular intervals;
 - 3. Taking prompt and appropriate corrective action upon notice of violations of the Act or the implementing of regulations with all contracts;

4. Ensuring that all contracts for services approved by MWDB are competitively procured in accordance with CMCOG requirements; and
 5. Implementing contract type, terms, and specifications as approved by MWDB.
-
- C. Ensure the appropriate use and management of the funds provided under WIOA subtitle B for the activities and system and for workforce development activities, ensure the appropriate use, management, and investment of funds to maximize performance outcomes under section 116 (ref: WIOA sec 107 (d))
 - D. Receipt and accountability for all Workforce Innovation & Opportunity Act funds;
 - E. Establishment and maintenance of a financial management system;
 - F. Providing monthly financial reports;
 - G. Establishment and maintenance of procurement and contracting system;
 - H. Processing payment and reimbursements authorized by duly enacted board-approved policies;
 - I. Monitoring and reporting as required to the MWDB, local elected officials, state, CMCOG, and US Department of Labor; and
 - J. Engaging and selecting an auditor to audit all funds as required by the Act.
-



Agenda Briefing

| | | | |
|------------------------------------|--|--------------------------|--------------------------------|
| Prepared by: | Lori Thomas | Title: | Assistant County Administrator |
| Department: | Administration | Division: | |
| Date Prepared: | September 20, 2024 | Meeting Date: | October 15, 2024 |
| Legal Review | Patrick Wright via email | Date: | October 2, 2024 |
| Budget Review | Maddison Wilkerson via email | Date: | September 25, 2024 |
| Finance Review | Stacey Hamm via email | Date: | September 25, 2024 |
| Approved for consideration: | County Administrator | Leonardo Brown, MBA, CPM | |
| Meeting/Committee | Regular Session | | |
| Subject | Construction Contract Approval for the Olympia Magistrate at 3650 Bluff Road | | |

RECOMMENDED/REQUESTED ACTION:

The Chief Magistrate requests approval of the contract for the construction of the Olympia Magistrate with a Richland County Sheriff's Substation at a gross maximum price of \$4,468,440 to be located at 3650 Bluff Road.

Request for Council Reconsideration: Yes

FIDUCIARY:

| | | | | |
|---|--------------------------|-----|-------------------------------------|----|
| Are funds allocated in the department's current fiscal year budget? | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |
| If not, is a budget amendment necessary? | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

Funding was previously approved and allocated for Magistrate facility construction/improvements. Currently available for these projects is \$7,314,149. The cost of this facility is still available from these funds.

Applicable fund, cost center, and spend category:

Fund: 1301
Cost Center: 9950
Spend Category: Construction
Project: Olympia Magistrate Office
Loan: General Obligation Bonds 2020A

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

In 2017, a Request for Qualifications RC-035-Q-2017 was issued for a Design-Build team to provide design, management and construction services for various magistrate renovations and new builds, as part of the County's efforts to house all magistrate's in County-owned facilities. GMK Associates was awarded the first two projects- Hopkins and Upper Township magistrate's offices as the immediate result of the RFQ. This request continues work with the selected team in pursuit of the endeavor.

COUNTY ATTORNEY'S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

There are no legal concerns regarding this matter.

REGULATORY COMPLIANCE:

Not applicable.

MOTION OF ORIGIN:

Mr. Walker moved to approve the priority list proposed by the Chief Magistrate for improvements and/or relocation of County Magistrate facilities in the following order: Olympia, Pontiac, Lykeland, Dentsville, Waverly, and Eastover, seconded by Ms. English.

| | |
|----------------|---|
| Council Member | The Honorable Overture Walker, District 8 |
| Meeting | Regular Session |
| Date | February 6, 2024 |

STRATEGIC & GENERATIVE DISCUSSION:

On February 6, 2024, Council gave unanimous approval to the County Magistrate Offices Improvement Priority List. This approval was given relative to funding of \$ 7,314,149 that remains in previously allocated funds for the construction and/or improvement of Magistrate facilities.

The Chief Magistrate's office previously had a standard design developed for all new magistrate facilities; however, this design is proprietary with the recommended vendor. While costs will be similar, costs between facilities may vary based upon the requirements of specific geographic locations. At the Olympia facility, a Richland County Sheriff's Substation will also be constructed adjacent to the Magistrate's office.

This facility will be located centrally in the Olympia magistrate area to provide services to the residents in the area. The land for this facility was provided by the Columbia Empowerment Zone which will provide multi-family living, senior assisted living, medical facilities, and a community marketplace.

The Magistrate's office requests approval of the contract with GMK for \$4,468,440 for the construction of this facility.

ASSOCIATED STRATEGIC GOAL, OBJECTIVE, AND INITIATIVE:

Goal: Plan for Growth through Inclusive and Equitable Infrastructure

Objective: Create excellent facilities

ADDITIONAL COMMENTS FOR CONSIDERATION:

Not applicable.

ATTACHMENTS:

1. Contract for the Construction of the Bluff Road Magistrate Office
2. Location Map
3. Minutes from February 6, 2024 Council meeting.



AIA® Document A141® – 2014

Standard Form of Agreement Between Owner and Design-Builder

GMP VERSION

AGREEMENT made as of the Nineteenth day of September in the year Two-Thousand
Twenty-Four.

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

Richland County Administration
2020 Hampton Street, Suite 4069
P.O. Box 192
Columbia, SC 29201
(803) 576-2050
Email: adminoffice@richlandcountysc.gov

and the Design-Builder:

(Name, legal status, address and other information)

GMK Associates Design-Build Division, Inc.
1201 Main Street, Suite 2100
Columbia, SC 29201
Office Ph: (803) 256-0000

for the following Project:

(Name, location and detailed description)

New Richland County Magistrate's Office
Bluff Road Facility with Sheriff Substation
Columbia, SC

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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User Notes:

(1934644090)

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- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
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- B INSURANCE AND BONDS
- C SUSTAINABLE PROJECTS *[Not Used]*

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Project Criteria *[Section not Used]*

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1.
(List name, address and other information.)

TBD

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

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§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Ryan S. McCormick, PE
Director, Design-Build Division
GMK Associates Design-Build Division, Inc.
1201 Main Street, Suite 2400
Columbis, SC 29201
Email: RMcCormick@gmka.com
Ofc: (803) 255-0335
Cell: (803) 269-4229

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten (10) days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 14.4.
- Litigation in a court of competent jurisdiction where the project is located.
- Other: (Specify)

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written Amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated Agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 **The Work.** The term "Work" means the Design, Construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

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§ 1.4.4 **The Project.** The Project is the total Design and Construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 **Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 **Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 **Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 **Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 **Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 **Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 **Day.** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 **Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 [Section Not Used] **Compensation for Work Performed Prior To Execution of Design-Build Amendment**

§ 2.2 **Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment**

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

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ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 General Consultation. The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals.

§ 3.1.7 The Design-Builder, with the assistance of the Architect and Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder shall prepare and submit for the Owner's information a Schedule for the Work. The Schedule, including the time required for Design and Construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent Schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 **Design-Builder's Submittals**

§ 3.1.11.1 The Owner's review and approval shall not unreasonably be delayed or withheld. The submission of Submittals shall (1) be coordinated with the Design-Builder's Schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) reflect the progress of the Work.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 **Royalties, Patents and Copyrights**

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria.

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However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the willful or negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 [Article Not Used] WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Design Services

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall commence Design Services for the Work.

§ 5.1.2 Design-Builder's Design Responsibilities

§ 5.1.2.1 The Design-Builder, and its Architect, Interior Designer, and other Consultants, shall perform Design Services consistent with professional skill and care. When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions.

§ 5.1.2.2 The Design-Builder shall coordinate its Design Services with those services provided by the Owner. The Design-Builder shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Design-Builder shall provide prompt written notice to the Owner if the Design-Builder becomes aware of any error, omission, or inconsistency in such services or information.

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§ 5.1.2.3 The Design-Builder shall coordinate information provided by the Owner with information and data developed by the Design-Builder in the performance of its Design Services.

§ 5.1.2.1 The Design-Builder may provide Additional Services not otherwise designated in the Design-Build Documents, after execution of this Agreement, without invalidating this Agreement. Upon recognizing the need to perform Additional Services that may arise after execution of this Agreement, the Design-Builder shall notify the Owner. The Design-Builder, however, shall not proceed to provide such services until the Design-Builder receives the Owner's written authorization. Except for services due to the fault of the Design-Builder, any Additional Services provided in accordance with this Section, shall entitle the Design-Builder compensation in an equitable manner as authorized by the Owner.

§ 5.1.3 Construction Document Preparation

§ 5.1.3.1 The Design-Builder shall carefully study and compare the Project Criteria Documents, materials and other information provided by the Owner, shall take field measurements of any existing conditions related to the Work, shall observe and conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies, or omissions discovered.

§ 5.1.3.2 The Design-Builder shall provide to the Owner, for the Owner's written approval, Design Documents sufficient to establish the size, quality, and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Project Criteria Documents. Deviations, if any, from the Project Criteria Documents, shall be disclosed in writing.

§ 5.1.3.3 Upon the Owner's approved of the Design Documents, the Design-Builder shall prepare Construction Documents for the Project. The Construction Documents shall set forth, in detail, the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish the quality levels of materials and systems required. Deviations, in any, from the Design Documents shall be disclosed to the Owner in writing. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved Project Criteria Documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ 5.1.3.4 The Design-Builder shall meet with the Owner periodically to review progress of the Construction Documents.

§ 5.1.3.5 The Design-Builder shall not commence construction of the Work prior the Owner's authorization of the Construction Documents.

§ 5.1.3.6 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's review and approval. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.1.3.7 Upon the Owner's written approval of the Construction Documents, the Design-Builder, with the assistance of the Architect and Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

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§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, Construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, Construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide, or cause to be provided, and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities prior to permanent power, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the Building Permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Construction Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Construction Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than Twenty-One (21) days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Construction Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Construction Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all Allowances stated in the Design-Build Documents. Items covered by Allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 Allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site, unloading and handling, labor, installation costs, and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for site supervision, overhead, profit, and other expenses contemplated for stated Allowance amounts, shall be included in the Contract Sum but not in the Allowances; and
- .3 whenever costs are more than or less than Allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the Allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for Allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or Suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within Fourteen (14) days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the Fourteen (14) -day period shall constitute notice of no reasonable objection.

§ 5.7.3 [Section Not Used]

§ 5.7.3.1 [Section Not Used]

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Design-Build Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

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§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 [Section Not Used]

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§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's Schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within Fifteen (15) days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

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§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. The Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.2.1 The Owner shall furnish surveys to describe physical characteristics, legal limitations, and utility locations for the Site of the Project, and a written legal description of the Site. The surveys and legal information shall include, as applicable, graded and lines of streets, alleys, pavements, and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-ways, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the Site; locations, dimensions, and necessary data with respect to existing buildings; other improvements and trees; and information concerning available utility services and lines, both public and private, above and below-grade, including inverts and depths. All information on the survey shall be referenced to a Project Benchmark.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing Building and other Permits, Licenses and Inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to, or after, the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the Design Services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.9.1 The Owner shall provide, and pay for, 3rd Party Special Inspections as required per IBC Chapter 17.

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§ 7.2.10 The Owner shall purchase and maintain Insurance as set forth in Exhibit B.

§ 6.2.11 The Owner shall be responsible for the costs of permanent Utility Services for the Facility. The Design-Builder shall be responsible for the Costs of temporary Utility Services.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Construction Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Construction Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 [Section Not Used]

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten (10)-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of Insurance, other than property Insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain Insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner, or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a Stipulated Sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a Schedule of Values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 For each Progress Payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be

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conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including Design and Construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 [Section Not Used]

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§ 9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a Progress Payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven (7) additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.7.1 Unless otherwise agreed, payments of Applications for Payment shall be made monthly in proportion to the progress of the Work performed. Payments are due and payable within thirty (30) days of the submission of the Application for Payment. Amounts unpaid Sixty (60) days after the Application for Payment date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

(Insert rate of monthly or annual interest agreed upon.)

Bank of America Prime Rate Plus One percent (1.0 %)

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.1.1 Upon receipt of the Certificate of Occupancy from the Local Authority (temporary or final), the building shall be deemed substantially complete.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

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§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property Insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that Insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the Insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Design-Build Construction Documents marked to indicate field changes and selections made during Construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after

payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable,

and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's Site Superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner. The Owner shall be responsible for materials or substances required by the Owner, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 **Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one (1)-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one (1) -year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one (1) -year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one (1) -year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize the Design-Builder and its Consultants, Contractors, and Materials and Equipment Suppliers, as well as the Owner's consultants and separate contractors to use and reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project, including further development of the Instruments of Service. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

§ 12.3.3 Except of the licenses granted in this Article 12, no other licenses or rights shall be deemed granted or implied under this Agreement. The Owner shall not otherwise assign, delegate, sub-license, pledge, or otherwise transfer any license granted herein to another party without prior written agreement of the Design-Builder. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner's sole risk and expense and without liability to the Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 ~~Section Not Used~~ Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than One-Hundred (100%)-percent of the total number of days scheduled for completion, or One-Hundred and Twenty (120) days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven (7) days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven (7) additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 ~~Section Not Used~~
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven (7) days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than nine (9) years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless thirty (30) days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten (10) days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten (10) days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten (10) days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

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§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten (10) days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within thirty (30) days from the date of an initial decision, demand in writing that the other party file for mediation within sixty (60) days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the State of South Carolina.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

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§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by the Design-Build Documents, the Owner shall submit the proposed language of such certificates for review at least fourteen (14) days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least fourteen (14) days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder (ex., IBC Chapter 17 Inspections).

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder, and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ 15.9 Force Majeure

§ 15.9.1 Non-fulfillment, delay or omission by the Design-Builder as regards to any and all of the obligations of this Agreement will not be considered breach of the Agreement, nor will it entail any liability when it is the result of Force Majeure. Force Majeure will be understood to comprise any extraordinary event, unforeseen, or if foreseen, an inevitable event, such as labor disputes, fire, public health emergencies, insurrection, war, natural disasters, the prohibition of a government to not supply goods, damages caused by extraterritorial laws, embargoes and blockades imposed by third countries, among others, that may occur or remain in force after the execution of this Agreement or the Design-Build Amendment, which may impede the partial or total fulfillment by the Design-Builder of the obligations pursuant to this Agreement.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 [Section Not Used] AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed
- .5 [Section Not Used] AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

N/A

- .6 Other:

N/A

Init.

This Agreement entered into as of the day and year first written above.

Richland County

GMK Associates Design-Build Division, Inc.

OWNER (Signature)

DESIGN-BUILDER (Signature)

(Printed name and title)

JEFFREY L BAKER
(Printed name and title) CHAIRMAN

(Date Signed)

(Date Signed) 9/19/24

Richland County Attorney's Office



Approved As To LEGAL Form Only.

No Opinion Rendered As To Content.

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AIA® Document A141® – 2014 Exhibit A

Design-Build Amendment

GMP VERSION

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder, dated the ~~Nineteenth~~ day of ~~September~~ in the year ~~Two-Thousand, Twenty-Four~~ (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:
(Name and location or address)

New Richland County Magistrate's Office
Bluff Road Facility with Sheriff Substation
Columbia, SC

THE OWNER:
(Name, legal status and address)

Richland County Administration
2020 Hampton Street, Suite 4069
P.O. Box 192
Columbia, SC 29201
(803) 576-2050
Email: adminoffice@richlandcountysc.gov

THE DESIGN-BUILDER:
(Name, legal status and address)

GMK Associates DB Division, Inc.
1201 Main Street, Suite 2100
Columbia, SC 29201
Office Ph: (803) 256-0000

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM**
- A.2 CONTRACT TIME**
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**
- A.5 COST OF THE WORK**

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

- Stipulated Sum, in accordance with Section A.1.2 below
- Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below *(N/A)*
- Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below *(N/A)*

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum for Design Services and Construction, subject to authorized adjustments as provided in the Design-Build Documents, are as follows:

§ A.1.2.1.1 Design Services. For the Design-Builder's performance of the Work as described in Section 5.1 of the Agreement, the Owner shall pay the Design-Builder in current funds the amount of: ~~Two-Hundred, Sixty-Three Thousand, Five-Hundred Dollars and Zero Cents (\$263,500)~~, per the attached Conceptual Budget Summary dated September 10, 2024.

§ A.1.2.1.1.1 The Design Services to be performed shall be commenced upon the execution of this Agreement and, subject to the authorized adjustments and to delays not caused by the Design-Builder, shall be completed in a ~~Four~~ (4) month duration.

§ A.1.2.1.2 Construction. The Stipulated Sum for Construction shall be (\$), per the GMP Construction Cost Budget Summary dated .

The Proposed Construction Costs, including Design/Construction Contingency, for the Scope of Work are ~~Four-Million, Two-Hundred, Four Thousand, Nine-Hundred, Forty Dollars (\$4,204,940)~~.

The Stipulated Sum for Construction will be issued via a future Construction Cost Amendment after sufficient Design Services have been completed to solicit Pricing from Subcontractors and Vendors to establish a Final Guaranteed Maximum Price for the Project.

§ A.1.2.2 The Stipulated Sum for Construction is guaranteed by the Design-Builder not to exceed the above-stated amount, subject to additions and deductions by changes in the work as provided in the Final IPDM Construction Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Reasonably expected costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

§ A.1.2.3 The Stipulated Sum will be converted to a Lump-Sum Price after Final Buyout of the project and will be incorporated into this Agreement by Amendment.

§ A.1.2.4 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

§ A.1.2.5 Unit prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

| Item | Units and Limitations | Price per Unit (\$0.00) |
|------|-----------------------|-------------------------|
|------|-----------------------|-------------------------|

§ A.1.2.6 Allowances, if any, are as follows:
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both)

| Allowance | Amount (\$ 0.00) | Included Items |
|-----------|------------------|----------------|
|-----------|------------------|----------------|

§ A.1.2.7 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

See attached Conceptual Budget Summary dated April 23, 2024.

§ A.1.3 **[Section Not Used]** Cost of the Work Plus Design-Builder's Fee

§ A.1.4 **[Section Not Used]** Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make Progress Payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Per A.1.5.1.3.

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the First (1st) day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the First (1st) day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Owner receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 **[Section Not Used]**

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum, the Design-Builder shall submit the most recent Schedule of Values in accordance with the Design-Build Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for Design Services, if any, shall be shown separately. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This Schedule of Values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.1.8 In the event that the Owner's Lender engages the services of an independent inspection service for the payment application approval process, the Design-Builder has the right to provide reasonable objection to the firm or individual selected to perform the inspection services.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each Progress Payment related to Construction Schedule of Value items shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the Schedule of Values, less Retainage of Ten percent (10%) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less Retainage of Ten percent (10%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.
- .5 Retainage does not apply to Compensation for Design Services.

§ A.1.5.2.3 The Progress Payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, Retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of Retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

Upon the Owners written approval, the Design-Builder may reduce Retainage to Five-Percent (5%) after Fifty-Percent (50%) completion of the Project.

§ A.1.5.3 [Section Not Used] Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.4 [Section Not

Used] Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than Thirty (30) days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

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§ A.1.5.5.2 [Section Not Used]

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than () days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

The Construction Duration to achieve Substantial Completion of the Work will be established via a future Construction Amendment after sufficient Design Services have been completed to solicit Pricing from Subcontractors and Vendors to develop a Final Guaranteed Maximum Price for the Project.

| Portion of Work | Substantial Completion Date |
|-----------------|-----------------------------|
| N/A | |

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

None

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|----------|-------|------|-------|
| | | | |

§ A.3.1.2 The Specifications:
(Either list the specifications here or refer to an exhibit attached to this Amendment.)

| Section | Title | Date | Pages |
|---------|-------|------|-------|
| N/A | | | |

§ A.3.1.3 The Drawings:
(Either list the drawings here or refer to an exhibit attached to this Amendment.)

| Number | Title | Date |
|--------|-------|------|
| N/A | | |

§ A.3.1.4 [Section Not Used] The Sustainability Plan, if any:

§ A.3.1.5 [Section Not Used]

Init.

§ A.3.1.6 Design-Builder's assumptions and clarifications:

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

N/A

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

(Identify name, title and contact information.)

.1 Superintendent

TBD

.2 Project Manager

TBD

.3 Others

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

GMK Architects, GMK Engineering, GMK Interiors.

ARTICLE A.5 MISCELLANEOUS PROVISIONS

§ A.5.1 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

Init.

Richland County

GMK Associates Design-Build Division, Inc.

OWNER (Signature)

(Printed name and title)

(Date)



DESIGN-BUILDER (Signature)

JEFFREY L BAKER CHAIRMAN
(Printed name and title)

(Date)

9/19/24

Richland County Attorney's Office



Approved As To LEGAL Form Only.

No Opinion Rendered As To Content.

Int.

User Notes:

Richland County
New Magistrate Facility
with Sheriff Substation
Bluff Road Site (The Station at Congaree Pointe)
Conceptual Budget Summary Update

September 10, 2024

New Construction Area = 4,830 sf + 3,030 sf = 7,860 sf

| | |
|---|-------------|
| Sitework Allowance (Similar Scope of Hopkins Facility): | \$386,330 |
| Sitework Allowance (additional for Sheriff Substation): | \$151,500 |
| New Magistrate Building Construction (Hopkins Facility): | \$1,892,465 |
| New Sheriff Substation Building Construction (3,030 sf): | \$984,750 |
| Collaborative Exterior Aesthetic Upgrades for The Station at Congaree Pointe: | \$541,500 |
| Include Exterior Signage (Letters), Security, Cameras, etc.: | \$97,290 |
| Construction Costs Sub-Total: | \$4,053,835 |
| Design Fees (6.5%): | \$263,500 |
| Design/Construction Contingency (3.5%): | \$151,105 |
| Design & Construction Costs: | \$4,468,440 |



AIA Document A141[®] – 2014 Exhibit B

Insurance and Bonds

GMP VERSION

for the following PROJECT:
(Name and location or address)

New Richland County Magistrate's Office
Bluff Road Facility with Sheriff Substation
Columbia, SC

THE OWNER:
(Name, legal status and address)

Richland County Administration
2020 Hampton Street, Suite 4069
P.O. Box 192
Columbia, SC 29201
(803) 576-2050
Email: adminoffice@richlandcountysc.gov

THE DESIGN-BUILDER:
(Name, legal status and address)

GMK Associates DB Division, Inc.
1201 Main Street, Suite 2100
Columbia, SC 29201
Office Ph: (803) 256-0000

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the Nineteenth day of September in the year Two-Thousand, Twenty-Four.
(In words, indicate day, month and year.)

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Inf.

ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company, or companies, lawfully authorized to do business in the jurisdiction where the Project is located. Each insurer shall have a Best rating of A, VII or higher. All deductibles and retentions for the policies are to be paid by Design-Builder. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.2.1.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

The policy shall provide that this policy is primary over any other Owner insurance or self-insurance, even if the policy asserts it is excess, secondary or contingent.

§ B.2.1.2 Business Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits of the State of South Carolina. "Other States" coverage is not sufficient.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

at statutory limits of the State of South Carolina.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.2.1.7.1 The Design-Builder will obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than Two Million Dollars (\$2,000,000) per claim and Five Million Dollars (\$5,000,000) in the aggregate.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. Upon request, the Owner may be included as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Business Automobile

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Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.2 Performance Bond and Payment Bond

If requested by the Owner, the Design-Builder shall provide surety bonds as follows:
(Specify type and penal sum of bonds.)

| Type | Penal Sum (\$0.00) |
|------|--------------------|
| None | \$0.00 |

§ B.2.2.1 If requested, the cost of the Performance and Payment Bonds will be paid by the Owner.

§ B.2.2.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE B.3 OWNER'S INSURANCE

§ B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements,

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and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 **Boiler and Machinery Insurance.** As applicable, the Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 **Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.7 **Waivers of Subrogation.** The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate

agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

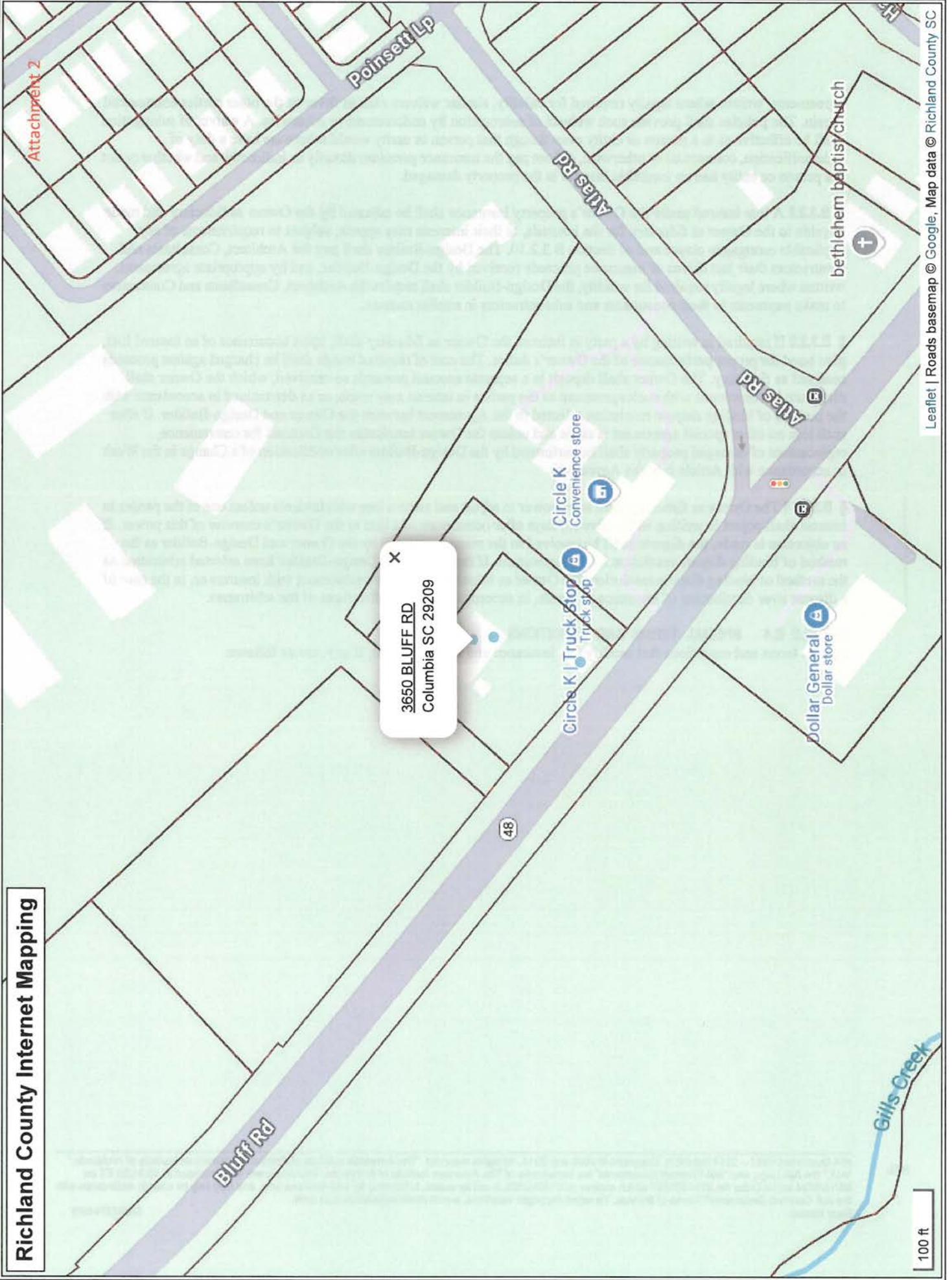
§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Richland County Internet Mapping



Attachment 2

3. **Chief Magistrate – County Magistrate Offices Improvement Priority List** – Mr. Brown stated a previous version of Council communicated to staff that for the Magistrate's Office to move forward with the decisions on the funding provided, they had to produce a priority list. Through a few iterations of Chief Magistrates, we are now at the point where a priority list is being provided. Staff is requesting approval of the priority list as proposed by Chief Magistrate Valerie Stroman for the County Magistrate facility improvements in the following order:

- a. *Olympia Magistrate*
- b. *Pontiac Magistrate*
- c. *Lykesland Magistrate*
- d. *Dentsville Magistrate*
- e. *Waverly Magistrate*
- f. *Eastover Magistrate*

Mr. Brown noted there was \$8M allocated to improve and/or relocate Magistrate facilities within their specific jurisdictions. The current available funding is \$7,314,149.

Mr. Walker moved to approve the priority list proposed by the Chief Magistrate for improvements and/or relocation of County Magistrate facilities in the following order: Olympia, Pontiac, Lykeland, Dentsville, Waverly, and Eastover, seconded by Ms. English.

Mr. Livingston inquired if the county leased or owned the properties listed.

Judge Simons stated all the facilities listed except the Eastover Magistrate's Office are leased. He noted the Eastover Magistrate is in dire need of improvements.

Mr. Livingston inquired if their goal is still to own as many Magistrate facilities as possible.

Judge Simons responded that the original plan was to get all of the Magistrates out of rental properties and into county-owned facilities. He indicated the Dutch Fork Magistrate is not on the list but is also in bad shape.

Mr. Walker said it was his understanding there was a previous priority list, and the Pontiac Magistrate was #1 on the list.

Judge Simons maintained there has never been a priority list. When we initially started looking at the Magistrate's Offices, we submitted a list, but the list changed. He indicated the Olympia Magistrate's lease is up for renewal soon, which is why they wanted to go ahead and get them into another facility and not renew their lease. The Pontiac and Dentsville Magistrate Offices are currently being housed at Central Court.

Mr. Weaver inquired if the \$7.3M has already been allocated.

Mr. Brown responded that the funding was specifically allocated to relocate and improve the Magistrate offices.

For clarification, Mr. Weaver stated that the County will build six Magistrate facilities for \$7.3M.

Judge Simons replied the \$7.3M will not build all six facilities. We will construct as many as possible, and then they will have to come back to Council for additional funding.

Mr. Weaver said he assumed we would utilize a standard plan for the facilities and not redesign each one.

Judge Simons responded that was their plan.

Ms. Barron inquired as to how the priority list was created and ranked.

Judge Simons stated there are many different factors. One is being able to find a piece of property within the district. Another is the needs of the facilities. There was no favoritism given.

Mr. Pugh noted there are some health issues at the Dutch Fork Magistrate's Office.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Ms. Newton moved to reconsider Items 10(b)(1), 10(b)(2), and 10(b)(3), seconded by Ms. Terracio.

Opposed: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The motion for reconsideration failed.

11. **REPORT OF THE CLERK OF COUNCIL** – No report was given.

**RICHLAND COUNTY
ADMINISTRATION**

2020 Hampton Street, Suite 4069
Columbia, SC 29204
803-576-2050

Report of the County Administrator Attachment 5



Agenda Briefing

| | | | |
|------------------------------------|---|--------------------------|--------------------------------|
| Prepared by: | Lori Thomas | Title: | Assistant County Administrator |
| Department: | Administration | Division: | |
| Date Prepared: | September 20, 2024 | Meeting Date: | October 15, 2024 |
| Legal Review | Patrick Wright via email | Date: | October 2, 2024 |
| Budget Review | Maddison Wilkerson via email | Date: | September 25, 2024 |
| Finance Review | Stacey Hamm via email | Date: | September 25, 2024 |
| Approved for consideration: | County Administrator | Leonardo Brown, MBA, CPM | |
| Meeting/Committee | Regular Session | | |
| Subject | Construction Contract Approval for the Pontiac Magistrate on Clemson Road | | |

RECOMMENDED/REQUESTED ACTION:

The Chief Magistrate requests approval of the contract for the construction of the Pontiac Magistrate at a gross maximum price of \$2,511,860 to be located on Clemson Road between 683 and 703 Clemson Road.

Request for Council Reconsideration: Yes

FIDUCIARY:

| | | | | |
|---|--------------------------|-----|-------------------------------------|----|
| Are funds allocated in the department’s current fiscal year budget? | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |
| If not, is a budget amendment necessary? | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

Funding was previously approved and allocated for Magistrate facility construction/improvements. Currently available for these projects is \$7,314,149. The cost of this facility is still available from these funds.

Applicable fund, cost center, and spend category:

Fund: 1301
Cost Center: 9950
Spend Category: Construction
Project: Pontiac Magistrate Office
Loan: General Obligation Bonds 2020A

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

In 2017, a Request for Qualifications RC-035-Q-2017 was issued for a Design-Build team to provide design, management and construction services for various magistrate renovations and new builds, as part of the County’s efforts to house all magistrate’s in County-owned facilities. GMK Associates was awarded the first two projects- Hopkins and Upper Township magistrate’s offices as the immediate result of the RFQ. This request continues work with the selected team in pursuit of the endeavor.

COUNTY ATTORNEY’S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

There are no legal concerns regarding this matter.

REGULATORY COMPLIANCE:

Not applicable.

MOTION OF ORIGIN:

Mr. Walker moved to approve the priority list proposed by the Chief Magistrate for improvements and/or relocation of County Magistrate facilities in the following order: Olympia, Pontiac, Lykeland, Dentsville, Waverly, and Eastover, seconded by Ms. English.

| | |
|----------------|---|
| Council Member | The Honorable Overture Walker, District 8 |
| Meeting | Regular Session |
| Date | February 6, 2024 |

STRATEGIC & GENERATIVE DISCUSSION:

On February 6, 2024, Council gave unanimous approval to the County Magistrate Offices Improvement Priority List. This approval was given relative to funding of \$7,314,149 that remains in previously allocated funds for the construction and/or improvement of Magistrate facilities.

The Chief Magistrate's office previously had a standard design developed for all new magistrate facilities; however, this design is proprietary with the recommended vendor. While costs will be similar, costs between facilities may vary based upon the requirements of specific geographic locations.

This facility will be located along Clemson Road, a primary artery in the Pontiac magistrate area, to provide services to the residents in the area. The land for this facility is owned by Richland County.

The Magistrate's office requests approval of the contract with GM K for \$2,511,860 for the construction of this facility.

ASSOCIATED STRATEGIC GOAL, OBJECTIVE, AND INTIATIVE:

Goal: Plan for Growth through Inclusive and Equitable Infrastructure

Objective: Create excellent facilities

ADDITIONAL COMMENTS FOR CONSIDERATION:

Not applicable.

ATTACHMENTS:

1. Contract for the Construction of the Clemson Road Magistrate Office
2. Location Map
3. Minutes from February 6, 2024 Council meeting.

AJA Document A141' - 2014

Standard Form of Agreement Between Owner and Design-Builder

GMPVERSION

AGREEMENT made as of the Nineteenth day of September in the year Two-Thousand, Twenty-Four,
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Richland County Administration
2020 Hampton Street, Suite 4069
P.O. Box 192
Columbia, SC 29201
(803) 576-2050
Email: adminoffice@richlandcountysc.gov

and the Design-Builder:
(Name, legal status, address and other information)

GMK Associates Design-Build Division, Inc.
1201 Main Street, Suite 2100
Columbia, SC 29201
Office Ph: (803) 256-0000

for the following Project:
(Name, location and detailed description)

New Richland County Magistrate's Office
Clemson Road Facility
Columbia, SC

The Owner and **Design-Builder** agree as follows.

ADDmONS AND DELETIONS:

The author of this doaiment has added information needed for its completion. The author may also have revised the text of the original AiA standard form. An Additions and *Deletions Report* that notes added Information as well as revisions D the standard foon text is available from the author and should be reviewed. A vertical line in the left margin af this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with en attorney Is encouraged with respect ID its completion or modification.

Consultation with an attorney Is also encouraged with respect to professional licensing requirements in the juriaidlcion where the Project is located.

Inil

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOUOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 8 CHANGES IN THE WORK
- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
- 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION
- 10 PROTECTIONOFPERSONSANDPROPERTY
- 11 UNCOVERINGAND CORRECTION OF WORK
- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
- 15 MISCELLANEOUS PROVISIONS
- 16 SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

- A DESIGH-BUILD AMENDMENT
- B INSURANCEANDBONDS
- C SUSTAINABLE PROJECTS [Not Used]

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Project Criteria [Section not Used]

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

TBD

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

Init.

TBD

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work and, if known, identify by name and address.)

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Ryan S. McConnick, PE
Director, Design-Build Division
GMK Associates Design-Build Division, Inc.
1201 Main Street, Suite 2100
Columbia, SC 29201
Email: RMcCormick@gmka.com
Ofc: (803) 255-0335
Cell: (803) 269-4229

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten (10) days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 14.4.
- Litigation in a court of competent jurisdiction where the project is located.
- Other: (Specify)

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written Amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated Agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the Design, Construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

Init.

§ U. 4 The Project. The Project is the total Design and Construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ U. 7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 (Section Not Used) Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment
For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment

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ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 General Consultation. The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals.

§ 3.1.7 The Design-Builder, with the assistance of the Architect and Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder shall prepare and submit for the Owner's information a Schedule for the Work. The Schedule, including the time required for Design and Construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project

Init.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent Schedules submitted to the Owner.

§ 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 The Owner's review and approval shall not unreasonably be delayed or withheld. The submission of Submittals shall (1) be coordinated with the Design-Builder's Schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) reflect the progress of the Work.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturer is required by the Owner, or where the copyright violations are required in the Owner's Criteria.

However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the willful or negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

1. assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 [Article Not Used] WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Design Services

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall commence Design Services for the Work.

§ 5.1.2 Design-Builder's Design Responsibilities

§ 5.1.2.1 The Design-Builder, and its Architect, Interior Designer, and other Consultants, shall perform Design Services consistent with professional skill and care. When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions.

§ 5.1.1.2 The Design-Builder shall coordinate its Design Services with those services provided by the Owner. The Design-Builder shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Design-Builder shall provide prompt written notice to the Owner if the Design-Builder becomes aware of any error, omission, or inconsistency in such services or information.

§ 5.1.2.3 The Design-Builder shall coordinate information provided by the Owner with information and data developed by the Design-Builder in the performance of its Design Services.

§ S.1.2.1 The Design-Builder may provide Additional Services not otherwise designated in the Design-Build Documents, after execution of this Agreement, without invalidating this Agreement. Upon recognizing the need to perform Additional Services that may arise after execution of this Agreement, the Design-Builder shall notify the Owner. The Design-Builder, however, shall not proceed to provide such services until the Design-Builder receives the Owner's written authorization. Except for services due to the fault of the Design-Builder, any Additional Services provided in accordance with this Section, shall entitle the Design-Builder compensation in an equitable manner as authorized by the Owner.

§ S.1.3 Construction Document Preparation

§ S.1.3.1 The Design-Builder shall carefully study and compare the Project Criteria Documents, materials and other information provided by the Owner, shall take field measurements of any existing conditions related to the Work, shall observe and conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies, or omissions discovered.

§ S.1.3.2 The Design-Builder shall provide to the Owner, for the Owner's written approval, Design Documents sufficient to establish the size, quality, and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Project Criteria Documents. Deviations, if any, from the Project Criteria Documents, shall be disclosed in writing.

§ S.1.3.3 Upon the Owner's approved of the Design Documents, the Design-Builder shall prepare Construction Documents for the Project. The Construction Documents shall set forth, in detail, the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish the quality levels of materials and systems required. Deviations, in any, from the Design Documents shall be disclosed to the Owner in writing. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved Project Criteria Documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ S.1.3.4 The Design-Builder shall meet with the Owner periodically to review progress of the Construction Documents.

§ S.1.3.5 The Design-Builder shall not commence construction of the Work prior the Owner's authorization of the Construction Documents.

§ S.1.3.6 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's review and approval. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ S.1.3.7 Upon the Owner's written approval of the Construction Documents, the Design-Builder, with the assistance of the Architect and Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project

§ 5.2 Construction

§ 5.2.1 Commencement, Except as permitted in Section 5.2.2, Construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, Construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide, or cause to be provided, and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities prior to permanent power, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5A Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the Building Permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Construction Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Construction Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than Twenty-One (21) days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Construction Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 [f, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Construction Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all Allowances stated in the Design-Build Documents. Items covered by Allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder, shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- 1 Allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site, unloading and handling, labor, installation costs, and all required taxes, less applicable trade discounts;
- 2 the Design-Builder's costs for site supervision, overhead, profit, and other expenses contemplated for stated Allowance amounts, shall be included in the Contract Sum but not in the Allowances; and
- 3 whenever costs are more than or less than Allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the Allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for Allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or Suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within Fourteen (14) days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the Fourteen (14) -day period shall constitute notice of no reasonable objection.

§ 5.7.3 [Section Not Used]

§ 5.7.3.1 (Section Not Used)

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Design-Build Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.U Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.1.4.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.1.4.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.1.4.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- 1 The change in the Work;
- 2 The amount of the adjustment, if any, in the Contract Sum; and
- 3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- 1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- 2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- 3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- 4 As provided in Section 6.3.7.

I 6.3.4 (Section Not Used)

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

1. Additional costs of professional services;
2. Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
3. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
4. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
5. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
6. Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's Schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within Fifteen (15) days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. The Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.2.1 The Owner shall furnish surveys to describe physical characteristics, legal limitations, and utility locations for the Site of the Project, and a written legal description of the Site. The surveys and legal information shall include, as applicable, graded and lines of streets, alleys, pavements, and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-ways, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the Site; locations, dimensions, and necessary data with respect to existing buildings; other improvements and trees; and information concerning available utility services and lines, both public and private, above and below-grade, including inverts and depths. All information on the survey shall be referenced to a Project Benchmark.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing Building and other Permits, Licenses and Inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to, or after, the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the Design Services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.9.1 The Owner shall provide, and pay for, 3rd Party Special Inspections as required per IBC Chapter 17.

§ 7.2.10 The Owner shall purchase and maintain Insurance as set forth in Exhibit B.

§ 6.2.11 The Owner shall be responsible for the costs of permanent Utility Services for the Facility. The Design-Builder shall be responsible for the Costs of temporary Utility Services.

I 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Construction Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Construction Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 [Section Not Used]

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten (10)-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

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ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a Stipulated Sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a Schedule of Values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 For each Progress Payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be

conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- 1 defective Work, including Design and Construction, not remedied;
- 2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- 3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- 4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- 5 damage to the Owner or a separate contractor;
- 6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- 7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 [Section Not Used]

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§ 9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a Progress Payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven (7) additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.7.1 Unless otherwise agreed, payments of Applications for Payment shall be made monthly in proportion to the progress of the Work performed. Payments are due and payable within thirty (30) days of the submission of the Application for Payment. Amounts unpaid Sixty (60) days after the Application for Payment date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

(Insert rate of monthly or annual interest agreed upon.)

Bank of America Prime Rate Plus One percent (1.0 %)

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.1.1 Upon receipt of the Certificate of Occupancy from the Local Authority (temporary or final), the building shall be deemed substantially complete.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Design-Build Construction Documents marked to indicate field changes and selections made during Construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after

payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable,

and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.8 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's Site Superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.A The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner. The Owner shall be responsible for materials or substances required by the Owner, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 It: without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

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ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one (1)-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one (1)-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one (1)-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one (1)-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize the Design-Builder and its Consultants, Contractors, and Materials and Equipment Suppliers, as well as the Owner's consultants and separate contractors to use and reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project, including further development of the Instruments of Service. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

§ 12.3.3 Except of the licenses granted in this Article 12, no other licenses or rights shall be deemed granted or implied under this Agreement. The Owner shall not otherwise assign, delegate, sub-license, pledge, or otherwise transfer any license granted herein to another party without prior written agreement of the Design-Builder. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner's sole risk and expense and without liability to the Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 [Section Not Used] Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

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§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- 1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- 2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- 3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- 4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than One-Hundred (100%)-percent of the total number of days scheduled for completion. or One-Hundred and Twenty (120) days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven (7) days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven (7) additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- 1 [Section Not Used]
- 2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- 3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- 4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- 5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven (7) days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- 1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- 2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- 3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- 1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- 2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- 1 cease operations as directed by the Owner in the notice;
- 2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- 3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than nine (9) years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 Claims Arising After Final Payment After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless thirty (30) days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten (10) days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten (10) days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten (10) days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten (10) days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within thirty (30) days from the date of an initial decision, demand in writing that the other party file for mediation within sixty (60) days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the State of n, tb.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

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§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by the Design-Build Documents, the Owner shall submit the proposed language of such certificates for review at least fourteen (14) days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least fourteen (14) days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder (ex., MC Chapter 17 Inspections).

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder, and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

Init.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ 15.9 Force Majeure

§ 15.9.1 Non-fulfillment, delay or omission by the Design-Builder as regards to any and all of the obligations of this Agreement will not be considered breach of the Agreement, nor will it entail any liability when it is the result of Force Majeure. Force Majeure will be understood to comprise any extraordinary event, unforeseen, or if foreseen, an inevitable event, such as labor disputes, fire, public health emergencies, insurrection, war, natural disasters, the prohibition of a government to not supply goods, damages caused by extrajurisdictional laws, embargoes and blockades imposed by third countries, among others, that may occur or remain in force after the execution of this Agreement or the Design-Build Amendment, which may impede the partial or total fulfillment by the Design-Builder of the obligations pursuant to this Agreement

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™, 2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™, 2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™, 2014, Exhibit B, Insurance and Bonds
- .4 [Section Not Used] AIA Document A141™, 2014, Exhibit C, Sustainable Projects, if completed
- .5 [Section Not Used] AIA Document E203™, 2013, Building Information Modeling and Digital Data Exchange, if completed, or the following:

N/A

- .8 Other:

N/A

Int.

This Agreement entered into as of the day and year first written above.

Richland County

GMK Associates Design-Build Division, Inc.

OWNER (Signature)

(Printed name and title)

(Date Signed)

(Printed name and title) a, . 6

(Date Sign

Yickell f

Richland County Attorney's Office

Elizabeth A. Mc

Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.

Int.

AIA Document A14f - 2014 Exhibit A

Design-Build Amendment

GMP VERSION

This Amendment is incorporated into the accompanying AIA Document A14FM....2014, Standard Form of Agreement Between Owner and Design-Builder, dated the Nineteenth day of September in the year Two-Thousand, Twenty-Four (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:
(Name and location or address)

New Richland County Magistrate's Office
Clemson Road Facility
Columbia, SC

THE OWNER:
(Name, legal status and address)

Richland County Administration
2020 Hampton Street, Suite 4069
P.O. Box 192
Columbia, SC 29201
(803) 576-2050
Email: adminoffice@rkblandcoantysc.gov

THE DESIGN-BUILDER:
(Name, legal status and address)

GMK Associates DB Division, Inc.
1201 Main Street, Suite 2100
Columbia, SC 29201
Office Pb: (803) 256-0000

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Init.

Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:
(Check the appropriate box.)

Stipulated Sum, in accordance with Section A.1.2 below

Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below [N/A]

Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below [N/A]

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum for Design Services and Construction, subject to authorized adjustments as provided in the Design-Build Documents, are as follows:

§ A.1.2.1.1 Design Services. For the Design-Builder's performance of the Work as described in Section 5.1 of the Agreement, the Owner shall pay the Design-Builder in current funds the amount of: One-Hundred, Forty-Eight Thousand, One-Hundred, Twenty-Five Dollars and Zero Cents (\$148,125), per the attached Conceptual Budget Summary dated April 23, 2024.

§ A.1.2.1.1.1 The Design Services to be performed shall be commenced upon the execution of this Agreement and, subject to the authorized adjustments and to delays not caused by the Design-Builder, shall be completed in a Four (4) month duration.

§ A.1.2.1.2 Construction. The Stipulated Sum for Construction shall be (\$), per the GMP Construction Cost Budget Summary dated .

The Proposed Construction Costs, including Design/Construction Contingency, for the Scope of Work are Two-Million, Three-Hundred, Sixty-Three Thousand, Seven-Hundred, Thirty-Five Dollars (\$2,363,735).

The Stipulated Sum for Construction will be issued via a future Construction Cost Amendment after sufficient Design Services have been completed to solicit Pricing from Subcontractors and Vendors to establish a final Guaranteed Maximum Price for the Project.

§ A.1.2.2 The Stipulated Sum for Construction is guaranteed by the Design-Builder not to exceed the above-stated amount, subject to additions and deductions by changes in the work as provided in the Final IPDM Construction Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Reasonably expected costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

§ A.1.2.3 The Stipulated Sum will be converted to a Lump-Sum Price after Final Buyout of the project and will be incorporated into this Agreement by Amendment.

§ A.1.2.4 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted)

§ A.1.2.5 Unit prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

| Item | Units and Limitations | Price per Unit (\$0.00) |
|------|-----------------------|-------------------------|
|------|-----------------------|-------------------------|

§ A.1.2.6 Allowances, if any, are as follows:
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both)

| Allowance | Amount (\$ 0.00) | Included Items |
|-----------|------------------|----------------|
|-----------|------------------|----------------|

§ A.1.2.7 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

See attached Conceptual Budget Summary dated April 23, 2024.

§ A.1.3 [Section Not Used] Cost of the Work Plus Design-Builder's Fee

§ A.U [Section Not Used] Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make Progress Payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Per A.1.5.1.3.

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the First (1st) day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the First (1st) day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Owner receives the Application for Payment
(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 (Section Not Used)

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum, the Design-Builder shall submit the most recent Schedule of Values in accordance with the Design-Build Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for Design Services, if any, shall be shown separately. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This Schedule of Values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.1.8 In the event that the Owner's Lender engages the services of an independent inspection service for the payment application approval process, the Design-Builder has the right to provide reasonable objection to the firm or individual selected to perform the inspection services.

§ A.1.5.2 Progress Payments-Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each Progress Payment related to Construction Schedule of Value items shall be computed as follows:

- 1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the Schedule of Values, less Retainage of Ten percent (10%) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- 2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less Retainage of Ten percent (10%);
- 3 Subtract the aggregate of previous payments made by the Owner; and
- 4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement
- 5 Retainage does not apply to Compensation for Design Services.

§ A.1.5.2.3 The Progress Payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- 1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, Retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- 2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement

§ A.1.5.2.4 Reduction or limitation of Retainage, if any, shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.J and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions herefor such reduction or limitation.)

Upon the Owner's written approval, the Design-Builder may reduce Retainage to Five-Percent (5%) after Fifty-Percent (50%) completion of the Project.

§ A.1.5.3 **[Section Not Used]** Progress Payments-Cost of the Work Plus a Fee

§ A.1.5.4 **[Section Not Used]** Progress Payments-Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than Thirty (30) days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 [Section Not Used]

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than () days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

The Construction Duration to achieve Substantial Completion of the Work will be established via a future Construction Amendment after sufficient Design Services have been completed to solicit Pricing from Subcontractors and Vendors to develop a Final Guaranteed Maximum Price for the Project.

| Portion of Work | Substantial Completion Date |
|-----------------|-----------------------------|
| N/A | |

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

None

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

I A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract

| Document | Title | Date | Pages |
|----------|-------|------|-------|
|----------|-------|------|-------|

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

| Section | Title | Date | Page |
|---------|-------|------|------|
| N/A | | | |

§ A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

| Number | Title | Date |
|--------|-------|------|
| N/A | | |

§ A.3.1.4 [Section Not Used] The Sustainability Plan, if any:

§ A.3.1.5 [Section Not Used]

§ A.3.1.8 Design-Builder's assumptions and clarifications:

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

N/A

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

(Identify name, title and contact information.)

.1 Superintendent

TBD

.2 Project Manager

TBD

.3 Others

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

GMK Architects, GMK Engineering, GMK Interiors.

ARTICLE A.5 MISCELLANEOUS PROVISIONS

§ A.5.1 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

Richland County

GMK Associates Design-Build Division, Inc.

OWNER (Signature)

(Printed name and title)

(Date)

[Handwritten Signature]

DESIGN-BUILDER (Signature)

t.J}iH-(f 4)/ L _a
(Printed name and title)

1ft., 12, 'f
(Date)

C-wiP-T
As To LEGAL Form Only.
No Opinion Rendered As To COntntml

Int.

Richland County

New Magistrate Facility

Clemson Road, Columbia, SC

Conceptual Budget Summary

April 23, 2024

New Construction Area = 4,830 sf

| | |
|---|-------------------------|
| Sitework Allowance (Similar Scope of Hopkins Facility): | \$386,330 |
| New Building Construction (based on Hopkins Facility): | \$1,892,465 |
| Construction Costs Sub-Total: | <hr/> \$2,278,795 |
| Design Fees (6.5%): | \$148,125 |
| Design/Construction Contingency (3.5%): | \$84,940 |
| Design & Construction Costs: | <hr/> <hr/> \$2,511,860 |

NOTES:

*Building Design and Sitework Scopes to be similar to Hopkins Facility.

*Conceptual Budget Costs have been escalated from Hopkins Magistrate Facility actual Construction Costs.

*Per *Engineering News Record* Cost Data, Escalation from April 2018 to January 2024 has been approximately +40%.

*Conceptual Budget Costs have also been escalated through 2025.

AIA Document A14f-2014 Exhibit B

Insurance and Bonds

GMP VERSION

for the following PROJECT:
(Name and location or address)

New Richland County Magistrate's Office
Clemson Road Facility
Columbia, SC

THE OWNER:
(Name, legal status and address)

Richland County Administration
2020 Hampton Street, Suite 4069
P.O. Box 192
Columbia, SC 29201
(803) 576-2050
Email: adminofike@ricbandcountysc.gov

THE DESIGN-BUILDER:
(Name, legal status and address)

GMK Associates DB Division, Inc.
1201 Main Street, Suite 2100
Columbia, SC 29201
Office Pb: (803) 256-0000

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the Nineteenth day of September in the year Two-Thousand, Twenty-Four.
(In words, indicate day, month and year.)

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company, or companies, lawfully authorized to do business in the jurisdiction where the Project is located. Each insurer shall have a Best rating of A, VII or higher. All deductibles and retentions for the policies are to be paid by Design-Builder. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:
(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period/or correction of Work, state the duration.)

§ B.2.1.1 Commercial General Liability with policy limits of not less than **One Million Dollars** (\$.1,000,000) for each occurrence and **Two Million Dollars** (\$2,000,000) in the aggregate providing coverage for claims including

- 1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- 2 personal injury;
- 3 damages because of injury to or destruction of tangible property;
- 4 bodily injury or property damage arising out of completed operations; and
- 5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

The policy shall provide that this policy is primary over any other Owner insurance or self-insurance, even if the policy asserts it is excess, secondary or contingent.

§ B.2.1.2 Business Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than **One Million Dollars** (\$1,000,000) per claim and **One Million Dollars** (\$1,000,000) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ 8.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ 8.2.1.4 Workers' Compensation at statutory limits of the State of South Carolina. "Other States" coverage is not sufficient.

§ 8.2.1.5 Employers' Liability with policy limits as provided below:

at statutory limits of the State of South Carolina.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.2.1.7.1 The Design-Builder will obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than **Two Million Dollars** (\$2,000,000) per claim and **Five Million Dollars** (\$5,000,000) in the aggregate.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. Upon request, the Owner may be included as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Business Automobile

Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.2 Performance Bond and Payment Bond

If requested by the Owner, the Design-Builder shall provide surety bonds as follows:
(Specify type and penal sum of bonds.)

| Type | Penal Sum (\$0.00) |
|------|--------------------|
| None | \$0.00 |

§ B.2.2.1 If requested, the cost of the Performance and Payment Bonds will be paid by the Owner.

§ B.2.2.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE B.3 OWNER'S INSURANCE

§ 8.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements,

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and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance,

§ 8.3.2.2 Boiler and Machinery Insurance. As applicable, the Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ 8.3.2.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate

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agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

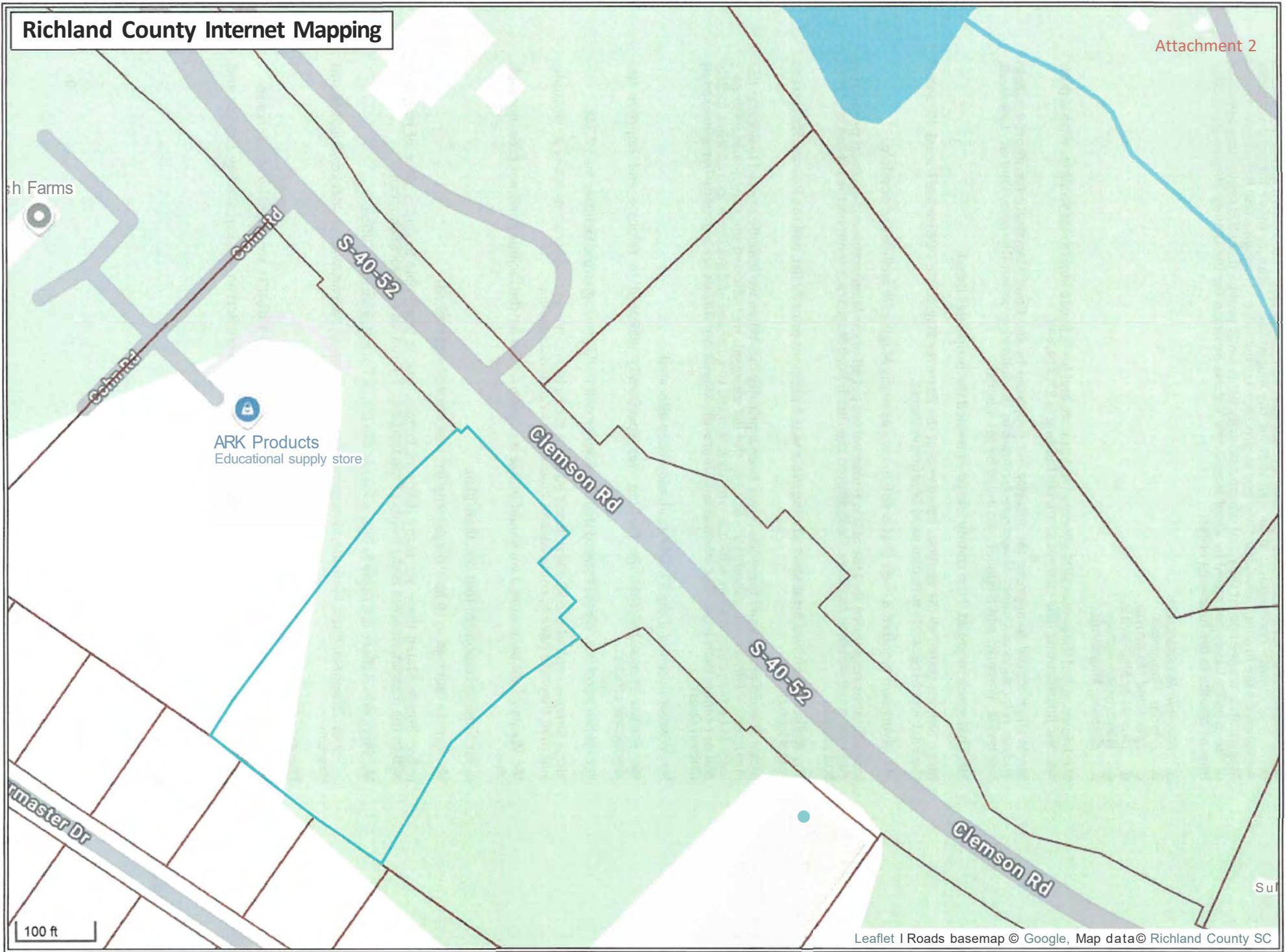
§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

ARTICLE 8.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:



3. **Chief Magistrate - County Magistrate Offices Improvement Priority List** - Mr. Brown stated a previous version of Council communicated to staff that for the Magistrate's Office to move forward with the decisions on the funding provided, they had to produce a priority list. Through a few iterations of Chief Magistrates, we are now at the point where a priority list is being provided. Staff is requesting approval of the priority list as proposed by Chief Magistrate Valerie Stroman for the County Magistrate facility improvements in the following order:

- a Olympia Magistrate
- b Pontiac Magistrate
- c Lykes and Magistrate
- d Dentsville Magistrate
- e Waverly Magistrate
- f Eastover Magistrate

Mr. Brown noted there was \$8M allocated to improve and/or relocate Magistrate facilities within their specific jurisdictions. The current available funding is \$7,314,149.

Mr. Walker moved to approve the priority list proposed by the Chief Magistrate for improvements and/or relocation of County Magistrate facilities in the following order: Olympia, Pontiac, Lykeland, Dentsville, Waverly, and Eastover, seconded by Ms. English.

Mr. Livingston inquired if the county leased or owned the properties listed.

Judge Simons stated all the facilities listed except the Eastover Magistrate's Office are leased. He noted the Eastover Magistrate is in dire need of improvements.

Mr. Livingston inquired if their goal is still to own as many Magistrate facilities as possible.

Judge Simons responded that the original plan was to get all of the Magistrates out of rental properties and into county-owned facilities. He indicated the Dutch Fork Magistrate is not on the list but is also in bad shape.

Mr. Walker said it was his understanding there was a previous priority list, and the Pontiac Magistrate was #1 on the list.

Judge Simons maintained there has never been a priority list. When we initially started looking at the Magistrate's Offices, we submitted a list, but the list changed. He indicated the Olympia Magistrate's lease is up for renewal soon, which is why they wanted to go ahead and get them into another facility and not renew their lease. The Pontiac and Dentsville Magistrate Offices are currently being housed at Central Court.

Mr. Weaver inquired if the \$7.3M has already been allocated.

Mr. Brown responded that the funding was specifically allocated to relocate and improve the Magistrate offices.

For clarification, Mr. Weaver stated that the County will build six Magistrate facilities for \$7.3M.

Judge Simons replied the \$7.3M will not build all six facilities. We will construct as many as possible, and then they will have to come back to Council for additional funding.

Mr. Weaver said he assumed we would utilize a standard plan for the facilities and not redesign each one.

Judge Simons responded that was their plan.

Ms. Barron inquired as to how the priority list was created and ranked.

Judge Simons stated there are many different factors. One is being able to find a piece of property within the district. Another is the needs of the facilities. There was no favoritism given.

Mr. Pugh noted there are some health issues at the Dutch Fork Magistrate's Office.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

the vote in favor was unanimous.

Ms. Newton moved to reconsider Items 10(b)(1), 10(b)(2), and 10(b)(3), seconded by Ms. Terracio.

Opposed: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The motion for reconsideration failed.

11. **REPORT OF THE CLERK OF COUNCIL** - No report was given.

**RICHLAND COUNTY
ADMINISTRATION**

2020 Hampton Street, Suite 4069
Columbia, SC 29204
803-576-2050

Report of the County Administrator Attachment 6



Agenda Briefing

| | | | |
|------------------------------------|----------------------------------|----------------------|--------------------------------|
| Prepared by: | Lori Thomas | Title: | Assistant County Administrator |
| Department: | Administration | Division: | |
| Date Prepared: | September 24, 2024 | Meeting Date: | October 15, 2024 |
| Legal Review | Patrick Wright via email | Date: | September 26, 2024 |
| Budget Review | Maddison Wilkerson via email | Date: | September 25, 2024 |
| Finance Review | Stacey Hamm via email | Date: | September 25, 2024 |
| Approved for consideration: | County Administrator | | Leonardo Brown, MBA, CPM |
| Meeting/Committee | Regular Session | | |
| Subject | New Employee Probationary Period | | |

RECOMMENDED/REQUESTED ACTION:

Staff requests Council approval to change the new employee probationary period from twelve months to an introductory period of six months (180 days) effective November 1, 2024.

Request for Council Reconsideration: [g] Yes

FIDUCIARY:

| | | | | |
|---|-------------------------------------|-----|-------------------------------------|----|
| Are funds allocated in the department's current fiscal year budget? | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| If not, is a budget amendment necessary? | <input type="checkbox"/> | Yes | <input checked="" type="checkbox"/> | No |

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

There is no anticipated fiscal impact.

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

Not applicable.

COUNTY ATTORNEY'S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

There are no legal concerns regarding this matter.

REGULATORY COMPLIANCE:

While there is no requirement to reduce the County's new employee probationary period, the probationary period for the State of South Carolina, Richland County School Districts, and most other private employers is six months (180 days). Staff believe this provides enough time to allow the employee and the County to ensure a good fit for the employee in the organization as well as the ability to adapt to and perform the work required to be successful in his/her new position. The modification would also ensure the employee's ability to be considered for annual step increases in a manner that would not exceed that of an annual increase initially.

MOTION OF ORIGIN:

There is no associated Council motion of origin.

STRATEGIC & GENERATIVE DISCUSSION:

Staff requests to modify the current policy related to employee probationary period from one (1) year to an introductory period of 180 days. Society for Human Resource Management (SHRM) suggests the most common time frame for a new hire probation period, or introductory period, is 60 to 90 days; however, employers can set any time frame desired to fully evaluate if an employee fits the organization's culture and can do the job. In state and local government in South Carolina, the most common introductory period is 180 days. The modification still allows supervisors sufficient time to evaluate an employee and allows the employee time to determine if the job and organization are a good fit.

Additionally, staff recommends changing this period from a "probationary period" to an "Introductory period." The use of the phrase "probationary period" can convey the expectation of special or expanded employment rights that were not intended by the company. Using the phrase "introductory period" eliminates any confusion according to Society for Human Resource Management.

While this modification was initially planned to take place with the recommendation of a new Employee Handbook Resolution, staff feels implementing this process now will allow the County to address employees who are currently on a one-year probationary period as an employee may be employed for up to 27 months before being eligible for and receiving a step increase. Under the proposed new introductory period, employees will be eligible a step increase in no more than 18 months.

ASSOCIATED STRATEGIC GOAL, OBJECTIVE, AND INTIATIVE:

Goal: Establish operational excellence

Objective: Address employee related matters to create a more desirable workplace

Initiative: Implement a County Council-approved step-based compensation plan.

ATTACHMENTS:

- 1 Current and Proposed Policy

Current Policy

The Probationary Period

All new employees (except temporaries) are considered to be on probation for the first twelve months. This period is a continuation of the selection process and is a time in which the new employee should make extra effort to demonstrate that he/she is well suited for his/her job.

If the Department Head concludes at any time during the probation period that the new employee is not well suited for the position, the employee may be terminated or may be placed on extended probation if approved by the County Administrator.

The probationary period ends successfully when the Department Head, not sooner than one year after the employee was hired, evaluates the new employee in writing and authorizes taking him/her off of his/her initial probationary status.

A newly promoted employee does not serve a promotional probation period on his/her new position.

Recommended Policy

Introductory Period

Each new Richland County employee shall be subject to a 180-day introductory period.

The supervisor shall conduct periodic evaluations on the Introductory employee's performance. With the approval of the County Administrator, the supervisor may request an extension to the introductory period due to the position being particularly difficult, highly technical, or the employee's time on board was delayed by injury or illness. Human Resources will be apprised of any extension to the Introductory period for any employee.

At any time during the introductory period, the department or employee may choose to initiate a "no fault" separation which will not adversely affect the employee's personnel records. However, nothing in this section shall limit or restrict the "at-will" employment status of an employee. Richland County retains the right to terminate the employee at any time, either during or after the introductory period for any reason or no reason, and no right to employment for a specific period of time shall be implied by the introductory period.

New employees shall not be eligible for paid vacation time or sick leave nor shall they receive pay for accumulated vacation or sick leave if their employment is terminated for any reason during the introductory period. The employee shall be credited for vacation time and sick time accumulation from the date of employment upon successful completion of the introductory period.

SPECIAL NOTE: THE INTRODUCTORY PERIOD IS NOT TO BE CONSTRUED AS A MINIMUM GUARANTEE OF EMPLOYMENT. ALL EMPLOYEES OF THE COUNTY ARE EMPLOYED "AT-WILL" WHICH MEANS THAT BOTH THE EMPLOYEE AND THE COUNTY CAN TERMINATE THE EMPLOYMENT RELATIONSHIP AT ANY TIME, WITH OR WITHOUT NOTICE.

STATE OF SOUTH CAROLINA
COUNTY COUNCIL OF RICHLAND COUNTY
ORDINANCE NO. 036-24HR

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R19902-02-07 FROM RESIDENTIAL THREE DISTRICT (R3) TO GENERAL COMMERCIAL DISTRICT (GC); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R19902-02-07 from Residential Three District (R3) to General Commercial District (GC).

Section II. Severability. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional, or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section IV. Effective Date. This ordinance shall be effective from and after October 15, 2024.

RICHLAND COUNTY COUNCIL

By: _____
Jesica Mackey, Chair

Attest this 15th day of

October, 2024

Anette A. Kirylo
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.

Public Hearing: September 24, 2024
First Reading: September 24, 2024
Second Reading: October 1, 2024
Third Reading: October 15, 2024



**Richland County
Planning & Development Services Department**

Map Amendment Staff Report

PC MEETING DATE: May 6, 2024
RC PROJECT: 24-007 MA
APPLICANT: Gunil G. Kim

LOCATION: 105 Weir Road

TAX MAP NUMBER: R19902-02-07
ACREAGE: .24 acres
EXISTING ZONING: R3
PROPOSED ZONING: GC

ZPH SIGN POSTING: September 13, 2024

Staff Recommendation

Approval

Background

Zoning History

The original zoning as adopted September 7, 1977 was RS-2 District. With the adoption of the 2005 Land Development Code the RS-2 District was designated Residential Single-family Medium Density District (RS-MD).

The parcel was remapped to the R3 District under the new land development code.

Zoning District Summary

The General Commercial District provides lands for a broad range of commercial uses, characterized primarily by retail, office, and service establishments, in a primarily automobile-oriented environment along corridors. Allowed uses include retail sales, personal and business services, recreation/entertainment, eating and drinking establishments, lodging, vehicle sales and services, and multi-family residential development.

Maximum density standard: no more than sixteen (16) units per acre.

Based upon a gross density calculation, the maximum number of units for this site is approximately: 3 dwelling units*.

*In calculating the maximum number of dwelling units, site characteristics, restrictions, land used for installation of infrastructure (which often amounts to 20-30% of the site) are not taken into consideration.

| Direction | Existing Zoning | Use |
|---------------|-----------------|------------------------|
| <u>North:</u> | R3 | Residence |
| <u>South:</u> | GC | Drinking Establishment |
| <u>East:</u> | GC | Repair |
| <u>West:</u> | GC | Car Wash |

Discussion

Parcel/Area Characteristics

The parcel has frontage along Weir Road. The subject parcel is undeveloped. There are no sidewalks or streetlights along this section of Weir Road. The surrounding area is primarily characterized by commercial uses with residential developed parcels north of the site. East and west of the site are commercial uses. South of the site is a drinking establishment.

Public Services

The Jackson Creek fire station (station number 32) is located on Two Notch Road, approximately .7 miles north east of the subject parcel. There are fire hydrants located along Two Notch Road. Records indicate that the parcel is in the City of Columbia’s water service area and located in East Richland County’s Public Service District sewer service area.

Being within a service area is not a guarantee that services are available to the parcel.

Plans & Policies

The 2015 Richland County Comprehensive Plan, **“PUTTING THE PIECES IN PLACE”**, designates this area as **Mixed Use Corridor**.

Land Use and Design

Areas include established commercial, office, and medium-density residential developments located along principal arterial roads, and exclude established single-family residential subdivisions that may be located in the corridor. Mixed-use corridor areas should provide a vertical and horizontal mix of suburban scale retail, commercial, office, high-density residential, and institutional land uses. Open spaces and parks are also important uses within Mixed-Use Corridors. These corridors are punctuated by higher intensity development located at “nodes” called Activity Centers where the highest density and integration of mixed uses occurs.

Desired Development Pattern

Suburban commercial corridors should be transformed over time from traditional strip commercial development to Mixed-Use Corridors connecting Activity Centers. Between Activity Centers, corridors should be redeveloped to convert single story, single use developments on individual lots to multi-story, mixed use formats that organize uses in a pedestrian-friendly format.

Traffic Characteristics

The 2023 SCDOT traffic count (Station #115) located northeast of the subject parcel on Two Notch Road identifies 33,100 Average Daily Trips (ADT’s). Two Notch Road is classified as a five lane undivided principal arterial, maintained by SCDOT with a design capacity of 38,600 ADT’s. This segment of Two Notch Road is currently operating at Level of Service (LOS) “C”.

There are no planned or programmed improvements for this section of Two Notch Road through SCDOT. There is a Bikeway planned for this section of Two Notch Road through the County Penny Sales Tax program. The project has not started and has not anticipated start date.

Conclusion

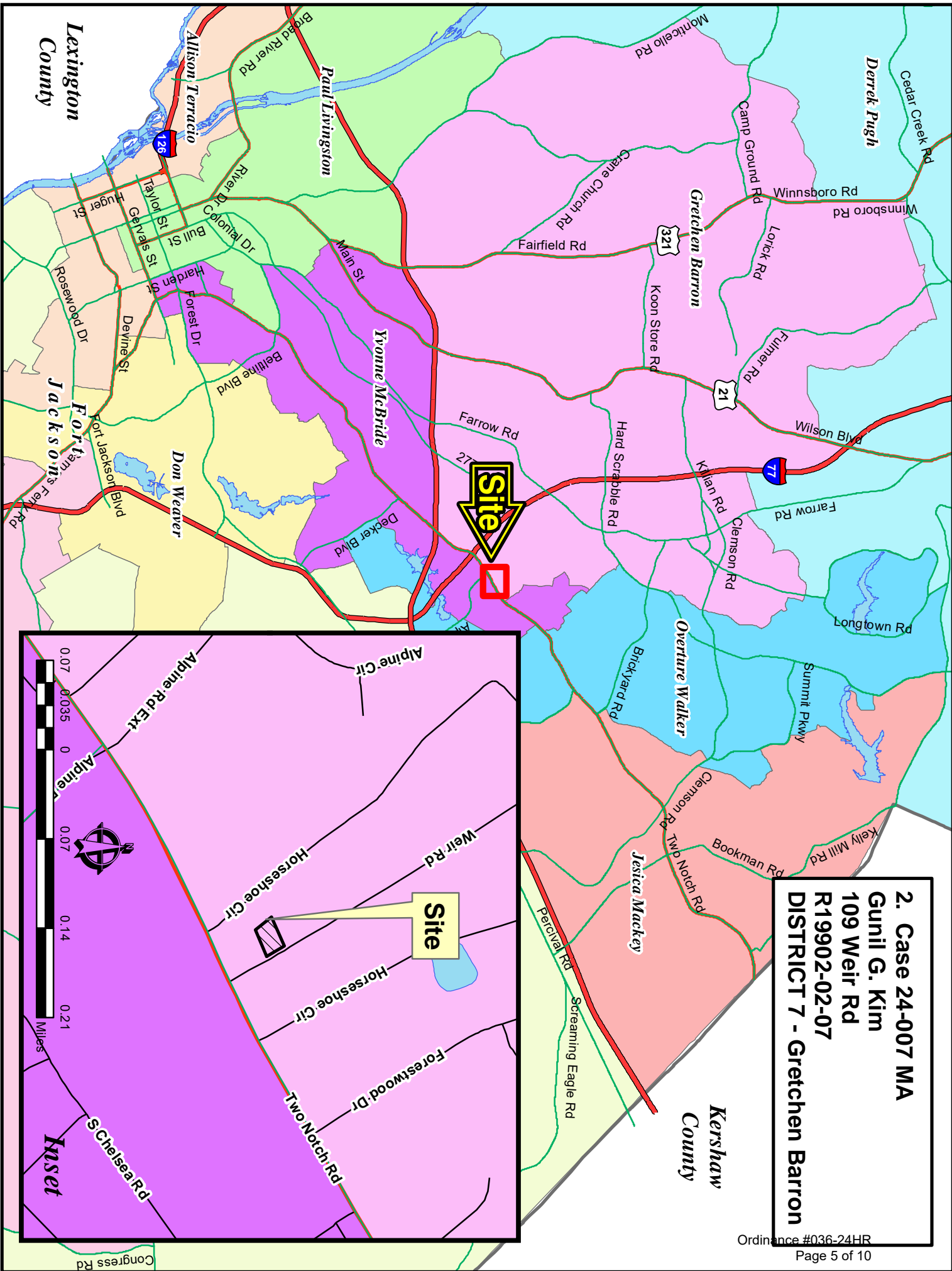
The proposed rezoning is consistent with the objectives outlined in the Comprehensive Plan. The proposed commercial district is in character with the land use and desired development pattern recommended in the 2015 Comprehensive Plan.

Principally, staff recommends **Approval** of this map amendment.

However, approval of the rezoning request would not be in character with the existing zoning designation and residential development pattern found further north along Weir Road.

Planning Commission Action

At their **May 6, 2024** meeting, the Richland County Planning Commission **agreed** with the PSDS recommendation and recommends the County Council **approve** the proposed amendment for RC Project # **24-007 MA**.

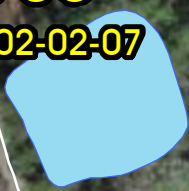


**Lexington
County**

**Kershaw
County**

**2. Case 24-007 MA
Gunil G. Kim
109 Weir Rd
R19902-02-07
DISTRICT 7 - Gretchen Barron**

CASE 24-007 MA
R3 to GC
TMS R19902-02-07



Todd Branch Dr

Forestwood Dr

Weir Rd

Two Notch Rd

Horseshoe Cir

 **SPECIAL FLOOD HAZARD AREA**

 **WETLANDS**

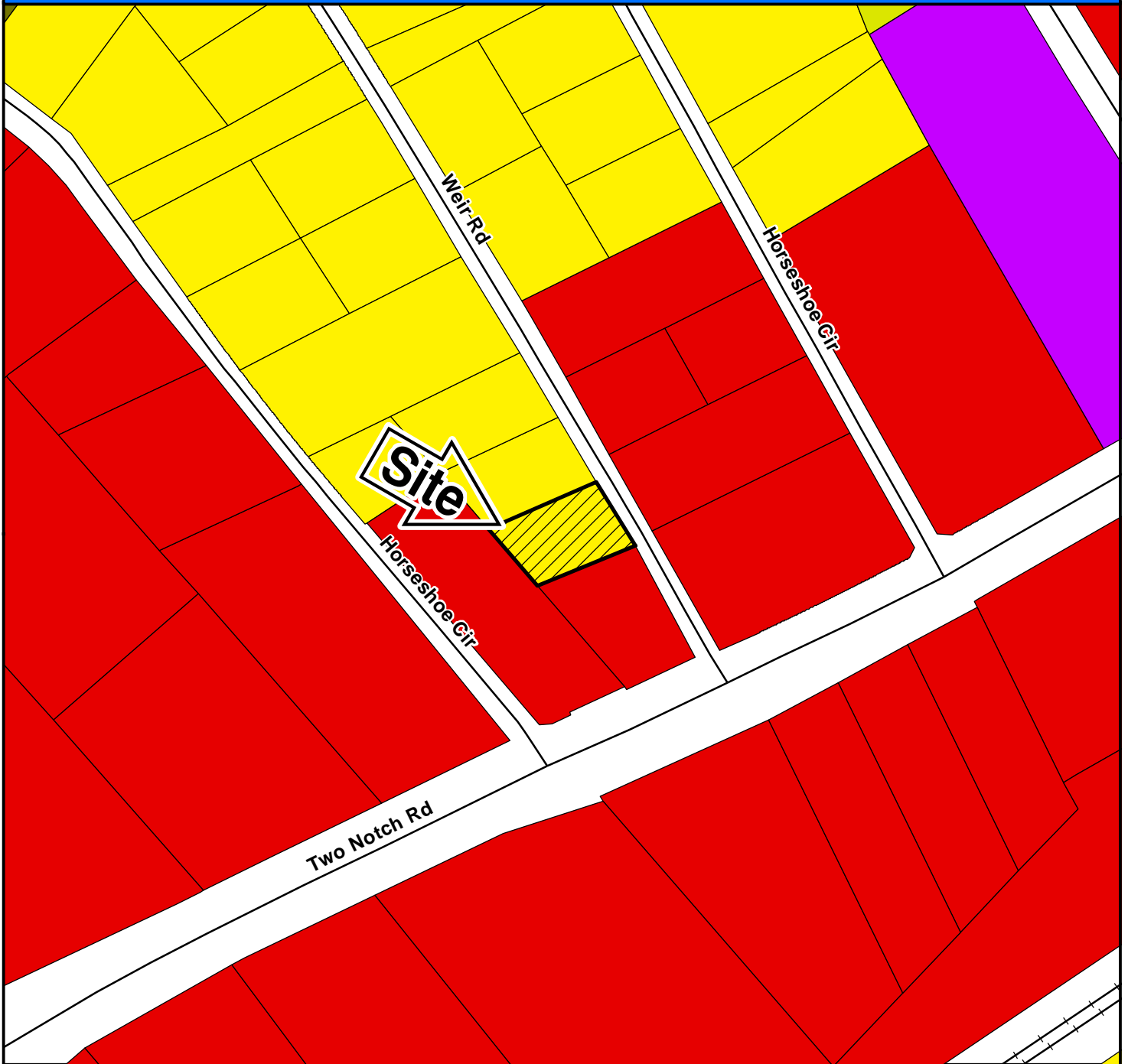


S Chelsea Rd







Woolly Ln

Case 24-007 MA

R3 to GC



ZONING CLASSIFICATIONS

| | | | | | |
|--|--|---|---|---|--|
|  OS |  R1 |  R5 |  GC |  HI |  CC-4 |
|  AG |  R2 |  R6 |  M-1 |  CC-1 |  PD |
|  HM |  R3 |  RC |  INS |  CC-2 |  Subject Property |
|  RT |  R4 |  MU1 |  LI |  CC-3 | |



NORTHEAST PLANNING AREA

FUTURE LAND USE & PRIORITY INVESTMENT AREAS

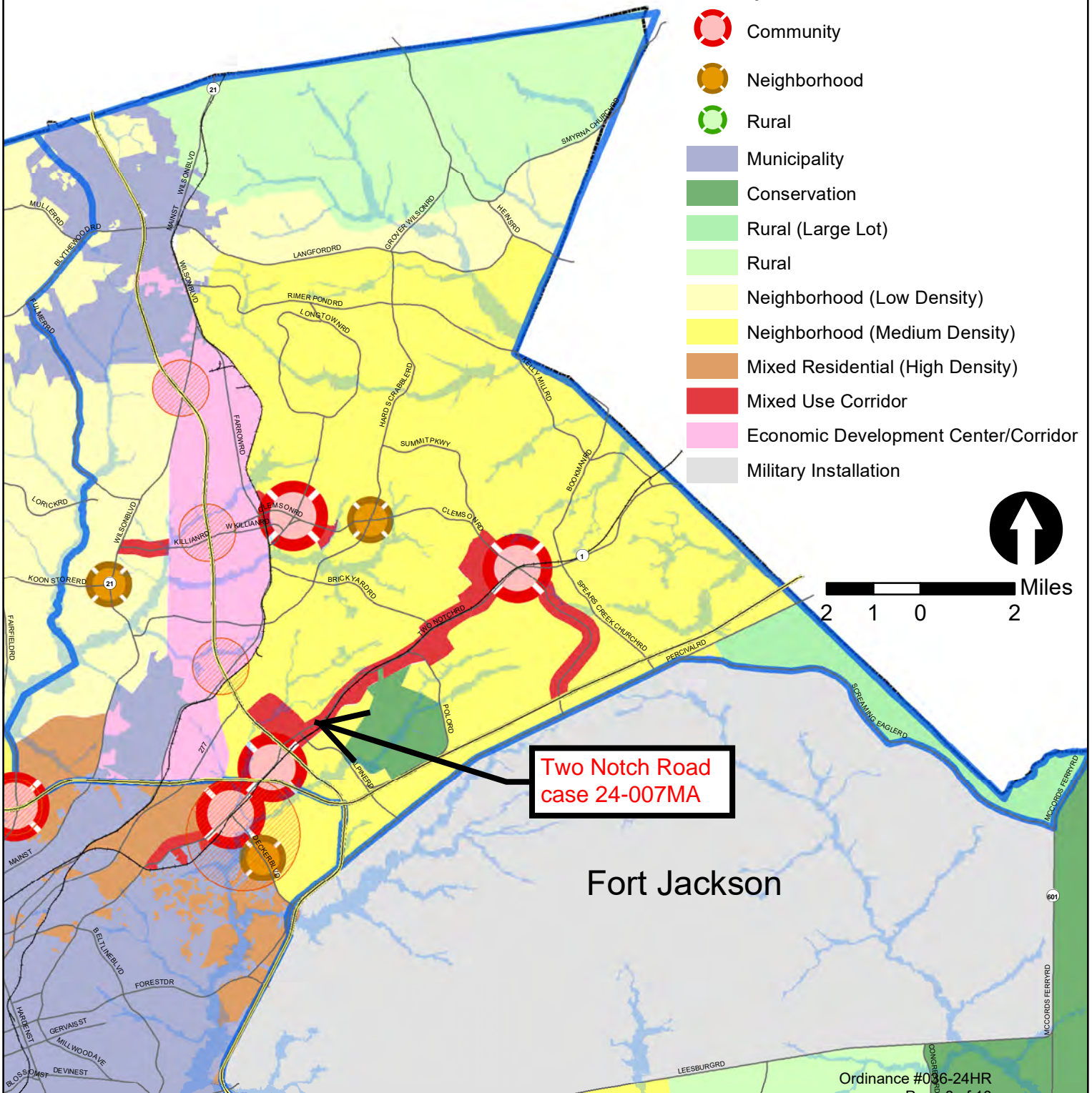


For more information on Priority Investment Areas, refer to the Priority Investment Element in Section 12 of the Comprehensive Plan.

Adopted March 17, 2015

Legend

- 100 Year Floodplain
- Priority Investment Area
- Planning Area Boundary
- Activity Center**
- Community
- Neighborhood
- Rural
- Municipality
- Conservation
- Rural (Large Lot)
- Rural
- Neighborhood (Low Density)
- Neighborhood (Medium Density)
- Mixed Residential (High Density)
- Mixed Use Corridor
- Economic Development Center/Corridor
- Military Installation



Fort Jackson

Case #24-007 MA - Zoning Districts

| Current Zoning District | |
|--|----|
| Residential Three (R3) District | |
| Use Classification, Category, Type | R3 |
| Agricultural | |
| Agriculture and Forestry | |
| Community garden | SR |
| Residential | |
| Household Living | |
| Dwelling, Single-family detached | P |
| Group home, Family | SR |
| Public, Civic and Institutional | |
| Community Service | |
| Community recreation center | SR |
| Library | SR |
| Place of worship | SE |
| Public recreation facility | SR |
| Public safety facility | P |
| Education | |
| Elementary, middle, or high school | SR |
| Parks and Open Space | |
| Park or greenway | SR |
| Transportation | |
| Transit stop | SR |
| Utilities and Communication | |
| Antenna | P |
| Utility, minor | SR |
| Commercial | |
| Recreation/Entertainment | |
| Golf course | SE |

a. Permitted Uses

A “P” indicates that the use is allowed by right in the zoning district at the head of that column.

b. Special Requirements Uses

An “SR” indicates that the use is allowed in the zoning district at the head of that column only if the Zoning Administrator determines the use complies with the use-specific standards.

c. Special Exception Uses

An “SE” indicates that the use is allowed in the zoning district only if the Board of Zoning Appeals approves a special exception permit for the use.

Case #24-007 MA - Zoning Districts

Proposed Zoning District

General Commercial (GC) District

| Use Classification, Category, Type | GC |
|---|----|
| Agricultural | |
| Agriculture and Forestry | |
| Community garden | SE |
| Agriculture and Forestry Related | |
| Farm supply and machinery sales and service | P |
| Produce stand | P |
| Residential | |
| Household Living | |
| Dwelling, Live-Work | SR |
| Dwelling, Multi-family | P |
| Group home, Family | SR |
| Group Living | |
| Group home, Large | SE |
| Rooming or boarding house | P |
| Community Service | |
| Animal shelter | SR |
| Community food services | P |
| Community recreation center | P |
| Cultural facility | P |
| Day care facility | SR |
| Government office | P |
| Hospital | P |
| Library | P |
| Membership organization facility | P |
| Nursing care facility | P |
| Place of worship | P |
| Public recreation facility | SR |
| Public safety facility | P |
| Short-term or transitional housing | SE |
| Education | |
| College or university | P |
| Elementary, middle, or high school | P |
| School, business or trade | P |
| Funeral and Mortuary Services | |
| Cemetery | SR |
| Funeral home or mortuary | P |
| Parks and Open Space | |
| Arboretum or botanical garden | P |
| Park or greenway | SR |
| Zoo | SR |
| Transportation | |
| Transit stop | SR |
| Fleet terminal | P |
| Passenger terminal, surface transportation | P |
| Utilities and Communication | |
| Antenna | P |
| Broadcasting studio | P |
| Communication tower | SE |
| Utility, minor | SR |

| Commercial | |
|--|----|
| Kennel | SR |
| Pet grooming | P |
| Veterinary hospital or clinic | SR |
| Commercial Services | |
| Artist studio | P |
| Auction house | P |
| Bank, Retail | P |
| Catering | P |
| Commercial services | P |
| Consumer goods repair | SR |
| Contractor's office | P |
| Lawn, tree, or pest control services | P |
| Linen or uniform supply | P |
| Medical, dental, and health practitioner | P |
| Non-depository personal credit institution | SR |
| Office | SR |
| Personal services | P |
| Rental center | SR |
| Self-service storage facility | SR |
| Sightseeing tour services | P |
| Tattoo or body piercing facility | SR |
| Bar or other drinking place | SR |
| Restaurant | SR |
| Restaurant, Carry-out | P |
| Restaurant, Drive-through | P |
| Recreation/Entertainment | |
| Arena, stadium, or outdoor theater | SR |
| Commercial recreation, Indoor | P |
| Commercial recreation, Outdoor | SR |
| Fitness or training center/studio | P |
| Golf course | SR |
| Marina | P |
| Performing arts center | P |
| Sexually Oriented Business | SR |
| Shooting range, Indoor | P |
| Shooting range, Outdoor | |
| Smoking place | SR |
| Retail Sales | |
| Bakery | P |
| Building supply sales | P |
| Consumer goods store | SR |
| Consumer goods store, Large | P |
| Convenience store | P |
| Drugstore | P |
| Farmers' market | P |
| Flea market | P |
| Garden center or retail nursery | P |
| Grocery/Food store | P |
| Manufactured home sales | SR |
| Outdoor power equipment store | P |
| Pawnshop | P |

| Traveler Accommodations | |
|--|----|
| Bed and breakfast | P |
| Home-based lodging | P |
| Hotel or motel | P |
| Vehicle Sales and Services | |
| Car wash | P |
| Heavy vehicle wash | P |
| Parking, Commercial | P |
| Vehicle fueling station | P |
| Vehicle parts and accessories store | P |
| Vehicle repair, minor | P |
| Vehicle sales and rental | P |
| Vehicle towing | SR |
| Industrial | |
| Freight Movement, Warehousing, and Wholesale Distribution | |
| Warehouse/Distribution facility | SR |
| Production of Goods | |
| Artisan goods production | SR |
| Manufacturing, assembly, and fabrication, Light | P |
| Waste and Recycling Facilities | |
| Recycling collection station | P |

a. Permitted Uses

A "P" indicates that the use is allowed by right in the zoning district at the head of that column.

b. Special Requirements Uses

An "SR" indicates that the use is allowed in the zoning district at the head of that column only if the Zoning Administrator determines the use complies with the use-specific standards.

c. Special Exception Uses

An "SE" indicates that the use is allowed in the zoning district only if the Board of Zoning Appeals approves a special exception permit for the use.

STATE OF SOUTH CAROLINA
COUNTY COUNCIL OF RICHLAND COUNTY
ORDINANCE NO. 037-24HR

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R32400-06-23 FROM HOMESTEAD DISTRICT (HM) TO RESIDENTIAL TRANSITION DISTRICT (RT); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R32400-06-23 from Homestead District (HM) to Residential Transition District (RT).

Section II. Severability. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional, or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section IV. Effective Date. This ordinance shall be effective from and after October 15, 2024.

RICHLAND COUNTY COUNCIL

By: _____
Jesica Mackey, Chair

Attest this 15th day of

October, 2024

Anette A. Kirylo
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.

Public Hearing: September 24, 2024
First Reading: September 24, 2024
Second Reading: October 1, 2024
Third Reading: October 15, 2024



Richland County Planning & Development Services Department

Map Amendment Staff Report

PC MEETING DATE: July 11, 2024
RC PROJECT: 24-019 MA
APPLICANT: Bonnie Joshi

LOCATION: Windsorwood Court

TAX MAP NUMBER: R32400-06-23
ACREAGE: 5.17 acres
EXISTING ZONING: HM
PROPOSED ZONING: RT

ZPH SIGN POSTING: September 13, 2024

Staff Recommendation

Approval

Background

Zoning History

The original zoning as adopted September 7, 1977 was Rural District (RU). With the adoption of the 2021 Land Development Code the Rural District (RU) was designated Homestead District (HM).

Zoning District Summary

The Residential Transition District (RT) provides lands for low-intensity residential development outside urban and suburban settings. The district is intended to serve as a transition between very low intensity rural areas and suburban residential areas. Residential development is limited to manufactured homes and detached single-family dwellings, which may be located on large lots or on family subdivisions that respect the natural features of the land and are designed to conform to the suburban/rural fringe character of the district. Development in the district includes natural buffers between adjacent uses and roadway buffers to support road corridors that have a natural appearance and limit visibility into developed areas.

Maximum density standard: no more than one (1) dwelling units per acre.

Based upon a gross density calculation*, the maximum number of units for this site is approximately: 5 dwelling units.

*Gross density calculations do not consider site characteristics or land set aside for infrastructure or opens space.

| Direction | Existing Zoning | Use |
|----------------------|-----------------|-------------------|
| <u>North:</u> | HM | Manufactured Home |
| <u>South:</u> | HM | Undeveloped |
| <u>East:</u> | AG | Undeveloped |
| <u>West:</u> | HM | Undeveloped |

Discussion

Parcel/Area Characteristics

The parcel has access to Windsorwood Court. There are no sidewalks or street lamps along this section of Windsorwood Court. The subject parcel is undeveloped. The immediate area is characterized by residential uses and undeveloped parcels. South, north and east of the site is undeveloped. North of the subject parcel is a manufactured home.

Public Services

The subject parcel is within the boundaries of School District One. The Gadsden Elementary School is located 1.27 miles northeast of the subject parcel on Goodwin Circle. The Gadsden fire station (number 19) is located 1.8 miles north of the subject parcel on Gadsden Community Center Road. Water would be provided by well and sewer is provided by septic.

Plans & Policies

2015 Comprehensive Plan

The 2015 Richland County Comprehensive Plan, ***“PUTTING THE PIECES IN PLACE”***, designates this area as ***Rural (Large Lot)***.

Land Use and Design

These are areas of mostly active agricultural uses and some scattered large-lot rural residential uses. Limited rural commercial development occurs as Rural Activity Centers located at rural crossroads, and does not require public wastewater utilities. Some light industrial and agricultural support services are located here. These areas are targets for future land conservation efforts, with a focus on prime and active agricultural lands and important natural resources. Historic, cultural, and natural resources are conserved through land use planning and design that upholds these unique attributes of the community.

Desired Development Pattern

Active working lands, such as farms and forests, and large lot rural residential development are the primary forms of development that should occur in Rural (Large Lot) areas. Residential development should occur on very large, individually-owned lots or as family subdivisions. Master planned, smaller lot subdivisions are not an appropriate development type in Rural (Large Lot) areas. These areas are not appropriate for providing public wastewater service, unless landowners are put at risk by failing septic systems. Commercial development is appropriately located within Rural Activity Centers.

Traffic Characteristics

The 2023 SCDOT traffic count (Station #246) located north of the subject parcel on Bluff Road identifies 2,500 Average Daily Trips (ADT's). Bluff Road is classified as a two-lane undivided

minor arterial, maintained by SCDOT with a design capacity of 12,400 ADT's. This portion of Bluff Road is currently operating at Level of Service (LOS) "A".

The ADTs are the total volume of traffic passing a point on a roadway during a 24-hour period. ADT data is collected by SCDOT.

There are no planned or programmed improvements for this section of Bluff Road through the County Penny Sales Tax program.

Conclusion

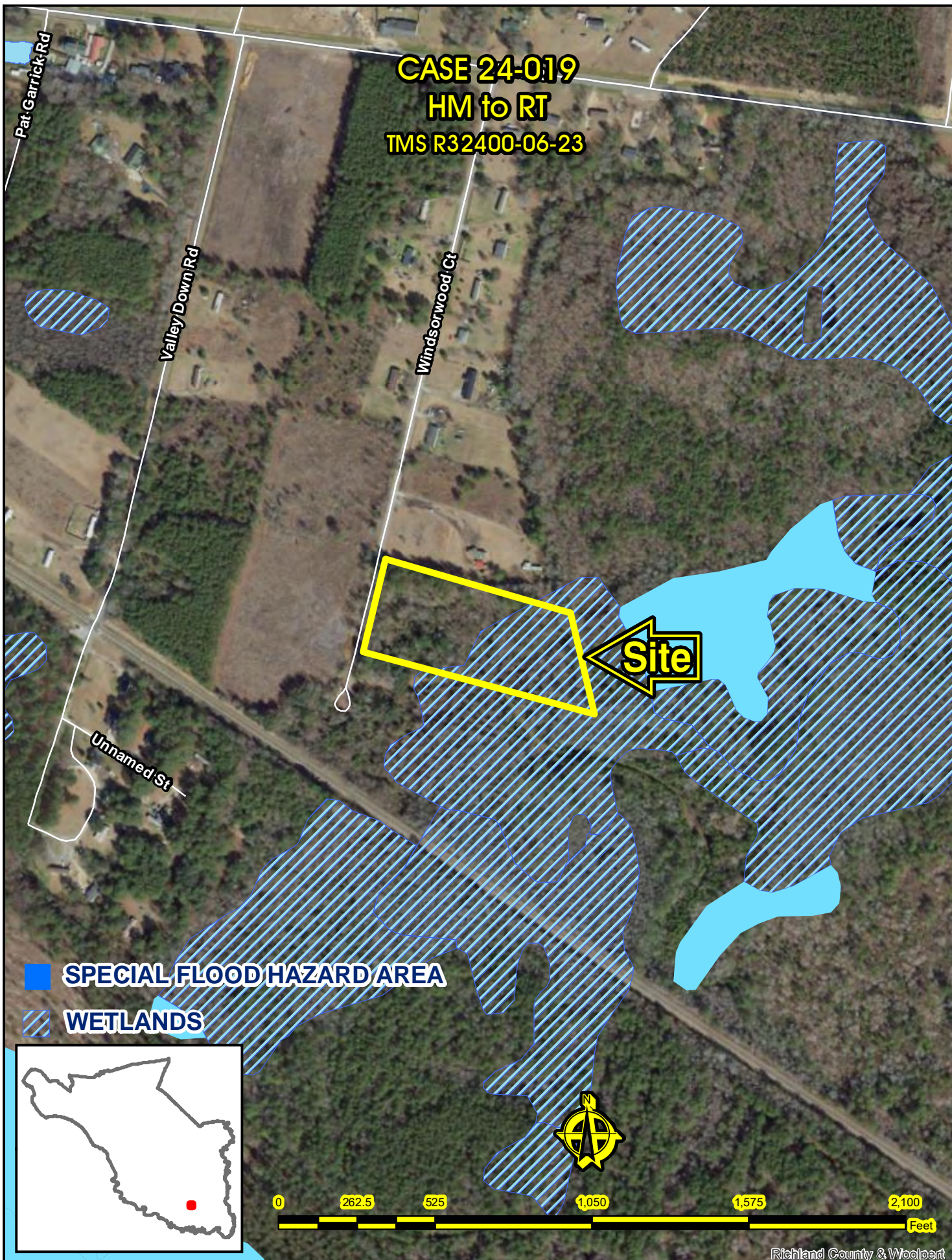
The proposed rezoning is consistent with the objectives for the Rural (large Lot) land use designation outlined in the 2015 Comprehensive Plan.


For this reason, staff recommends **Approval** of this map amendment.

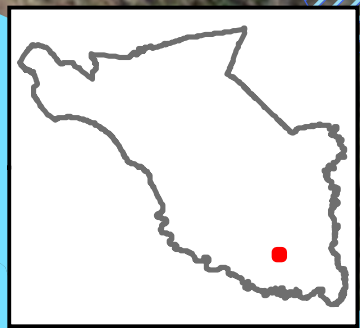
Planning Commission Action

At their **July 11, 2024** meeting, the Richland County Planning Commission agreed with the PSDS recommendation and recommends the County Council approve the proposed amendment for RC Project # **24-019 MA**.

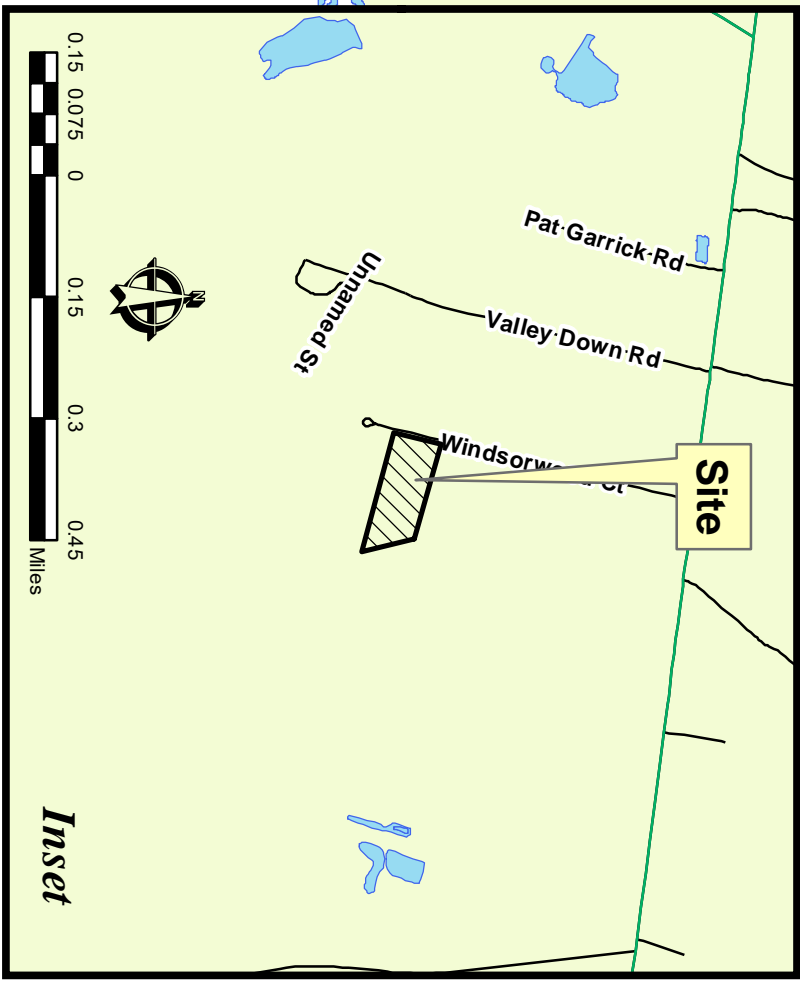
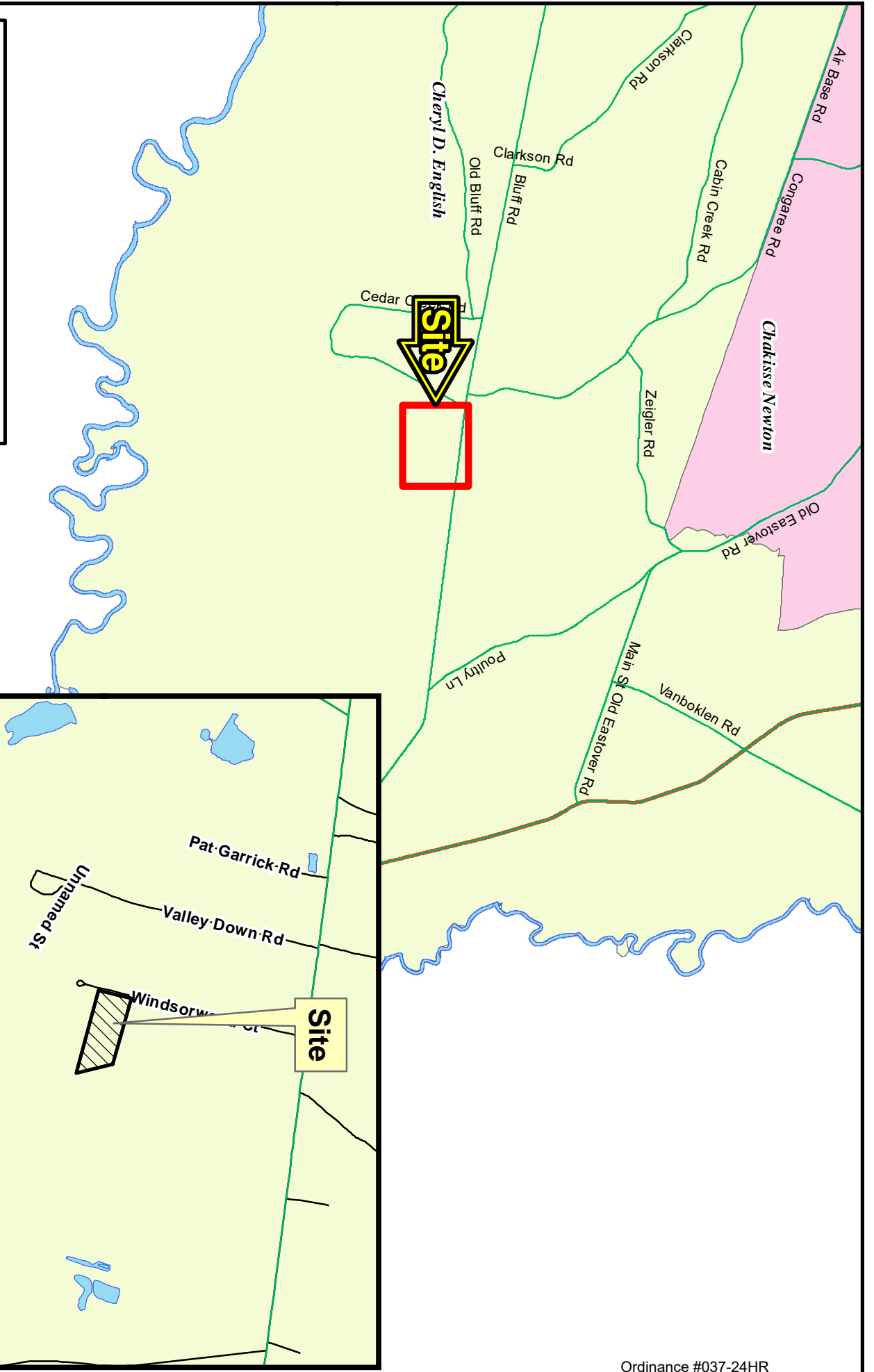
CASE 24-019
HM to RT
TMS R32400-06-23



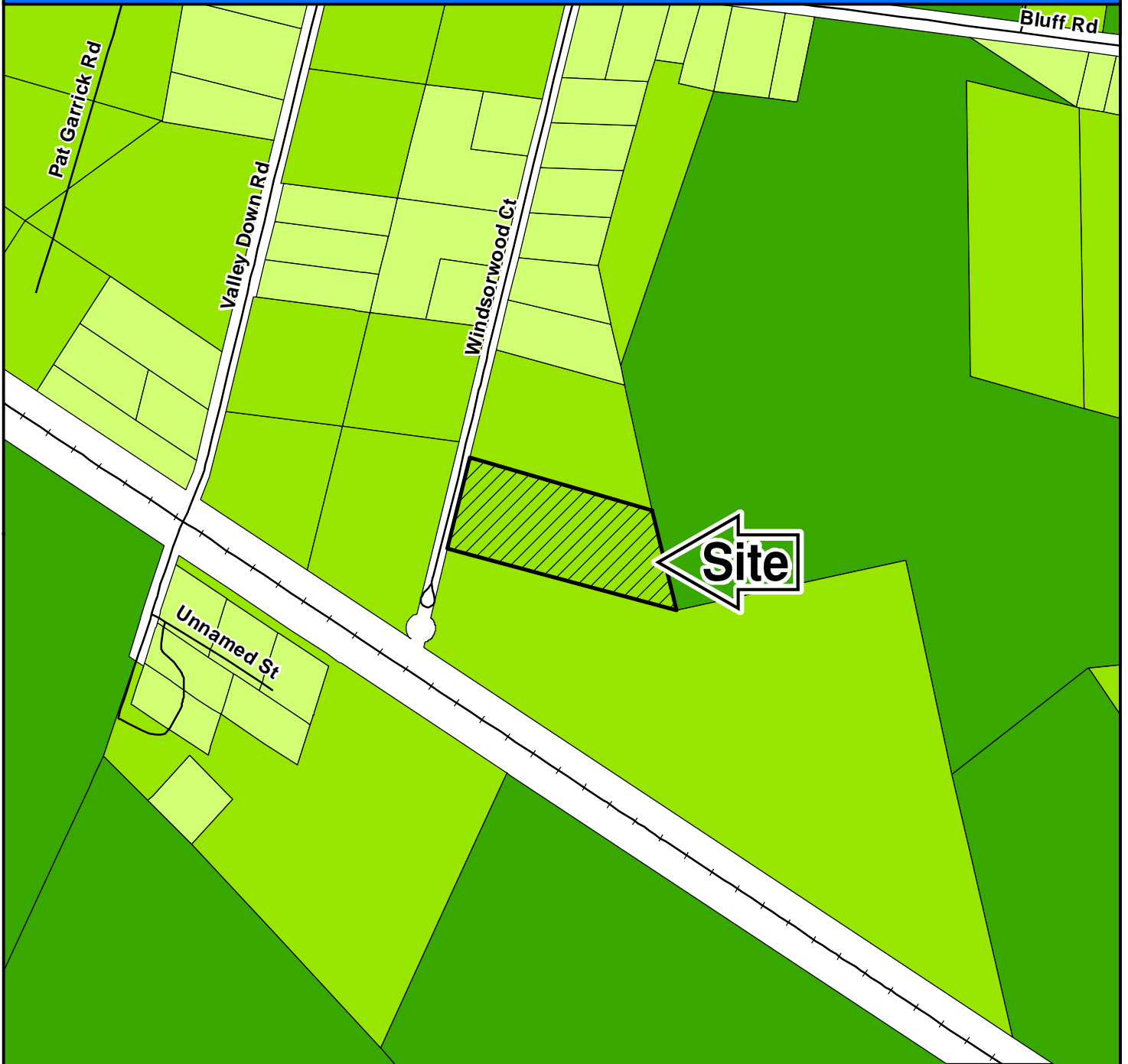
 **SPECIAL FLOOD HAZARD AREA**
 **WETLANDS**








4. Case 24-019 MA
Bonnie Joshi
E/S Windsorwood Court
R32400-06-23
DISTRICT 10 - Cheryl D. English



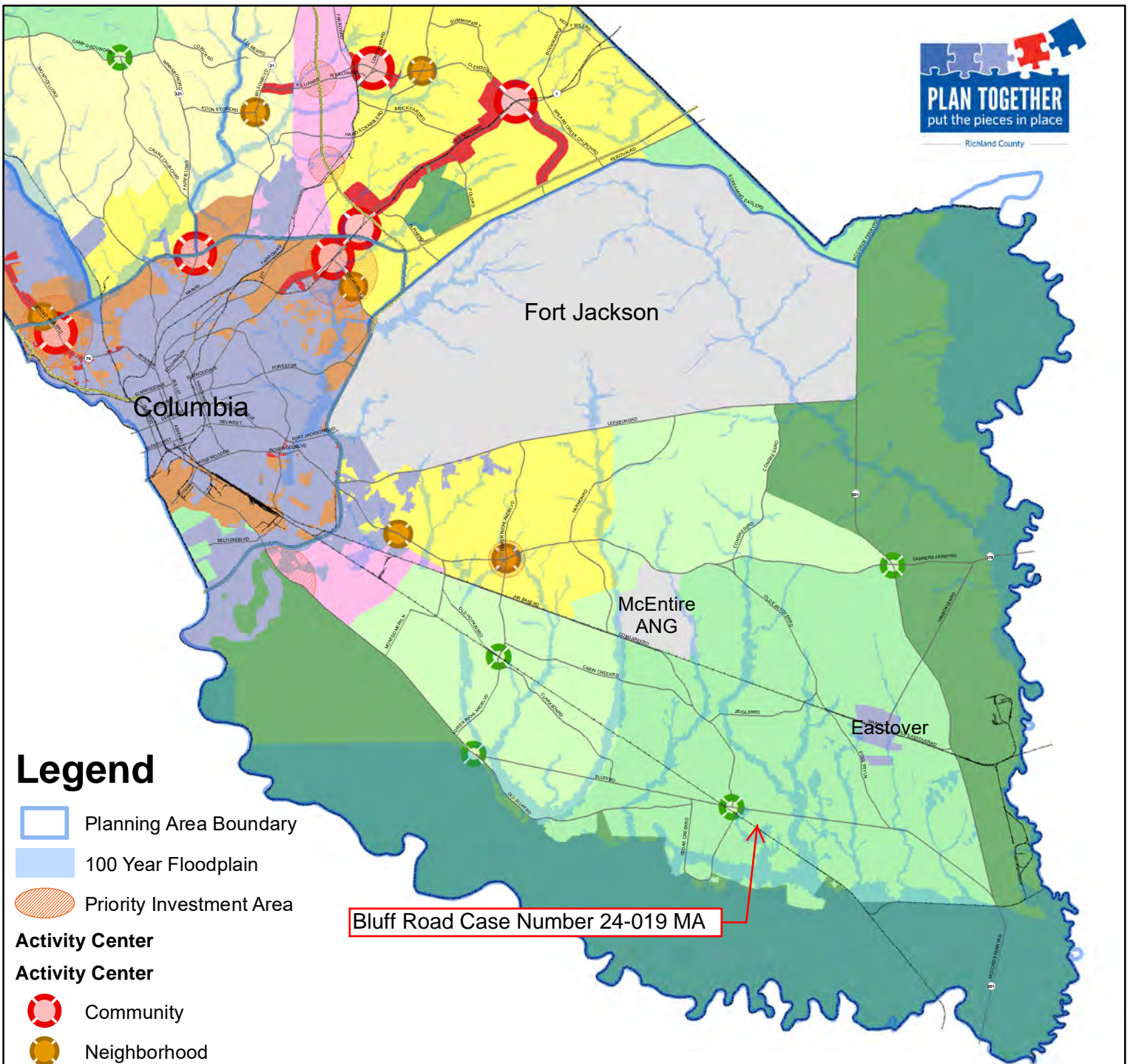
Case 24-019 MA HM to RT



ZONING CLASSIFICATIONS

| | | | | | |
|--|--|---|---|---|--|
|  OS |  R1 |  R5 |  GC |  HI |  CC-4 |
|  AG |  R2 |  R6 |  M-1 |  CC-1 |  PD |
|  HM |  R3 |  RC |  INS |  CC-2 |  Subject Property |
|  RT |  R4 |  MU1 |  LI |  CC-3 | |





Legend

- Planning Area Boundary
- 100 Year Floodplain
- Priority Investment Area
- Activity Center**
- Community
- Neighborhood
- Rural
- Municipality
- Conservation
- Rural (Large Lot)
- Rural
- Neighborhood (Low Density)
- Neighborhood (Medium Density)
- Mixed Residential (High Density)
- Mixed Use Corridor
- Economic Development Center/Corridor
- Military Installation

Bluff Road Case Number 24-019 MA

For more information on Priority Investment Areas, refer to the Priority Investment Element in Section 12 of the Comprehensive Plan.

FUTURE LAND USE & PRIORITY INVESTMENT AREAS

SOUTHEAST PLANNING AREA



Adopted March 17, 2015

Miles
4 2 0 2 4

Case #24-019 MA - Zoning Districts

Current Zoning District

Homestead (HM) District

| Use Classification, Category, Type | HM |
|---|----|
| Agricultural | |
| Agriculture and Forestry | |
| Agriculture | P |
| Community garden | SR |
| Forestry | P |
| Agriculture and Forestry Related | |
| Agriculture research facility | P |
| Agritourism | P |
| Equestrian center | SR |
| Farm distribution hub | P |
| Farm winery | SR |
| Produce stand | P |
| Riding or boarding stable | P |
| Rural retreat | SR |
| Veterinary services (livestock) | P |
| Residential | |
| Household Living | |
| Dwelling, Single-family detached | P |
| Group home, Family | SR |
| Manufactured home | SR |
| Manufactured home park | SR |
| Group Living | |
| Children's residential care home | SR |
| Continuing care community | SE |
| Group home, Large | SE |
| Rooming or boarding house | SR |
| Community Service | |
| Community recreation center | SR |
| Library | SR |
| Membership organization facility | SE |
| Place of worship | SR |
| Public recreation facility | SR |
| Public safety facility | P |
| Education | |
| Elementary, middle, or high school | SR |
| Funeral and Mortuary Services | |
| Cemetery | SR |
| Parks and Open Space | |
| Arboretum or botanical garden | SE |
| Park or greenway | SE |
| Transportation | |
| Transit stop | SR |
| Utilities and Communication | |
| Antenna | P |
| Communication tower | SE |
| Solar energy conversion system, Large scale | SR |
| Utility, minor | SR |
| Wind energy conversion system, Large scale | SE |

| | |
|---------------------------------|----|
| Commercial | |
| Kennel | SR |
| Recreation/Entertainment | |
| Golf course | SR |
| Hunt club | P |
| Shooting range, Outdoor | SE |
| Retail Sales | |
| Farmers' market | SR |
| Traveler Accommodations | |
| Bed and breakfast | SR |
| Campground | SR |
| Home-based lodging | SR |
| Industrial | |
| Extraction | |
| Borrow pit | SE |

a. Permitted Uses

A "P" indicates that the use is allowed by right in the zoning district at the head of that column.

b. Special Requirements Uses

An "SR" indicates that the use is allowed in the zoning district at the head of that column only if the Zoning Administrator determines the use complies with the use-specific standards.

c. Special Exception Uses

An "SE" indicates that the use is allowed in the zoning district only if the Board of Zoning Appeals approves a special exception permit for the use.

Case #24-019 MA - Zoning Districts

Proposed Zoning District

Residential Transition (RT) District

| Use Classification, Category, Type | RT |
|---|----|
| Agricultural | |
| Agriculture and Forestry | |
| Agriculture | P |
| Community garden | SR |
| Forestry | P |
| Agriculture and Forestry Related | |
| Agritourism | SR |
| Equestrian center | SR |
| Farm winery | SR |
| Produce stand | SR |
| Riding or boarding stable | P |
| Rural retreat | SE |
| Residential | |
| Household Living | |
| Dwelling, Single-family detached | P |
| Group home, Family | SR |
| Manufactured home | SR |
| Manufactured home park | SR |
| Group Living | |
| Children’s residential care home | SE |
| Continuing care community | SE |
| Group home, Large | SE |
| Rooming or boarding house | SR |
| Community Service | |
| Community recreation center | SR |
| Day care facility | SR |
| Library | SR |
| Membership organization facility | SE |
| Nursing care facility | SE |
| Place of worship | SR |
| Public recreation facility | SR |
| Public safety facility | P |
| Education | |
| Elementary, middle, or high school | SR |
| Funeral and Mortuary Services | |
| Cemetery | SR |
| Parks and Open Space | |
| Arboretum or botanical garden | SE |
| Park or greenway | SR |
| Transportation | |
| Transit stop | SR |
| Utilities and Communication | |
| Antenna | P |
| Communication tower | SE |
| Solar energy conversion system, Large scale | SR |
| Utility, minor | SR |

| | |
|---------------------------------|----|
| Commercial | |
| Kennel | SR |
| Recreation/Entertainment | |
| Golf course | SR |
| Hunt club | P |
| Traveler Accommodations | |
| Bed and breakfast | SR |
| Campground | SR |
| Home-based lodging | SR |
| Industrial | |
| Extraction | |
| Borrow pit | SE |

a. Permitted Uses

A “P” indicates that the use is allowed by right in the zoning district at the head of that column.

b. Special Requirements Uses

An “SR” indicates that the use is allowed in the zoning district at the head of that column only if the Zoning Administrator determines the use complies with the use-specific standards.

c. Special Exception Uses

An “SE” indicates that the use is allowed in the zoning district only if the Board of Zoning Appeals approves a special exception permit for the use.

STATE OF SOUTH CAROLINA
COUNTY COUNCIL OF RICHLAND COUNTY
ORDINANCE NO. 038-24HR

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R04200-06-13 FROM PLANNED DEVELOPMENT DISTRICT (PDD) TO RESIDENTIAL TRANSITION DISTRICT (RT); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R04200-06-13 from Planned Development District (PDD) to Residential Transition District (RT).

Section II. Severability. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional, or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section IV. Effective Date. This ordinance shall be effective from and after October 15, 2024.

RICHLAND COUNTY COUNCIL

By: _____
Jesica Mackey, Chair

Attest this 15th day of

October, 2024

Anette A. Kirylo
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.

Public Hearing: September 24, 2024
First Reading: September 24, 2024
Second Reading: October 1, 2024
Third Reading: October 15, 2024



**Richland County
Planning & Development Services Department**

Map Amendment Staff Report

PC MEETING DATE: September 5, 2024
RC PROJECT: 24-022MA
APPLICANT: Kevin Meetze

LOCATION: 1925 Kennerly Road

TAX MAP NUMBER: R04200-06-13
ACREAGE: 3.17 acres
EXISTING ZONING: PD
PROPOSED ZONING: RT

ZPH SIGN POSTING: September 13, 2024

Staff Recommendation

Disapproval

Background

Zoning History

The original zoning as adopted September 7, 1977 was Rural District (RU). The property was rezoned from RU to Planned Development District (PD) under case 02-063MA.

Zoning District Summary

The Residential Transition District (RT) provides lands for low-intensity residential development outside urban and suburban settings. The district is intended to serve as a transition between very low intensity rural areas and suburban residential areas. Residential development is limited to manufactured homes and detached single-family dwellings, which may be located on large lots or on family subdivisions that respect the natural features of the land and are designed to conform to the suburban/rural fringe character of the district. Development in the district includes natural buffers between adjacent uses and roadway buffers to support road corridors that have a natural appearance and limit visibility into developed areas.

Maximum density standard: no more than one (1) dwelling units per acre.

Based upon a gross density calculation*, the maximum number of units for this site is approximately: 3 dwelling units.

*Gross density calculations do not consider site characteristics or land set aside for infrastructure or opens space.

| Direction | Existing Zoning | Use |
|---------------|-----------------|----------------------|
| <u>North:</u> | RT | Residence |
| <u>South:</u> | RT | Residence |
| <u>East:</u> | RT/RT | Residence/ Residence |
| <u>West</u> | HM | Residence |

Discussion

Parcel/Area Characteristics

The parcel has access to Charlie Griner Road and Kennerly Road. There are no sidewalks or street lamps along this section of Kennerly Road. Charlie Griner Road is a named driveway for E911 purposes. The subject parcel has two manufactured homes. The immediate area is characterized by residential parcels and undeveloped parcels. West of the subject parcel is residence. South and north of the site are residences and undeveloped parcels. East of the site is undeveloped.

Public Services

The subject parcel is within the boundaries of School District One. The River Springs Elementary School is located approximately .1 miles southwest of the subject parcel on Connie Wright Road. The Ballentine fire station (number 20) is located 2.5 miles southwest of the subject parcel on Broad River Road. Water would be provided by the City of Columbia and sewer is provided by Richland County.

Plans & Policies

2015 Comprehensive Plan

The 2015 Richland County Comprehensive Plan, ***“PUTTING THE PIECES IN PLACE”***, designates this area as ***Neighborhood (Medium Density)***.

Land Use and Design

Areas include medium-density residential neighborhoods and supporting neighborhood commercial scale development designed in a traditional neighborhood format. These neighborhoods provide a transition from Neighborhood (Low-Density) to more intense Mixed Residential (High-Density) urban environments. Multi-family development should occur near activity centers and within Priority Investment Areas with access to roadways with adequate capacity and multimodal transportation options. Non-residential development may be considered for location along main road corridors and within a contextually-appropriate distance from the intersection of a primary arterial.

Desired Development Pattern

The primary use within this area is medium density residential neighborhoods designed to provide a mix of residential uses and densities within neighborhoods. Neighborhoods should be connected and be designed using traditional grid or modified grid designs. Non-residential uses should be designed to be easily accessible to surrounding neighborhoods via multiple transportation modes.

Traffic Characteristics

The 2023 SCDOT traffic count (Station #493) located south of the subject parcel on Coogler Road identifies 2,100 Average Daily Trips (ADT's). Coogler Road is classified as a two-lane undivided major collector, maintained by SCDOT with a design capacity of 9,800 ADT's. This portion of Coogler Road is currently operating at Level of Service (LOS) "A".

The ADTs are the total volume of traffic passing a point on a roadway during a 24-hour period. ADT data is collected by SCDOT.

There are no planned or programmed improvements for this section of Coogler Road through SCDOT or the County Penny Sales Tax program.

Conclusion

The proposed rezoning is not consistent with the objectives for the Neighborhood (Medium Density) land use designation outlined in the 2015 Comprehensive Plan. The Desired Development Pattern of the Comprehensive Plan recommends medium density residential neighborhoods as the primary use within this designation.

For this reason, staff recommends **Disapproval** of this map amendment.

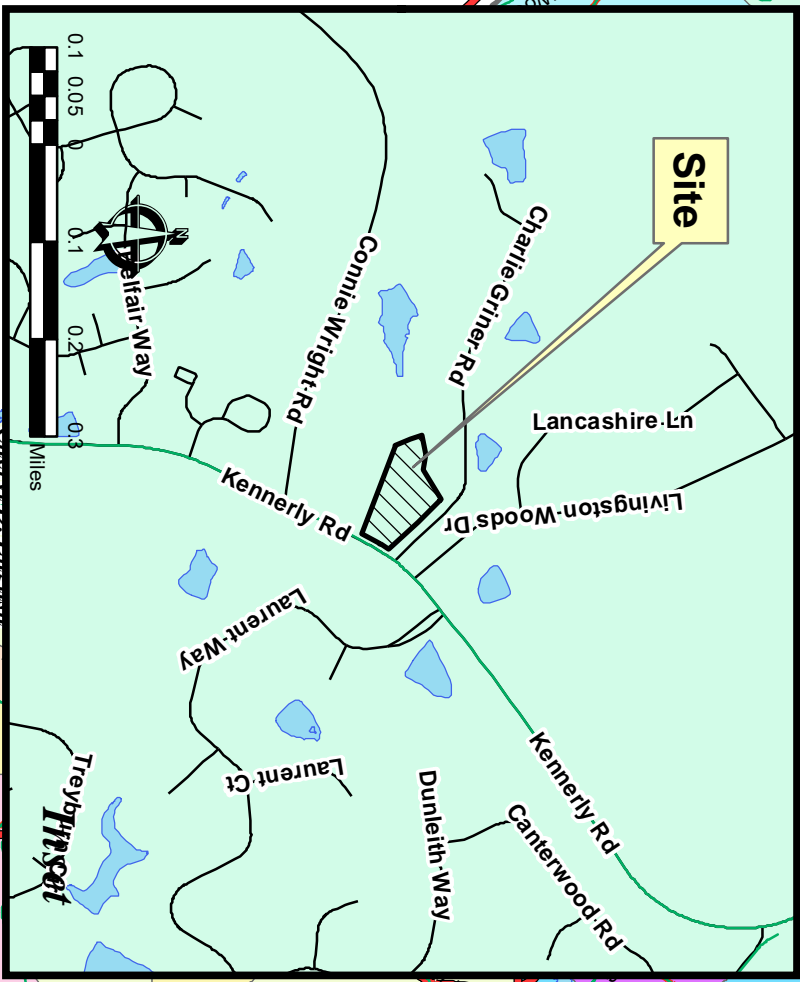
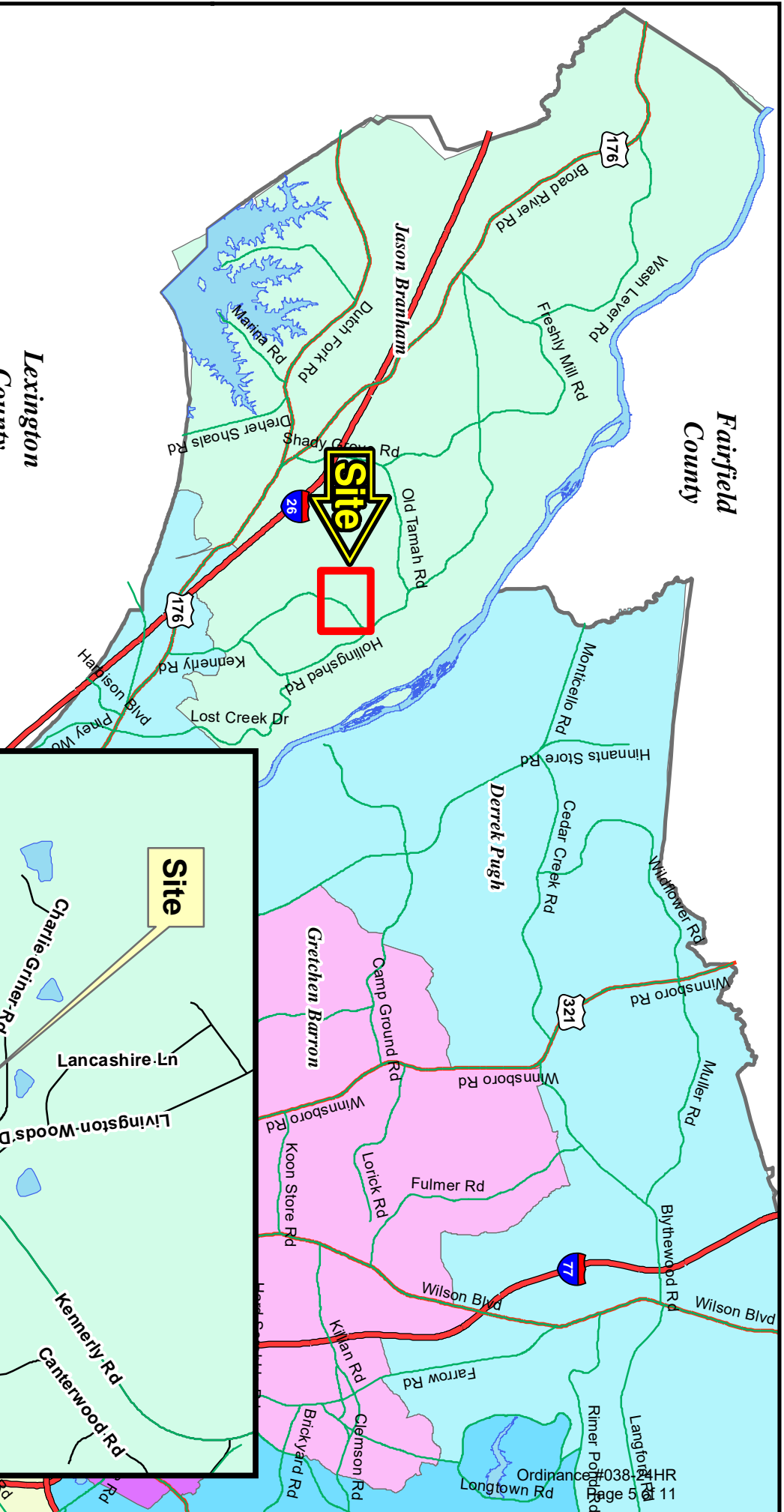
Planning Commission Action

At their **September 5, 2024** meeting, the Richland County Planning Commission **agreed** with the PDSD recommendation and recommends the County Council **disapprove** the proposed amendment for RC Project # **24-022 MA**.

2. Case 24-022 MA
Kevin Meetze
1925 Kennerly Road
R04200-06-13
DISTRICT 1 - Jason Branham

Lexington
 County

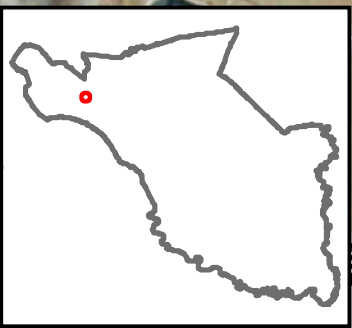
Fairfield
 County



CASE 24-022
PD to RT
TMS R04200-06-13

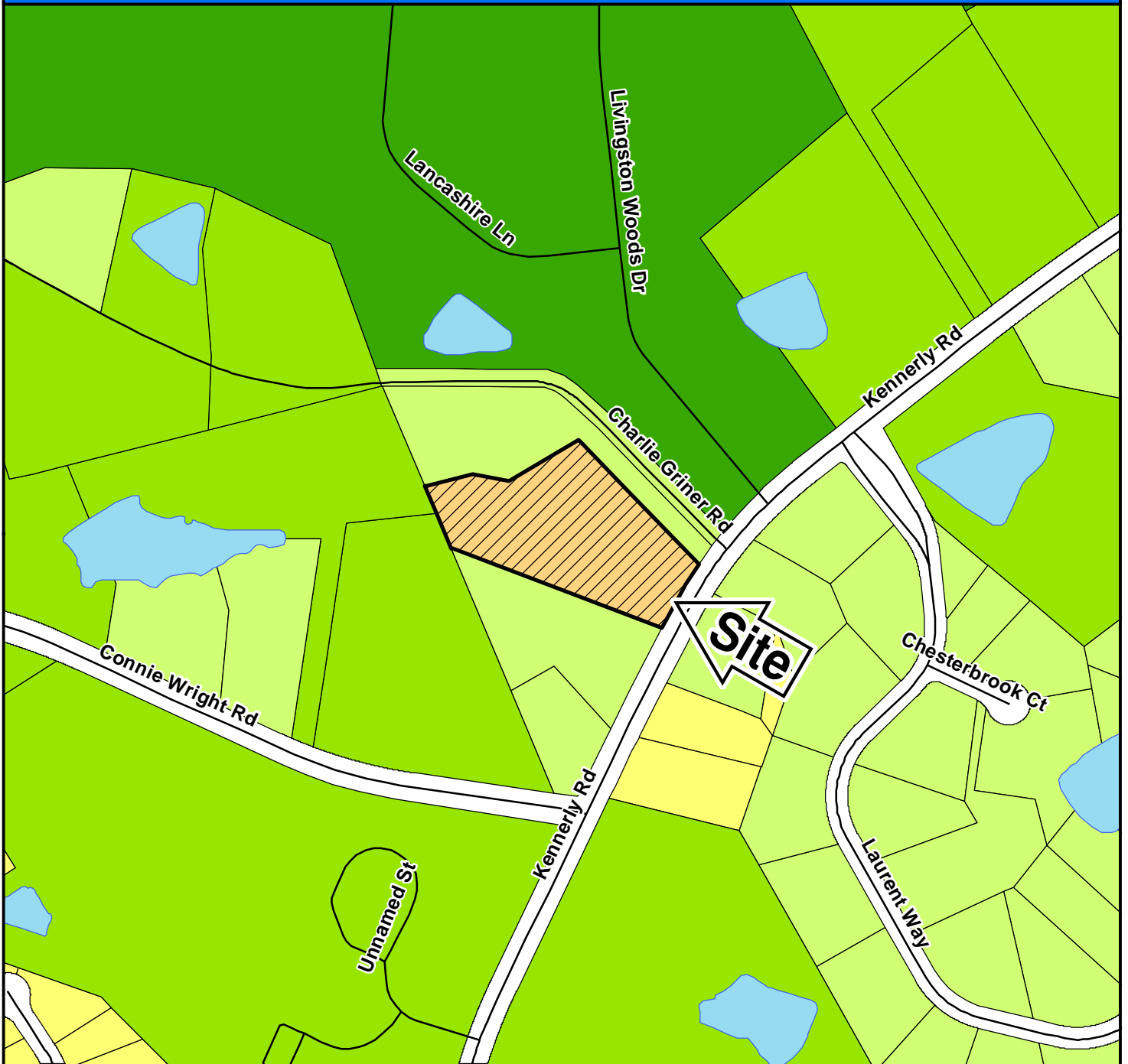


SPECIAL FLOOD HAZARD AREA
WETLANDS










Case 24-022 MA

PD to RT



ZONING CLASSIFICATIONS

| | | | | | | | | | | | |
|---|----|---|----|---|-----|---|-----|--|------|---|------------------|
|  | OS |  | R1 |  | R5 |  | GC |  | HI |  | CC-4 |
|  | AG |  | R2 |  | R6 |  | M-1 |  | CC-1 |  | PD |
|  | HM |  | R3 |  | RC |  | INS |  | CC-2 |  | Subject Property |
|  | RT |  | R4 |  | MU1 |  | LI |  | CC-3 | | |

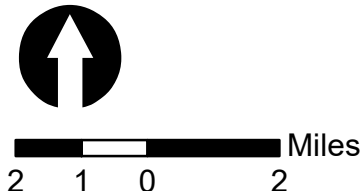
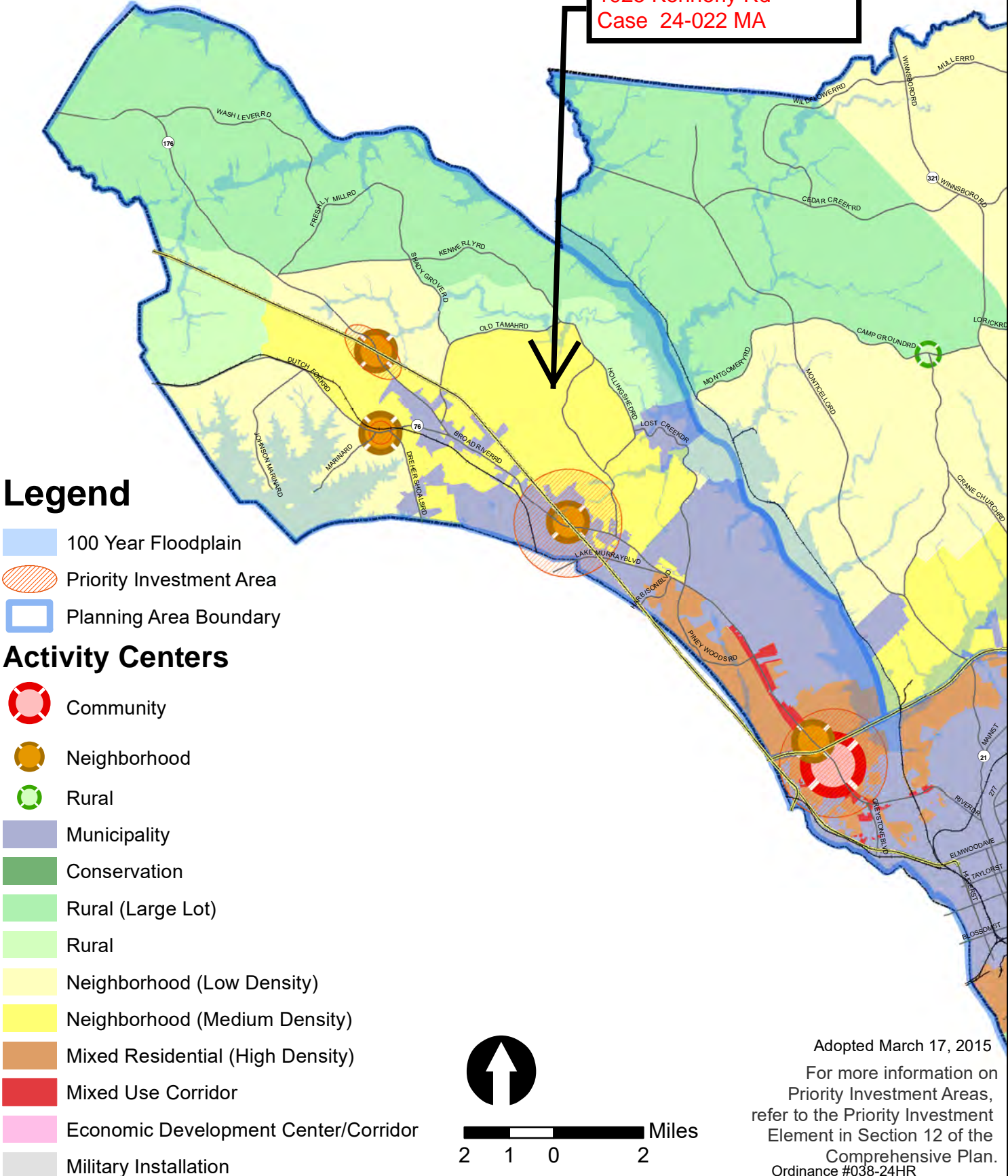


NORTHWEST PLANNING AREA

FUTURE LAND USE & PRIORITY INVESTMENT AREAS



1925 Kennerly Rd
Case 24-022 MA



Adopted March 17, 2015
 For more information on Priority Investment Areas, refer to the Priority Investment Element in Section 12 of the Comprehensive Plan.
 Ordinance #038-24HR
 Page 8 of 11

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. 057-02HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY ZONING CLASSIFICATION OF TAX MAP SHEET 04200, BLOCK 02, LOT 13, FROM RU (RURAL DISTRICT) TO PDD (PLANNED DEVELOPMENT DISTRICT).

Pursuant to the authority by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

SECTION I. The Richland County Zoning Maps are hereby amended by the reclassification of a portion of Tax Map Sheet 04200, Block 02, Lot 13, from RU (Rural District) to PDD (Planned Development District).

SECTION II. Site Development Requirements. The following site development requirements shall apply to the subject parcels:

- a) A legal description of the subject property is attached hereto as Exhibit A;
- b) The Planning Commission is authorized to decide minor amendments to the Site Plan, which is attached hereto as Exhibit B, consistent with the provisions of Chapter 26-72.13 of the County Code; and
- c) The total amount of structures on the site shall be limited to 4,000 square feet;
- d) The sole point of access to the site shall be confined to Charlie Griner Road; and
- e) All parking for the proposed facility shall be located behind the structures.

SECTION III. Severability. If any section, subsection, or clause of this ordinance shall be deemed unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

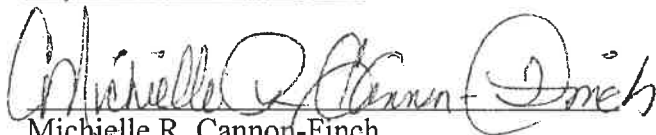
SECTION IV. Conflicting Ordinances. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.


SECTION V. Effective Date. This ordinance shall be enforced from and after October 15, 2002.

RICHLAND COUNTY COUNCIL

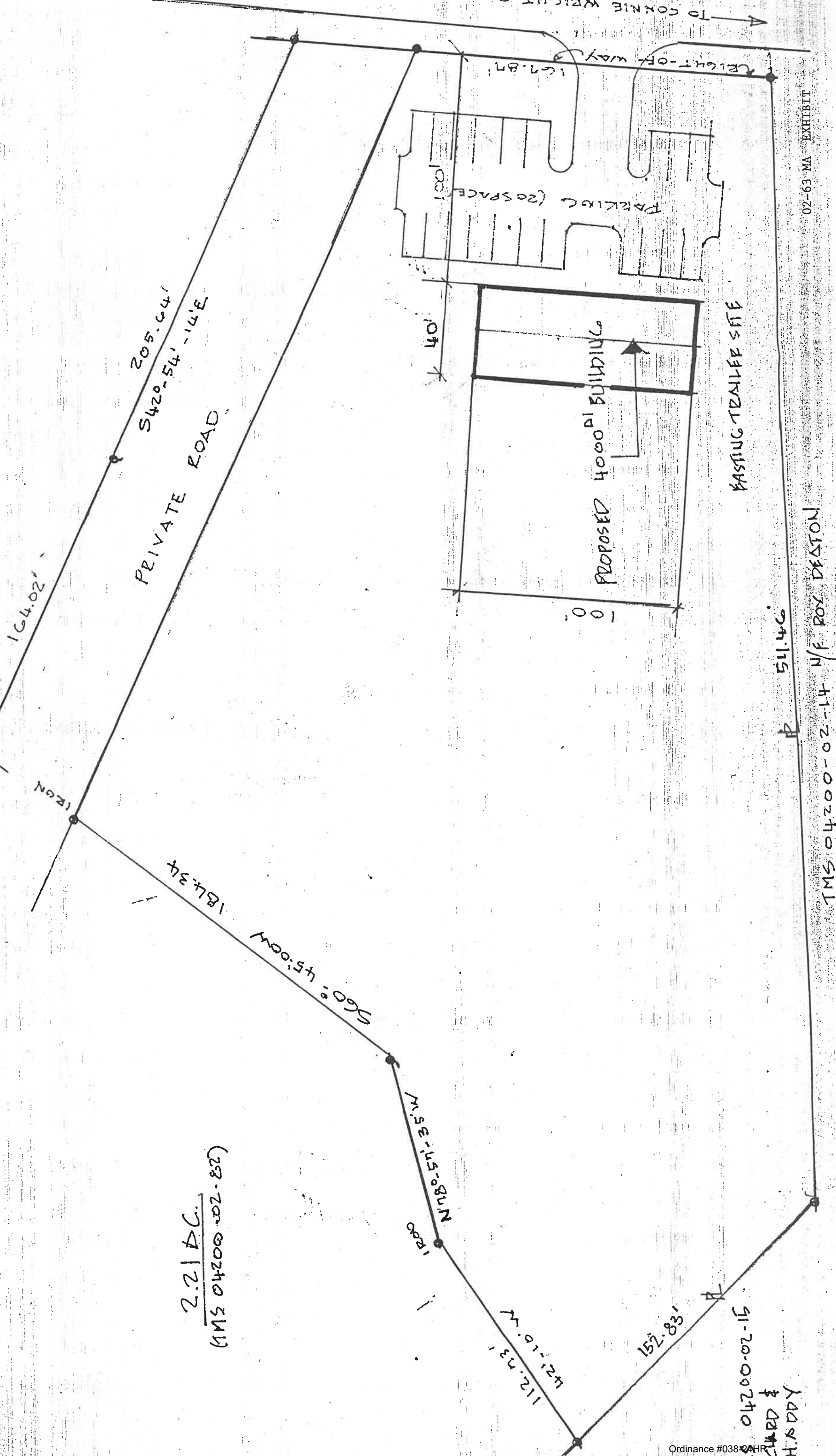
By: 
Joseph McEachern, Chair

Attest this 13TH day of
NOVEMBER, 2002.


Michelle R. Cannon-Finch
Clerk of Council

Richland County Attorney's Office

Approved As To LEGAL Form Only.
No Opinion Rendered As To Content

Public Hearing: September 24, 2002
First Reading: September 24, 2002
Second Reading: October 1, 2002
Third Reading: October 15, 2002



TMS 04200-02-14 N/F ROY DEATON

APPROVED &
J.H. ADDY

Case #24-011 MA - Zoning Districts

Current Zoning District

Residential Transition (RT) District

| Use Classification, Category, Type | RT |
|---|----|
| Agricultural | |
| Agriculture and Forestry | |
| Agriculture | P |
| Community garden | SR |
| Forestry | P |
| Agriculture and Forestry Related | |
| Agritourism | SR |
| Equestrian center | SR |
| Farm winery | SR |
| Produce stand | SR |
| Riding or boarding stable | P |
| Rural retreat | SE |
| Residential | |
| Household Living | |
| Dwelling, Single-family detached | P |
| Group home, Family | SR |
| Manufactured home | SR |
| Manufactured home park | SR |
| Group Living | |
| Children’s residential care home | SE |
| Continuing care community | SE |
| Group home, Large | SE |
| Rooming or boarding house | SR |
| Community Service | |
| Community recreation center | SR |
| Day care facility | SR |
| Library | SR |
| Membership organization facility | SE |
| Nursing care facility | SE |
| Place of worship | SR |
| Public recreation facility | SR |
| Public safety facility | P |
| Education | |
| Elementary, middle, or high school | SR |
| Funeral and Mortuary Services | |
| Cemetery | SR |
| Parks and Open Space | |
| Arboretum or botanical garden | SE |
| Park or greenway | SR |
| Transportation | |
| Transit stop | SR |
| Utilities and Communication | |
| Antenna | P |
| Communication tower | SE |
| Solar energy conversion system, Large scale | SR |
| Utility, minor | SR |

| | |
|---------------------------------|----|
| Commercial | |
| Kennel | SR |
| Recreation/Entertainment | |
| Golf course | SR |
| Hunt club | P |
| Traveler Accommodations | |
| Bed and breakfast | SR |
| Campground | SR |
| Home-based lodging | SR |
| Industrial | |
| Extraction | |
| Borrow pit | SE |

a. Permitted Uses

A “P” indicates that the use is allowed by right in the zoning district at the head of that column.

b. Special Requirements Uses

An “SR” indicates that the use is allowed in the zoning district at the head of that column only if the Zoning Administrator determines the use complies with the use-specific standards.

c. Special Exception Uses

An “SE” indicates that the use is allowed in the zoning district only if the Board of Zoning Appeals approves a special exception permit for the use.

STATE OF SOUTH CAROLINA
COUNTY COUNCIL OF RICHLAND COUNTY
ORDINANCE NO. 039-24HR

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R17003-01-04 FROM GENERAL COMMERCIAL DISTRICT (GC) TO RESIDENTIAL FIVE DISTRICT (R5); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R17003-01-04 from General Commercial District (GC) to Residential Five District (R5).

Section II. Severability. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional, or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section IV. Effective Date. This ordinance shall be effective from and after October 15, 2024.

RICHLAND COUNTY COUNCIL

By: _____
Jesica Mackey, Chair

Attest this 15th day of

October, 2024

Anette A. Kirylo
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.

Public Hearing: September 24, 2024
First Reading: September 24, 2024
Second Reading: October 1, 2024
Third Reading: October 15, 2024



**Richland County
Planning & Development Services Department**

Map Amendment Staff Report

PC MEETING DATE: September 5, 2024
RC PROJECT: 24-023 MA
APPLICANT: Madison Pickrel

LOCATION: Northeastern Freeway

TAX MAP NUMBER: R17003-01-04
ACREAGE: 21.07 acres
EXISTING ZONING: GC
PROPOSED ZONING: R5

ZPH SIGN POSTING: September 13, 2024

Staff Recommendation

Approval

Background

Zoning History

The original zoning as adopted September 7, 1977 was General Commercial District (C-3). With the adoption of the 2005 Land Development Code the General Commercial District (C-3) was designated General Commercial District (GC).

Zoning District Summary

The Residential 5 District provides lands for a broad range of high-intensity residential housing options, with good access and connectivity for vehicles, bicycles, and pedestrians. Development allowed in this district includes multi-family and attached dwellings, such as apartments, condos, and townhouse dwellings, as well as public, civic, and institutional uses that support surrounding residential development.

Maximum density standard: no more than twelve (12) units per acre.

Based upon a gross density calculation*, the maximum number of units for this site is approximately: 254 dwelling units.

*Gross density calculations do not consider site characteristics or land set aside for infrastructure or opens space.

| Direction | Existing Zoning | Use |
|----------------------|-----------------|----------------|
| <u>North:</u> | R6 | Multi-family |
| <u>South:</u> | N/A (I-20) | Interstate 20 |
| <u>East:</u> | R6 | Multi-family |
| <u>West:</u> | N/A (I-20) | Interstate 277 |

Discussion

Parcel/Area Characteristics

The parcel has access to Sprint Tree Drive. There are no sidewalks or streetlamps along this section of Spring Tree Drive. The subject parcel is undeveloped. The immediate area is characterized by multi-family uses. West and south of the subject parcel are interstates. North and east of the site are multi-family developments.

Public Services

The subject parcel is within the boundaries of School District Two. The Joseph Keels Elementary School is located .28 miles east of the subject parcel on Springcrest Drive. The Dentsville fire station (number 14) is located .66 miles southeast of the subject parcel on Firelane Road. Water is provided by the City of Columbia and sewer is provided by the East Richland County Public Service District.

Plans & Policies

2015 Comprehensive Plan

The 2015 Richland County Comprehensive Plan, ***“PUTTING THE PIECES IN PLACE”***, designates this area as ***Economic Development Center/ Corridor***.

Land Use and Design

Concentrated areas of high-quality employment facilities, integrated with or adjacent to complementary retail and commercial uses and/or medium-and high-density residential uses. This category encourages development of manufacturing, industrial, flex space, and office uses in locations that will minimally affect surrounding properties. Commercial and residential uses are secondary to employment uses.

Desired Development Pattern

Master planned industrial and business parks should include a mix of uses within single developments, including employment, convenience commercial and dining, and housing. These mixed-use employment “campuses” provide opportunities for employees to conveniently shop and dine during normal business hours. Smaller scale, single-use employment developments located along major roads should be designed to appropriately buffer manufacturing and industrial uses from adjacent properties. Secondary commercial and residential uses should be located along primary road corridors proximate to employment centers.

Traffic Characteristics

The 2023 SCDOT traffic count (Station #313) located south of the subject parcel on Parklane Road identifies 17,800 Average Daily Trips (ADT's). Parklane Road is classified as a five-lane undivided minor collector, maintained by SCDOT with a design capacity of 24,800 ADT's. This portion of Parklane Road is currently operating at Level of Service (LOS) “B”.

The ADTs are the total volume of traffic passing a point on a roadway during a 24-hour period. ADT data is collected by SCDOT.

There is a Rehab & Resurfacing Project currently under construction for this section of Parklane Road through SCDOT. The anticipated completion date is currently undetermined.

There are no projects or programs for this section of Parklane Road through the County Penny Sales Tax program.

Conclusion

The proposed rezoning is consistent with the objectives for the Economic Development Center/ Corridor zoning district land use designation outlined in the 2015 Comprehensive Plan. Multi-family housing is recommended near activity centers and within Priority Investment Areas with access to roadways with adequate capacity and multimodal transportation options. The proposed request meets the location recommendations of the Economic Development Center/ Corridor designation.

For this reason, staff recommends **Approval** of this map amendment.

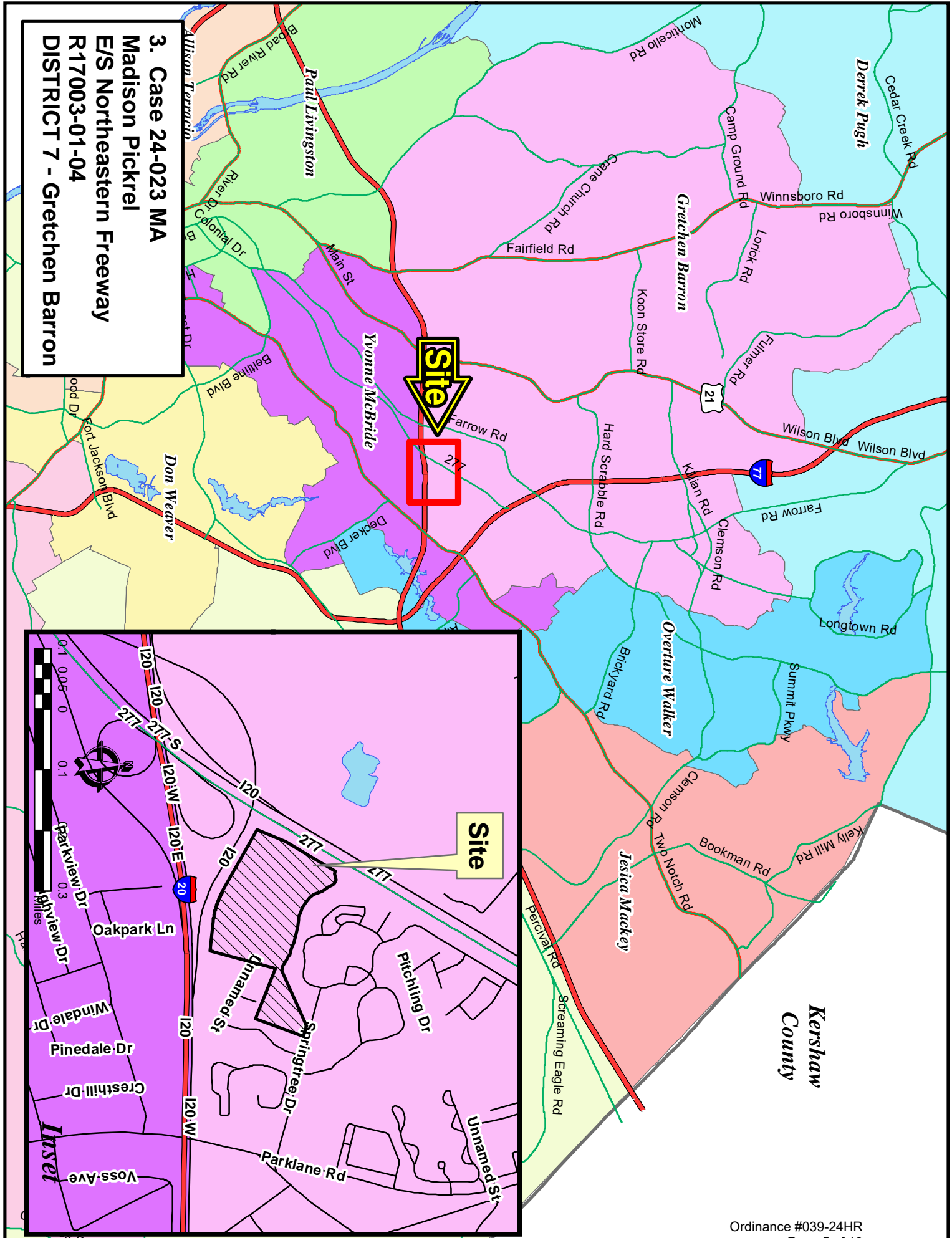
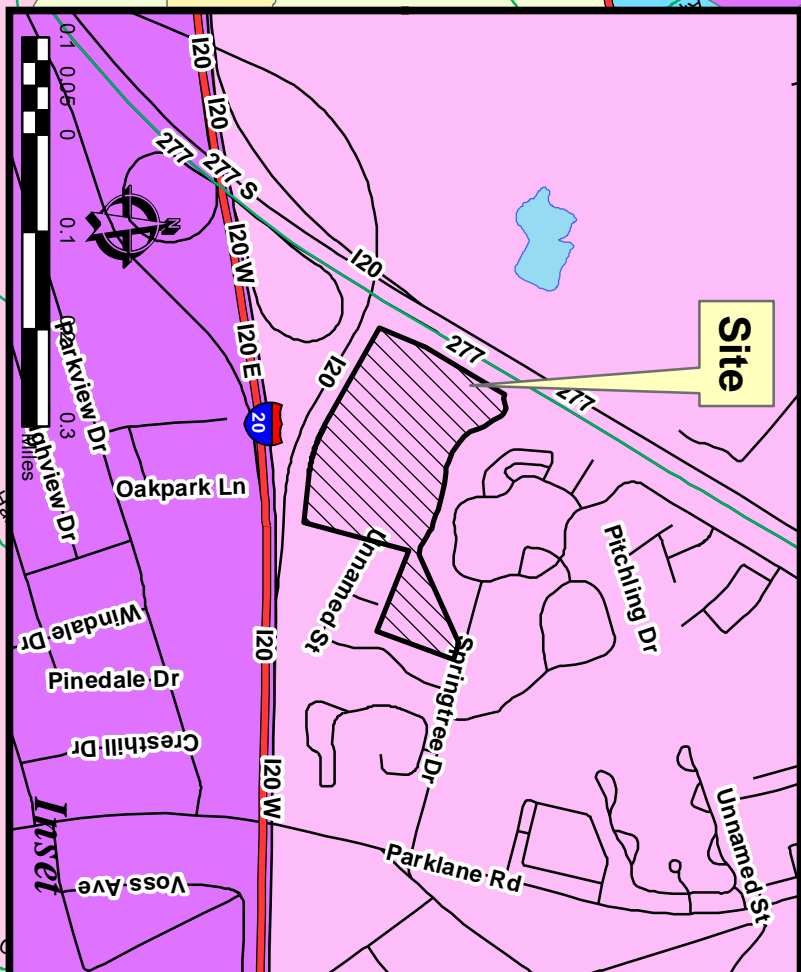
Planning Commission Action

At their **September 5, 2024** meeting, the Richland County Planning Commission **agreed** with the PDSO recommendation and recommends the County Council **approve** the proposed amendment for RC Project # **24-023 MA**.

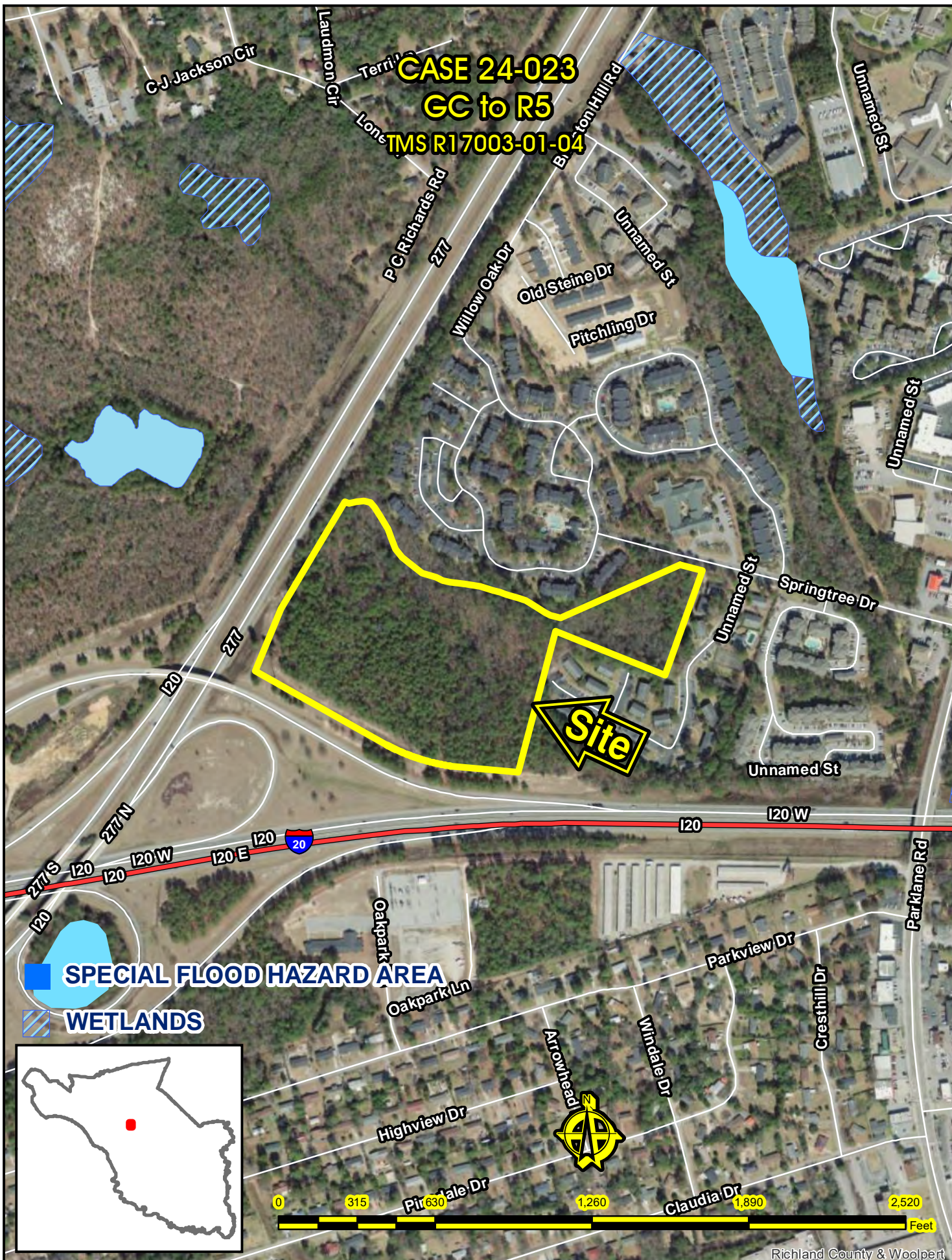
**3. Case 24-023 MA
 Madison Pickrel
 E/S Northeastern Freeway
 R17003-01-04
 DISTRICT 7 - Gretchen Barron**



Site

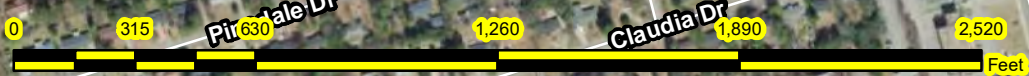
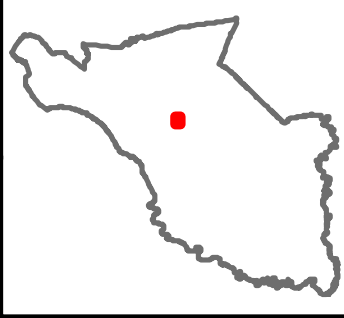


CASE 24-023
GC to R5
TMS R17003-01-04



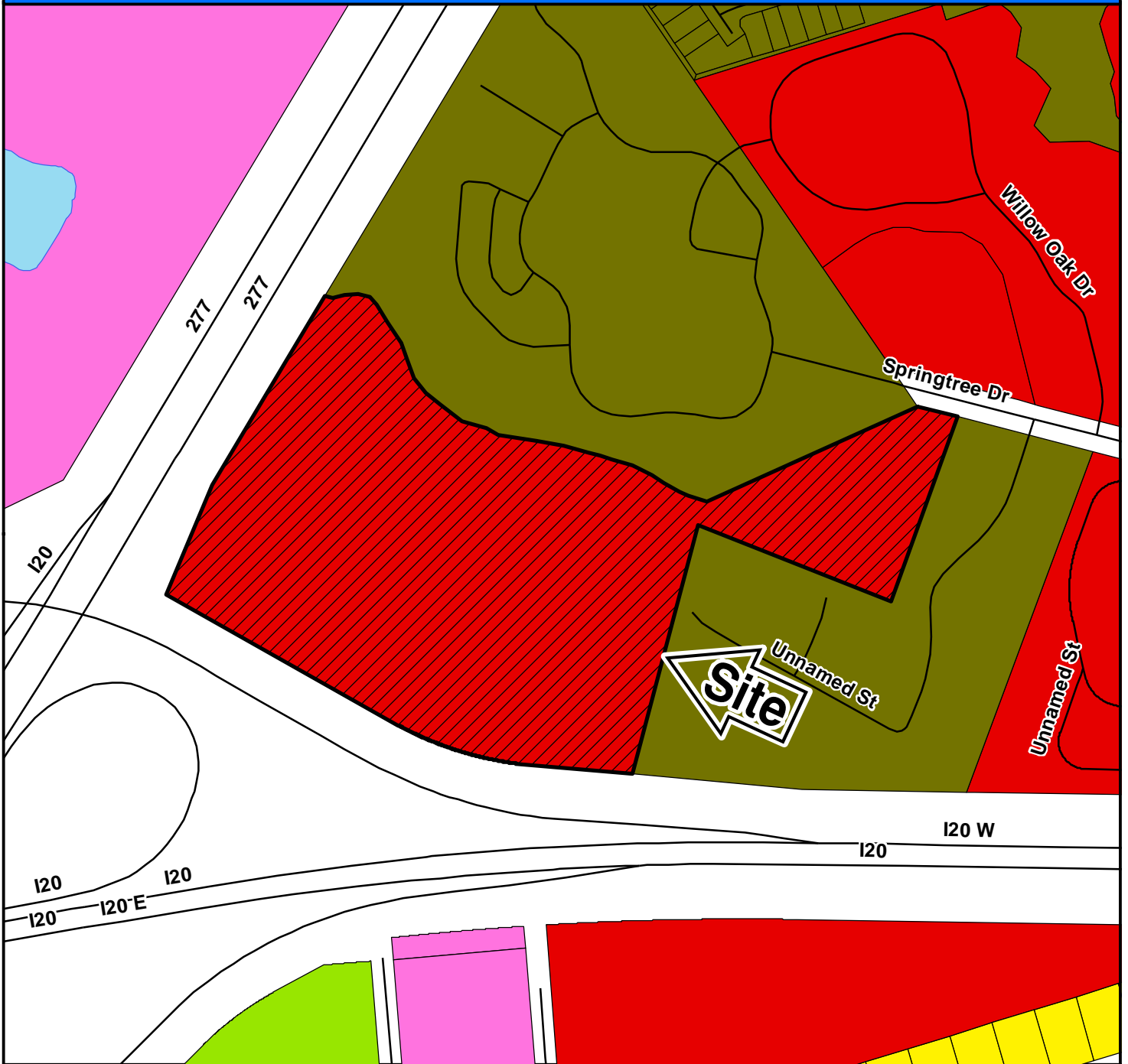
SPECIAL FLOOD HAZARD AREA

WETLANDS















Case 24-023 MA

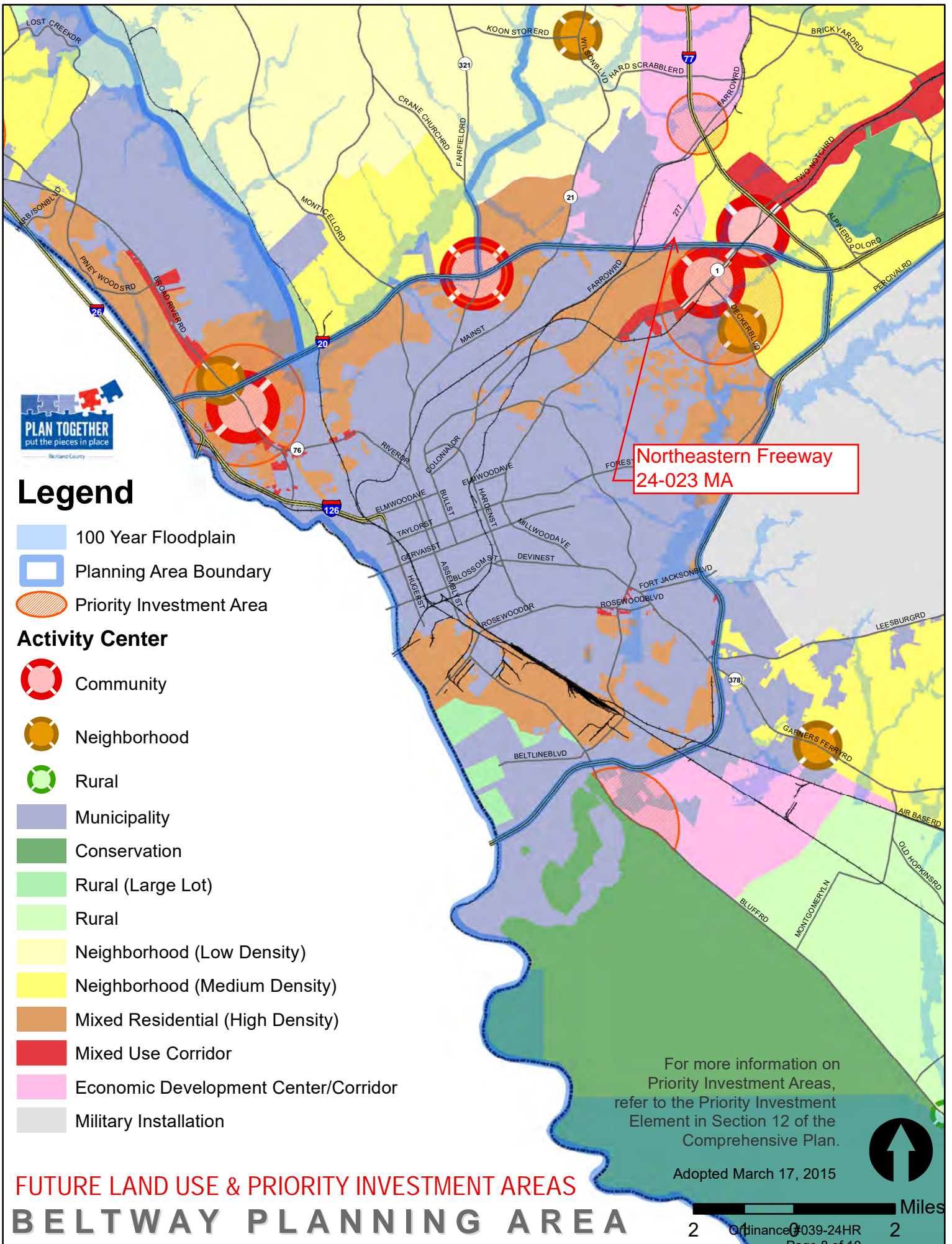
GC to R5



ZONING CLASSIFICATIONS

| | | | | | | | | | | | |
|---|----|---|----|---|-----|---|-----|--|------|---|------------------|
|  | OS |  | R1 |  | R5 |  | GC |  | HI |  | CC-4 |
|  | AG |  | R2 |  | R6 |  | M-1 |  | CC-1 |  | PD |
|  | HM |  | R3 |  | RC |  | INS |  | CC-2 |  | Subject Property |
|  | RT |  | R4 |  | MU1 |  | LI |  | CC-3 | | |





Legend

- 100 Year Floodplain
- Planning Area Boundary
- Priority Investment Area
- Activity Center**
- Community
- Neighborhood
- Rural
- Municipality
- Conservation
- Rural (Large Lot)
- Rural
- Neighborhood (Low Density)
- Neighborhood (Medium Density)
- Mixed Residential (High Density)
- Mixed Use Corridor
- Economic Development Center/Corridor
- Military Installation

Northeastern Freeway
24-023 MA

For more information on Priority Investment Areas, refer to the Priority Investment Element in Section 12 of the Comprehensive Plan.

Adopted March 17, 2015



FUTURE LAND USE & PRIORITY INVESTMENT AREAS BELTWAY PLANNING AREA

Case #24-0 MA - Zoning Districts

Current Zoning District

General Commercial (GC) District

| Use Classification, Category, Type | GC |
|---|----|
| Agricultural | |
| Agriculture and Forestry | |
| Community garden | SE |
| Agriculture and Forestry Related | |
| Farm supply and machinery sales and service | P |
| Produce stand | P |
| Residential | |
| Household Living | |
| Dwelling, Live-Work | SR |
| Dwelling, Multi-family | P |
| Group home, Family | SR |
| Group Living | |
| Group home, Large | SE |
| Rooming or boarding house | P |
| Community Service | |
| Animal shelter | SR |
| Community food services | P |
| Community recreation center | P |
| Cultural facility | P |
| Day care facility | SR |
| Government office | P |
| Hospital | P |
| Library | P |
| Membership organization facility | P |
| Nursing care facility | P |
| Place of worship | P |
| Public recreation facility | SR |
| Public safety facility | P |
| Short-term or transitional housing | SE |
| Education | |
| College or university | P |
| Elementary, middle, or high school | P |
| School, business or trade | P |
| Funeral and Mortuary Services | |
| Cemetery | SR |
| Funeral home or mortuary | P |
| Parks and Open Space | |
| Arboretum or botanical garden | P |
| Park or greenway | SR |
| Zoo | SR |
| Transportation | |
| Transit stop | SR |
| Fleet terminal | P |
| Passenger terminal, surface transportation | P |
| Utilities and Communication | |
| Antenna | P |
| Broadcasting studio | P |
| Communication tower | SE |
| Utility, minor | SR |

| Commercial | |
|--|----|
| Kennel | SR |
| Pet grooming | P |
| Veterinary hospital or clinic | SR |
| Commercial Services | |
| Artist studio | P |
| Auction house | P |
| Bank, Retail | P |
| Catering | P |
| Commercial services | P |
| Consumer goods repair | SR |
| Contractor's office | P |
| Lawn, tree, or pest control services | P |
| Linen or uniform supply | P |
| Medical, dental, and health practitioner | P |
| Non-depository personal credit institution | SR |
| Office | SR |
| Personal services | P |
| Rental center | SR |
| Self-service storage facility | SR |
| Sightseeing tour services | P |
| Tattoo or body piercing facility | SR |
| Bar or other drinking place | SR |
| Restaurant | SR |
| Restaurant, Carry-out | P |
| Restaurant, Drive-through | P |
| Recreation/Entertainment | |
| Arena, stadium, or outdoor theater | SR |
| Commercial recreation, Indoor | P |
| Commercial recreation, Outdoor | SR |
| Fitness or training center/studio | P |
| Golf course | SR |
| Marina | P |
| Performing arts center | P |
| Sexually Oriented Business | SR |
| Shooting range, Indoor | P |
| Shooting range, Outdoor | |
| Smoking place | SR |
| Retail Sales | |
| Bakery | P |
| Building supply sales | P |
| Consumer goods store | SR |
| Consumer goods store, Large | P |
| Convenience store | P |
| Drugstore | P |
| Farmers' market | P |
| Flea market | P |
| Garden center or retail nursery | P |
| Grocery/Food store | P |
| Manufactured home sales | SR |
| Outdoor power equipment store | P |
| Pawnshop | P |

| Traveler Accommodations | |
|--|----|
| Bed and breakfast | P |
| Home-based lodging | P |
| Hotel or motel | P |
| Vehicle Sales and Services | |
| Car wash | P |
| Heavy vehicle wash | P |
| Parking, Commercial | P |
| Vehicle fueling station | P |
| Vehicle parts and accessories store | P |
| Vehicle repair, minor | P |
| Vehicle sales and rental | P |
| Vehicle towing | SR |
| Industrial | |
| Freight Movement, Warehousing, and Wholesale Distribution | |
| Warehouse/Distribution facility | SR |
| Production of Goods | |
| Artisan goods production | SR |
| Manufacturing, assembly, and fabrication, Light | P |
| Waste and Recycling Facilities | |
| Recycling collection station | P |

a. Permitted Uses

A "P" indicates that the use is allowed by right in the zoning district at the head of that column.

b. Special Requirements Uses

An "SR" indicates that the use is allowed in the zoning district at the head of that column only if the Zoning Administrator determines the use complies with the use-specific standards.

c. Special Exception Uses

An "SE" indicates that the use is allowed in the zoning district only if the Board of Zoning Appeals approves a special exception permit for the use.

Case #24-0 MA - Zoning Districts

| Current Zoning District | |
|--|----|
| Residential Five (R5) District | |
| Use Classification, Category, Type | R5 |
| Agricultural | |
| Agriculture and Forestry | |
| Community garden | SR |
| Residential | |
| Household Living | |
| Dwelling, Four-family | P |
| Dwelling, Multi-family | P |
| Dwelling, Three-family | P |
| Dwelling, Townhouse | SR |
| Dwelling, Two-family | SR |
| Group home, Family | SR |
| Manufactured home park | SR |
| Group Living | |
| Children's residential care home | SE |
| Continuing care community | SR |
| Fraternity or sorority house | P |
| Group home, Large | SE |
| Rooming or boarding house | SE |
| Public, Civic and Institutional | |
| Community Service | |
| Community recreation center | SR |
| Library | SR |
| Nursing care facility | P |
| Place of worship | SR |
| Public recreation facility | SR |
| Public safety facility | P |
| Education | |
| Elementary, middle, or high school | SR |
| Parks and Open Space | |
| Park or greenway | SR |
| Transportation | |
| Transit stop | SR |
| Utilities and Communication | |
| Antenna | P |
| Utility, minor | SR |
| Commercial | |
| Golf course | SE |
| Traveler Accommodations | |
| Bed and breakfast | SR |

a. Permitted Uses

A "P" indicates that the use is allowed by right in the zoning district at the head of that column.

b. Special Requirements Uses

An "SR" indicates that the use is allowed in the zoning district at the head of that column only if the Zoning Administrator determines the use complies with the use-specific standards.

c. Special Exception Uses

An "SE" indicates that the use is allowed in the zoning district only if the Board of Zoning Appeals approves a special exception permit for the use.

STATE OF SOUTH CAROLINA
COUNTY COUNCIL OF RICHLAND COUNTY
ORDINANCE NO. 040-24HR

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R02408-01-04 FROM INSTITUTIONAL DISTRICT (INS) TO GENERAL COMMERCIAL DISTRICT (GC); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R02408-01-04 from Institutional District (INS) to General Commercial District (GC).

Section II. Severability. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional, or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section IV. Effective Date. This ordinance shall be effective from and after October 15, 2024.

RICHLAND COUNTY COUNCIL

By: _____
Jesica Mackey, Chair

Attest this 15th day of

October, 2024

Anette A. Kirylo
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.

Public Hearing: September 24, 2024
First Reading: September 24, 2024
Second Reading: October 1, 2024
Third Reading: October 15, 2024



**Richland County
Planning & Development Services Department**

Map Amendment Staff Report

PC MEETING DATE: September 5, 2024
RC PROJECT: 24-025 MA
APPLICANT: Mike Crandall

LOCATION: 1765 Dutch Fork Road

TAX MAP NUMBER: R02408-01-04
ACREAGE: 1.3 acres
EXISTING ZONING: INS
PROPOSED ZONING: GC

ZPH SIGN POSTING: September 13, 2024

Staff Recommendation

Disapproval

Background

Zoning History

The original zoning as adopted September 7, 1977 was Rural District (RU).

Zoning History for the General Area

The PDD parcel southeast of the site was rezoned from General Commercial District (GC) to Planned Development District (PDD) under case number 05-004MA (Ordinance number 060-04HR).

The General Commercial District (GC) parcel immediately east of the site on Dutch Fork Road was rezoned from Rural District (RU) under case number 04-046MA.

The Office and Institutional District (OI) parcel north of the site on Dutch Fork Road was rezoned from Rural District (RU) under case number 17-011MA.

A parcel southeast of the site on Gates Road of the site was rezoned from Rural District (RU) to General Commercial District (GC) under case number 05-22MA.

The PDD parcel southeast of the site with frontage on Dutch Fork Road and Shadowood Drive was rezoned from Rural District (RU) under case number 05-40MA.

The Light Industrial District (M-1) parcels southeast of the site on Gates Road were rezoned from Rural District (RU) under case number 02-018MA.

The General Commercial District (GC) parcel north of the site on Dutch Fork Road was rezoned from Rural District (RU) under case number 05-082MA.

Zoning District Summary

The General Commercial (GC) District is intended to accommodate a variety of commercial and non-residential uses characterized primarily by retail, office, and service establishments oriented primarily to major traffic arteries or extensive areas of predominantly commercial usage.

No minimum lot area, except as required by DHEC. The maximum allowed density for residential uses is sixteen (16) dwelling units per acre.

Based upon a gross density calculation, the maximum number of units for this site is approximately: 20 dwelling units*.

*In calculating the maximum number of dwelling units, site characteristics, restrictions, land used for installation of infrastructure (which often amounts to 20-30% of the site) are not taken into consideration.

| Direction | Existing Zoning | Use |
|----------------------|------------------------|---------------------------------|
| <u>North:</u> | INS/ GC | Office/ Veterinary Office |
| <u>South:</u> | R2/ GC | Residence/ Construction Company |
| <u>East:</u> | GC/ GC | Dentist office/Undeveloped |
| <u>West:</u> | R2 | Residence |

Discussion

Parcel/Area Characteristics

The subject property has frontage along Dutch Fork Road. Dutch Fork Road is a two-lane undivided minor arterial without sidewalks and streetlights along this section. The immediate area is characterized by commercial and industrial uses. North of the site is a veterinary office. West of the site is a residence. South of the site is an Office/Construction Company. East of the site are two General Commercial District zoned parcels.

Public Services

The subject parcel is within the boundaries of Lexington/Richland School District Five. Ballentine Elementary School is located .6 miles east of the subject parcel on Bickley Road. Records indicate that the parcel is within the City of Columbia's water service area and is in within Richland County's sewer service area. There is a fire hydrant located on Dutch Fork Road. The Dutch Fork/Ballentine fire station (station number 20) is located on Broad River Road, approximately 2 miles east of the subject parcel.

Being within a service area is not a guarantee that services are available to the parcel.

Plans & Policies

The 2015 Richland County Comprehensive Plan, ***"PUTTING THE PIECES IN PLACE"***, designates this area as ***Neighborhood (Low-Density)***.

Land Use and Design

Areas where low-density residential is the primary use. These areas serve as a transition between Rural and Neighborhood (Medium-Density) areas, and are opportunities for low-density traditional neighborhood development and open space developments that preserve open spaces and natural features. Commercial development should be located within nearby Neighborhood Activity Centers, and may be considered for location along main road corridors

and within a contextually-appropriate distance from the intersection of a primary arterial. Places of worship and parks are appropriate institutional uses, but should be designed to mitigate impacts on surrounding neighborhoods. Industrial development with significant community impacts (i.e., noise, exhaust, odor, heavy truck traffic) is discouraged in these areas.

Desired Development Pattern

Lower-density, single-family neighborhood developments are preferred. Open space developments that provide increased densities in trade for the protection of open spaces and recreational areas are also encouraged (see Desired Pattern for Rural areas for more information on open space developments). Residential developments that incorporate more open spaces and protection of natural areas through the use of natural stormwater management techniques, such as swales, are encouraged. Homes in neighborhoods can be supported by small-scale neighborhood commercial establishments located at primary arterial intersections, preferably within Neighborhood Commercial Activity Centers.

Traffic Characteristics

The 2023 SCDOT traffic count (Station #145) located southeast of the subject parcel on Dutch Fork Road identifies 28,200 Average Daily Trips (ADT's). Dutch Fork Road is classified as a five lane undivided minor arterial, maintained by SCDOT with a design capacity of 24,800 ADT's. Dutch Fork Road is currently operating at Level of Service (LOS) "F".

There are no planned or programmed improvements for this section of Dutch Fork Road through the SCDOT or the County Penny Sales Tax program.

Conclusion

Staff is of the opinion that the proposed rezoning is not consistent with the objectives outlined in the Comprehensive Plan.

According to the Plan, commercial development should be located within nearby Neighborhood Activity Centers, and may be considered for location along main road corridors and within a contextually-appropriate distance of a primary arterial. The subject parcel is located along a main road corridor, but the proposed zoning designation would allow for commercial uses that are more intense than the neighborhood scale recommended by the Plan.

For these reasons, staff recommends **Disapproval** of this map amendment.

However, the proposed zoning request would be in character with the adjacent land uses.

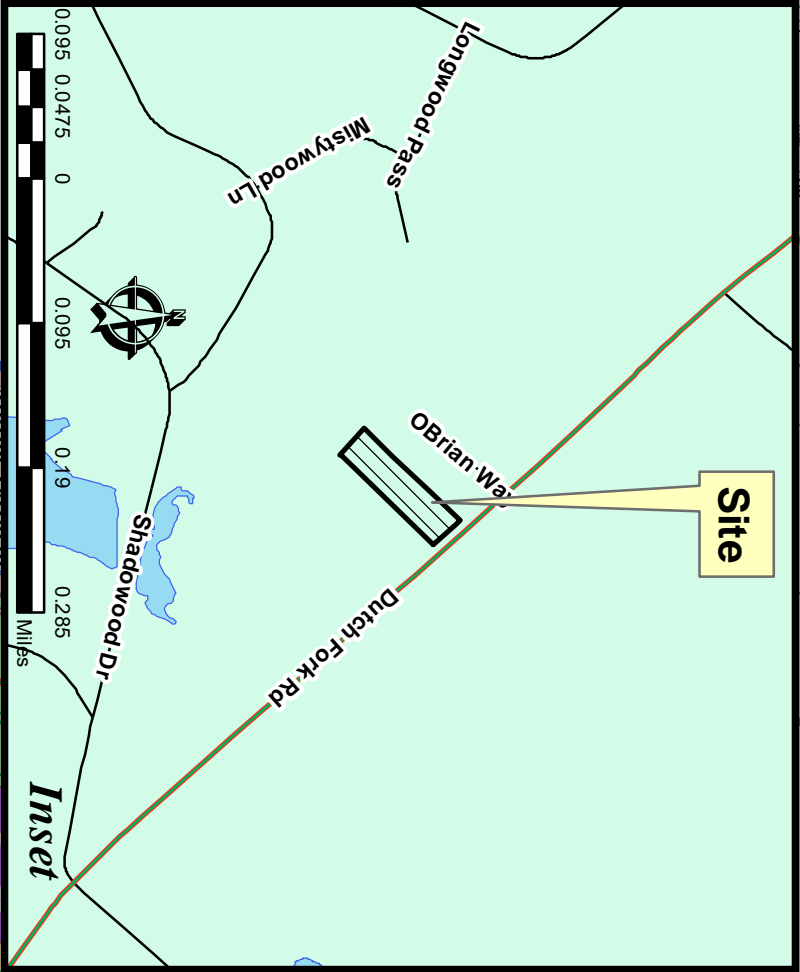
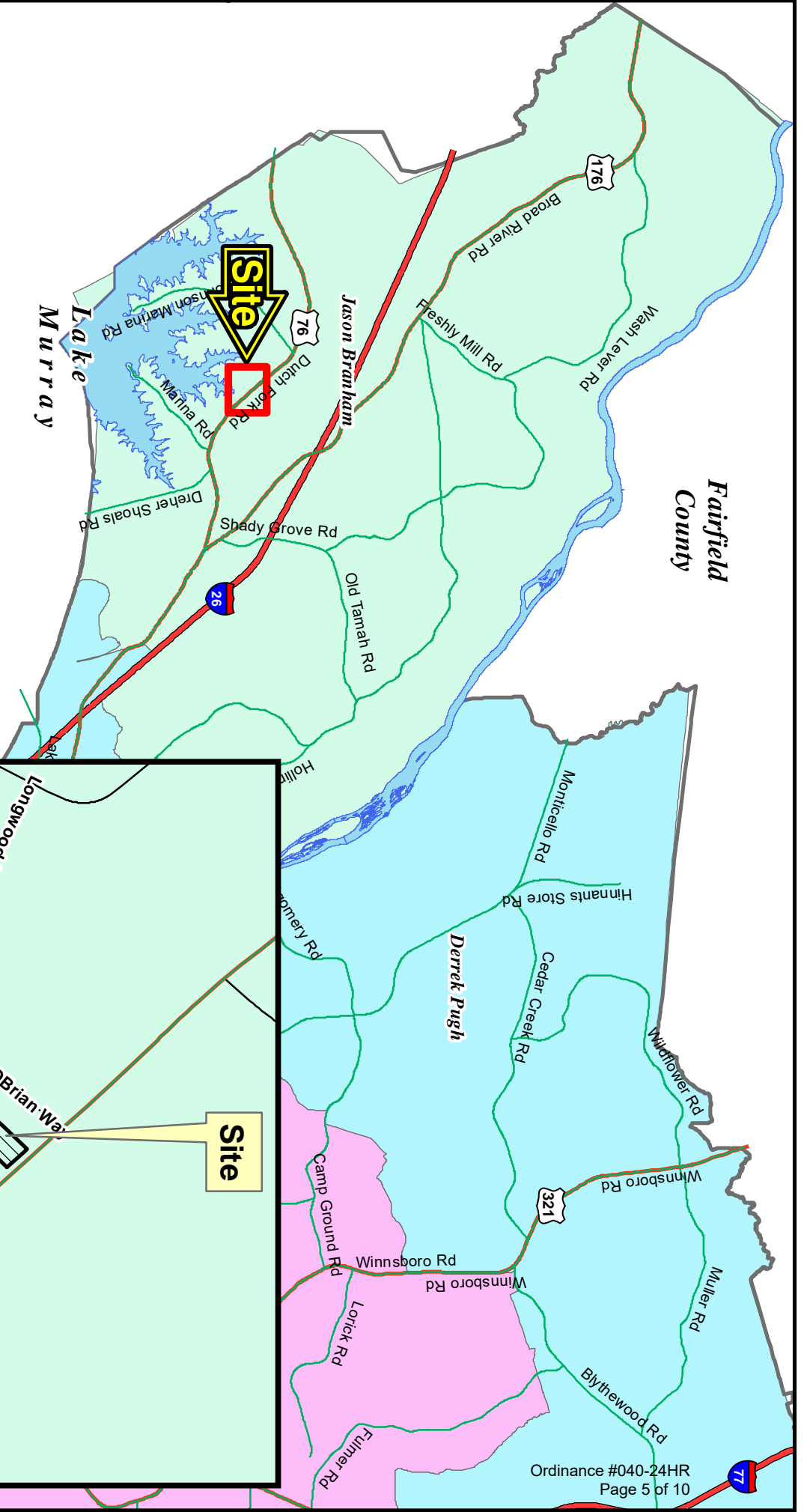
Planning Commission Action

At their **September 5, 2024** meeting, the Richland County Planning Commission **disagreed** with the PDSD recommendation for the following reason:

- The requested zoning designation is in character with the adjacent land uses.

The PC recommends the County Council **approve** the proposed amendment for RC Project # **24-025 MA**.

5. Case 24-025 MA
 Mike Crandall
 1765 Dutch Fork Road
 R02408-01-04
 DISTRICT 1 - Jason Branham

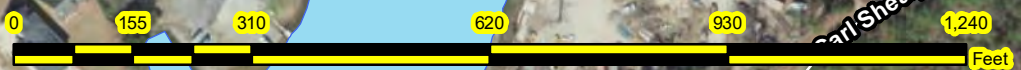


CASE 24-025
INS to GC
TMS R02408-01-04

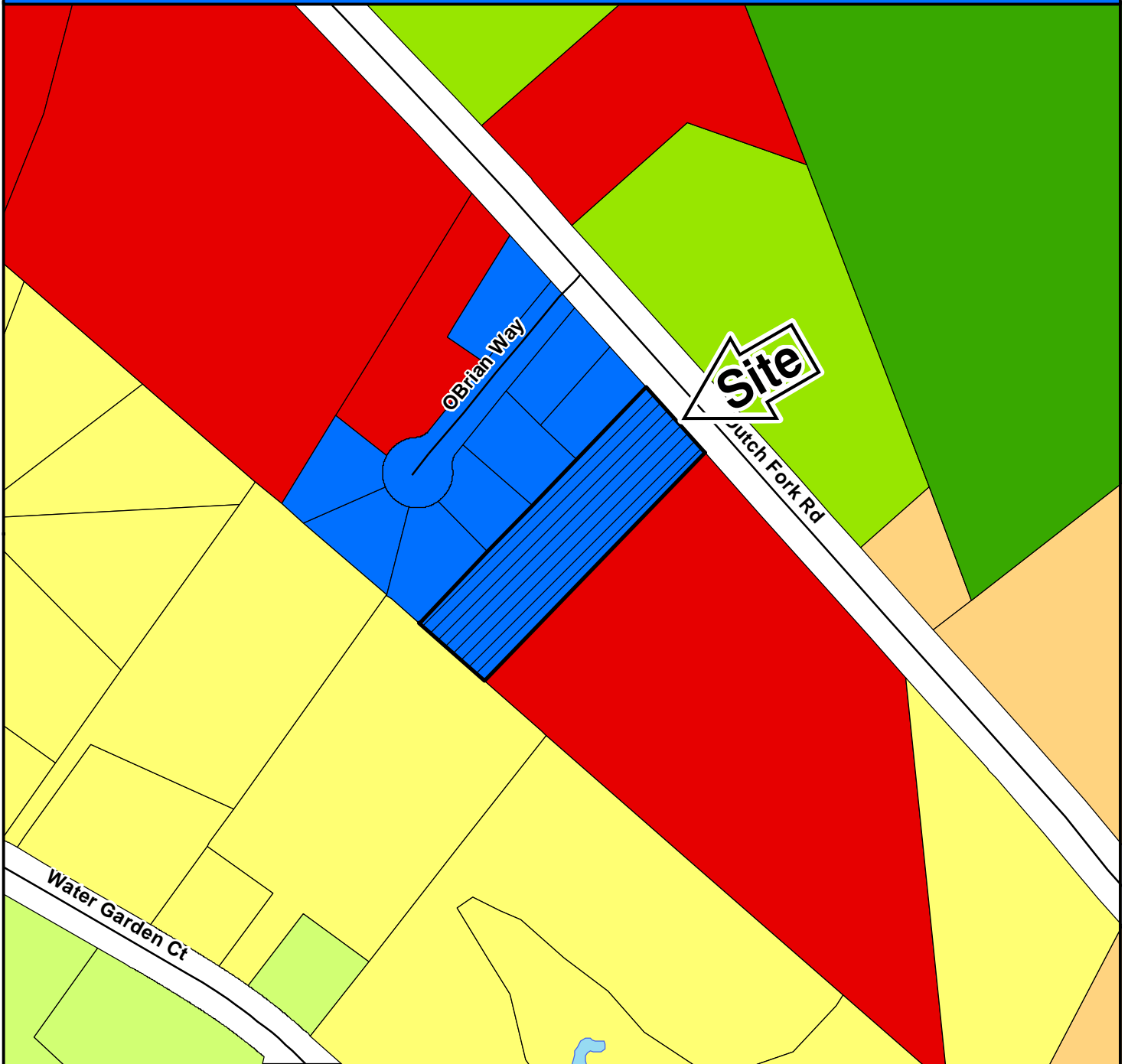


 **SPECIAL FLOOD HAZARD AREA**

 **WETLANDS**



Case 24-025 MA INS to GC



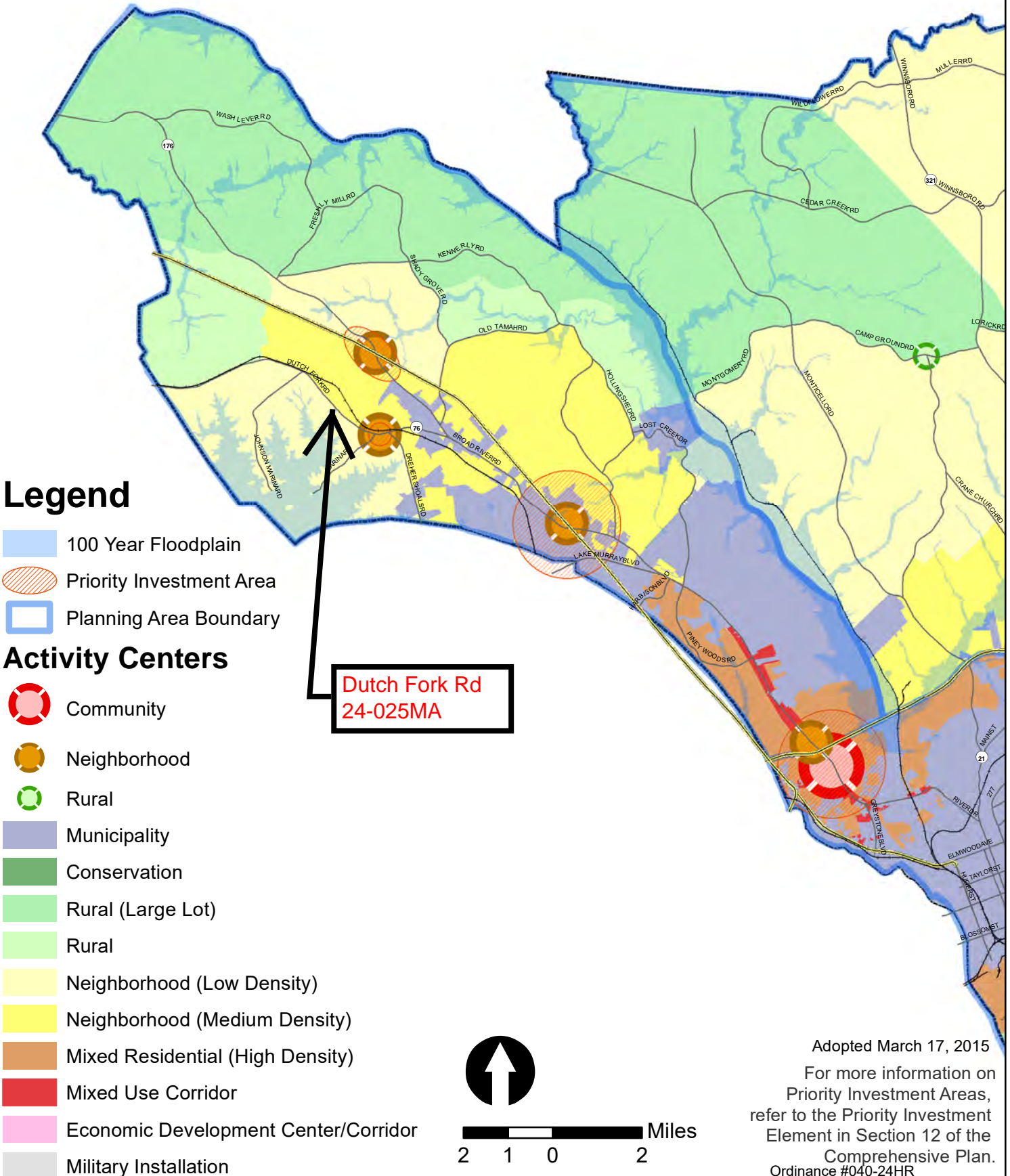
ZONING CLASSIFICATIONS

| | | | | | | | | | | | |
|--|----|--|----|--|-----|--|-----|--|------|--|------------------|
| | OS | | R1 | | R5 | | GC | | HI | | CC-4 |
| | AG | | R2 | | R6 | | M-1 | | CC-1 | | PD |
| | HM | | R3 | | RC | | INS | | CC-2 | | Subject Property |
| | RT | | R4 | | MU1 | | LI | | CC-3 | | |



NORTHWEST PLANNING AREA

FUTURE LAND USE & PRIORITY INVESTMENT AREAS



Adopted March 17, 2015
 For more information on Priority Investment Areas, refer to the Priority Investment Element in Section 12 of the Comprehensive Plan.
 Ordinance #040-24HR
 Page 8 of 10

Case #24-025 MA - Zoning Districts

| |
|-------------------------------------|
| Current Zoning District |
| Institutional (INS) District |

| Use Classification, Category, Type | INS | Use Classification, Category, Type | INS |
|---|-----|---------------------------------------|-----|
| Agricultural | | Office | SR |
| Agriculture and Forestry | | Personal services | P |
| Community garden | SE | Bar or other drinking place | P |
| Agriculture and Forestry Related | | Restaurant | P |
| Agriculture research facility | P | Restaurant, Carry-out | P |
| Rural retreat | SR | Restaurant, Drive-through | P |
| Residential | | Recreation/Entertainment | |
| Group Living | | Arena, stadium, or outdoor theater | P |
| Children’s residential care home | P | Commercial recreation, Indoor | P |
| Dormitory | SR | Commercial recreation, Outdoor | SR |
| Fraternity or sorority house | SE | Fitness or training center/studio | P |
| Rooming or boarding house | SE | Golf course | SR |
| Community Service | | Marina | P |
| Animal shelter | P | Performing arts center | P |
| Community food services | P | Shooting range, Indoor | P |
| Community recreation center | P | Smoking place | SR |
| Correctional facility | P | Retail Sales | |
| Cultural facility | P | Bakery | P |
| Day care facility | SR | Consumer goods store | SR |
| Government office | P | Convenience store | P |
| Hospital | P | Drugstore | P |
| Library | P | Farmers’ market | P |
| Membership organization facility | P | Grocery/Food store | P |
| Nursing care facility | P | Traveler Accommodations | |
| Place of worship | P | Hotel or motel | P |
| Public recreation facility | P | Vehicle Sales and Services | |
| Public safety facility | P | Parking, Commercial | P |
| Short-term or transitional housing | SE | Industrial | |
| Education | | Waste and Recycling Facilities | |
| College or university | P | Recycling collection station | P |
| Elementary, middle, or high school | P | Recycling sorting facility | P |
| School, business or trade | P | | |
| Funeral and Mortuary Services | | | |
| Cemetery | P | | |
| Funeral home or mortuary | P | | |
| Parks and Open Space | | | |
| Arboretum or botanical garden | P | | |
| Park or greenway | P | | |
| Transportation | | | |
| Transit stop | SR | | |
| Fleet terminal | P | | |
| Passenger terminal, surface transportation | P | | |
| Utilities and Communication | | | |
| Antenna | P | | |
| Broadcasting studio | P | | |
| Communication tower | SR | | |
| Power generation facility | P | | |
| Solar energy conversion system, Large scale | SR | | |
| Utility, minor | SR | | |
| Non-depository personal credit institution | SR | | |

a. Permitted Uses
A “P” indicates that the use is allowed by right in the zoning district at the head of that column.

b. Special Requirements Uses
An “SR” indicates that the use is allowed in the zoning district at the head of that column only if the Zoning Administrator determines the use complies with the use-specific standards.

c. Special Exception Uses
An “SE” indicates that the use is allowed in the zoning district only if the Board of Zoning Appeals approves a special exception permit for the use.

Case #24-025 MA - Zoning Districts

Proposed Zoning District

General Commercial (GC) District

| Use Classification, Category, Type | GC |
|---|----|
| Agricultural | |
| Agriculture and Forestry | |
| Community garden | SE |
| Agriculture and Forestry Related | |
| Farm supply and machinery sales and service | P |
| Produce stand | P |
| Residential | |
| Household Living | |
| Dwelling, Live-Work | SR |
| Dwelling, Multi-family | P |
| Group home, Family | SR |
| Group Living | |
| Group home, Large | SE |
| Rooming or boarding house | P |
| Community Service | |
| Animal shelter | SR |
| Community food services | P |
| Community recreation center | P |
| Cultural facility | P |
| Day care facility | SR |
| Government office | P |
| Hospital | P |
| Library | P |
| Membership organization facility | P |
| Nursing care facility | P |
| Place of worship | P |
| Public recreation facility | SR |
| Public safety facility | P |
| Short-term or transitional housing | SE |
| Education | |
| College or university | P |
| Elementary, middle, or high school | P |
| School, business or trade | P |
| Funeral and Mortuary Services | |
| Cemetery | SR |
| Funeral home or mortuary | P |
| Parks and Open Space | |
| Arboretum or botanical garden | P |
| Park or greenway | SR |
| Zoo | SR |
| Transportation | |
| Transit stop | SR |
| Fleet terminal | P |
| Passenger terminal, surface transportation | P |
| Utilities and Communication | |
| Antenna | P |
| Broadcasting studio | P |
| Communication tower | SE |
| Utility, minor | SR |

| Commercial | |
|--|----|
| Kennel | SR |
| Pet grooming | P |
| Veterinary hospital or clinic | SR |
| Commercial Services | |
| Artist studio | P |
| Auction house | P |
| Bank, Retail | P |
| Catering | P |
| Commercial services | P |
| Consumer goods repair | SR |
| Contractor's office | P |
| Lawn, tree, or pest control services | P |
| Linen or uniform supply | P |
| Medical, dental, and health practitioner | P |
| Non-depository personal credit institution | SR |
| Office | SR |
| Personal services | P |
| Rental center | SR |
| Self-service storage facility | SR |
| Sightseeing tour services | P |
| Tattoo or body piercing facility | SR |
| Bar or other drinking place | SR |
| Restaurant | SR |
| Restaurant, Carry-out | P |
| Restaurant, Drive-through | P |
| Recreation/Entertainment | |
| Arena, stadium, or outdoor theater | SR |
| Commercial recreation, Indoor | P |
| Commercial recreation, Outdoor | SR |
| Fitness or training center/studio | P |
| Golf course | SR |
| Marina | P |
| Performing arts center | P |
| Sexually Oriented Business | SR |
| Shooting range, Indoor | P |
| Shooting range, Outdoor | |
| Smoking place | SR |
| Retail Sales | |
| Bakery | P |
| Building supply sales | P |
| Consumer goods store | SR |
| Consumer goods store, Large | P |
| Convenience store | P |
| Drugstore | P |
| Farmers' market | P |
| Flea market | P |
| Garden center or retail nursery | P |
| Grocery/Food store | P |
| Manufactured home sales | SR |
| Outdoor power equipment store | P |
| Pawnshop | P |

| Traveler Accommodations | |
|--|----|
| Bed and breakfast | P |
| Home-based lodging | P |
| Hotel or motel | P |
| Vehicle Sales and Services | |
| Car wash | P |
| Heavy vehicle wash | P |
| Parking, Commercial | P |
| Vehicle fueling station | P |
| Vehicle parts and accessories store | P |
| Vehicle repair, minor | P |
| Vehicle sales and rental | P |
| Vehicle towing | SR |
| Industrial | |
| Freight Movement, Warehousing, and Wholesale Distribution | |
| Warehouse/Distribution facility | SR |
| Production of Goods | |
| Artisan goods production | SR |
| Manufacturing, assembly, and fabrication, Light | P |
| Waste and Recycling Facilities | |
| Recycling collection station | P |

a. Permitted Uses

A "P" indicates that the use is allowed by right in the zoning district at the head of that column.

b. Special Requirements Uses

An "SR" indicates that the use is allowed in the zoning district at the head of that column only if the Zoning Administrator determines the use complies with the use-specific standards.

c. Special Exception Uses

An "SE" indicates that the use is allowed in the zoning district only if the Board of Zoning Appeals approves a special exception permit for the use.

STATE OF SOUTH CAROLINA
COUNTY COUNCIL OF RICHLAND COUNTY
ORDINANCE NO. 041-24HR

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R07406-01-05 FROM GENERAL COMMERCIAL DISTRICT (GC) TO COMMUNITY MIXED USE DISTRICT (MU3); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R07406-01-05 from General Commercial District (GC) to Community Mixed Use District (MU3).

Section II. Severability. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional, or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section IV. Effective Date. This ordinance shall be effective from and after October 15, 2024.

RICHLAND COUNTY COUNCIL

By: _____
Jesica Mackey, Chair

Attest this 15th day of

October, 2024

Anette A. Kirylo
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.

Public Hearing: September 24, 2024
First Reading: September 24, 2024
Second Reading: October 1, 2024
Third Reading: October 15, 2024



**Richland County
Planning & Development Services Department**

Map Amendment Staff Report

PC MEETING DATE: September 5, 2024
RC PROJECT: 24-029 MA
APPLICANT: Lindsay S. Van Slambrook

LOCATION: 1335 Garner Lane

TAX MAP NUMBER: R07406-01-05
ACREAGE: 2.36 acres
EXISTING ZONING: GC
PROPOSED ZONING: MU3

ZPH SIGN POSTING: September 13, 2024

Staff Recommendation

Approval

Background

Zoning History

The original zoning as adopted September 7, 1977 was General Commercial District (GC).

Zoning District Summary

The MU3: Community Mixed-Use District provides lands for walkable mixed-use centers that include a mix of commercial and institutional uses serving residents of the community generally, and neighborhoods surrounding the district, as well as high-intensity residential uses. Development allowed in this district includes a broad range of uses at different scales, such as large and small format retail uses, grocery stores, restaurants and bars, personal service uses, professional offices, stand-alone multi-family residential development, and multi-family residential development in buildings containing nonresidential uses on the ground floor. District standards are intended to ensure uses, development intensities, and development forms that supports development that:

- Is oriented toward the major road corridor or otherwise establishes a traditional main street character;
- Provides enhanced visual character on the major streets within the center;
- Includes public open space accessible to those who live in, work in, and visit the center; and
- Is well-integrated in terms of access and circulation, complementary uses, and compatible design.

| Direction | Existing Zoning | Use |
|---------------|-----------------|--------------------------|
| <u>North:</u> | N/A | Interstate 20 |
| <u>South:</u> | R6 | Multi-family |
| <u>East:</u> | GC/GC | Hotel/ Self Storage |
| <u>West:</u> | GC/GC | Office/Vacant Commercial |

Discussion

Parcel/Area Characteristics

The parcel has frontage along Garner Lane and Longcreek Drive. There are no sidewalk or street lamps along this section of Garner Lane or Longcreek Drive. The immediate area is primarily characterized by multi-family residential uses to the south and commercial uses to the east and west.

Public Services

The subject parcel is within the boundaries of Richland School District One. The W.S. Sandel Elementary School is located .6 miles west of the subject parcel on Seminole Road. Records indicate that the parcel is in the City of Columbia’s water and sewer service area. There is a fire hydrant located directly in front of the site on Garner Lane. The St. Andrews fire station (station number 6) is located at 1225 Briargate Circle, approximately .50 miles northwest of the subject parcel.

Being within a service area is not a guarantee that services are available to the parcel.

Plans & Policies

The 2015 Richland County Comprehensive Plan, ***“PUTTING THE PIECES IN PLACE”***, designates this area as ***Community Activity Center and Priority Investment Area***.

Land Use and Design

Community Activity Centers provide the goods, services, and facilities which are possible only with the critical mass of population provided by a larger community-scale marketshed. These centers supply anchor and junior retailers, smaller retail establishments, office space, and high-density residential uses. Mixed-use developments that integrate higher-density residential uses with nonresidential uses, such as developments that place dwellings over shops, are encouraged. The integration of public spaces within these centers is encouraged. A Community Activity Center may also include uses typical of both neighborhood and community centers, since it may also serve these functions for the surrounding neighborhood or community. Centers should be master-planned and designed in a manner that provides a vertical (multi-story) or horizontal (multiple-uses on a site) mix of uses.

Priority Investment Area (Broad River and Bush River)

This district is envisioned to be redeveloped with mid-rise buildings between 2-4 stories in height; with an emphasis on creating a diverse stock of housing units such as town homes, garden apartments, and duplexes fitting with the appropriate architectural character, scale and density of the surrounding neighborhoods. This district is not intended for detached single-family residential development in the future. Neighborhood commercial uses may include coffee shops, bakeries, grocery stores, convenience stores, small urgent care or medical clinics, day-care centers, and pocket parks.

Traffic Characteristics

The 2023 SCDOT traffic count (Station #183) located south of the subject parcel on Broad River Road identifies 28,300 Average Daily Trips (ADT's). Broad River Road is classified as a five-lane undivided principal arterial road, maintained by SCDOT with a design capacity of 38,600 ADT's. This portion of Broad River Road is currently operating at Level of Service (LOS) "B".

The ADTs are the total volume of traffic passing a point on a roadway during a 24-hour period. ADT data is collected by SCDOT.

There is an Interchange Improvement project currently under construction for this section of Broad River Road through SCDOT. There is no anticipated completion date available.

There is a Bikeway project planned for this section of Broad River Road through the County Penny Sales Tax program. This project does not have start date as of yet.

Conclusion

The proposed rezoning is consistent with the objectives outlined in the Comprehensive Plan. The Plan recommends "high-density residential uses and mixed-use developments that integrate higher-density residential uses with nonresidential uses." In addition, the Broad River and Bush River Priority Investment Area also recommends "mid-rise buildings between 2-4 stories in height."

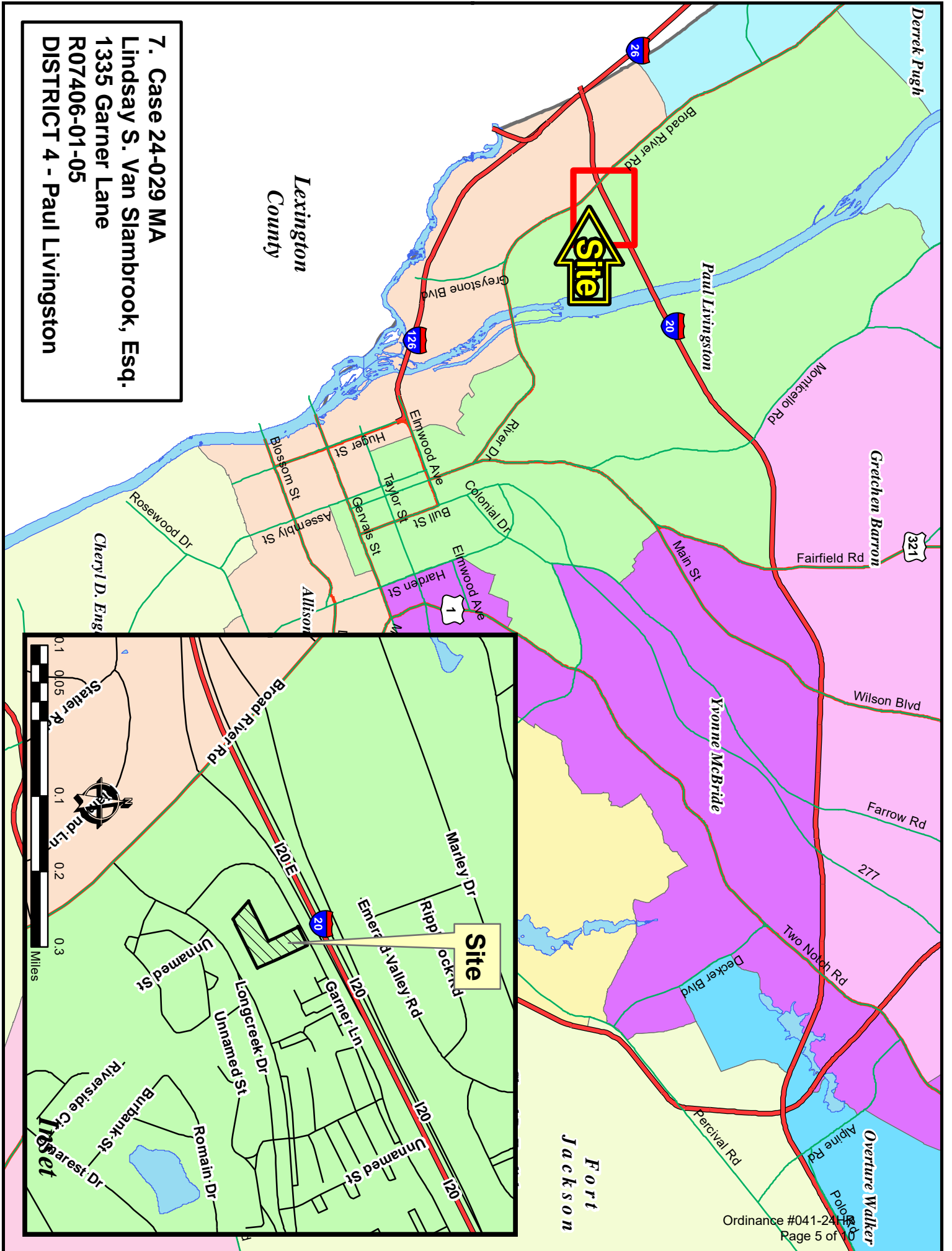
The requested zoning designation promotes uses and developments that are supportive of the recommendations.

For these reasons, staff recommends **Approval** of this map amendment.

Planning Commission Action

At their **September 5, 2024** meeting, the Richland County Planning Commission **agreed** with the PDSD recommendation and recommends the County Council **approve** the proposed amendment for RC Project # **24-029 MA**.

7. Case 24-029 MA
Lindsay S. Van Slambrook, Esq.
1335 Garner Lane
R07406-01-05
DISTRICT 4 - Paul Livingston



CASE 24-029
GC to MU3
TMS R07406-01-05

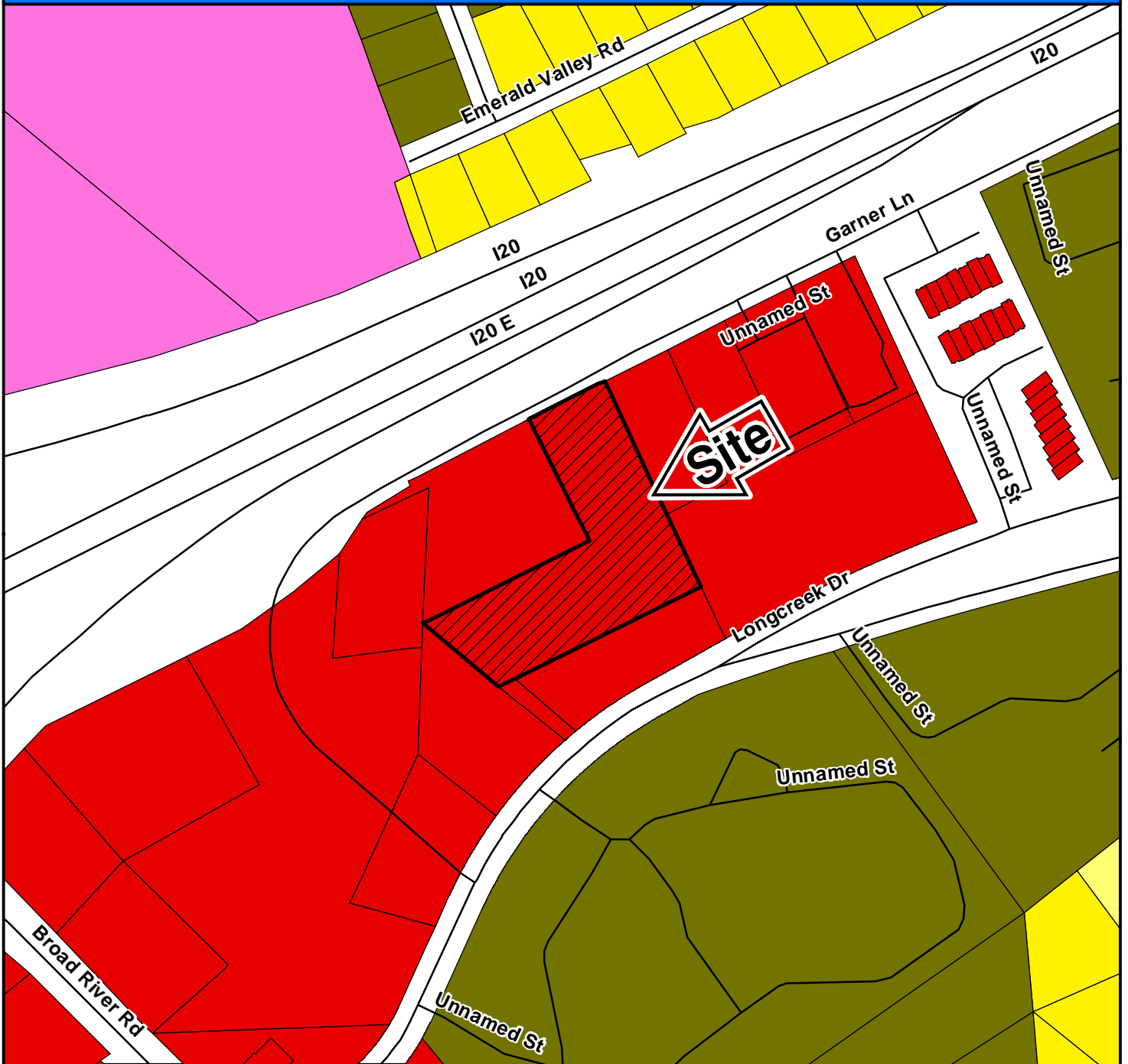


SPECIAL FLOOD HAZARD AREA







WETLANDS

Case 24-029 MA

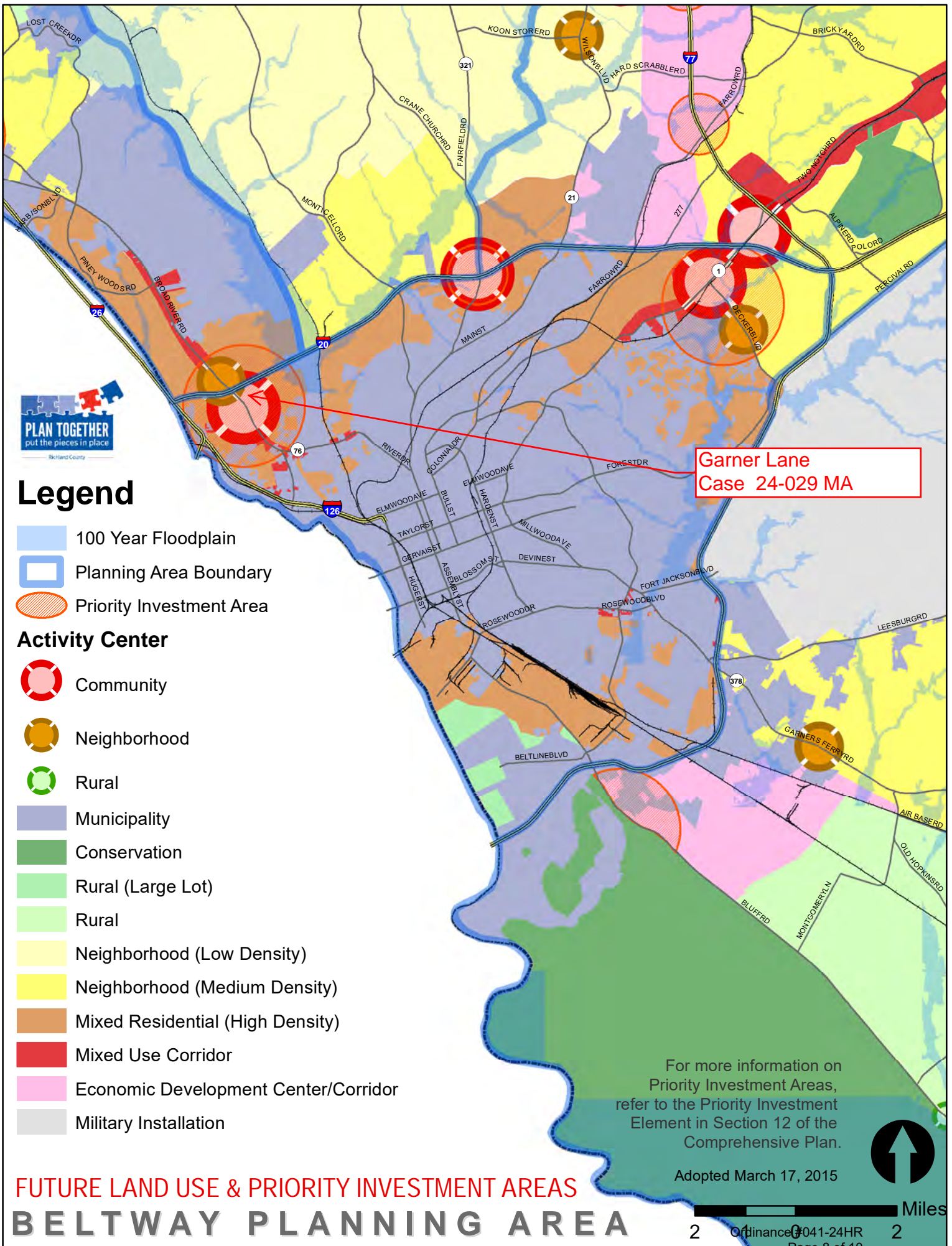
GC to MU3



ZONING CLASSIFICATIONS

| | | | | | |
|--|--|---|---|---|--|
|  OS |  R1 |  R5 |  GC |  HI |  CC-4 |
|  AG |  R2 |  R6 |  M-1 |  CC-1 |  PD |
|  HM |  R3 |  RC |  INS |  CC-2 |  Subject Property |
|  RT |  R4 |  MU1 |  LI |  CC-3 | |





Legend

- 100 Year Floodplain
- Planning Area Boundary
- Priority Investment Area
- Activity Center**
- Community
- Neighborhood
- Rural
- Municipality
- Conservation
- Rural (Large Lot)
- Rural
- Neighborhood (Low Density)
- Neighborhood (Medium Density)
- Mixed Residential (High Density)
- Mixed Use Corridor
- Economic Development Center/Corridor
- Military Installation

Garner Lane
Case 24-029 MA

For more information on Priority Investment Areas, refer to the Priority Investment Element in Section 12 of the Comprehensive Plan.

Adopted March 17, 2015



FUTURE LAND USE & PRIORITY INVESTMENT AREAS

BELTWAY PLANNING AREA

Case #24-029 MA - Zoning Districts

Current Zoning District

General Commercial (GC) District

| Use Classification, Category, Type | GC |
|---|----|
| Agricultural | |
| Agriculture and Forestry | |
| Community garden | SE |
| Agriculture and Forestry Related | |
| Farm supply and machinery sales and service | P |
| Produce stand | P |
| Residential | |
| Household Living | |
| Dwelling, Live-Work | SR |
| Dwelling, Multi-family | P |
| Group home, Family | SR |
| Group Living | |
| Group home, Large | SE |
| Rooming or boarding house | P |
| Community Service | |
| Animal shelter | SR |
| Community food services | P |
| Community recreation center | P |
| Cultural facility | P |
| Day care facility | SR |
| Government office | P |
| Hospital | P |
| Library | P |
| Membership organization facility | P |
| Nursing care facility | P |
| Place of worship | P |
| Public recreation facility | SR |
| Public safety facility | P |
| Short-term or transitional housing | SE |
| Education | |
| College or university | P |
| Elementary, middle, or high school | P |
| School, business or trade | P |
| Funeral and Mortuary Services | |
| Cemetery | SR |
| Funeral home or mortuary | P |
| Parks and Open Space | |
| Arboretum or botanical garden | P |
| Park or greenway | SR |
| Zoo | SR |
| Transportation | |
| Transit stop | SR |
| Fleet terminal | P |
| Passenger terminal, surface transportation | P |
| Utilities and Communication | |
| Antenna | P |
| Broadcasting studio | P |
| Communication tower | SE |
| Utility, minor | SR |

| Commercial | |
|--|----|
| Kennel | SR |
| Pet grooming | P |
| Veterinary hospital or clinic | SR |
| Commercial Services | |
| Artist studio | P |
| Auction house | P |
| Bank, Retail | P |
| Catering | P |
| Commercial services | P |
| Consumer goods repair | SR |
| Contractor's office | P |
| Lawn, tree, or pest control services | P |
| Linen or uniform supply | P |
| Medical, dental, and health practitioner | P |
| Non-depository personal credit institution | SR |
| Office | SR |
| Personal services | P |
| Rental center | SR |
| Self-service storage facility | SR |
| Sightseeing tour services | P |
| Tattoo or body piercing facility | SR |
| Bar or other drinking place | SR |
| Restaurant | SR |
| Restaurant, Carry-out | P |
| Restaurant, Drive-through | P |
| Recreation/Entertainment | |
| Arena, stadium, or outdoor theater | SR |
| Commercial recreation, Indoor | P |
| Commercial recreation, Outdoor | SR |
| Fitness or training center/studio | P |
| Golf course | SR |
| Marina | P |
| Performing arts center | P |
| Sexually Oriented Business | SR |
| Shooting range, Indoor | P |
| Shooting range, Outdoor | |
| Smoking place | SR |
| Retail Sales | |
| Bakery | P |
| Building supply sales | P |
| Consumer goods store | SR |
| Consumer goods store, Large | P |
| Convenience store | P |
| Drugstore | P |
| Farmers' market | P |
| Flea market | P |
| Garden center or retail nursery | P |
| Grocery/Food store | P |
| Manufactured home sales | SR |
| Outdoor power equipment store | P |
| Pawnshop | P |

| Traveler Accommodations | |
|--|----|
| Bed and breakfast | P |
| Home-based lodging | P |
| Hotel or motel | P |
| Vehicle Sales and Services | |
| Car wash | P |
| Heavy vehicle wash | P |
| Parking, Commercial | P |
| Vehicle fueling station | P |
| Vehicle parts and accessories store | P |
| Vehicle repair, minor | P |
| Vehicle sales and rental | P |
| Vehicle towing | SR |
| Industrial | |
| Freight Movement, Warehousing, and Wholesale Distribution | |
| Warehouse/Distribution facility | SR |
| Production of Goods | |
| Artisan goods production | SR |
| Manufacturing, assembly, and fabrication, Light | P |
| Waste and Recycling Facilities | |
| Recycling collection station | P |

a. Permitted Uses

A "P" indicates that the use is allowed by right in the zoning district at the head of that column.

b. Special Requirements Uses

An "SR" indicates that the use is allowed in the zoning district at the head of that column only if the Zoning Administrator determines the use complies with the use-specific standards.

c. Special Exception Uses

An "SE" indicates that the use is allowed in the zoning district only if the Board of Zoning Appeals approves a special exception permit for the use.

Case #24-029 MA - Zoning Districts

Proposed Zoning District

Neighborhood Mixed-Use (MU3) District

| Use Classification, Category, Type | MU3 | | |
|---|-----|--|----|
| Agricultural | | Commercial services | P |
| Agriculture and Forestry | | Consumer goods repair | SR |
| Community garden | SE | Contractor's office | P |
| Agriculture and Forestry Related | | Medical, dental, and health practitioner | P |
| Farm supply and machinery sales and service | P | Non-depository personal credit institution | SR |
| Produce stand | P | Office | SR |
| Residential | | Personal services | P |
| Household Living | | Rental center | SR |
| Dwelling, Live-Work | SR | Self-service storage facility | SR |
| Dwelling, Multi-family | P | Sightseeing tour services | P |
| Group home, Family | SR | Tattoo or body piercing facility | SR |
| Group Living | | Bar or other drinking place | SR |
| Continuing care community | SR | Restaurant | SR |
| Rooming or boarding house | SE | Restaurant, Carry-out | P |
| Community Service | | Restaurant, Drive-through | SR |
| Community food services | P | Recreation/Entertainment | |
| Community recreation center | P | Arena, stadium, or outdoor theater | SR |
| Cultural facility | P | Commercial recreation, Indoor | P |
| Day care facility | SR | Commercial recreation, Outdoor | SR |
| Government office | P | Fitness or training center/studio | P |
| Hospital | P | Performing arts center | P |
| Library | P | Smoking place | SR |
| Membership organization facility | P | Retail Sales | |
| Nursing care facility | P | Bakery | P |
| Place of worship | P | Consumer goods store | SR |
| Public recreation facility | SR | Convenience store | P |
| Public safety facility | P | Drugstore | SR |
| Short-term or transitional housing | SE | Farmers' market | P |
| Education | | Garden center or retail nursery | P |
| College or university | P | Grocery/Food store | P |
| Elementary, middle, or high school | SR | Traveler Accommodations | |
| School, business or trade | SR | Bed and breakfast | SR |
| Funeral and Mortuary Services | | Home-based lodging | SR |
| Cemetery | SR | Hotel or motel | P |
| Funeral home or mortuary | P | Vehicle Sales and Services | |
| Parks and Open Space | | Parking, Commercial | P |
| Arboretum or botanical garden | P | Vehicle fueling station | P |
| Park or greenway | SR | Industrial | |
| Transportation | | Freight Movement, Warehousing, and Wholesale Distribution | |
| Transit stop | SR | Warehouse/Distribution facility | SR |
| Passenger terminal, surface transportation | P | Production of Goods | |
| Utilities and Communication | | Artisan goods production | SR |
| Antenna | P | | |
| Broadcasting studio | P | | |
| Communication tower | SE | | |
| Utility, minor | SR | | |
| Commercial | | | |
| Kennel | SR | | |
| Pet grooming | SR | | |
| Veterinary hospital or clinic | SR | | |
| Commercial Services | | | |
| Artist studio | P | | |
| Bank, Retail | P | | |
| Catering | P | | |

a. Permitted Uses

A "P" indicates that the use is allowed by right in the zoning district at the head of that column.

b. Special Requirements Uses

An "SR" indicates that the use is allowed in the zoning district at the head of that column only if the Zoning Administrator determines the use complies with the use-specific standards.

c. Special Exception Uses

An "SE" indicates that the use is allowed in the zoning district only if the Board of Zoning Appeals approves a special exception permit for the use.

STATE OF SOUTH CAROLINA
COUNTY COUNCIL OF RICHLAND COUNTY
ORDINANCE NO. 042-24HR

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R17209-01-06 FROM RESIDENTIAL TWO DISTRICT (R2) TO NEIGHBORHOOD MIXED USE DISTRICT (MU1); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R17209-01-06 from Residential Two District (R2) to Neighborhood Mixed Use District (MU1).

Section II. Severability. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional, or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section IV. Effective Date. This ordinance shall be effective from and after October 15, 2024.

RICHLAND COUNTY COUNCIL

By: _____
Jesica Mackey, Chair

Attest this 15th day of

October, 2024

Anette A. Kirylo
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.

| | |
|-----------------|--------------------|
| Public Hearing: | September 24, 2024 |
| First Reading: | September 24, 2024 |
| Second Reading: | October 1, 2024 |
| Third Reading: | October 15, 2024 |



**Richland County
Planning & Development Services Department**

Map Amendment Staff Report

PC MEETING DATE: September 5, 2024
RC PROJECT: 24-031MA
APPLICANT: Pastor Levern McKenny

LOCATION: 438 Rabon Road

TAX MAP NUMBER: R17209-01-06
ACREAGE: 6 acres
EXISTING ZONING: R2
PROPOSED ZONING: MU-1

ZPH SIGN POSTING: September 13, 2024

Staff Recommendation

Disapproval

Eligibility for Map Amendment Request

Section 26-2.5 Zoning Map Amendment

A Zoning Map amendment requested by a property owner or the owner’s authorized agent shall not be considered for an area less than two acres unless the requested change involves one of the following conditions:

(b) (4) a. 3.

3. An addition of an MU1 district contiguous to an existing R2, R3, R4, R5, R6, or MU3 district.

Background

Zoning History

The original zoning as adopted September 7, 1977 was RS-3 District. With the adoption of the 2005 Land Development Code, the RS-3 District was designated Residential Single-family Medium Density District (RS-MD). With the adoption of the 2021 Land Development Code the Residential Single-family Medium Density District (RS-MD) was designated Residential District (R2).

Zoning District Summary

The MU1: Neighborhood Mixed-Use District provides lands for moderate-intensity, neighborhood-scale commercial that supports the common day-to-day demands of the surrounding neighborhood for goods and services. This district allows a mix of commercial uses such as grocery stores, restaurants and bars, personal services, small-scale retail, and offices, as well as moderate-intensity multi-family residential development in close proximity to and with convenient access to shopping and employment within the district. District standards are

intended to ensure uses, development intensities, and development forms supports development that:

- Is oriented toward and provides enhanced visual character on the major streets within the district;
- Provides safe and convenient vehicular, bicycle, and pedestrian access from surrounding neighborhoods; and
- Is well-integrated in terms of access and circulation, complementary uses, and compatible design.

New structures in the Neighborhood Mixed-Use District (MU1) shall have a building footprint of not more than 6,000 square feet. The gross floor area of new structures shall not exceed 12,000 square feet. Existing structures shall not be expanded to exceed a footprint or gross floor area of 12,000 square feet.

| Direction | Existing Zoning | Use |
|----------------------|-----------------|-------------------|
| <u>North:</u> | HI | Lumber Yard |
| <u>South:</u> | GC/GC | Gymnastics center |
| <u>East:</u> | R2 | Undeveloped |
| <u>West:</u> | R2 | Undeveloped |

| |
|-------------------|
| Discussion |
|-------------------|

Parcel/Area Characteristics

The parcel has frontage along Rabon Road. The parcel contains a place of worship. Rabon Road is a two-lane local road without sidewalks or street lamps. The immediate area is primarily characterized by commercial, industrial and undeveloped land uses. West and East of the site is residentially zoned and undeveloped. North of the site is an Industrial use and is zoned Heavy Industrial District (HI).

Public Services

The subject parcel is located within the boundaries of Richland School District Two. Killian Elementary School is located 2.5 miles northeast of the subject parcel on Clemson Road. Records indicate that the parcel is within the City of Columbia’s water and sewer service area. There are two fire hydrants located along this section of Flora Drive. The Jackson Creek fire station (station number 32) is located on Two Notch Road, approximately 1.3 miles southeast of the subject parcel.

Being within a service area is not a guarantee that services are available to the parcel.

Plans & Policies

The 2015 Richland County Comprehensive Plan, ***“PUTTING THE PIECES IN PLACE”***, designates this area as ***Neighborhood (Medium-Density)***.

Land Use and Design

Areas include medium-density residential neighborhoods and supporting neighborhood commercial scale development designed in a traditional neighborhood format. These neighborhoods provide a transition from Neighborhood (Low-Density) to more intense Mixed

Residential (High-Density) urban environments. Multi-family development should occur near activity centers and within Priority Investment Areas with access to roadways with adequate capacity and multimodal transportation options. Non-residential development may be considered for location along main road corridors and within a contextually-appropriate distance from the intersection of a primary arterial.

Desired Development Pattern

The primary use within this area is medium density residential neighborhoods designed to provide a mix of residential uses and densities within neighborhoods. Neighborhoods should be connected and be designed using traditional grid or modified grid designs. Non-residential uses should be designed to be easily accessible to surrounding neighborhoods via multiple transportation modes.

Traffic Characteristics

The 203 SCDOT traffic count (Station #611) located east of the subject parcel on Rabon Road identifies 8,000 Average Daily Trips (ADT's). Rabon Road is classified as a two-lane undivided major collector, maintained by SCDOT with a design capacity of 8,600 ADT's. Rabon Road is currently operating at Level of Service (LOS) "C".

The ADT's are the total volume of traffic passing a point on a roadway during a 24-hour period. ADT's data is collected by SCDOT.

There are no planned or programmed improvements for this section of Rabon Road, either through SCDOT or the County Penny Sales Tax program.

Conclusion

The proposed rezoning is not consistent with the objectives of the Comprehensive Plan. According to the plan, "Non-residential development may be considered for location along main road corridors and within a contextually-appropriate distance from the intersection of a primary arterial." This parcel is not within contextually appropriate distance from a primary arterial.

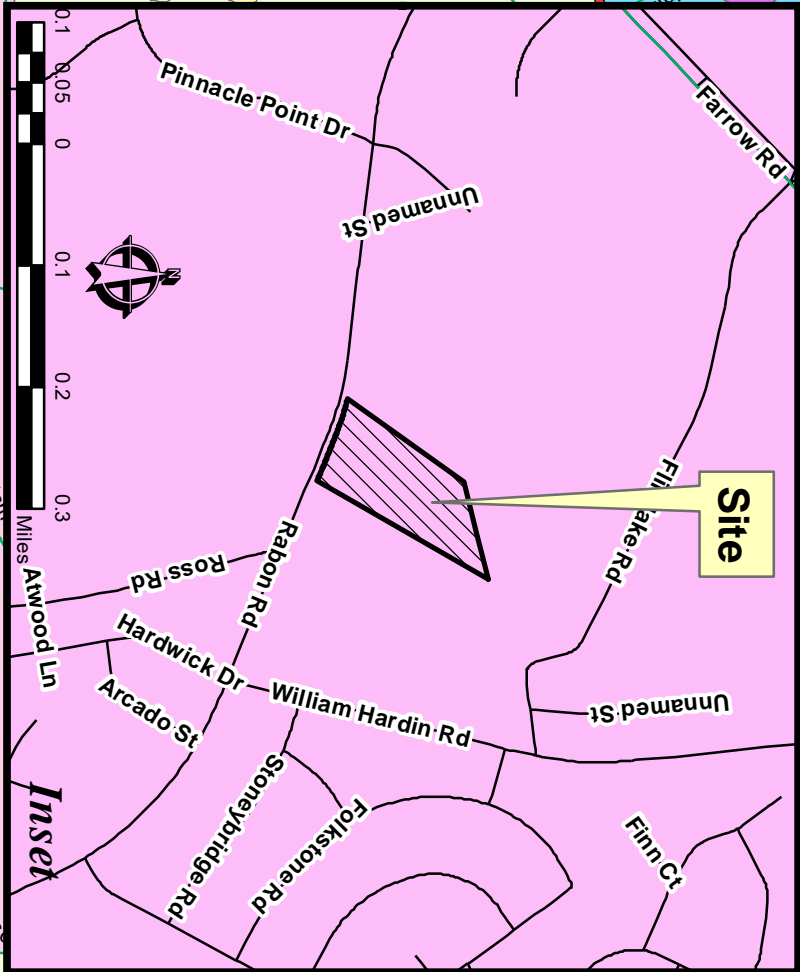
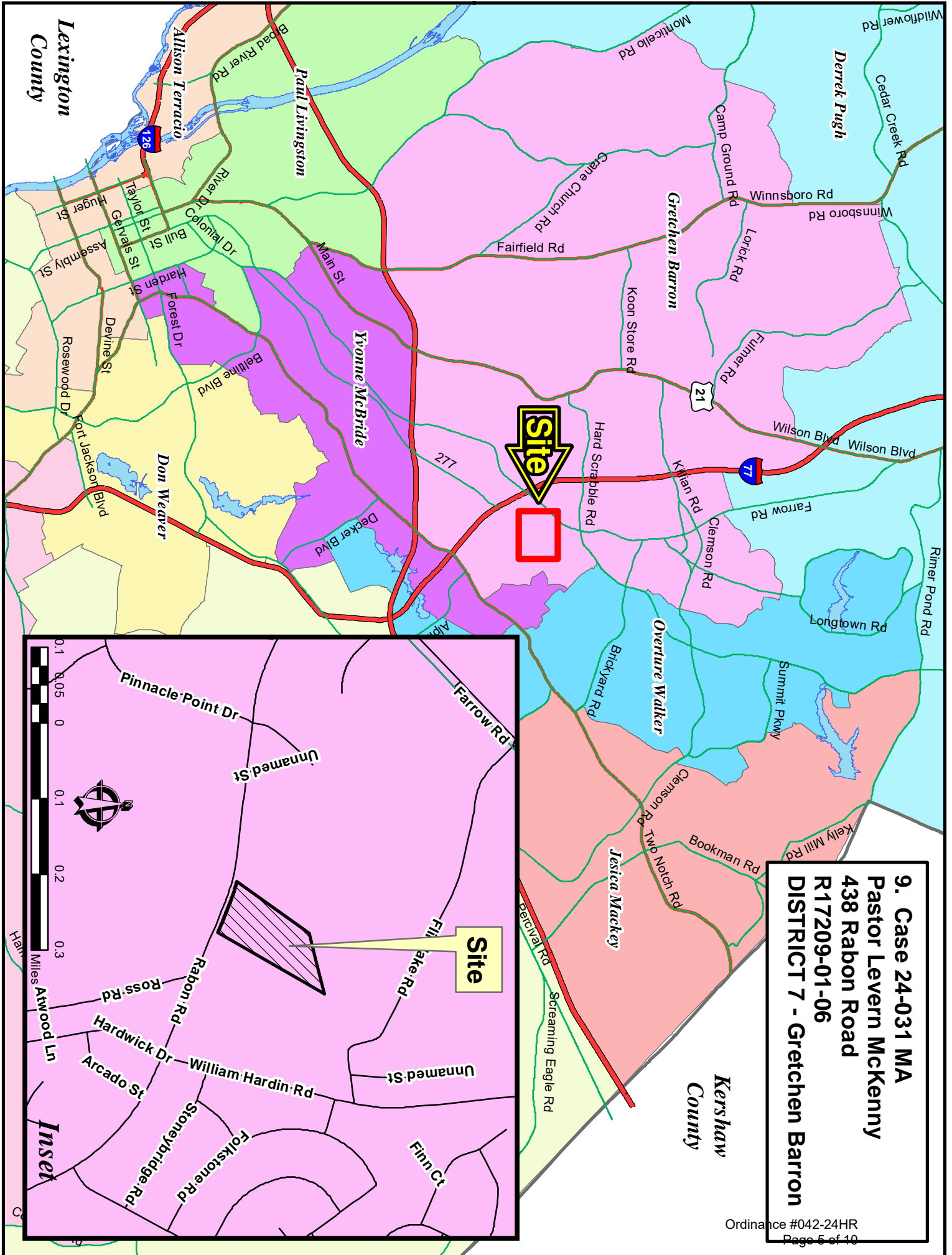
For this reason, staff recommends **Disapproval** of this map amendment.

Planning Commission Action

At their **September 5, 2024** meeting, the Richland County Planning Commission **disagreed** with the PDSO recommendation for the following reason:

- The request is consistent with the uses and zonings in the surrounding area.

The PC recommends the County Council **approve** the proposed amendment for RC Project # **24-031 MA**.



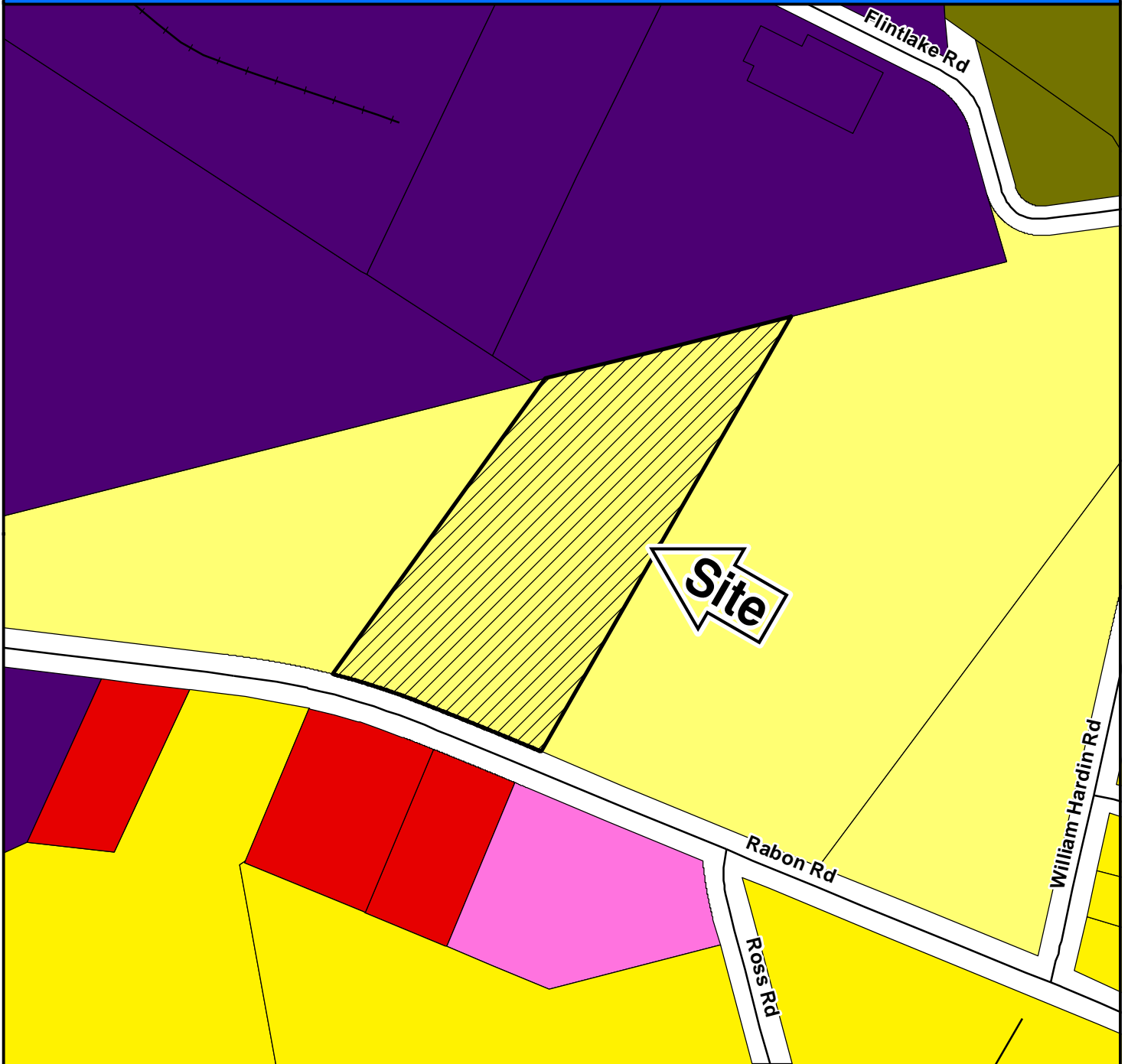
9. Case 24-031 MA
Pastor Levern McKenny
438 Rabon Road
R17209-01-06
DISTRICT 7 - Gretchen Barron

CASE 24-031
R2 to MU1
TMS R17209-01-06











Case 24-031 MA

R2 to MU1



ZONING CLASSIFICATIONS

| | | | | | |
|--|--|---|---|---|--|
|  OS |  R1 |  R5 |  GC |  HI |  CC-4 |
|  AG |  R2 |  R6 |  M-1 |  CC-1 |  PD |
|  HM |  R3 |  RC |  INS |  CC-2 |  Subject Property |
|  RT |  R4 |  MU1 |  LI |  CC-3 | |



NORTHEAST PLANNING AREA

FUTURE LAND USE & PRIORITY INVESTMENT AREAS

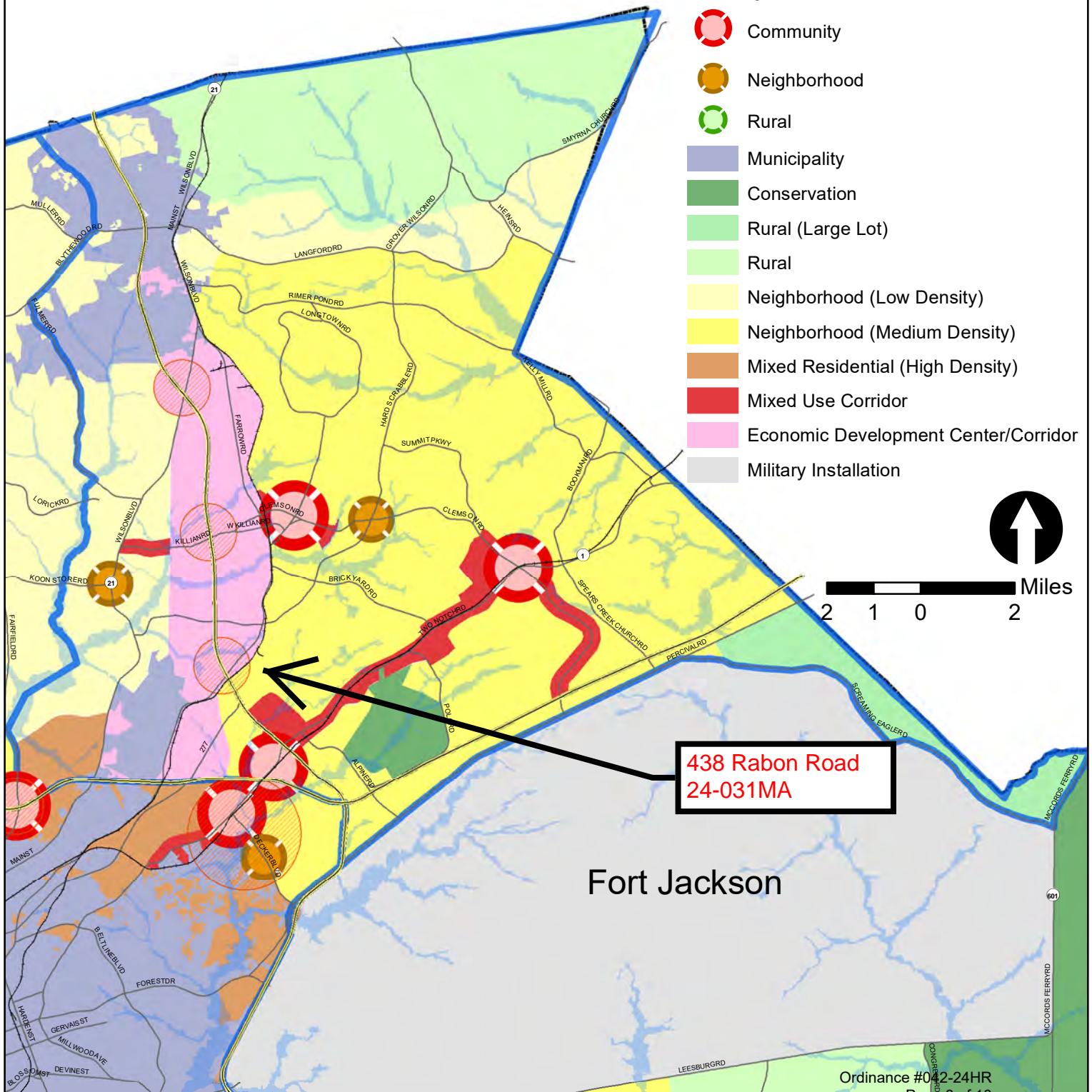


For more information on Priority Investment Areas, refer to the Priority Investment Element in Section 12 of the Comprehensive Plan.

Adopted March 17, 2015

Legend

- 100 Year Floodplain
- Priority Investment Area
- Planning Area Boundary
- Activity Center**
- Community
- Neighborhood
- Rural
- Municipality
- Conservation
- Rural (Large Lot)
- Rural
- Neighborhood (Low Density)
- Neighborhood (Medium Density)
- Mixed Residential (High Density)
- Mixed Use Corridor
- Economic Development Center/Corridor
- Military Installation



Case #24-031 MA - Zoning Districts

a. Permitted Uses

A “P” indicates that the use is allowed by right in the zoning district at the head of that column.

b. Special Requirements Uses

An “SR” indicates that the use is allowed in the zoning district at the head of that column only if the Zoning Administrator determines the use complies with the use-specific standards.

c. Special Exception Uses

An “SE” indicates that the use is allowed in the zoning district only if the Board of Zoning Appeals approves a special exception permit for the use.

| Proposed Zoning District | |
|--|----|
| Residential Two (2) District | |
| Use Classification, Category, Type | R2 |
| Agricultural | |
| Agriculture and Forestry | |
| Community garden | SR |
| Residential | |
| Household Living | |
| Dwelling, Single-family detached | P |
| Group home, Family | SR |
| Public, Civic and Institutional | |
| Community Service | |
| Community recreation center | SR |
| Library | SR |
| Place of worship | SE |
| Public recreation facility | SR |
| Public safety facility | P |
| Education | |
| Elementary, middle, or high school | SR |
| Parks and Open Space | |
| Park or greenway | SR |
| Transportation | |
| Transit stop | SR |
| Utilities and Communication | |
| Antenna | P |
| Utility, minor | SR |
| Commercial | |
| Recreation/Entertainment | |
| Golf course | SE |

Case #24-031 MA - Zoning Districts

| Proposed Zoning District | |
|--|-----|
| Neighborhood Mixed-Use (MU1) District | |
| Use Classification, Category, Type | MU1 |
| Agricultural | |
| Agriculture and Forestry | |
| Community garden | SR |
| Agriculture and Forestry Related | |
| Produce stand | P |
| Residential | |
| Household Living | |
| Dwelling, Live-Work | SR |
| Dwelling, Multi-family | P |
| Group home, Family | SR |
| Group Living | |
| Children’s residential care home | P |
| Continuing care community | SR |
| Group home, Large | SE |
| Rooming or boarding house | SE |
| Community Service | |
| Community food services | P |
| Community recreation center | SR |
| Cultural facility | P |
| Day care facility | SR |
| Government office | P |
| Library | P |
| Membership organization facility | P |
| Nursing care facility | P |
| Place of worship | P |
| Public recreation facility | SR |
| Public safety facility | P |
| Short-term or transitional housing | SE |
| Education | |
| College or university | P |
| Elementary, middle, or high school | P |
| School, business or trade | SR |
| Funeral and Mortuary Services | |
| Cemetery | SR |
| Funeral home or mortuary | P |
| Parks and Open Space | |
| Arboretum or botanical garden | P |
| Park or greenway | SR |
| Transportation | |
| Transit stop | SR |
| Passenger terminal, surface transportation | SE |
| Utilities and Communication | |
| Antenna | P |
| Communication tower | SE |
| Utility, minor | SR |

| | |
|--|----|
| Commercial | |
| Kennel | SR |
| Pet grooming | SR |
| Veterinary hospital or clinic | SR |
| Commercial Services | |
| Artist studio | P |
| Auction house | |
| Bank, Retail | SR |
| Catering | P |
| Commercial services | P |
| Consumer goods repair | SR |
| Medical, dental, and health practitioner | P |
| Non-depository personal credit institution | SR |
| Office | SR |
| Personal services | P |
| Rental center | SR |
| Self-service storage facility | SR |
| Tattoo or body piercing facility | SR |
| Bar or other drinking place | SE |
| Restaurant | SR |
| Restaurant, Carry-out | P |
| Recreation/Entertainment | |
| Commercial recreation, Indoor | SR |
| Fitness or training center/studio | P |
| Smoking place | SR |
| Retail Sales | |
| Bakery | P |
| Consumer goods store | SR |
| Convenience store | P |
| Drugstore | SR |
| Farmers’ market | P |
| Garden center or retail nursery | P |
| Grocery/Food store | P |
| Pawnshop | P |
| Traveler Accommodations | |
| Bed and breakfast | SR |
| Vehicle Sales and Services | |
| Parking, Commercial | P |
| Vehicle fueling station | P |
| Freight Movement, Warehousing, and Wholesale Distribution | |
| Warehouse/Distribution facility | SR |
| Production of Goods | |
| Artisan goods production | SR |

- a. Permitted Uses**
A “P” indicates that the use is allowed by right in the zoning district at the head of that column.
- b. Special Requirements Uses**
An “SR” indicates that the use is allowed in the zoning district at the head of that column only if the Zoning Administrator determines the use complies with the use-specific standards.
- c. Special Exception Uses**
An “SE” indicates that the use is allowed in the zoning district only if the Board of Zoning Appeals approves a special exception permit for the use.



REQUEST OF ACTION

Subject: FY25 - District 2 Hospitality Tax Allocations

A. Purpose

County Council is being requested to approve a total allocation of **\$13,000** for District 2.

B. Background / Discussion

For the 2024 - 2025 Fiscal Year, County Council approved designating the Hospitality Discretionary account funding totaling \$82,425.00 for each district Council member. The details of these motions are listed below:

Motion List (3rd reading) for FY17: Hospitality Tax discretionary account guidelines are as follows: (a) Establish a H-Tax discretionary account for each Council District; (b) Fund the account at the amount of \$164,850.00; (c) Council members will recommend Agencies to be funded by their allocation. Agencies and projects must meet all of the requirements in order to be eligible to receive H-Tax funds; (d) All Council recommendation for appropriations of allocations to Agencies after the beginning of the fiscal year will still be required to be taken back to Council for approval by the full Council prior to the commitment of funding. This would only require one vote.

Motion List (3rd reading) for FY25, Regular Council Meeting – June 18, 2024: Establish Hospitality Tax discretionary accounts for each district in FY25 at the amount of \$82,425. Move that up to \$300,000 of unallocated district specific H-Tax funding for FY23-24 be carried over and added to any additional funding for FY24-25.

Pursuant to Budget Memorandum 2017-1 and the third reading of the budget for FY25 each district Council member was approved \$82,425.00 to allocate funds to Hospitality Tax eligible organizations of their own discretion. As it relates to this request, District 2 H-Tax discretionary account breakdown and its potential impact is listed below:

| | | |
|---------------------------------------|-------------------------------|-----------|
| Initial Discretionary Account Funding | \$ 82,425 | |
| FY2024 Remaining | \$ 51,625 | |
| | Blythewood Historical Society | \$ 10,000 |
| | Auntie Karen Foundation | \$ 3,000 |
| Total Allocation | \$ 13,000 | |
| FY25 Approved Allocations YTD | \$ 5,000 | |
| Remaining FY2025 Balance | \$116,050 | |

C. Legislative / Chronological History

- 3rd Reading of the Budget – June 8, 2017
- Regular Session - May 15, 2018
- 3rd Reading of the Budget FY19- June 21, 2018
- 3rd Reading of the Budget FY20- June 10, 2019
- 3rd Reading of the Budget FY21- June 11, 2020
- 3rd Reading of the Budget FY22- June 10, 2021
- 3rd Reading of the Budget FY23- June 7, 2022
- 3rd Reading of the Budget FY24- June 6, 2023
- 3rd Reading of the Budget FY25- June 18, 2024

D. Alternatives

1. Consider the request and approve the allocation.
2. Consider the request and do not approve the allocation.

E. Final Recommendation

Staff does not have a recommendation regarding this as it is a financial policy decision of County Council. The funding is available to cover the request. Staff will proceed as directed.