

RECITALS:

NOW, THEREFORE, for and in consideration of the mutual promises, undertakings and covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged and affirmed, the Parties hereto agree as follows:

- I. **RECITALS INCORPORATED.** The foregoing recitals are hereby incorporated as though fully set forth herein.
- II. **TERM.** The provisions of this Agreement shall come into full force and effect on the Effective Date. This Agreement shall terminate either: (1) on December 31, 2029; or (2) upon completion of the Project and the Town's receipt of a fully completed ROW as shown in Exhibit D; whichever occurs first. The Parties may mutually agree in writing to extend the term of this Agreement as deemed necessary to complete the Project, and the County Administrator for Beaufort County and the Town Manager for Town of Bluffton have received authority to extend this Agreement for a period of one (1) year without the need to obtain additional authority from any governing body.
- III. **PROCUREMENT.** The Parties agree that all procurement laws and regulations must be adhered to in the procurement of a contractor to complete the Project. The Parties shall work cooperatively to draft the requirements to be used in the procurement process to obtain a contractor. The Town shall be responsible for overseeing the procurement process and ensuring compliance with the Town's procurement ordinance. The County acknowledges and agrees that the contractor for construction of the ROW will be chosen by the Town at the sole discretion of the Town and does not require County approval. The bidder chosen by the Town through the procurement process to complete the Project is hereinafter referred to as the "**Contractor**".
- IV. **PROJECT MANAGEMENT.** The County shall be solely responsible for the oversight and management of the Project including, but not limited to, those obligations and responsibilities established in this section.
 - a. *Oversight.* The County will oversee and is responsible for ensuring that the Project is constructed in line with the project plans and specifications as shown in Exhibit D. If at anytime there is a significant deviation from the plans shown in Exhibit D, then the County shall communicate with Town and provide a reason and explanation of the deviation and provide written notice of any additional costs incurred due to said deviation.
 - b. *Inspections.* The Parties acknowledge and agree that the County may contract with and utilize a third-party construction engineering and inspections ("**CEI**") services to provide daily inspections, oversight of construction efforts and tracking of quantities installed. The County shall be solely responsible for procuring and contracting for CEI services in compliance with the County's procurement ordinance.
 - i. *Cost of CEI Services.* The Parties acknowledge and agree that the costs associated with the CEI services shall be paid in equal parts by the Town and County, each being responsible for fifty (50%) percent of the total CEI services cost. The Parties agree that the cost for CEI Services shall not exceed a total cost of Seventy Thousand and 00/100 (\$70,000.00) Dollars or Thirty-Five Thousand and 00/100 (\$35,000.00) Dollars for either Party.
 - c. *Access Easement.* Being that the developer of Alston Park Phase 3 is moving forward with constructing a right-of-way from New Riverside Road to Benton Circle, the Parties acknowledge and understand that an access easement may be necessary to access the real property associated with the Project. The

County will be solely responsible for obtaining and executing any documents necessary to gain access to the real property associated with and during the Project.

- V. PROPERTY CONVEYANCE.** Prior to funds being spent or the commencement of construction related to the Project, the Town shall take all steps necessary to obtain ownership of the property generally located and identified as “Future Holly Hill Lane” in Exhibit B and as shown in Exhibit D. Parties acknowledge and agree that a failure of the Town to obtain ownership of the “Future Holly Hill Lane” real property is not a default by the Town and does not create any obligation for additional compensation to the County. If the Town is unable to obtain ownership of the real property described herein, then the Town shall provide the County with written notice; and following issuance of written notice this Agreement shall automatically terminate. Acceptance of Future Holly Hill Lane is contingent on Town of Bluffton Town Council approval.
- VI. FINANCIAL OBLIGATIONS.** The Parties agree to be equally responsible for the cost associated with the Project and as detailed in “*Exhibit E*”, attached hereto and incorporated herein by reference. Based on the estimate provided by an engineer previously obtained by a separate agreement between the Parties, the total cost associated with the Project is _____ and 00/100 (\$_____) Dollars (“*Project Cost*”). Based on the estimated costs, each Party shall pay an amount not to exceed _____ and 00/100 (\$_____) Dollars. The Parties acknowledge and agree that the costs associated with the CEI services are not included in this Project Cost and that the County is solely responsible for payment of all costs associated with CEI services.
- a. *Financial Oversight.* The Parties agree that the funds shall be held by the Town and in a manner that allows for the funds to be identified for this Project. The County agrees to provide the Town with the funds in an amount established in the above Section III within thirty (30) calendar days from the Effective Date. The Town shall be solely responsible for remitting payment to the Contractor pursuant to Section III(b) of this Agreement.
 - b. *Payment Process.* The County shall be responsible for receiving all invoices from the Contractor and reviewing said invoices for accuracy. Following a review by the County, the invoices shall be submitted to the Town with a cover letter stating that the County has reviewed and approves the payment of the invoice to the Contractor. Upon receipt of the approved invoice, the Town shall make timely payment to the Contractor directly.
- Failure by the County to approve an invoice within fourteen (14) calendar days of receipt of an invoice from the Contractor shall result in the County being fully responsible for any fees or costs associated with an untimely payment to the Contractor. Failure by the Town to remit payment to the Contractor within sixteen (16) calendar days of receipt of an approved invoice from the County shall result in the Town being fully responsible for any fees or costs associated with an untimely payment to the Contractor.
- c. *Cost Overages.* The Parties agree and acknowledge that the Project Cost as described in Exhibit E have been reviewed and approved by the appropriate governing body. If at any time either Party becomes aware that the Project is going to exceed the Project Cost, then said Party shall notify the other Party in writing within five (5) business days of becoming aware of said cost overages. If the Project exceeds the Project Cost for any reason, then the Parties agree to take all necessary steps to obtain the necessary approval and authority to obtain additional funding as required to complete the Project; where said authority shall be

obtained no later than ninety (90) calendar days following receipt of notice of cost overages as established in this subsection. To the extent possible, any cost overages shall be equally split between the Parties.

VII. PUBLIC RIGHT-OF-WAY DEDICATION. The Parties understand and acknowledge that the real property associated with the Project is intended to be a public right-of-way. Following completion of the Project, the Town shall take all steps necessary to obtain dedication of the ROW and request public dedication of the developer's portion of Holly Hill Lane. Following dedication of the public right-of-way, the Town shall be responsible for continued maintenance of the public right-of-way.

VIII. TERMINATION.

- a. *Termination for Convenience.* Any Party may terminate this Agreement for convenience and without cause by providing a thirty (30) day written notice to the other Parties. If at the time of termination there are outstanding costs owed to the Contractor for the Project, the terminating Party shall be responsible for its portion of compensation to the Contractor for those services rendered as of the date of the notice of termination and the Town shall return all remaining funds to the non-terminating Parties.
- b. *Termination for Default.* A Party shall be considered in default of its obligations under this Agreement if such party should fail to observe, comply with, or perform any term, condition or covenant contained in this Agreement or any Exhibit hereto. Following receipt of a notice of default, the defaulting party shall have a period of seven (7) calendar days to cure said default. In the event of default and failure to cure said default, the non-defaulting party may terminate this Agreement immediately upon written notice to the other parties and pursue any remedies provided by law or under this Agreement.
- c. *Automatic Termination.* The Parties acknowledge and agree that this Agreement shall automatically terminate pursuant to Section V of this Agreement. If terminated due to Section V, then within thirty (30) days of the date of notice, the Town shall provide the County with all of the funds being held by the Town as established in Section VI of this Agreement.

IX. NOTICES. Whenever notice is required or permitted under the terms of this Agreement, it shall be in writing and personally delivered or sent postage or delivery charges prepaid by either (a) United States mail, certified, return receipt requested, in which case notice shall be deemed given on the certified date of delivery or rejection of delivery, or (b) by any national express delivery service which provides evidence of delivery. All notices shall be addressed to the following address (or at such other address as may hereafter be substituted by notice in writing thereof):

The County: **Beaufort County**
 Attn: Michael Moore, *Administrator*
 100 Ribaut Road
 Beaufort, SC 29902
 Phone: 843.255.2000
 Email: Mmoore@bcgov.net

The Town: **Town of Bluffton**
 Attn: Stephen Steese, *Town Manager*
 20 Bridge Street
 Bluffton, SC 29910
 Phone: 843-706-4500
 Email: ssteese@townofbluffton.com

With Copy to: **Beaufort County Attorney**
 Attn: Brian Hulbert
 100 Ribaut Road
 Beaufort, SC 29902
 Phone: 843.255.2055
 Email: brian.hulbert@bcgov.net

With Copy to: **Finger, Melnick, Brooks & LaBruce, P.A.**
 Attn: Terry L. Finger, Esq.
 P.O. Box 24005
 Hilton Head Island, SC 29925
 Phone: 843.681.7000
 Email: tfinger@fingerlaw.com

X. NON-DISCRIMINATION. The Parties certifies that in the performance of this Agreement, no Party will discriminate any person, client, or subcontractor on account of race, color, sex, age, religion, handicap, or national origin. It is the policy of the Parties to comply with Title VI of the 1964 Civil Rights Act (Title VI) and its related statutes. To this end, the Town and County gives notice to all vendors or businesses that the Town and County assures full compliance with Title VI and its related statutes in all programs, activities, and contracts. It is the policy of the Town and County that no person shall be excluded from participation in, denied the benefit of, or subjected to discrimination under any of its programs, activities, or contracts based on race, color, national origin, age, sex, disability, religion, or language. Pursuant to Title VI requirements, any entity that enters into a contract or agreement with the Town including, but not limited to vendors or businesses, may not discriminate based on race, color, national origin, age, sex, disability, religion, or language.

XI. MISCELLANEOUS.

- a. *Relationship of the Parties.* Notwithstanding any provision hereof, for the purposes of this Agreement each Party is an independent party and nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, business opportunity, joint venture, or any other type of agency relationship. The Parties acknowledge, understand and agree that this Agreement does not create a fiduciary relationship between the Parties nor does it create any obligations unless contained in the terms of this Agreement.
- b. *Construction of Agreement.* Each Party acknowledges that it has participated in the negotiation and drafting of this Agreement. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto or thereto by any court by reason of such Party having or being deemed to have structured, dictated, or drafted any provision in the Agreement.
- c. *Sole Agreement, Merger, and Amendments.* This Agreement contains all of the terms and conditions agreed to between the Parties and supersedes all prior agreements, and there are no oral agreements relating to the transaction covered hereby. All other discussions, proposals, agreements or offers are merged into this Agreement. This Agreement cannot be amended, altered, changed or modified unless each such alteration, amendment, change or modification shall have been set forth in writing in its entirety and signed and delivered by each Party.
- d. *Counterparts.* This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
- e. *Good Faith.* The Parties shall act in good faith in performing and discharging their respective duties and obligations hereunder. Any provision requiring the approval of either Party shall not be unreasonably withheld. The Parties shall execute and deliver such other instruments and documents as reasonably may be necessary to implement and effectuate the terms of this Agreement.

- f. *Waiver.* No provision, condition or covenant of this Agreement shall be waived by either Party hereto except by a written instrument delivered to the other Party and signed by the Party consenting thereto. If the Town fails to enforce any provision of this Agreement, that failure does not waive the provision or Town's right to enforce it.
- g. *Successors and Assigns.* All provisions of this Agreement shall be binding on and inure to the benefit of each Party and each Party's respective heirs, executors, legal representatives, successors, successors in title and assigns. The Parties understand and agree that neither Party may assign nor transfer any rights or obligations under this Agreement without providing written notice to the other Party and obtaining written approval of the assignment from the other Party, where the Parties agree that said approval shall not be unreasonably withheld.
- h. *Time of the Essence.* Time is of the essence of this Agreement, although a request for additional time should not be unreasonably withheld when the additional time is needed by a Party to receive the approval and authority required by either local or state law.
- i. *Captions.* The section headings appearing in this Agreement are for convenience of reference only and are not intended to any extent for the purpose, to limit or define the test of any section or any subsection hereof.
- j. *Severability.* If any provision of this Agreement is held to be illegal, invalid or unenforceable, then this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.
- k. *Applicable Law.* This Agreement has been made in the State of South Carolina, and shall be interpreted in accordance with South Carolina law, and any enforcement of this Agreement shall be brought in the State of South Carolina.

IN WITNESS WHEREOF, the Parties hereto have affixed their signatures hereto on the Effective Date.

Town of Bluffton:
WITNESSES:

Stephen Steese
Town Manager

Beaufort County:
WITNESSES:

Michael Moore
County Administrator

EXHIBIT A

New Riverside Master Plan



EXHIBIT B

Alston Park Master Plan



EXHIBIT D

Engineering Plans

EXHIBIT E

Project Costs