

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT) **MEMORANDUM OF AGREEMENT**

THIS MEMORANDUM OF AGREEMENT ("Agreement") is being entered into on the 12th day of June, 2020, by and between Beaufort County, South Carolina ("County"), a body politic duly created and existing pursuant to the provisions of S.C. Code Ann. § 4-9-10, *et seq.*, and the Town of Bluffton ("Town"), a South Carolina municipal corporation, created and existing pursuant to S.C. Code Ann. § 5-7-10, *et seq.*, located within the County, collectively hereinafter referred to as the "Parties"; regarding the sharing of responsibility of Minimum Control Measures ("MCM") required in the National Pollution Discharge Elimination System ("NPDES") permit requirement for South Carolina Permit #SCR030000.

WHEREAS, the Parties previously entered into an Intergovernmental Agreement dated July 1, 2016 ("IGA"), to define and implement environmental initiatives related to the protection of Southern Beaufort County Watersheds and other outstanding natural resources, a copy of which is attached hereto as Exhibit "A" and fully incorporated herein by reference; and

WHEREAS, Article 7.02 of the IGA identifies that some aspects of NPDES Municipal Separate Storm Sewer System (MS4) Phase II requirements will lend themselves to coordination and cooperation between the Parties and in such instances, coordination between the Parties shall be on the basis of a specific Minimum Control Measure ("MCM") and shall be established by a separate written agreement; and

WHEREAS, the Parties are authorized to enter into this Agreement by virtue of the provisions of Sections 4-9-40 and 4-9-41 of the South Carolina Code of Laws, 1976, as amended, and Article VIII, Section 13 of the South Carolina Constitution; and

WHEREAS, the Parties are in pursuit of their mission to protect the local watersheds and other outstanding natural resources and to implement both the County's and the Town's Monitoring Plan, Stormwater Ordinance, Stormwater Management Plans, Illicit Discharge Detection and Elimination Plan, Best Management Practice Plan and Enforcement Response Plan and the Parties have determined that this Agreement is in the best interest of achieving those objectives; and

WHEREAS, the Parties initially entered into a Memorandum of Agreement dated June 15, 2017, which expires June 12, 2020; and

WHEREAS, the Parties have determined that it is reasonable, necessary, and in the public interest and welfare for the Parties to cooperate and coordinate the joint administration of the applicable stormwater management ordinances and programs within the territorial jurisdiction of the other Party, as set forth more thoroughly herein.

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 by the County and the Town, the Parties hereto agree as follows:

1. **Recitals Incorporated.** The foregoing recitals are hereby incorporated as though fully set forth herein.

2. **County's Right to Jointly Support Town Stormwater Ordinance.** The Town hereby agrees and grants to the County and the County hereby acknowledges and accepts the non-exclusive right and authority to jointly administer the Town's duly adopted Unified Development Ordinance 2011-15, as amended, and any plans, programs, or corresponding ordinances adopted in accordance therewith, including but not limited to the Town's (i) Stormwater Management Plan, (ii) MCM 3: Illicit Discharge Detection and Elimination (IDDE) Program, (iii) MCM 4: Construction Site Runoff Control Program, (iv) MCM 5: Post-Construction Runoff Control Program; and, (v) Monitoring Plan (herein, collectively "Town's Stormwater Ordinances"), on all properties located within the municipal limits of the Town.

a. **Right of Entry.** Included in the County's right to jointly administer the Town's Stormwater Ordinances within the corporate limits of the Town is the right and authority to enter onto such property located within the Town to perform water quality sampling, conduct inspections, investigate potential violations and take such other actions as permitted by the Town's Stormwater Ordinances to the fullest extent granted to the Town.

b. **Notifications.** The County agrees to notify the Town within twenty-four hours of detecting any potential violation of the Town's Stormwater Ordinances within the corporate limits of the Town. The notification should include the location of the potential violation, the time and date of the potential violation, the type of potential violation, and any additional information that would be necessary or prudent for the Town to have in order to carry out enforcement proceedings. The County agrees to provide the Town with any information required for enforcement action prosecution or other action permitted under the Town's Stormwater Ordinances within 14 days, and agrees to produce County personnel in court, as necessary and upon adequate notice.

c. **Town Documentation.** The Town agrees to provide the County with access to any documentation or records that could assist the County in its joint administration of the Town's Stormwater Ordinances.

3. **Town's Right to Jointly Support County Stormwater Ordinance.** The County hereby agrees and grants to the Town and the Town hereby acknowledges and accepts the non-exclusive right and authority to jointly administer the County's duly adopted Stormwater Ordinance 2016/38, as amended, and any plans, programs, or corresponding ordinances adopted in accordance therewith, including but not limited to the County's (i) Stormwater Management Plan, (ii) MCM 3: Illicit Discharge Detection and Elimination (IDDE) Program, (iii) MCM 4: Construction Site Runoff Control Program, (iv) MCM 5: Post-Construction Runoff Control Program; and, (v) Monitoring Plan (herein, collectively "County's Stormwater Ordinances"), on all properties located within the territorial jurisdiction of the County.

a. **Right of Entry.** Included in the Town's right to jointly administer the County's Stormwater Ordinances within the territorial jurisdiction of the County is the right and authority to enter onto such property located within the County to perform water quality sampling, conduct inspections, investigate potential violations and take such other actions as permitted by the County's Stormwater Ordinances to the fullest extent granted to the County.

b. **Notifications.** The Town agrees to notify the County within twenty-four hours of detecting any potential violation of the County's Stormwater Ordinances within the territorial jurisdiction of the

County. The notification should include the location of the potential violation, the time and date of the potential violation, the type of potential violation, and any additional information that would be necessary or prudent for the County to have in order to carry out enforcement proceedings. The Town agrees to provide the County with any information required for enforcement action prosecution or other action permitted under the County's Stormwater Ordinances within 14 days, and agrees to produce Town personnel in court, as necessary and upon adequate notice.

c. County Documentation. The County agrees to provide the Town with access to any documentation or records that could assist the Town in its joint administration of the County's Stormwater Ordinances.

4. Joint Monitoring. Monitoring Components. The Parties will meet components of their Monitoring Plans, as established pursuant to their Stormwater Ordinances and policy documents, through this Agreement as follows:

a. Monitoring locations, parameters, sampling frequency, and flow data will be determined by both Parties and samples will be collected in accordance with both Parties' Monitoring Plans. Every effort will be made to establish locations and parameters that align with both Parties' Monitoring Plans.

b. All water quality data collected by either Party related to or for the New, May, Okatie and Colleton River watersheds will be shared through the University of South Carolina Beaufort's Water Quality Laboratory.

c. Neither Party will incur any fees to the other in regard to this joint monitoring plan.

5. Miscellaneous.

a. Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by either party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

b. Amendments. Except as otherwise provided herein, this Agreement may not be amended, changed, modified or altered without the prior written consent of both Parties hereto.

c. Scope of Agreement. This Agreement incorporates any and all prior agreements, covenants, and understandings between the Parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this Agreement. No prior agreement or understandings, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.

d. Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

e. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

g. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provision or sections of this Agreement.

h. No Partnership. The Parties hereto intend only to provide for the provision of the services described herein and affirmatively state that no master-servant, principal-agent, employer-employee relationship is created by this Agreement. No employee, volunteer, contractor, agent, or subagent, shall be considered an employee or agent of the other party for any purpose whatsoever, and none shall have any status, right or benefit of employment with the other.

i. No Third Party Beneficiaries. The Parties hereto affirmatively represent that this Agreement is made solely for the benefit of the County and the Town and is not for the benefit of any third party who is not a signature party hereto. No party other than the signature parties hereto shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

6. **Term.** The term of this Agreement shall be from the date first stated above for a period of five (5) years. The Agreement will be reviewed by the Parties annually to determine funding availability for the upcoming year. This Agreement can be extended for additional five (5) year periods upon the mutual agreement of the Parties. This Agreement may not exceed two (2) additional renewals.

7. **Termination for Convenience.** The County and the Town shall have the right to terminate this Agreement for convenience upon sixty (60) days written notice.

8. **Notice.** All notices required to be given under the terms of this Agreement shall be in writing and either (i) served personally during regular business hours; (ii) served by e-mail; or, (iii) served by certified or registered mail, return receipt requested, properly addressed with postage prepaid. Notices upon the Parties shall be served as follows:

TO THE TOWN: Town of Bluffton Engineering Department
 Attn: Watershed Management Division
 Post Office Box 386
 Bluffton, South Carolina 29910
 E-Mail: kjones@townofbluffton.com

TO THE COUNTY: Beaufort County, South Carolina
 Attn: Stormwater Division
 Post Office Drawer 1228
 Beaufort, South Carolina 29902
 E-Mail: wstormwater@bcgov.net

(Signature Page to Follow)

IN WITNESS WHEREOF, the Parties hereto have affixed their signature hereto the date first written hereinabove.

BEAUFORT COUNTY

By: Ashley M Jacobs
Ashley M. Jacobs
County Administrator

TOWN OF BLUFFTON

By: Marc Orlando
Marc Orlando
Town Manager