

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF BEAUFORT)

**AGREEMENT FOR SERVICES AND
CONVEYANCE OF REAL PROPERTY**

THIS AGREEMENT FOR SERVICES AND DONATION OF REAL PROPERTY ("**Agreement**") is made and entered into as of the latter date of execution below by and between the **TOWN OF BLUFFTON**, a South Carolina municipal corporation (the "**Town**"), **BEAUFORT COUNTY**, a political subdivision of the State of South Carolina (the "**County**"), and **BUCKWALTER PLACE ASSOCIATION, INC.** (collectively "**BPA**"). The Town, District, and BPA may from time to time be referred to individually as a "**Party**" and collectively as the "**Parties.**"

RECITALS:

WHEREAS, the Town of Bluffton Town Council (“*Town Council*”) initially approved the Buckwalter Place Master Plan (“*BP Master Plan*”) via majority vote on July 17, 2007, which is associated with real property located within the Town of Bluffton’s jurisdiction. The BP Master Plan shows a right-of-way connecting Innovation Drive and Discovery Drive within Buckwalter Place (“*Connector Road*”); and,

WHEREAS, Buckwalter Place Association, Inc. currently owns the real property which contains the future right-of-way for the Connector Road consisting of approximately 25.36-acres, more or less, and identified as Beaufort County Tax Map No. R610 022 000 1101 0000, identified as Parcel G on the Plat in “**Exhibit A**” attached hereto and incorporated herein by reference; collectively hereinafter the “*Parent Parcel*”; and,

WHEREAS, the County, to address the transportation needs for the developing area adopted Transportation Impact Fees (“*Impact Fees*”), described in more detail herein, where said fees shall be used for specific projects including the Connector Road; and,

WHEREAS, the County and the Town entered into an intergovernmental agreement in November 2022 establishing the collection and use of transportation impact fees associated with properties located in the Town's jurisdiction, including the Parent Parcel and other properties located within the BP Master Plan; and,

WHEREAS, the Parties agree that the purpose of this Agreement is to permit the Parties to formalize the agreed upon responsibilities, covenants and obligations of each Party to fulfill the obligations established in the BP Master Plan to construct the Connector Road and fund a portion of the Project with Impact Fees in accordance with the terms and conditions established in this Agreement.

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. THE PROJECT DEFINED. The Parties agree that for purposes of this Agreement, the “*Project*” is defined as the construction of the Connector Road on and across the Parent Parcel as approved in the BP Master Plan and as further shown and detailed in the Exhibits attached hereto.

III. PROJECT BACKGROUND.

- a. *Buckwalter Place.* The Town of Bluffton Town Council initially approved the Buckwalter Place Master Plan via majority vote on July 17, 2007, which was last revised in April 2019 and as fully provided for in “**Exhibit B**”, attached hereto and incorporated herein by reference. The initial Master Plan and its subsequent amendments show the Connector Road connecting the development to the northern development, initially known as Parcel C4 and now known as Washington Square. The developer of Washington Square constructed the portion of the Connector Road up to the shared property line with Buckwalter Place when installing its infrastructure. The portion of the Connector Road within Buckwalter Place, beginning at the intersection of Innovation Drive and Discovery Drive and ending at its intersection with the existing portion constructed by Washington Square, has yet to be constructed.

BPA obtained a Development Permit (DP-02-16-009495) from the Town on January 6, 2022, for the construction of the Connector Road, described in more detail in “**Exhibit C**”, attached hereto and incorporated herein by reference.

- b. *Connector Road Property and Existing Roads.* The general location of the Connector Road right-of-way is shown in the preliminary plan and “Wetland Earthwork Plans for Connector Road to Parcel 4” provided in “**Exhibit D**” and Discover Drive Connector Site Plan provided in Exhibit D-1, attached hereto and incorporated herein by reference.

BPA also owns a portion of two rights-of-way which intersect with the Connector Road known as Innovation Drive and Discovery Drive consisting of approximately 3 acres, more or less, and identified as Beaufort County Tax Map No. R610-029-000-1720-0000 (the “*Existing Roads*”) as shown in Exhibit A.

- c. *Beaufort County Impact Fees.* The County approved a Transportation Impact Fee Ordinance and its corresponding Support Study with Ordinance 2023/08 on March 13, 2023. Pursuant to Beaufort County Code Section 82-34 “Accounts and Expenditures”, the Transportation Impact Fees may only be expended as follows:
- i. Beaufort County Code Section 82-34(b)(1) states that “expenditure of development impact fees shall be made only for the category of system improvements, and within or for the benefit of the service area, for which the development impact fee was imposed as shown by the relevant capital improvements plan and as authorized in the State Development Impact Fee Act”.
 - ii. Beaufort County Code Section 82-87 includes Table 82-87b: Road Facility Project South of the Broad River of the Impact Fee Ordinance, which identifies Buckwalter Parkway Access Management as a Capital Improvement Project. To identify transportation needs for this area, the County approved an updated Buckwalter Parkway Access Management Plan via Ordinance 2022/07 on February 28, 2022, and

Town Council subsequently adopted the Plan via Resolution on March 8, 2022. The Access Management Plan, Figure 3B (Exhibit A) identifies the Connector Road as a Cross Access Connection. Therefore, the Connector Road is a qualified and approved project for which Transportation Impact Fees may be expended.

- IV. TERM AND SCHEDULE.** The provisions of this Agreement shall come into full force and effect on the Effective Date and expire on July 1, 2027. The Parties agree that BPA shall complete the Project no later than the later of (i) July 1, 2026, (ii) 360 days after the BPA obtains all permits needed to construct the Connector Road. The Project shall be considered complete on the date which BPA obtains a certification of completion from the appropriate Town department(s) stating the work was completed and is in compliance with all State and local laws, regulations and requirements.
- V. PROJECT WORK.** The Parties acknowledge and agree that BPA shall be solely responsible for all work related to the Project including, but not limited to, surveys and approvals for subdivision of the Connector Road, engineering plans, obtaining permits and other necessary approvals, site preparation, construction of Connector Road, and all other services and actions associated with and necessary to complete the Project. SEDA shall be solely responsible for ensuring that the Connector Road is designed, engineered and constructed in compliance with all South Carolina Department of Transportation standards. The Parties agree that the Project will consist of construction of a right-of-way, sidewalk and supporting infrastructure but not utilities in a manner generally consistent with Exhibit D.
- VI. PROJECT COST AND PAYMENT.**
- a. *Project Cost.* BPA has provided a breakdown of the costs associated with the Project, with a total cost of Six Hundred Fifty-Four Thousand Eight Hundred Forty-Nine and 72/100 (\$654,849.72) Dollars; the details and breakdown of costs are fully shown in “**Exhibit E**”, attached hereto and incorporated herein by reference; collectively hereinafter referred to as the “**Project Cost**”. BPA shall be solely responsible for the initial costs associated with the Project and shall be reimbursed for a portion of the Project Cost as established in this Agreement. The Project Costs include interest payable to BPA in the amount of 8% per annum of the unreimbursed costs paid by BPA. This interest will begin to accrue on the date BPA advances reimbursable Project Costs and shall cease on the date the Project Costs are reimbursed. Also included in the cost are fees for management and oversight by Southeastern Real Estate Group, and Grand Oak Construction Company.
- b. *Project Cost Reimbursement Amount.* The Parties acknowledge and agree to the Project Cost, and to those terms and conditions contained in this Agreement that may affect the amount associated with the Project Cost. The Parties agree to individually be solely responsible for a third (1/3) of the Project Cost each, in an amount not to exceed Two Hundred Eighteen Thousand Two Hundred Eighty-Three and 24/100 (\$218,283.24) Dollars except for any additional costs that are incurred pursuant to the terms of this Agreement, specifically to include any Cost Overages as established in this Agreement.

- c. *Request for Payment.* Following completion of the Project, whereby completion has occurred once the final approvals have been provided to BPA by the applicable Town department, BPA shall provide separate written requests to the Town and to the County for payment of the Party's portion of the Project Costs. The required written request shall be made pursuant to Section X of this Agreement. The written request required in this Section shall include a complete breakdown of the total Project Cost.
- d. *Project Cost Overages.* The Parties acknowledge and agree that the actual costs for completion of the Project may exceed the Project Cost due to unexpected cost inflation, unforeseen circumstances and environmental project delays, hereinafter "**Cost Overages**". The Parties agree to Cost Overages in an amount not to exceed twenty (20%) percent of the Project Cost shown in Exhibit F. If Cost Overages exceed twenty (20%) percent of the Project Cost, then BPA shall provide the Town and the County a written explanation of said Cost Overages prior to the expenses be incurred and shall obtain approval from the Town and County prior to incurring the expenses. Cost Overages under the 20% threshold or otherwise approved in accordance with the preceding sentence shall be referred to herein as "Approved Cost Overages". Failure by BPA to obtain said prior approval may result in the Town or the County not reimbursing BPA for the Cost Overages. Failure by the Town or the County to provide said response to BPA shall result in an automatic amendment to any cost dispute to the benefit of BPA. The Parties agree to each individually be solely responsible for a third (1/3) of any Cost Overages resulting from the terms and conditions in this section.
- e. *Review of Project Cost.* Following a written request from BPA pursuant to Section IIII, the Town and County shall have five (5) business days to review the Project Cost and provide a written request to BPA for additional information or details associated with any or all of the Project Cost. Failure by the Town or the County to provide said response shall result in an automatic amendment to any cost dispute to the benefit of BPA. BPA must provide a written response to the aforementioned inquiry within five (5) business days, failure to provide said response shall result in an automatic amendment to any cost dispute to the benefit of the Town or County.
- f. *Payment by Parties.* Pursuant to Section III(a) of this Agreement, BPA shall initially be responsible for the total cost of the Project. The Parties acknowledge and agree that BPA is not required to pay any other Party any amount of funds for the Project Cost.

The Town and County shall provide payment to BPA for its portion of the Project Cost within Forty-Five (45) calendar days from either: 1) the date of the written request required in Section VII; or 2) following completion of a review of the Project Cost established in Section VII; whichever date comes later.

- i. **Form of Payment.** The Parties acknowledge and agree that the Town and County shall remit payment to BPA in the form of a written check and mailed to the address provided for in Section X of this Agreement.

VII. CONVEYANCE OF RIGHT-OF-WAY. The Parties acknowledge and agree that in order to allow the use of Impact Fees for the construction of the Connector Road, the right-of-way must be a public road which requires its transfer to a public entity. As the Project may impact the Existing Roads which may utilize Impact Fees, the Existing Roads should also be public roads owned by a public entity. Therefore, BPA agrees to enter into a separate agreement, as approved by Resolution by Town Council, for the conveyance of the Connector Road and the Existing Roads to the Town upon the completion of the Project for a nominal consideration in the amount of Ten and 00/100 (\$10.00) Dollars and exclusive of any development rights. Included with said dedication shall be the associated sidewalks and landscaping which the Town shall assume maintenance responsibility for. Additionally, BPA agrees the said conveyance shall be free and clear of any liens or encumbrances and shall include the execution of a limited warranty deed.

VIII. RECORDS AND REPORTS.

- a. *Record Retention, Reports and Access.* The Parties shall maintain all records and reports connected with this Agreement and the Project for a period of at least four (4) years following the Effective Date. During the aforementioned retention period or at anytime during a term of this Agreement, the Town or County may request access to any and all records associated with this Agreement or the Project; and BPA shall provide requested records within ten (10) business days from the date of receipt of the written request.
- b. *Accounting Report.* BPA acknowledges and understands that the funds associated with this Agreement are public monies and shall be used only for the purposes stated in this Agreement. BPA agrees to comply with any and all requests from the Town or the County regarding accounting reports including, but not limited to, breakdown of Project Cost, payments to vendors, payments to contractors or payments for licenses or permits. Failure to provide the requested documents may result in the Town or County denying payment of the reimbursement for the Project Cost.

IX. TERMINATION.

- a. *Termination for Convenience.* Any Party may terminate this Agreement for convenience and without cause by providing a written notice to the other Parties at least thirty (30) calendar days prior to commencement of construction of the Connector Road. If construction is initiated and either the Town or the County desire to terminate this Agreement for convenience, then BPA shall be reimbursed by the terminating Party for any funds it has expended that were included in the Project Cost. If BPA terminates this Agreement for convenience and without cause, then neither the Town nor the County shall be responsible for any costs associated with the Project nor required to provide any payments to BPA for any Project Cost without any exception.
- 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 ten (10) 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.

- X. 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

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

To BPA: **Buckwalter Place Association, Inc.**
c/o Southeastern:
2743 Perimeter Parkway, Building 100, Suite 370
Augusta, Georgia 30909
Ph. 706-854-6724
Email: sarah.davis@southeastern.company

- XI. COMPLIANCE WITH LAWS.** In execution of this Agreement, BPA certifies and agrees that it is and shall continue to conduct all activities, construction and business in compliance with all applicable federal, state, and local laws, regulations and ordinances and to obtain and maintain all appropriate permits and consents. The terms of this Section shall survive termination of this Agreement. BPA shall be solely responsible for ensuring that the Project is designed, engineered and constructed in compliance with all South Carolina Department of Transportation, South Carolina Laws, and local laws, regulations and standards. **Failure to comply with this Section and/or failure to construct the Connector Road in compliance with the applicable laws and regulations may result in partial or full denial of reimbursement by either the Town or the County, or both.**

- a. *Conflict of Interest.* BPA shall comply with all applicable conflict of interest laws, ordinances and regulations now in effect or hereafter to be enacted during the term of this Agreement. BPA warrants that as of the Effective Date it is not aware of any facts that create a conflict of interest. If BPA hereafter becomes aware of any facts that may reasonably be construed to create a conflict of interest, BPA shall immediately inform the Town and County, and disclose all relevant facts in writing. Failure to comply with this Section shall be deemed a breach of the Agreement and may result in the immediate termination of the agreement.

XII. INDEMNIFICATION. BPA shall, at its cost and expense, protect, defend, indemnify and hold harmless the Town and County, its directors, officers, employees, and agents, from and against any and all demands, liabilities, causes of action, costs and expenses (including attorney's fees), claims, judgments, or awards of damages, arising out of or in any way resulting from the acts or omissions of BPA, its directors, officers, employees, or agents, relating in any way to BPA's performance under this Agreement.

XIII. ASSIGNMENT. The Parties understand and agree that BPA may neither assign nor transfer any rights or obligations under this Agreement without providing written notice to the Town and the County and obtaining written approval of the assignment from the Town and County, where the Parties agree that said approval shall not be unreasonably withheld.

XIV. NON-DISCRIMINATION. The Parties certify 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 Town and County 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.

XV. 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.
- 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.

Signature Page to Follow

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

Buckwalter Place Association, Inc.:

WITNESSES:

Exhibit A
Plat Depicting Roads and Parcel G

DRAFT

Exhibit B
Buckwalter Place Master Plan

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Exhibit C

Development Permit

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Exhibit D
Wetland Earthwork Plans for Connector Road to Parcel 4

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Exhibit D-1
Discover Drive Connector Site Plan

DRAFT

Exhibit E

Budget

DESCRIPTION	TOTAL
Demo	\$12,675.00
Earthwork	\$136,635.00
Paving/ concrete	\$191,162.50
Drainage System	\$36,500.00
Water System	\$25,725.00
SUB-TOTAL HARD COSTS PARCEL C4 ROAD	\$402,697.50
Civil Engineer/Environmental	\$95,000.00
Legal	\$5,000.00
Construction Interest to BPA	\$32,215.80
Development Fee to Southeastern Real Estate Group	\$20,134.88
Construction Management Fee to GOCC	\$40,269.75
SUB-TOTAL SOFT COSTS	\$192,620.43
TOTAL HARD AND SOFT COSTS	\$595,317.93
10% CONTINGENCY	\$59,531.79
TOTAL PARCEL C4 ROAD	\$654,849.72