

RESOLUTION NUMBER 2022-11
AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH
SC NORTH AUGUSTA BUENA VISTA, LLC RELATED TO THE
CONSTRUCTION OF A STORM WATER AND DRAINAGE
IMPROVEMENT PROJECT EXTENDING ACROSS THE AREA FROM
MARTINTOWN ROAD TO BUENA VISTA AVENUE ON A PARCEL OF
PROPERTY CONTAINING 50.86 ACRES CURRENTLY UNDER CONTRACT
TO SC NORTH AUGUSTA BUENA VISTA, LLC

WHEREAS, SC North Augusta Buena Vista, LLC has approached the City concerning the construction of a storm water and drainage improvement project on property that the developer currently has under contract; and,

WHEREAS, the storm water improvements as identified in the proposed contract are necessary for the development of the property; and,

WHEREAS, the City identified this storm water and drainage improvement project in 2018 related to a Capital Project Sales Tax Program; and,

WHEREAS, a Referendum approved this project for the Sales Tax Program; and,

WHEREAS, sufficient funds have not been available, to date, for the construction of this project; and,

WHEREAS, the developer has agreed to advance costs related to the project and construct same based upon plans to be approved by the City; and,

WHEREAS, when the project was considered for the 2018 Referendum, the estimate for the cost of the project at that time was \$600,000.00; and,

WHEREAS, the developer has agreed to be responsible for all costs and expense related to the improvements above \$600,000.00; and,

WHEREAS, City Council is of the belief that it is in the City's best interest to enter into this contract.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of North Augusta, South Carolina, in meeting duly assembled and by the authority thereof, that:

1. That the City Administrator is authorized to execute the agreement attached hereto, marked as Exhibit "A" causing the City to enter into an agreement with SC North Augusta Buena Vista, LLC for the construction of a storm water drainage project as identified in such agreement.
2. That the City Administrator is further authorized to execute all additional documents necessary to carry out this agreement.

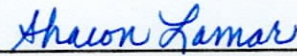
3. At such time as the project is completed and payment is required, such payment is to be paid from Capital Project Sales Tax Funds, if available or from such other funds as designated by City Council at that time.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS 7th DAY OF MARCH, 2022.



BRITON S. WILLIAMS, MAYOR

ATTEST:



SHARON LAMAR, CITY CLERK

STORMWATER IMPROVEMENTS AGREEMENT

This Stormwater Improvements Agreement (the "Agreement") is made and entered into as of this _____ day of _____, 2022 by and between **SC NORTH AUGUSTA BUENA VISTA, LLC**, a South Carolina limited liability company ("Developer") and the **CITY OF NORTH AUGUSTA, SOUTH CAROLINA** ("City") (Developer and the City being sometimes individually referred to herein as a "Party" and sometimes collectively referred to as the "Parties").

RECITALS

WHEREAS, Developer and/or its affiliates is currently either record owner or under contract to purchase approximately 50.86 acres of real property in the City of North Augusta, City of Aiken, State of South Carolina, consisting of the following five (5) tax parcels: 007 16 03 001 (42.5 acres), 007 12 12 009 (3.99 acres) 007 12 12 006 (2.8 acres), 007-12-12-007 (0.97 acres) and 007-12-12-005 (0.60 acres) (collectively, the "Property"); and

WHEREAS, Developer has submitted preliminary plans for development of the Property which have been approved by the City, and contemplates a development on the Property consisting of single family detached homes, multifamily units, and commercial outparcels (the "Development"); and

WHEREAS, the City will benefit from the Development of the Property through the expansion of its tax base, the addition of needed infrastructure, and the certainty and control of growth within the Property; and

WHEREAS, the Development will require the construction of stormwater and drainage improvements specifically related to stormwater drainage affecting a portion of the Property located between Martintown Road and East Buena Vista Avenue (the "Stormwater Improvements"); and

WHEREAS, the City previously recognized the need for the Stormwater Improvements, and included the construction project for same (the "Project") in matters to be funded through the Capital Project Sales Tax Program, which was approved by referendum in 20____ (the "Program"); and

WHEREAS, at the time the Stormwater Improvements were originally contemplated, the cost for the Project was estimated to be \$600,000.00; and

WHEREAS, although the Project was included in a list of matters to be funded through the Program, sufficient funds were previously unavailable to undertake the Project (as Program funds were utilized for other matters within the Program considered by the City to be of higher priority); and

WHEREAS, Developer is agreeable to advancing funds for the Project based on an understanding that, subject to certain conditions set forth herein, the City will thereafter reimburse Developer for all costs and expenses related to same, up to but not exceeding \$600,000.00; and

WHEREAS, the Parties wish to enter into this Agreement to address, among other things (i) Developer's preparation of plans and specifications for the Stormwater Improvements (the "Plans"), (ii) the review and approval of the Plans by the City, (iii) the completion of the Project by Developer pursuant to the approved Plans, and (iv) the reimbursement by the City to Developer for all costs and expenses related the Project up to but not exceeding \$600,000.00.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The foregoing Recitals are incorporated and made a part of this Agreement.
2. Developer will prepare the Plans and submit the same to the City for review, comment and approval. The Plans will contemplate, among other things, the utilization of the Stormwater Improvements for stormwater drainage by the Developer, for the benefit of the Development, through the connection of one or more stormwater pipes or other stormwater facilities on the Property to the Stormwater Improvements.
3. To the maximum extent permitted by law, the City will assist Developer with the identification, coordination of, and timely issuance of, all City and other governmental permits, approvals and consents which may be necessary or desirable in connection with the construction/installation, operation, maintenance and repair of the Stormwater Improvements.
4. Upon approval of the Plans by the City, and subsequent to Developer acquiring the entirety of the Property, Developer will proceed with the construction and installation of the Stormwater Improvements.
5. Upon completion of the Project, Developer will submit the Stormwater Improvements as constructed and installed to the City, which will either approve the Stormwater Improvements or ask for modifications in order to grant ultimate approval.
6. Within sixty (60) days after the Project has been completed, Developer will submit documented and verified costs of the Project to the City, who will, within thirty (30) days of submittal by Developer and through revenue sources available to the City, reimburse Developer for any and all costs and expenses incurred by Developer in conjunction with the Project, such reimbursement amount not to exceed Six Hundred Thousand and no/100 Dollars (\$600,000.00). Any costs and expenses incurred by Developer related to the Project in excess of \$600,000.00 shall be the responsibility of Developer.
7. This Agreement shall be construed in accordance with, and governed in all respects by, the laws of the State of South Carolina, without regard to its conflicts of laws principles.
8. All covenants, agreements, warranties, and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns.
9. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In addition, this Agreement may contain more than one counterpart of the signature page(s), all of which signature page(s) may be attached to one copy of this Agreement to constitute the entire executed Agreement. Scanned, facsimile, or photocopies of the executed Agreement may be relied upon as if the original.
10. Neither party may assign or transfer the responsibilities or agreement made herein without the prior written consent of the non-assigning party, which shall not be unreasonably withheld.
11. This Agreement may only be amended or supplemented by a written agreement signed by the Parties.

12. If any provision in this Agreement is voidable or unenforceable that provision will be severed and the rest of this Agreement will remain in full force and effect.

13. The provisions of this Agreement are binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. The Parties shall have all rights at law and in equity in enforcing this Agreement. This Agreement and any attachments constitute the entire and final agreement between the Parties. It supersedes any previous correspondence, tenders, representations, proposals, understandings and communications whether oral or in writing relating to the subject matter hereof (apart from documents referred to specifically herein).

14. By their signature hereto, the Parties hereby agree that this Agreement is intended to be a legally binding document.

(signature page to follow)

[SIGNATURE PAGE – STORMWATER AGREEMENT]

IN WITNESS WHEREOF, the parties have caused this Stormwater Agreement to be executed by its duly authorized representatives the day and year first written above.

CITY OF NORTH AUGUSTA, SOUTH CAROLINA

By: _____

Name: _____

Its: _____

SC NORTH AUGUSTA BUENA VISTA, LLC,
a South Carolina limited liability company

By: _____
Philip J. Wilson, Manager