



CITY COUNCIL

SPECIAL CALLED AGENDA

OF

DECEMBER 27, 2016

Administration Department



Interoffice Memorandum

TO: Mayor and City Council

FROM: Lark W. Jones, Mayor

DATE: December 22, 2016

SUBJECT: Special Called Meeting of Tuesday, December 27, 2016

CITIZEN COMMENTS: Citizens may speak to Mayor and City Council on each item listed on this agenda. Mayor Jones will call for your comments prior to City Council discussing the matter. When speaking to Council, please step up to the microphone, give your full name and address, and direct your remarks to Mayor Jones.

CITIZEN ASSISTANCE: Individuals needing special assistance or sign interpreter to participate in the meeting, please notify the Administration Department 48 hours prior to the meeting.

Pursuant to Section 2-37, entitled "Calling Special Meetings," of the Code of Laws of North Augusta, South Carolina, a special called meeting of City Council is called for Tuesday, December 27, 2016 at 7:00 P. M. at the Municipal Center located at 100 Georgia Avenue, North Augusta, South Carolina.

The purpose of the special meeting shall be for Council to consider the following:

1. **CALL TO ORDER:**
2. **INVOCATION AND PLEDGE OF ALLEGIANCE:**
3. **ROLL CALL:**
4. **ECONOMIC DEVELOPMENT:** A Resolution Designating Brassfield and Gorrie, LLC as the Selected General Contractor for Site Work as a Part of Project Jackson

A resolution has been prepared for Council's consideration designating Brassfield and Gorrie, LLC as the selected general contractor for site work as a part of Project Jackson.

Please see **ATTACHMENT NO. 4** for a copy of the proposed resolution and supporting documentation.

5. **FINANCE:** A SECOND AMENDED AND RESTATED ORDINANCE AUTHORIZING THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA TO ENTER INTO AN INSTALLMENT PURCHASE TRANSACTION IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING SIXTEEN MILLION DOLLARS (\$16,000,000) TO REFINANCE THE COSTS RELATING TO THE CONSTRUCTION AND EQUIPPING OF A PARKING GARAGE ON CERTAIN REAL PROPERTY OWNED BY THE CITY AND DESCRIBED HEREIN AND FINANCE THE COSTS RELATING TO THE CONSTRUCTION AND EQUIPPING OF CERTAIN ROADS, WATER, SEWER AND RELATED INFRASTRUCTURE LOCATED WITHIN A TAX INCREMENT FINANCING DISTRICT OF THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS INCLUDING THE BASE LEASE AGREEMENT AND THE INSTALLMENT PURCHASE AND USE AGREEMENT; DELEGATING THE AUTHORITY TO THE MAYOR AND CITY ADMINISTRATOR TO DETERMINE CERTAIN MATTERS; AND OTHER MATTERS RELATING THERETO.

A. Ordinance, First Reading

An ordinance has been prepared for Council's consideration authorizing the City of North Augusta, South Carolina to enter into an installment purchase transaction in the principal amount of not exceeding sixteen million dollars (\$16,000,000) to refinance the costs relating to the construction and equipping of a parking garage on certain real property owned by the City and described herein and finance the costs relating to the construction and equipping of certain roads, water, sewer and related infrastructure located within a tax increment financing district of the City; authorizing the execution and delivery of various documents including the base lease agreement and the installment purchase and use agreement; delegating the authority to the Mayor and City Administrator to determine certain matters; and other matters relating thereto.

Please see [ATTACHMENT NO. 5-A](#) for a copy of the proposed ordinance.

B. Ordinance, Second Reading

Pending Council's action on Item 5-A above, the ordinance is submitted for Council's consideration on second reading.

Please see [ITEM NO. 5-A](#) above for the proposed ordinance text.



Lark W. Jones, Mayor

ATTACHMENT 4

RESOLUTION NO. 2016-37
A RESOLUTION DESIGNATING BRASSFIELD AND GORRIE, LLC AS THE SELECTED
GENERAL CONTRACTOR FOR SITE WORK AS A PART OF PROJECT JACKSON

WHEREAS, the City has been working on Project Jackson for several years; and

WHEREAS, as part of the Project, the City will construct a multi-use stadium; and

WHEREAS, delays in the project to this point have caused cost escalations; and

WHEREAS, the construction timeframe for construction of the stadium is approximately 14 months; and

WHEREAS, the City believes that Project Jackson is at a point where site work must commence on the project to ensure a completion date in time for the 2018 baseball season; and

WHEREAS, time is of the essence in proceeding with such construction, in order to achieve the total development as envisioned by Project Jackson; and

WHEREAS, for the purpose of meeting its responsibility to provide the stadium, the City issued a request for qualifications with respect to construction services related to the construction of said stadium; and

WHEREAS, following a review of the submitted qualifications, the City has determined that Brassfield and Gorrie, LLC is best qualified to provide the services on the time schedule required; and

WHEREAS, the City would desire to authorize only the site work portion of the contract at this time; and

WHEREAS, the Mayor and City Council have determined that it is in the best interest of the City to move forward with such site work;

NOW THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of North Augusta, South Carolina, in meeting duly assembled and by the authority thereof select Brassfield and Gorrie, LLC as the general contractor for the stadium site work within Project Jackson and authorize the City Administrator to execute a contract with same for site work only.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS ____ DAY OF DECEMBER, 2016.

Lark W. Jones, Mayor

ATTEST:

Donna B. Young, City Clerk

DRAFT AIA® Document A102™ - 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 21 day of December in the year 2016
(In words, indicate day, month and year)

BETWEEN the Owner and the Owner's Representative:
(Name, address and other information)

City of North Augusta, SC (Owner)
P.O. Box 6400
100 Georgia Avenue
North Augusta, SC 29861-6400

Greenstone Development Services, LLC (Owner's Representative)
3301 Windy Ridge Parkway, Suite 320
Atlanta, GA 30339

and the Contractor:
(Name, address and other information)

Brasfield & Gorrie, L.L.C.
3021 7th Avenue South
Birmingham, AL 35233

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

North Augusta Site Work Package
City of North Augusta, SC

The Architect:
(Name, address and other information)

Odell Associates, Inc.
800 West Hill Street, Third Floor
Charlotte, NC 28208

The Owner and Contractor 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.

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

This document is not intended for use in competitive bidding.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following ranked order of precedence: Amendments or Modifications to the Agreement, Attachments to the Agreement, the General Conditions, Specifications, and Drawings, and then this Agreement.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the mutual relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration 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. The Owner agrees to furnish and approve, in a timely manner, information

required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

§ 3.1 Owner's Representative's general responsibility hereunder as Owner's manager and director of oversight shall be to manage, supervise, and coordinate the planning, design, construction, and completion of the Project. Owner will contract directly for any services for which it bears direct financial responsibility.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be as follows:

Commencement of the site work and miscellaneous procurement as set forth in Attachment C will not begin until ten (10) days after the last of the following is achieved:

1. Receipt of the executed contract by Contractor.
2. Receipt of a Limited Notice to Proceed in the amount of \$3,388,644.
3. Reasonable evidence has been provided to Contractor that financial arrangements have been made to fulfill the Owner's obligations under the Limited Notice to Proceed.

Commencement of the Stadium Construction is required no later than February 1, 2017 in order for construction to be substantially complete by 4/1/2018, and such work will not begin until ten (10) days after the last of the following is achieved:

1. Receipt of a Full Notice to Proceed in the amount which is to be determined after the final stadium GMP pricing exercise.
2. Reasonable evidence has been provided to Contractor that financial arrangements have been made to fulfill the Owner's obligations under the Full Notice to Proceed, including confirmation of any municipal bond issuance.
3. Owner has provided Contractor with evidence of ownership of the property upon which the Work is to be performed.
4. Permit is received for building construction.
5. Worksite is established free from hazardous materials.
6. Worksite is ready to allow unimpeded access to the Work by the Contractor.

In the event Owner fails to fulfill the conditions required to release Contractor to perform the Work by February 1, 2016, Contractor shall be entitled to an equitable adjustment in the Contract Sum and the Contract Time. Additionally, the GMP shall be increased by an additional \$136,000 as funds for demobilization and remaining fixed costs, contractor may exercise its right to demobilize the project site upon completion of the Site Work scope of work as defined in Attachment C.

The following add alternate is included herein that the Owner may approve for incorporation into the GMP, should the owner not be in a position to issue an NTP on or before February 1, 2017 for the balance of the ballpark scope. The amount of the alternate below shall cover the costs to extend the approval/NTP deadline for the ballpark scope of work until **March 17, 2017**. Approval of the alternate below will enable B&G to continue advancing the critical schedule activities productively until formal release on the balance of the ballpark scope, through 3/17/17. Should the Owner exercise its' option on the alternate below, the date listed in the previous paragraph related to the balance of demobilization funds, shall be adjusted to 3/17/17.

ADD ALTERNATE FOR B&G TO CONTINUE CRITICAL PATH WORK UNTIL 3/17/17 - \$1,697,703.

Critical Path Work Activities Include but may not be limited to:

1. Foundation excavation
2. Form/Reinforce/Place substructure concrete (footings, shear walls, bleacher risers, SOG)
3. Foundation backfill and Fine grading
4. Design and procurement for shoring and retaining walls
5. Release wet well C2 and pumps
6. Install masonry stem walls
7. Underground MEP Rough In
8. Structural Steel material procurement (order raw materials, shop drawings and detailing)
9. Submittals for release of long lead time MEP equipment

If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work specifically listed herein not later than Ninety Days (90) days from the date of commencement, or as follows:

Portion of Work	Substantial Completion date
[Redacted]	[Redacted]

, subject to adjustments of this Contract Time as provided in the Contract 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.)

Owner shall not be entitled to and waives any claim for damages or expenses, including liquidated or consequential damages, in the event Contractor fails to achieve Substantial Completion within the Contract Time.

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

3% of the Cost of Work, excluding Direct Purchase items by Owner.

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

Fee provided in 5.1.1 will apply to changes in the Work, whether change is add or deduct. 3% of the Cost of Work shall be used for fee on changes to the work.

§ 5.1.3 Limitations, if any on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work after 100% Construction Documents are provided and incorporated herein:

Subcontractor's mark-up for additional material, labor, and cost incurred in performing additional Work shall not exceed the following: For Changes in the Work totaling less than \$5,000, Subcontractor shall be allowed actual cost up to 10% markup for Overhead and up to 10% markup for Profit. For Changes in the Work totaling more than \$5,000, Subcontractor shall be allowed actual cost up to 10% markup for Overhead and up to 5% markup for Profit.

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed one hundred percent (100%) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

See Attachment D for clarifications

Item	Units and Limitations	Price Per Unit
[Redacted]	[Redacted]	[Redacted]

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed **Three Million Three Hundred Eighty Eight Thousand Six Hundred Forty Four and 00/100 (\$3,338,644.00)**, subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

The Guaranteed Maximum Price is subject to adjustment for (i) scope changes, (ii) change orders authorized in accordance with the requirements of the Contract Documents, (iii) any Owner-caused delays, and (iv) and delays caused by weather or other force majeure conditions. The difference, upon Final Completion of the Work, between (i) the total aggregate sum of the Cost of the Work plus the Contractor's Fee and (ii) the Guaranteed Maximum Price (such difference equals the Savings) shall be shared by the Owner and the Contractor as follows: Eighty Percent (80%) of such Savings shall inure to the benefit of the Owner and the remainder shall be paid to the Contractor as an additional fee. Cost which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price

§ 5.2.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee or either, or of a separate contractor employed by the Owner, or by changes in the Work, Contractor shall be entitled to an equitable adjustment to the Contract Sum and Guaranteed Maximum Price and Contract Schedule.

If the Contractor is delayed more than ten (10) work-days, in the aggregate, by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond the control of Owner or Contractor, Contractor shall be entitled to an equitable adjustment to the Contract Sum and Guaranteed Maximum Price.

§ 5.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to

subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. Some categories of Contractor's cost fluctuate and are difficult to determine conclusively by audit or other means, given the corporate framework of Contractor. For this reason, and to reduce the expense of the final audit and contract close-out, Owner and Contractor agree that certain items, specifically described below, will be charged as fixed rates or fixed percentages that approximate Contractor's actual costs. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops, including reconstruction expenses. Labor Burden shall be specified as applicable to Direct Personnel Expense (DPE) charged at a rate equal to 51.31%, which percentage shall cover Worker's Compensation Insurance, all payroll taxes, field bonuses, field employee health insurance, training and all other fringe benefits and costs. Subsistence rates, discretionary to Contractor, may also be paid to construction workers, in some cases, to cover travel and related costs. Special rates for field engineers and concrete finishers are charged, in addition to their Wages and Labor Burden, to cover special equipment needs.

§ 7.2.2 The following rates shall be charged for management, estimating, supervisory and administrative personnel for time spent by each individual working on the Project at the jobsite, jobsite office, home office or other offices:

a. Regional Vice President	\$ 155 / Hour
b. Regional Preconstruction Director	\$ 150 / Hour
c. Senior General Superintendent	\$ 150 / Hour
d. Senior Superintendent	\$ 120 / Hour
e. Superintendent	\$ 110 / Hour
f. Assistant Superintendent	\$ 90 / Hour
g. Assistant Field Manager	\$ 80 / Hour
h. Division Manager	\$ 150 / Hour
i. Operations Manager	\$ 130 / Hour
j. Senior Project Manager	\$ 110 / Hour
k. Project Manager II	\$ 100 / Hour
l. Project Manager I	\$ 90 / Hour
m. Assistant Project Manager	\$ 75 / Hour
n. Chief Estimator	\$ 120 / Hour
o. Senior Estimator	\$ 100 / Hour
p. Estimator II	\$ 90 / Hour
q. Estimator I	\$ 80 / Hour
r. Project Management - Administrative Assistant	\$ 50 / Hour
s. Estimating - Administrative Assistant	\$ 50 / Hour
t. Regional Accountant/Subcontractor Document Coordinator	\$ 45 / Hour

The rates provided above represent the total payment by Owner for each individual regardless of fluctuations in Contractor's actual cost. The rates include salary or wages, training, insurance, vacation and all other fringe benefits. The above rates have been established by the mutual agreement of Contractor and Owner and will apply throughout the Project, provided that Contractor will be allowed to increase the rates annually each January 1st by five percent (5%). If Contractor is required to relocate an individual to work on Owner's Project, Owner agrees to reimburse Contractor the reasonable relocation cost or subsistence expense.

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments, and benefits required by law or collective bargaining agreements and, for persons not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, will not be separately charged but are included in the Labor Burden for hourly construction workers and the rates charged for management, supervisory and administrative personnel.

§ 7.2.5 Incentive compensation and any other discretionary payments paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 7.3 SUBCONTRACT COSTS

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts. Owner's audit of Contractor's final accounting of Subcontract Costs, pursuant to Articles 11 and 12, shall be for the purpose of determining that the Subcontract Costs were in fact paid by Contractor to Subcontractors in the performance of the Work. Subcontractors' costs of performance shall not be subject to audit unless incurred pursuant to a cost-plus subcontract which expressly provides that the subcontractor's costs may be audited by Owner.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ 7.5.1 Costs, including transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment shall be subject to the Owner's prior approval.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 That portion of bond premiums, insurance premiums and loss funding that can be directly attributed to this Contract for coverages and limits at a minimum required by Article 11 of the AIA 201-2007, as modified. Owner acknowledges that Contractor may utilize large deductible and/or retention insurance policies and shall charge to Owner an amount to fund for expected losses which are included in the rate established in this section. The final Contract Sum and Guaranteed Maximum Price will include a fixed charge equal to 1.25% of the final amount otherwise payable by Owner to cover Contractor's cost of all liability insurance, umbrella insurance, risk management and Corporate Safety Programs. Such charge will be deemed to include all liability insurance premiums inclusive of deductibles, risk management expenses, plus Contractor's costs associated with Corporate Safety Engineer inspections, travel, meals, lodging, incentives, bonus programs and training. Bond premium and Builder's Risk policies inclusive of deductibles shall be charged at actual cost.

The Contractor shall implement a Subcontractor Default Protection (SDP) Program, which shall be reimbursable at 1.2% of the total subcontract and purchase order value, including change orders and owner-provided materials. The Contractor may, in its sole discretion, procure payment and performance bonds, enroll the subcontractor in a default insurance program, or self-insure the risk. The SDP charge will be included in the GMP for the Project.

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Meals involving representatives of Contractor and subcontractors, Owner or design professionals, where Contractor documents the purpose of the meeting and the attendees; soft drinks, bottled water, refrigerator, paper towels, toiletries, and other incidentals in the project trailer; Contractor's signage at the construction site; rates for deployment and maintenance of computer hardware and software and software licenses utilized for the Project; any sales tax bond, business license, notices, and expediting of permits required for the Project.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

§ 7.6.10 The final Contract sum and Guaranteed Maximum Price will include a warranty reserve equal to 0.25% of all amounts otherwise payable by Owner to Contractor. Contractor shall charge its actual cost to this reserve, and

any savings accruing in this reserve at the end of the warranty period will be distributed according to the Savings provisions of this agreement.

§ 7.6.11 Any other cost in the schedule of values not otherwise included.

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

§ 7.8.3 Owner acknowledges that Contractor will be allowed to purchase material, rent equipment, and procure services from B&G Equipment & Supply Company, a wholly owned subsidiary of Brasfield & Gorrie, LLC. HRA Risk Services is a related party that may serve as an agent in bonding and insurance transactions.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be provided in Article 15;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article 7;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article 7; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus

materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 When a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

§ 10.4 Except as otherwise agreed in writing by both parties hereto, the contractor must competitively bid any trade Work that the Contractor wishes to perform with the Contractor's own fares through an Affiliate as defined in Article 7.8.1, and shall obtain no less than two (2) additional responsive bids from responsible Subcontractors. The Contractor, or an Affiliate, shall be permitted to perform such trade Work upon the Owner's approval. Any trade Work performed by the Contractor's own forces or by an Affiliate shall be paid for and accounted for as though that Work were performed by a Subcontractor under the terms of this Agreement.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. The provisions of this Article 11 shall apply to all costs reimbursable as Cost of the Work except for those costs covered by specific rates, percentages or changes set forth in Article 7.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. The Architect will certify the Application for Payment, while the Owner and/or Owner's Representative will approve, subject to any required adjustments, the actual payment amounts,

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

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment to the Contractor not later than the 25th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than fifteen (25) days after the Architect receives the Application for Payment.

§ 12.1.4 In conjunction with each Application for Payment, the Contractor shall submit Contractor's Interim Lien Waiver and Release and Interim Claim Waiver form. Based upon Applications for Payment and all supporting documentation as required by the Contracts submitted to the Owner and the Architect by the Contractor and Certificates for Payment issued by the Owner, the Owner shall make progress payments on the account of the Contractor as provided below and elsewhere in the Contract Documents. During and at the completion of the Project the Contractor shall have available for the Owner's review in the Contractor's main office upon the Owner's request, detailed material as Owner may reasonably request to support the actual costs, which shall include, but not be limited to the following: a) copies of original payrolls; b) invoices for material and services; c) records of payment for reimbursable costs; d) Subcontractor billings, Interim Lien Waivers and Releases and Interim Claim Waivers and Releases in the form attached as Exhibit "K", payment requests and payment information; and e) all other documentation required by Owner and Lender.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of Ten percent (10%) until fifty percent (50%) of the Contract Value is complete, and zero percent (0%) retainage for the remaining Contract Value, such that the total retainage is five percent (5%) of the Contract Value. The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage. The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments retention for Subcontractors.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. 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.

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

.1 In performing their review of Contractor's final accounting, Owner's auditors may perform an audit sampling of Contractor's costs to verify that appropriate accounting and control systems were implemented by the Contractor. Certain provisions of Article 7 reflect the agreement of Owner and Contractor to fixed rates, percentages or charges to be included in the Cost of the Work. Owner and Contractor agree that the rates, percentages or charges set forth in this Agreement are reasonable and appropriate as a reimbursable job cost included in the Cost of the Work. For any audit sampling performed by Owner's auditors, its auditors shall verify whether the rates, percentages or charges contained in the Contractor's final accounting and application for payment are the rates, percentages or charges set forth in this Agreement. Unless Owner's auditors demonstrate that they have discovered significant irregularities in the course of their review of Contractor's final accounting, their review will be deemed complete thirty (30) days after delivery of the final accounting to the Architect by Contractor.

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.4 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the

Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

Final payment shall be issued upon the completion of the work according to the terms herein and it has been inspected and approved by the authorities having jurisdiction, and the Architect.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER

The Owner or Owner's Representative will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

Mutually agreed upon mediator

§ 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

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

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201-2007, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201-2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.
- .4 Total amount of General conditions, demobilization and other fixed costs as itemized in Attachment C, shall be paid in full.

§ 14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Contractor’s Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

Five Percent (5%)

10% per annum

§ 15.3 The Owner or Owner’s representative:

Todd Glover (Owner)
City of North Augusta, SC
P.O. Box 6400
100 Georgia Avenue
North Augusta, SC 29861-6400

Chris Schoen or James Dean (Owner’s Representative)
Greenstone Development Services, LLC.
3301 Windy Ridge Parkway, Suite 320
Atlanta, GA 30339

§ 15.4 The Contractor’s representative:
(Name, address and other information.)

Juan Carlos Ospina
Brasfield & Gorrie, L.L.C.
3021 7th Avenue South
Birmingham, AL 35233

§ 15.5 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ written notice to the other party.

§ 15.6 Other provisions:

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A201–2007, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ 16.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications exhibit: Attachment A

§ 16.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of Drawings exhibit: Attachment A

§ 16.1.6 The Addenda, if any:

Number	Date	Pages
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Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

- A. Attachment A – Drawing & Specification Log
- B. Attachment B – Sitework Limits for Ballpark
- C. Attachment C – Schedule of Values
- D. Attachment D – Clarifications

ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of insurance or bond	Limit of liability or bond amount (\$ 0.00)
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This Agreement entered into as of the day and year first written above.

 OWNER (Signature)

 CONTRACTOR (Signature)

 (Printed name and title)

Juan Carlos Ospina, Vice President

 (Printed name and title)

1) **Division 1/General Conditions**

- a) General Conditions Exclusions:
 - i) Pricing excludes the City of North Augusta Bond fee.

- b) General Conditions Clarifications:
 - i) Pricing Excludes City of North Augusta building permits and plan review fees.
 - ii) Pricing excludes NPDES permitting costs, and B&G assumes the NPDES and all related permits will be the responsibility of Others, and will be in place prior to commencement of work onsite.
 - iii) Pricing includes costs for grading permit
 - iv) Pricing includes City of North Augusta Business License for the Site work GMP Scope of work.
 - v) Pricing excludes management of Owner Furnished Items.
 - vi) Pricing excludes 3rd Party Testing and Inspections
 - vii) Pricing is valid through 12/31/16.
 - viii) Agreement assumes that Ballpark portion of the contract will be approved and B&G released for procurement and construction as expected on or before 2/1/17 to allow for continuous work on the critical path of the overall project schedule. Owner shall be responsible for schedule and cost impacts due to delays resulting from issuance of a Ballpark Notice to Proceed after 2/1/17.
 - (1) Should B&G not receive a written notice to proceed for the remainder of the Ballpark scope of work by 2/1/17, they will complete the current scope of work as best possible, and demobilize from the project site as soon as practicable.
 - (2) Half the cost for demobilization is included in this GMP contract amount, however per AIA 102 Article 4, should B&G not receive NTP on the ballpark scope of work, or approval for the add alternate to extend the job until 3/17/17, the balance of the demobilization costs will be added to the GMP, as outlined in the Attachment C.
 - (3) Owner will be responsible for other additional costs incurred by B&G as a result of not being directed to proceed on the ballpark work, which include but may not limited to standby, downtime, material escalations, storage and costs attributed to resource re-allocations.
 - ix) We have assumed that the Owner will notify Brasfield & Gorrie of all permitting responsibilities prior to mobilization, and that permits required can be obtained as needed to support project schedule
 - x) Unless specifically identified in the SOV (Attachment C), all ballpark related costs are excluded from this contract.
 - xi) Preconstruction and construction costs for the proposed Outfield Building are excluded. Actual costs and contract amounts to be determined with receipt of

- final design documents. Cost and schedule for Outfield Building to be determined after receipt of final design documents.
- xii) Brasfield & Gorrie has excluded all work with scoreboard for Ballpark. Design details for scoreboard installation appear to be missing from the current design drawings. Final details for scoreboard may have cost and/or schedule impacts for the Ballpark or Outfield Building.
 - xiii) Project Value Analysis items to date are included on Attachment E for reference and information only. These VA items will be re-evaluated and revised (if necessary) during the re-pricing of the overall ballpark GMP.
 - xiv) Brasfield & Gorrie has excluded any off-site parking or laydown. It has been assumed that the Project Jackson development site will support all craft parking and construction laydown for the Ballpark project.
 - xv) Subcontractor and vendor pricing included in this GMP are based on previous scope assumptions from March 2016 and contract documents included within Attachment A. Pricing has been updated and reflected as itemized line items on the Schedule of Values (Attachment C), based on current market pricing. Should Brasfield & Gorrie not receive an executed Agreement and receipt of a Full Notice to Proceed on or before 12/31/16, Brasfield & Gorrie may evaluate cost and/or schedule impacts related to the delay, and shall be entitled to any increase in the Contract Sum or adjustment of Contract Time.
 - xvi) GMP does not include any preconstruction or construction costs associated with construction of parking decks.
 - xvii) Brasfield & Gorrie will be issued a separate contract to cover the costs for the Sweet Water Shell, and shall be authorized to proceed with work for that building by the time we are released to begin work for the Ballpark, on or before 3/17/17.
 - xviii) Brasfield & Gorrie will be issued a separate contract to cover the costs for the Outfield Building above level 1, and shall be authorized to proceed with work for that building by the time Brasfield & Gorrie is released to begin work for the ballpark, on or before 3/17/17. Substantial completion dates within the Agreement do not apply to any portions of the Outfield Building unless adjusted via Change Order.
 - xix) The term Value Engineering shall be synonymous with Value Analysis, and Brasfield & Gorrie accepts no responsibility for the design and performance related to value analysis/value engineering. All VA/VE items must be approved in writing both technically by the engineer of record and commercially by the ownership stakeholders prior to Brasfield & Gorrie proceeding with procurement.

2) **Division 2**
I. Scope

**CLARIFICATIONS & QUALIFICATIONS – 12/21/16
SITE WORK GMP & PARCEL J**

1. In accordance w/ project drawings and specifications (Attachment A), with the exception of Parcel J.
 - a. Parcel J scope of work shall be in accordance w/ Kimley-Horn Drawings C-01, C-02, C-03 dated 10/11/16.
2. Except as specifically contemplated herein, this contract excludes all site work associated with the Ballpark Village Parcels, except Parcels A & J.
3. Parcel J scope of work shall generally include:
 - a. Demo of existing structures
 - b. Stripping to stock pile
 - c. Export topsoil (outside project limits, and offsite if necessary)
 - d. Cut/Fill Onsite Material
 - e. Import of fill material (only includes 50% from offsite import)
 - f. Fine grading of building pads
4. Site work & Grading scope shall be limited to the boundaries identified on the attached Sheets (Attachment B), unless specifically noted otherwise.
5. Demolition & removal within ballpark parcel as shown on marked-up DWG. EC-3
 - a. Legal haul off and disposal of all debris in accordance with state and local regulations.
 - b. Includes but is not limited to old asphalt roads, debris piles, abandoned utility poles, existing piping, existing walls & structures, etc.
6. Installation, grading, stabilizing, and maintenance of sediment basins.
7. Erosion control Phase 1-1 for entire Ballpark Development, Phases 2-1 thru 4A-1 for Ballpark only as noted on marked-up drawings.
 - a. Note that due to the ownership constraints of some of the parcels, the Erosion Control Plan may not be completed or may require modifications.
8. Perform site demolition and grading sequence in accordance w/ a mutually agreeable schedule.
 - a. Installation of erosion control, sediment basins and dewatering measures prior to mass excavation and foundation work, with the exception of Parcel J.
 - b. Parcel J shall commence concurrently with the erosion control work.
9. Protect existing plant materials not designated for removal, during construction

10. Provide driveway permits per SCDOT & provide written grading plan.
11. Location & marking of existing utilities prior to beginning work
12. Field verification of all existing elevations and layout
13. Installation/maintenance of site entrance and temporary haul roads
14. Installation & maintenance of all necessary erosion control measures in compliance w/ the contract documents, local inspectors/jurisdiction (City of N. Augusta & Aiken County, and applicable regulations (SCDHEC Sediment control planning).
 - a. Inspection of all site & erosion control measures weekly and after rain events (>0.5")
15. Final clearing & grubbing of Ballpark Parcel. (excludes clearing of trees)
16. Excavation & Backfill per plans & specifications.
17. Clearing & grubbing of topsoil for material stock piling and temporary storage of fill material. Assume a minimum depth of 12" of topsoil.
18. Includes dewatering & moisture conditioning as necessary
19. Furnish & install pond & wetland linings if required for scope of work.
20. Furnish and install bowl collector piping and manholes.
21. Stabilization of areas brought to final grade and rough graded areas to prevent washout or erosion
 - a. Stabilization to be done with the use of seeding, blankets, approved BMP's etc.
22. Furnish & Install all piping, fittings, equipment, valves, thrust blocks/supports & precast/prefabricated structures per plans & specifications for storm drainage
23. Furnish & install all pipe bedding & granular backfill as called for on the documents.
24. Tie in to storm utility mains (mains to be installed by others)
25. Determination of left field wall design must be completed by 2/1/17.

II. Scope Clarifications

1. Brasfield & Gorrie has not included any relocation of existing utilities. It is assumed that any modifications to existing utilities will be performed by others, and that such modifications will be completed with no cost or schedule impacts to Brasfield & Gorrie in accordance with Brasfield & Gorrie's overall project schedule. We have assumed that the existing overhead power lines will be relocated, and all work on roadways and

existing utilities will be completed in a timely manner that will not impact B&G's work.

2. It is assumed that any excavated soil that is to be reused, and may be temporarily stored onsite at agreed upon locations in the ballpark village parcel.
 - a. Utilize appropriate erosion and sediment controls for temporarily stored materials, including capping of stockpiles soils as needed.
3. Excavated unsuitable materials shall generally be defined as materials that cannot be legally stockpiled onsite, and must be hauled off and disposed through the appropriate chain of custody/process as required by local, state and federal laws and regulations.
4. It is assumed that all excavated fill that will not be reused, will be stock piled on agreed upon locations in the ballpark village. Prior to stock piling this material on the parcels, 12" of topsoil will need to be removed, subgrade will be inspected by Soils Engineer and approved (excess material is not to be placed on unsuitable materials).
 - a. Remove 12" of topsoil (organics) in any location where onsite stockpiling or temporary fill will be stored in the Ballpark Village parcel.
 - b. This proposal assumes all clearing of trees for this purpose has been done by the City of North Augusta or Others.
 - c. Any additional clearing and grubbing outside of the ball park parcel will be done on a unit price basis at \$5,121.00/Acre.
 - d. Unsuitable material from the ball park parcel will be hauled off site at a unit price basis at \$30.49/cy
 - e. Unsuitable material from the village parcels will be hauled off site at a unit price basis at \$30.49/cy
 - f. It is expected that the contractor will perform estimating calculations and determine a quantity of excess material that will need to be stockpiled on the Village Parcels.
 - g. Stockpiled material will be stored a maximum of 4' deep.
 - h. Stockpiled material will be stored at locations directed by the owner on the Village Parcels.
5. Due to the strong possibility of contaminated soil w/ brick material, contractor has assumed a 3' undercut under 50% of the structural slabs & foundations within the ballpark parcel. Provide calculated quantities:

**CLARIFICATIONS & QUALIFICATIONS – 12/21/16
SITE WORK GMP & PARCEL J**

- a. Total neat line cut 42,535 CY's
 - b. Total additional undercut included in the bid 4,740 CY's
 - c. TOTAL EXCAVATED MATERIALS 47,275 CY's
6. If additional excavation/undercutting is to be done beyond the total CY's listed above, this will be done at a unit price of \$7.07/cy (haul off will be additional \$23.47/cy)
7. It is assumed that all backfill materials shall consist of onsite excavated material.
- a. If there is not enough suitable fill material existing onsite for the ballpark parcel or parcel J, additional fill material will be hauled in at a unit price basis at \$21.85/cy truck measure.
 - b. This proposal further assumes that the engineer may develop parameters to allow for reuse of brick contaminated materials; however, this material will only be used for backfill if it can be done so without treatment, crushing, sorting etc.
 - c. Otherwise, brick contaminated materials shall be hauled off at a unit price basis at \$23.47/cy
8. All necessary permits to legally commence work have been secured by the Owner or Others, and will be in place prior to Brasfield & Gorrie starting work. Owner shall equitably adjust the GMP and project schedules for impacts resulting from Brasfield & Gorrie not being able to prosecute work in an uninterrupted and continuous manner once mobilized.
9. We have assumed that final design for the pumps and pump structures will be provided to Brasfield & Gorrie by 2/1/17. Failure to meet these dates may result in Brasfield & Gorrie being entitled to additional costs and /or time.

III. EXCLUSIONS:

1. Haul off of any unsuitable or excess materials.
2. All work associated w/ the wet well C2 and pumps
3. Utility work outside of storm water and water infrastructure as shown on the contract documents.
4. Haul in of any backfill material.
5. Work on Ballpark Village Parcels, excluding A & J
6. Testing, remediation or treatment of soils containing brick material or any other inorganics and contaminants

7. Relocating or re-handling of stockpiled excess fill once it has been dumped, and will no longer be needed at the ballpark parcel.
8. Removal and disposal of existing structures within the work area, unless specifically noted in the contract documents.
9. This proposal excludes the processing, sorting, or special preparation/treatment of soils containing brick material in order to convert to suitable backfill. Non-extraordinary excavation and re-use of brick as fill is not excluded.
10. Relocation of existing utilities, unless specifically called out
11. Grading work beyond the ballpark parcel and parcel J except as required for stockpiling operation described above, and Phase 1 erosion control.
12. Relocation of existing electrical service and poles/equipment.
13. Any demolition outside of the ballpark construction area.
14. Maintenance of any roads, ponds or access ways outside of the ballpark parcel, except as specifically coordinated and needed for the ball park construction activities.
15. Excludes any testing, treatment or special disposal of any brick material contaminated w/ lead.
16. Rock removal beyond what can be reasonably removed or demolished with a track hoe bucket.
17. All clearing will be done by others. Grubbing of land outside of ballpark parcel is excluded.
18. Brasfield & Gorrie excludes any work or modifications to erosion control installed by others to meet local compliance requirements. It is assumed any existing erosion control measures turned over to Brasfield & Gorrie will meet local code requirements.

North Augusta Green Jackets Ballpark
Sitework GMP Contract w/ Parcel J
Schedule of Values - 12.21.16



Note: All activities must proceed in same time frame sequence to realize greatest project schedule & cost efficiency

Item Description	Value
Site Work (Exclusive of Playing Field)	
Earthwork	
Grubbing	\$70,062
Erosion Control	\$274,843
Demolition & Debris Removal	\$48,056
Grading Permitting/Business Licensing	\$14,500
Strip & Stockpile Topsoil	\$106,752
Mass Grading	\$278,619
Spread Excess Soils	\$20,675
Stormwater	
Water	\$5,016
Stormwater structures, manholes, water quality box, valves, headwall etc.	\$224,254
Stormwater piping, Excavation, equipment, labor etc.	\$176,201
Perimeter bowl collector piping/structures (Excluding Wet Well C2 and Pumps)	\$199,000
Stadium Substructure	
Procurement & Early material costs for foundation/substructure work	\$219,040
Foundation/Substructure/Retaining wall formwork and start up supplies	\$164,060
Foundation/Substructure/Retaining wall excavation & prep work	\$78,900
Stadium Shop Drawings & Procurement Release	
Structural and Misc Steel (Startup Costs)	\$55,000
Glass & Glazing (Startup Costs)	\$27,500
HVAC (Startup Costs)	\$22,000
Plumbing (Startup Costs)	\$43,000
Fire Protection (Startup Costs)	\$18,150
Sitework - Permits	\$4,662
Sitework - General Conditions	\$577,134
Stadium - Demobilization & Remaining Fixed Costs **	\$136,000
Sitework - Builders Risk, Insurance, Bond	\$34,543
Subtotal	\$2,797,966
Sitework - Contractor Fee	\$83,938
Sitework - Contractor Contingency	\$0
SITWORK PORTION - ESTIMATED CONSTRUCTION COST:	\$2,881,904
Parcel J Site Work (Exclusive of Stadium Site Work Scope)	
Parcel J - Demo, stripping, Cut/Fill, Fine Grading	\$453,807
Sitework - Permits	\$2,500
Sitework - General Conditions	\$29,600
Sitework - Builders Risk, Insurance, Bond	\$6,074
Subtotal	\$491,981
Sitework - Contractor Fee	\$14,759
Sitework - Contractor Contingency	\$0
PARCEL J SITWORK - ESTIMATED CONSTRUCTION COST***:	\$506,740

** (Applicable only if Stadium construction does not proceed immediately after Sitework scope defined herein) - Sitework GMP includes only half of the demobilization and remaining fixed costs associated with the project. Should B&G not receive notice to proceed with the balance of the ballpark scope of work on or before 2/1/17, this contract shall be increased by \$136,000, and B&G shall have the option to complete the scope under the Sitework GMP and demobilize the project accordingly.

*** Cost portion for Parcel J Sitework included herein, shall be the ultimate responsibility of the developers (Greenstone)

ORDINANCE NO. 2016-27

A SECOND AMENDED AND RESTATED ORDINANCE AUTHORIZING THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA TO ENTER INTO AN INSTALLMENT PURCHASE TRANSACTION IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING SIXTEEN MILLION DOLLARS (\$16,000,000) TO REFINANCE THE COSTS RELATING TO THE CONSTRUCTION AND EQUIPPING OF A PARKING GARAGE ON CERTAIN REAL PROPERTY OWNED BY THE CITY AND DESCRIBED HEREIN AND FINANCE THE COSTS RELATING TO THE CONSTRUCTION AND EQUIPPING OF CERTAIN ROADS, WATER, SEWER AND RELATED INFRASTRUCTURE LOCATED WITHIN A TAX INCREMENT FINANCING DISTRICT OF THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS INCLUDING THE BASE LEASE AGREEMENT AND THE INSTALLMENT PURCHASE AND USE AGREEMENT; DELEGATING THE AUTHORITY TO THE MAYOR AND CITY ADMINISTRATOR TO DETERMINE CERTAIN MATTERS; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, AS FOLLOWS:

Section 1. Definitions.

The terms defined in this Section for all purposes of this second amended and restated ordinance (this "*Ordinance*") shall have the respective meanings as set forth in this Section. The term:

"*Bank*" means Bank of America, N.A., or any affiliate of Bank of America, N.A. or such other financial institution as approved by the City Representative.

"*Base Lease*" means the Second Amended and Restated Base Lease Agreement by and between the City and the Corporation to be dated as of the date of its delivery, together with any amendments, modifications and restatements thereof or substitutions therefor, in each case the form of which shall be negotiated, determined and finalized by a City Representative.

"*Bond*" means, collectively, the Interim Bond and the Permanent Bond.

"*Bond Agreement*" means the Bond Agreement by and between the Corporation and the Trustee (or the Bank, as more fully provided herein) to be dated as of the date of its delivery, together with any amendments, modifications and restatements thereof or substitutions therefor.

"*City*" means the City of North Augusta, South Carolina.

“*City Administrator*” shall mean the City Administrator of the City and any individual appointed to act as City Administrator subsequent hereto.

“*City Clerk*” shall mean the City Clerk of the City of North Augusta.

“*City Council*” means the City Council of the City of North Augusta.

“*City Representative*” shall mean the Mayor, the City Administrator or any other City official or representative selected to act on behalf of the City.

“*Corporation*” means the North Augusta Public Facilities Corporation, a South Carolina nonprofit corporation.

“*Financing*” means, collectively, the First Prior Interim Financing, the Second Prior Interim Financing, the Interim Financing and the Permanent Financing, all as more fully described in Sections 2(c) and (d) hereof.

“*Financing Documents*” means collectively, the Base Lease, the Installment Purchase Agreement, and the Bond Agreement.

“*First Prior Interim Bond*” means the installment purchase revenue bond issued by the Corporation in connection with the First Prior Interim Financing in the form of a \$10,000,000 Taxable Installment Purchase Revenue Bond (Parking Garage Project), Series 2015A dated January 21, 2015.

“*First Prior Interim Financing*” means the initial installment purchase transaction entered into on January 21, 2015 through the issuance of the First Prior Interim Bond, in anticipation of the Permanent Financing, all for the purpose of financing the Prior Project.

“*First Prior Ordinance*” means an ordinance enacted by the City Council on December 15, 2014, the provisions of which, in part, authorized the Prior Project, the First Prior Interim Financing and the approval of the issuance of the First Prior Interim Bond by the Corporation.

“*Installment Payments*” has the meaning assigned to such term in Section 2(e).

“*Installment Purchase Agreement*” means the Second Amended and Restated Installment Purchase and Use Agreement by and between the Corporation and the City to be dated as of the date of its delivery, together with any amendments, modifications and restatements thereof or substitutions therefor, in each case the form of which shall be negotiated, determined and finalized by a City Representative.

“*Interim Bond*” means the installment purchase revenue bond issued by the Corporation in connection with the Interim Financing in the form of a not exceeding \$16,000,000 Taxable Installment Purchase Revenue Bond (Parking Garage and Infrastructure Project), Series 2017A.

“Interim Financing” means the installment purchase transaction to be entered into in anticipation of the Permanent Financing, all for the purposes of refinancing or financing the Project, and consisting of the issuance of the Interim Bond.

“Mayor” shall mean the Mayor of the City.

“Ordinance” means this Ordinance of the City.

“Permanent Bond” means the installment purchase revenue bond(s) issued in connection with the Permanent Financing to refinance or refund the Interim Bond.

“Permanent Financing” means the installment purchase transaction to be entered into in order to refund or refinance the Interim Financing, all for the purpose of financing the Project, and consisting of the issuance of the Permanent Bond.

“Prior Project” means the construction and equipping of a parking garage facility.

“Project” means (a) the Prior Project, and (b) the construction and equipping of roads, water, sewer and related infrastructure of the City, such infrastructure to be located generally and bound by the Savannah River to the south, Georgia Avenue to the east, the brick ponds to the north and the Hammond’s Ferry subdivision to the west, and those portions of Center Street and Railroad Avenue adjacent to such parcels, as applicable.

“Real Property” means all those certain pieces, parcels or tracts of land as described on Exhibit A hereto, including the existing improvements thereon as of the date hereof.

“Second Prior Interim Bond” means the installment purchase revenue bond issued by the Corporation in connection with the initial Interim Financing in the form of a \$13,000,000 Taxable Installment Purchase Revenue Bond (Parking Garage and Infrastructure Project), Series 2016A dated January 21, 2016.

“Second Prior Interim Financing” means the second installment purchase transaction entered into on January 21, 2016 through the issuance of the Second Prior Interim Bond, in anticipation of the Permanent Financing, all for the purpose of financing or refinancing the Project.

“Second Prior Ordinance” means an amended and restated ordinance enacted by the City Council on January 4, 2016, the provisions of which, in part, authorized the Project, the Second Prior Interim Financing and the approval of the issuance of the Second Prior Interim Bond by the Corporation.

“State” shall mean the State of South Carolina.

“Trustee” means a financial institution that shall act as trustee in connection with the consummation of the Financing Documents, such institution to be selected by a City

Representative; provided that the Financing Documents may provide that so long as the Bank is the sole owner of the Bond, the Bond Agreement will function as a loan agreement between the Bank, for its own account and not as a bond trustee, and the Corporation and, if the Bond Agreement provides for the role of a Trustee, then, except as otherwise provided in the Bond Agreement, (a) the Bank shall succeed to all of the rights and obligations of the Trustee thereunder and (b) all references therein to the Trustee shall be deemed to be references to the Bank.

Section 2. Findings and Determinations.

The City Council hereby finds and determines:

(a) The City is a body politic and corporate of the State and as such possesses all general powers granted to municipalities of the State.

(b) Under South Carolina law, the City is authorized to sell, lease or dispose of personal and/or real or mixed property.

(c) The City Council enacted the First Prior Ordinance to provide for the authorization of the Prior Project, the entering into of the First Prior Interim Financing and the approval of the issuance by the Corporation of the First Prior Interim Bond. The provisions of the First Prior Ordinance allowed for the extension of the First Prior Interim Financing subject to the approval of the Bank. The City Council enacted the Second Prior Ordinance to provide for the authorization of the Project, the entering into of the Second Prior Interim Financing and the approval of the issuance by the Corporation of the Second Prior Interim Bond. The provisions of the Second Prior Ordinance allowed for the extension of the Second Prior Interim Financing subject to the approval of the Bank. This Ordinance is being enacted for the purposes of: (i) providing for the refinancing of the Second Prior Interim Financing and providing funds to payoff the Second Prior Interim Bond; (ii) expanding the original scope of the Project by increasing the par amount of the original authorization contained within the Second Prior Ordinance by \$3,000,000; (iii) authorizing the entering into and execution of the Financing Documents; (iv) authorizing the consummation of the Interim Financing and the approval of the issuance and delivery by the Corporation of the Interim Bond; and (v) amending and restating the Second Prior Ordinance.

(d) The Financing of the Project will be effected through an installment purchase transaction pursuant to which the City will enter into the Base Lease and the Installment Purchase Agreement; provided that it is understood that the installment purchase transaction initially will be structured as the Interim Financing and that the maturity of such Interim Financing will be approximately one year from the closing thereof, subject to a one year extension as determined by the Bank in its sole discretion, and that the Permanent Financing will occur on or before the maturity of the Interim Financing, all as more fully contemplated in the Financing Documents.

(e) Pursuant to the provisions of the Base Lease, the City will lease the Real Property to the Corporation in consideration of (i) the issuance by the Corporation of the Bond pursuant to the provisions of the Bond Agreement, and (ii) the payment of Base Lease Rent (as defined in the Base Lease) to the City. The Bond will be paid by the Corporation from the receipts of certain payments (the "*Installment Payments*") made by the City to the Corporation under the provisions of the Installment Purchase Agreement. Pursuant to the provisions of the Installment Purchase Agreement, the City will agree to purchase from the Corporation the Facilities (as defined in the Installment Purchase Agreement) by making the Installment Payments. Notwithstanding the foregoing, the Financing Documents will provide that the refunding or refinancing of the Interim Bond with the Permanent Bond will be permitted and, when consummated, will not constitute one or more Installment Payments, but rather, in such case, the Installment Payments will be provided for in the definitive documents relating to the issuance of the Permanent Bond.

(f) The proceeds of the Bond will be used (i) to defray all or a portion of the costs of the financing or refinancing of the Project (or, in the case of the Permanent Bond, to refund the Interim Bond), and (ii) to pay the costs of issuance of the Bond.

(g) It is understood that the Interim Bond evidencing the Interim Financing shall be purchased initially by the Bank.

(h) The rights to receive Installment Payments, together with all rights, but not obligations of the Corporation under the Base Lease and the Installment Purchase Agreement, shall be assigned by the Corporation to the Trustee, or the Bank, as applicable, under the Bond Agreement as security and a source of payment for the Bond. In addition, the revenues generated by the Project shall be assigned by the Corporation and the City to the Trustee, or the Bank, as applicable, under the Bond Agreement as security and a source of payment for the Bond. It is also understood that the Interim Bond evidencing the Interim Financing will be secured in part by a covenant of the Corporation to consummate the Permanent Financing described herein through the issuance of the Permanent Bond on or prior to the maturity of the Interim Bond and the proceeds of the Permanent Bond will be used, among other purposes, to refund the Interim Bond.

(i) As previously discussed, in order to finance or refinance all or a portion of the costs of the Project, the City Council has determined that it is necessary and in the best interest of the City to enter into the Financing authorized by this Ordinance with the Corporation. The Financing will serve a proper public and corporate purpose of the City.

(j) It is understood that the Permanent Financing shall be subject to approval of a separate ordinance of the City to be enacted by City Council prior to the consummation of such Permanent Financing.

Section 3. Authorization for the Project; Pledge of Revenues.

The Project is hereby approved. The City Representative or such other appropriate officers and agents of the City are empowered and directed to negotiate, execute and deliver contracts, agreements, certificates and conveyances necessary or convenient to accomplish the Project and pledge the revenues therefrom as security for payment of the Bond, including, without limitation, the Financing Documents. In connection with the consummation of the Interim Financing, the City is authorized to pay or is authorized to cause the Corporation to pay to the Bank all accrued interest and any unused fees with respect to the Second Prior Interim Bond, such payment of accrued interest and any unused fees to be paid to the Bank at or prior to the closing of the Interim Financing.

Section 4. Approval of Corporation and Issuance of Bond.

The City hereby ratifies the formation of the Corporation, the appointment of the Corporation's initial Board of Directors and the issuance by the Corporation of the Bond. The City also acknowledges that, in accordance with the provisions of the Installment Purchase Agreement, the City will acquire absolute title to the Facilities upon payment of all amounts due under the Installment Purchase Agreement; *provided, however*, that the City does not hereby waive its right to terminate the Installment Purchase Agreement prior to such payment in accordance with the provisions of the Installment Purchase Agreement.

Section 5. Delegation of City Representative to Approve Base Lease, Installment Purchase Agreement, and Bond Agreement.

The City Council hereby approves the City Representative to negotiate, make such determinations as may be necessary, and finalize the Base Lease. The Mayor or the City Administrator is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the City Clerk is hereby authorized, empowered and directed to attest, the Base Lease in the name and on behalf of the City, and thereupon to cause the Base Lease to be delivered to the Corporation and to cause the Base Lease (or memorandum thereof) to be recorded in the office of the Register of Deeds for Aiken County, South Carolina. Any amendment to the Base Lease shall be executed in the same manner.

The City Council hereby approves the City Representative to negotiate, make such determinations as may be necessary, and finalize the Installment Purchase Agreement. The Mayor or the City Administrator is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the City Clerk is hereby authorized, empowered and directed to attest, the Installment Purchase Agreement in the name and on behalf of the City, and thereupon to cause the Installment Purchase Agreement to be delivered to the Corporation and to cause the Installment Purchase Agreement (or memorandum thereof) to be recorded in the office of the Register of Deeds for Aiken County, South Carolina. Any amendment to the Installment Purchase Agreement shall be executed in the same manner.

The City is not a party to the Bond Agreement, but the City acknowledges that the Bond Agreement is an integral part of the documents related to the Financing. A City

Representative is hereby authorized to provide for the review and approval of the form of the Bond Agreement with such additions, deletions, amendments and changes as may be deemed necessary by the parties thereto and approved by the City Representative prior to the consummation of the Financing.

Section 6. Execution of Documents.

The Mayor and the City Administrator, or either one of them acting alone, and the City Clerk are fully empowered and authorized to take such further actions and to execute and deliver such additional documents as may be deemed necessary or desirable in order to effectuate the execution and delivery of the Base Lease and the Installment Purchase Agreement in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby, and the action of such officers in executing and delivering any of such documents, in such form as the Mayor and the City Administrator shall approve, is hereby fully authorized. The City Council hereby retains the law firm of Pope Flynn, LLC as bond counsel with respect to the transactions authorized by this Ordinance.

Section 7. Severability.

If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 8. Amendment and Restatement; Repeal of Inconsistent Ordinances and Resolutions.

This Ordinance amends and restates the Second Prior Ordinance. All ordinances and resolutions of the City, and any part of any ordinance or resolution, inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 9. Effective Date.

This Ordinance shall be effective upon its enactment by the City Council.

**DONE, RATIFIED AND ENACTED BY THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA IN MEETING DULY
ASSEMBLED ON THIS 9TH DAY OF JANUARY, 2017.**

(SEAL)

Lark W. Jones, Mayor

ATTEST:

Donna B. Young, City Clerk

First Reading: December 27, 2016
Second Reading: December 27, 2016
Public Hearing: January 9, 2017
Third Reading: January 9, 2017

EXHIBIT A

Description of the Real Property

ALL THAT LOT, TRACT OR PARCEL OF LAND, WITH ANY IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE CITY OF NORTH AUGUSTA, AIKEN COUNTY, SOUTH CAROLINA, HAVING THE FOLLOWING METES AND BOUNDS, TO WIT:

COMMENCING AT THE SOUTHEAST INTERSECTION OF BLUFF AVENUE AND WEST AVENUE AT A PK NAIL FOUND BEING THE POINT OF COMMENCEMENT; THENCE SOUTH 19 DEGREES 27 MINUTES 31 SECONDS WEST (S19°27'31"W), A DISTANCE OF 185.93 FEET TO A #4 REBAR SET BEING THE **POINT OF BEGINNING**; THENCE SOUTH 70 DEGREES 18 MINUTES 41 SECONDS EAST (S70°18'41"E), A DISTANCE OF 324.42 FEET TO A #4 REBAR SET; THENCE SOUTH 17 DEGREES 04 MINUTES 52 SECONDS WEST (S17°04'52"W), A DISTANCE OF 194.71 FEET TO A #4 REBAR FOUND; THENCE NORTH 72 DEGREES 55 MINUTES 08 SECONDS WEST (N72°55'08"W), A DISTANCE OF 18.43 FEET TO A #4 REBAR FOUND; THENCE ALONG A CURVE HAVING A RADIUS OF 118.00 FEET AND AN ARC LENGTH OF 78.37 FEET, WITH A CHORD BEARING OF SOUTH 88 DEGREES 03 MINUTES 18 SECONDS WEST (S88°03'18"W) AND A CHORD DISTANCE OF 76.94 FEET TO #4 REBAR SET; THENCE NORTH 67 DEGREES 48 MINUTES 09 SECONDS WEST (N67°48'09"W), A DISTANCE OF 42.59 FEET TO A #4 REBAR FOUND; THENCE NORTH 19 DEGREES 25 MINUTES 18 SECONDS EAST (N19°25'18"E), A DISTANCE OF 24.57 FEET TO A #4 REBAR SET; THENCE NORTH 70 DEGREES 19 MINUTES 10 SECONDS WEST (N70°19'10"W), A DISTANCE OF 199.89 FEET TO A #4 REBAR SET; THENCE NORTH 19 DEGREES 27 MINUTES 31 SECONDS EAST (N19°27'31"E), A DISTANCE OF 28.39 FEET TO A #4 REBAR SET; THENCE SOUTH 70 DEGREES 12 MINUTES 34 SECONDS EAST (S70°12'34"E), A DISTANCE OF 5.00 FEET TO A #4 REBAR SET; THENCE NORTH 19 DEGREES 27 MINUTES 31 SECONDS EAST (N19°27'31"E), A DISTANCE OF 77.21 FEET TO A #4 REBAR SET; THENCE NORTH 70 DEGREES 12 MINUTES 34 SECONDS WEST (N70°12'34"W), A DISTANCE OF 5.00 FEET TO A #4 REBAR SET; THENCE NORTH 19 DEGREES 27 MINUTES 31 SECONDS EAST (N19°27'31"E), A DISTANCE OF 91.71 FEET TO A #4 REBAR SET BEING THE **POINT OF BEGINNING** CONTAINING 1.51 ACRES.

