

1 - Work Session Agenda

Documents:

[1 - WORK SESSION AGENDA.PDF](#)

2 - Greenville Drive - Field Street Improvements And Development Agreement

Documents:

[2 - GREENVILLE DRIVE - FIELD STREET IMPROVEMENTS AND DEVELOPMENT AGREEMENT.PDF](#)

2 - Ordinance (Item 15f)

Documents:

[2 - ORDINANCE ITEM 15F - AGREEMENT - WEST END STADIUM - DEVELOPMENT AGREEMENT AND THIRD AMENDMENT TO STADIUM DEVELOPMENT LEASE AGREEMENT.PDF](#)

3 - Citizen Advisory Committee On Public Safety Update

Documents:

[3 - PRESENTATION - CITIZEN ADVISORY COMMITTEE ON PUBLIC SAFETY UPDATE.PDF](#)



CITY COUNCIL OF THE CITY OF GREENVILLE WORK SESSION MEETING

**Monday, December 14, 2020
3:30 p.m.**

Greenville City Hall is currently closed to the public. Please use the following methods to attend the Work Session Meeting:

Virtual Meeting Viewing
<https://www.greenvillesc.gov/meeting>
Password: meetnow

**Telephone: 1-415-655-0002
WebEx Event Number: 179 184 5517**

**Remote Viewing Location:
Greenville Convention Center, 1 Exposition Drive**

The city of Greenville seeks input from citizens while adhering to public health and safety guidelines. All attendees at the remote viewing location will be subject to a temperature screening with a touch-less forehead thermometer. Anyone with a temperature reading above 100 degrees Fahrenheit will not be admitted. Attendees will be required to wear a covering over their mouth and nose, unless it violates a religious tenant or belief or causes difficulty breathing.

AGENDA

ATTENDEES:

CITY COUNCIL: Mayor Knox White; Councilmember Wil Brasington; Councilmember John DeWorken, Councilmember Dorothy Dowe, Councilmember Lillian Flemming; Councilmember Ken Gibson; Councilmember Russell Stall

CITY STAFF: City Manager John McDonough; City Attorney Michael S. Pitts; City Clerk Camilla G. Pitman

- 1. Call to Order** **3:30 p.m.**
- 2. Greenville Drive – Field Street Improvements and Development Agreement** **3:30 p.m.**
(Presented by Assistant City Manager Shannon Lavrin)
- 3. Citizen Advisory Committee on Public Safety Update** **3:50 p.m.**
(Presented by City Attorney Mike Pitts and Captain Greg Smith)
- 4. Executive Session:** **4:05 p.m.**
 - a. Boards and Commissions**
(Presented by City Clerk Camilla Pitman)
- NOTE: City Council will leave the Work Session WebEx virtual meeting to conduct an Executive Session (by electronic means) which is not open to the public. The Work Session meeting will adjourn following the completion of the Execution Session. No action will be taken prior to adjourning the meeting.*
- 5. Adjourn** **4:30 p.m.**

Greenville Drive – Field Street Improvements and Development Agreement

December 14, 2020





Field Street Improvements

- Development Agreement – reimbursement not to exceed \$2.55 million (costs will be substantiated)
- Covers the Design and Construction of Public Improvements
 - Includes public restrooms, landscaping, lighting, hardscape/pavers, street furniture, electrical, irrigation, storm drainage
- Proposed Maintenance:
 - Greenville Drive responsibility:
 - Public restrooms, landscaping (including trees and silva cells), lawn, and irrigation systems
 - City responsibility:
 - Lighting and hardscape/pavers/sidewalk
- Stadium development lease agreement amendment





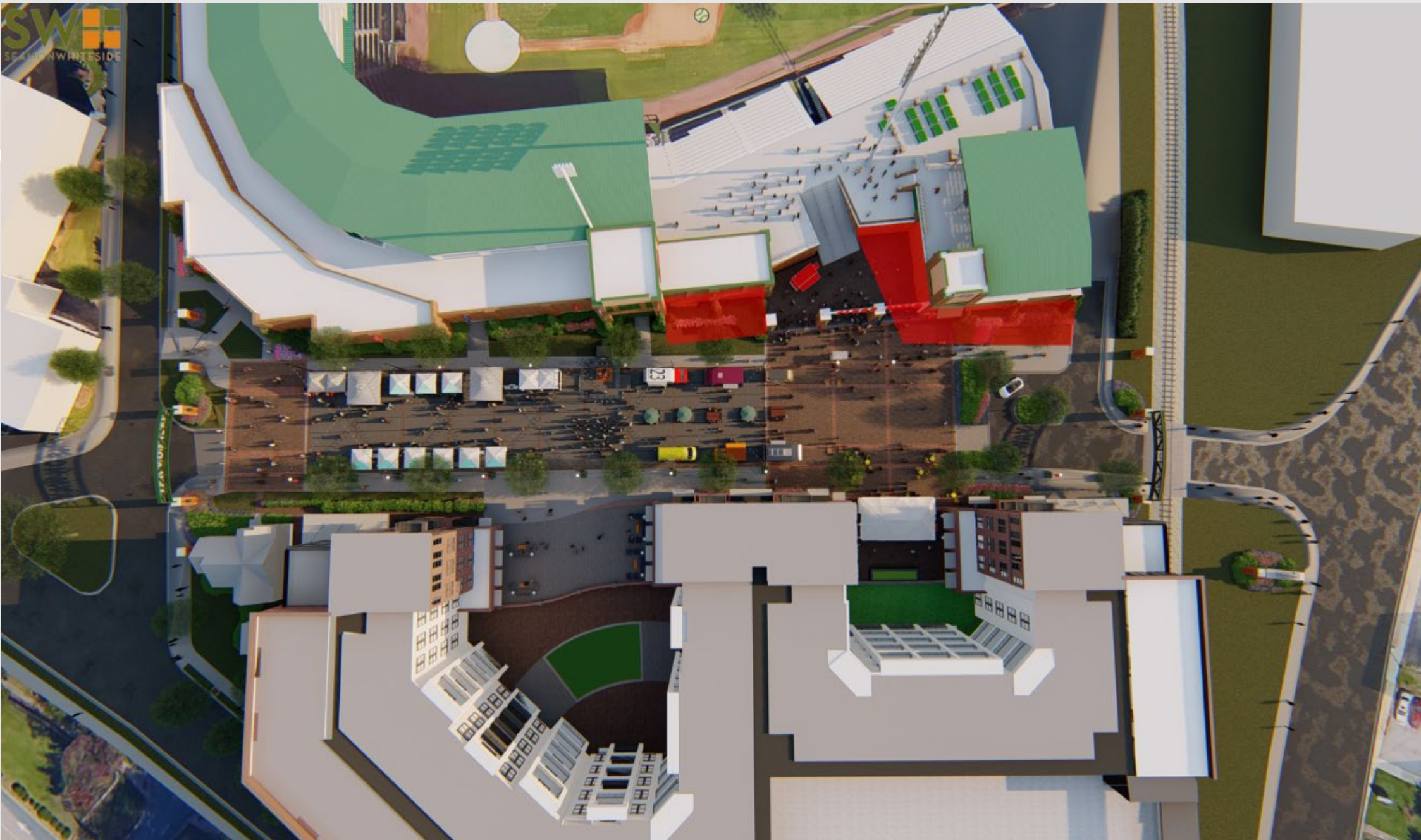


Event Day



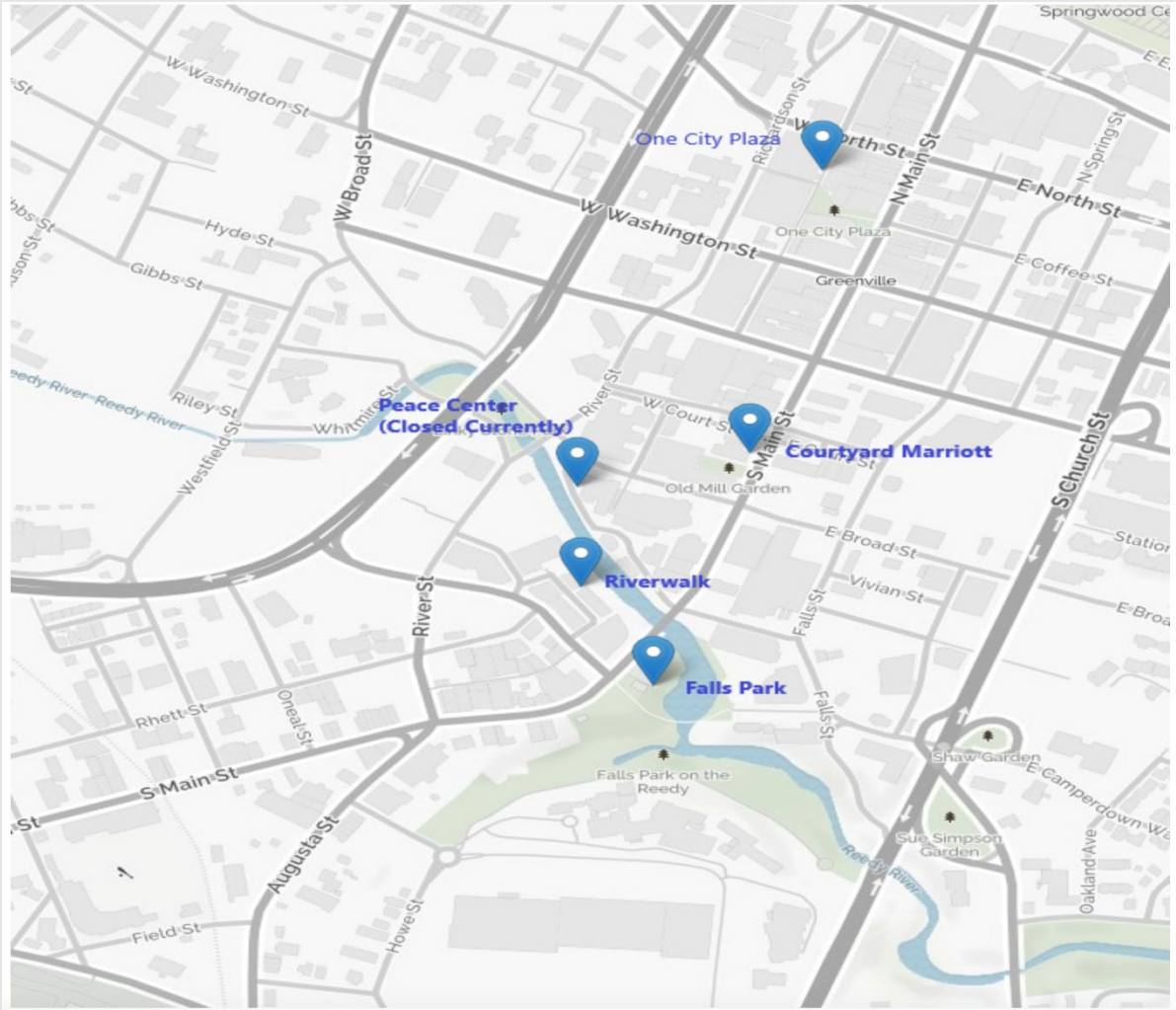
Event Day

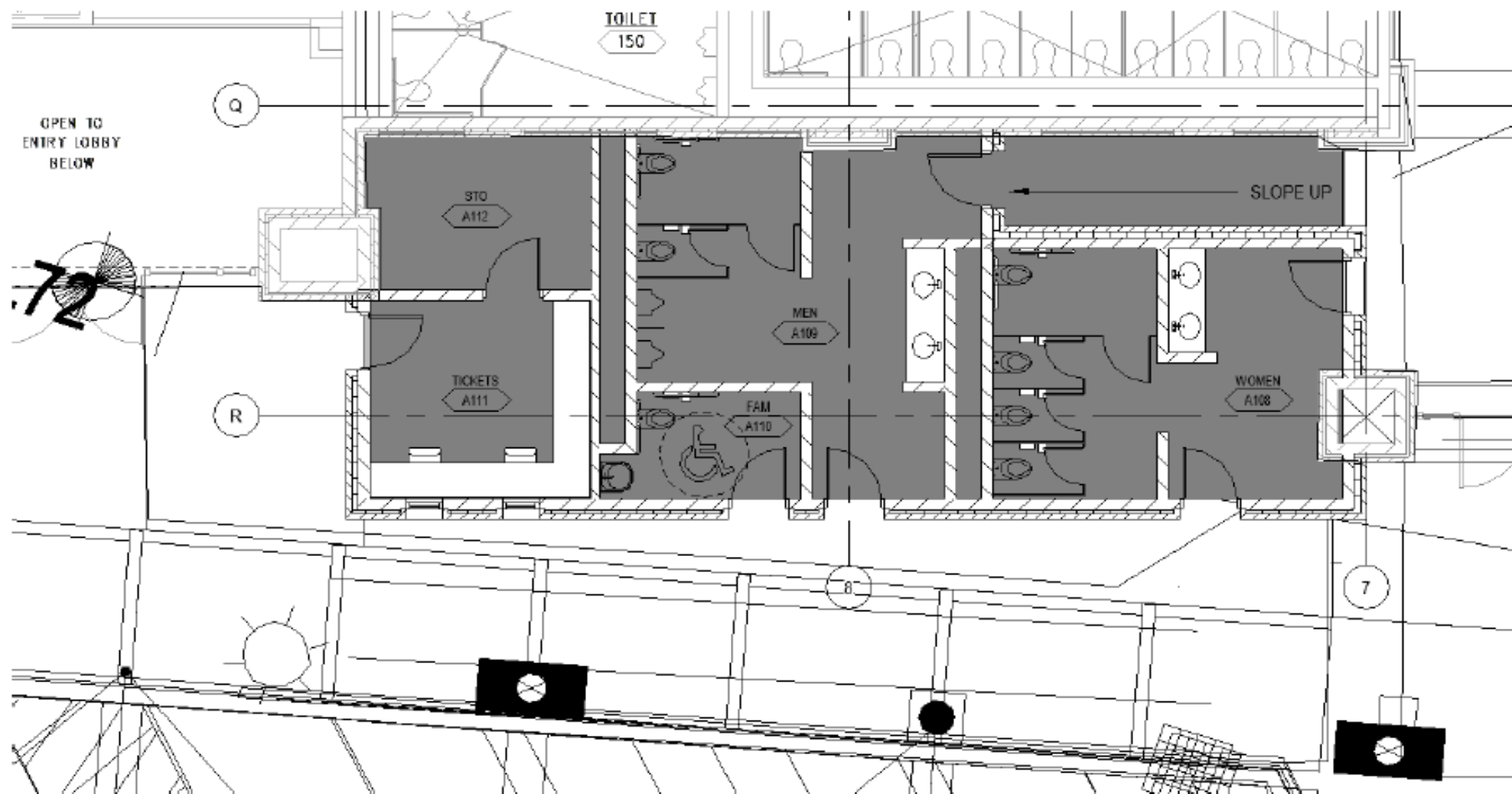


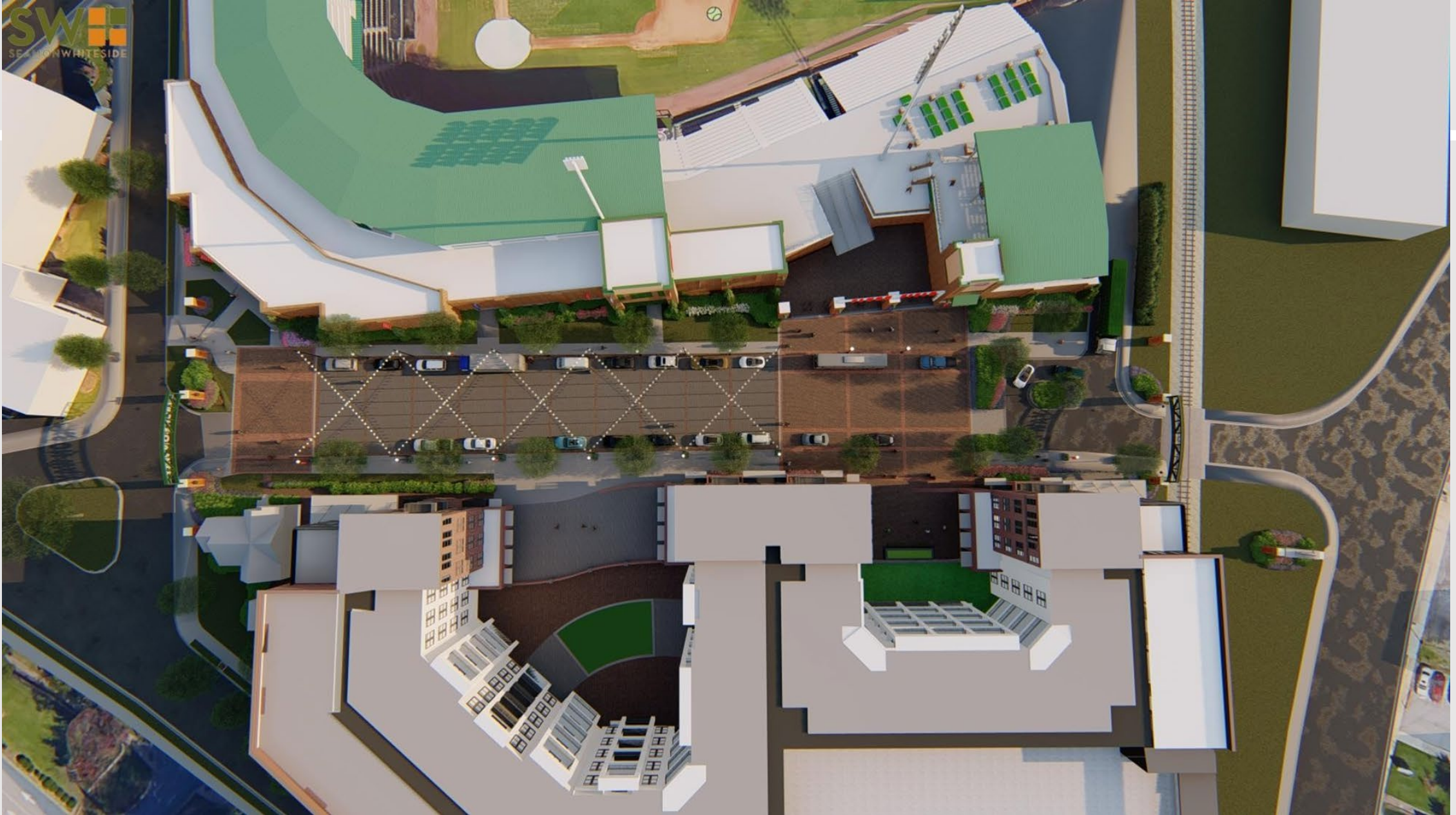




Downtown Restroom Locations









REQUEST FOR COUNCIL ACTION

City of Greenville, South Carolina

Agenda Item No.

15f

TO: Honorable Mayor and Members of City Council

FROM: John F. McDonough, City Manager

☒ Ordinance/First Reading ☐ Ordinance/Second & Final Reading ☐ Resolution/First & Final Reading ☐ Information Only

AGENDA DATE REQUESTED: December 14, 2020

ORDINANCE/RESOLUTION CAPTION:

ORDINANCE TO ENTER INTO A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF GREENVILLE AND WEST END STADIUM, LLC FOR THE DESIGN AND CONSTRUCTION OF PUBLIC IMPROVEMENTS ON FIELD STREET ADJACENT TO FLUOR FIELD AND TO APPROPRIATE \$2,550,000 FOR THE PROJECT AND TO APPROVE A THIRD AMENDMENT TO THE STADIUM DEVELOPMENT LEASE AGREEMENT

SUMMARY BACKGROUND:

After much success with minor league baseball in downtown Greenville, the City and West End Stadium, LLC desire to enter into a new partnership for the construction of public improvements on Field Street for its conversion and reconfiguration into a pedestrian plaza event space on game and other special event days. Both entities are committed to continuous improvements to Fluor Field, given its economic impact to the West End and surrounding area of downtown, and this project begins the next chapter in the evolution of the West End and baseball stadium area. In consideration of the City's participation in the Project, West End Stadium has agreed to certain amendments to the Stadium Development Lease Agreement, which such changes are more fully set forth in the Third Amendment to Stadium Development Lease Agreement attached to the Ordinance.

IMPACT IF DENIED:

The project will not move forward.

FINANCIAL IMPACT:

\$2,550,000 will be appropriated from the Economic Development Project in the Capital Projects Fund. This project has sufficient balance for this appropriation.

REQUIRED SIGNATURES

Department Director DocuSigned by: Merle Johnson
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DocuSigned by:

OMB Director Matt Ely
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City Attorney DocuSigned by: Michael Pitts
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DocuSigned by:

City Manager John McDonough
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AN ORDINANCE

TO ENTER INTO A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF GREENVILLE AND WEST END STADIUM, LLC FOR THE DESIGN AND CONSTRUCTION OF PUBLIC IMPROVEMENTS ON FIELD STREET ADJACENT TO FLUOR FIELD AND TO APPROPRIATE \$2,550,000 FOR THE PROJECT AND TO APPROVE A THIRD AMENDMENT TO THE STADIUM DEVELOPMENT LEASE AGREEMENT

WHEREAS, West End Stadium, LLC (“WES”) holds a long-term lease to the professional baseball stadium located in Greenville, South Carolina, currently named Fluor Field (“Fluor Field”); and

WHEREAS, Greenville Drive, LLC, a Delaware limited liability company and affiliate of WES (the “Drive”), owns the *Greenville Drive* minor league baseball team which operates out of and plays its home games at Fluor Field; and

WHEREAS, WES and the Drive have made significant investments in Fluor Field of no less than \$30 million, including a major renovation in 2017 with additional financial support from the City, which has enhanced the ability of the Drive to offer Fluor Field and its surrounding areas for various events and community gatherings; and

WHEREAS, WES, the Drive, and the city of Greenville (the “City”) are committed to continuous improvements to Fluor Field given its economic impact to the West End and surrounding area of Greenville; and

WHEREAS, Field Street, a low vehicular traffic street running from Augusta Street to South Markley Street alongside Fluor Field, provides a major entrance to Fluor Field and is the drop-off and pick-up location for the City trolley service on game days; and

WHEREAS, WES and the City desire to develop Field Street into the “Field Street Entertainment District” for conversion and reconfiguration to a pedestrian plaza event space (the “Plaza”) on game and other special event days (the “Project”), and the Project shall consist of the Public Improvements described in the Development Agreement attached hereto and made a part hereof as Attachment 1 (the “Development Agreement”); and

WHEREAS, WES and the City desire to cooperate in the construction of the Public Improvements and to establish the procedures under which the Public Improvements will be designed, approved, and constructed, as well as the conditions under which the City will reimburse WES for approved expenditures associated with the Public Improvements; and

WHEREAS, the City is committed to the continuing development of its commercial districts and supports opportunities to leverage funds for public improvements adjacent to private redevelopments; and

WHEREAS, the Project is located in a key commercial district within the City and City Council believes it will make a significant positive economic and community impact in the West End and the surrounding area, increase the tax base, and should act as a catalyst for further high-quality development in and around Fluor Field – all to the benefit of the City and its citizens; and

WHEREAS, in consideration of the City's participation in the Project, WES has agreed to certain amendments to the Stadium Development Lease Agreement in order to provide that early termination of the Lease may not be sought by WES until the year 2032 which such amendments are more fully set forth in the Third Amendment to Stadium Development Lease Agreement attached hereto and made a part hereof as Attachment 2 (the "Lease Amendment"); and

WHEREAS, in light of the foregoing, City Council desires to approve the Development Agreement, approve the Lease Amendment and appropriate the funds required to meet the City's financial commitment under the Development Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA, the Development Agreement and the Lease Amendment are hereby approved in substantially the same form as Attachment 1 and Attachment 2, respectively, and \$2,550,000 is hereby appropriated as reflected in Attachment 3 to this Ordinance. The City Manager, in consultation with the City Attorney, may make or accept minor modifications to the wording and designations of the attached documents as may be necessary or appropriate, provided there is no compromise of the substantive purposes of this Council action. Should the City Manager or City Attorney, or both, determine that any modification of previously negotiated terms is significant and warrants further action by City Council, then the matter shall be presented to Council for further review before the final execution.

DONE, RATIFIED AND PASSED THIS THE ____ DAY OF _____, 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED:

CITY MANAGER

ATTACHMENT 1

STATE OF SOUTH CAROLINA) **CITY OF GREENVILLE AND**
) **WEST END STADIUM, LLC**
COUNTY OF GREENVILLE) **DEVELOPMENT AGREEMENT**
) **FOR A PROJECT LOCATED ON FIELD**
) **STREET IN GREENVILLE, SOUTH CAROLINA**

This Development Agreement (the "Agreement"), by and between **West End Stadium, LLC**, a South Carolina limited liability company ("WES"), and the **City of Greenville**, a political subdivision and municipal corporation organized and existing under the laws of the State of South Carolina (the "City"), is entered into this _____ (the "Effective Date").

WHEREAS, WES holds a long-term lease to the professional baseball stadium located in Greenville, South Carolina, currently named Fluor Field ("Fluor Field");

WHEREAS, Greenville Drive, LLC, a Delaware limited liability company and affiliate of WES (the "Drive"), owns the *Greenville Drive* minor league baseball team which operates out of and plays its home games at Fluor Field;

WHEREAS, WES and the Drive have made significant investments in Fluor Field of no less than \$30 million, including a major renovation in 2017 with additional financial support from the City, which has enhanced the ability of the Drive to offer Fluor Field and its surrounding areas for various events and community gatherings;

WHEREAS, WES, the Drive, and the City are committed to continuous improvements to Fluor Field given its economic impact to the West End and surrounding area of Greenville;

WHEREAS, Field Street, a low vehicular traffic street running from Augusta Street to S. Markley Street alongside Fluor Field, provides a major entrance to Fluor Field and is the drop-off and pick-up location for the City trolley service on game days;

WHEREAS, WES and the City desire to develop Field Street into the "Field Street Entertainment District" for conversion and reconfiguration to a pedestrian plaza event space (the "Plaza") on game and other special event days (the "Project"), and the Project shall consist of the Public Improvements described in the Agreement;

WHEREAS, across from Fluor Field, another developer is constructing new apartments with some ground floor commercial space on the property bounded by Field, Augusta, and Vardry Streets (the "Adjacent Development");

WHEREAS, the Adjacent Development may include a signature restaurant at the corner of Augusta and Field Streets, and the Shoeless Joe Jackson Museum has been relocated to the corner of South Markley Street and Field Street, where it will be improved by the developer of the Adjacent Development;

WHEREAS, WES and the City desire to cooperate in the construction of the Public Improvements and to establish the procedures under which the Public Improvements will be

designed, approved, and constructed, as well as the conditions under which the City will reimburse WES for approved expenditures associated with the Public Improvements;

WHEREAS, the City is committed to the continuing development of its commercial districts and supports opportunities to leverage funds for public improvements adjacent to private redevelopments; and

WHEREAS, the Project is located in a key commercial district within the City and will make a significant positive economic and community impact in the West End and surrounding area of Greenville, increase the tax base, and potentially act as a catalyst for further high-quality development within the surrounding area – all to the benefit of the City and its citizens.

NOW THEREFORE, for good and valuable consideration, including the mutual exchange of promises set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties covenant with one another to perform as follows:

1. *WES Commitments:*

- (a) *Public Improvements.* WES shall be responsible for the design and construction of public streetscape and landscape improvements, including, but not limited to: public restrooms, site demolition (mobilization and demobilization, curb and gutter, asphalt pavement, concrete sidewalk, storm structure, storm pipe, and traffic control), storm drainage, sidewalks, pavers, milling of existing asphalt pavement with 2" overlay, curb and gutter, catch basins, striping, pedestrian and hanging bistro lighting, site furnishings, benches, bollards, pedestal outlets for food trucks and events, electrical distribution/meter installation/fees, plants and mulch and related labor, silva cells, and irrigation to be located along Field Street adjacent to Fluor Field within the public right-of-way or on property owned by the City (collectively, the "Public Improvements"). Preliminary conceptual renderings and cost estimates of the Public Improvements (excluding the restrooms) are attached hereto and made a part hereof as Exhibit A, and the City and WES shall collaborate in good faith on the final design plans and specifications of the Public Improvements, subject to any approvals that must be obtained including, but not limited to, a Certificate of Appropriateness from the City's Design Review Board. In the event the City and WES cannot reasonably reach mutual agreement for the final approved design plans and specifications, each party shall have the right to terminate the Agreement upon 15 calendar days' prior written notice to the other party, prior to commencement of construction, whereupon the parties shall have no further obligations or liabilities under the Agreement.
- (b) *Investment Required.* Subject to the terms and conditions of this Agreement, WES shall be responsible for the cost of the design and construction of the Public Improvements (exclusive of land acquisition costs, if any), including hard cost and eligible soft cost expenditures, to the extent such costs are not covered by the City's Reimbursement Payment obligation described below.
- (c) *Time for Performance.* Subject to any delays caused by the City or by a Force Majeure Event (as defined below), WES covenants that it shall use commercially reasonable efforts to commence the construction of the Public Improvements on or before December 2021 and substantially complete the same no later than December 2022, as evidenced by the City's written acceptance of the Public

Improvements to include written certifications by the City's Parks and Recreation and Public Works Departments to the effect that the Public Improvements were constructed based on plans approved by the City, in accordance with this Agreement and all applicable laws and regulations.

- (d) *Insurance.* WES shall procure and maintain, at its sole cost, the following types and levels of insurance for any claim or loss (including attorney's fees) arising out of, or related in any manner to, the Public Improvements in commercially reasonable amounts, but in no event less than:

Minimum Coverages and Limits:

1.	General Liability	\$1,000,000 per occurrence
2.	Automobile Liability	\$1,000,000 per occurrence
3.	Workers' Compensation	Statutory Limits
4.	Employer's Liability	\$500,000/\$500,000/\$500,000
5.	Environmental / Pollution Liability	\$1,000,000 per occurrence

Such insurance shall remain in place until such time as the Public Improvements are completed and accepted by the City in writing. Thereafter, WES (as well as its successors and assigns) shall continuously maintain general liability insurance in the aforementioned amounts insuring against any claim or loss (including attorney's fees) arising out of, or related in any related manner to: (i) the design or construction of the Public Improvements (which coverage shall be in place for a period of at least eight years following completion of the Public Improvements and may be in the form of a tail policy) or (ii) the maintenance obligations of WES as set forth below in Paragraph 1(f) (which coverage shall remain in effect for so long as WES or the Drive continues to have such maintenance obligations).

Certificates showing proof of such insurance shall be submitted to the City's Risk Manager via email to inscerts@greenvillesc.gov prior to commencement of construction of the Public Improvements, and annually thereafter, certificates showing proof of the general liability insurance required above shall be submitted to the City's Risk Manager (via email as previously noted) for so long as such insurance is required to be in effect. It shall also be an affirmative obligation upon WES (as well as its successors and assigns) to advise the City's Risk Manager (via e-mail as previously noted) within two days of the cancellation or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement.

The general liability policy is to contain or be endorsed to name City, its officers, officials, employees, and agents as additional insureds as respects the liability arising out of the activities performed under this Agreement. Such coverage shall be primary and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

WES shall maintain workers' compensation insurance for all of WES's employees who are in any way connected with the performance under this Agreement. Such insurance shall comply with all applicable state laws and provide a waiver of subrogation against the City, its officers, officials, employees, agents, and representatives, unless otherwise approved by the City.

Such insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII and licensed to do business in the State of South Carolina, unless otherwise approved by the City, and WES shall not self-insure in satisfaction of the insurance requirements set out herein without the express written consent of the City.

- (e) *Surety Bonds.* WES shall ensure adequate performance and payment bonds are procured and maintained with respect to all work comprising the Public Improvements until such time as they are complete and lien waiver(s) obtained. The City will accept in lieu of a Surety Bond, reasonable evidence of WES's available funds to complete the Public Improvements, including, but not limited to, either a letter of credit or cash bond in form and substance reasonably satisfactory to the City.
- (f) *WES's Maintenance of a Portion of the Public Improvements.* WES agrees, without additional compensation, to maintain (or cause the Drive to maintain) those portions of the Public Improvements comprised of public restrooms, landscaping (including trees and silva cells), lawn, and irrigation systems in accordance with the City's Landscape Maintenance Requirements as more fully set forth in Exhibit B. Any water irrigation associated with this landscaping or lawn areas shall be connected to WES's or the Drive's meter as part of these maintenance obligations and WES shall be responsible (or cause the Drive to be responsible) for all water irrigation costs. In the event WES or any of its affiliates at any time cease to occupy and operate Fluor Field, WES shall have the right to terminate its maintenance and water irrigation obligations under this Paragraph 1(f) by providing the City with at least 90 calendar days' prior written notice thereof. The City shall grant to WES, its contractors, agents, and employees a non-exclusive license to enter onto any property owned by the City for the purpose of performing its maintenance and water irrigation obligations under this Paragraph 1(f) for a term commencing on the Effective Date and continuing through the date of termination of the maintenance and water irrigation obligations under this Paragraph 1(f). The City and WES shall enter into a separate license and maintenance agreement, substantially in the form attached hereto as Exhibit C, for the purpose of the maintenance and water irrigation obligations and granting the right of entry to perform the same to WES, its contractors, agents, and employees.
- (g) *Mandatory Transfer of Maintenance and Insurance Obligations.* The maintenance and insurance obligations set forth above shall apply to any successor or permitted assign of WES.
- (h) *Pre-Construction Site Evaluation.* Prior to the commencement of construction of the Public Improvements, WES shall conduct a due diligence evaluation of the property, at WES's sole expense, to seek to confirm that there would not be any significant environmental, subsurface, utility, or other property conditions that would result in significant unexpected costs for the Project, including subsurface road repairs or changes to sewage, water, or electrical lines (collectively, "Material Unexpected Conditions"). The City will reasonably cooperate with and assist WES in connection with such evaluation. In the event such evaluation reveals the existence of Material Unexpected Conditions, WES shall have the right to terminate the Agreement upon 30 calendar days' prior written notice to the City

prior to commencement of construction, whereupon WES shall have no further obligations or liabilities under the Agreement.

- (i) *Material Unexpected Conditions During Construction.* In the event that Material Unexpected Conditions are revealed after the commencement of construction of the Public Improvements, and such Material Unexpected Conditions were not known by WES and should have been discovered by professionals engaged by WES, exercising that level of skill and competence to be expected of similarly situated contractors performing the same or similar services in the same or similar locale, during its pre-construction site evaluation, WES shall be solely responsible for up to \$500,000.00 of such applicable costs in the aggregate. If, however, the total costs arising from such Material Unexpected Conditions shall exceed \$500,000.00, the City and WES shall work together in good faith on an appropriate reduction in the scope of the Project and/or the sharing of any such excess expenses; provided, however, that in no event will the total amount to be paid by the City under this Agreement, including the Reimbursement Payment pursuant to Section 2(a), exceed \$2,550,000.00. In the event the City and WES are unable to agree on a reduction in the scope of the Project or sharing of such excess expenses, WES shall have the right to terminate the Agreement upon written notice to the City, whereupon WES shall immediately repair all public right-of-way, including but not limited to the sidewalks, crosswalks, and public infrastructure, along Field Street, to a safe and functional condition for public use, subject to the regulations of any agency having jurisdiction; provided, however, that in no event will the total amount to be paid by WES for such repairs exceed \$500,000.00.
- (j) *Construction Delay.* In the event construction of the Public Improvements is abandoned by WES for a period of more than 90 calendar days (other than as a result of a Force Majeure Event, a termination of the Agreement in accordance with the terms hereof, or the City's bad faith, intentional misconduct, or breach of this Agreement), WES shall immediately repair all public right-of-way, including but not limited to the sidewalks, crosswalks, and public infrastructure, along Field Street, to a safe and functional condition for public use, subject to the regulations of any agency having jurisdiction. Such time limit may be extended with the approval of the City Manager. WES acknowledges the City shall have no responsibility for any loss or damages arising out of, or related in any manner to, Project delays, unless caused by the City's bad faith, intentional misconduct, or breach of the Agreement.
- (k) *Force Majeure Event.* WES shall not be in breach and shall have no liability under the Agreement due to its inability to fulfill or delay in fulfilling any of its obligations under the Agreement if such inability or delay is due to or arises from any cause beyond its reasonable control, and without its fault or negligence, including governmental preemption in connection with a national emergency, pandemic or epidemic (including, without limitation, COVID-19), labor strikes or troubles, unavailability of labor, fuel, steam, water, electricity, products or materials, mechanical breakdown, enemy action, civil commotion, fire or other casualty, or storms, winds, floods, earthquakes or other acts of God (collectively, a "Force Majeure Event"); provided that (i) WES, within 10 calendar days of the beginning of such Force Majeure Event, notifies the City's Project Manager (as defined below) of the cause, and anticipated length, of the delay, and (ii) WES shall perform the subject obligations as soon as the cause for such delay has subsided or can

be eliminated. In the event a Force Majeure Event occurs which delays the Project for a period of 180 calendar days or more, WES shall have the right to terminate the Agreement upon written notice to the City, whereupon WES shall, as soon as the cause for such delay has subsided or can be eliminated, repair all public right-of-way, including but not limited to the sidewalks, crosswalks, and public infrastructure, along Field Street, to a safe and functional condition for public use, subject to the regulations of any agency having jurisdiction; provided, however, that in no event will the total amount to be paid by WES for such repairs exceed \$500,000.00.

- (l) *Additional Right-of-Way/Easement Acquisition.* It is anticipated that the Public Improvements will be constructed entirely within the existing Field Street public right-of-way or on property owned by the City. In the unlikely event that additional right-of-way or easements must be acquired from third-party property owners in order to accommodate the construction of the Public Improvements, WES and the City shall discuss and mutually agree on the sharing of any expenses that may be required to: (a) obtain such right-of-way or easement(s); (b) dedicate or cause the dedication of all such right-of-way to the City; and (c) obtain any such easement(s) where the City is the grantee directly from the third-party property owner as grantor; provided, however, that in no event will the total amount to be paid by the City under this Agreement, including the Reimbursement Payment pursuant to Section 2(a), exceed \$2,550,000.00. All right-of-way instruments and easements shall be in a form acceptable to the City in its reasonable discretion. In the event the City and WES are unable to agree on the sharing of any such additional required right-of-way or easement expenses, WES shall have the right to terminate the Agreement upon written notice to the City, whereupon WES shall immediately repair all public right-of-way, including but not limited to the sidewalks, crosswalks, and public infrastructure, along Field Street, to a safe and functional condition for public use, subject to the regulations of any agency having jurisdiction; provided, however, that in no event will the total amount to be paid by WES for such repairs exceed \$500,000.00.
- (m) *Temporary Construction License.* The City hereby grants to WES, its contractors, agents and employees, a non-exclusive temporary license to enter onto any property owned by the City for the purpose of completing the Public Improvements for a term commencing on the Effective Date and continuing through the date of the expiration or termination of this Agreement.

2. *City Contributions and Commitments:*

- (a) *Project Participation.* Subject to the appropriation of funds by City Council prior to the commencement of construction of the Project and Paragraph 2(b) below, the City will reimburse WES for the actual substantiated cost of the design and construction of the Public Improvements in an amount up to, but not to exceed, \$2,550,000.00 (the "Reimbursement Payment"). The City's Reimbursement Payment will be paid in installments as follows: (i) the first payment shall be due within 30 calendar days after the construction commencement date, based on the actual substantiated Public Improvements design and other applicable costs (excluding the costs of WES's pre-construction site evaluation) incurred prior to such construction commencement date; (ii) thereafter, payments shall be due within 30 calendar days after the end of each three-month period following the

construction commencement date, based on the actual substantiated Public Improvements design, construction, and other applicable costs incurred in such three-month period then ended; and (iii) if any Reimbursement Payment remains unpaid at the time of the completion and acceptance of the Public Improvements, a final payment shall be due within 30 calendar days after such acceptance. The Reimbursement Payment is subject to the applicable portion of the Public Improvements then completed substantially meeting all requirements and conditions otherwise set forth in the Agreement, including having reasonably met the standards of quality in design and construction set forth in the final approved design and construction documents agreed upon by the parties pursuant to Paragraph 1(a) above.

- (b) *Reimbursement Substantiation.* No installment of the Reimbursement Payment shall be provided to WES without detailed substantiation of the actual costs incurred for the design and construction of the Public Improvements. At a minimum, such detail shall include the schedule of values submitted to WES by any design professional and by any other contractor performing design, construction, or other services necessary for the completion of the Public Improvements. The City may make reasonable requests for additional substantiation in establishing compliance with the Agreement. Actual costs do not include any of the following actual or allocated costs of WES or the Drive: personnel costs, overhead costs, or interest expense. The submitted substantiation of costs shall solely be for those Public Improvements set forth in Paragraph 1(a) above. No other improvements shall be subject to reimbursement without the written authorization of the City Manager upon his providing a written finding that the improvement complies with the provisions of the Agreement. In addition, prior to payment of each installment of the Reimbursement Payment, the City may, at its option, review the work at the Project site or elsewhere to determine whether the quantity and quality of the work is as represented in the submitted substantiation.
- (c) *Project Manager.* The City will assign a project manager (the "Project Manager") to assist in WES's implementation of the Public Improvements, including the permitting processes for such activities requiring City permits. The Project Manager shall serve as a liaison between WES and the Drive, on the one hand, and the City, on the other. The City also shall use its best efforts to work with other public agencies and utilities to foster and promote a coordinated and supported effort for completion of the Project and the Public Improvements. Additionally, in the spirit of partnership, the City will assign a point person from the City's Department of Events and Cultural Affairs ("DECA") to assist with an overall smooth process for the coordination of events.
- (d) *City Maintenance Obligations.* Upon completion and acceptance of the Public Improvements, the City shall maintain the Public Improvements to the extent their maintenance is not the responsibility of: (i) WES pursuant to Paragraph 1(f); or (ii) any utility provider. The City, directly or through Duke Energy, shall be responsible for ongoing service and energy fees associated with the operation and maintenance of any enhanced street or pedestrian lighting along Field Street which are located within the public right-of-way or on property owned by the City. Additionally, the City shall be responsible for the maintenance of hardscapes, including pavers and sidewalks.

- (e) *Permitting of Plaza Activity.* The City shall jointly, with notification to the Drive, shall manage the use of the Plaza in a manner generally consistent with the management of other City plazas or event spaces, with the exception of application of the general prohibition on commercial use as it pertains to WES' use, or the use by WES' affiliates and its successors in interest, given that the Plaza meets the exception criteria of Section 36-136(a)(5) of the City Code of Ordinances. Specifically, the City recognizes that this public space is improved as part of an economic development project where WES made a significant capital investment in the public improvements comprising the Plaza and said public space is immediately adjacent to Fluor Field, a major downtown economic development project directly promoting tourism in which WES has also made a significant capital investment. The City acknowledges that WES and/or the Drive desire to utilize the Plaza on game days as a complimentary extension of the Fluor Field experience and that they will, from time to time, desire to host other events on the Plaza. Accordingly, with respect to WES's and/or the Drive's use of the Plaza, the parties agree as follows:
- (1) In addition to the usage contemplated below, WES and/or the Drive shall be allowed to use the Plaza from six (6) hours prior to four (4) hours after all Drive home games and any other baseball games at Fluor Field
 - (2) All events permitted hereunder shall comply with applicable provisions of the City Code of Ordinances including, but in no way limited to, Chapter 16, Article III, Division 3 (noise regulations). All events at the Plaza must be open to the public without separate admission (i.e., a ticket to the game must not be required in order to attend the Plaza events), with the exception of up to five (5) ticketed events or as approved by the City Manager in consultation with the Department of Events and Cultural Affairs..
 - (3) WES and/or the Drive shall quarterly submit a written request to the City for additional usage of the Plaza, and the City shall use commercially reasonable efforts to accommodate such requests.
 - (4) The City shall use commercially reasonable efforts to accommodate any other requests for usage of the Plaza made by WES and/or the Drive during the year; however, the City will not be required to cancel any prior reservations of the Plaza in favor of usage by WES and/or the Drive.
 - (5) All City event permit requirements and fees (i.e., police and trash services) shall apply to all WES's and/or the Drive's usage of the Plaza, including for games days as described above.
 - (6) In no instance shall usage of the Plaza by WES and/or the Drive exceed 182 calendar days per year, to ensure that the use of this eligible public space for special events is not of such a frequency that the public space loses its public character.
 - (7) Due to the significant strain that major events place upon City resources, the City shall have the right to establish blackout dates which shall be communicated to WES at least one year in advance.

For the avoidance of doubt, the City's point person for events will notify the Drive of the permitting of non-Drive related events at the Plaza to ensure that no schedule conflict occurs with WES's and/or the Drive's planned usage of the Plaza.

- (f) *Change of Street Name.* The City and WES agree to collaborate on changing the name of Field Street to Shoeless Joe Drive or another street name that is mutually acceptable to the City and WES, it being understood that any name change will require approval of the City Planning Commission and Greenville County E-911.
3. *Reimbursements Subject to Standard of Reasonableness.* Those costs which are to be reimbursed or paid as consideration by the City must be reasonably incurred and substantiated in accordance with City of Greenville Procurement Procedures Section 2.4(J)(5), as more fully set forth in Exhibit D attached hereto and incorporated herein, applicable to public private partnerships. WES's procurement practices therefore shall adhere to principles of fairness, efficiency, and value for the use of public funds, and must provide for competitiveness, even though bids may not be necessary.
4. *Term.* This Agreement is effective as of the Effective Date and, unless sooner terminated in accordance with the terms hereof, shall terminate upon the later of the following events: (a) the acceptance of the Public Improvements by the City, or (b) WES's receipt of all Reimbursement Payment amounts due hereunder; provided that the provisions of Sections 1(d), 1(f), 2(d) and 2(e) of this Agreement shall survive any such termination and remain in effect in accordance with their terms.
5. *Termination for Cause.* In addition to any other rights that the parties may have hereunder, either party may terminate this Agreement, upon written notice to the other, if the other party materially breaches any provision of this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by the other party (or the other party has not reasonably acted to cure) within 30 calendar days after the other party's receipt of written notice of such breach. Termination of this Agreement by a party for cause shall not relieve either party of any obligation incurred to the other prior to termination, and the City shall reimburse WES for all work on the Project prior to termination; provided, however, that if this Agreement is terminated by the City for cause, the City may procure the services necessary to complete the Project from another source and WES shall be liable for all additional costs incurred by the City, if any, in the completion of the Project.
6. *Termination for Non-Appropriation.* Notwithstanding anything else herein, the parties acknowledge and agree that this Agreement shall be subject to immediate termination by the City, without damages or further obligation, in the event that, prior to the commencement of the construction of the Project, funds are not appropriated or otherwise made available to support the City's performance under this Agreement. The City will give WES written notice of any such termination for non-appropriation prior to the scheduled commencement of construction of the Project.
7. *Compliance with Law.* Design, construction, and operation of the Public Improvements shall be performed in a good, safe, and workmanlike manner and in accordance with all applicable laws, rules, orders, ordinances, regulations, and legal requirements of all governmental entities, agencies, or instrumentalities relating to the development, use or condition of the Property and any improvements constructed thereon including, without

limitation, Titles II and III of the Americans with Disabilities Act (as amended), and all building code and zoning requirements then in effect.

8. *Assignment.* WES may not assign its rights and obligations under the Agreement to third parties without advance written consent of the City, which consent shall not be unreasonably withheld. The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Notwithstanding anything to the contrary herein, the provisions of Section 2(d) (*City Maintenance Obligations*) and Section 2(e) (*Permitting of Field Street Activity*) shall inure to the benefit of any successors or permitted assigns of WES and/or the Drive, with the understanding that any person or entity acquiring all or substantially all of the business or assets of WES or the Drive, as applicable, shall constitute a permitted assign for purposes of this Agreement.
9. *Modification.* No modification, amendment, or waiver of any provision of the Agreement shall be binding upon the parties unless the same is first reduced to writing in a document having the same formality as the Agreement and executed by the duly authorized officer for each party. Minor modifications can be made by the City Manager on behalf of the City, it being agreed that reasonable extensions of time may be granted without City Council approval.
10. *Merger of Negotiations.* This Agreement constitutes the entire agreement between the parties. All prior negotiations and representations of both parties are merged into the Agreement, and no prior statement, whether written or oral, shall be binding upon either party unless reduced to writing and contained in the Agreement.
11. *Applicable Law.* The Agreement shall be subject to, and interpreted under, the laws of the State of South Carolina. Any dispute arising out of, or related in any manner to the Agreement or the Project must be brought in the Greenville County Court of Common Pleas following the exhaustion of any and all available administrative remedies.
12. *Execution Required.* This Agreement shall be null and void if not executed by WES and presented to the City within 90 calendar days of passage of the adopting ordinance.
13. *No Joint Venture.* The parties acknowledge the City is acting solely in a governmental capacity in expanding and enhancing the City's public infrastructure and spaces, in approving the Agreement, and in providing any other approvals related to the Project. Accordingly, the parties further acknowledge that no joint venture is intended or created between WES or the Drive and the City, and the parties expressly disclaim the same.
14. *Indemnification.* WES shall indemnify, defend, and hold harmless the City, as well as its officers, officials, and employees, from and against all third party claims of any nature whatsoever, at law or in equity, arising out of, or related in any manner to WES's obligations under this Agreement or WES's obligations relating to the Project, including, but not limited to, injuries or damages allegedly attributable to the design and construction of the Public Improvements as well as the maintenance obligations of WES under the Agreement, excluding only those claims resulting from the gross negligence or willful misconduct of the City, its officers, officials, or employees or from a breach of the Agreement by the City. The City shall give WES prompt notice of any such claim. WES shall have the sole and exclusive right to control the defense and settlement of any claim upon which it is or may be obligated to indemnify the City, provided that WES's legal

counsel shall be subject to the approval of the City, which approval shall not be unreasonably withheld, and that such defense or settlement does not impair the City's rights under the Agreement or its rights and protections under the law derived from its status as a municipal political subdivision of the State of South Carolina. This provision shall survive the expiration of the term of this Agreement or the earlier termination of this Agreement.

15. *Notice.* All notices and communications hereunder shall be in writing and shall be delivered personally or sent by certified mail, return receipt requested, addressed to the parties as follows:

CITY:
City of Greenville
Attention: City Manager
206 S. Main Street
P.O. Box 2207
Greenville, SC 29602
Phone: 864.467.5700

With a copy to (which shall not constitute notice):
City of Greenville
Attention: Economic Development Director
206 S. Main Street
P.O. Box 2207
Greenville, SC 29602
Phone: 864.467.4404

WES:
West End Stadium, LLC
c/o Greenville Drive
Attention: Craig Brown
935 South Main Street, Suite 202
Greenville, SC 29601
Phone: 864.240.4508

16. *Further Assurances.* Each of the parties hereto shall use reasonable efforts to, and shall cause its respective affiliates to use their reasonable efforts to, from time to time, execute and deliver such additional documents, instruments, and assurances, and take such further actions, as may be reasonably requested by the other party to carry out the provisions hereof and give effect to the transactions and arrangements contemplated hereunder. For the avoidance of doubt, this Section 16 shall not be construed to obligate the City to issue any event permits for any events at the Plaza that may be requested by WES or the Drive.
17. *Miscellaneous.* If any part or provision of this Agreement is held invalid or unenforceable under applicable law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining parts and provisions of this Agreement. The waiver of a breach of this Agreement by either party shall not operate as a waiver of any subsequent breach, and no delay in acting with regard to any breach of this Agreement shall be construed to be a waiver of the breach. Headings are inserted for convenience only and shall not be considered for any other purpose. All exhibits referenced above (including all attachments thereto) are attached hereto and incorporated herein as part of the Agreement. The Agreement may be executed in duplicate counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. An executed counterpart of the Agreement transmitted by facsimile, email or other electronic transmission shall be deemed an original counterpart and shall be legally binding upon the parties hereto to the same extent as delivery of an

original counterpart. Each of the parties hereto shall be responsible for its respective costs and expenses incurred in connection with the negotiation and execution of the Agreement.

[Signature pages follow]

IN WITNESS WHEREOF, the City and WES have executed this Agreement as of the day and year first above written.

CITY OF GREENVILLE, SOUTH CAROLINA

John F. McDonough
City Manager

WEST END STADIUM, LLC

Craig Brown
Title: _____

Approved to the form:

City Legal Department

Reviewed:

City Director of Economic and Community Development

Reviewed:

City Director of Public Works

Reviewed:

City Interim Director of Parks and Recreation

Reviewed:

City Director of OMB

Reviewed:

City Risk Manager

Received:

City Purchasing Administrator

EXHIBIT A
PUBLIC IMPROVEMENTS



Cost Estimate of Public Improvements



Jackson Way
Preliminary Pricing
11/18/2020

	CFE Budget
General Conditions	\$ 195,000.00
Site Demolition	
Curb & Gutter	\$ 11,000.00
Asphalt Pavement	\$ 2,000.00
Concrete Sidewalk	\$ 12,000.00
Storm Structure	\$ 2,000.00
Storm Pipe	\$ 2,000.00
Traffic Control	\$ 5,000.00
Storm Drainage	
RCP Storm 0'-6'	\$ 5,000.00
Structure 0'-6'	\$ 7,000.00
Site, Sidewalks, Curb & Gutter	
Layout	\$ 5,000.00
Fine Grade	\$ 7,000.00
Export	\$ 7,000.00
Concrete Pavers Vehicular Rated	\$ 431,000.00
Concrete Bands	\$ 35,000.00
Mill Existing Asphalt Paving - 2" Overlay	\$ 20,000.00
18" Curb & Gutter	\$ 14,000.00
Concrete Aprons	\$ 13,000.00
Hooded Frame & Grate Catch Basin Throat	\$ 6,000.00
Striping and Signage	\$ 5,000.00
Utility	
Duke Deluxe Acorn Pedestrian Light	\$ 180,000.00
Site Furnishings / Benches / Bollards	\$ 50,000.00
Brick and Steel - Archway Structures	\$ 285,000.00
Augusta Street Marquee (V-shape)	\$ 245,000.00
Light Pole Bases	\$ 55,000.00
Landscaping Allowance	
Plants, Mulch, Labor	\$ 10,000.00
Street Trees	\$ 7,000.00
Silva Cells	\$ 190,000.00
Irrigation System	\$ 10,000.00
Total:	\$ 1,816,000.00
Feasibility / Design Fees	\$ 195,000.00
8% General Contractor Fees	\$ 145,000.00
Contingency	\$ 144,000.00
PROJECT TOTAL	\$ 2,300,000.00

**Budget is Conceptual and is not an offer to contract. All values should be considered as Allowances.*

****Note:** The public restrooms are not included as part of this budget and will not exceed \$300,000. They will be performed by another contractor. The total amount for all public improvements will not exceed \$2,550,000.

EXHIBIT B**LANDSCAPE MAINTENANCE REQUIREMENTS**

WES's Maintenance Responsibilities for the Project:

- Landscaping, which includes trees and silva cells
- Lawn
- Irrigation Systems

City's Maintenance Responsibilities for the Project:

- Lighting - Ongoing service and energy fees (either through the City directly or through Duke Energy) associated with the operation and maintenance of any enhanced street or pedestrian lighting along Field Street, which are located within the public right-of-way or on property owned by the City.
- Anything not covered by WES, such as hardscapes, pavers, and sidewalks.



City to maintain lighting

City to maintain hardscape (includes pavers and sidewalks)

WES to maintain landscaping (including trees and silva cells), lawn, and irrigation systems, and public restrooms.

EXHIBIT C

FORM OF LICENSE AND MAINTENANCE AGREEMENT

See next page.

STATE OF SOUTH CAROLINA	)	LICENSE AND MAINTENANCE
	)	AND MAINTENANCE AGREEMENT
COUNTY OF GREENVILLE	)	

THIS LICENSE AND MAINTENANCE AGREEMENT (the "Agreement") is made and entered into this _____ by and between **West End Stadium, LLC**, a South Carolina limited liability company ("WES"), and the **City of Greenville**, a political subdivision and municipal corporation organized and existing under the laws of the State of South Carolina (the "City") (each a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, the Parties have entered into a Development Agreement, dated as of _____ 2020 (the "Development Agreement"), pursuant to which WES shall design and construct certain public streetscape and landscape improvements, including, but not limited to: site demolition (mobilization and demobilization, curb and gutter, asphalt pavement, concrete sidewalk, storm structure, storm pipe, and traffic control), public restrooms, storm drainage, sidewalks, pavers, milling of existing asphalt pavement with 2" overlay, curb and gutter, catch basins, striping, pedestrian and hanging bistro lighting, site furnishings, benches, bollards, pedestal outlets for food trucks and events, electrical distribution/meter installation/fees, plants and mulch and related labor, silva cells, and irrigation (the "Public Improvements"), to be located along Field Street adjacent to Fluor Field within the public right-of-way or on property owned by the City (the "Property"), and the City shall reimburse WES for up to \$2.55 million in actual substantiated costs for the design and construction of the Public Improvements in accordance with the terms of the Development Agreement;

WHEREAS, pursuant to Section 1(f) of the Development Agreement, WES shall maintain (or cause its affiliate, Greenville Drive, LLC (the "Drive"), to maintain) those portions of the Public Improvements comprised of the public restrooms, landscaping (including trees and silva cells), lawn, and irrigation systems and shall be responsible (or cause the Drive to be responsible) for all water irrigation costs; and

WHEREAS, pursuant to Section 1(f) of the Development Agreement, the City has agreed to grant to WES, its contractors, agents, and employees, a non-exclusive license to enter onto the Property for the purpose of performing such maintenance and water irrigation obligations.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. WES shall maintain (or cause the Drive to maintain) those portions of the Public Improvements comprised of landscaping (including trees and silva cells), lawn, and irrigation systems in accordance with the City's Landscape Maintenance Requirements and, further, shall maintain the public restrooms to the same level as the City maintains comparable facilities.

2. Any water irrigation associated with the landscaping or lawn areas shall be connected to WES's or the Drive's meter as part of these maintenance obligations, and WES shall be responsible (or cause the Drive to be responsible) for all water irrigation costs.

3. The City hereby grants unto WES, its contractors, agents, and employees a non-exclusive license to enter onto the Property for the purpose of performing such maintenance and water irrigation obligations.

4. WES, its contractors, agents, and employees shall take all commercially reasonable precautions to ensure its performance of the maintenance and water irrigation obligations does not pose a hazard or cause damage to persons or property.

5. In accordance with Section 1(d) of the Development Agreement, WES (as well as its successors and assigns) shall continuously maintain, at its sole cost, general liability insurance in the minimum amount of at least \$1,000,000 per occurrence, insuring against any claim or loss (including attorney's fees) arising out of, or related in any manner to, the maintenance and water irrigation obligations of WES as set forth herein. Such coverage shall remain in effect for so long as WES or the Drive continues to have such maintenance and water irrigation obligations. Certificates showing proof of general liability insurance required hereunder shall be submitted to the City's Risk Manager via email to inscerts@greenvillesc.gov prior to commencement of construction each year for so long as such insurance is required to be in effect. It shall also be an affirmative obligation upon WES (as well as its successors and assigns) to advise the City's Risk Manager via e-mail to inscerts@greenvillesc.gov within two days of the cancellation or substantive change of such insurance policy, and failure to do so shall be construed to be a breach of this Agreement. The general liability policy is to contain or be endorsed to name City, its officers, officials, agents, and employees as additional insureds as respects the liability arising out of the activities performed under this Agreement. Such coverage shall be primary and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII and licensed to do business in the State of South Carolina, unless otherwise approved by the City, and WES shall not self-insure in satisfaction of the insurance requirements set out herein without the express written consent of the City.

6. Notwithstanding anything herein to the contrary, WES shall indemnify, defend, and hold harmless the City, as well as its officers, officials, and employees, from and against all third party claims of any nature whatsoever, at law or in equity, arising out of, or related in any manner to WES's obligations under this Agreement, excluding only those claims resulting from the gross negligence or willful misconduct of the City, its officers, officials, or employees or from a breach of this Agreement by the City. The City shall give WES prompt notice of any such claim. WES shall have the sole and exclusive right to control the defense and settlement of any claim upon which it is or may be obligated to indemnify the City, provided that WES's legal counsel shall be subject to the approval of the City, which approval shall not be unreasonably withheld, and that such defense or settlement does not impair the City's rights under this Agreement or its rights and protections under the law derived from its status as a municipal political subdivision of the State of South Carolina. This provision shall survive the expiration or termination of this Agreement.

7. WES shall coordinate (or shall cause the Drive to coordinate) the maintenance and water irrigation obligations with the City's Public Works Department.

8. The license granted by this Agreement shall be for so long as WES or any of its affiliates shall occupy or operate Fluor Field. In the event WES or any of its affiliates at any time cease to occupy and operate Fluor Field, WES shall have the right to terminate its maintenance and water irrigation obligations hereunder by providing the City with at least 90 calendar days' prior written notice thereof.

9. WES shall comply with all applicable federal, state, county, and City laws, rules, regulations, and ordinances in connection with maintenance and water irrigation obligations.

10. The City shall retain the right to make all use of the Property so long as such use shall not unreasonably interfere with the rights granted to WES hereunder.

11. Miscellaneous. If any part or provision of this Agreement is held invalid or unenforceable under applicable law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining parts and provisions of this Agreement. The waiver of a breach of this Agreement by either Party shall not operate as a waiver of any subsequent breach, and no delay in acting with regard to any breach of this Agreement shall be construed to be a waiver of the breach. Headings are inserted for convenience only and shall not be considered for any other purpose. No modification, amendment or waiver of any provision of the Agreement shall be binding upon the Parties unless the same is first reduced to writing in a document having the same formality as the Agreement and executed by the duly authorized officer for each Party. This Agreement and the Development Agreement constitute the entire agreement between the Parties. All prior negotiations and representations of the Parties are merged into the Agreement, and no prior statement, whether written or oral, shall be binding upon either party unless reduced to writing and contained in the Agreement or the Development Agreement. This Agreement shall be subject to, and interpreted under, the laws of the State of South Carolina without regard to conflict of laws principles. Any dispute arising out of, or related in any manner to, the Agreement must be brought exclusively in the Greenville County Court of Common Pleas following the exhaustion of any and all available administrative remedies.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

**CITY OF GREENVILLE, SOUTH CAROLINA
(SEAL)**

Witness

By: _____
John F. McDonough, City Manager

Witness

STATE OF SOUTH CAROLINA

)

)

COUNTY OF GREENVILLE

)

ACKNOWLEDGMENT

THE FOREGOING INSTRUMENT was acknowledged before me this _____ day of _____, 2020 by John F. McDonough as the City Manager of the City of Greenville, South Carolina.

[SEAL]

Print Name: _____
Notary Public for South Carolina
My Commission Expires: _____

[Signatures continued on next page]

Signed, sealed and delivered
in the presence of:

WEST END STADIUM, LLC (SEAL)

Witness

By: _____
Print Name: _____
Its: _____

Witness

STATE OF SOUTH CAROLINA

)

COUNTY OF GREENVILLE

)

ACKNOWLEDGMENT

)

THE FOREGOING INSTRUMENT was acknowledged before me this _____ day of _____, 2020 by _____ as _____ of West End Stadium, LLC.

[SEAL]

Print Name: _____
Notary Public for South Carolina
My Commission Expires: _____

Approved as to form:

City Attorney

Reviewed by:

City Director of Economic and Community Development

Reviewed by:

City Director of Public Works

Reviewed by:

City Interim Director of Parks and Recreation

Reviewed by:

City Director of OMB

Reviewed by:

City Risk Manager

Received by:

City Purchasing Administrator

EXHIBIT D**CITY OF GREENVILLE PROCUREMENT PROCEDURES SECTION 2.4(J)(5)**

5. Development Agreements. Whenever the City enters into an agreement with a private developer as a means of coordinating a private project with the provision of public services, the construction or installation of improvements, the installation of public improvements, or a combination of such arrangements, then in order to achieve efficiencies for all projects concerned and to avoid confusion and delay in the completion of the respective projects, the City may enter into written agreements which permit the private entity's procurement practices to be utilized in the City's component of the project. Any such arrangement, however, must be designed to secure the greatest value for the public good with the most efficient means available in accordance with reasonable business standards. Any written agreement for such coordinated projects must provide for the City's consent and approval of procurement practices for improvements or activities funded by the City. Such practices must assure adherence to principles of fairness, efficiency, and value for the use of public funds. The practices must provide for competitiveness, even though bids may not be necessary. To the extent performance bonds or payments bonds are required by the general law of this State for political subdivisions, these practices shall assure their use for public improvements funded by the City.

ATTACHMENT 2**THIRD AMENDMENT TO STADIUM DEVELOPMENT LEASE AGREEMENT**

This THIRD AMENDMENT TO STADIUM DEVELOPMENT LEASE AGREEMENT dated as of December __, 2021 (this "Amendment") between **CITY OF GREENVILLE, SOUTH CAROLINA**, a municipality organized and existing under the laws of the State of South Carolina ("Lessor" or the "City"), and **WEST END STADIUM, LLC**, a South Carolina limited liability company ("Lessee").

W I T N E S S E T H:

WHEREAS, Lessor, RB3, LLC (n/k/a Greenville Drive, LLC ("Greenville Drive")), and Lessee entered into that certain Stadium Development Lease Agreement dated as of May 26, 2005 which was amended by way of a First Amendment thereto dated April 2, 2014 and further amended by way of Second Amendment thereto dated February 28, 2017 (the "Original Lease"), with respect to the development, construction and leasing of a professional baseball stadium within the City of Greenville, South Carolina, all as more particularly described in the Original Lease;

WHEREAS, the Stadium and the Greenville Drive have been a tremendous success, playing a transformative role in the redevelopment of downtown, particularly the West End, where there has been significant commercial and residential development which has greatly increased the City's tax base;

WHEREAS, the Greenville Drive home games and other events at the Stadium (including NCAA and league all-star baseball games) play an equally important role as a destination venue which draws City residents, those living in the surrounding areas and tourists alike;

WHEREAS, Greenville Drive and other fans patronize local retail and eating establishments and hotels, before and after each game, thereby generating additional sales, accommodations and hospitality taxes;

WHEREAS, the City and the Lessee are undertaking improvements to Field Street which is immediately adjacent to the Stadium in order to create a public plaza on game days and other special events which will further enhance and promote the Stadium experience;

WHEREAS, in consideration of the City's funding of the aforementioned Field Street improvements, the Lessee has agreed to extend the date before which it may seek optional termination of the Original Lease to December 31, 2032 (the Original Lease, as modified by this Amendment, the "Lease").

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Capitalized Terms. All capitalized terms used and not otherwise defined in this Amendment shall have the respective meanings ascribed to them in the Original Lease.
2. Optional Termination. Effective as of the date hereof, the Original Lease shall be amended as follows:

(a) Section 5.5 of the Original Lease shall be deemed modified by deleting the reference to "2026" in the first line thereof and replacing the same with "2032".

(b) Section 12.2(a) of the Original Lease shall be deemed modified by deleting the reference to "October 31, 2026" in the second and third lines thereof and replacing the same with "October 31, 2032".

(c) Each reference in the Original Lease to "this Agreement", "this Lease", "herein", "hereunder" or words of similar import shall be deemed to refer to the Lease as defined herein.

(d) For the avoidance of doubt, it is understood and agreed that the references to "2026" in the last paragraph of paragraph 6 of the Second Amendment to the Original Lease (i.e., the paragraph starting with "Notwithstanding anything to the contrary herein...") shall hereafter be references to "2032".

3. Brokerage. Each of Lessor and Lessee represents and warrants to the other that it has not dealt with any broker in connection with this Amendment and that, to the best of its knowledge, no broker negotiated this Amendment or is entitled to any fee or commission in connection herewith.

4. Miscellaneous. (a) Except as set forth herein, nothing contained in this Amendment shall be deemed to amend or modify in any respect the terms of the Original Lease and such terms shall remain in full force and effect as modified hereby. If there is any inconsistency between the terms of this Amendment and the terms of the Original Lease, the terms of this Amendment shall be controlling and prevail.

(b) A memorandum of this Amendment shall be executed and acknowledged in accordance with the laws of the State and recorded in the Register of Deed's Office.

(c) This Amendment contains the entire agreement of the parties with respect to its subject matter and all prior negotiations, discussions, representations, agreements and understandings heretofore had among the parties with respect thereto are merged herein. This Amendment may not be modified or amended except as provided in Section 13.5 of the Lease.

(d) Each of the parties hereto respectively represents and warrants to the other that (i) it has the full power and authority to make, execute, deliver and perform this Amendment and the transactions contemplated hereby, and (ii) this Amendment has been duly and validly authorized, executed and delivered by such party and constitutes the legal valid and binding obligations of such party, enforceable against it in accordance with its terms.

(e) This Amendment may be executed in duplicate counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. An executed counterpart of this Amendment transmitted by facsimile, email or other electronic transmission shall be deemed an original counterpart and shall be as effective as an original counterpart of this Amendment and shall be legally binding upon the parties hereto to the same extent as delivery of an original counterpart.

(f) Each of the parties hereto shall be responsible for its respective costs and expenses incurred in connection with the negotiation and execution of this Amendment.

(g) This Amendment shall be binding upon and inure to the benefit of Lessor and Lessee and their respective successors and permitted assigns.

(h) This Amendment shall be governed by the laws of the State without giving effect to conflict of laws principles thereof.

(i) The captions, headings, and titles in this Amendment are solely for convenience of reference and shall not affect its interpretation.

[remainder of page intentionally blank; signature pages follow]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment as of the day and year first above written.

WITNESSES:

LESSOR:

CITY OF GREENVILLE, SOUTH CAROLINA

By: _____

Name:

Title:

STATE OF _____)

_____)

COUNTY OF _____)

ACKNOWLEDGMENT

Personally appeared before me, _____, a Notary Public in and for said State and County duly commissioned and qualified, _____, with whom I am personally acquainted, and who acknowledged that s/he executed the within instrument for the purposes therein contained, and who further acknowledged that s/he is the _____ of CITY OF GREENVILLE, SOUTH CAROLINA (the "Lessor") and is authorized by the Lessor to execute this instrument on behalf of the Lessor.

WITNESS my hand, at office, this ____ day of _____, 20__.

Notary Public

My Commission Expires:

[signatures continue on the following page]

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

WITNESS my hand, at office, this ____ day of _____, 20__.

[end of signature pages]

BUDGET AMENDMENT					
BUDGET	Capital Projects Fund		REQUESTED BY		
FISCAL YEAR	2020-21		DATE		
<u>INCREASE</u>			<u>DECREASE</u>		
<u>Description</u>			<u>Description</u>		
<u>Capital Projects Fund</u>					
Transfer in Cap. Projects Fund (REV)		2,550,000			
Construction (EXP)		2,550,000			
Explanation:	To appropriate \$2,550,000 in the Capital Projects Fund for a development agreement for Jackson Way.				
DATE			APPROVED BY		
				City Council/City Manager Camilla Pitman/City Clerk	
FOR OMB POSTING PURPOSES ONLY					
<u>Budget Adjustments</u>		Increase (Decrease) <u>Amount</u>	<u>Journal Entry</u>		
<u>Project Code</u>	<u>Account</u>		<u>Project Code</u>	<u>Account</u>	<u>Amount</u>
ED3545	341-0000-391-81-41	2,550,000	ED3500	341-9010-491-81-41	DR 2,550,000
ED3545	341-9010-411-68-04	2,550,000	ED3545	341-0000-391-81-41	CR 2,550,000
	Total	5,100,000		Total	-
	Prepared By				
	Posted By				
	Date			Number	



Staff Report

Updates From Policy Review Recommendations





Policy Review Committee Recommendations

- Changes were recommended and previously presented to Council on:
 - Use of Force by Police Officers GO-200A13
 - Body Worn Cameras GO-247A4
 - Police Service Dogs GO-263A2

These changes were reviewed by GPD Policy Management Group and made effective December 7, 2020.

December 14, 2020





BODY WORN CAMERA (BWC) Equipment Recommendation

- The Committee recommended the addition of holster activation switches that automatically turn on the officers BWC when their weapon is drawn from the holster.
- The first switches GPD received for trial and evaluation did not function properly with our equipment .
- We have now received 2 new switches that are being tested and appear to be working well.
- We anticipate completing the T&E and purchasing holster switches for every GPD officer in Q1 2021



Summary of Changes to Public Safety Citizen Review Board (PSCRB) Ordinances

- Changes were unanimously recommended by the advisory committee
- Lowers age limit for Board service from 30 to 21
- Mandatory Training for PSCRB Members
 - Ride-along, use of force simulator, and Citizen's Academy
- GPD shall provide a list of all internal or external complaints concerning violation of the BWC policy
- Increased promotion of the PSCRB complaint and appeals process
- Tracking and reporting of all complaints involving failure to follow policy or misconduct; periodic reporting of same to the PSCRB
 - Reasonable access to underlying file materials available upon majority vote of the Board