



## REQUEST FOR COUNCIL ACTION City of Greenville, South Carolina

**TO:** Honorable Mayor and Members of City Council  
**FROM:** Nancy P. Whitworth, Interim City Manager

Agenda Item No.

11g

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

**AGENDA DATE REQUESTED:** January 28, 2019

**ORDINANCE/RESOLUTION CAPTION:**

TO ENTER INTO A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF GREENVILLE AND THE SOUTH CAROLINA CHILDREN'S THEATRE FOR THE PROVISION OF PUBLIC IMPROVEMENTS

**SUMMARY BACKGROUND:**

The South Carolina Children's Theatre (SCCT) is building a new Theatre Arts and Education Center for children in the West End, located on Augusta Street. This Development Agreement provides for reimbursement in an amount not to exceed \$1.5 million from the city of Greenville for public improvements related to the new facility.

**IMPACT IF DENIED:**

The South Carolina Children's Theatre is relying on City support for the new facility and will be impacted if this support is not received.

**FINANCIAL IMPACT**

\$900,000 is available now for a partial reimbursement, assuming the work is substantiated by the City; the City will reimburse for the balance according to this schedule: (i) \$300,000 due on or before July 15, 2019, and (ii) \$300,000 due on or before July 15, 2020, it being recognized that the amount of the final reimbursement shall be reduced if actual cost is less than \$1,500,000.

### REQUIRED SIGNATURES

Department Director \_\_\_\_\_

OMB Director \_\_\_\_\_

City Attorney Michael S. Pitts

City Manager Nancy Whitworth

DocuSigned by:

*Michael S. Pitts*

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DocuSigned by:

*Nancy Whitworth*

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A N O R D I N A N C E

TO ENTER INTO A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF GREENVILLE AND THE SOUTH CAROLINA CHILDREN’S THEATRE FOR THE PROVISION OF PUBLIC IMPROVEMENTS

WHEREAS, the South Carolina Children’s Theatre (the “SCCT”) is constructing a new Theatre Arts and Education Center for Children in the West End (the “Project”); and

WHEREAS, the Project will consist of approximately 36,000 square feet of headquarters space to include a main stage, lobby, 2<sup>nd</sup> Stage space, classrooms, administrative offices, and parking; and

WHEREAS, a new permanent home for the SCCT has been a long-term vision and desire of the Greenville community; and

WHEREAS, the SCCT has been undergoing a fundraising campaign, and the city of Greenville has expressed interest in assisting with public improvements related to the project in an amount not to exceed \$1,500,000 as more fully set forth in Resolution 2016-37 and Ordinance 2017-38; and

WHEREAS, while the aforementioned Ordinance stated that the City’s intent to provide financial support for the Project would be rescinded if Project construction did not start by January 1, 2018, City Council nevertheless wishes to extend that deadline in light of the SCCT’s diligence and success in its fundraising efforts as well as the fact construction of the Project has now commenced; and

WHEREAS, City Council desires to formalize its commitment to participate in the Project by funding certain public improvements as more fully set forth in the Development Agreement between the City and the SCCT attached hereto and made a part hereof as Attachment A (the “Development Agreement”);

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA, the Development Agreement is hereby approved in substantially the same form as attached hereto and incorporated herein as Attachment A. 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. Any provision of Ordinance 2017-38 which is inconsistent with the foregoing is hereby rescinded and repealed.

DONE, RATIFIED AND PASSED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

REVIEWED:

\_\_\_\_\_  
CITY MANAGER

ATTACHMENT A

STATE OF SOUTH CAROLINA	)	CITY OF GREENVILLE AND SOUTH
	)	CAROLINA CHILDREN'S THEATRE
	)	DEVELOPMENT AGREEMENT FOR A
	)	PROJECT ON AUGUSTA STREET,
COUNTY OF GREENVILLE	)	GREENVILLE, SC

This Agreement (the "Agreement") by and between South Carolina Children's Theatre, a South Carolina Nonprofit duly authorized by the Secretary of State of South Carolina to do business in the State (the "Project Developer") and the City of Greenville, a municipal corporation under the laws of South Carolina (the "City"), is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

In consideration of and for the mutual exchange of promises set forth in the Agreement, the parties covenant with one another to perform as follows:

**1. Project Developer Commitments**

a. Development Size and Purpose. The Project Developer, its agents or assigns, shall be responsible for the design and construction of a Theatre Arts & Education Center for Children in the West End (TMS No. 0090000100700 and 0090000100800) as more fully referenced in Exhibits A and B. The development, hereinafter referred to as the "Project" shall consist of approximately 36,000 square feet of headquarters space including a main stage, lobby, 2<sup>nd</sup> Stage space, classrooms, administrative offices, and parking. The Project will promote the culture arts and is anticipated to draw residents and tourists into Downtown Greenville.

b. Investment Required. The Project Developer covenants that it shall make an investment through equity, loans, capital campaign receipts and other sources of not less than \$10 million (\$10,000,000) in design, development, and construction (the "Project Developer Investment") in the Project as evidenced by documentation which is reasonably acceptable to the City.

c. Implementation of Investment. Subject to any delays caused by City or by force majeure, Project Developer covenants that it shall use best efforts to have a substantially complete and occupied Project not later than two (2) years after receipt of all building permits. The parties recognize that the investment commitments of the Project identified in subsection (b) above have been relied upon by the City in the planning for the public improvements herein described and in providing for their reimbursement pursuant to Section 3 below. In the event the Project Developer does not complete the Project Developer Investment as stated above, the City shall not be required to reimburse the Project Developer for any Project-related public improvements performed by the Project Developer.

d. Public Infrastructure Improvements. The Project Developer agrees to install public infrastructure improvements related to the site grading on the 2.19 acre site, soil stabilization, utilities – water, sanitary sewer and storm sewer, streetscape, drives and parking, public plazas, and landscaping ("Public Improvements"), as more fully set forth in in Exhibit C. Prior to receiving reimbursement for the Public Improvements pursuant to Section 2(a) below, the Project Developer shall receive written confirmation from the City's Parks and Recreation and Public Works Departments to the effect that, in their reasonable determination, the Public Improvements were constructed based on plans approved by the City, in accordance with this Agreement and in accordance with all applicable laws and regulations, including Title II of the Americans with Disabilities Act.

e. Reimbursements subject to standard of Reasonableness. Those costs which are to be reimbursed or paid as consideration by the City for the Public Improvements must be reasonably incurred and substantiated in accordance with City of Greenville Procurement Procedures III (K) , (see Exhibit D) applicable to public-private partnerships. The Project Developer's procurement practices therefore shall adhere to fairness, efficiency, value for the use of public funds and principles of competitiveness, even though bids may not be required.

f. Compliance with Law. Construction 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 Public Improvements including, without limitation the Americans with Disabilities Act as well as all building code requirements then in effect.

g. Insurance Requirements. The Project Developer shall procure and maintain insurance coverage for occurrences during the term of the Agreement against any claim for injuries to persons or damages to property which may arise from, or in connection with, the construction of the Public Improvements by the Project Developer, its employees, agents, contractors, or representatives. Such insurance shall be in the following minimum amounts:

- Commercial General Liability \$1,000,000.00 per occurrence
- Comprehensive Motor Vehicle Liability \$1,000,000.00 per occurrence
- Workers Compensation - Statutory limits
- Employers Liability \$500,000/\$500,000/\$500,000

The Project Developer shall deliver certificates of insurance to establish proof of current and ongoing coverage to the City's Risk Manager via email at [inscerts@greenvillesc.gov](mailto:inscerts@greenvillesc.gov).

The City of Greenville must be shown as the certificate holder. Further, in the event the Project Developer receives notice of insurance cancellation in any form from an insurance provider or its agent, then the Project Developer must assure receipt of written notice within five (5) days of the Project Developer's receipt of notice by delivery in one of the above referenced means of contact.

The General Liability Coverage must list the City, its officers, officials, and employees as additional insured's for activities arising under the Project Developer performance under the Agreement. The coverage shall be primary as to the Project Developer's negligent acts and omissions or willful misconduct. It shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability coverage.

The Workers' Compensation Coverage shall apply to all of the Project Developer's employees who are in any way connected with the Project Developer's performance under the Agreement. The coverage shall comply with all applicable state laws and provide a waiver of subrogation from the Project Developer against the City, its officers, officials, agents and employees, unless otherwise approved by the City.

The Project Developer must obtain insurance coverage from insurers with a current A. M. Best's rating of net less than A: VII. The insurers must be licensed to do insurance business in the State of South Carolina, unless otherwise approved by the City. The Project Developer cannot be a self-insured in order to meet these requirements, unless the City in writing consents for the particular named Project Developer for the specific Agreement.

The Project Developer shall be solely liable and the City in no way shall be responsible for any coverage deductible, co-insurance penalty, or self-insured retention (if applicable), including any loss sustained because of the operation of the deductible, penalty, or retention.

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Further, the Project Developer has an affirmative duty, and shall carry out that duty, to see that any and all contractors and subcontractors performing on the Project Developer's behalf shall also have the same insurance obligations as are borne by the Project Developer under these general terms and conditions.

## 2. City Commitments

a. Summary of Reimbursable Expenditures. Recognizing that the Public Improvements are opportunities to enhance the overall public realm Downtown in conjunction with a significant development, that will enhance the cultural arts experience for both residents and tourists alike, the maximum amount of City funds to be expended to the Project Developer on public infrastructure related to the Project are as follows:

**Public Improvements as set out in Exhibit C at their actual substantiated cost or \$1,500,000, whichever amount is less.**

Upon completion of the Public Improvements and receipt of the confirmations contemplated above in Section 1.d, the Project Developer may apply for a partial reimbursement in an amount not to exceed \$900,000. Thereafter, and at all times subject to the appropriation of funds by City Council, the City will reimburse the Project Developer for the balance of the Public Improvement costs according to the following schedule: (i) \$300,000 due on or before July 15, 2019 and (ii) \$300,000 due on or before July 15, 2020, it being recognized that the amount of the final reimbursement payment shall be reduced to reflect the actual substantiated cost of the Public Improvement if such cost is less than \$1,500,000.

In order to receive reimbursement for the Public Improvement costs contemplated hereunder, the Project Developer shall submit original or certified copies of invoices along with payment records substantiating the expenditures to the City (Attention: Mary Douglas Hirsch, P.O. Box 2207, Greenville, SC 29602). Following review and approval of the aforementioned documentation, reimbursement shall be made within thirty (30) business days. In the event of a dispute concerning an item(s) of reimbursement, the City shall timely reimburse the Project Developer for all undisputed amounts and shall expeditiously work with the Project Developer to resolve any outstanding reimbursement disputes, subject at all times to the cap set forth above in Section 2(a). Actual costs do not include any of the following actual or allocated costs of the Project Developer, its affiliates or principals: personnel costs, corporate or other overhead costs, contingency, interest expense, costs associated with right-of-way, or easement acquisition.

b. Maintenance. The City shall maintain the Public Improvements within the public right-of-way of Augusta Street upon completion, dedication, and acceptance by the City.

3. No Assignment Without Consent. Prior to completion of the duties set forth herein, neither the City nor the Project Developer are authorized to assign its respective duties under the Agreement to third parties without first having received from the other party a written consent, which consent shall not be unreasonably withheld, executed with the same formality of the Agreement. Notwithstanding the foregoing, City does acknowledge and agree that Project Developer will be utilizing a general contractor to perform the work on the Project. The parties acknowledge that the City's reimbursement for the Public Infrastructure is based on the Project Developer's commitment to provide a Theatre Arts and Education Center for children in the West End.

4. Modification. No modification 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. However, minor changes and modifications to the Development Agreement are authorized as may be necessary or appropriate to allow for a

final version mutually acceptable to the parties, with said minor changes and modification being approved by the City Manager and the City Attorney. Should the City Manager or City Attorney, or both, determine that any modification of previously negotiated terms is significant and warrants further action by Council, then the matter shall be presented to and reviewed by City Council before the final execution.

5. Merger of Negotiations. 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.

6. Applicable Law. The Agreement is entered into under the laws of South Carolina, the City is a political subdivision of South Carolina, and the subject real property and improvements are located in Greenville, South Carolina. The Agreement shall be construed in accordance with the laws of South Carolina.

7. No Joint Venture. The parties acknowledge the City is acting solely in a governmental capacity in expanding/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 the Project Developer (or its affiliates or principals) and the City, and the parties expressly disclaim the same.

8. Indemnification. The Project Developer shall indemnify, defend and hold harmless the City, as well as its officers, officials and employees, from and against all claims of any nature whatsoever, at law or in equity, arising out of, or related in any manner to the Agreement or the design and construction of the Public Improvements, excluding only those claims resulting from the breach of this agreement by the City or the gross negligence or willful misconduct of the City, its officers, contractors, agents, officials, and/or employees. This provision shall survive termination of the Agreement.

9. 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:	With a copy to:
City of Greenville	City of Greenville
Attention: City Manager	Attention: Economic Development Department
206 S. Main Street	206 S. Main Street
P.O. Box 2207	P.O. Box 2207
Greenville, SC 29602	Greenville, SC 29602

PROJECT DEVELOPER:  
SC Children's Theatre  
Attention: Debbie Bell  
PO Box 9340  
Greenville, SC 29604

10. 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.

WHEREFORE, in consideration of the foregoing, the parties do bind themselves by terms and conditions of the agreement by providing below the signature of their authorized officers.

WITNESS: SOUTH CAROLINA CHILDREN'S THEATRE  
\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
\_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF SOUTH CAROLINA   )  
  )  
COUNTY OF GREENVILLE   )                    ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018 by the duly authorized officer for South Carolina Children's Theatre.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

WITNESS: CITY OF GREENVILLE, SOUTH CAROLINA  
\_\_\_\_\_  
By: \_\_\_\_\_  
Name: Nancy P. Whitworth  
\_\_\_\_\_  
Its: Interim City Manager

STATE OF SOUTH CAROLINA   )  
  )  
COUNTY OF GREENVILLE   )                    ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018 by the duly authorized officer for City of Greenville.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_



APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
Parks and Recreation

\_\_\_\_\_  
Economic Development

\_\_\_\_\_  
OMB

\_\_\_\_\_  
Risk Manager

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EXHIBITS

- A. Property Map
- B. Project Rendering
- C. Site Plan
- D. Procurement

Exhibit A  
Property Map



Tax Map Numbers:

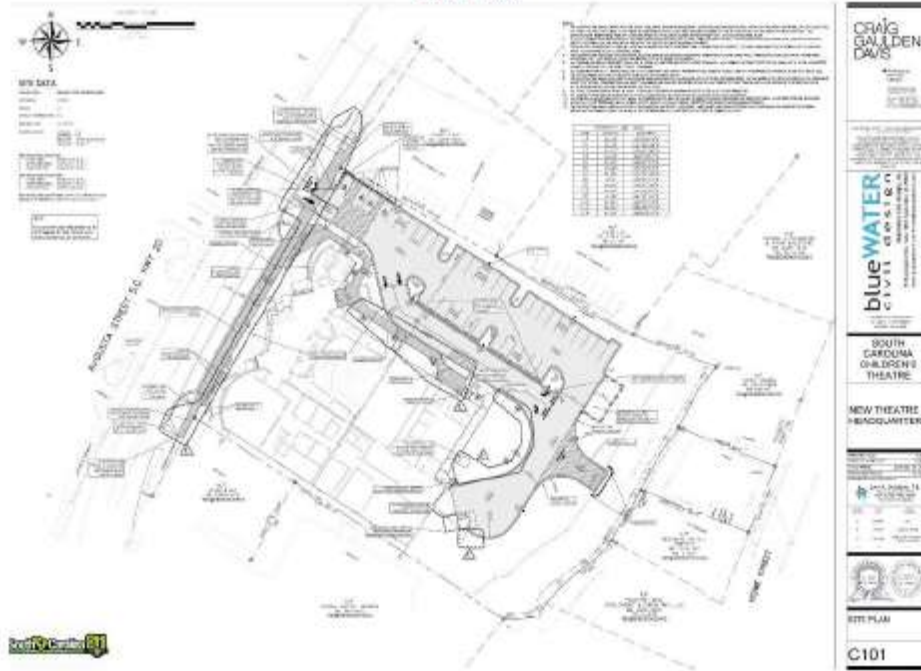
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Exhibit B  
Project Rendering



Exhibit C  
Site Plan



Eligible reimbursements are listed in Section 1(d):

The Project Developer agrees to install public infrastructure improvements related to the site grading on the 2.19 acre site, soil stabilization, utilities – water, sanitary sewer and storm sewer, streetscape, drives and parking, public plazas, and landscaping ("Public Improvements"), as noted in Exhibit C.

The City of Greenville agrees to reimburse the South Carolina Children's Theatre for:

From Section 2(a): Public Infrastructure Improvements as set out in Exhibit C at their actual substantiated cost or \$1.5 million, whichever amount is less.

Exhibit C (Continued)

**SCCT - City Work including site grading, soil stabilization, utilities, water, sanitary sewer, storm sewer, streetscape, drives, and parking, public plazas and landscaping - November 28, 2018**

Item	Status of Procurement	Status of Work	Estimated Cost
Construction Costs			
Site Clearing, Demo	Under Contract	Complete	47,704
Erosion Control	Under Contract	Ongoing	29,950
Earthwork	Under Contract	Complete	122,486
Allowance for Unsuitable Soil Removal and Replace	Under Contract	85% Complete	105,000
Underground Storm Storage	Under Contract	Complete	89,000
Storm Drainage	Under Contract	80% Complete	79,222
Roof Drains	Under Contract	Complete	43,455
Water Service	Under Contract	25% Complete	29,425
San Sewer Service	Under Contract	Complete	28,750
Site Seasonal Walls - T shapes	Under Contract	Complete	19,450
Curb and Gutter	Under Contract	85% Complete	28,617
Flashboard at of thurs	Under Contract	Not Started	6,000
8" Tap and Valve Greenville Water	Under Contract	Complete	2,190
1 1/2" meter tap REVA	Under Contract	Complete	15,000
Greenville Water Fees	Under Contract	Complete	5,850
Front Sander	Under Contract	Complete	2,400
Wind Destruct Enclosure	Under Contract	Not Started	2,800
Temporary Stone Paving	Under Contract	Ongoing	95,000
Paving / Striping / Augusta Patch	Under Contract	Not Started	89,894
Code Related Signage (Allowance)	Under Contract	Not Started	5,000
Block Pavers at city curb	Under Contract	Not Started	4,725
Benchies Allowance	Under Contract	Not Started	5,800
Bike Rack Allowance	Under Contract	Not Started	1,000
Demolition Building	Under Contract	Complete	12,850
Allowance for Haz Mat survey	Under Contract	Complete	1,000
Geot Inspections	Under Contract	Ongoing	5,000
Traffic Reroute for Sewer	Under Contract	Complete	20,000
Fence and Site Barriers - Temp	Under Contract	Complete	80,000
Landscaping, irrigation, and topsoil and temporary grassing allowance	Under Contract	In Process	80,000
Foundation Drain	Under Contract	Not Started	6,000
Stencils and Plugs	Under Contract	Not Started	45,700
Site Walls at front plaza and foundations for sign walls	Under Contract	In Process	20,000
Precast at Site Walls	Under Contract	In Process	42,000
General Conditions - provided for 2 months	Under Contract	Complete	124,854
Profit	Under Contract	Ongoing	44,853.85
Business License	Under Contract	Complete	1,035
Permit	Under Contract	Complete	5,704
<b>Subtotal of Construction Costs</b>			<b>\$1,143,006</b>
<b>Soft Costs</b>			
Site Lighting - Duke Energy for Parking Lot	Finaling Contract	Not Started	45,000
Site Design	Under Contract	Complete	75,000
Decorative Adder for Street Lights	Finaling Contract	Not Started	35,000
Misc Demos, Site Prep, Site Maintenance	Under Contract	Complete	51,825
Material Testing / Site	Under Contract	In Process	25,000
Survey	Under Contract	Complete	13,800
Site Signage	In Procurement	Not Started	191,000
Embankment			20,000
<b>Subtotal of Soft Costs</b>			<b>\$362,375</b>
<b>Total Estimated City Costs</b>			<b>\$1,505,381</b>

## Exhibit D

## Procurement

**Section III (K)**

Whenever the City enters into a development agreement providing for a public-private partnership for the provision of public services or the construction of a building or infrastructure improvements, then in order to achieve efficiencies for the project concerned and to avoid confusion and delay in the completion of the project, the City may enter into written agreements which permit the private entity's procurement practices to be utilized in the City component of the project. Any such implementation, however, must be designed to secure the greatest value for the public good with the most efficient means available in accord with reasonable business standards. Any written agreement for such arrangements must provide for the City's consent and approval of procurement practices. Such practices must assure adherence to principles of fairness, efficiency, and value for the use of public funds, as well as competitiveness, even though bids may not be necessary. Whenever a procurement involves funds provided by the State of South Carolina or the Federal Government, this procurement shall be in compliance with such state and federal laws and regulations as applicable.