

STATE OF GEORGIA)
)
COUNTY OF CHATHAM)

ESCROW AGREEMENT AND MEMORANDUM OF UNDERSTANDING

This Agreement is made by and between The Mayor and Aldermen of the City of Savannah, a Municipal Body within Chatham County, Georgia ((hereafter City) and the Savannah Exchange Club Fair Association, a Non-Profit Georgia Incorporation, a Charitable Organization (hereafter Club) and dated this ____ day of September 2022.

WITNESSETH

Whereas, the Club is the owner of +- 320.46 acres of land, commonly known as Tract D, a recombination of UC Corps Southern States #5 Tract, Litchfield Plantation, SMB 37P, Page 71 and SMB 39S, Page 53, 320.46 acres, near Hwy 204 and the I-95 204 Interchange;

Whereas, the Club is a non-profit charitable organization that acquired said property for purposes of improvements to the property for a fair ground and associated facilities for parking, utilities, and other amenities necessary to operate a countywide fair for the enjoyment of the Chatham County citizens and simultaneously to raise funds to carry out as many charitable purposes;

Whereas, the property is located within the City limits and therefore is subject to regulation by the City;

Whereas, the City of Savannah is responsible to ensure that sanitary sewerage generated within the City limits and the City's sanitary sewer service area is disposed of in a lawful and sanitary manner;

Whereas, *the Club intends to construct and provide restroom facilities at the fairground* to be maintained in a clean and sanitary manner, including the temporary storage and disposal of sewage generated on site prior to construction of permanent sewage collection and disposal facilities;

Whereas, the Club is in need of assistance from the City of Savannah to allow the temporary use of black water storage tanks to hold sewage and waste from restroom facilities for the public bathrooms during the Club's 2022 annual fair event held on the Club's property;

Whereas, the Club intends to install the necessary infrastructure to connect to the City's sewer system prior to March 31, 2023;

Whereas, the Club intends to document its intent to install said infrastructure by placing the total project estimated cost into an escrow account;

Whereas, the City will grant the Club temporary utilization of Black water storage tanks for public restrooms during the Club's 2022 annual fair set forth in this Memorandum of Understanding.

Now Therefore, for and in consideration of granting the Club permission for the temporary storage of sewage, disposal of sewage, and Black water tanks at the 2022 annual fair event held on Club property and in consideration of the promises made by the Club to comply with all applicable laws and regulations, the parties agree more particularly as follows:

1. **Recitals.** The recitals above are incorporated by reference and made a part of this agreement. This includes the attached Project Schedule which must be adhered to as a requirement to this MOU. The parties agree that holding the annual fair event is subject to the Club completing its obligations as stated herein and failure to complete said obligations as set forth in the Project Schedule, excluding factors causing delays beyond the Clubs control, could result in the City taking actions that could include prohibiting the 2022 annual fair event from taking place due to insufficient restroom facilities associated with sewage disposal services in a sanitary manner.
2. **Escrow Agent.** The Club and the City hereby appoint Hart & Associates Law Firm, LLC as their Escrow Agent, and Holder accepts such appointment and agrees to perform the duties and responsibilities contained in this Agreement.
3. **Receipt of Funds.** Holder hereby acknowledges receipt on this day of the sum of One Hundred Fifty-Five Thousand Eight Hundred Seventy-Five Dollars and Zero Cents (\$155,875.00) received from the Club.
4. **Distribution of Funds for Construction Purposes.** During the course of this Agreement, the Club may draw upon the funds held in escrow for the purpose of paying various bids, invoices, or bills that are part of the construction project necessary to construct the infrastructure referenced above. The Club may direct Holder to pay said invoices by providing a copy of the invoice to Holder and City, and Holder shall disburse funds to pay for said invoices out of the funds held in escrow.
5. **Distribution of Remaining Funds.** Holder shall hold and disburse the funds based upon the Club and the City's satisfaction of the obligations contained herein. If the Club has

completed construction of all infrastructure necessary to connect to the City's sewer system by March 31, 2023, then any remaining funds held in escrow shall be distributed to the Club. If the Club has not completed construction by March 31, 2023, then the remaining funds shall be distributed to the City, along with any additional funds that the City deems necessary to complete the project. Provided that the Club delivers sufficient funds to the City to complete the unfinished work, the City shall assume responsibility to complete construction of the infrastructure necessary for the Club to connect to the City's sewer system. In addition, the City will establish a schedule to complete the unfinished work regardless of the impacts to any future events to be held at the property. In the event that the Club and the City cannot agree as to the disbursement of funds, then Holder shall interplead and deliver the funds into a Chatham County Court, and after delivery Holder will be relieved from any future obligation under this Agreement.

6. **Liability of Holder.** In performing its duties under this Agreement or upon failure to perform its duties hereunder, Holder shall not be liable to anyone for any damages, losses, or expenses which such person or entity may incur as a result of Holder's acting or failing to act, provided, however, that Holder shall be liable for damages arising out of its willful default or gross negligence under this Agreement. Accordingly, Holder shall not incur any liability with respect to (1) any action taken or omitted to be taken in good faith upon advice of its counsel of the parties hereto given with respect to any questions relating to the duties and responsibilities of the Holder hereunder, or (2) action taken or omitted to be taken in reliance upon any documents, including any written notice or instruction provided for in this Escrow Agreement, not only as to its due execution and to the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein which Holder shall in good faith believe to be genuine, to have been signed or presented by proper person or persons, and to conform with the provisions of this Agreement.
7. **Indemnification.** Club and City, to the extent allowed by law, covenant and agree to jointly and severally indemnify and hold harmless Holder against any and all losses, claims, damages, liability, and expenses, including, but not limited to, reasonable costs of investigation and counsel fees and disbursements which may be imposed on Holder or incurred by it in connection with its acceptance of its appointment herein as Holder for

purposes of performance of its duties hereunder, including any litigation arising from this Escrow Agreement or involving the subject matter hereof.

8. **Interpleader.** In the event of a dispute between any of the parties hereto, Holder may tender into the registry or custody of the Superior Court of Chatham County, Georgia, all money, documents, and/or other property then in its possession under the terms of this Agreement, to institute such legal proceedings as it deems appropriate, and thereupon to be discharged from all further duties under this Agreement, provided, however, Holder shall continue to be entitled to indemnification from the other parties hereto as provided above.
9. **Representation.** Holder has represented the Club in the past, in connection with the transaction between Club and City. However, for this Agreement, Holder has acted as a scrivener based upon the agreement of both Club and City. Club and City hereby waive any conflict of interest which may be present.
10. **Use of Black Water and Grey Water Tanks.** The City will grant unto the Club the permission to temporarily use sewage holding tanks, black water tanks, and grey water tanks for the public restrooms of the Club's 2022 annual fair hosted on the Club's property. The Club agrees and the City allows that it will limit the use of the Black holding tanks for the Club's 2022 annual fair for one (1) month of the year in and around October to November 2022, with one week for set up, two weeks for operation and use, and one week for cleaning and removal of the tanks. All activity related to construction shall be completed by March 31, 2023 – per the attached –Project Schedule. It will be the responsibility of the Club to secure the appropriate, written approvals from the Chatham Count Health Department as to the proposed method that will be used to temporarily collect and dispose of black water. No later than March 31, 2023, the Club must connect its onsite sewage facilities to the City sewer system as set forth herein, provided that the Club has secured final approval from the City prior to commencing discharge of the Club's sewage to the City's sanitary sewer system.
11. **Scope of Work.** The Club will place in Escrow the sum of \$155,875.00 for construction costs of the lift station and force main to the Club's Project Engineer to be performed by Coleman Company, Inc. and construction by a Contractor licensed by City of Savannah.

- 12. Compliance with State Regulations.** The Club agrees that the use of Black water storage tanks shall be subject to all terms and conditions of O.C.G.A. §12-15-5 which sets forth the regulations as relates to sewage holding tank specifications; removal of sewage from tanks; disposal of sewage; and need for documentation and manifests. All rules regulations and requirements of O.C.G.A. §12-15-5 are incorporated by reference into this agreement.
- 13. Maintenance of Tanks.** The Black water storage tanks shall be emptied periodically in the one month of usage through the services of a professional and licensed hauling firm who shall have an authorized and approved account to dump and dispose of the sewage at the City of Savannah 1400 East President Street Water Reclamation Plant where the sewage shall be emptied per the procedures and costs of the City of Savannah Water Reclamation Plant. The location of the Black water tanks onsite shall be situated such that they will not be subject to spillage resulting from flood, vehicle collision or some other natural or manmade risk that could reasonably be expected to occur onsite. In the event that a sewage spill occurs, the Club shall notify the City immediately for potential reporting purposes, and the Club will be responsible for the payment of any fine levied against the City related to a sewer spill that was the result of the Club's onsite sewage collection and disposal operations. In addition, the Club will be responsible to perform and pay for all remediation costs associated with the spill(s).
- 14. Jurisdiction and Choice of Law.** This Agreement shall be deemed to have been executed in Chatham County, Georgia, and all questions of interpretation shall be governed by the laws of the State of Georgia, with jurisdiction and venue being in the Superior Court of Chatham County, Georgia.
- 15. Counterparts.** This Agreement may be executed in counterparts, and all such counterparts together shall constitute the entire agreement of the parties hereto. A faxed signature shall be deemed to be of the same effect as an original signature.
- 16. Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

17. Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

18. Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

So agreed to this ____ day of **September, 2022.**

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SIGNATURES ON THE FOLLOWING PAGE]**

THE MAYOR AND ALDERMEN
OF THE CITY OF SAVANNAH

EXECUTED IN THE PRESENCE OF:

WITNESS

BY: _____
CITY MANAGER

ATTEST: _____
CLERK OF COUNCIL

(SEAL)

SAVANNAH EXCHANGE CLUB
FAIR ASSOCIATION, INC.

EXECUTED IN THE PRESENCE OF:

Timothy J. Bennett
WITNESS

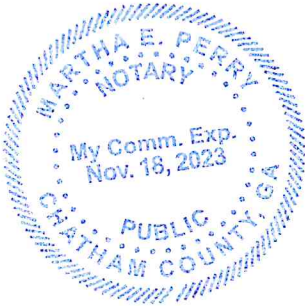
Martha E. Perry
NOTARY PUBLIC

BY:

Larry D. Reed
President

ATTEST: _____

(SEAL)



Savannah Exchange Club Sanitary Sewer Installation Schedule

