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RESOLUTION NO.: R-2024-058

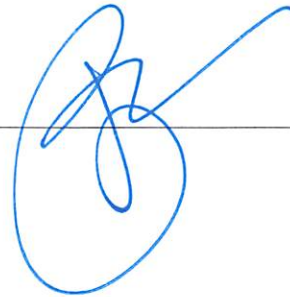
*Authorizing the City Manager to execute a Memorandum of Understanding  
Between the City of Columbia and Mungo Homes Properties, LLC*

BE IT RESOLVED by the Mayor and City Council of the City of Columbia, South Carolina this 16<sup>th</sup> day of July, 2024, that the City Manager is hereby authorized to execute the attached Memorandum of Understanding, or on a form to be approved by the City Attorney, between the City of Columbia and Mungo Homes Properties, LLC, for the Swygert Creek Sewer Trunk Line, CIP Project # SS7620.

Requested by:

City Manager \_\_\_\_\_

Mayor \_\_\_\_\_



Approved by:

  
City Manager \_\_\_\_\_

Approved as to form:

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

ATTEST:

  
City Clerk \_\_\_\_\_

Introduced: 7/16/2024

Final Reading: 7/16/2024

**STATE OF SOUTH CAROLINA            )**  
**)** **MEMORANDUM OF UNDERSTANDING**  
**COUNTY OF RICHLAND                    )**

This Agreement entered into by and between the City of Columbia, South Carolina (the “City”), a municipal corporation, and Mungo Homes Properties, LLC (“Mungo”), a South Carolina corporation.

**WITNESSETH THAT:**

**WHEREAS, the Swygert Creek drainage basin, located within the City’s sewer service area, contains a significant amount of developable land in a high potential growth area west of Blythewood and the City intends to improve access to the sewer collection system to this area by constructing the Swygert Creek Sewer Trunk Line, CIP Project # SS7620; and**

**WHEREAS, Mungo plans to develop TMS R12300-02-13 in this area and has agreed to cooperate with the City as well as contribute a portion of the financial resources to design and construct the Swygert Creek Sewer Trunk Line, CIP Project # SS7620; and**

**NOW THEREFORE, The City of Columbia and Mungo collaborate as follows:**

- 1. The City will be responsible for easement acquisition, including but not limited to permission to survey, notifications of survey, preparation of easement documents, having the property owners execute the easement documents, and recording of documents.**
- 2. Mungo shall be responsible for providing the City with easement exhibits for permissions to survey and easement plats signed by a South Carolina Registered Land Survey for the City’s use in obtaining and recording the easement documents. All exhibits and plats shall be to the standard established by the City of Columbia Real-Estate Department.**
- 3. Mungo and the City shall discuss, coordinate, and both parties shall agree to any design changes that may be needed while working with the property owners to obtain executed final easements. All design plan and easement plat edits shall be the responsibility of Mungo.**
- 4. All costs associated with easement agreements and easement acquisitions shall be shared at the proportional percentage of the total with 40% from the City of Columbia and 60% from Mungo. The City will not be financially responsible for impacts to Mungo resulting from any delays in obtaining easements for SS7620.**
- 5. The sewer design shall be in accordance with the City of Columbia standards and regulations, and the project specifications shall utilize the current Columbia Water standard technical specifications (a copy can be provided to Mungo upon request).**

6. Mungo shall manage the project for the City. Management shall include design, surveying, permitting, wetland consulting, bidding, construction oversight, and reporting. Mungo will be responsible for paying all non-construction costs associated with the project until the project is completed, permitted to operate, and accepted by the City of Columbia. Upon final completion of the project, the proportional percentages of the total non-construction costs will be determined with 40% of the total being the responsibility of the City of Columbia. The total non-construction costs associated with this project has been estimated by Mungo to be \$200,000.
7. Non-construction costs for this project that elevates the total to over \$200,000 shall be presented to the City and shall be agreed to in writing prior to obligating the City to the 40% proportional share of the total. The City maintains its right to review all non-construction costs associated with the total, in detail; to determine if such costs are fair and reasonable for the services needed to adequately complete the project.
8. Mungo and their engineer shall schedule and coordinate a project kickoff meeting with the City and a coordination/review meeting at the 30% design phase. Mungo and the City shall agree to the 30% design prior to finalizing easement exhibits for acquisition by the City.
9. Mungo shall submit the final design plans and specifications for review and approval through the City's utility plan review process.
10. Mungo shall obtain a minimum of three quotes for the construction of the project to be reviewed by the design engineer and submitted to the City for review and approval.
11. A Notice to Proceed from the City noting the approved bid/quote and the City's cost share shall be required prior to the start of construction.
12. The Project Engineer's (CEC) estimate is in the amount of \$2,165,944. Of the total estimate, Mungo shall contribute \$1,299,566 (60%) towards the total construction cost and the City shall contribute \$866,377 (40%) towards the total construction costs.
13. Construction Change Orders or directives that affect the construction cost shall be submitted in draft to the City of Columbia for review and approval prior to being issued to the Contractor.
14. Mungo and its Engineer shall include the City of Columbia designee(s) to attend monthly design updates/meetings. The monthly meetings will include updates on the project schedule, completeness of design, permitting and easement items, review issues that may impact the cost estimate, and other relevant items.
15. A City of Columbia Inspector/Administrator will be assigned to the construction project. Mungo and its Engineer and Contractor shall hold monthly progress meetings during the construction phase and include the City's Inspector/Administrator. The City Inspector/Administrator has the right, but not the obligation, to inspect the contractor's

performance against the city requirements, plans, and specifications. Required testing and other relevant project documentation shall be provided to the City of Columbia Inspector/Administrator.

16. Meeting minutes from each monthly construction meeting shall be developed, documented, and distributed to all participating attendees and City of Columbia designee(s).

17. Mungo shall not obligate the City to any additional costs during construction without written acceptance of such costs from the City.

18. Additional Costs Construction costs or savings will be at the same percentages as the initial cost share. The City's proportional cost share is 40%. Mungo's proportional cost share is 60%.

19. Once construction is completed, a final copy of all required forms and documents are turned into the City Utility Project Coordinator. The City shall review and if approved, issue an O&M letter. The Engineer requests final permit to operate from SCDHEC.

20. Final invoice, the final cost share allocations, all documents needed to support project costs, release of lien wavers, approved Record Drawings, and W9 from the developer/contractor is required prior to reimbursement.

21. Upon completion and acceptance of the projects, the City will reimburse Mungo for the City's proportional share of the non-construction costs and final construction costs calculated from the proportional percentages. The City will not reimburse Mungo for any expenses deemed by the City, in its sole and exclusive discretion, to be non-Project expenses.

22. This Agreement represents the entire and integrated agreement between Mungo and the City.

23. The City and Mungo may terminate this Agreement at any time upon any of the following grounds:

a. In the event, the project cannot be completed as intended.

b. Due to un-anticipated cost escalation and both parties cannot agree to a reasonable solution to address the un-anticipated cost escalation.

c. Due to Unavailability of Funds – Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance in subsequent fiscal periods, both parties shall meet and discuss an amenable path forward. If a resolution cannot be met, this Agreement shall be canceled. In the event of a cancellation pursuant to this paragraph, the total project cost of

the Swygert Creek Sewer incurred prior to the cancelation will be calculated from unamortized, reasonably incurred, nonrecurring costs. Any of the sewer assets constructed to date will be conveyed to the City and the identified costs shall be assigned to each party at the pre-determined proportional share of 40% (City) and 60% (Mungo).


d. Cause – Mungo or the City fails to perform any of the services identified under this Agreement and does not correct such deficiency within a reasonable time after being notified in writing of such deficiency. The costs incurred to date shall be distributed at the proportional share as described in Section 24.a. of this Agreement.

e. Force Majeure – Neither the City or Mungo shall be liable for any excess costs if failure to perform the terms of this Agreement arises out of causes beyond the control and without the fault or negligence of either party. Such Causes may include, but not be restricted to acts of God or of the public enemy, acts of government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargos, and unusually severe weather conditions; but in every case, the failure to perform is caused beyond the control of both the City and Mungo, and without the fault or negligence of either of them. Costs identified in this Agreement shall be proportionally shared at 40% (City) and 60% (Mungo) in the event of a Force Majeure that terminates this Agreement.


f. Upon completion of the items listed in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last written below.


WITNESSES:


  
\_\_\_\_\_  
Denise Hahn

MUNGO HOMES PROPERTIES, LLC

By:   
\_\_\_\_\_  
Printed Name: William J. Dixon  
Title: Vice President

CITY OF COLUMBIA, South Carolina

  
\_\_\_\_\_  
Luanne Summerville

By:   
\_\_\_\_\_  
Printed Name: Teresa B. Wilson  
Title: City Manager

APPROVED AS TO FORM  
  
Notary Department Co. of Columbia, SC

7/3/2024