# COUNTY COUNCIL OF BEAUFORT COUNTY

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CLERK TO COUNCIL


## AGENDA
## NATURAL RESOURCES COMMITTEE
Wednesday, June 6, 2012
2:00 p.m.
Executive Conference Room
Administration Building

Committee Members:
Paul Sommerville, Chairman
Brian Flewelling, Vice-Chairman
Steven Baer
Gerald Dawson
William McBride
Jerry Stewart
Laura Von Harten

Staff Support: Tony Criscitiello

1. CALL TO ORDER – 2:00 P.M.

2. STORMWATER MANAGEMENT AND UTILITY AGREEMENT PROPOSAL BETWEEN BEAUFORT COUNTY AND THE TOWN OF PORT ROYAL (backup)

3. OKATIE EAST RETROFIT SERVICE PROPOSAL (backup)

4. FY 2013 STORMWATER OUTREACH AGREEMENT WITH CLEMSON UNIVERSITY (backup)

5. RAIL TRAIL AGREEMENT AND PLANS (backup)

6. CONSIDERATION OF REAPPOINTMENTS AND APPOINTMENTS
   A. Northern Corridor Review board
   B. Southern Corridor Review Board
   C. Stormwater Management Utility Board

7. ADJOURNMENT

A quorum of Council may be in attendance at all Committee meetings.
Please silence your cell phone during the meeting.

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**BEAUFORT COUNTY STORMWATER UTILITY**
**120 Shanklin Road**
**Beaufort, South Carolina 29906**
**Voice (843) 255-2801 Facsimile (843) 255-9478**

TO: Councilman Paul Sommerville, Chairman, Natural Resources Committee

VIA: Gary Kubic, County Administrator
Bryan Hill, Deputy County Administrator
David Starkey, Chief Financial Officer
Rob McFee, P.E., Director of Engineering & Infrastructure
Robert Klink, P.E. County Engineer

FROM: Dan Ahern, P.E., Stormwater Manager

SUBJ: **Draft IGA for Stormwater Utility between Beaufort County and the Town of Port Royal**

DATE: May 17, 2012

**BACKGROUND.** The existing 10-year Intergovernmental Agreements (IGAs) between the municipalities and the county concerning operation of the Beaufort County Stormwater (SW) Utility ended in September 2011. New agreements were signed with Town of Hilton Head Island and Bluffton last year. The Town of Port Royal and City of Beaufort chose to extend the old agreement for one year.

The Town of Port Royal is now proposing a new agreement based on agreements signed by the Towns of Hilton Head Island and Bluffton. There was one notable difference between this agreement and the agreements signed last year. The Town of Port Royal has proposed clarifying wording in Article 6 that addresses their concerns on redevelopment. They have also agreed to utilize Beaufort County Utility Best Management Practice (BMP) Manual which will meet the concerns that the Utility had about meeting State designated water uses.
The wording incorporated into this agreement is as follows:

1. Town of Port Royal will be using the Utility's BMP manual
2. The Utility's goal effective/equivalent impervious surface (10% /5%) requirements will be applied to new development
3. On redevelopment with stormwater draining to unimpaired waters, no additional stormwater runoff volume will be allowed from the redevelopment
4. On redevelopment with stormwater draining to impaired waters that is a factor in the impairment, necessary volume reductions will be required up to the goal (10%/5%) effective impervious surface requirements

This clarified wording addresses the Town of Port Royal's interest in encouraging in-fill and redevelopment while protecting water uses. It also allows developers and engineers to have one technical document to use in selecting and sizing appropriate stormwater practices. It is the only notable reduction and other changes are minor changes to link to approval process dates.

The Stormwater Utility board reviewed this draft agreement and recommended approval. This agreement will be presented to the Town of Port Royal Council on June 6, 2012 and final vote is scheduled for June 13, 2012 Council Meeting.

**RECOMMENDATON**
The Natural Resources Committee recommend for approval by County Council, the proposed IGA with the Town of Port Royal.

Attachments
Draft Intergovernmental agreement with the Town of Port Royal

WHEREAS, this Agreement is made on this ___ day of _____, 2012, by and between Beaufort County, South Carolina, and the Town of Port Royal, South Carolina, for the purpose of establishing the terms and conditions of the participation by the Town in a county-wide stormwater utility, which utility shall be operated by the County.

## ARTICLE 1 - TITLE AND PURPOSE

1.00 *Title:* This intergovernmental agreement between Beaufort County, South Carolina, and the Town of Port Royal, South Carolina, shall be known as the "Stormwater Management and Utility Agreement Between Beaufort County, South Carolina, and the Town of Port Royal, South Carolina."

1.01 *Purpose:* This Agreement is made for the purpose of defining the roles, responsibilities and financial relationship between the County and the Town with respect to the establishment, administration and operation of the Beaufort County Stormwater Utility, which includes the following:

(a) Establishment of rates;

(b) Use of revenue;

(c) Acquisition of existing stormwater infrastructure;

(d) Construction of new stormwater infrastructure;

(e) Maintenance of stormwater infrastructure;

(f) Operation of stormwater infrastructure;

(g) Regulation and use of stormwater infrastructure; and,

(h) Enhancement of water quality.

1.02 *References to County Ordinances:* This Agreement hereby incorporates by reference

Beaufort County, South Carolina, Ordinances 2005-33, 2008-29, and 2009-21 regarding the establishment of a Stormwater Utility. In the case of any conflict between the provisions of the Ordinances and this Agreement, the provisions of this Agreement shall control.

## ARTICLE 2 - DEFINITIONS

2.00 *Definitions:* When used in this "Stormwater Management and Utility Agreement between Beaufort County, South Carolina, and the Town of Port Royal, South Carolina," the following words shall have the meanings set forth in this Article 2:

2.01 *Agreement:* This Stormwater Management and Utility Agreement between Beaufort County, South Carolina, and the Town of Port Royal, South Carolina.

2.02 *County:* Beaufort County, South Carolina.

2.03 *County Wide Stormwater Management Study:* The study conducted by the County to determine the drainage infrastructure and maintenance needs within the various watersheds within the County. This became the Beaufort County Stormwater Master Plan dated February 20, 2006.

2.04 *Cost of Service Analysis and Rate Study:* The study conducted by the County which was adopted by County Council on August 22, 2005 to determine an equitable and appropriate rate structure for Stormwater Utility User Fees within all areas of the County, so that fees charged by the Stormwater Utility will be in compliance with provisions of S. C. Code Ann. 48-14-120(C)(Supp. 2010), and S. C. Regs. 72-310 (Supp. 2010).

2.05 *Stormwater Utility User Fee; Single Family Unit Rate (SFU).* The single-family unit fee rate shall be defined as the impervious area measurements obtained from a statistically representative sample of all detached single-family structures within Beaufort County. The

representative value will be 4,906 square feet.

2.06 *NPDES:* The National Pollutant Discharge Elimination System stormwater regulatory program established by the United States Environmental Protection Agency to address pollutants in stormwater discharged to waters of the United States. Phase II of this regulatory program impacts communities under 100,000 in population, small construction sites between one acre and five acres, and industrial sites owned and operated within communities under 100,000 population.

2.07 *Public Stormwater*: Stormwater runoff which is conveyed through a public drainage easement or public road right of way, and/or which some portion is generated from a public road right of way.

2.08 *Stormwater Infrastructure:* Real property, interests in real property, improvements to real property such as ditches, drains, pipes, culverts, catch basins, pumps, or the like, or any combination of them, used or useful in the collection and disbursement of storm and surface water, or the control of flooding. As used herein, Stormwater Infrastructure does not include drainage systems or facilities that are not publicly owned, and which do not carry public stormwater.

2.09 *Stormwater Management:* Control of storm and surface water, erosion, stormwater quality protection and flooding through the use of Stormwater Infrastructure, and the creation and enforcement of development standards related to storm and surface water.

2.09 *Stormwater Management Plan:* The plan developed by the County that addresses planning, design and construction of capital improvements to the Stormwater Infrastructure; acquisition of real property or interests in real property for the purposes of Stormwater Management; maintenance and repair of Stormwater Infrastructure; regulation of the use of

Stormwater Infrastructure; acquisition of equipment and other assets; regulation of impacts including any that may be mandated under the NPDES Phase II regulations, contracting with engineering, financial, legal, construction and other professionals for services in support of the Stormwater Utility, emergency preparedness related to storms and hurricanes, acquisition or construction of Stormwater Infrastructure, or any other functions required, useful or prudent for a program of Stormwater Management.

2.10 *Stormwater Utility User Fees:* Stormwater Utility User Fees shall mean the service fee imposed pursuant to this article for the purpose of funding costs related to stormwater programs, services, systems, and facilities. These fees will be calculated based upon the residential category for a parcel and/or the nonresidential parcel's impervious area and/or the vacant/undeveloped land category, as pursuant to the provisions of Beaufort County Ordinance 2005-33.

2.11 *Stormwater Utility:* The administrative organization created for the purposes of planning, designing, overseeing, funding, building, and maintaining Stormwater Infrastructure, either directly or through cooperative arrangements with other governmental bodies; and for administering and managing Stormwater Management throughout Beaufort County.

2.12 *Town:* The Town of Port Royal, South Carolina.

## ARTICLE 3 - TERM OF THIS AGREEMENT

3.00 *Term of This Agreement:* The term and duration of this Agreement shall be as follows in this Article 3.

3.01 *Initial Term of this Agreement:* The Initial Term of this Agreement shall be for a

period of ten (10) years, commencing on the date of the execution hereof.

3.02 *Periodic Review of this Agreement:* The Stormwater Implementation Committee shall conduct periodic review of this Agreement to determine if it remains current and with the state of the art stormwater management and practices applicable to coastal areas. The Stormwater Implementation Committee shall provide recommendations to the municipalities and County for updates to the agreement if necessary.

3.03 *Extension of this Agreement:* The term of this Agreement may be extended at any time by the mutual agreement of the parties hereto, or upon the expiration of the initial ten (10) year term set forth in Article 3.01 above.

3.04 *Termination of this Agreement:* This Agreement may be terminated by either party hereto, by delivering written notice of the termination to the other party. Termination under this Article shall only be effective on the final day of any given County fiscal year. The written notice of termination shall be provided by the party terminating the Agreement no less than one hundred eighty days prior to the date the termination will be effective.

3.05 *Effect of Termination:* Upon termination of this Agreement under any provision of this Article 3, or otherwise, all rights and obligations of any party hereto, specifically including but not limited to the right of the County to charge Stormwater Utility User Fees to property owners in the Town, shall immediately end.

3.06 *Conveyance of Assets:* Upon termination of this Agreement under any provision of this Article 3, the County shall convey to the Town all of its right, title and interest in any Stormwater Infrastructure, including any stormwater easements, within the municipal limits of the Town. However, this shall not include Stormwater Infrastructure on County owned parcels or County road rights of way within the limits of the Town.

3.07 *Rebate of User Fees:* Upon termination of this Agreement under any provision of this Article 3, the County shall return to the Town any collected but unspent or unobligated Stormwater Utility User Fees collected from within the Town Limits.

## ARTICLE 4 – FINANCE AND FUNDING

4.00 *Financial and Funding Relationship:* The Town shall provide the County with its Stormwater Utility User Fee collection Rate for its fiscal year prior to August 15 each year of this Agreement. This will be in the form of a letter to the County Administrator from the Town Manager. The Town shall also provide to the County an annual report of its stormwater fee expenditures for each fiscal year. This report shall be delivered by September 1 each year this Agreement is in effect.

4.01 *Use of Revenue:* In accordance with the provisions of S. C. Code Ann. 48-14-120(C) (Supp. 2010), and S. C. Regs. 72-310 (Supp. 2010), all Stormwater Utility User Fees collected within the Town, less an administrative fee, shall be returned to the Town. The administrative fee is to be calculated as a fixed dollar amount for each single family unit (SFU) billed by the Stormwater Utility. The Utility shall define its administrative costs each year during the annual budget process. For fiscal year 2012 the fee shall be $2.80 per Single Family Unit (SFU) base rate applied to the fee paying lands within the limits of the Town. After fiscal year 2012, the Stormwater Implementation Committee shall conduct annual reviews of the Utility's administrative budget and recommend to the municipalities and County any changes to the amount billed per SFU. Along with its recommendation the Stormwater Implementation Committee and the County Stormwater Utility shall provide the Town an itemized proposal and

a written explanation for adjustments to the administrative services and deliverables to be provided in the coming fiscal year. Any proposal that requires Town Council approval shall be submitted to the Town by March 1 of each calendar year all other requests for approvals shall be submitted to the Town by March 15 of each calendar year. The Town shall provide a written recommendation of acceptance or rejection to the County Stormwater Utility by April 15 of the same year. Once agreed upon, the fee shall serve as the basis for the annual administrative fee to be calculated per Town SFU, and included in each entity's annual budget.

(a) The administrative fee shall be used by the County to defray the County's administrative costs in managing the Stormwater Utility.

(b) The Town shall use Stormwater Utility User Fees to provide Stormwater Management within the Town, including, but not limited to:

(i) The acquisition, design, construction, and maintenance of Stormwater Infrastructure, or repayment of bonded indebtedness issued to fund construction of Stormwater Infrastructure, in so far as the law and covenants of the bonds allow, or for repayment to the Town for general fund or other funds spent by the Town to fund Stormwater Management activities;

(ii) Acquisition of Stormwater Infrastructure, including any easements or other interests in real property which shall be held in the name of the Town;

(iii) Maintenance of Stormwater Infrastructure by the Town and its contractor(s,) or by direct services of the Stormwater Utility. Charges for services by the Stormwater Utility; shall be negotiated and approved by

the County and the Town, as is provided in Articles 4.03, 4.05(a), 5.05, and 5.07 below; The Town shall have the right of non exclusive use of direct maintenance services, and there shall be no minimum dollar amount required to be spent annually by the Town on any services provided by the Stormwater Utility;

(iv) Plan review and site inspections related to compliance with stormwater ordinances and standards for development within the Town as set forth in Articles 4.05, 4.06 and 4.07 below;

(v) NPDES Phase II permit compliance;

(vi) Payment of bond indebtedness or repayment of funds borrowed from the general fund or any other fund for the purpose of funding Stormwater Management projects or activities; and,

(vii) Any other services related to Stormwater Management.

4.02 *Further Agreements Authorized:* The Town and the County may negotiate and enter into agreements to share costs and responsibilities related to NPDES permit compliance. Such agreements and cost allocations shall be reflected in each entities annual budget and must be authorized by the Town Council and County Council.

4.03 *Cost of Services:* If the Town chooses to utilize the direct services of the Stormwater Utility, however described, they shall be accounted for at the County's actual cost of the equipment, materials, and personnel utilized in the delivery of the services.

4.04 *Setting of Stormwater Utility User Fee Rate (SFU's):* The Town shall be responsible each year for setting the Stormwater Utility User Fee Rate to be assessed on parcels

within the Town. The Stormwater Utility User Fee rate shall be set in accordance with S. C. Code Ann. 48-14-120(C) (Supp. 2010), and S. C. Regs. 72-310(G) (Supp. 2010), or any other applicable law or regulation.

4.05 *Plan Review and Site Inspection:* For all activities that constitute development within Town limits, the Town will provide review of plans and site inspections to ensure compliance with applicable laws, ordinances and regulations related to storm and surface water, erosion control and flooding

4.06 *Coordination of Services:* The Town shall identify a representative of its staff to serve as the contact person and coordinator for Stormwater Management Services, including services provided by the County within the Town, long range planning and water quality initiatives such as the NPDES Phase II requirements compliance, notification of problems, facilitating emergency access within any planned or future Planned Unit Developments within the Town, and advising the County on site-specific conditions within the Town.

## ARTICLE 5 – ADMINISTRATION OF STORMWATER UTILITY

5.00 *Stormwater Utility:* The County has established a Stormwater Utility that administers funds and conducts a Stormwater Management program throughout the County.

5.01 *Stormwater Management Plan:* The County shall have the responsibility to develop and maintain a Stormwater Management Plan to be administered by the Stormwater Utility.

5.02 *Relationship of Plan to Agreement:* The Stormwater Management Plan developed and maintained by the Stormwater Utility shall incorporate the obligations of the County and Town

under this Agreement. In the case of any conflict between the provisions of the Stormwater Management Plan and this Agreement, the provisions of this Agreement shall control.

5.03 *Stormwater Utility User Fees:* The Stormwater Utility shall bill and collect parcel based Stormwater Utility User Fees from property owners, tenants, or other appropriate parties, pursuant to its authority and subject to any intergovernmental agreements, including this Agreement, and may also apply for, acquire and use any other funding from any public or private source in support of the Stormwater Management Plan as allowed by law.

5.04 *County Responsibilities:* The County, through the Stormwater Utility, shall have the following responsibilities:

(a) *Collection and Distribution of Fees:* Stormwater Utility User Fees within the Town limits shall be charged and collected by the County in accordance with the provisions of Article 4.0 of this Agreement; the Stormwater Utility User Fees shall be collected in accordance with S. C. Code Ann. 48-14-120(C) (Supp. 2010), and S. C. Regs. 72-310(G) (Supp. 2010), or any other applicable law or regulation, and shall not include provisions for relief from the payment of the Stormwater Utility User Fees; the County shall distribute the Town's Stormwater Utility User Fees less the County administrative costs as defined in Article 4.01, in the same manner as ad valorem taxes are distributed for each year this Agreement is in effect;

(b) *Provision of Services:* Provision of the services required under this Agreement.

(c) *Budgeting and Expenditure:* Setting the budget for the Stormwater Utility, and spending the revenues in accordance with any applicable ordinances

or agreements, including this Agreement;

(d) *Administrative Activities:* Managing all administrative activities of the Stormwater Utility, including but not limited to, fee assessment, collection and distribution, maintenance of accounting records, maintenance of stormwater data, implementation of the master plan, acquisition of easements, coordination with other agencies, reporting to the stormwater utility board;

(e) *Accounting:* Maintaining an accounting of revenues and expenditures on a jurisdictional or geographic basis, as may be set or described under any applicable ordinance or agreement, including this Agreement, the County shall provide the Town with an itemized annual accounting of all Stormwater Utility User Fees within the Town limits in the form of a budget report, including but not limited to: how parcel fees were determined, calculated, and assessed; total fees collected; total Administrative costs retained by the County; total fees in arrears, on which parcels and the status of the collection attempt(s) on such parcels; fee credits applied for; fee credits paid; and fees that required adjustment since the last billing. This budget report shall be parcel based and provided to the Town annually prior to February 15 throughout the term of this agreement as a electronic document compatible with the most current version of Microsoft Office. The County shall also maintain an annual accounting of all administrative costs associated with operating the Utility. Either the Town or County, at the sole expense of the requesting jurisdiction, may request a professional audit of any of the budget reports;

(f) *Operation and Maintenance:* At the direction and approval of the Town,

provide for the operation and maintenance of Stormwater Infrastructure within the Town; and,

5.05 *Delivery of Services:* The County shall coordinate the delivery of services hereunder through the Town Manager or his designee, via a Job Order Process as agreed to by the Town and County. All delivery of County services upon parcels within the Town limits shall be approved in writing by the Town before any work is performed or any funds may be returned to the County, and all delivery of stormwater infrastructure services within County Rights of Ways shall be coordinated with the Town.

5.06 *Coordination with Other Jurisdictions:* From time to time a need for coordination between all incorporated jurisdictions within the County and the County may occur, and it shall be the responsibility of the County to facilitate such coordination. The County will work with designated representatives from all jurisdictions within the County to ensure effective communication regarding issues impacting the Stormwater Infrastructure and the Stormwater Management Plan.

5.07 *Qualifications and Extents of Service:* Stormwater infrastructure in public road Rights of Ways, whether State, County or Municipal, shall be maintained by the road owner, as these areas are exempt from Stormwater Utility User Fees per Section 99-109 (b) of County Ordinance 2005-33. The Town shall retain the right to determine the qualifications for, extent of, and level of service required to maintain the Stormwater Infrastructure within the limits of the Town, with the exception of County and State road Rights of Way, which shall be designed and maintained in accordance with their current standards.

5.08 *Fee Credits:* The Town shall be notified of and will have the authority to review and comment on all County stormwater fee credit applications requested upon parcels within the

Town limits prior to such adjustments being made.

5.09 *Easements:* The Town and County will allow mutual blanket encroachments upon each other's existing easements, but only to enable the Town and/or County to perform stormwater utility related work within the limits of the Town.

## ARTICLE 6: STORMWATER ORDINANCES AND DEVELOPMENT STANDARDS

6.00 *Applicable Standards:* The current hydrologic and hydraulic engineering and design standards of the County (BMP Manual) shall prevail in the design, construction, operation and maintenance of any portion of the Stormwater Infrastructure within the Town, unless superseded in the future by the creation of new hydrologic and hydraulic engineering and design standards of the Town, County or State, as may be required for specific work performed in Town, County or State rights of way with the exception of Redevelopment Areas. The Redevelopment Areas are shown on Attachment "A" to this document. The Town agrees that future stormwater volumes in the Redevelopment Area will not exceed those that exist prior to redevelopment of said properties unless is it scientifically documented that specific stormwater pollutants are generated and draining from the site and are causing site specific degradation of water quality in the receiving stream. In such a case, a Redevelopment Area will be required to correct stormwater discharge pollutant loads to a level that no longer degrades water quality in the receiving stream.

6.01 *State or Federal Laws or Regulations:* The Town and the County shall at all times comply with any applicable State or Federal Laws or regulations relating to Stormwater Management, Stormwater Infrastructure, erosion control or pollution.

6.02 *Plan Review and Site Inspection:* The Town shall be responsible for the review and

approval of all development plans within the Town, to ensure that all applicable regulations pertaining to construction site erosion, sedimentation, and pollution control as well to post-construction stormwater quantity and quality control are met. The Town shall be responsible for providing inspections during construction of all Town owned stormwater systems. The Town will continue its practice of review of privately owned stormwater systems upon completion to ensure that construction conforms with the approved development stormwater plan.

## ARTICLE 7 – NPDES MS4 PHASE II PERMIT COMPLIANCE

7.00 *NPDES Compliance*: Should the Town be designated by the State of South Carolina for compliance with the NPDES program, the Town shall be responsible for the development of the NPDES MS4 Phase II permit application, the development of Best Management Practices required by the permit, and the implementation of the program of Best Management Practices set forth in the permit.

7.01 *Roles and Responsibilities:* The Town and County shall hold separate NPDES MS4 Phase II permits and shall each be responsible for maintaining compliance with their respective permit requirements.

7.02 *Coordination of Activities:* It is expected that some aspects of NPDES MS4 Phase II requirements will lend themselves to coordination and cooperation between the Town and the County. In such instances, coordination between the Town and the County shall be on the basis of a specific Minimum Control Measure (MCM) and shall be established by a separate written agreement that specifies the objectives, product deliverables, schedules, funding distribution, and the roles and responsibilities of each party in addressing these measures.

7.03 *Annual Reporting:* The Town and County will each be responsible for preparing an

annual report documenting the activities undertaken in support of NPDES MS4 Phase II permit requirements during the previous year and submitting the report to the South Carolina Department of Health and Environmental Control.

7.04 *Permit Related Costs:* All costs related to the NPDES MS4 Phase II permit shall be borne by the permit holder. In instances where the Town and County coordinate to meet permit requirements, costs may be shared on a basis that is detailed in a separate written agreement.

## ARTICLE 8 – DATA ACQUISITION AND MANAGEMENT

8.00 *Roles and Responsibilities:* The Town and County shall each be responsible for acquiring and maintaining data sets that are relevant to Stormwater Management in their respective jurisdictions.

8.01 *Cost Sharing:* Cost sharing agreements for data acquisition may be made between the Town and County on a project-specific basis. The terms and details of any cost sharing agreement shall be detailed in a separate written agreement between the Town and County.

8.02 *Data Sharing*: The Town and County shall share acquired data at the request of the other. In such instances the Town and County will agree to abide by each entity's current data distribution policy.

8.03 *Data Types:* Types of data that the Town and County will acquire, maintain, and may share include but are not limited to, GIS data, aerial photography, LIDAR data, water quality monitoring data, stream gage data, financial and accounting data.

## ARTICLE 9 – OTHER AGREEMENTS

9.00 *Scope and cost sharing:* From time to time various projects may be shared in

scope and/or cost between the County and the Town, or the County and multiple Municipalities within the County via Memos of Understanding, Contracts, and/or Joint Resolutions.

9.01 *Agreement Recommendations:* The Stormwater Implementation Committee shall be the vehicle whereby agreements of project scope and cost sharing between the County and multiple Municipalities within the County are reviewed and recommended to the Municipalities and County. It is understood that the Stormwater Implementation Committee shall have no authority to financially commit the Town or County to any project of any type and only will provide technical recommendations for such projects. . For agreements solely between the Town and the County, the Stormwater Implementation Committee Review is not required.

9.02 *Agreement approvals:* Other agreements between the County and the Town must be approved by the Town Council and the County Council or their designees.

## ARTICLE 10 - MISCELLANEOUS

10.00 *Provisions Applicable to This Agreement:* The following general provisions are applicable to this Agreement:

10.01 *Binding Effect:* This Agreement shall inure to the benefit of and shall be binding upon the Town and County and their respective successors and assigns, if any are permitted hereunder.

10.02 *Amendment, Changes and Modifications:* Except as otherwise provided herein, this Agreement may not be effectively amended, changed, modified or altered without the written consent of the Town and the County.

10.03 *Severability:* In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render

unenforceable any other provision hereof.

10.04 *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

10.05 *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

10.06 *Captions:* The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

10.08 *Plural/Singular:* Where appropriate, the use of the singular herein shall include and be deemed to be the plural, and the use of the plural herein shall be deemed to include the singular.

10.09 *No Third Party Beneficiaries:* The Town and the County hereto affirmatively represent that this Agreement is made solely for the benefit of the parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a signature party hereto. No party other than the signature parties and their respective successors and assigns hereto shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

10.10 *Notices:* All notices, applications, requests, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered in person, or mailed by regular first class mail, postage prepaid (in such case, delivery shall be deemed complete upon mailing), addressed as follows, or to such other place as may be designated in writing by the parties.

To the Town: THE TOWN OF PORT ROYAL

Van Willis, Manager

700 Paris Ave.

Port Royal,, SC 29935

To the County: BEAUFORT COUNTY, SOUTH CAROLINA

Gary Kubic, Manager

Post Office Box 1128

Beaufort, SC, 29902

10.11 *No Waiver:* No failure of either party hereto to exercise any power or right given to such party hereunder, or to insist on strict compliance by any other party to its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any party's right to thereafter demand strict compliance with the terms of this Agreement.

10.12 *Further Assurances and Corrective Documents:* The Town and the County agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the provisions hereof. The Town and the County agree that each shall, upon request, execute and deliver such other or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the provisions hereof.

In Witness Whereof, The Town of Port Royal, South Carolina, and Beaufort County, South Carolina, by and through their duly authorized officers, have set their hands and seals on

this ___ day of _____, 2012.

WITNESSES:

THE TOWN OF PORT ROYAL,
SOUTH CAROLINA

_____

By:_____

Samuel Murray, Mayor

_____

Attest:_____

Van Willis,, Town Manager

WITNESSES:

BEAUFORT COUNTY, SOUTH CAROLINA

_____

By:_____

Wm. Weston J. Newton, Chairman

_____

Attest:_____

Gary Kubic, Manager

**BEAUFORT COUNTY STORMWATER UTILITY**
**120 Shanklin Road**
**Beaufort, South Carolina 29906**
**Voice (843) 255-2801 Facsimile (843) 255-9478**

TO: Councilman Paul Sommerville, Chairman, Natural Resources Committee

VIA: Gary Kubic, County Administrator
Bryan Hill, Deputy County Administrator
David Starkey, Chief Financial Officer
Dave Thomas, Purchasing Director
Monica Spells, Compliance Officer
Rob McFee, P.E., Director of Engineering & Infrastructure
Robert Klink, P.E. County Engineer

FROM: Dan Ahern, P.E., Stormwater Manager

SUBJ: **Okatie East Retrofit Service Proposal**

DATE: May 10, 2012

**BACKGROUND.** The Natural Resources committee approved the Water Quality Restoration Plan for Battery Creek and Okatie River at their January 2012 meeting. One of the identified retrofit projects in the January 2011 Regional Stormwater Quality BMP Retrofit Project was a wetland enhancement opportunity on the East Fork of the Okatie River. This is a unique project that will take an impacted drainage system and reconnect small flows that presently stay in the drainage ditch and move the flow out of the ditch and on to the adjacent wetlands. This will reduce the overall runoff volume and temporarily detain small rainfall event flows before they continue to the main stem of the Okatie River. This will lead to a reduction of volume and bacteria load above a shellfish monitoring station that has not been meeting shellfish harvesting standards.

**DISCUSSION.** Ward Edwards had been selected in a county/municipal selection process to complete the January 2011 retrofit project and had brought the wetland enhancement idea to initial regulatory review. They are now continuing to the next step in implementing the retrofit. The proposed project consists of removing an existing old logging road and replacement of deteriorating drainage culvert with a new designed system that will detain small flows out on to the wetlands and allow large rainfall events to pass downstream. The proposed agreement will provide the following:

| | |
|---|---|
| - Task 1- Tree and Topographic Surveying | $5,300 |
| - Modeling and Analysis | $15,000 |
| - BMP Design | $7,500 |
| - Wetland Impact Permitting | $13,800 |
| - Construction Permitting (as incurred up to) | $5,000 |
| - Total Project Fees | $46,600 |

This project has some unique aspects that will require more than the normal engineering. This will require an iterative process to determine the optimum outlet structure size and design. This is necessary to maximize the benefit of the retrofit without causing problems with the Island West Pond drainage system. Utility staff have met with the Island West Homeowners Association (January 3, 2012) and with the operator of the Golf course (January 10, 2012) to explain the project. Easements for access have been obtained.

It is expected that the construction for this project that is estimated around $100,000 will be done by the Stormwater Utility. We are partnering with the Town of Bluffton on this project because success with this project can be applied to a number of sites in the May River.
This agreement will be funded with budgeted funds in account 13531-51160.

## RECOMMENDATION

Recommend that the Natural Resources Committee approve the Okatie East Wetland Enhancement proposal by Ward Edwards in the amount of $46,600.

Attachments
Okatie East Wetland Enhancement Proposal dated April 20, 2012

WARD EDWARDS

Post Office Box 381 - Bluffton, SC 29910
1613 Paris Avenue - Port Royal, SC 29935
T 866.837.5250
F 843.837.2558
www.WardEdwards.com

April 20, 2012

Mr. Dan Ahern
Beaufort County Engineering
102 Industrial Village Road, Bldg 3
Beaufort, SC 29906
Sent by email to dahern@bcgov.net

**Okatie East Wetland Enhancement**
Service Authorization No. 1
Edwards Reference: 090096A

Thank you for the opportunity to continue working with Beaufort County on this project. We look forward to a successful project with you and creating a good pilot retrofit project that can be applied to other basins throughout the County. Based on our recent correspondence, we understand that you require the modeling and design services for the Okatie East Wetland Enhancement proposed from our previous Regional Retrofit Study.

The scope and fees in this proposal package provide for the requested engineering services, along with the surveying and wetland permitting services needed to get the project to construction.

We appreciate this opportunity to submit a proposal to provide the services that we discussed. Please review the contents of this package and feel free to contact me if you have questions. I can be reached at (843) 322-6020.

**SCOPE:**

The project involves the design of a regional stormwater quality retrofit within the Okatie East Branch of the Okatie River 3 (headwaters) water quality basin from the 2006 Beaufort County Stormwater Master Plan. The proposed BMP will be a wetland restoration and enhancement of a jurisdictional wetland running through the Island West community. The restoration and enhancement will be accomplished by the removal of a failing steel culvert running under an old logging road that transects the wetland just upstream of Hampton Parkway. The culvert will be replaced with a new adjustable outlet structure that will detain runoff from smaller rainfall events while allowing runoff from larger rainfall events to pass relatively unimpeded. The BMP concept was developed in the 2010-2011 Beaufort County Regional Stormwater Quality BMP Retrofit Study prepared by Ward Edwards.

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## ASSUMPTIONS/EXCLUSIONS

- The easements needed to construct the proposed improvements are being acquired by Beaufort County.
- The existing wetlands are under restrictive covenants from the original Island West Wetland Master Plan. The proposed wetland modifications will require additional permitting effort, beyond the standard jurisdictional impacts. Additional wetland mitigation credits may be needed by the County
- Beaufort County Stormwater plans to construct the project itself, so bidding and construction inspection services are excluded from the scope. If any inspection and closeout services are needed at a later date, they will be handled under a separate contract.

## Task 1: Tree & Topographic Survey

Ward Edwards will provide the following surveying service through a sub-consultant. The scope of the survey will include:

- The survey is to be prepared on SC State Plane Coordinates and use NAVD 88.
- Tree & topographic data of the existing culvert, logging road and the surrounding area (approximately 3 acres) is to be collected. This is to include:
    - Pipe invert
    - Top of and bottom of the logging road berm
    - Channel inverts and tops of bank at 25-ft intervals and at all changes of direction. The channel survey is to extend 200-ft upstream (east) of the culvert, and 100-ft downstream (west)
    - The eastern edge of Hampton Parkway
    - Locate any property corners and wetland flags located in the survey area
- GIS grade Topographic information on 13 ponds in the Island West Community including
    - Normal water level
    - Average top of bank
    - Size and inverts of interconnecting pipes
- Topographic survey of the pipes under Blythe Island Drive including
    - Pipe sizes
    - Pipe inverts
    - Channel inverts and tops of bank 50-ft upstream and downstream of culvert ends
    - Existing road edges and centerline of pavement above culverts

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- Topographic survey of the existing channel running between Hampton Pkwy and Blythe Island Drive including
  - Cross sections at every 50-ft and at all major changes of directions.
  - Channel invert
  - Top of bank
  - Ground shots 25-ft beyond both sides of the top of bank



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## Task 2 - Modeling & Analysis Phase

Ward Edwards will analyze the existing conditions and the proposed conditions in greater detail in order to design the proposed BMP such that it will not impact the function of the existing ponds within Island West. The Modeling & Analysis will include the following:

- Gather record drawings and original design information that is available from permitting agencies and other sources
- Use survey data provided by the County, LiDAR contours, aerial photography, record drawings and other available information to map out the existing drainage patterns within Island West.
- Create a hydrologic and hydraulic model of the Island West pond system and the wetland system in order to establish the existing conditions. The model will be run to estimate the current peak pond stages and discharges through the wetland system.
- Using the existing conditions model, a proposed conditions model will be developed in order to analyze the proposed changes to the logging road and proposed outlet control structure. An iterative design process will be used to determine the optimum outlet structure size and design
- Ward Edwards will prepare a summary report outlining the existing and proposed model. The report will estimate the proposed benefit to water quality based on a runoff volume reduction. The report will be suitable for permitting the project with SCDHEC-OCRM, the Army Corp of Engineers, and the Town of Bluffton.
- Ward Edwards will support the County in gaining final approval from the property owners to allow the construction of the proposed BMP. Ward Edwards will attend up to two information meetings with stakeholders, and up to two Stormwater Utility Board meetings to present the model results.

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## Task 3 - BMP Design Drawings

Ward Edwards will prepare the BMP Design Drawings, suitable for permitting and constructing the proposed culvert modifications. Services in the phase will include:

1. Prepare design plans detailing the civil construction associated with this project. Plans are prepared using AutoCAD software and paper copies are printed on 24" x 36" sheets.
   Design drawings will show:

   a. Clearing and demolition plans;
   b. Staking plans;
   c. Site grading and stormwater plans;
   d. Erosion & sediment control plans;
   e. Construction details and technical specifications.

2. Prepare spreadsheet summarize the engineer's opinion of probable construction costs.

## Task 4 - Wetland Permitting

Newkirk Environmental, Inc. (NEI) will coordinate with the client, project attorney and project engineer to finalize and arrange replacement of existing restrictive covenants along with completing permit drawings suitable for submittal to the USACE and SCDHEC. More specifically NEI will assist the project in obtaining a permit to replace an existing culvert with a new outlet control structure and alter approximately 400 LF of timber road across wetlands. This will include necessary site visits, attendance at team meetings and review of draft plans and permit drawings. Upon completion of suitable permit drawings, Newkirk Environmental, Inc. will prepare and submit a Joint Permit application package, including a description of and justification for the proposed project, to the USACE and SCDHEC. NEI will calculate the mitigation requirements for the permit as part of the permit package.

Following submittal of the application, Newkirk Environmental, Inc. will serve as a liaison between the applicant and the various state and federal regulatory agencies throughout the permit review and decision process and, as necessary, arrange and coordinate meetings, facilitate actions, conduct project coordination with the project team and assist the permitting and certifying agencies to an initial conclusion. This will include response to comments or questions and coordination of additional information as needed.

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## Task 5 - Construction Permitting Phase

Ward Edwards will perform the following tasks as a part of this phase of the contract:

1. Prepare appropriate applications and submittal packages to the regulatory agencies with jurisdiction over the plans. Application and review fees will be paid by the Client, and are not included in the Ward Edwards fee for this project;
2. Coordinate the receipt of comments from review agencies;
3. Prepare and submit plan revisions to the agencies.
4. Support wetland impact permitting with Newkirk

The wetland impact permitting will be assisted by sub-consulting with Newkirk Environmental. This proposal includes a separate phase for the document preparation and agency follow-up by Newkirk. Ward Edwards' involvement in the wetland permitting effort will be billed under this Phase. The agencies for which applications and submittal packages will be prepared for this project are as follows:

a. SCDHEC-OCRM NPDES and CZC
b. Beaufort County Encroachment Permit
c. Town of Bluffton

## FEES:

The below fees are based on your prompt payment of our invoices and on the orderly and continuous progress of the Project. Reimbursable expenses will be billed as incurred. Billing references appear on all invoices for ease of reference to this agreement.

| Service Description | Fee Type | Fee Amount |
|---|---|---|
| Task 1: Tree & Topographic Surveying | Fixed Fee | $ 5,300 |
| Task 2: Modeling & Analysis | Fixed Fee | $ 15,000 |
| Task 3: BMP Design Phase | Fixed Fee | $7,500 |
| Task 4:Wetland Impact Permitting | Fixed Fee | $13,800 |
| Task 5: Construction Permitting | Hourly Consulting | $5,000 |
| Reimbursable Expenses | As incurred | per the PSA |
| **Total Project Fees** | | **$46,600** |

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Terms and conditions appear in the Professional Services Agreement (PSA) dated January 1, 2011. Beaufort County is the CLIENT in this Agreement. When signed below, this proposal and the referenced PSA represent the entire understanding and agreement of this Project between you and Ward Edwards and serve as the authorization for Ward Edwards to proceed with professional services. Modification must be made in writing and signed by both Ward Edwards and CLIENT.

**SERVICE AUTHORIZATION:**

By: Paul Nave
Ward Edwards, Inc.

Approved By: _____
Beaufort County

Date: _____

In an effort to improve account communication and reduce paper waste, we will submit our project invoices electronically (Adobe PDF format). If you prefer to receive mailed hard copies of the invoices and have any other special account considerations such as a purchase order number or copying accounting personnel, please provide the additional billing preferences below.

| Invoices for this Service Authorization should be directed to: | | | |
|---|---|---|---|
| Contact(s): | | Company: | |
| Mailing Address: | | City, State, Zip: | |
| Phone: | | Facsimile: | |
| EMAIL Address(s): | | | |
| Additional Billing Info: | | | |

**BEAUFORT COUNTY STORMWATER UTILITY**
**120 Shanklin Road**
**Beaufort, South Carolina 29906**
**Voice (843) 255-2801 Facsimile (843) 255-9478**

TO: Councilman Paul Sommerville, Chairman, Natural Resources Committee

VIA: Gary Kubic, County Administrator
Bryan Hill, Deputy County Administrator
David Starkey, Chief Financial Officer
Dave Thomas, Purchasing Director
Monica Spells, Compliance Officer
Rob McFee, P.E., Director of Engineering & Infrastructure
Robert Klink, P.E. County Engineer

FROM: Dan Ahern, P.E., Stormwater Manager

SUBJ: **FY 2013 Stormwater Outreach Agreement with Clemson University**

DATE: May 14, 2012

**BACKGROUND.** Previously the stormwater outreach and education efforts were supported through agreements with Clemson Extension and Port Royal Sound Foundation (formally Friends of the Rivers). The Stormwater Implementation Committee proposed coordination between the county and municipalities to operate under an expected stormwater permit. One of these recommendations was to "*contract with Carolina Clear of Clemson University as the Low Country Stormwater Education (LCSE) Consortium management agency*". This recommendation was presented to the Natural Resources Committee on August 10, 2010 and was approved. FY2012 was a transition year and there was a small contract with Carolina Clear to coordinate with our local education partners to create a single outreach plan.

**DISCUSSION.** The FY2013 Stormwater Outreach Proposal was developed after a number of meetings with local partners and stakeholders. The four key focus areas in the FY2013 plan are:

- General Stormwater awareness and buffer awareness
- Watershed-friendly & low maintenance residential practices
- Life on the waterfront demonstrations
- Initiating telephone survey to gage outreach success

Carolina Clear presented the FY2013 Outreach plan to the Stormwater Utility Board on May 2, 2012 and they approved the plan and proposed agreement. The plan will be funded through the Clemson University County Extension Program support agreement in an amount of $67,665 and some of these funds will be going to the local educational partners. This is an increase over the FY2012 agreements (Clemson $33k and Port Royal Sound Foundation $24k) due to the initiation of a telephone survey to gage outreach success. Funding will be through SWU account 13531-51160. Municipalities are cost sharing on this agreement and will cover one-half of the cost.

**RECOMMENDATION**

Recommend that the Natural Resources Committee approve and recommend council approval of the proposed Clemson University County Extension Program Support Agreement for $67,665.

Attachments
Clemson Support Agreement signed by Clemson April 16, 2012

Return to DOD QUINN - Clemson Extension 843-255-6060 Ext. 116

# CLEMSON UNIVERSITY
## COUNTY EXTENSION PROGRAM SUPPORT AGREEMENT (CEPSA)

SPONSOR: Beaufort County Public Works Stormwater Management Utility


This agreement between CLEMSON University (hereafter referred to as CLEMSON) and the SPONSOR (listed above) is entered into for the purpose of supporting an Extension Agent – Horticulture in the Beaufort County office.

CLEMSON'S RESPONSIBILITIES: CLEMSON agrees to:

1. Assign a professional who will be responsible for activities described in Appendix A.
2. Steve Meadows (Field Operations) will Monitor the performance of the Extension Agent - Horticulture and ensure the agent receives continuing training.
3. Administer the CEPSA funds in accord with the laws of South Carolina and the stipulations of THE SPONSOR.
4. Provide to the SPONSOR, upon request, a summary of expenditures made in support of the Extension Agent – Horticulture.

SPONSOR'S RESPONSIBILITIES The SPONSOR agrees to:

1. Provide funds in the amount of $67,665 as described in the detail budget in Appendix B which includes all in-kind contributions.
2. Provide a representative for the program described in Appendix A who will as needed serve on the any applicable committee.
3. SPONSOR will pay CLEMSON the above amount, upon invoice, on a quarterly basis.

PERIOD OF PERFORMANCE: The period of performance shall begin on July 1, 2012, and end June 30, 2013.

COMMON RESPONSIBILITIES: CLEMSON and the SPONSOR agree to:

1. The parties acknowledge and agree that the intent of this arrangement is to support a position of County Extension Agent – Horticulture for Beaufort County. To the extent that the provisions of the Fair Labor Standards Act or other laws governing wages and hours might be found to apply to the County Extension Agent - Horticulture, CLEMSON agrees to ensure compliance and to conform with all other reporting procedures as designated by this position.

2. Individually and collectively execute, expedite, and fulfill the conditions of this AGREEMENT and the mutually composed APPENDIX "A" and "B" in the best interests of SPONSOR and CLEMSON.

3.

4. Sponsor will allow Clemson to reallocate funds within budget categories in Appendix B and Other than reallocation, Mutually negotiate a revised and/or amended APPENDIX "A" or "B" should SPONSOR'S requirements or CLEMSON's conditions significantly change during the term of this AGREEMENT.

TERMINATION: This AGREEMENT may be terminated by any party at any time by providing written notice to the other parties at least thirty days prior to the work termination date. Upon termination, CLEMSON will provide SPONSOR with a summary of expenditures and refund any unexpended Public Service Agreement funds. The summary of expenditures shall be considered final and accepted thirty (30) days after transmission to the SPONSOR, in the absence of communication to the contrary.

ENDORSEMENTS:

SPONSOR: _____

authorized institutional official — date

_____

address

_____

phone — fax

CLEMSON UNIVERSITY: _____ 4/16/2012

Gerald Sonnenfeld, PhD, Vice President for Research — date

Office of Sponsored Programs 300 Brackett Hall, Clemson,SC 29634-5702

address

864 656 2424 — 864 656 0881

phone — fax

OSP ONLY - AGREEMENT NUMBER : _____

STATEMENT OF SERVICES TO BE PROVIDED BY CLEMSON

APPENDIX A:

- Promote Beaufort County stormwater BMP's by conducting community presentations relating to application of the **Carolina Yards and Neighborhoods** principles, including **Backyard Buffers, Carolina Clear** and **Coast-A-Syst** materials.
- Write articles regarding homeowner practices which focus on water conservation and pollution prevention. Disseminate articles through local mass media as well as homeowner associations and other newsletters.
- Develop and provide educational display booths at select community events.
- Develop and present **irrigation workshops** for homeowners and landscapers designed to improve understanding of appropriate irrigation practices and assist them in maintaining systems at peak performance.
- Continue **Master Gardener** training with strong emphasis in pollution prevention and water conservation.
- Develop links on local websites directing residents to the **Carolina Yards and Neighborhoods, Coast-a-Syst,** and **Carolina Clear** websites.
- Develop water quality education opportunities for elementary, middle, and high school students.
- Develop grant and other funding to enhance program delivery.
- Investigate innovative approaches to water pollution prevention and conservation (e.g., rain barrels). Implement new programs as appropriate.
- Coordinate with Clemson Extension Commercial Horticulture staff to develop water pollution prevention and conservation awareness for, and encourage changes in, landscape professionals.
- Collaborate with Beaufort County staff as well as individuals from other agencies and private industry in developing programs to address water pollution prevention/conservation as appropriate.
- Maintain program accountability documents and provide data to Beaufort County Stormwater Utility on a quarterly basis.

Additions: Carolina Clear will partner with Beaufort County Stormwater Utility to conduct the following:

- Coordinate a working local partnership that communicates regional stormwater education and involvement activities; make available tools to report activities for regional representation.
- With input from partner agencies and communities and readily available sources, develop a regional outreach plan that targets specific audiences with region-specific objectives, as necessary.
- Oversee and direct the implementation and evaluation of a coordinated outreach activity in partnership with the Port Royal Sound Foundation.
- Begin Phase I of statewide telephone survey instrumentation. This shall include identifying region-specific questions to be added to the baseline questions asked across the state, testing questions with faculty, and piloting questions by phone. Actual survey will begin fall 2013.
- Provide materials for outreach and education to be distributed by partners and established at community buildings (1 display per community).
- Report back to Utility Board work completed over the course of the agreement.
- Work towards involving Jasper County in regional stormwater education and involvement efforts that will meet future compliance expectations of the NPDES MS4 General Stormwater Permit.
- Work through Clemson Extension to deliver compliance-appropriate stormwater education and involvement outreach.

APPENDIX B: REQUESTED BUDGET

| | |
|---|---|
| Salary | $ 13,828 |
| Fringe Benefits 32.2% | $ 4453 |
| Materials/supplies | $ 3,577 |
| Travel | $ 1307 |
| Total | $ 23,165 |

| | |
|---|---|
| *Additional Funding* | |
| Outreach to be delivered by Port Royal Sound Foundation via subcontract | $25,000 |
| Phase 1 of survey delivery Dept. of Sociology | $7500 |
| Travel, materials, salary for Additional staff required | $12,000 |
| NEW TOTAL REQUEST | $67,665 |

E N D O F A G R E E M E N T

FILE COPY

# AGREEMENT,
# BEAUFORT COUNTY, CITY OF BEAUFORT, FRIENDS OF THE SPANISH MOSS RAIL TRAIL AND PATH FOUNDATION

This agreement (Agreement) is made and entered into this 8th day of May, 2012, by and between Beaufort County, South Carolina ("County"), the City of Beaufort, South Carolina ("City") the Friends of the Spanish Moss Rail Trail, a South Carolina non-profit corporation ("Friends"), and PATH Foundation, Inc., a Georgia non-profit corporation ("PATH"), collectively the "Parties".

WHEREAS, the County has an easement and intends to construct a recreational trail and greenway from Ribaut Road in Port Royal, South Carolina to the south edge of the Whale Branch River in the County (the "Trail"); and,

WHEREAS, initial portions of the Trail pass through the incorporated area of the City, and the City is supportive of the County's efforts and wishes to cooperate in the development of the Trail; and,

WHEREAS, the Friends have the objective of supporting and facilitating the development of the Trail; and,

WHEREAS, PATH is experienced in the design and construction of recreational trails and PATH has obtained private funding to construct the initial section of the Trail from Allison Road to Depot Road in the City (the "Project"); and

WHEREAS, the Friends have agreed to work with PATH as it designs and constructs the Project and to use the completed Project as a model section for the design and construction of successive sections of the Trail; and,

WHEREAS, both the County and the City have secured grants that will be used to design and construct successive sections of the Trail, and the Parties wish to ensure that the activities and procedures of the privately funded and grant funded sections of the Trail are in harmony; and,

WHEREAS, the Parties agree that this Agreement shall define their respective roles and responsibilities in the design and construction of the Project.

NOW, THEREFORE the Parties hereto agree as follows:

## 1. Description of the Project

The Project consists of the planning, design, permitting and construction of a recreational trail along a section of the former Port Royal Railroad right-of-way from Allison Road to Depot Road, a distance of approximately 5100 linear feet, all within the City. The plans and engineering design documents, when completed and approved in accordance with

this Agreement, shall be attached hereto as Addendum A and incorporated herein. The Project, when completed and approved by the County, will be the property of the County.

## 2. Commitment of the Right-of-Way

Pursuant to that certain easement agreement between The County and Beaufort Jasper Water and Sewer Authority ("BJWSA") recorded Records Book ___ at Page ____ in the office of the Register of Deeds of Beaufort County, South Carolina (the "Easement"), the County obtained an easement over the former Port Royal Railroad right-of-way for the construction of the Trail. A copy of the Easement is attached hereto as Exhibit A. The County hereby commits the entire width of the right-of-way to the Project, provided that all reserved rights of BJWSA and all prior easement rights and conditions defined in the Easement are recognized, adhered to, and as required, incorporated into the design and implementation of the Project.

## 3. Responsibility and Funding for Project Development and Implementation

PATH has secured private funding and PATH shall be responsible for the design, development and construction of the Project. PATH will make a concerted effort to employ local engineers, surveyors, and other consultants during the design process. PATH shall select a design team (the "Design Team"), including, but not limited to a surveyor, landscape architect, engineer (licensed in South Carolina), and construction contractor (licensed in South Carolina), and the Design Team shall be responsible for the following:

1) Preparation of a topographic survey of the Project;
2) Organization and participation in a public meeting soliciting input and recommendations for the design of the Trail;
3) Development and presentation of construction plans for the Project (the "Plans"), to be approved by the Parties;
4) Application for required permits (the "Permits");
5) Development of branding and specifications for the Trail (the "Design Specifications"), to be approved by the Parties;
6) Construction of the Project in accordance with the Plans and Design Specifications, which shall meet the following minimum design standards:
    a) compliance with The American Association of State Highway and Transportation Officials (AASHTO), Guide for the Development of Bicycle Facilities, 1999 and AASHTO Guide for the Planning, Design and Operation of Pedestrian Facilities, 1st Edition, 2004,
    b) nominal width of twelve (12) feet,
    c) compliance with the Americans with Disabilities Act,
    d) constructed with adequate sub grade compaction to minimize cracking and sinking, and sufficient to accommodate appropriate loadings, including emergency vehicles, and
    e) two percent (2%) cross slope to ensure proper drainage;
7) Coordination of required construction inspections; and
8) Hiring of consultants as needed to complete the Project.

PATH shall serve as the point of contact on behalf of the Parties for all issues arising during development and construction of the Project. The County, City, and Friends shall work with PATH to complete the Project in a timely fashion by reviewing all submittals, initiating meetings to obtain necessary approvals and consensus, and issuing required permits. The County and City shall make their staffs and existing records, mapping and other resources available to the Design Team, and the County and City shall consult, as needed, with the Design Team.

PATH will make every effort to deliver Plans and Design Specifications to the County, City, and Friends for review and approval on or before September 1, 2012. In the event PATH is unable to obtain the required approvals and permitting to begin construction of the Project on or before November 1, 2012, PATH shall not be required to commit to completion of the Project. In the event the Parties have not reached final approval regarding location of the Trail on or before November 1, 2012, PATH shall not be required to commit to completion of the Project.

**4. Approval of Project Plans and Design Specifications**

PATH will establish an approval team (the "Approval Team"), including but not limited to the following: (a) a representative from the planning and engineering staff of the County, (b) a representative from the planning and public works staff of the City, (c) a representative from the planning and engineering staff of the Town of Port Royal (the "Town"), and (d) a representative from the Friends. The Approval Team shall review the Plans and Design Specifications prepared by PATH and provide recommended revisions to the Plans and Design Specifications to PATH. The final Plans and Design Specifications approved by the Approval Team shall be submitted to the Beaufort County Planning Commission for recommendation of adoption and approval by Beaufort County Council.

The Parties understand and agree that the Plans and Design Specifications developed in the Project will serve as the base design for successive sections of the Trail.

**5. Selection of Construction Contractor**

The Project construction contractor ("Contractor") and the Project engineer ("Engineer") shall be licensed in South Carolina and they shall be selected by PATH. The Contractor and Engineer shall be members of the Design Team. PATH, because of the use of private funding, is under no obligation to utilize government procurement procedures. A bid bond may be required of the Contractor, in PATH's discretion, but a performance bond shall be required of the Contractor, in favor of both PATH and the County. Following the selection of the Contractor, PATH shall coordinate a pre-construction conference between PATH, the Design Team, and the Approval Team. Following this conference, a notice to proceed shall be issued by the County. The Contractor shall be required to acquire and maintain liability, worker's compensation, and other usual and customary insurances required by the County in its construction contracts sufficient, in the opinion of the Parties, to address any eventualities that may arise.

## 6. Administration of the Construction Contract, Inspections

While administration of the construction contract shall be the responsibility of PATH, the inspection of the construction work shall be a joint effort of the Friends, the County and the City, to be coordinated by the Engineer. The design documents shall specify the details and quality of the construction and the construction contract shall specify the timetable for construction activities. Each of the governmental Parties shall designate one individual from their staff to be responsible for participation in an inspection team (the "Inspection Team") and it will be the responsibility of those individuals to satisfy themselves that the construction is meeting the needs and expectations of each of the governmental Parties. In the event of a dispute between the members of the Inspection Team, the final decision shall be made by the County, in consultation with Friends and PATH.

## 7. Responsibility and Procedure for Payment of Contractors

PATH shall process and pay properly submitted payment requests and obtain lien waivers on a timely basis so as to avoid any mechanic's or materialmen's liens attaching to the property.

## 8. Responsibility for Development and Implementation of Successive Sections of the Trail

The Friends shall be responsible for the design, development and construction of successive sections of the Trail funded through their efforts, and the Friends shall select surveyors, architects, engineers, and consultants to complete construction of those sections of the Trail. The County and City shall work with the Friends to complete construction of those portions of the Trail in a timely fashion by reviewing all submittals, initiating meetings to obtain necessary approvals and consensus, and issuing required permits. The County and City shall make their staffs and existing records, mapping and other resources available to the Friends, and the County and City shall consult, as needed, with the Friends.

PATH shall mentor Friends and provide guidance and assistance as needed to enable Friends to develop and implement successive sections of the Trail.

## 9. Funding for Development and Implementation of Successive Sections of the Trail

The Friends shall act as a conduit for private funding of the successive sections of the Trail either solely or in conjunction with PATH. The County and the City hereby commit secured grants and future grants to be used to design and construct successive sections of the Trail. The County, Town and City agree to continue using their best efforts to provide and/or obtain funding to finish construction of the remaining sections of the Trail, including obtaining and assisting with the Friends' efforts to obtain matching funds for such challenge grants as they or PATH may be able to obtain. The Parties shall work together to ensure that

the activities and procedures of the privately funded and grant funded sections of the Trail are in harmony.

**10. Acceptance of the Trail Upon Completion**

Upon completion of the Project, the improvements in the completed section of the Trail in its as is, where is condition, shall be transferred to the County utilizing whatever documentation the County reasonably determines to be necessary.

**11. Responsibility for Maintenance of the Trail**

Notwithstanding the obligations of the County under the Easement, maintenance of the Trail, including the completed Project, within its jurisdictional boundaries, shall be the responsibility of the City. The Friends agree to assist the City in the maintenance of the Trail, including the completed Project, through the sponsorship and conduct of volunteer work days on a periodic basis. As the Trail will have overarching regional appeal, and will be utilized by citizens of Beaufort of unincorporated County, as well as the residents of the City of Beaufort. The County agrees to assist the City with the maintenance of the Trail including the completed Project, at a mutually agreed upon level, to include funding, the loan of specialty equipment and/or personnel as required.

**12. Miscellaneous**

The Parties acknowledge that completion of the Project will be the first of what will be many sections of the Trail to be constructed and maintained. A long term comprehensive agreement will be needed between the County, City, Town, Friends, and BJWSA to construct and maintain the entire Trail.

*SIGNATURES ON FOLLOWING PAGE(S).*

WITNESS:

Name: Joshua Crosby

BEAUFORT COUNTY

By:
Name: GARY KUBIC
Title: Administrator

WITNESS:

Name: Michael A McTeer

CITY OF BEAUFORT

By:
Name: Scott F. Dadson
Title: City Manager

WITNESS:

Name: Marlene R Smith

FRIENDS OF SPANISH MOSS TRAIL

By:
Name: DAVID TEDDER
Title: Director

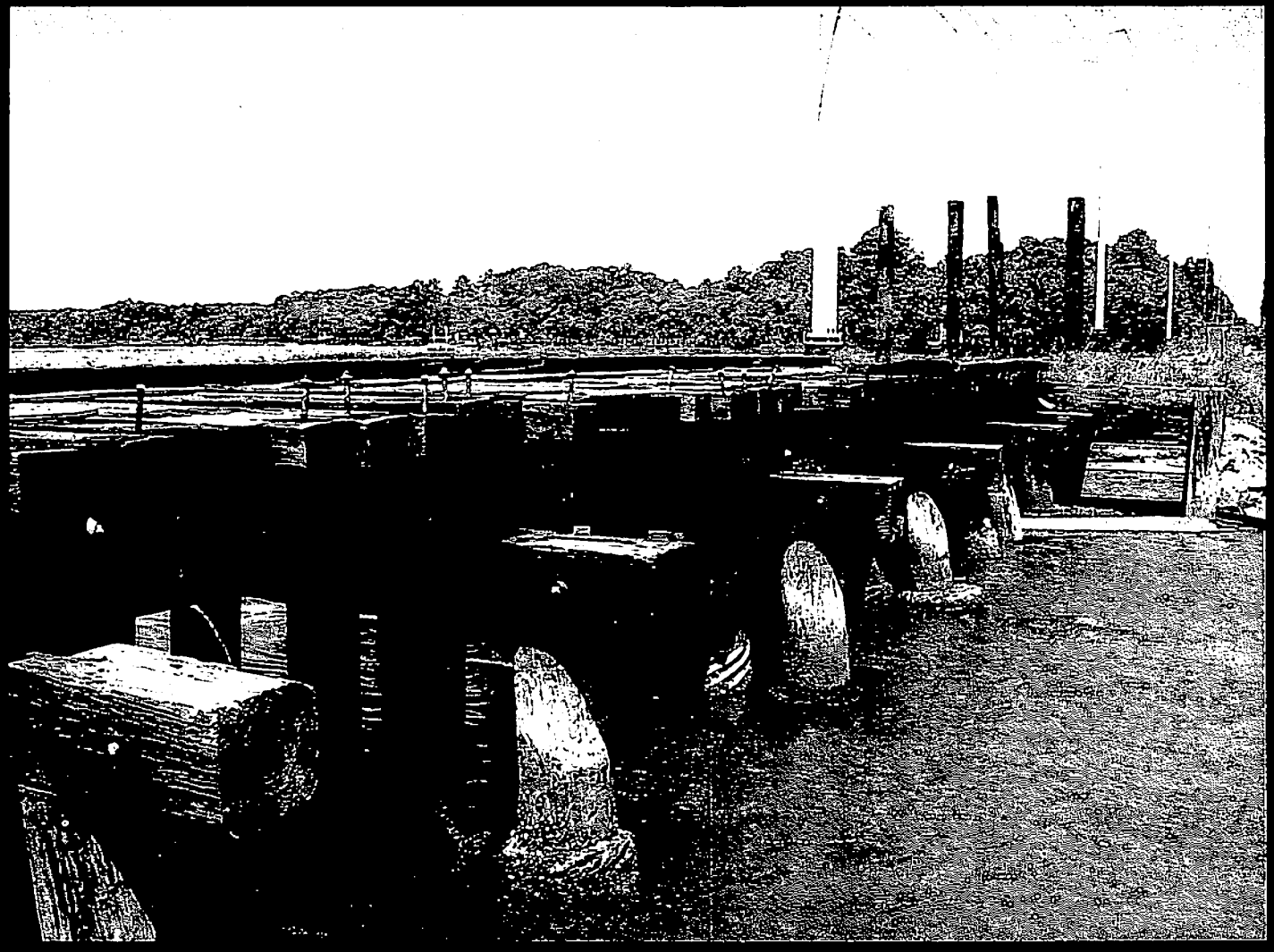
WITNESS:

Name: Linda Bridges

PATH FOUNDATION, INC.

By:
Name: ED MCMAHON
Title: EX DIRECTOR

# Spanish Moss Trail



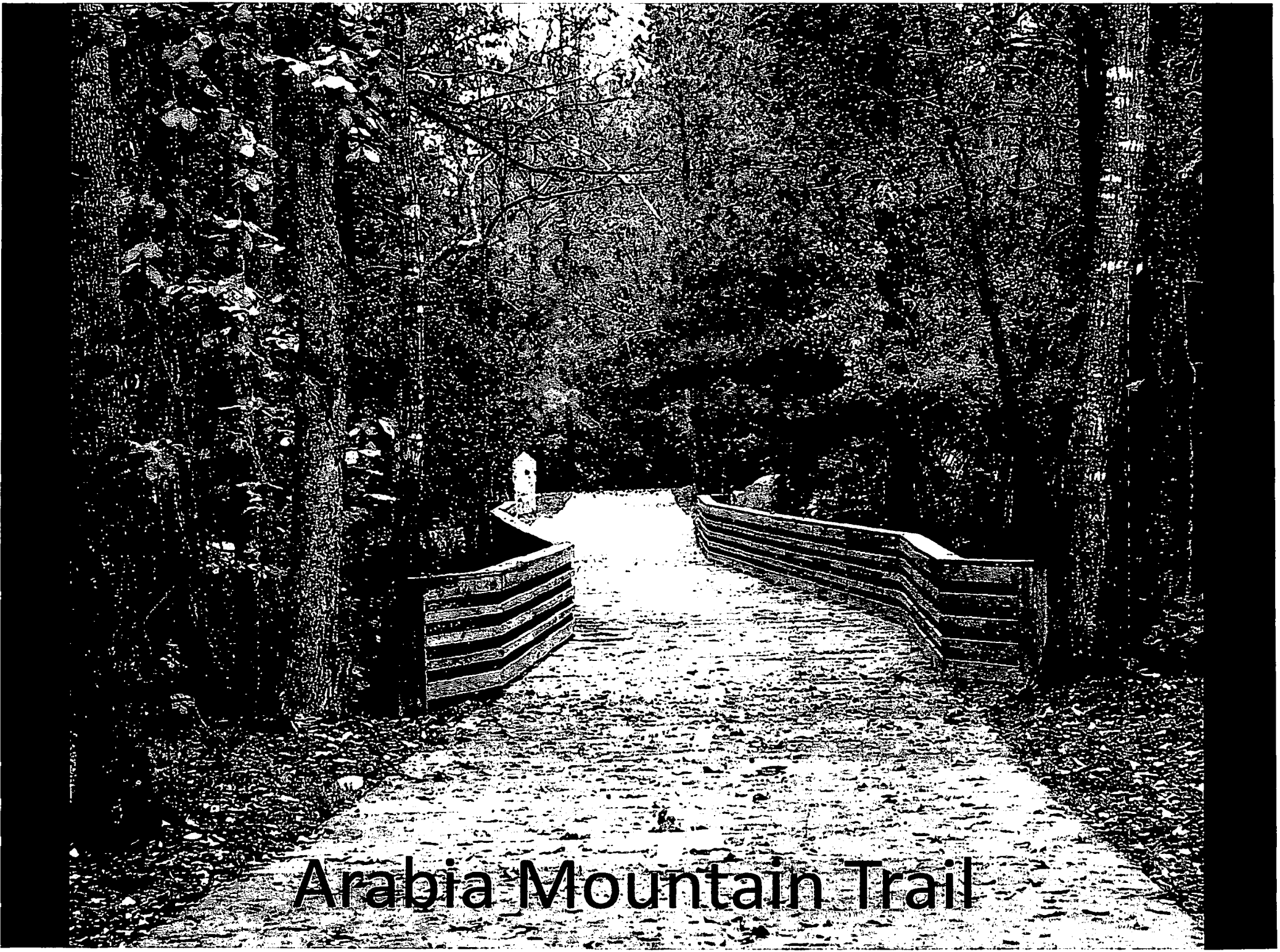



Ed McBrayer, Executive Director
PATH Foundation
1601 W. Peachtree Street
Atlanta, Georgia 30329
(404) 875-7284
Fax (404) 875-3242
*edwin@pathfoundation.org*
*www.pathfoundation.org*

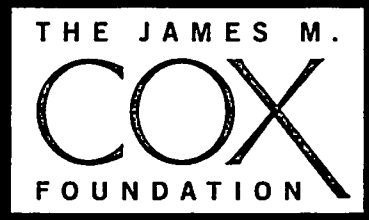
# 20 YEARS AT PATH

- Built over 170 miles of greenway trails
- Raised over $35 million from private sector for trail development
- Caused $75 million to be allocated from public sector for trails


THE SILVER COMET TRAIL


Arabia Mountain Trail

ST. SIMONS ISLAND
ISLAND-WIDE TRAIL SYSTEM

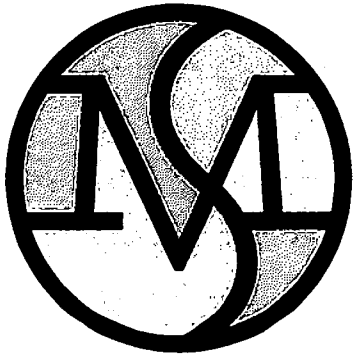



# James M. Cox Foundation $1,167,960 Grant for the Spanish Moss Trail

$100,000.00 for planning and design of the trail

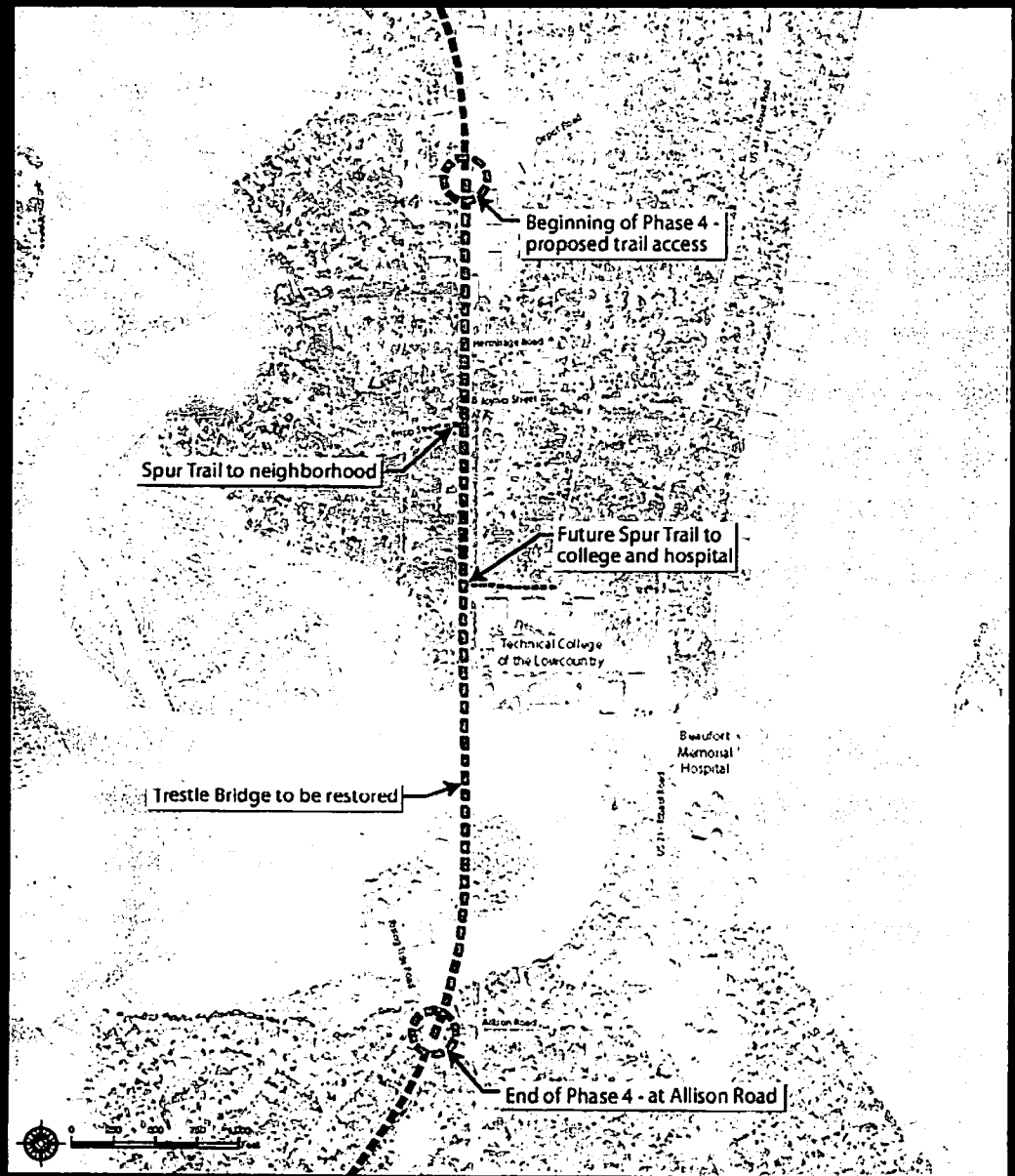
$497,960.00 for construction of trail from Allison Road to Depot Road *(contingent upon construction by Nov. 1st)*

$600,000.00 for a challenge grant to be matched 1:1 for construction of the trail from Laurel Bay Road to Clarendon Road *(contingent upon match by Dec. 31, 2012)*



# Spanish Moss Trail

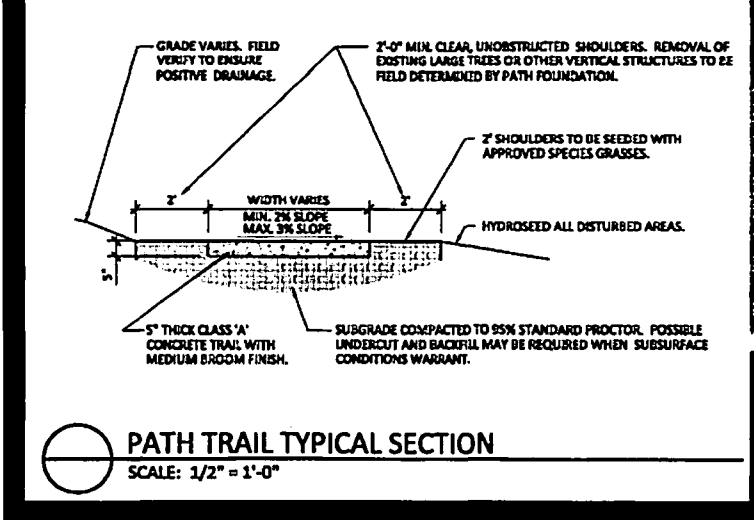
# Depot Rd. to Allison Rd. – SMT Phase 4



# Depot Rd. to Allison Rd. – SMT Phase 4








PATH TRAIL TYPICAL SECTION

SCALE: 1/2" = 1'-0"

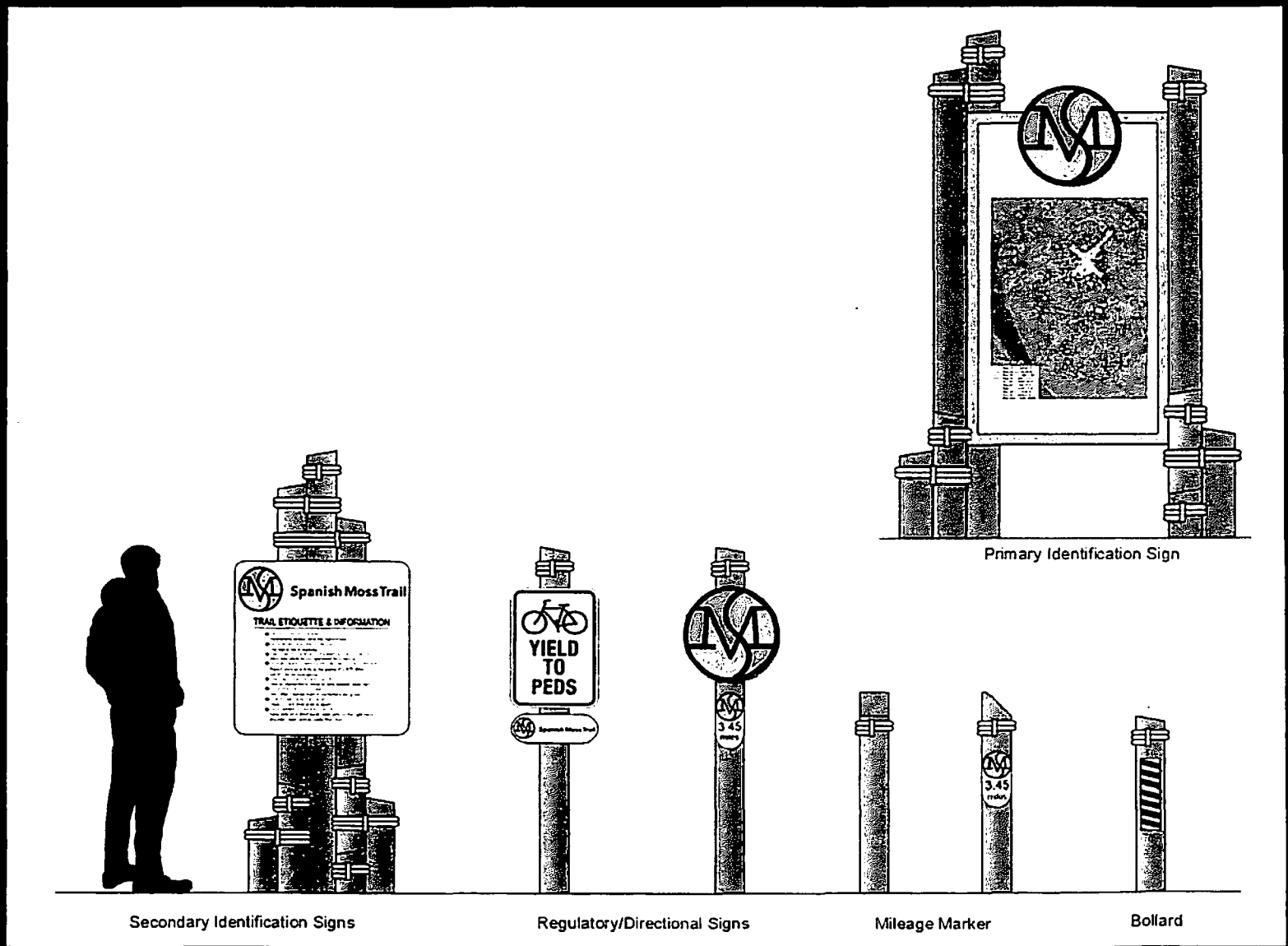
# Spanish Moss Trail – Depot Road



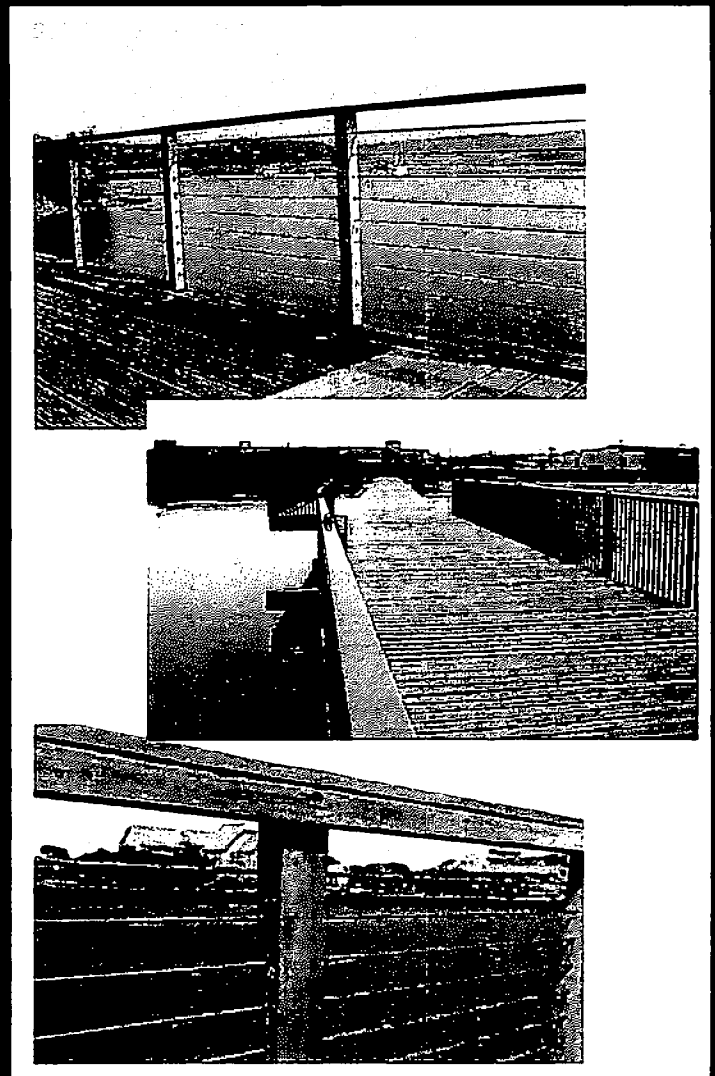
# Spanish Moss Trail – Depot Road



# Spanish Moss Trail Signage

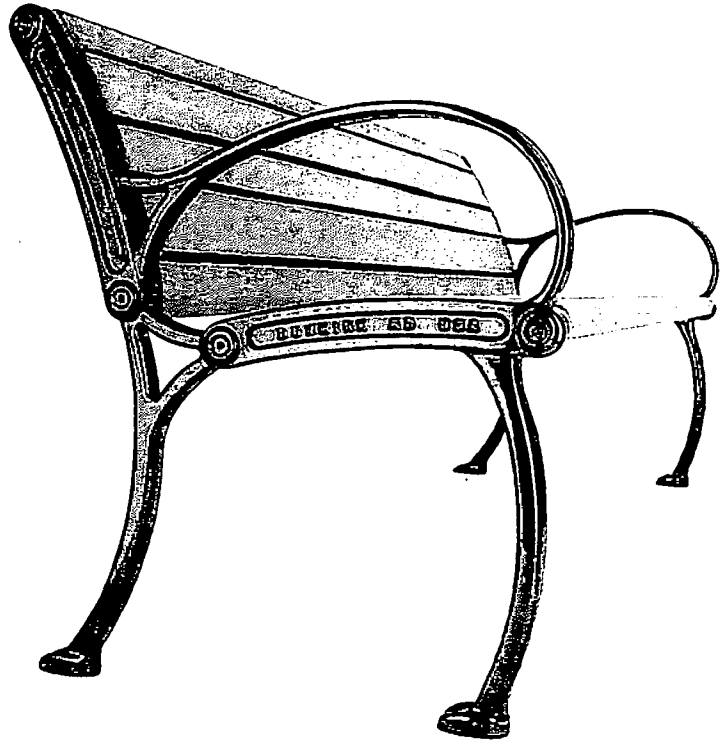


# Spanish Moss Trail Standards

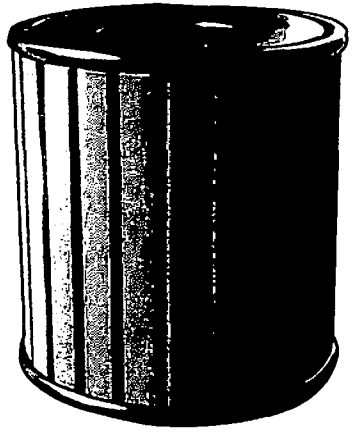


Typical Trestle Bridges and Cable/Wood Handrail

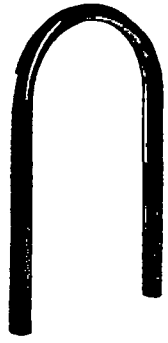
# Spanish Moss Trail Amenities



**Farmers Modern Series**
**by Victor Stanley**
model #FB-324 Fullback Bench
Description: 6-foot, center cast legs with surface mount, Ipe wood slats for seat and back.

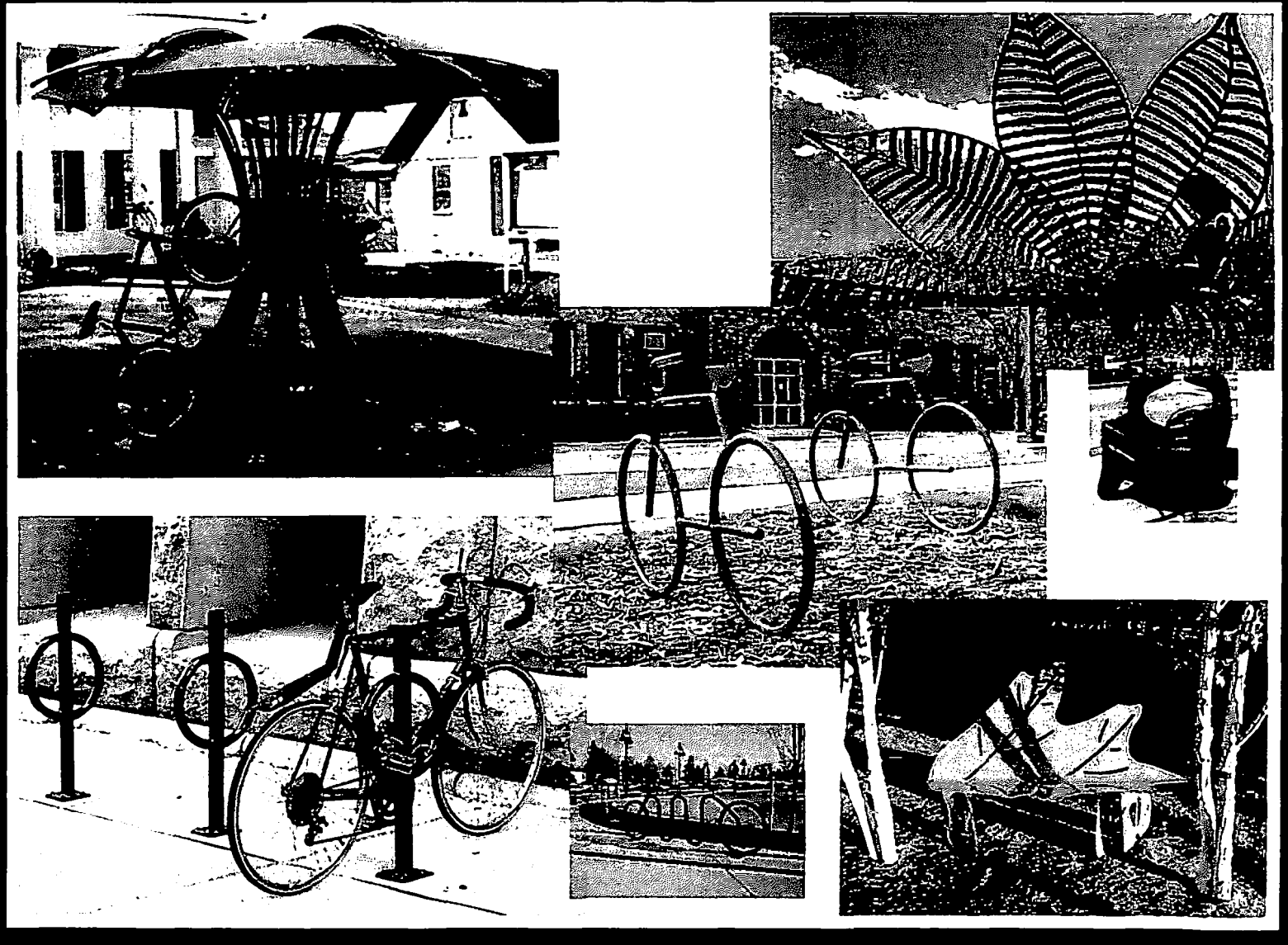


**GreenSites Series**
**by Victor Stanley**
model #RTH-36
Description: 36-gallon capacity, solid vertical side slats, standard tapered form lid, black plastic liner, available with dome lid or convex lid with self-closing door. Available with recycling option.

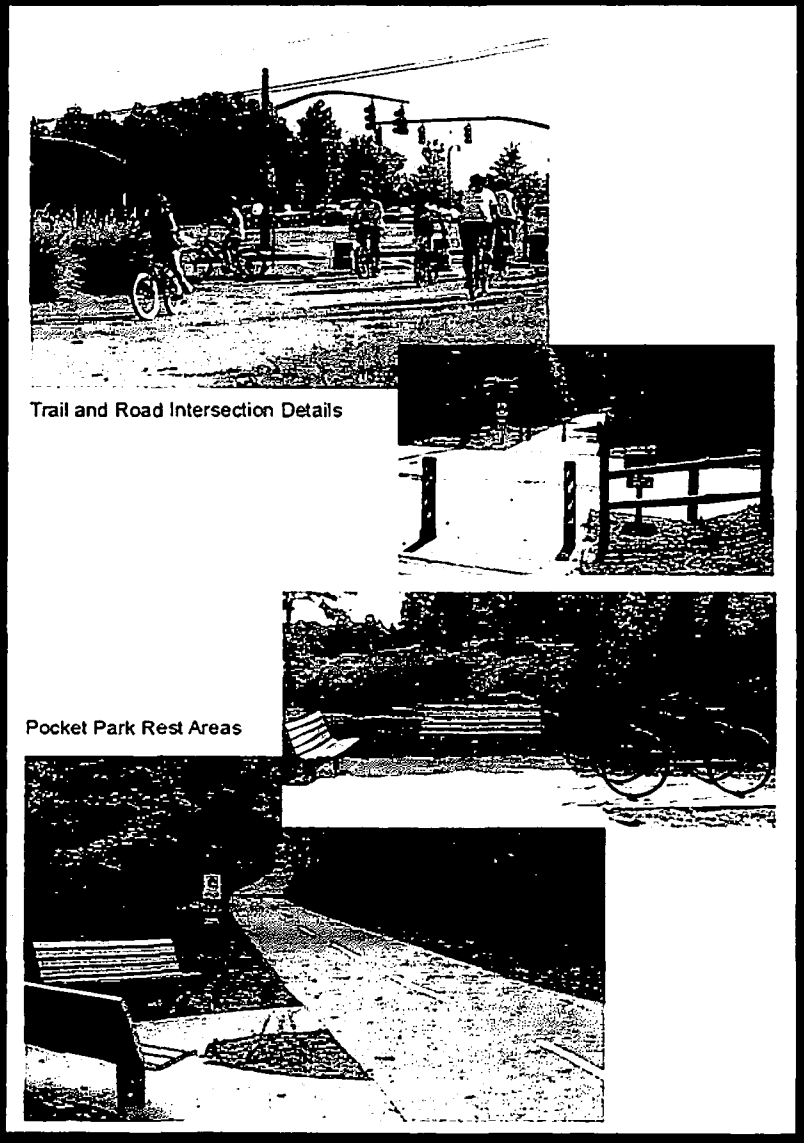


**Cycle Sentry Series**
**by Victor Stanley**
model #BRWS-101
Description: 2 bike capacity, tubular steel single arc, in-ground or surface mount, powder-coated black.

# Public Art Opportunities



# Spanish Moss Trail Standards



# Spanish Moss Trail Phase 4 – Timeline

Meeting Presentations

Friday, May 18th – 9:30 a.m. Northern Implementation Commission Meeting
Tuesday, May 22th – 7:00 p.m. City Council meeting
Monday, June 4th – 6:00 p.m. Joint Planning Commission Meeting/Public Meeting
Tuesday, June 5th - City of Beaufort Pre-Application Meeting
Thursday June 7th – 5:00 p.m. City of Beaufort Redevelopment Commission

Design for Construction

May 11, 2012 – June 29, 2012

Permitting

May 28, 2012 – August 31, 2012

Construction

September 4, 2012 – October 31, 2012

# Spanish Moss Trail


Friends of Spanish Moss Trail
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*wdmossjr@gmail.com*

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*edwin@pathfoundation.org*

Greta deMayo and Wendell York
**KAIZEN**COLLABORATIVE
(404) 626-3519 / (404) 316-3279
*greta.demayo@kaizencollaborative.com*