

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

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L. Casey Manning, Circuit Court Judge

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S.C. Supreme Court

Unpublished Opinion No. 2011-UP-519 (S.C. Ct. App. Filed November 29, 2011)

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Stevens & Wilkinson of South Carolina, Inc. .... Respondent,

vs.

City of Columbia, South Carolina ..... Petitioner.

---

APPENDIX

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2005-CP-40-3361

Stevens & Wilkinson of South Carolina, Inc. .... Respondent,

vs.

City of Columbia, South Carolina ..... Appellant.

RECORD ON APPEAL

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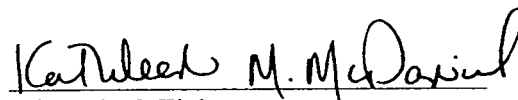
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July 26, 2010  
Columbia, South Carolina

|                                             |   |                                |
|---------------------------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA                     | ) | IN THE COURT OF COMMON PLEAS   |
|                                             | ) |                                |
| COUNTY OF RICHLAND                          | ) | FOR THE FIFTH JUDICIAL CIRCUIT |
| Stevens & Wilkinson of South Carolina, Inc. | ) | Civil Action 05-CP-40-3361     |
|                                             | ) |                                |
| Plaintiff,                                  | ) |                                |
| v.                                          | ) | ORDER                          |
|                                             | ) |                                |
| City of Columbia, South Carolina,           | ) |                                |
|                                             | ) |                                |
| Defendant.                                  | ) |                                |

RICHLAND COUNTY  
 CLERK OF COURT  
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 JEANETTE W. HARRIS  
 C. C. 8. 1. 8.

This matter is before the Court on the motion of Plaintiff Stevens & Wilkinson for partial summary judgment. The Plaintiff insists that no genuine issue of material fact exists as to whether the City of Columbia entered into a binding contract by authorizing the expenditure of \$650,000 on architectural and design services on July 30, 2003. After reviewing the pleadings, motions, memoranda and other material presented, the Court grants the Plaintiff's motion.

#### FACTS

This case arises out of an agreement between the City of Columbia and the Plaintiffs to enter into a "Memorandum of Understanding" ("MOU") in April 17<sup>th</sup> of 2003 through which all parties would work to design, fund and construct a publicly-financed hotel in downtown Columbia (the "Hotel Project"). For a variety of reasons yet to be established, the Hotel Project was never completed. Instead, a privately-financed project was approved by the City on May 28, 2004. The Plaintiffs comprise various Hotel Project participants that allege they are owed monies due to the City's failure to carry through with the publicly-financed Hotel Project.

Stevens & Wilkinson's motion, however, does not fall within the framework of the MOU and does not turn upon the terms contained therein. Rather Stevens & Wilkinson contends the City entered into a contractual agreement separate and apart from the MOU.

*136*  
*[Signature]*

Stevens & Wilkinson served as the chief architect and head of the design team responsible for much of the preliminary planning of the Hotel Project. The preliminary planning was geared towards the completion of a hotel design that was sufficient to formulate a "guaranteed maximum price". Once the preliminary designing was complete, this "guaranteed maximum price" would be utilized by the City to obtain municipal bond financing sufficient to cover the final cost of the Hotel Project.

In June of 2003, Stevens & Wilkinson notified the City that the design team had completed the preliminary planning necessary to reach a "guaranteed maximum price" as envisioned by the MOU. As a result, Stevens & Wilkinson announced their intention to "put their pencils down" until the bond financing of the Hotel Project was finalized.

As an alternative to this delay, Stevens & Wilkinson offered to continue the design team's work on finalizing the Hotel Project plans in exchange for \$650,000 through October 15, 2003 and \$75,000 per week, thereafter, until the completion of the Project. On July 30, 2003, the City responded to this offer by approving an allocation of \$650,000 to Stevens & Wilkinson. On December 18, 2003, Stevens & Wilkinson submitted an invoice to the City for \$697,084.79 for services rendered through December 15<sup>th</sup>. The City released a check to Stevens & Wilkinson on December 29, 2003 in the amount of \$697,084.79.

Stevens & Wilkinson requests that this Court enter partial summary judgment finding that a contractual agreement was formed between itself and the City on July 30, 2003. In support of its motion, Stevens & Wilkinson has submitted the deposition testimony of three City of Columbia witnesses: Charles Phillips, the retained expert of the City, Tameika Isaac-Devine, a City Councilwoman, and of Steven Gantt, the assistant City Manager and liaison between City Council and Stevens & Wilkinson. The relevant portions of that testimony are as follows:



Q. Were you aware of an agreement between Stevens and Wilkinson as head of the design team and the City of Columbia in July of 2003 which provided for compensation to Stevens and Wilkinson and members of the design team above and beyond the terms of the memorandum of understanding?

A. Yes.

Q. Tell me what your understanding of that agreement is.

A. Well, it's my understanding that Stevens and Wilkinson made a proposal to be paid for design work that it had done to the city because -- well, because they wanted to be paid for the work that they had done, and the city ultimately decided outside of the -- I understand the city's position is outside of the MOU that it would pay -- I think the amount was \$697,000, something like that, related to work that was done for a particular point in time by the plaintiff because it would allow the work to go on and go forward rather than losing time if the project was ever approved and actually built. And that amount -- I think the council approved \$650,000, but was paid. And that's my understanding.

(Charles Phillips Deposition, pp. 62-63)

Q. The Stevens & Wilkinson (sic) as you saw continued to work after that period of time described under the MOU and council voted to pay them additional moneys through bond closing?

A. We voted to pay them \$650,000 which was the estimate we received through October. Yes.

Q. Right. And they ultimately were paid more than that, about \$710,000 according to these documents because they continued to work even beyond that, beyond the October 10<sup>th</sup>; isn't that correct?

A. I can't recall. But I wouldn't disagree with that, no.

(Councilwoman Isaac-Devine Deposition, pp. 82-83)

Q. The City voted to pay -- let me see if I can state this correctly. What happened was, Stevens and Wilkinson, the architects, got to a point in July when they said, we've done what we're supposed to do under the MOU at risk. If you want us to work -- if you don't want us to wait until the bonds close; you're going to have to pay us for, you know, going forward. Is that correct?

326  
Cm

A. Yes.

(Steve Gantt Deposition, pp. 16-17)

Q. Okay. And she's handed you Exhibit Number 5, which is a invoice and then a check cut to Stevens and Wilkinson for \$697,084.79. Is that correct?

A. Yes.

Q. Now that's in excess of the \$650,000 that the City approved, City Council approved, correct?

A. Yes.

(Steve Gantt Deposition, p. 19)

Q. What they had done up to July was to do enough design that you could get the -- an estimate of the maximum price to build the thing; is that correct?

A. It's my understanding they had gotten to some percentage of completion of the plans that Turner Construction could then use those plans to determine what they thought the guaranteed max price would be for the project. Yes.

Q. And then going forward from July, the idea was to go ahead -- I mean, those are not complete plans. That was just enough of a plan so people could give a guaranteed maximum price; is that correct?

A. That's correct.

(Steve Gantt Deposition, pp. 22-23)

Q. And during the -- I guess what I'm trying to get to is: During that process, during that after-October process -- well, let me back up. First of all, we have agreed that the City modified its agreement with Stevens and Wilkinson by having them work after that July period when they put their pencils down and agreed to pay them, correct?

A. Council did agree to pay them.

(Steve Gantt Deposition, p. 36)



### STANDARD OF REVIEW

Under former Circuit Court Rule 44, our Supreme Court held "it is appropriate to grant summary judgment on all issues or on specified issues if there is no genuine issue of fact to be determined." Hossenlopp By and Through Hossenlopp v. Cannon, 285 S.C. 367, 369, 329 S.E.2d 438, 440 (1985), rev'd on other grounds.

The revised Rules of Civil Procedure further clarified the process of a motion for partial summary judgment.

If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion ... shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear without substantial controversy ... and directing such further proceedings in the action as are just.

SCRCP 56(d).

### ANALYSIS

Here, Plaintiff Stevens & Wilkinson has moved for summary judgment above and beyond the "Memorandum of Understanding" entered between the various parties. More specifically, Stevens & Wilkinson argues that a contractual agreement was formed between itself and the City of Columbia in July of 2003 for work to be performed on the Hotel Project from that date until the Project's completion. "A contract exists where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act. ... Stated another way, there must be an offer and an acceptance accompanied by valuable consideration." Regions Bank v. Schmauch, 354 S.C. 648, 660-661, 582 S.E.2d 432, 439 (Ct. App. 2003).

596  
[Signature]

The uncontroverted evidence in this case indicates that Stevens & Wilkinson, as the head of the architectural/design team of the Hotel Project, completed all design work necessary to formulate a guaranteed maximum price for the Hotel Project by July of 2003. At that point in time, Bobby Lyles—the President of Stevens & Wilkinson—penned a letter to City Council notifying them of the design team's intent to "put their pencils down" until bond financing was finalized. As an alternative to this delay, however, Stevens & Wilkinson offered to continue work on the Hotel Project in exchange for \$650,000 through October 15, 2003 and \$75,000 a week thereafter. The City accepted this offer on July 30, 2003 via a vote of City Council approving the allocation of \$650,000 to the design team.

While an issue may remain outstanding as to whether the July 30, 2003 agreement was later modified by the parties, the existence of a contract between the two parties is not. Stevens & Wilkinson made an affirmative offer of services for compensation to the City of Columbia through its July 21, 2003 letter. The City affirmatively accepted this offer, albeit on seemingly modified terms, via its vote of July 30, 2003. The intent of the parties to enter into a contractual agreement is further confirmed by the \$697,084.79 paid to Stevens & Wilkinson by the City on December 29, 2003. Thus the three tenants of contract have been established: offer, acceptance and valuable consideration.

Whereas the existence of a contract between Stevens & Wilkinson and the City of Columbia as a result of the July 30, 2003 agreement is the only issue now before the Court, the Court hereby grants the Plaintiff's motion for partial summary judgment.

IT IS SO ORDERED.

March 23, 2009  
Columbia, South Carolina



L. Casey Manning  
Resident Judge  
Fifth Judicial Circuit

CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
JANET W. MCNEEL  
C.C.P. & G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA

|                                             |   |                                |
|---------------------------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA                     | ) | IN THE COURT OF COMMON PLEAS   |
|                                             | ) |                                |
| COUNTY OF RICHLAND                          | ) | FOR THE FIFTH JUDICIAL CIRCUIT |
| Stevens & Wilkinson of South Carolina, Inc. | ) | Civil Action 05-CP-40-3361     |
|                                             | ) |                                |
| Plaintiff,                                  | ) |                                |
| v.                                          | ) | <b>ORDER ON</b>                |
|                                             | ) | <b>RULE 59(e) MOTION</b>       |
| City of Columbia, South Carolina,           | ) |                                |
|                                             | ) |                                |
| Defendant.                                  | ) |                                |

RICHLAND COUNTY  
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 JEANETTE W. McBRIDE  
 C.C.P. & G.S.

This matter is before the court on the motion of Defendant City of Columbia to alter or amend the prior order of March 23, 2009 granting Plaintiff Stevens & Wilkinson's motion for partial summary judgment. The March 23<sup>rd</sup> order found that the Plaintiff had established that there was no genuine issue of material fact as to whether a contract existed between Stevens & Wilkinson and the City.

I decline to reach the issues raised by the City, for the reasons stated below. First, the City's counteroffer vs. acceptance argument was not raised before me in defense to the Plaintiff's motion for partial summary judgment. As our appellate courts have held, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App.

1990). The City previously offered several defenses to the Plaintiff's motion, but this was not one of them. Thus it is inappropriate for the City to introduce new theories in support of its case in the form of a Rule 59(e) motion.

The City also requests that I find any obligation it possessed under the contract with Stevens & Wilkinson was satisfied by the City's December 29, 2003 payment to Stevens & Wilkinson. My previous order, however, was constrained to the existence of the contract. "The purpose of Rule 59(e), SCRCp, to alter or amend the judgment is to request the trial judge to

‘reconsider matters properly encompassed in a decision on the merits.’” *Arnold v. State*, 309 S.C. 157, 172-173, 420 S.E.2d 834, 842 (1992). My previous order did not rule on the question of the breach of contract or any damages related thereto. Thus it would be inappropriate for me to make extend a ruling in this case.

Finally, even if I were to rule upon the City’s counteroffer vs. acceptance theory, I find that the City’s position does not give rise to a genuine issue of material fact. The July 30, 2003 City Council minutes represent that financing for \$650,000 of interim architectural fees was “approved”. The minutes did not represent any instruction of a counterproposal. Furthermore, the City has represented to this court that it “agreed” to pay the \$650,000. The lack of reference within the City Council minutes to the additional \$75,000 per week beyond the anticipated bond closing date does not clearly preclude an acceptance of the original offer. To the contrary, the fact that the City continued to work with Stevens & Wilkinson beyond the bond closing date and paid Stevens & Wilkinson more than the \$650,000 further supports their acceptance of the initial offer. “Assent to an offer need not be expressed to constitute a contract, and may be inferred from acts and conduct.” *Florence City-County Airport Com’n v. Air Terminal Parking Co.*, 283 S.C. 337, 341, 322 S.E.2d 471, 473 (Ct. App. 1984).

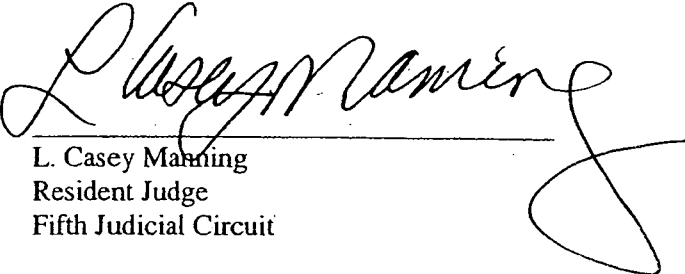
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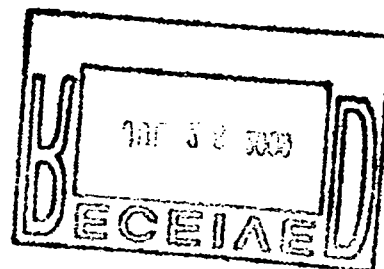
As a further matter, it appears that the phrase “albeit on seemingly modified terms” contained within my previous order has given rise to this motion. It was not my intent to cloud the issue of the terms contained within the initial offer and acceptance. Rather, the phrase was a reference to the outstanding questions of whether the terms may have been modified by the parties after the contract was formed—questions addressed within the very same paragraph. In view of the confusion surrounding this phrase, I amend the previous order so as to delete this phrase.

Beyond the minor correction referenced above, the court declines to alter or amend its  
March 23, 2009 order.

IT IS SO ORDERED.

23  
July 23, 2009  
Columbia, South Carolina

  
\_\_\_\_\_  
L. Casey Manning  
Resident Judge  
Fifth Judicial Circuit



STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Stevens & Wilkinson of )  
South Carolina, Inc., )

Case No.: 05-CP-40-3861

Plaintiff, )

**AMENDED COMPLAINT**

vs. )

City of Columbia, South Carolina, )

Defendant. )

The Plaintiff, complaining of the Defendant named above, would respectfully show that:

1. The Plaintiff, Stevens & Wilkinson of South Carolina, Inc., is a corporation organized and existing under the laws of the State of South Carolina and doing business in Columbia, South Carolina.
2. The Defendant, the City of Columbia, South Carolina (hereinafter "the City") is a political subdivision of the State of South Carolina and is amenable to suit for the causes of action alleged herein.

**FACTS COMMON TO ALL CAUSES OF ACTION**

3. On or about January 15, 2001, the City issued a Request for Qualifications for a team to assist in developing a 300-room, first-class, full service convention center Hotel (hereinafter "the Hotel").
4. The City took such action after a commissioned market study determined that the Hotel, if publicly-financed, would be economically feasible.

5. The market study additionally concluded that the Hotel would, within two years of operation, generate cash flow more than sufficient to service the debt resulting from its construction.
6. In December of 2002, the City selected a development team (hereinafter "the Team") that would be responsible for the construction of the Hotel. The Plaintiff was the architectural and design member of the Team.
7. From December 2002 through February 2004, the Team established regular weekly development team meetings in which staff personnel of the City regularly participated. Most of these meetings were held at the Plaintiff's Columbia office.
8. During the course of these regular project meetings the City encouraged the Team, including the Plaintiff, to continue to spend considerable time and money in the refinement of the project design documents and other plans.
9. In April 2003, the Team, including the Plaintiff, executed a Memorandum of Understanding (MOU) with the City under which the Team agreed to design, construct and finance the convention center Hotel pursuant to the terms therein. A copy of the MOU is attached to the original complaint in this action, and incorporated herein by reference.
10. The MOU was a valid, binding contract between the Team (including the Plaintiff), and the City.
11. At all times, the Plaintiff acted in good faith under the MOU, and believed the City was acting in good faith as well.

12. The Plaintiff, acting pursuant to the MOU, incurred substantial costs and performed extensive work for the Hotel project.

13. Columbia Convention Center Hotel Corporation (hereinafter "CCCHC") is a nonprofit corporation which was formed by the City to hold title to the Hotel for the benefit of the City.

14. After its formation, CCCHC at all times acted as an agent of the City.

15. On February 11, 2004, CCCHC voted to approve the financing structure and development budget for the Hotel as presented by the Team, including the Plaintiff.

16. On February 25, 2004, the City authorized the Team, including the Plaintiff, to proceed with finalizing documentation, closing, fundraising and groundbreaking for the Hotel.

17. In March, 2004, in violation of its obligation of good faith and fair dealing under the MOU, the City issued a new Request for Proposal (hereinafter "RFP") for privately-funded delivery of the Hotel.

18. In the RFP process instituted as of March 2004, the City acted in bad faith, and in violation of state procurement laws in favoring one bidder, Windsor/Aughtry Company, Inc. (hereinafter "WAC") in at least the following ways:

- a. In allowing a representative of WAC to sit in on the Team's presentation and have the benefit of The Team's and Plaintiff's work product;

- b. In allowing and encouraging WAC to modify its original proposal under the RFP, which had been for a limited-service hotel, to a full-service hotel; and
- c. Deliberately withholding Team correspondence from the selection committee while providing post due date correspondence and materials from WAC.

19. During the course of dealings between the Team and the City, the City obtained a substantial amount of material which was proprietary to the Team, including the Plaintiff, which was work product of the Team and Plaintiff and which was intended to be used only in connection with the Team's and Plaintiff's activities under the MOU.

20. Notwithstanding the proprietary nature of the Team's work product, the City shared it with other parties interested in and competitive to the Team's project.

21. Moreover, despite the City's issuance of the new RFP, no representative of the City ever instructed the Plaintiff to cease working on the project, and

---

Plaintiff continued to work on the project. The City gladly accepted the benefit of the Plaintiff's labor on the project.

22. In early July of 2003, the City met with agents for the Plaintiff and agreed to remit to Plaintiff the sum of approximately \$700,000.00 in return for Plaintiff's past and continued work on the project. In so doing, the City recognized its obligations under the MOU.

23. In December of 2003, the City paid to Plaintiff the sum of approximately \$700,000.00 and partially performed its obligations under the MOU. However, the City failed to pay to Plaintiff the full amount due Plaintiff in violation of the MOU.

24. Alternatively, when the City met with Plaintiff's agents in July of 2004, the City effectively amended the MOU and agreed to pay Plaintiff in full for all work performed on the project.

25. The reasonable value of the services and money provided by the Plaintiff to the Defendant, less the sum already remitted to Plaintiff by the City in December of 2003, is \$1,279,721.00.

**FOR A FIRST CAUSE OF ACTION  
(Breach of Contract)**

26. Each and every preceding paragraph is included by reference as if contained herein.

27. The City refused to compensate the Plaintiff for the above referenced expenditures of time, money and effort made by the Plaintiff in furtherance of the

~~Hotel in accordance with the MOU, and the parties' amended agreement of July~~

2003 (as evidenced by the City's payment of approximately \$700,000.00 in December of 2003).

28. This refusal by the City constituted an unjustifiable failure on the part of the City to perform in accordance with the MOU, and the July, 2003, agreement.

29. The Plaintiff sustained significant monetary damages as a direct and proximate result of the City's actions.

**FOR A SECOND CAUSE OF ACTION  
(Quantum Meruit)**

30. Alternately, the Plaintiff pleads, upon information and belief, that, should an action in contract not lie, the Plaintiff is nonetheless entitled to recovery in Quantum Meruit for the following reasons.

31. As a result of the work and effort described in the preceding paragraphs, the Plaintiff has furnished the Defendant with valuable materials and services, including, but not limited to, plans, designs, renderings, and expert advice. These materials and services were of significant monetary value.

32. The Defendant did not fully compensate the Plaintiff for rendering such materials and services.

33. The Defendant accepted these materials and services, and has made use of them in furtherance of the construction of the Hotel.

34. These materials and services were rendered under circumstances that reasonably notified the Defendant that the Plaintiff expected payment for such materials and services.

---

**~~FOR A THIRD CAUSE OF ACTION~~  
(Breach of Duty of Good Faith and Fair Dealing)**

35. Each and every preceding paragraph is included by reference as if contained herein.

36. By virtue of the MOU between the Team (including the Plaintiff) and the City, each party had an obligation to adhere to the principles of good faith and fair dealing in performance of the contract.

37. The City acted with bad faith in refusing to perform in accordance with the MOU and made misrepresentations to the Plaintiff with regard to the Defendant's ability to perform in accordance with the MOU.

38. The City, acting in bad faith, decided not to proceed with the Hotel project as set forth in the MOU. Upon information and belief, the City's decision was not based on a determination that the project was not feasible.

39. The City's actions described above, particularly those described in paragraphs 17, 18, and 19, violate the provisions set forth in South Carolina Code Sections 11-35-20 and 11-35-30.

**FOR A FOURTH CAUSE OF ACTION  
(Estoppel)**

40. Each and every preceding paragraph is included by reference as if contained herein.

41. The City made an unambiguous promise to pay Plaintiff for all work performed on the project.

42. This promise is set forth in the MOU, at paragraph VI.3.

~~43. Plaintiff reasonably and justifiably relied on this promise by expending~~  
time, money and resources in preparing plans and designs for the  
aforementioned hotel project.

44. Plaintiff's reliance was expected by and foreseeable to the City.

45. At the time it performed this work, Plaintiff lacked the knowledge that City was not going to pay them for the work performed.

46. As a result of the above, Plaintiff suffered financial loss. Not only did Plaintiff incur the loss of the value of the money and other resources it directly

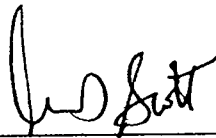
invested in reliance on the City's promise, it invested substantial time and effort in this project that could have been invested in other profitable work.

47. Plaintiff prejudicially changed its position in reliance on the City's promise, as set forth in the preceding paragraph. Plaintiff passed up the opportunity to earn money on other projects while working on the hotel project.

48. Based on the above, the City is estopped from withholding payment to plaintiff for the reasonable value of the work performed.

WHEREFORE, the Plaintiff prays for judgment against the Defendant in a sum sufficient to compensate it for its actual damages, for the costs of this action, for pre-judgment interest. Plaintiff prays for such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFF

November 14, 2005  
Columbia, South Carolina

|                                   |                                   |
|-----------------------------------|-----------------------------------|
| STATE OF SOUTH CAROLINA           | ) IN THE COURT OF COMMON PLEAS    |
|                                   | )                                 |
| COUNTY OF RICHLAND                | ) Civil Action No.: 05-CP-40-3361 |
| Stevens & Wilkinson of            | )                                 |
| South Carolina, Inc.,             | )                                 |
|                                   | ) <b>PLAINTIFF STEVENS &amp;</b>  |
|                                   | ) <b>WILKINSON'S MOTION FOR</b>   |
|                                   | ) <b>PARTIAL SUMMARY JUDGMENT</b> |
|                                   | )                                 |
| Plaintiffs,                       | )                                 |
| vs.                               | )                                 |
|                                   | )                                 |
| City of Columbia, South Carolina, | )                                 |
|                                   | )                                 |
| Defendant.                        | )                                 |
|                                   | )                                 |

RICHLAND COUNTY  
 FILED  
 2009 FEB 20 PM 2:10  
 JEANETTE W. McBRIDE  
 C.C.P. & G.S.

Plaintiff Stevens & Wilkinson of South Carolina, Inc. ("S&W"), by and through its undersigned attorneys and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, hereby submits this motion for partial summary judgment.

Plaintiff requests that the Court, as a matter of law, find the following:

1. The Memorandum of Understanding entered between Stevens & Wilkinson and the City of Columbia constituted a binding and enforceable contract;
2. The City of Columbia never determined that its performance as detailed within the Memorandum of Understanding was not feasible; and
3. Stevens & Wilkinson and the City of Columbia created a contractual agreement—separate and apart from the Memorandum of Understanding—in July of 2003 for the performance of and payment for architectural and design services.

Plaintiff Stevens & Wilkinson bases its motion upon the pleadings, discovery documentation and other material revealed in this case. Plaintiff avers that no genuine issue material of fact exists as to these three points. As a result, the Court should grant Plaintiff's motion for partial summary judgment.

Plaintiff reserves the right to submit a memorandum of law in support of its motion.

Respectfully submitted,



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ATTORNEYS FOR THE PLAINTIFF  
STEVENS & WILKINSON

Columbia, South Carolina  
February 20, 2009.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Gary Realty Company, Inc., and )  
Garfield Traub Development, LLC, )

All Captions Consolidated Under  
Docket No. 2007-CP-40-1252

Plaintiffs, )

vs. )

City of Columbia, South Carolina, )

Defendant. )

Stevens & Wilkinson of South )  
Carolina, Inc., )

Plaintiff, )

vs. )

City of Columbia, South Carolina, )

Defendant. )

Gary Realty Company, Inc. and )  
Garfield Traub Development, LLC, )

Plaintiff, )

vs. )

Paul C. "Bo" Aughtry, III, Windsor/Aughtry )  
Co., Inc., Vista Hotel Partners, LLC, and )  
Hilton Hotels Corporation, )

Defendants. )

Stevens & Wilkinson of South )  
Carolina, Inc., )

Plaintiff, )

vs. )

MEMORANDUM IN OPPOSITION TO  
PLAINTIFF STEVENS &  
WILKINSON'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

RICHLAND COUNTY  
FILED  
2009 MAR 9 PM 4:47  
JEANETTE W. MERRIDE  
C.C.P. & J.C.

Paul C. "Bo" Aughtry, III, Windsor/Aughtry )  
Co., Inc., and Vista Hotel Partners, LLC, )

Defendants. )

Turner Construction Company, )

Plaintiff, )

vs. )

City of Columbia, South Carolina, )

Defendant. )

Defendant City of Columbia ("the City") respectfully submits this Memorandum in Opposition to the Motion for Partial Summary Judgment filed by Plaintiff Stevens & Wilkinson of South Carolina, Inc. ("Stevens & Wilkinson").

#### SUMMARY OF ARGUMENT

This Court should deny Stevens & Wilkinson's motion for partial summary judgment because there are significant questions of fact and law that cannot be resolved by summary judgment.

1. The publicly funded Hotel Project was not feasible.

A. The City's expert witnesses reviewed the record, and their opinion is that the publicly

funded hotel project was not financially or economically feasible for the City.

B. The debt service coverage ratio of the financing plans proposed by the Project Team never met the City's recommended level of 1.7 or the minimum level of 1.5.

C. The Project Team expected the City to commit a total City Standby Support Payment of up to \$90 million if the hotel revenues were insufficient to cover debt service.

2. This City and Stevens & Wilkinson did not enter into an agreement in July 2003 separate and

apart from the Memorandum of Understanding for the payment of any and all of Stevens & Wilkinson's fees over the course of the Hotel Project.

- A. The City Council voted to pay the Project Team \$650,000 in interim architectural design fees on July 30, 2003. On December 29, 2003, the City issued a check to Stevens & Wilkinson for \$697,084.79, more than meeting their agreed to obligation.
- B. Any payment to the Project Team of interim architectural design fees was an advance on funds that would have been paid to the Project Team had the bonds closed in accordance with the Memorandum of Understanding.
- C. When the City agreed to pay the interim architectural design fees, this agreement was with Turner Construction Company and not with Stevens & Wilkinson.

For these reasons, the City respectfully requests that this Court deny Stevens & Wilkinson's motion for partial summary judgment.

#### **STANDARD FOR SUMMARY JUDGMENT**

Summary judgment is a drastic remedy and should only be cautiously granted in order not to deprive a litigant of a trial on disputed issues. Conner v. City of Forest Acres, 348 S.C. 454, 462, 560 S.E.2d 606, 610 (2002). ~~In Hancock v. Mid-South Mgt. Co., 2008 WL 5545318, Op. Num. 26587~~ (Jan. 26, 2009), the South Carolina Supreme Court held that "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." The City, therefore, must present a mere scintilla of evidence in its defense in order to withstand Stevens & Wilkinson's motion for partial summary judgment. In fact, the City can present significant evidence, well in excess of a mere scintilla, to demonstrate that questions of fact and law exist concerning the

issues raised in Stevens & Wilkinson's motion for partial summary judgment.

### FACTS

In April 2003, the City entered into a Memorandum of Understanding ("MOU") with the Project Team that had been selected to develop a hotel ("the Hotel Project") to support the operations of the Columbia Metropolitan Convention Center. (Memorandum of Understanding, Bates Number C 0035.) The members of the Project Team included, among others, Stevens & Wilkinson as the architects; Garfield Traub, Gary Realty, and Edens & Avant as the developers; and Citigroup as the bond underwriter. The MOU contemplated issuing approximately \$60 million in hotel revenue bonds to finance the development and construction of the hotel. (Memorandum of Understanding, Section V.4.) Over the next months, the Project Team worked to design a hotel within a budget for which an acceptable financing structure could be developed.

In order to keep the Hotel Project moving and at the behest of the Project Team, the City Council voted on July 30, 2003, to approve a limited, one-time payment of interim architectural fees to the Project Team. The minutes from that City Council meeting state:

ACTION: APPROVED \$650,000 for Interim architectural design services for a period of 90 days prior to Bond Closing. ~~Mr. Papadea and Mr. Osborne did not vote~~ due to a conflict of interest.

(Minutes of Columbia City Council meeting, July 30, 2003, Bates Number 2-719-720.) In December of 2003, the Project Team sought to collect the interim architectural design fee that had been approved in July. The City issued a check to Stevens & Wilkinson for the full amount on December 29, 2003. (Check, 1-937.)

In March 2004, the City decided to pursue the development of a privately funded hotel

instead of the publicly funded option. (Minutes of City Council Meeting, March 17, 2004, no Bates number.) On April 2, 2004, the City issued a second Request for Proposals. (Request for Proposals, April 2, 2004, Bates number 1-501-510.) The City ultimately selected Windsor/Aughtry as the private developer of the Hilton Hotel.

### **ARGUMENT**

#### **1. The Publicly Funded Hotel Project Was Not Feasible.**

Pursuant to the terms of the MOU, the City had sole discretion to determine whether the publicly funded Hotel Project was feasible. (Memorandum of Understanding, Section I.1.) The City engaged two experts, Jeff Sachs and Charles Phillips, to examine the feasibility of the Hotel Project. Both expert witnesses testified that, in their expert opinions, the Hotel Project was not economically or financially feasible. (Deposition of Jeff Sachs, 14:5-16; Deposition of Charles Phillips, 36:16-40:13.)

In his deposition, Jeff Sachs defined a feasible project as one where “the expected returns, while accounting for risk, meet or exceed the investor’s objectives.” (Deposition of Jeff Sachs 46:7-8.) In this case, the City’s objective was “to build the hotel and have the cash flows of the hotel provide for the costs of building the hotel” so that the City would not have to make any outlay of money. (Deposition of Jeff Sachs 46:14-20.)

One reason that the Hotel Project was not feasible was that the debt service coverage ratio never reached the level that was required by the City. The City required that any financing plan produced by the Project Team obtain a recommended debt service coverage ratio of 1.7 and a minimum of 1.5. (Deposition of Jeff Sachs, 26:4-21.) This meant that the City wanted to see a plan

where the projected hotel revenues would equal 170% of the total debt service every year. The project team never developed a financing plan that consistently maintained debt service coverage ratios of 1.7 or even the minimum level of 1.5. (Deposition of Jeff Sachs, 53:2-56:23.) As explained by Charles Phillips, "The city never felt like that they had reached a level of comfort with the risk that they would be entering into by borrowing this money and building and owning the hotel." (Deposition of Charles Phillips, 38:7-10.) The inability of the financing plans to provide an acceptable debt service coverage ratio rendered the publicly funded Hotel Project financially and economically not feasible.

A second reason the Hotel Project was not feasible was the ever-increasing amount of money that the City would be required to pay to service the bonded indebtedness if the hotel revenues failed to cover the debt payments. By March 2004, one of the latest iterations of the proposed financing plan indicated that the total value of bonds that would have needed to be issued to finance the development and construction of the hotel was over \$70 million. (Citigroup Sources and Uses, dated March 2, 2004, Bates Number CG\_01885-01899.) Over the 30 year life of those bonds, the total amount of principle and interest that would need to be repaid to the bond buyers would have been in excess of \$140,000,000. (Id.) Although the City anticipated obtaining bond insurance, if the hotel revenues did not cover the debt service, the City was still going to be expected to pay 50-70% of any debt service shortfall. (Ambac commitment letter, dated February 17, 2004, ¶ 16, Bates number GT 1009-1011.) Over the life of the bonds, the City faced paying up to almost \$90 million in City Standby Support Payments. (Citigroup Sources and Uses, dated March 2, 2004, Bates Number CG\_01885-01899.) The publicly funded Hotel Project posed an unacceptable level of risk to the City and its taxpayers. The Hotel Project, therefore, was not economically or financially feasible.

**2. Payment of Interim Architectural Design Fees Did Not Create a Contractual Agreement Between Stevens & Wilkinson Separate and Apart from the MOU**

The MOU is the only written document controlling the relationship between the City and Stevens & Wilkinson. The City's approval in July 2003 of the payment of interim architectural design fees directly to Stevens & Wilkinson did not create a contract, separate and apart from the MOU. The City Council admits it agreed to pay \$650,000 in interim architectural design fees. However, this was the only payment approved by the City Council on July 30, 2003. The minutes from the July 30, 2003, City Council meeting state, "APPROVED \$650,000 for Interim architectural design services for a period of 90 days prior to Bond Closing." The City in fact fully complied with this obligation and paid \$697,084.79 directly to Stevens & Wilkinson on December 29, 2003.

Stevens & Wilkinson cannot assert that the City's agreement to pay the interim architectural design fees created another agreement separate and apart from the MOU because this payment (1) was merely an advance on payments that were anticipated following the bond closing and (2) was made pursuant to an agreement with Turner Construction, if anyone.

The Project Team, including Stevens & Wilkinson, understood that the payment was simply  
~~an advance on what the Project Team would be paid once the bonds closed.~~ On December 5, 2003,

Robert Lyles stated in a memo to Shawn Epps, that "the A&E team is requesting this advance in the spirit of the Council's actions last July." (Memo from Bobby Lyles to Shawn Epps, December 5, 2003, Bates number 1-929.) On December 17, 2003, Robert Lyles stated in a letter to Mark Alles of Turner Construction Company that in order for the City to agree to advance funds to the design team that Turner Construction Company would have to "agree the City of Columbia will be reimbursed directly at bond closing for the advanced funds." (Letter from Robert T. Lyles to Mark

Alles, December 17, 2003, Bates number 1-942.) On December 18, 2003, Mark Alles of Turner Construction Company stated in a letter to John Lumpkin, "We approve the direct payment of \$705,000 to Stevens & Wilkinson with the following understanding: (1) We would reimburse the City after the bonds close." (Letter from Mark Alles to John Lumpkin, dated December 18, 2003, Bates number 1-940.) These statements demonstrate that the Project Team, including Stevens & Wilkinson, knew that any payment of interim architectural design fees was merely an advance on funds that were anticipated to be collected at the bond closing and not another agreement separate and apart from the MOU.

Any agreement the City had with the Project Team concerning the payment of the interim architectural fees would have been directly with Turner Construction Company and not with Stevens & Wilkinson. In his December 17, 2003 letter to Mark Alles of Turner Construction Company, Robert Lyes stated, "Since Stevens & Wilkinson and the design team's contract is with Turner Construction, the City needs for Turner to agree . . . that it is permissible that the advanced funds be paid directly to Stevens & Wilkinson for distribution to the design team instead of through Turner, to Stevens & Wilkinson, to the design team." (Letter from Robert Lyes to Mark Alles, dated December 17, 2003, 1-942.) At his deposition, Robert Lyes testified that Stevens & Wilkinson had

no contract with the City concerning the payment of the \$697,084.79.

Q. And you're saying in your letter to Mr. Mark Alles at Turner, you're saying since Stevens & Wilkinson and the design team's contract is with Turner Construction, and by that you meant that you did not have a direct contract with the City of Columbia, right?

MR. NEWMAN: Object to the form.

THE WITNESS: I did not have a direct contract; my contract was with Turner Construction.

BY MR. PAUL: All right. And it was Turner that had a contract with the

nonprofit corporation?

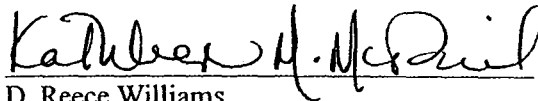
A: Right, or the city, whichever.

(Deposition of Robert T. Lyles, 146: 7-19.)

Based on the foregoing, there is sufficient evidence to create a question of law and fact as to whether the City entered into an agreement with Stevens & Wilkinson in July 2003 that was separate and apart from the MOU.

**CONCLUSION**

Based upon the foregoing, significant issues of law and fact exist, and Defendant City of Columbia asks the Court to deny Plaintiff Stevens & Wilkinson's Motion for Partial Summary Judgment.



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**ATTORNEYS FOR DEFENDANT  
CITY OF COLUMBIA**

March 9, 2009

Columbia, South Carolina

**COLUMBIA**

**MOU**

**FINAL COPY**

**4/17/03**

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C 0035

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") by and between the CITY OF COLUMBIA ("City") and the PROJECT TEAM ("Project Team") defined below, for the development of a 300-room convention center hotel and ancillary uses (hereafter the "Hotel") in response to the City's solicitation for development teams to construct and operate the Hotel.

WHEREAS, Project Team intends to construct a three hundred (300) guestroom, full service Hilton Hotel with approximately twelve thousand (12,000) square feet of meeting space in downtown Columbia adjacent to the new Midlands Regional Convention Center (the "MRCC") to satisfy the needs of conventioners and visitors to Columbia; and

WHEREAS, the City has determined that the Hotel is required to maximize the utilization and the economic benefits of the MRCC; and

WHEREAS, the City's support of the development of the Hotel helps to achieve this goal and understands a public-private partnership will be required to create a financially viable Hotel; and

WHEREAS, it was determined that it would be in the best interest of the City for a Non-Profit Corporation ("NPC") of the City to be the owner of the Hotel; and

WHEREAS, the Project Team submitted a proposal to finance, develop and operate the Hotel in response to the City's solicitation; and

WHEREAS, the City and the Project Team desire to document the understandings reached with respect to the financing, development and operation of the Hotel.

NOW THEREFORE, in consideration of the foregoing and the mutual promises contained herein, and other valuable consideration the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

### I. GENERAL CONDITIONS

1. This MOU reflects the intent to proceed in good faith to execute definitive written agreements with respect to the business terms and conditions herein contained. Notwithstanding anything herein to the contrary, if the City determines that it is not feasible to proceed with the Hotel project it shall have no liability under this MOU.
2. Unless superseded by an amendment to this MOU or the final Development Management Agreement, this MOU identifies the understanding of the parties.

### II. PURPOSE

This MOU is entered into with the understanding by all parties that the primary reason for the City's participation in the Hotel is to maximize the impact the MRCC has on the community by developing an adjacent headquarters hotel. Accordingly, it is understood that the MRCC impact is of the highest priority.

### III. PARTIES TO THIS MEMORANDUM OF UNDERSTANDING

1. City - City of Columbia ("City");
2. Project Team:
  - 2.1. Developer - Edens & Avant Real Estate Services LLC; Garfield Traub Development; and Gary Realty, Inc.
  - 2.2. Design/Builder - Turner Construction Company in association with Construction Dynamics and DESA, Inc.. The A/E part of their Team is - Thompson, Ventulett, Stainback & Associates, Inc. Architects; Stevens & Wilkinson; and ENVIRO AgScience.
  - 2.3. Operator - Hilton Corporation.
  - 2.4. Underwriter - Salomon Smith Barney, Inc.

### IV. Hotel Description

1. Hotel Site - The anticipated site is located near the new MRCC and is approximately 60,000 square feet.
2. Parking Facility Site - The anticipated site is located near new MRCC and is approximately 80,000 square feet.
3. Brand - The Hotel is to be branded as a "Hilton" hotel and named by the NPC in accordance with the Operator's brand requirements.
4. Hotel Program - The Hotel is to include 300 rentable guestrooms, including ten 10 suites. The Hotel is to also include approximately 12,000 square feet of ballroom and breakout meeting space. In addition, the Hotel is to include a casual restaurant and lobby bar that collectively is to provide table seating adequate to serve Hotel guests as well as those utilizing meeting space in the Hotel.
5. Parking - The Hotel is to have access to adequate parking spaces in a larger public parking garage adjacent to the Hotel for Hotel patrons and guests.
6. Project Quality - The construction quality and level of amenities is to be similar in all material respects to the Sheraton Overland Park Hotel and/or The Radisson Convention Center Hotel in Myrtle Beach.
7. Development Budget - A detailed development budget will be prepared by Developer but shall be subject to the review and approval of the City.

## **V. ROLE OF THE CITY**

1. **Hotel Site Assembly** – The City agrees to acquire the Hotel Site, satisfy any environmental issues, demolish any existing structures, rezone the land for the Hotel (if required) and convey it to the NPC at cost, funded by Hotel Revenue Bond proceeds. The Developer will provide an amount satisfactory to the City in Hotel Revenue Bond proceeds for acquisition of land and site development costs associated with the Hotel.
2. **Parking Facility** – The City is to develop a nearby Parking Facility of approximately 800 spaces. 300 parking spaces will be made available in the public parking garage for Hotel patrons and guests. The NPC is to work with the City to formulate a joint use agreement related to the Hotel parking spaces during periods of low demand.
3. **Establish NPC** – The City is to establish a NPC to issue bonds to finance the Hotel, own the Hotel developed by the Project Team, and retain the Operator for the operation of the Hotel consistent with the terms and conditions of this MOU. The NPC articles of incorporation, bylaws and Board of Directors are to be established by the City.
4. **NPC Financing** – The NPC is to retain the Underwriter and legal counsel to structure and issue approximately \$60 million in tax-exempt hotel revenue bonds in amounts acceptable to the City ("the Bonds") supported by Hotel revenues and the City Financial Participation. The Bonds will be issued either in one series—"Hotel Bonds" or two series—"Senior Bonds and "Subordinate Bonds" The City shall use its best efforts to approve the issuance of a series of tax-exempt Hotel revenue bonds. The proceeds of the Bonds will be sufficient to (i) pay the development and construction costs of the project, (ii) pay 100% of debt service on the Bonds during the construction period and pay a portion of debt service during the first two operating years, (iii) fund debt service reserve funds for the Bonds, (iv) pay the fees of the Underwriter as described below, and (v) pay other financing costs including the costs of bond and underwriter's counsel, rating agency fees, trustee fees, financial advisory fees, printing costs and costs of the feasibility report. in amounts satisfactory to the City.
5. **City Credit Support** – The City is willing to provide a credit enhancement to support an amount acceptable to the City which would be utilized for any debt service shortfall on the Subordinate Bonds or Hotel Bonds (as the case may be), if project revenues net of expenses are insufficient to provide for the debt service on the Subordinate Bonds or on the Hotel Bonds.

## **VI. ROLE OF THE DEVELOPER**

1. **Development of the Hotel** – The Developer will coordinate design, development, construction and delivery of the Hotel in accordance with the terms of the Development Management Agreement to be finalized between the City or NPC and the Developer.

2. Development Fee - The Developer is to be paid a development fee of 4.75% of the project budget, exclusive of land and any financing related fees, to ensure the coordination and delivery of the Hotel on time and on budget. A preliminary scope of services is presented in Attachment 1. The fee is intended to include all fees and costs associated with personnel, administrative, travel and any other expenses. The Development Fee is to be paid as follows: 33 1/3% upon closing the bond sale; 57 2/3% on a pro rata basis over the construction period based on percentage of completion of the Hotel and the balance of 10% at the issuance of a Certificate of Occupancy for the Hotel.
3. Pre-Development Funding - The Project Team will be responsible for the costs incurred prior to closing the financing. These costs include, but are not limited to, design, testing, bid packages, legal, underwriting, travel, etc. If the Hotel financing fails to close as a result of the City not meeting its obligations outlined in the Development Agreement, or as a result of an unforeseen catastrophic event not caused by any of the Project Team, the City will reimburse the Project Team for actual, documented costs incurred to that point in time up to an amount to be agreed upon. All studies, tests, plans and the like prepared or obtained by the Project Team will be assigned to and become the property of the City.
4. Project Oversight - During the design and construction phases of the Hotel, the Developer shall furnish to the City and the City's consultants all information reasonably requested concerning the designing, planning, construction and development of the Hotel. The Developer is to provide the City with the opportunity for timely review and approval of construction plans for the Hotel. The Developer acknowledges that the City may have its own construction monitor, which could also be the construction monitor for the bondholders, on the Hotel site and that Construction Oversight costs are to be paid from the Hotel budget.
5. Zoning - The City and the Developer will work together on zoning matters including those related to the height of the Hotel building setbacks and design review issues.
6. Commercial Non-Discrimination Policy and Subcontracting Outreach Program - The Developer and Operator agree to fully implement the City's Commercial Non-Discrimination Policy and Subcontracting Outreach Program and to execute any amendments covering matters as reasonably determined by the City as necessary to evidence compliance with the City's policies. In addition, it will be the goal of the Developer to have twenty-five percent (25%) of the work associated with the construction of the Hotel handled by MBE/WBE firms and fifteen percent (15%) of the development and related fees generated by this project paid to the MBE/WBE firms associated with the project.

## VII. ROLE OF THE CONTRACTOR

1. Fee - The Design/Builder is to be paid 8% of Design/Build costs for general conditions and a 5% fee based on the Design/Build costs for the Design/Builder's overhead and profit. The fees are intended to include all fees and costs associated with personnel, administrative, travel and any other expenses. The fee is to be paid

per a schedule to be outlined in the Design/Build Agreement. If the Underwriter does not close the financing, the City will not be responsible for reimbursing for any costs incurred except as provided in Section VI, 3 herein above.

2. **Development Guarantee** – Upon the execution of the Design/Build Agreement, Turner Construction guarantees that the Hotel budget, including all costs related to designing, constructing, finishing and equipping the hotel will not exceed an amount to be agreed upon between the City, the Developer and Turner Construction. At the time of the issuance of any bonds, Turner Construction is to guarantee delivery of the Hotel on a date certain for the budgeted amount. The guarantee is to be supported by a payment and performance bond acceptable to the City and in an amount acceptable to the City that names the City as dual obligee. The guarantee is to also provide the City with liquidated damages on a schedule and in amounts sufficient to equal the interest on any bonds as it becomes due. The guarantee must be acceptable to the bond underwriter and to the bondholders.
3. **Design/Build Cost Savings** – Fifty-percent (50%) of the construction cost savings realized during the construction of the Hotel will accrue to the NPC. Program/budget changes prior to the commencement of construction shall not be considered construction cost savings.

#### **VIII. ROLE OF THE ARCHITECT**

1. **Fee** – The Architect is to be paid a fee of 7.25% by the Design/Builder based on hard construction costs together with the Design/Builder's general expenses and fees. This fee is comprised of a 6% basic services fee and 1.25% for special consultants to be retained by the Architect for the project. The fee is to be paid consistent with the normal A.I.A. contractual provisions in terms of timing and amount of payments. If the Underwriter does not close the financing, the City will not be responsible for reimbursing any costs incurred except as provided in VI, 3 herein above. The fee includes all fees and costs associated with personnel, administrative, travel and any other expenses for the defined scope. The Architect will be reimbursed for any additional services or expenses as requested by the City.
2. **Design Review** – The Architect shall develop and implement a design review process that is to provide the City, neighborhood and professional staff input into the design of the Hotel. All parties pledge to use their best efforts to maintain the integrity of the Hotel and to be conscious of the time and cost of changes made during the review process.

#### **IX. ROLE OF THE UNDERWRITER**

1. **Services Provided** – Underwriter as the NPC's senior managing underwriter is to be responsible for analyzing and structuring the project, development of the financing plan, development of the supporting financial documents, and marketing the bonds.
2. **Fee** – The Underwriter fee, contingent upon a successful transaction closing, is to be either 1.5% of the total par amount of the Bonds for the Senior Bonds and 1.25% of

the total par amount of the Bonds for the Subordinate Bonds or 1.375% of the total par amount of the Hotel Bonds.

## **X. ROLE OF THE OPERATOR**

1. **Operator Contribution** – Subject to the provisions under this Section X, the Operator will contribute \$1.5 million in the form of an interest free, self-amortizing loan whose initial principal balance, after the opening, is to automatically reduce, without payment, by 1/180th per month as long as the QMA (defined below) is in effect. If the QMA is terminated before such loan is fully amortized, Operator shall be repaid the unamortized portion of such loan. The exact amount and terms will be subject to the approval of senior management of the Operator.
2. **Qualified Management Agreement** – The Hotel is to be managed by the Operator under a 15-year Qualified Management Agreement ("QMA") that complies with Operating Guidelines for Management Contracts as set forth in the IRS Revenue Procedure 97-13 and the Internal Revenue Code of 1986, as amended, and as interpreted by the City's or NPC's Bond Counsel, as appropriate. The City has the right to approve the final form of the QMA.
3. **Base Management Fee** – The Operator will be paid a fixed base management fee for the first four years, calculated based on 2.0% during the first year, 2.5% during the second year, 2.5% during the third year and 2.75% during the fourth year, of the projected gross operating revenues of the Hotel, and adjusted annually to reflect changes in a Market RevPar index for the remaining term. The fee structure assumes that the QMA would include a performance test that would allow for the earliest termination date to be at a time to be determined.
4. **Subordinated Base Management Fee** – The Operator will be paid a fixed subordinate management fee for the first three years, calculated based on 1.0% of the projected gross operating revenues of the Hotel, and 1.25% annually thereafter. This fee would be subordinate to either the senior project revenue bonds and the City enhanced project revenue bonds or the Hotel Bonds as applicable..
5. **Centralized Services Costs** – If required by Bond Counsel, the Operator agrees to be paid a fixed amount for centralized services allocation for the first four years, based on the Operator's current formulas and the projected gross operating revenues, and adjusted annually by CPI for the remaining term.
6. **Technical Services Fee** – The Operator is to be paid \$315,000 for technical services related to Hotel development. The fee is intended to include all fees and costs associated with personnel, administrative, travel and miscellaneous expenses. The fee is to be paid pro rata over the design and construction period based on percentage of completion of the Hotel.
7. **Pre-Opening Marketing** – The Operator is to outline its plan for directing the pre-opening marketing activities of the Hotel in an attachment to the QMA, subject to approval by the NPC. Pre-opening costs are estimated to be \$1,500,000.

8. Non-Compete Area – For a period of time, not to exceed the time the Operator manages the Hotel, Operator agrees not to directly or indirectly operate, franchise, brand or manage another full service Hilton Hotel within a five (5) mile radius of the Hotel.
9. Employees – All employees of the Hotel are to be employees of the Operator who shall be solely responsible for complying with all employment laws.
10. City Policies – The Operator agrees that the QMA will include certain requirements by the City relating to policies including but not limited to: Commercial Non-Discrimination Policy and Subcontracting Outreach Program, Equal Employment Opportunity, Drug Policy, etc.
11. Procurement – The Operator is to use reasonable efforts to make all purchases for the best commercial terms available. Any rebate received by the Operator related to a purchase for Hotel is applied to reduce the cost of Operator's purchasing operations and such reduction in cost (or, if any, the purchasing operation's profit) will be allocated to Hotel in the same manner as allocated to other Operator-managed hotels. Payments received from vendors for services rendered by Operator to such vendors, including market research, collection of purchasing data and participation in co-marketing or advertising programs, are not considered rebates and will be retained by Operator.
12. HQ Hotel Room Block Commitment – The Operator is to enter into an agreement with the Convention Center Authority that is to make available 250 of the Hotel's standard rooms and an applicable percentage of the Hotel's suites for a to-be-determined number of event nights each month for city-wide events booking the MRCC for a mutually agreeable number of months in advance. The number of rooms required to be made available can be reduced to 200 at a mutually agreeable point in time. The City is to retain the right to impose a room block rate cap on each type of room tied to the average daily group rate for such type of room, if the City determines it is required to book the event. The Operator can reasonably request release of dates beyond a to-be-agreed-upon date for certain high-impact in-house group events.
13. MRCC Meeting Space Rental and Catering Policy - Subject to availability, Operator agrees to pay normal and customary rental rates for use of MRCC facilities and services and to use MRCC catering services for such functions.
14. Flag Approval – Hilton Corporation will need to formally approve the use of its flag, which approval is expected.

## XI. ATTACHMENTS

1. Preliminary Development Management Scope of Services

SIGNATURES

CITY OF COLUMBIA



Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

EDENS & AVANT REAL ESTATE  
SERVICES, LLC

\_\_\_\_\_  
John H. Lumpkin, Jr. President

GARY REALTY, INC.

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Charles B. Gary, President

STEVENS & WILKINSON

\_\_\_\_\_  
Robert T. Lyles, Chairman

TURNER CONSTRUCTION  
COMPANY

\_\_\_\_\_  
Paul D. Little, Vice President

GARFIELD TRAUB DEVELOPMENT,  
LLC

By Garfield Corporation, Member

\_\_\_\_\_  
Raymond Garfield, Jr., President

THOMPSON, VENTULETT,  
STAINBACK & ASSOCIATES, INC.  
ARCHITECTS

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Roger Neuenchwander, President

ENVIRO AgSCIENCE

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Louis B. Lynn, President

CONSTRUCTION DYNAMICS, INC

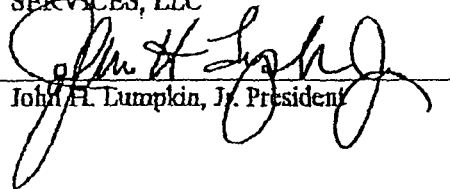
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Nathaniel Spells, Sr. President

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SERVICES, LLC

John H. Lumpkin, Jr. President

GARY REALTY, INC.

Charles B. Gary, President

*Prime Architect*  
STEVENS & WILKINSON *OF*  
*Smith County, Inc.*

Robert T. Lyles, Chairman

GARFIELD TRAUB DEVELOPMENT,  
LLC  
By Garfield Corporation, Member

Raymond Garfield, Jr., President

*Design Architect*  
THOMPSON, VENTULETT,  
STAINBACK & ASSOCIATES, INC.,  
ARCHITECTS

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Robert T. Lyles, Chairman

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Paul D. Little, Vice President

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LLC**

By Garfield Corporation, Member

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Charles B. Gary, President

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**STEVENS & WILKINSON**

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COMPANY**

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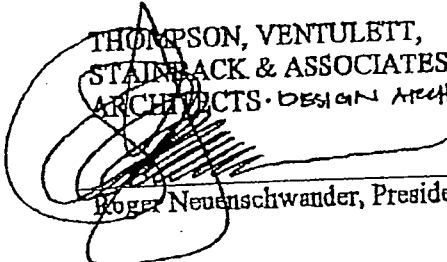
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Charles B. Gary, President

THOMPSON, VENTULETT,  
STAINBACK & ASSOCIATES, INC.  
ARCHITECTS • DESIGN ARCHITECT

  
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Roger Neuenschwander, President

STEVENS & WILKINSON  
PRIME / ARCHITECT of RECORD

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Robert T. Lyles, Chairman

ENVIRO AgSCIENCE

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Louis B. Lynn, President

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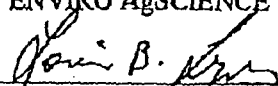
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ENVIRO AgSCIENCE

  
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**STEVENS & WILKINSON**

\_\_\_\_\_  
Robert T. Lyles, Chairman

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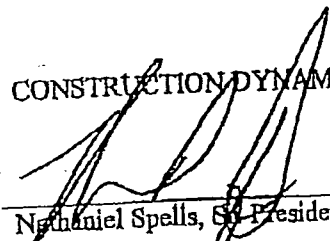
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STAINBACK & ASSOCIATES, INC.**  
ARCHITECTS

\_\_\_\_\_  
Roger Neuenschwander, President

**ENVIRO AgSCIENCE**

\_\_\_\_\_  
Louis B. Lynn, President

**CONSTRUCTION DYNAMICS, INC**

  
\_\_\_\_\_  
Nathaniel Spells, Sr. President

DESA, INC

Diane E. Sumpter  
Diane E. Sumpter, President & CEO

HILTON CORPORATION

Stephen H. Crabill, Vice President,  
Southeast Region

SALOMON SMITH BARNEY, INC.

William M. Corrado, Director

DESA, INC

Diane B. Sumpter, President & CEO

HILTON CORPORATION

Stephen H. Crabill, Vice President,  
Southeast Region

CITIGROUP GLOBAL MARKETS  
INC.

William M. Corrado  
William M. Corrado, Director

DESA, INC

Diane B. Sumpter, President & CEO

HILTON HOTELS CORPORATION

Greg S. Dickens  
Greg S. Dickens, Vice President  
South Central Region

SALOMON SMITH BARNEY, INC.

William M. Corrado, Director

## **ATTACHMENT 1**

### **PRELIMINARY DEVELOPMENT MANAGEMENT SCOPE OF SERVICES**

#### **I. PRE-CONSTRUCTION SERVICES:**

1. Identify and quantify the Owner's goals for the Project so that these goals can be communicated clearly to the entire Project team.
2. Identify for the Owner a list of required consultants and other professionals required to develop the Project that have not already been envisioned.
3. Develop an initial Project development schedule describing the steps and duration of the major tasks required to develop the Project.
4. Identify other parameters, such as code, zoning, land use or other such restrictions, which have a potential impact of the design development or construction of the Project.
5. Work with architect and operator to refine the current Project program and master plan.
6. Review and refine the preliminary Project budget outlining the expected costs to develop the Project.
7. Develop a bid packaging plan.

#### **II. DESIGN COMPLETION PHASE (AFTER FINANCING PLAN APPROVAL):**

1. Manage the design and development team throughout the entire documentation process to ensure adherence to the approved program, budget and schedule.
2. Develop the organizational structure of the development team, establish responsibilities and line of authority and establish communication procedures to be used throughout the development process.
3. Provide periodic review of design documents for completeness, feasibility, constructability and appropriateness of building systems and materials.
4. Provide periodic budget checks throughout the design process and propose and review value engineering alternatives required to maintain Project budget.
5. Implement any design changes required to maintain the Project budget.
6. Identify and coordinate required site studies, such as soil and environmental reports, necessary to design and obtain construction permits for the Project.

7. Assist the Owner, architect and/or general contractor in the review of the Project with code officials and submission of the Project to obtain required building permits.
8. Work with the architect to prepare bid packages.
9. Review contractor submittals and make recommendations.
10. Assist the City with negotiating the contractor contracts.
11. Develop and manage the entire accounting and funding process to include receipt and review of all Project related invoices and payment applications and assembly of such documents into a monthly draw package. Submit this package to the City with recommendation for payment and manage and/or monitor payment by the City.
12. Establish and monitor the FF&B procurement process for adherence to the approved Project budget and schedule.
13. Maintain Project records and Project communication procedures throughout the development process.

### **III. CONSTRUCTION PHASE:**

1. Provide on-site representation throughout the entire construction process as the City's representative.
  2. Monitor the development and maintenance of the construction schedule by the general contractor(s).
  3. Conduct regular on-site meetings with the general contractor(s), architect, operator and other appropriate development team members to coordinate and maintain the construction process.
  4. Review and coordinate all requests for information from the general contractor(s) for timely response by the architect. Review and monitor all supplemental instructions and directives for potential impact on the Project budget and schedule.
- 
5. Review all invoices and applications for payment from the general contractor(s) and design team and include all approved requests in the monthly draw package to be submitted to the City for payment.
  6. Provide a monthly report to the City that summarizes the status of the Project cost and schedule.
  7. Review change proposals submitted by the general contractor(s) for appropriateness and accuracy and recommend acceptance and/or payment of such changes to the City.
  8. Monitor the submission of shop drawings and product samples by the general contractor(s) and response and review by the architect for timeliness and appropriateness.

9. Monitor the procurement, warehousing, delivery and installation of all FF&E with the purchasing agent and associated vendors and contractors to ensure timeliness.
10. Develop with the design team and general contractor the construction punch lists for all areas of the Project. Monitor implementation and completion of all punch list items.
11. Assist the general contractor(s) with acquisition of all government approvals required to receive a certificate of occupancy.
12. Maintain all Project records throughout the construction process.

#### IV. POST-CONSTRUCTION PHASE:

1. Assist the general contractor(s) and operator in conducting all move-in operations, system start-ups and other transitional requirements.
2. Manage the closeout of the construction contract, punch list completion and receipt and documentation of all final lien waivers.
3. Close out the Project accounting and provide the final status of the Project budget.
4. Obtain and turnover to operations and/or the Owner all product and warranty information pertaining to the Project.

CITY OF COLUMBIA  
CITY COUNCIL WORK SESSION ACTION REPORT  
July 30, 2003  
9:00 AM - City Council Chambers  
3<sup>rd</sup> Floor City Hall - 1737 Main Street



CITY COUNCIL DISCUSSION/ ACTION

- A. \*\*Comprehensive Land Use Agreement between The University Neighborhood Organization and The University of South Carolina

ACTION: Representatives of the University Neighborhood Association, the University of South Carolina and the National Advocacy Center discussed the impact the proposed agreement and the Inn could have on the community as a whole.

- B. \*\*The Greater Columbia Hotel & Motel Association – Mr. Tom Sponseller, President/CEO

ACTION: Representatives of the hospitality industry presented statistical data supporting their opposition to the University being involved with the development of a hotel.

- C. Columbia Action Council Budget Request – Mr. Allison Baker, Director of Parks & Recreation

ACTION: APPROVED staff recommendations to reduce the Columbia Action Council's budget and AUTHORIZED staff to determine a funding source for the additional \$30,000.00 requested to cover three (3) events during fiscal year 2003/2004.

- D. Proposal for Collecting and Remitting Hospitality Tax Funding – Ms. Cathy Alexander, Finance Director

ACTION: AUTHORIZED staff to continue collecting the Hospitality Tax without offering taxpayer discounts and asked staff to review other taxes and how various jurisdictions handle taxpayer discounts while considering administrative costs. A report should be given to Council within thirty- (30) days.

- E. Underwriter Recommendations – Mr. Steve Gantt, ACM for Development Services

ACTION: APPROVED staff recommendations.

- F. Central Midlands Regional Transit Authority Update – Ms. Dana Turner, Administrative Advisor

ACTION: Ms. Dana Turner, Administrative Advisor, updated the members of Council on the RTA.

ORDINANCE – SECOND READING

- G. Ordinance No.: 2003-030 – Granting encroachment to The Woman's Club for placement of a plaque near their former clubhouse at 1703 Blossom Street – First reading approval July 23, 2003

ACTION: APPROVED on second reading.

ORDINANCE – FIRST READING

- H. Ordinance No.: 2003-067 - Authorizing property exchange between the City of Columbia and South Carolina Department of Transportation

ACTION: APPROVED on first reading.

\*\* Amendment to the Agenda

WS AR 07/30/2003 Page 1

### APPOINTMENT

HI. \*\*Arts Task Force

ACTION: APPROVED the appointment of Ms. Stacy Calvert to the Arts Task Force.

Council voted to go into Executive Session at 12:02 p.m. to discuss Items I, through K.

### EXECUTIVE SESSION DISCUSSION

I. Discussion of the evaluation of employees

ACTION: This item was held over, no action was taken.

J. \*\*Discussion of negotiations incident to the proposed sale of property

ACTION: This item was discussed in Executive Session, no action was taken.

K. Discussion of negotiations incident to proposed contractual arrangements

- AquaGrille

ACTION: This item was held over, no action was taken.

- Mr. Charles Williams, Consultant

ACTION: This item was held over, no action was taken.

- Annexation Coordinator

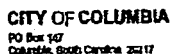
ACTION: This item was held over, no action was taken.

- Convention Center Hotel

- Mayor Coble adjourned the Executive Session discussion at 1:54 p.m. to reconvene the Work Session.

ACTION: APPROVED \$650,000 for Interim architectural design services for a period of 90 days prior to Bond Closing. Mr. Papadea and Mr. Osborne did not vote due to a conflict of interest.

Mayor Coble adjourned the meeting at 1:55 p.m.



| VENDOR ID | VENDOR NAME           | CHECK DATE | CHECK NO. |
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| V003755   | STEVENS AND WILKINSON | 12/29/03   | 00011636  |

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PO Box 147  
Columbia, South Carolina 29211

WACHOVIA BANK OF SOUTH CAROLINA, N.A.  
COLUMBIA, S.C.

CHECK NO. 00011636

67-77  
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DATE: 12/29/03

AP ACCOUNT

**PAY EXACTLY**

\$\*\*\$6975084.79

PAY - SIX Hundred NINETY SEVEN Thousand EIGHTY FOUR Dollars and SEVENTY NINE Cents. This check is payable to the order of

THIS CHECK WILL NOT BE PAID IF PRESENTED TO THE TREASURER AFTER  
THE EXPIRATION OF NINETY (90) DAYS FROM DATE HEREOF.

TO THE  
ORDER  
OF:

STEVENS AND WILKINSON  
POST OFFICE DRAWER 7  
COLUMBIA, SC 29202

EXPIRATION OF NINETY (90) DAYS FROM DATE HEREOF.

*Ernest Alexander  
Marsh Sullivan*

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**CITY OF COLUMBIA  
CITY COUNCIL WORK SESSION ACTION REPORT  
March 17, 2004  
9:00 AM - City Council Chambers  
3<sup>rd</sup> Floor City Hall - 1737 Main Street**



**REVIEW ZONING PUBLIC HEARING AGENDA**

**\*\*There was a consensus of Council to amend the Work Session agenda to include the discussion of the Disparity Study, City Center Master Plan Request for Qualifications and the Convention Center Hotel Request for Proposals:**

**PRESENTATIONS**

A. Greening the Arts Festival 2004 – Ms. Shirley Fields-Martin, Executive Director  
**ACTION:** Ms. Shirley Fields Martin presented the Greening the Arts Festival to the members of City Council. Greening the Arts Festival will be held from Sunday, May 23, 2004 until Sunday, May 30, 2004 in the City of Columbia.

B. Rosewood Community Parks Master Plan – Mr. Bob Amundson, Rosewood Community Council President and Mr. Kenneth Simmons, Kenneth B. Simmons & Associates  
**ACTION:** Mr. Bob Amundson, Rosewood Community Council President and Mr. Kenneth Simmons, Kenneth B. Simmons & Associates presented the Rosewood Community Parks Master Plan as it relates to Valencia, Rosewood, Tyler and Lester Bates Parks.

Council voted unanimously to endorse the Parks Master Plan subject to the appropriation of funding.

**COUNCIL DISCUSSION / ACTION**

B1. **\*\*Disparity Study**  
**ACTION:** Council voted unanimously to endorse and adopt the Proposed Critical Path for MBE / WBE Policy Development for the City of Columbia along with the proposed implementation schedule and budget. The City Manager was authorized to implement the plan and budget as outlined.

B2. **\*\*Greater Columbia Community Relations Council Request for Funding – Mr. Preston Winkler, Executive Director**  
**ACTION:** Council voted unanimously to allocate Community Promotions Funding in the amount of \$60,783.25 to cover a budgetary shortfall for fiscal year 2003/2004.

The request to add the Greater Columbia Community Relations Council to the City of Columbia's General Fund Budget will be discussed at a later date.

### COUNCIL DISCUSSION / ACTION

B3. \*\*City Center Master Plan Request for Qualifications

**ACTION:** Staff was directed to proceed with a Request for Qualifications for the City Center Master Plan.

- Mayor Coble adjourned the Work Session at 10:00 a.m. to convene the Zoning Public Hearing.
- Mayor Coble reconvened the Work Session at 11:33 p.m.

B4. \*\*Convention Center Hotel Request for Proposals

**ACTION:** Staff was directed to draft a Request for Proposals for a full service Convention Center Hotel.

### APPOINTMENTS

C. Design Development Review Commission

**ACTION:** APPROVED the re-appointment of Mr. James Byrum, Ms. Gardenia Fair, Mr. James Mancini and Ms. Nancy McCormick for a three-year term to expire in April 2007.

Council voted unanimously to go into Executive Session at 11:37 a.m. for the discussion of Items D. through F. as amended.

### EXECUTIVE SESSION DISCUSSION

- D. Receipt of legal advice, which relates to a matter covered by attorney-client privilege
- E. \*\*Discussion of negotiations incident to the proposed sale of property
- F. \*\*Receipt of legal advice which relates to a pending, threatened or potential claim

**ACTION:** These items were discussed in Executive Session no action was taken.

- Mayor Coble adjourned the Work Session at 12:50 p.m.
-

# **Request for Proposals**



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## **Convention Center Hotel**

**CITY OF COLUMBIA, SOUTH CAROLINA  
REQUEST FOR PROPOSALS  
CONVENTION CENTER HOTEL**

**I. OVERVIEW.** The City of Columbia, South Carolina ("City") is issuing this request for proposals ("RFP") for the development and operation of a full service convention center hotel to support the Columbia Metropolitan Convention Center ("Convention Center"). The Convention Center is currently under construction and is scheduled to be completed in September 2004. The completion of this facility will represent a substantial investment and the culmination of unprecedented cooperation between many organizations in the area. An important factor in the success of convention centers nationwide is the affiliation of the convention center with a hotel. For this reason, the City is seeking proposals for the construction, ownership, and operation of a convention center hotel ("Hotel").

**II. GENERAL INFORMATION AND INSTRUCTIONS.**

**A. PROCUREMENT PROCESS.** The RFP is not a bid. In the event the City elects to negotiate a contract with the successful proposer, such contract shall contain terms and conditions consistent herewith. The City reserves the right, in its sole discretion, to reject all submissions, reissue a subsequent RFP, terminate, restructure, or amend this procurement process at any time. The final selection and contract negotiation rests solely with the City. The City shall establish a special committee ("Committee") for the purpose of reviewing the proposals and making appropriate recommendations to City Council. Where the context permits the term "City" shall include the Committee and City Council.

**B. QUESTIONS.** Questions are allowed and encouraged to clarify this RFP. All questions or requests for information shall be in writing and addressed to City of Columbia, Attn: Steven A. Gantt, PO Box 147, Columbia, SC 29217. Such written questions may also be transmitted by facsimile to (803) 255-8922 or e-mail to [sagantt@columbiasc.net](mailto:sagantt@columbiasc.net). Upon request the City shall provide a copy of its market study prepared by PKF Consulting.

**Proposers shall not lobby or otherwise contact members of City Council or the Committee with respect to this RFP.** Such contact shall constitute grounds for rejection of a proposal.

**C. PRE-RESPONSE MEETING.** A pre-response meeting will be held on Monday, April 19, 2004, at 2:00 p.m. at the City Council Chambers, City Hall, 1737 Main Street, Columbia, SC. Proposers are not required to attend but are encouraged to do so.

**D. REJECTION OF PROPOSALS.** The City may reject any proposals which do not conform to the essential requirements of the RFP.

E. CONFIDENTIALITY. All information, materials, or other documents submitted by a proposer shall not be released or made otherwise available to any person or entity except the City's representatives assisting in this procurement process, until public opening of the proposals, unless required by law or judicial process. Proprietary or financial information submitted to the City by a proposer will not be disclosed if proposer visibly marks each part of the proposal which proposer considers to be confidential financial or proprietary information with the word "Confidential", unless required by law or judicial process.

F. EVALUATION CRITERIA. The following shall be used in evaluating proposals and the proposals should include information necessary for such evaluation:

1. Past Performance - The proposer's satisfactory past experience in developing and operating hotels.
2. Proposed Investment/Financial Ability - The total capital investment proposed to be made in the Hotel and the financial ability of the proposer.
3. Performance of Requested Services - Demonstration that proposer currently has the capability, qualifications, and experience to develop and operate the Hotel.
4. Exceeding Minimum - Greater consideration will be given to proposals exceeding the Minimum Hotel Specifications.
5. Maximization of City Incentives - The City has outlined the incentives it is willing to grant for this project below and greater consideration will be given to proposals exceeding Minimum Hotel Specifications and/or requiring less City incentives.

G. PROPOSALS, FORMAT.

1. All proposals must be clearly marked "Proposal for Development and Operation of Columbia Convention Center Hotel".
2. Proposals must be signed by an authorized person and submitted in sealed envelopes and shall include at least ten (10) copies.
3. Proposals must be submitted by hand delivery (including delivery by recognized courier) to Steven A. Gantt, City of Columbia, City Hall, 1737 Main Street, Columbia, SC 29201, or mailed to City of Columbia, Attn: Steven A. Gantt, PO Box 147, Columbia, SC 29217.
4. Proposals must be received on or before May 4, 2004.

H. INTERVIEWS/ CONTRACT NEGOTIATIONS. The City will evaluate

the proposals and may, in its discretion, elect to interview, meet with, and/or require public presentations from one or more of the proposers before making final selection. Once final selection is made a contract will be negotiated with the selected proposer which may include a security deposit requirement. The City intends to make a final selection prior to July 1, 2004.

**III. TERMS AND CONDITIONS.** The physical characteristics of the Hotel enumerated herein are minimum requirements. The goal of the City is to obtain the largest number of guest accommodations at the highest possible quality as a result of this RFP. Proposers are therefore encouraged to enhance their submissions with respect to all elements of the Hotel, including but not limited to, numbers of guests rooms, size of meeting areas, restaurant, lounge/bar, kitchen, facilities and other guest amenities. Preference will be given to size of facility, quality of finishes, design features including expansion capability, and guest services to be provided.

**A. MINIMUM HOTEL SPECIFICATIONS.**

1. 200 guest rooms of not less than 330 square feet / room.
2. 5,000 square feet of meeting space.
3. Kitchen facility capable of providing service to a restaurant, lounge/bar, room service, catering to meeting space.
4. Restaurant facilities of not less than 100 seats; offering three meals per day, seven days per week.
5. Lounge/bar facility with not less than 50 seats. A lobby bar may be substituted in lieu of dedicated lounge bar.
6. Swimming pool of sufficient size to provide a pleasing recreational experience for guests.
7. Fitness room or facility appropriately equipped.
8. Business center equipped with appropriate modem business equipment and technology.
9. The building exterior shall be constructed with long lasting, aesthetically pleasing materials (e.g., masonry, brick, precast). Interiors finishes shall be of first class quality.
10. Mechanical systems shall be designed to maximize efficiency, guest comfort, and aesthetics.

11. The Hotel must be branded or flagged by a nationally known hotel operator with a nationwide reservation system. Significant weight and preference will be afforded to proposals which offer a "First-Class" nationally known hotelier, it being the intent of the City to attract visitors and groups from across the United States.

**B. ROOM BLOCK AGREEMENT.**

1. The primary mission of the Hotel will be to provide support for the convention activities of the Convention Center. Consequently, the proposers must be willing to enter into a satisfactory long-term room block agreement that would generally require committing at least 200 rooms and appropriate hotel meeting space for qualified (city-wide) events held at the Convention Center up to 14 nights per month for events that book the Convention Center three years or more in advance. The requirements of the room block agreement would decrease as the booking horizon shortens.

2. All reasonable efforts shall be made to allow the Hotel to charge the prevailing room rates to a qualified event. However, if a room rate cannot be successfully negotiated between the Hotel and the qualified event, the City may, at its sole discretion, require the Hotel to charge a predetermined rate that would be mutually agreed upon between the City and the Hotel as part of the room block agreement.

3. The details of the room block agreement are subject to negotiation between the City and the Hotel and are an integral part of the City offering the incentives outlined below.

**C. HOTEL SITE(S).** The Hotel shall be constructed on one of two City-owned parcels generally shown or described on the attached Exhibits "A" and "B", respectively. The parcel described on Exhibit "A" is bounded on the north by Senate Street and is called "Parcel A" and the parcel described on Exhibit "B" is bounded on the south by Senate Street and is called "Parcel B". The City intends to construct a public parking garage either along Pendleton Street on property currently owned by the City and on property not yet acquired by the City or on property currently owned by the City which includes Parcel A. If the garage is constructed on Pendleton Street Parcel A will be the preferred Hotel site. If the garage is constructed on land which includes Parcel A then Parcel B will be the Hotel site.

**D. CITY INCENTIVES.**

1. **GROUND LEASE.** The City will ground lease the site for a 50 year term for a rental of One Dollar (\$1.00) per year paid in advance. The ground lease shall not be subordinated to liens.

2. **PARKING.** The City will provide one parking space per sleeping room in a City parking facility to be constructed nearby to the Hotel site and managed and maintained by the City. These parking spaces will be made available to the Hotel at 50% of then

prevailing market rates (the current daily market rate is \$10.00). The City anticipates entering into a joint use parking agreement related to the parking facility that will allow the City to rent as many spaces as possible to daily visitors. As such, the City envisions working with the Hotel to determine the reasonable number of spaces that will be required for the Hotel on a daily basis and the Hotel will be charged only for the spaces it utilizes. In this way, the Hotel can minimize its parking costs and the City can maximize its parking revenues.

3. The City reserves the right but not the obligation to consider additional incentives to induce a higher quality product. If additional incentives are required please specify and explain.

E. **NON-DISCRIMINATION.** Proposer will take affirmative action in complying with all federal, state and local requirements concerning fair employment and employment of the handicapped and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin, or physical handicap. Any contract extended subsequent to this RFP shall require proposers to comply with the City's Commercial Non-Discrimination Policy and Sub-Contractor Outreach Program.

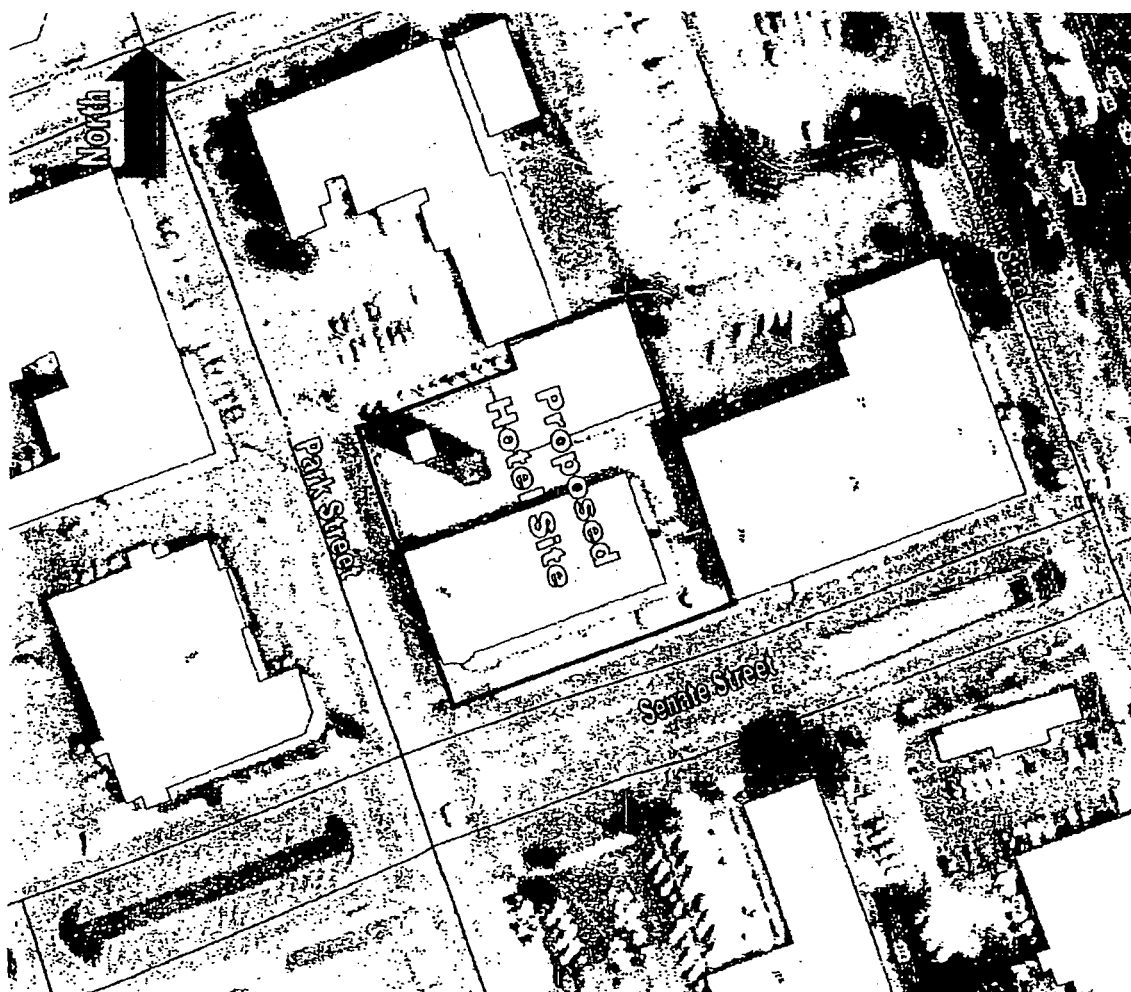
## Exhibit "A"



### Description of Site:

The proposed Hotel site is located at the southwest corner of Senate and Park Streets. The approximate boundaries of the property are as follows: northern boundary (Senate Street) - 207 feet, eastern boundary (Park Street) - 243 feet, western boundary - 243, southern boundary - 210 feet.

## Exhibit "B"



### Description of Site:

The proposed Hotel site is located at the northeast corner of Senate and Park Streets. The approximate boundaries of the property are as follows: southern boundary (Senate Street) - 206 feet, western boundary (Park Street) - 186 feet, northern boundary (irregular line) - 206 feet, eastern boundary - 208 feet.

## **ADDENDUM #1**

**April 13, 2004**

### **CITY OF COLUMBIA, SOUTH CAROLINA REQUEST FOR PROPOSALS CONVENTION CENTER HOTEL**

1. Delete the "Room Block Agreement" section of the RFP (Subsection "B" of Section "III") submitted on or about April 2, 2004.
2. Insert the following Room Block Agreement section (Subsection "B" of Section "III") into the RFP:

#### **B. ROOM BLOCK AGREEMENT.**

1. The primary mission of the Hotel will be to provide support for the convention activities of the Convention Center. Consequently, the proposers must be willing to enter into a satisfactory long-term room block agreement that would generally require committing at least 200 rooms and appropriate hotel meeting space for qualified (city-wide) events held at the Convention Center up to 14 nights per month for events that book the Convention Center one year or more in advance. The requirements of the room block agreement would be eliminated within the one year period.

2. All reasonable efforts shall be made to allow the Hotel to charge the prevailing room rates to a qualified event. However, if a room rate cannot be successfully negotiated between the Hotel and the qualified event, the City may, at its sole discretion, require the Hotel to charge a predetermined rate that would be mutually agreed upon between the City and the Hotel as part of the room block agreement.

3. The details of the room block agreement are subject to negotiation between the City and the Hotel and are an integral part of the City offering the incentives outlined below.

**ADDENDUM #2**

April 15, 2004

**CITY OF COLUMBIA, SOUTH CAROLINA  
REQUEST FOR PROPOSALS  
CONVENTION CENTER HOTEL**

Due to the number of people on the selection committee for the convention center hotel, please submit 15 copies of your proposal instead of 10.

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1 A. Yes. 2A, yes. Yes. There's one  
2 clarification I'd like to make.  
3 Q. Sure.  
4 A. I'm not currently a certified public  
5 accountant. I was, and I let my license lapse when  
6 I got sick a couple of years ago.  
7 Q. What year was that that you let it  
8 lapse?  
9 A. You know, I think it was around -- I  
10 can't recall if it was before or after I was sick.  
11 I was -- I had -- I was out for six months for  
12 cancer in 2004, so...  
13 Q. Are you doing well?  
14 A. I'm doing great.  
15 Q. That's great.  
16 A. I'm here today.  
17 Q. So it would have lapsed around 2004?  
18 A. Uh-huh. I don't -- I don't do public  
19 accounting. I do this consulting.  
20 Q. So you have no current plans to re-up  
21 your certification?  
22 A. That's correct.  
23 Q. If you'll turn to page five, 2C  
24 gives -- it says: The specific opinions such  
25 person holds in each area of expertise which is

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1 relevant to this matter. If you would, take a  
2 moment to read that paragraph.  
3 A. That's true. I haven't read D yet. I  
4 see my name down there, too.  
5 Q. The last sentence in C reads:  
6 Mr. Sachs has also reviewed financial projections  
7 and other information provided by the plaintiffs to  
8 the City of Columbia, and in the discovery of this  
9 case, and has concluded that the Hilton Hotel  
10 project as proposed by the plaintiffs was not  
11 economically and financially feasible for the City  
12 of Columbia. Did I read that correctly?  
13 A. Yes.  
14 Q. Is that the opinion that you intend to  
15 render in this case?  
16 A. Yes.  
17 Q. Are there any other opinions you intend  
18 to render that aren't mentioned in 2C there?  
19 A. I don't know.  
20 Q. You don't know. Okay. Why don't you  
21 know?  
22 A. That's the primary opinion. I don't  
23 know what'll come up that I'll be asked to opine on  
24 as the trial proceeds.  
25 Q. Would it be fair, then, to say that any

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1 opinions would fall under that topic, though?  
2 A. Yes.  
3 Q. Are you going to opine as to the  
4 conduct of Hilton Hotel? And by conduct I mean --  
5 I'll represent to you that there's an allegation in  
6 this complaint that Hilton Hotel behaved in a  
7 manner that was inappropriate. Are you going to  
8 opine as to Hilton Hotel's conduct?  
9 A. I could, as it related to our  
10 involvement in the project. We were not involved  
11 in the second RFP project. So if there's a  
12 question that will be asked of Hilton's conduct,  
13 because we worked with them daily through the  
14 Garfield Traub proposal and negotiations, I can  
15 comment on that.  
16 Q. Could you explain further what you mean  
17 by that.  
18 A. We worked day to day for the 18 months  
19 of the project with the Hilton team through the  
20 negotiation of the contract. If you're going to  
21 ask a question about that, I can answer that, but  
22 if you're going to ask a question about Hilton's  
23 conduct after, say, March 1, '04, we were not  
24 involved with the project for the Bo Aughtry  
25 proposal or any of that component.

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1 MR. THOMPSON: Brink, it sounds like  
2 he's drawing a distinction between being a fact  
3 witness and offering an expert opinion on that.  
4 MR. HINSON: Sure. Thank you.  
5 BY MR. HINSON:  
6 Q. Mr. Sachs, I guess this is a little  
7 difficult in the sense -- or maybe some of the  
8 confusion here is that you're both a fact witness  
9 and have been designated as an expert witness. Do  
10 you intend to render any expert testimony, not just  
11 your knowledge as an individual who was involved in  
12 some of the facts in this case, but as an expert  
13 witness, as to Hilton's conduct?  
14 A. Yes.  
15 Q. Yes, you do?  
16 A. (Nodding head.)  
17 Q. And as an expert witness, what is  
18 your -- strike that.  
19 What is your expert opinion as to  
20 Hilton's conduct?  
21 A. Hilton negotiated in good faith  
22 throughout the process of the original Garfield  
23 Traub proposal.  
24 Q. And that is your expert opinion, not  
25 your personal opinion?

4 (Pages 13 to 16)

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1 was roughly 40 percent of the transaction, and the  
2 city -- if the hotel cash flows were not there the  
3 city would pay those bonds regardless. They had to  
4 have another funding source.

5 During that time, the capital markets  
6 were exploring different ways to finance these  
7 types of hotel projects and there was a new  
8 structure that had emerged which was done in Omaha  
9 whereby there would be one single-bond transaction,  
10 one single-bond tranche, and that one single bond  
11 would have a -- would have the cash flows to pay it  
12 off, as well as the city's support payment, they  
13 called it, roughly \$2 million a year. Under that  
14 structure, Citibank -- Citicorp determined there  
15 was a lower cost and hence increased coverage for  
16 this transaction.

17 Q. So what you're conveying there, then,  
18 is that the single-bond tranche, as you said,  
19 provided a higher --

20 A. Coverage.

21 Q. -- coverage ratio?

22 A. Yes.

23 Q. Staying on the same page, the last  
24 bullet point reads: Marching orders were to find  
25 ways to increase coverage. Is that marching orders

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1 those -- is it fair to call them criteria? Strike  
2 that.

3 Is it fair to call that a criteria that  
4 the city set out?

5 A. Yes.

6 Q. Do you remember the time frame the city  
7 set that criteria out?

8 A. That would have originally been  
9 established when we presented the two MOUs, the one  
10 for Edens and Avant team, Garfield Traub team, and  
11 the John Q. Hammonds proposal. When we presented  
12 those in December of 2002 for council to make their  
13 selection one of the things that we mentioned was  
14 that there needed to be higher coverage on the  
15 Edens and Avant proposal. And when they accepted  
16 that proposal -- I believe that was in January of  
17 '03 -- that MOU, it came with the marching orders,  
18 through Steve Gantt, because that was our major  
19 contact, that the city had selected that team, but  
20 we had to get coverage down -- up. I'm sorry, had  
21 to get coverage up.

22 Q. And Steve Gantt said 1.5 was the  
23 coverage that it needed to get up to?

24 A. At least 1.5. We were striving for  
25 1.7.

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1 from the city?

2 A. Yes.

3 Q. What did the city -- strike that.

4 Was there a particular figure that you  
5 were given marching orders to get the coverage up  
6 to?

7 A. We were recommending at the time that  
8 the debt service coverage prior to these  
9 subordinate payments was at least 1.7, and at a  
10 minimum -- we were striving to get 1.7, but at a  
11 minimum it seemed that the city was interested in  
12 accepting a 1.5 coverage, neither of which were met  
13 at that point in time.

14 Q. How was the city's desire for 1.5  
15 coverage conveyed to you? Was that just a feeling  
16 you got or was that ever specifically laid out?

17 A. We laid it out in our recommendation  
18 and they concurred with that recommendation.

19 Q. You laid out a recommendation of 1.5?

20 A. A minimum of 1.5, with a desire to have  
21 it be 1.7.

22 Q. Does that matter, whether it's a  
23 single-bond or a double-bond structure?

24 A. No.

25 Q. Do you recall the time frame when

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1 Q. Now, to your knowledge, Steve Gantt has  
2 never been involved in building a city municipal  
3 hotel?

4 A. Correct. Yes.

5 Q. So his desire to get to a coverage  
6 ratio of 1.5, was that his own or that came solely  
7 from your -- in your -- to your understanding, did  
8 that -- was that his own?

9 A. It came -- no. It came from our  
10 advice.

11 Q. If you would, go with me -- lay out for  
12 me the different city hotel projects that you've  
13 been involved with.

14 A. I probably won't remember them all.

15 Q. Okay.

16 A. We have represented the public sector  
17 on projects in Charlotte; Raleigh; Winston-Salem;  
18 Richardson, Texas; San Antonio, Texas; Houston,  
19 Texas; Tampa, Florida; and that was at a -- when I  
20 was at a prior firm. La Vista, Nebraska.  
21 Portland, Oregon. And if I had my list I'd  
22 remember a bunch more, but those are -- Columbus,  
23 Georgia; Athens, Georgia; Cobb County, Georgia;  
24 Fort Lauderdale, Florida. Did I say Myrtle Beach?  
25 Wilmington, North Carolina; Columbus, Ohio; Boston.

7 (Pages 25 to 28)

| Page 45                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 47                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p>1 Q. Getting back to the issue of the debt<br/>2 service, or debt service coverage ratio, was there<br/>3 any other reason, besides the coverage ratio, for<br/>4 which you believe this project wasn't, as you<br/>5 termed, feasible?</p> <p>6 A. No.</p> <p>7 Q. So there wasn't an issue of the<br/>8 legality of the project?</p> <p>9 A. No.</p> <p>10 Q. There wasn't an issue with the land<br/>11 being unsuitable to construct such a hotel or --</p> <p>12 A. No.</p> <p>13 Q. -- anything of that nature?</p> <p>14 A. Correct.</p> <p>15 Q. Would it be fair to define feasibility<br/>16 as the potential returns of a project meet or<br/>17 exceed the investor's objectives?</p> <p>18 A. That's part of it.</p> <p>19 Q. What would you add?</p> <p>20 A. A component of risk.</p> <p>21 Q. If we change that to the expected<br/>22 returns meet or exceed the investor's objectives,<br/>23 would you agree with that definition of<br/>24 feasibility?</p> <p>25 A. I think you just said the same thing.</p>                                                                                                          | <p>1 taking risks that they could potentially outlay<br/>2 cash. Under a private structure, there was a known<br/>3 number that they would outlay up front but there<br/>4 was no risk of future cash flows.</p> <p>5 Q. You said earlier that you considered<br/>6 the debt service coverage of -- that the project<br/>7 ultimately got to, approximately 1.35, to be too<br/>8 low, is that correct?</p> <p>9 A. Correct.</p> <p>10 Q. Now, are you aware of the bond rating<br/>11 that the bonds in the proposed Garfield Traub hotel<br/>12 received?</p> <p>13 A. Yes.</p> <p>14 Q. What was that rating?</p> <p>15 A. Just above junk bonds.</p> <p>16 Q. Just above junk bonds?</p> <p>17 A. Yes.</p> <p>18 Q. What was that rate?</p> <p>19 A. It was a triple B minus or something<br/>20 like that. Barely rated.</p> <p>21 Q. What time period was that?</p> <p>22 A. February.</p> <p>23 Q. Of?</p> <p>24 A. '04. They got barely an investment<br/>25 grade rating. Then they got insurance on it from</p>                                                                                                                                                                                      |
| Page 46                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 48                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>1 Q. The expected returns -- I mean, I think<br/>2 the first time I said potential and the second time<br/>3 I said the expected. The expected returns meet or<br/>4 exceed the investor's objectives?</p> <p>5 A. After accounting for the risk.</p> <p>6 Q. I want to make sure I nail this down.<br/>7 The expected returns, while accounting for risk,<br/>8 meet or exceed the investor's objectives?</p> <p>9 A. Yes.</p> <p>10 Q. Yes, you'd agree with that definition?</p> <p>11 A. Yes, I agree with that definition.</p> <p>12 Q. What, if anything, did the city convey<br/>13 to you their objectives were?</p> <p>14 A. To build a hotel and have the cash<br/>15 flows of the hotel provide for the costs of<br/>16 building the hotel.</p> <p>17 Q. So the city's objective was to<br/>18 essentially not have to make an outlay of money --</p> <p>19 A. Correct.</p> <p>20 Q. -- in building the hotel?</p> <p>21 A. Under the public structure, that was<br/>22 their objective.</p> <p>23 Q. And they had a different objective,<br/>24 under a private structure?</p> <p>25 A. Under a public structure, they were</p> | <p>1 Ambac, which raised -- which now you're looking at<br/>2 insurance, and that's a different bond rating with<br/>3 the insurance, but the deal as it stood alone was<br/>4 just above junk bonds.</p> <p>5 Q. Just above junk bonds. Okay. And what<br/>6 was it with the insurance?</p> <p>7 A. Triple A.</p> <p>8 Q. Triple A.</p> <p>9 A. Now looking to the insurance company.</p> <p>10 Q. Is that the highest rating?</p> <p>11 A. Yep. Yes.</p> <p>12 Q. How does that insurance work? Can you<br/>13 take me through how you would insure a bond.</p> <p>14 A. If the cash flows -- if the bonds -- if<br/>15 there's not sufficient cash flows at any given time<br/>16 to make -- pay the bondholders their payment, the<br/>17 insurance company would step in and make the<br/>18 payment and then the insurance company, in this<br/>19 case, would go after the city to make good on their<br/>20 support payment. So ultimately it was the city for<br/>21 their -- whatever the agreed upon -- you know, it<br/>22 varied over time -- their support payment.</p> <p>23 Q. Why would -- now, Ambac -- strike that.<br/>24 Ambac was the company issuing the<br/>25 insurance, correct?</p> |

12 (Pages 45 to 48)

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1 BY MR. HINSON:  
2 Q. What did you understand the city's  
3 response was to you conveying this information to  
4 them, this information that it wasn't a feasible  
5 project?  
6 A. We were asked to continue moving  
7 forward and keep working on improving the debt  
8 service coverage ratio with the developer.  
9 Q. In October of 2003, did you believe you  
10 could get the debt service coverage ratio up to an  
11 acceptable level?  
12 A. No.  
13 Q. Did you convey that to the city?  
14 A. Yes.  
15 Q. Why didn't you believe you could get it  
16 up to an acceptable level? What roadblocks did you  
17 have?  
18 A. The developer had analyzed the  
19 development costs of the project and didn't believe  
20 there was any more cost savings to be lowered. PKF  
21 had rendered its opinions on the cash flows. We  
22 thought there was risk even in achieving those cash  
23 flows. So there was really no avenue for  
24 increasing the debt service coverage ratio barring  
25 interest rates, you know, significantly going down

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1 and having the cost of the debt go down.  
2 Q. So in October 2002 you still --  
3 A. '03.  
4 Q. I'm sorry, '03. Thank you. So in  
5 October '03 you still went forward, having informed  
6 the city of what you termed an unfeasible project,  
7 but with the direction from the city of increasing  
8 the debt service coverage, if possible; is that  
9 correct?  
10 A. Correct.  
11 Q. Were you able to increase the coverage  
12 at all after October of '03?  
13 A. We weren't doing the increasing or  
14 decreasing of the debt service coverage, but the  
15 developer was not able to increase the coverage  
16 other than in February '04 there was a finance --  
17 there was a financing technique employed whereby  
18 they would borrow even more on the project from  
19 capitalized interest to help provide a fund for  
20 potential shortfalls in the early years. That's  
21 somewhat of a double-edged sword because that then  
22 increases the debt service later because you have  
23 to pay off that borrowing and coverage went down in  
24 the later years.  
25 Q. So essentially they would borrow money

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1 to make their payments; is that accurate?  
2 A. That's accurate.  
3 Q. Did you have an opinion of this what  
4 you termed financing technique?  
5 A. Yes.  
6 Q. What was that?  
7 A. That we didn't think it was  
8 appropriate.  
9 Q. Why not?  
10 A. Because it lowered coverage in the  
11 later years down to 1.17. I looked at it last  
12 night. Once you got through that period, when you  
13 considered debt service and the legally required to  
14 be paid subordinate payments of management,  
15 subordinate management fees and FF&E, coverage was  
16 1.17.  
17 Q. 1.17?  
18 A. Uh-huh.  
19 Q. When you say later years, what --  
20 A. From about year four or five on.  
21 Q. And how far on did you look at it, a  
22 30-year term or a ten-year term? How long did you  
23 look?  
24 A. It stabilizes at about five years and  
25 stays where it's at. We -- I did not look at it

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1 beyond that.  
2 Q. So it's your testimony that after year  
3 five the debt service coverage will --  
4 A. Plus or minus. You're saying debt  
5 service coverage. I'm -- we looked at it from the  
6 city's perspective. Debt service coverage was  
7 higher.  
8 Q. Okay.  
9 A. Just considering debt, okay? But there  
10 are two significant subordinate payments that have  
11 to be paid. One was a subordinate fee to Hilton,  
12 subordinate management fee to Hilton, and the other  
13 was legally required per the documents that weren't  
14 signed but would be required had they been signed,  
15 an additional FF&E reserve, and if you add those  
16 two together, that's what I'm talking about that  
17 the coverage was 1.17. Revenues compared to all  
18 the payments, both debt service and the subordinate  
19 payments.  
20 Q. Would have stabilized around 1.17?  
21 A. Correct.  
22 Q. In year five?  
23 A. Yes.  
24 Q. Now, our conversation on that began  
25 with I asked your opinion of this financing

| Page 34                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 36                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <p>1 a certified public accountant?</p> <p>2 A. Yes, I did.</p> <p>3 Q. What areas of expertise did you</p> <p>4 utilize?</p> <p>5 A. Well, I had a lot of clients in the</p> <p>6 real estate business and in various aspects of it</p> <p>7 and I therefore understood a lot of their concerns</p> <p>8 and understood the difficulties related to the</p> <p>9 approach that the city had. I also, you know,</p> <p>10 understood about ad valorem taxes and how people</p> <p>11 felt about them in the community and was able to,</p> <p>12 you know, relay to the city the difficulties of</p> <p>13 that approach, as well as just practicalities of</p> <p>14 the plan that they had in mind.</p> <p>15 Q. Now, you stated that ultimately the</p> <p>16 city decided that the ad valorem tax was not a good</p> <p>17 idea?</p> <p>18 A. Correct.</p> <p>19 Q. Did the city ever consider the sale of</p> <p>20 municipal bonds to support the drainage proposal?</p> <p>21 A. Well, I know that was one of their</p> <p>22 considerations because, you know, during the time I</p> <p>23 was working with them it was one of the -- it was</p> <p>24 an approach. It's always an approach. So it was</p> <p>25 considered.</p>                              | <p>1 to how they should be accounted for, which related</p> <p>2 to the contract and related to how the parties</p> <p>3 divided the profits and made contributions for</p> <p>4 capital.</p> <p>5 Q. Again that was the City of Mobile?</p> <p>6 A. No. That was the City of Fair Hope</p> <p>7 and -- I think it was Daphne, D-A-P-N-E -- or</p> <p>8 D-A-P-H-N-E. I think -- I know one was Fair Hope.</p> <p>9 I think the other was Daphne.</p> <p>10 Q. Do you recall if the projects involved</p> <p>11 with those two cities involved any public financing</p> <p>12 via municipal bonds?</p> <p>13 A. I don't recall any.</p> <p>14 Q. Going back to Plaintiff's Exhibit</p> <p>15 Number 1. I read the opinion developed to say:</p> <p>16 Based on economic, financial and political</p> <p>17 perspectives, the plaintiff's development project</p> <p>18 was not feasible for the City of Columbia. I</p> <p>19 believe you stated earlier that the, and I quote,</p> <p>20 the plaintiff's development project, end quote, was</p> <p>21 the project envisioned by the memorandum of</p> <p>22 understanding?</p> <p>23 A. That's true.</p> <p>24 Q. Please explain to me the various bases</p> <p>25 for your opinion.</p>                                                                                                                                                                                                                                                                    |
| Page 35                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 37                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 Q. Did it ever happen?</p> <p>2 A. I don't know. I left before those</p> <p>3 things -- you know, before they began their program</p> <p>4 with whatever they did.</p> <p>5 Q. So if there was ever any proposal, you</p> <p>6 yourself never specifically reviewed it?</p> <p>7 A. Correct.</p> <p>8 Q. Beyond the two instances that we've</p> <p>9 discussed, have you ever offered any other advice</p> <p>10 to municipalities with regard to construction</p> <p>11 projects?</p> <p>12 A. Yes. There was one other situation</p> <p>13 I've just recalled. You want to ask me to --</p> <p>14 Q. Please. I'm sorry. I was waiting on</p> <p>15 you.</p> <p>16 A. Okay. In the late 1980s I was retained</p> <p>17 by the circuit court in Baldwin County, Alabama, as</p> <p>18 a special master and I was asked to determine the</p> <p>19 workings and the proper approach to apply a</p> <p>20 contract between two municipalities for the</p> <p>21 operation of a natural gas enterprise that supplied</p> <p>22 natural gas to these two cities or towns, as well</p> <p>23 as the outlying areas, and there were projects</p> <p>24 related to extending the service, as well as</p> <p>25 upgrading the operations, that I gave my opinion as</p> | <p>1 A. Well, one is there was a -- from the</p> <p>2 beginning of consideration of the project there was</p> <p>3 a very high priority that the city had that</p> <p>4 continued throughout the time that the project was</p> <p>5 considered that the city wanted to minimize its</p> <p>6 risk with respect to if the project went forward</p> <p>7 and the city issued bonds and became the owner and</p> <p>8 operator -- well, not -- well, the owner of the</p> <p>9 hotel. And this was clear from a number of records</p> <p>10 that are in the record, a number of things that are</p> <p>11 in the record and a number of things that I have</p> <p>12 evaluated. And the risk was particularly</p> <p>13 evaluated -- or an indicator of a relationship</p> <p>14 between the planning that was being done and the</p> <p>15 level of risk the city may be exposed to was the</p> <p>16 coverage of the bonds, the coverage of the debt,</p> <p>17 which was a comparison of the return on operating</p> <p>18 the hotel, how much money would be provided from</p> <p>19 the hotel operations, compared to the debt service</p> <p>20 each year, and the city was intent upon trying to</p> <p>21 reach a level -- that the planning would reach a</p> <p>22 level such that the city could see the possibility</p> <p>23 that the ultimate project may have a cushion, a</p> <p>24 comfort level that could be reached that the</p> <p>25 revenue that would come from operating the hotel</p> |

Pages 34 to 37

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| <p style="text-align: right;">Page 38</p> <p>1 would likely be greater than the debt service.<br/> 2 That level was never obtained with all the planning<br/> 3 and the going forward with the various models that<br/> 4 were prepared by Citigroup. That comfort level was<br/> 5 never obtained. So that's one reason why<br/> 6 economically and financially the project was not<br/> 7 feasible for the city. The city never felt like<br/> 8 that they had reached a level of comfort with the<br/> 9 risk that they would be entering into by borrowing<br/> 10 this money and building and owning a hotel.<br/> 11 Secondly, the various models and the<br/> 12 consideration over a period of several years was<br/> 13 always changing and the cost increased for the<br/> 14 hotel, as well as the amount of debt that was going<br/> 15 to be needed increased, as well as the terms of the<br/> 16 city's enhancement of the debt changed. There was<br/> 17 a good bit of increase in cost and bonded<br/> 18 indebtedness, and there was risk associated with<br/> 19 that fact because it could impact the city's<br/> 20 ability to have -- you know, make debt issues in<br/> 21 the future. It could impact the rating that the<br/> 22 city would have for its debt, its bonded<br/> 23 indebtedness.<br/> 24 Also there was a good bit of<br/> 25 uncertainty as to where was -- where were the</p>                                                  | <p style="text-align: right;">Page 40</p> <p>1 to get an average daily rate in the community or in<br/> 2 the area where the proposed hotel would be. That's<br/> 3 something that I know from talking to him, as well<br/> 4 as I can see in the work that he did that Jeff<br/> 5 Sachs considered. The fact that one has to<br/> 6 consider -- in making judgments about entering into<br/> 7 ownership of a hotel one has to make a<br/> 8 consideration of the cost of the hotel compared to<br/> 9 what is it going to be able to develop in terms of<br/> 10 revenue, and a room rent or price with this --<br/> 11 using this rule of thumb is something that still<br/> 12 has applicability. I think that was another<br/> 13 consideration.<br/> 14 So I think -- if I think of something<br/> 15 else I'll let you know.<br/> 16 Q. What documentation have you reviewed in<br/> 17 forming your opinion?<br/> 18 A. Well, I've looked at, I think, the<br/> 19 whole record. I have considered depositions. I<br/> 20 have had conversations with certain people. I have<br/> 21 looked at documents that were provided, you know,<br/> 22 the various projections that were made by<br/> 23 Citigroup. I've looked at all the documents, the<br/> 24 work that was done by Strategic Advisory Group --<br/> 25 and I'll just call them from here out SAG. I've</p> |
| <p style="text-align: right;">Page 39</p> <p>1 numbers for this project that were under<br/> 2 consideration going to end because of the fact that<br/> 3 there was a moving target and there was a lot of<br/> 4 change over time, and at the point in time that the<br/> 5 MOU and the relationship between the parties ended<br/> 6 there were a number of uncertainties that were at<br/> 7 hand and understood by both parties. Those<br/> 8 uncertainties themselves increased the risk that<br/> 9 the city would have been taking. Because of the<br/> 10 fact that those uncertainties involved money, the<br/> 11 resolution of them may be costly and further<br/> 12 increase the risk.<br/> 13 There's another consideration which<br/> 14 is -- there was an e-mail that was sent in February<br/> 15 from -- I can't remember his name now. It was a<br/> 16 very unusual name, but the fellow who was involved,<br/> 17 I believe, with the state hospitality or convention<br/> 18 and tourism sent an e-mail, I think it was<br/> 19 February 2, 2004, to the city council pointing out<br/> 20 to them a rule of thumb for determining feasibility<br/> 21 of lodgings, you know, of hotel properties, that<br/> 22 still had indications of being applicable. That<br/> 23 rule of thumb was where one would determine the<br/> 24 cost per room based on the cost of the project and<br/> 25 then compare that cost of a room with the potential</p> | <p style="text-align: right;">Page 41</p> <p>1 looked at numerous e-mails and memos that have been<br/> 2 produced. I've, of course, looked at the MOU.<br/> 3 I've looked at minutes of city council meetings,<br/> 4 minutes of the nonprofit board that was set up<br/> 5 to -- with the possibility of owning the hotel.<br/> 6 I've looked at news articles from local papers,<br/> 7 newspapers, publications concerning the project. I<br/> 8 think that's it. But that's just a sample of how I<br/> 9 would identify the record.<br/> 10 Q. Do you know the sum of the time that<br/> 11 you've spent working on this case?<br/> 12 A. Yes, I do.<br/> 13 Q. What is it?<br/> 14 A. I personally have spent 130 hours. I<br/> 15 have a colleague who has spent more than 700 hours.<br/> 16 Q. Who is that?<br/> 17 A. Lisa Miller. And I have two other<br/> 18 colleagues who have spent much less time, but who<br/> 19 have also helped me on this, in the work that I've<br/> 20 done.<br/> 21 Q. Who are those other colleagues?<br/> 22 A. One of them is named Allen Raulerson,<br/> 23 R-A-U-L-E-R-S-O-N, and another is Barbara Brown.<br/> 24 Q. As a result of its retainer of revenue<br/> 25 with the city, how many hours has Acuitas, through</p>                                                                                                      |

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City of Columbia, South Carolina  
Columbia Hilton  
Additional \$1.5MM City Use  
AAA-Insured (Taxable and Tax-Exempt Issuance)  
Sources and Uses of Funds (Combined)

| SOURCES:                                 | Tax-Exempt Bonds     | Taxable Bonds       | Key Money           | Total                |
|------------------------------------------|----------------------|---------------------|---------------------|----------------------|
| Per Amount                               | 60,905,000.00        | 9,660,000.00        | -                   | 70,565,000.00        |
| Key Money                                | -                    | -                   | 1,500,000.00        | 1,500,000.00         |
| Accrued Interest                         | -                    | -                   | -                   | -                    |
| <b>Total Sources</b>                     | <b>60,905,000.00</b> | <b>9,660,000.00</b> | <b>1,500,000.00</b> | <b>72,065,000.00</b> |
| USES:                                    |                      |                     |                     |                      |
| Construction Fund Deposit                | 43,572,396.23        | 4,298,431.81        | 1,000,000.00        | 48,870,828.04        |
| Other Development Costs                  | -                    | -                   | -                   | -                    |
| Other City Uses                          | 1,500,000.00         | -                   | -                   | 1,500,000.00         |
| Capitalized Interest Fund Deposit        | 4,497,514.08         | 4,011,107.91        | -                   | 8,508,621.99         |
| Debt Service Reserve Fund Deposit        | 5,282,047.91         | 577,368.46          | -                   | 5,859,416.37         |
| Working Capital Fund                     | -                    | -                   | 500,000.00          | 500,000.00           |
| Underwriter's Discount                   | 837,443.75           | 132,825.00          | -                   | 970,268.75           |
| Costs of Issuance                        | 1,389,167.40         | 220,332.60          | -                   | 1,609,500.00         |
| Municipal Bond Insurance                 | 3,823,674.48         | 417,957.03          | -                   | 4,241,631.51         |
| Accrued Interest                         | -                    | -                   | -                   | -                    |
| Other                                    | -                    | -                   | -                   | -                    |
| Contingency (Rounding)                   | 2,756.15             | 1,977.18            | -                   | 4,733.33             |
| <b>Total Uses</b>                        | <b>60,905,000.00</b> | <b>9,660,000.00</b> | <b>1,500,000.00</b> | <b>72,065,000.00</b> |
| ASSUMPTIONS / SUMMARY STATISTICS:        |                      |                     |                     |                      |
| Arbitrage Yield                          | 5.17%                | 5.64%               |                     | 5.21%                |
| True Interest Cost                       | 5.28%                | 5.83%               |                     | 5.33%                |
| All-In Cost of Borrowing                 | 5.46%                | 6.15%               |                     | 5.52%                |
| Initial Coverage                         | 2.60x                | 3.24x               |                     | 2.60x                |
| Average Coverage                         | 1.68x                | 4.84x               |                     | 1.68x                |
| Dated Date                               | 4/1/2004             | 4/1/2004            |                     | 4/1/2004             |
| Delivery Date                            | 4/1/2004             | 4/1/2004            |                     | 4/1/2004             |
| BOND ISSUANCE EXPENSES:                  |                      |                     |                     |                      |
| Underwriter's Discount                   | \$13.75              | \$13.75             |                     | \$13.75              |
| Costs of Issuance                        | \$22.81              | \$22.81             |                     | \$22.81              |
| Municipal Bond Insurance                 | 2.850%               | 2.850%              |                     | 2.850%               |
| INVESTMENT RATES:                        |                      |                     |                     |                      |
| Debt Service Reserve Fund Deposit        | 5.000%               | 5.000%              |                     | 5.000%               |
| Construction Fund Deposit                | 1.200%               | 1.200%              |                     | 1.200%               |
| Capitalized Interest Fund Deposit        | 1.200%               | 1.200%              |                     | 1.200%               |
| OTHER:                                   |                      |                     |                     |                      |
| Capitalized Interest                     | Yes                  | Yes                 |                     | Yes                  |
| Interest Capitalized Through             | 1/1/2008             | 1/1/2008            |                     | 1/1/2008             |
| Debt Service Reserve Fund                | Yes                  | Yes                 |                     | Yes                  |
| Debt Service Reserve Fund Requirement    | Lesser of Three      | Lesser of Three     |                     | Lesser of Three      |
| End of Construction                      | 12/1/2005            | 12/1/2005           |                     | 12/1/2005            |
| CONSTRUCTION FUND SUMMARY:               |                      |                     |                     |                      |
| Total Construction Fund Draws            | 43,908,000.00        | 4,361,000.00        | 1,000,000.00        | 49,269,000.00        |
| Target Construction Funds                | -                    | -                   | -                   | 49,269,000.00        |
| Difference                               | -                    | -                   | -                   | -                    |
| Notes:                                   |                      |                     |                     |                      |
| Interest / Investment Rates as of 2-5-04 |                      |                     |                     |                      |
| Assumes triple-A insured credit rating.  |                      |                     |                     |                      |

City of Columbia, South Carolina  
Columbia Hilton  
Operating Statistics and Forecasted Revenues, Expenses, Net Income and Coverage Ratios  
for the Year Ending December 31, as shown

|                                                | 2004            | 2007            | 2008            | 2009            | 2010            | 2011            | 2012            | 2013            | 2014            | 2015            |
|------------------------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Available Rooms (Daily)                        | 300             | 300             | 300             | 300             | 300             | 300             | 300             | 300             | 300             | 300             |
| Available Rooms (Annually)                     | 109,500         | 109,500         | 109,500         | 109,500         | 109,500         | 109,500         | 109,500         | 109,500         | 109,500         | 109,500         |
| Occupied Rooms (Annually)                      | 67,890          | 75,560          | 77,750          | 77,750          | 77,750          | 77,750          | 77,750          | 77,750          | 77,750          | 77,750          |
| Occupancy Percentage                           | 62.90%          | 69.00%          | 71.00%          | 71.00%          | 71.00%          | 71.00%          | 71.00%          | 71.00%          | 71.00%          | 71.00%          |
| Average Room Rate                              | \$117.75        | \$122.25        | \$126.50        | \$130.25        | \$134.25        | \$138.25        | \$142.25        | \$146.50        | \$151.00        | \$155.50        |
| Revenue Per Occupied Room (RevPAR)             | \$73.01         | \$84.35         | \$89.82         | \$92.48         | \$95.32         | \$98.16         | \$101.00        | \$104.02        | \$107.21        | \$110.41        |
| <b>REVENUE:</b>                                |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Rooms                                          | \$7,994         | \$9,237         | \$9,835         | \$10,127        | \$10,438        | \$10,749        | \$11,069        | \$11,390        | \$11,740        | \$12,090        |
| Food & Beverage                                | 4,827           | 4,765           | 4,908           | 5,058           | 5,207           | 5,364           | 5,524           | 5,690           | 5,861           | 6,037           |
| Telecommunications                             | 147             | 168             | 178             | 184             | 189             | 195             | 201             | 207             | 213             | 220             |
| Garage                                         | 578             | 660             | 700             | 721             | 742             | 765             | 788             | 811             | 836             | 861             |
| Other Operated Departments                     | 257             | 285             | 312             | 322             | 331             | 341             | 352             | 362             | 373             | 384             |
| Rentals and Other Income                       | 73              | 84              | 88              | 92              | 95              | 98              | 100             | 103             | 107             | 110             |
| <b>Total Revenues</b>                          | <b>\$13,674</b> | <b>\$15,208</b> | <b>\$16,622</b> | <b>\$16,502</b> | <b>\$17,002</b> | <b>\$17,512</b> | <b>\$18,028</b> | <b>\$18,583</b> | <b>\$19,130</b> | <b>\$19,702</b> |
| <b>DEPARTMENTAL EXPENSES:</b>                  |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Rooms                                          | \$1,970         | \$2,138         | \$2,231         | \$2,298         | \$2,367         | \$2,438         | \$2,511         | \$2,587         | \$2,664         | \$2,744         |
| Food & Beverage                                | 3,239           | 3,336           | 3,436           | 3,538           | 3,645           | 3,754           | 3,867           | 3,983           | 4,103           | 4,226           |
| Telecommunications                             | 88              | 101             | 107             | 110             | 114             | 117             | 121             | 124             | 128             | 132             |
| Garage                                         | 419             | 480             | 509             | 524             | 540             | 556             | 573             | 590             | 607             | 626             |
| Other Operated Departments                     | 180             | 208             | 219             | 225             | 232             | 239             | 248             | 253             | 261             | 269             |
| <b>Total Departmental Expenses</b>             | <b>\$5,896</b>  | <b>\$6,259</b>  | <b>\$6,502</b>  | <b>\$6,698</b>  | <b>\$6,898</b>  | <b>\$7,104</b>  | <b>\$7,318</b>  | <b>\$7,537</b>  | <b>\$7,763</b>  | <b>\$7,987</b>  |
| <b>Departmental Profit</b>                     | <b>\$7,778</b>  | <b>\$8,950</b>  | <b>\$10,120</b> | <b>\$9,804</b>  | <b>\$10,104</b> | <b>\$10,408</b> | <b>\$10,710</b> | <b>\$11,046</b> | <b>\$11,367</b> | <b>\$11,715</b> |
| <b>UNDISTRIBUTED EXPENSES:</b>                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Admin & Gen                                    | \$1,006         | \$1,036         | \$1,068         | \$1,100         | \$1,133         | \$1,167         | \$1,202         | \$1,238         | \$1,275         | \$1,313         |
| Marketing                                      | 1,067           | 1,120           | 1,154           | 1,188           | 1,224           | 1,261           | 1,299           | 1,337           | 1,378           | 1,419           |
| Property Operation & Maintenance               | 576             | 593             | 611             | 630             | 648             | 668             | 688             | 708             | 730             | 752             |
| Utility Costs                                  | 503             | 518             | 534             | 550             | 568             | 583             | 601             | 619             | 637             | 658             |
| <b>Total Undistributed Operating Expenses</b>  | <b>\$3,152</b>  | <b>\$3,267</b>  | <b>\$3,367</b>  | <b>\$3,468</b>  | <b>\$3,571</b>  | <b>\$3,679</b>  | <b>\$3,789</b>  | <b>\$3,903</b>  | <b>\$4,020</b>  | <b>\$4,140</b>  |
| <b>GROSS OPERATING PROFIT</b>                  | <b>\$4,806</b>  | <b>\$5,681</b>  | <b>\$6,153</b>  | <b>\$6,336</b>  | <b>\$6,533</b>  | <b>\$6,739</b>  | <b>\$6,918</b>  | <b>\$7,123</b>  | <b>\$7,347</b>  | <b>\$7,565</b>  |
| <b>FIXED CHARGES</b>                           |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Insurance                                      | 138             | 142             | 148             | 151             | 155             | 160             | 165             | 170             | 175             | 180             |
| <b>Total Fixed Charges</b>                     | <b>\$138</b>    | <b>\$142</b>    | <b>\$148</b>    | <b>\$151</b>    | <b>\$155</b>    | <b>\$160</b>    | <b>\$165</b>    | <b>\$170</b>    | <b>\$175</b>    | <b>\$180</b>    |
| <b>EBITDA BEFORE MGT FEES</b>                  | <b>\$4,468</b>  | <b>\$5,541</b>  | <b>\$6,007</b>  | <b>\$6,187</b>  | <b>\$6,378</b>  | <b>\$6,569</b>  | <b>\$6,753</b>  | <b>\$6,953</b>  | <b>\$7,172</b>  | <b>\$7,385</b>  |
| <b>MANAGEMENT FEES:</b>                        |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Base Management Fees                           | \$273           | \$380           | \$401           | \$454           | \$468           | \$482           | \$496           | \$510           | \$526           | \$542           |
| Incentive Management Fees (see below)          | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               |
| <b>Total Management Fees</b>                   | <b>\$273</b>    | <b>\$380</b>    | <b>\$401</b>    | <b>\$454</b>    | <b>\$468</b>    | <b>\$482</b>    | <b>\$496</b>    | <b>\$510</b>    | <b>\$526</b>    | <b>\$542</b>    |
| <b>EBITDA</b>                                  | <b>\$4,195</b>  | <b>\$5,161</b>  | <b>\$5,606</b>  | <b>\$5,733</b>  | <b>\$5,910</b>  | <b>\$6,087</b>  | <b>\$6,257</b>  | <b>\$6,443</b>  | <b>\$6,646</b>  | <b>\$6,843</b>  |
| Primary FF&E Reserve                           | \$137           | \$304           | \$481           | \$495           | \$510           | \$700           | \$721           | \$743           | \$765           | \$985           |
| <b>NET OPERATING INCOME (1)</b>                | <b>\$4,058</b>  | <b>\$4,857</b>  | <b>\$5,126</b>  | <b>\$5,238</b>  | <b>\$5,400</b>  | <b>\$5,387</b>  | <b>\$5,536</b>  | <b>\$5,700</b>  | <b>\$5,881</b>  | <b>\$5,858</b>  |
| Add: Incentive Management Fee (see below)      | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             |
| <b>ADJUSTED NET OPERATING INCOME</b>           | <b>\$4,058</b>  | <b>\$4,857</b>  | <b>\$5,126</b>  | <b>\$5,238</b>  | <b>\$5,400</b>  | <b>\$5,387</b>  | <b>\$5,536</b>  | <b>\$5,700</b>  | <b>\$5,881</b>  | <b>\$5,858</b>  |
| <b>INVESTMENT EARNINGS AND OTHER REV: (2)</b>  |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Debt Service Reserve Fund - Taxable            | \$29            | \$29            | \$29            | \$29            | \$29            | \$29            | \$29            | \$29            | \$29            | \$29            |
| Debt Service Reserve Fund - Tax-Exempt         | 264             | 284             | 264             | 264             | 264             | 264             | 264             | 264             | 264             | 264             |
| <b>Total Investment Earnings and Other Rev</b> | <b>\$293</b>    | <b>\$293</b>    | <b>\$293</b>    | <b>\$293</b>    | <b>\$293</b>    | <b>\$293</b>    | <b>\$293</b>    | <b>\$293</b>    | <b>\$293</b>    | <b>\$293</b>    |
| <b>REVENUES AVAILABLE FOR DEBT SERVICE</b>     | <b>\$4,351</b>  | <b>\$5,150</b>  | <b>\$5,419</b>  | <b>\$5,531</b>  | <b>\$5,693</b>  | <b>\$5,680</b>  | <b>\$5,829</b>  | <b>\$5,993</b>  | <b>\$6,174</b>  | <b>\$6,151</b>  |
| <b>TAXABLE LIEN DEBT SERVICE:</b>              |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Gross Debt Service                             | \$481           | \$481           | \$481           | \$1,311         | \$1,327         | \$1,345         | \$1,357         | \$1,375         | \$1,390         | \$1,409         |
| Less: Capitalized Interest                     | 240             | 240             | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               |
| <b>Net Taxable Lien Debt Service</b>           | <b>\$240</b>    | <b>\$240</b>    | <b>\$481</b>    | <b>\$1,311</b>  | <b>\$1,327</b>  | <b>\$1,345</b>  | <b>\$1,357</b>  | <b>\$1,375</b>  | <b>\$1,390</b>  | <b>\$1,409</b>  |
| <b>TAX-EXEMPT LIEN DEBT SERVICE:</b>           |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Gross Debt Service                             | \$2,868         | \$2,868         | \$2,868         | \$2,868         | \$2,868         | \$2,868         | \$2,868         | \$2,868         | \$2,868         | \$2,868         |
| Less: Capitalized Interest                     | 1,434           | 1,434           | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               |
| <b>Net Tax-Exempt Lien Debt Service</b>        | <b>\$1,434</b>  | <b>\$1,434</b>  | <b>\$2,868</b>  | <b>\$2,868</b>  | <b>\$2,868</b>  | <b>\$2,868</b>  | <b>\$2,868</b>  | <b>\$2,868</b>  | <b>\$2,868</b>  | <b>\$2,868</b>  |
| <b>TOTAL NET DEBT SERVICE</b>                  | <b>\$1,674</b>  | <b>\$1,674</b>  | <b>\$3,349</b>  | <b>\$4,179</b>  | <b>\$4,195</b>  | <b>\$4,213</b>  | <b>\$4,225</b>  | <b>\$4,243</b>  | <b>\$4,258</b>  | <b>\$4,277</b>  |
| <b>NET CASH FLOW AFTER DEBT SERVICE</b>        | <b>\$2,678</b>  | <b>\$3,475</b>  | <b>\$2,070</b>  | <b>\$1,352</b>  | <b>\$1,498</b>  | <b>\$1,467</b>  | <b>\$1,604</b>  | <b>\$1,750</b>  | <b>\$1,918</b>  | <b>\$1,874</b>  |
| <b>OTHER DEDUCTIONS:</b>                       |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Subordinated Management Fees                   | \$137           | \$152           | \$160           | \$208           | \$213           | \$219           | \$225           | \$232           | \$239           | \$246           |
| Subordinate FF&E Reserve Fund                  | 137             | 304             | 481             | 495             | 510             | 525             | 541             | 557             | 574             | 591             |
| <b>Total Other Deductions</b>                  | <b>\$273</b>    | <b>\$456</b>    | <b>\$641</b>    | <b>\$701</b>    | <b>\$723</b>    | <b>\$744</b>    | <b>\$766</b>    | <b>\$789</b>    | <b>\$813</b>    | <b>\$837</b>    |
| <b>NET CASH FLOW</b>                           | <b>\$2,403</b>  | <b>\$3,019</b>  | <b>\$1,429</b>  | <b>\$651</b>    | <b>\$775</b>    | <b>\$723</b>    | <b>\$838</b>    | <b>\$961</b>    | <b>\$1,103</b>  | <b>\$1,037</b>  |
| <b>APPLICATION OF NET CASH FLOWS:</b>          |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Supplemental Reserve Fund                      | \$2,403         | \$946           | \$830           | \$17            | \$17            | \$12            | \$18            | \$15            | \$19            | \$15            |
| Redemption Fund - 50%                          | 0               | 1,037           | 300             | 317             | 379             | 355             | 410             | 473             | 542             | 511             |
| City Surplus Fund - 50%                        | 0               | 1,037           | 300             | 317             | 379             | 355             | 410             | 473             | 542             | 511             |
| <b>Remaining Net Cash Flows</b>                | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      |
| <b>FUND BALANCES:</b>                          |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Supplemental Reserve Fund Requirement          | \$3,349         | \$3,349         | \$4,179         | \$4,198         | \$4,213         | \$4,225         | \$4,243         | \$4,258         | \$4,277         | \$4,292         |
| Accum. Bal. - Supplemental Reserve Fund        | \$2,403         | \$3,349         | \$4,179         | \$4,198         | \$4,213         | \$4,225         | \$4,243         | \$4,258         | \$4,277         | \$4,292         |
| Accum. Bal. - Bond Redemption Fund             | \$0             | \$1,037         | \$1,336         | \$1,653         | \$2,032         | \$2,388         | \$2,798         | \$3,271         | \$3,812         | \$4,323         |
| Accum. Bal. - Surplus Fund                     | \$0             | \$1,037         | \$1,336         | \$1,653         | \$2,032         | \$2,388         | \$2,798         | \$3,271         | \$3,812         | \$4,323         |
| <b>AVAILABLE CITY STANDBY SUP PAYMENT</b>      | <b>\$837</b>    | <b>\$837</b>    | <b>\$1,674</b>  | <b>\$2,089</b>  | <b>\$2,098</b>  | <b>\$2,106</b>  | <b>\$2,113</b>  | <b>\$2,122</b>  | <b>\$2,129</b>  | <b>\$2,139</b>  |
| <b>DEBT SERVICE COVERAGE RATIOS:</b>           |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Debt Service Coverage Ratio (3)                | 5.20            | 8.15            | 1.24            | 2.65            | 2.71            | 2.70            | 2.78            | 2.82            | 2.90            | 2.88            |
| Total Debt Service Coverage Ratio (4)          | 2.60            | 3.08            | 1.82            | 1.32            | 1.38            | 1.35            | 1.38            | 1.41            | 1.45            | 1.44            |

NOTES:

(1) As provided by PKF through 2015; 3% annual increase thereafter.

(2) Assumes Interest Earnings of 5.00% for the Debt Service Reserve Funds.

(3) Adjusted Net Operating Income Plus DSRF earnings divided by Net Debt Service Minus Available City Standby Support Payment.

(4) Adjusted Net Operating Income plus DSRF earnings divided by Net Debt Service.

City of Columbia, South Carolina  
Columbia Hilton  
Operating Statistics and Forecasted Revenues, Expenditures, Net Income and Coverage Ratios  
for the Years Ending December 31, as shown

|                                                | 2016            | 2017            | 2018            | 2019            | 2020            | 2021            | 2022            | 2023            | 2024            | 2025            |
|------------------------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Available Rooms (Daily)                        | 300             | 300             | 300             | 300             | 300             | 300             | 300             | 300             | 300             | 300             |
| Available Rooms (Annually)                     | 108,500         | 109,600         | 109,500         | 109,500         | 109,500         | 109,600         | 109,500         | 109,500         | 109,500         | 109,600         |
| Occupied Rooms (Annually)                      | 78,183          | 78,397          | 78,183          | 78,183          | 78,183          | 78,397          | 78,183          | 78,183          | 78,183          | 78,397          |
| Occupancy Percentage                           | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          |
| Average Room Rate                              | \$160.17        | \$164.97        | \$169.82        | \$175.02        | \$180.27        | \$185.88        | \$191.25        | \$196.88        | \$202.89        | \$208.98        |
| Revenue Per Occupied Room (RevPAR)             | \$114.36        | \$117.79        | \$121.32        | \$124.96        | \$128.71        | \$132.57        | \$136.55        | \$140.65        | \$144.87        | \$149.21        |
| <b>REVENUE:</b>                                |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Rooms                                          | \$12,453        | \$12,828        | \$13,211        | \$13,607        | \$14,018        | \$14,438        | \$14,869        | \$15,315        | \$15,775        | \$16,248        |
| Food & Beverage                                | 6,218           | 6,405           | 6,597           | 6,795           | 6,999           | 7,208           | 7,425           | 7,647           | 7,877           | 8,113           |
| Telecommunications                             | 227             | 233             | 240             | 248             | 255             | 263             | 271             | 279             | 287             | 296             |
| Garage                                         | 887             | 913             | 941             | 969             | 998             | 1,028           | 1,059           | 1,091           | 1,123           | 1,157           |
| Other Operated Departments                     | 398             | 407             | 420             | 432             | 445             | 459             | 472             | 488             | 501             | 516             |
| Rentals and Other Income                       | 113             | 117             | 120             | 124             | 128             | 131             | 135             | 139             | 144             | 148             |
| <b>Total Revenues</b>                          | <b>\$20,293</b> | <b>\$20,901</b> | <b>\$21,529</b> | <b>\$22,175</b> | <b>\$22,840</b> | <b>\$23,528</b> | <b>\$24,331</b> | <b>\$25,158</b> | <b>\$26,007</b> | <b>\$26,878</b> |
| <b>DEPARTMENTAL EXPENSES:</b>                  |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Rooms                                          | \$2,826         | \$2,911         | \$2,998         | \$3,088         | \$3,181         | \$3,278         | \$3,375         | \$3,476         | \$3,580         | \$3,688         |
| Food & Beverage                                | 4,353           | 4,483           | 4,618           | 4,756           | 4,898           | 5,046           | 5,197           | 5,353           | 5,514           | 5,679           |
| Telecommunications                             | 138             | 140             | 144             | 149             | 153             | 158             | 162             | 167             | 172             | 177             |
| Garage                                         | 645             | 664             | 684             | 705             | 726             | 747             | 770             | 793             | 817             | 841             |
| Other Operated Departments                     | 277             | 285             | 294             | 303             | 312             | 321             | 331             | 341             | 351             | 362             |
| <b>Total Departmental Expenses</b>             | <b>\$8,239</b>  | <b>\$8,484</b>  | <b>\$8,738</b>  | <b>\$8,901</b>  | <b>\$9,071</b>  | <b>\$9,248</b>  | <b>\$9,435</b>  | <b>\$9,630</b>  | <b>\$9,834</b>  | <b>\$10,047</b> |
| <b>Departmental Profit</b>                     | <b>\$12,058</b> | <b>\$12,418</b> | <b>\$12,790</b> | <b>\$13,174</b> | <b>\$13,569</b> | <b>\$14,280</b> | <b>\$14,896</b> | <b>\$15,528</b> | <b>\$16,173</b> | <b>\$16,831</b> |
| <b>UNDISTRIBUTED EXPENSES:</b>                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Admin & Gen                                    | \$1,352         | \$1,383         | \$1,435         | \$1,478         | \$1,522         | \$1,568         | \$1,615         | \$1,663         | \$1,713         | \$1,765         |
| Marketing                                      | 1,482           | 1,505           | 1,551           | 1,597           | 1,645           | 1,694           | 1,745           | 1,798           | 1,851           | 1,907           |
| Property Operation & Maintenance               | 775             | 798             | 822             | 846             | 872             | 898             | 925             | 953             | 981             | 1,011           |
| Utility Costs                                  | 678             | 698             | 717             | 738             | 760             | 783             | 807             | 831             | 856             | 882             |
| <b>Total Undistributed Operating Expenses</b>  | <b>\$4,287</b>  | <b>\$4,394</b>  | <b>\$4,525</b>  | <b>\$4,660</b>  | <b>\$4,799</b>  | <b>\$4,943</b>  | <b>\$5,092</b>  | <b>\$5,244</b>  | <b>\$5,402</b>  | <b>\$5,564</b>  |
| <b>GROSS OPERATING PROFIT</b>                  | <b>\$7,772</b>  | <b>\$8,028</b>  | <b>\$8,268</b>  | <b>\$8,514</b>  | <b>\$8,770</b>  | <b>\$9,033</b>  | <b>\$9,304</b>  | <b>\$9,583</b>  | <b>\$9,871</b>  | <b>\$10,167</b> |
| <b>FIXED CHARGES</b>                           |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Insurance                                      | 165             | 191             | 197             | 203             | 209             | 215             | 221             | 228             | 235             | 242             |
| <b>Total Fixed Charges</b>                     | <b>\$165</b>    | <b>\$191</b>    | <b>\$197</b>    | <b>\$203</b>    | <b>\$209</b>    | <b>\$215</b>    | <b>\$221</b>    | <b>\$228</b>    | <b>\$235</b>    | <b>\$242</b>    |
| <b>EBITDA BEFORE MGT FEES</b>                  | <b>\$7,607</b>  | <b>\$7,835</b>  | <b>\$8,070</b>  | <b>\$8,312</b>  | <b>\$8,561</b>  | <b>\$8,818</b>  | <b>\$9,083</b>  | <b>\$9,355</b>  | <b>\$9,636</b>  | <b>\$9,925</b>  |
| Base Management Fees                           | \$558           | \$575           | \$592           | \$610           | \$628           | \$647           | \$668           | \$686           | \$707           | \$728           |
| Incentive Management Fees (see below)          | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               |
| <b>Total Management Fees</b>                   | <b>\$558</b>    | <b>\$575</b>    | <b>\$592</b>    | <b>\$610</b>    | <b>\$628</b>    | <b>\$647</b>    | <b>\$668</b>    | <b>\$686</b>    | <b>\$707</b>    | <b>\$728</b>    |
| <b>EBITDA</b>                                  | <b>\$7,048</b>  | <b>\$7,260</b>  | <b>\$7,478</b>  | <b>\$7,702</b>  | <b>\$7,933</b>  | <b>\$8,171</b>  | <b>\$8,418</b>  | <b>\$8,669</b>  | <b>\$8,929</b>  | <b>\$9,197</b>  |
| Primary FF&E Reserve                           | \$1,015         | \$1,045         | \$1,076         | \$1,109         | \$1,142         | \$1,178         | \$1,212         | \$1,248         | \$1,285         | \$1,324         |
| <b>NET OPERATING INCOME (1)</b>                | <b>\$6,034</b>  | <b>\$6,215</b>  | <b>\$6,401</b>  | <b>\$6,593</b>  | <b>\$6,791</b>  | <b>\$6,995</b>  | <b>\$7,205</b>  | <b>\$7,421</b>  | <b>\$7,643</b>  | <b>\$7,873</b>  |
| Add: Incentive Management Fee (see below)      | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             |
| <b>ADJUSTED NET OPERATING INCOME</b>           | <b>\$6,034</b>  | <b>\$6,215</b>  | <b>\$6,401</b>  | <b>\$6,593</b>  | <b>\$6,791</b>  | <b>\$6,995</b>  | <b>\$7,205</b>  | <b>\$7,421</b>  | <b>\$7,643</b>  | <b>\$7,873</b>  |
| <b>INVESTMENT EARNINGS AND OTHER REV: (2)</b>  |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Debt Service Reserve Fund - Taxable            | \$29            | \$606           | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             |
| Debt Service Reserve Fund - Tax-Exempt         | 264             | 264             | 264             | 264             | 264             | 264             | 264             | 264             | 264             | 264             |
| <b>Total Investment Earnings and Other Rev</b> | <b>\$293</b>    | <b>\$870</b>    | <b>\$264</b>    | <b>\$264</b>    | <b>\$264</b>    | <b>\$264</b>    | <b>\$264</b>    | <b>\$264</b>    | <b>\$264</b>    | <b>\$264</b>    |
| <b>REVENUES AVAILABLE FOR DEBT SERVICE</b>     | <b>\$6,327</b>  | <b>\$7,085</b>  | <b>\$6,665</b>  | <b>\$6,857</b>  | <b>\$7,055</b>  | <b>\$7,259</b>  | <b>\$7,469</b>  | <b>\$7,685</b>  | <b>\$7,908</b>  | <b>\$8,137</b>  |
| <b>TAXABLE LIEN DEBT SERVICE:</b>              |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Gross Debt Service                             | \$1,424         | \$1,444         | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             |
| Less: Capitalized Interest                     | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               |
| <b>Net Taxable Lien Debt Service</b>           | <b>\$1,424</b>  | <b>\$1,444</b>  | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      |
| <b>TAX-EXEMPT LIEN DEBT SERVICE:</b>           |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Gross Debt Service                             | \$2,868         | \$2,868         | \$4,538         | \$4,592         | \$4,649         | \$4,703         | \$4,759         | \$4,817         | \$4,876         | \$4,931         |
| Less: Capitalized Interest                     | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               |
| <b>Net Tax-Exempt Lien Debt Service</b>        | <b>\$2,868</b>  | <b>\$2,868</b>  | <b>\$4,538</b>  | <b>\$4,592</b>  | <b>\$4,649</b>  | <b>\$4,703</b>  | <b>\$4,759</b>  | <b>\$4,817</b>  | <b>\$4,876</b>  | <b>\$4,931</b>  |
| <b>TOTAL NET DEBT SERVICE</b>                  | <b>\$4,292</b>  | <b>\$4,312</b>  | <b>\$4,538</b>  | <b>\$4,592</b>  | <b>\$4,649</b>  | <b>\$4,703</b>  | <b>\$4,759</b>  | <b>\$4,817</b>  | <b>\$4,876</b>  | <b>\$4,931</b>  |
| <b>NET CASH FLOW AFTER DEBT SERVICE</b>        | <b>\$2,035</b>  | <b>\$2,773</b>  | <b>\$2,127</b>  | <b>\$2,288</b>  | <b>\$2,407</b>  | <b>\$2,556</b>  | <b>\$2,710</b>  | <b>\$2,868</b>  | <b>\$3,032</b>  | <b>\$3,206</b>  |
| <b>OTHER DEDUCTIONS:</b>                       |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Subordinated Management Fees                   | \$254           | \$261           | \$269           | \$277           | \$286           | \$294           | \$303           | \$312           | \$321           | \$331           |
| Subordinate FF&E Reserve Fund                  | 809             | 827             | 846             | 865             | 885             | 906             | 927             | 949             | 971             | 994             |
| <b>Total Other Deductions</b>                  | <b>\$1,063</b>  | <b>\$1,088</b>  | <b>\$1,115</b>  | <b>\$1,142</b>  | <b>\$1,171</b>  | <b>\$1,200</b>  | <b>\$1,230</b>  | <b>\$1,261</b>  | <b>\$1,292</b>  | <b>\$1,325</b>  |
| <b>NET CASH FLOW</b>                           | <b>\$1,172</b>  | <b>\$1,685</b>  | <b>\$1,212</b>  | <b>\$1,323</b>  | <b>\$1,436</b>  | <b>\$1,557</b>  | <b>\$1,680</b>  | <b>\$1,808</b>  | <b>\$1,939</b>  | <b>\$2,080</b>  |
| <b>APPLICATION OF NET CASH FLOWS:</b>          |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Supplemental Reserve Fund                      | \$20            | \$228           | \$54            | \$57            | \$54            | \$56            | \$58            | \$59            | \$55            | \$61            |
| Redemption Fund - 50%                          | 578             | 829             | 579             | 633             | 691             | 750             | 811             | 874             | 942             | 1,009           |
| City Surplus Fund - 50%                        | 578             | 829             | 579             | 633             | 691             | 750             | 811             | 874             | 942             | 1,009           |
| <b>Remaining Net Cash Flows</b>                | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      |
| <b>FUND BALANCES:</b>                          |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Supplemental Reserve Fund Requirement          | \$4,312         | \$4,538         | \$4,592         | \$4,649         | \$4,703         | \$4,759         | \$4,817         | \$4,876         | \$4,931         | \$4,993         |
| Accum. Bal. - Supplemental Reserve Fund        | \$4,312         | \$4,538         | \$4,592         | \$4,649         | \$4,703         | \$4,759         | \$4,817         | \$4,876         | \$4,931         | \$4,993         |
| Accum. Bal. - Bond Redemption Fund             | \$4,899         | \$5,729         | \$6,308         | \$6,941         | \$7,632         | \$8,382         | \$9,193         | \$10,068        | \$11,009        | \$12,019        |
| Accum. Bal. - Surplus Fund                     | \$4,899         | \$5,729         | \$6,308         | \$6,941         | \$7,632         | \$8,382         | \$9,193         | \$10,068        | \$11,009        | \$12,019        |
| <b>AVAILABLE CITY STANDBY SUP PAYMENT</b>      | <b>\$3,004</b>  | <b>\$3,019</b>  | <b>\$3,177</b>  | <b>\$3,214</b>  | <b>\$3,254</b>  | <b>\$3,292</b>  | <b>\$3,331</b>  | <b>\$3,372</b>  | <b>\$3,413</b>  | <b>\$3,452</b>  |
| <b>DEBT SERVICE COVERAGE RATIOS:</b>           |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Debt Service Coverage Ratio (3)                | 4.81            | 5.48            | 4.90            | 4.88            | 5.08            | 5.15            | 5.23            | 5.32            | 5.41            | 5.50            |
| Total Debt Service Coverage Ratio (4)          | 1.47            | 1.64            | 1.47            | 1.49            | 1.52            | 1.54            | 1.57            | 1.60            | 1.62            | 1.65            |

NOTES:  
(1) As provided by PKF through 2015; 3% annual increase thereafter.  
(2) Assumes Interest Earnings of 5.00% for the Debt Service Reserve Funds.  
(3) Adjusted Net Operating Income Plus DSRF earnings divided by Net Debt Service Minus Available City Standby Support Payment.  
(4) Adjusted Net Operating Income plus DSRF earnings divided by Net Debt Service.

City of Columbia, South Carolina  
Columbia Hilton  
Operating Statistics and Forecasted Revenues, Expenditures, Net Income and Coverage Ratios  
for the Years Ending December 31, as shown

|                                                  | 2026            | 2027            | 2028            | 2029            | 2030            | 2031            | 2032            | 2033            | 2034            | 2035            |
|--------------------------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Available Rooms (Daily)                          | 300             | 300             | 300             | 300             | 300             | 300             | 300             | 300             | 300             | 300             |
| Available Rooms (Annually)                       | 109,500         | 109,500         | 109,500         | 109,500         | 109,500         | 109,500         | 109,500         | 109,500         | 109,500         | 109,500         |
| Occupied Rooms (Annually)                        | 78,183          | 78,183          | 78,183          | 78,397          | 78,183          | 78,183          | 78,183          | 78,397          | 78,183          | 78,183          |
| Occupancy Percentage                             | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          |
| Average Room Rate                                | \$215.25        | \$221.71        | \$228.36        | \$235.21        | \$242.28        | \$248.53        | \$257.02        | \$264.73        | \$272.87        | \$280.85        |
| Revenue Per Occupied Room (RevPAR)               | \$153.89        | \$158.30        | \$163.05        | \$167.94        | \$172.98        | \$178.17        | \$183.51        | \$189.02        | \$194.89        | \$200.53        |
| <b>REVENUE:</b>                                  |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Rooms                                            | \$18,735        | \$17,237        | \$17,755        | \$18,287        | \$18,838        | \$19,401        | \$19,983        | \$20,582        | \$21,200        | \$21,836        |
| Food & Beverage                                  | 8,357           | 8,807           | 8,866           | 8,132           | 9,405           | 9,688           | 9,978           | 10,278          | 10,588          | 10,903          |
| Telecommunications                               | 305             | 314             | 323             | 333             | 343             | 353             | 364             | 375             | 386             | 397             |
| Garage                                           | 1,192           | 1,228           | 1,254           | 1,302           | 1,341           | 1,382           | 1,423           | 1,468           | 1,510           | 1,555           |
| Other Operated Departments                       | 532             | 547             | 564             | 581             | 598             | 616             | 635             | 654             | 673             | 694             |
| Rentals and Other Income                         | 152             | 157             | 162             | 166             | 171             | 177             | 182             | 187             | 193             | 198             |
| <b>Total Revenues</b>                            | <b>\$27,272</b> | <b>\$28,090</b> | <b>\$28,833</b> | <b>\$29,101</b> | <b>\$30,683</b> | <b>\$31,616</b> | <b>\$32,564</b> | <b>\$33,541</b> | <b>\$34,548</b> | <b>\$35,584</b> |
| <b>DEPARTMENTAL EXPENSES:</b>                    |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Rooms                                            | \$3,798         | \$3,912         | \$4,030         | \$4,151         | \$4,275         | \$4,403         | \$4,535         | \$4,671         | \$4,812         | \$4,958         |
| Food & Beverage                                  | 5,850           | 6,025           | 6,208           | 6,392           | 6,584           | 6,781           | 6,985           | 7,194           | 7,410           | 7,633           |
| Telecommunications                               | 183             | 188             | 194             | 200             | 206             | 212             | 218             | 225             | 231             | 238             |
| Garage                                           | 887             | 893             | 919             | 947             | 975             | 1,005           | 1,035           | 1,068           | 1,098           | 1,131           |
| Other Operated Departments                       | 372             | 384             | 395             | 407             | 418             | 432             | 445             | 458             | 472             | 486             |
| <b>Total Departmental Expenses</b>               | <b>\$11,070</b> | <b>\$11,402</b> | <b>\$11,744</b> | <b>\$12,066</b> | <b>\$12,458</b> | <b>\$12,833</b> | <b>\$13,218</b> | <b>\$13,614</b> | <b>\$14,023</b> | <b>\$14,443</b> |
| <b>Departmental Profit</b>                       | <b>\$16,202</b> | <b>\$16,688</b> | <b>\$17,189</b> | <b>\$17,035</b> | <b>\$18,228</b> | <b>\$18,783</b> | <b>\$19,347</b> | <b>\$19,927</b> | <b>\$20,525</b> | <b>\$21,141</b> |
| <b>UNDISTRIBUTED EXPENSES:</b>                   |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Admin & Gen                                      | \$1,817         | \$1,872         | \$1,928         | \$1,988         | \$2,048         | \$2,107         | \$2,170         | \$2,235         | \$2,302         | \$2,371         |
| Marketing                                        | 1,964           | 2,023           | 2,084           | 2,148           | 2,211           | 2,277           | 2,345           | 2,418           | 2,488           | 2,563           |
| Property Operation & Maintenance                 | 1,041           | 1,072           | 1,104           | 1,137           | 1,172           | 1,207           | 1,243           | 1,280           | 1,319           | 1,358           |
| Utility Costs                                    | 908             | 935             | 963             | 992             | 1,022           | 1,053           | 1,084           | 1,117           | 1,150           | 1,185           |
| <b>Total Undistributed Operating Expenses</b>    | <b>\$5,731</b>  | <b>\$5,903</b>  | <b>\$6,080</b>  | <b>\$6,262</b>  | <b>\$6,450</b>  | <b>\$6,643</b>  | <b>\$6,843</b>  | <b>\$7,048</b>  | <b>\$7,260</b>  | <b>\$7,477</b>  |
| <b>GROSS OPERATING PROFIT</b>                    | <b>\$10,472</b> | <b>\$10,786</b> | <b>\$11,109</b> | <b>\$11,443</b> | <b>\$11,788</b> | <b>\$12,140</b> | <b>\$12,504</b> | <b>\$12,879</b> | <b>\$13,265</b> | <b>\$13,663</b> |
| <b>FIXED CHARGES</b>                             |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Insurance                                        | 249             | 257             | 264             | 272             | 280             | 289             | 298             | 306             | 316             | 325             |
| <b>Total Fixed Charges</b>                       | <b>\$249</b>    | <b>\$257</b>    | <b>\$264</b>    | <b>\$272</b>    | <b>\$280</b>    | <b>\$289</b>    | <b>\$298</b>    | <b>\$306</b>    | <b>\$316</b>    | <b>\$325</b>    |
| <b>EBITDA BEFORE MGT FEES</b>                    | <b>\$10,223</b> | <b>\$10,529</b> | <b>\$10,845</b> | <b>\$11,170</b> | <b>\$11,508</b> | <b>\$11,851</b> | <b>\$12,206</b> | <b>\$12,572</b> | <b>\$12,950</b> | <b>\$13,338</b> |
| <b>Base Management Fees</b>                      | <b>\$750</b>    | <b>\$772</b>    | <b>\$799</b>    | <b>\$820</b>    | <b>\$844</b>    | <b>\$869</b>    | <b>\$896</b>    | <b>\$922</b>    | <b>\$950</b>    | <b>\$979</b>    |
| <b>Incentive Management Fees (see below)</b>     | <b>0</b>        | <b>0</b>        | <b>0</b>        | <b>0</b>        | <b>0</b>        | <b>0</b>        | <b>0</b>        | <b>0</b>        | <b>0</b>        | <b>0</b>        |
| <b>Total Management Fees</b>                     | <b>\$750</b>    | <b>\$772</b>    | <b>\$799</b>    | <b>\$820</b>    | <b>\$844</b>    | <b>\$869</b>    | <b>\$896</b>    | <b>\$922</b>    | <b>\$950</b>    | <b>\$979</b>    |
| <b>EBITDA</b>                                    | <b>\$9,473</b>  | <b>\$9,757</b>  | <b>\$10,049</b> | <b>\$10,351</b> | <b>\$10,661</b> | <b>\$10,981</b> | <b>\$11,311</b> | <b>\$11,650</b> | <b>\$12,000</b> | <b>\$12,360</b> |
| <b>Primary FF&amp;E Reserve</b>                  | <b>\$1,384</b>  | <b>\$1,405</b>  | <b>\$1,447</b>  | <b>\$1,490</b>  | <b>\$1,535</b>  | <b>\$1,581</b>  | <b>\$1,628</b>  | <b>\$1,677</b>  | <b>\$1,727</b>  | <b>\$1,778</b>  |
| <b>NET OPERATING INCOME (1)</b>                  | <b>\$8,109</b>  | <b>\$8,352</b>  | <b>\$8,603</b>  | <b>\$8,861</b>  | <b>\$9,127</b>  | <b>\$9,401</b>  | <b>\$9,683</b>  | <b>\$9,973</b>  | <b>\$10,272</b> | <b>\$10,580</b> |
| <b>Add: Incentive Management Fee (see below)</b> | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      |
| <b>ADJUSTED NET OPERATING INCOME</b>             | <b>\$8,109</b>  | <b>\$8,352</b>  | <b>\$8,603</b>  | <b>\$8,861</b>  | <b>\$9,127</b>  | <b>\$9,401</b>  | <b>\$9,683</b>  | <b>\$9,973</b>  | <b>\$10,272</b> | <b>\$10,580</b> |
| <b>INVESTMENT EARNINGS AND OTHER REV: (2)</b>    |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Debt Service Reserve Fund - Taxable              | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             |
| Debt Service Reserve Fund - Tax-Exempt           | 264             | 264             | 264             | 264             | 264             | 264             | 264             | 264             | 264             | 264             |
| <b>Total Investment Earnings and Other Rev</b>   | <b>\$264</b>    | <b>\$264</b>    | <b>\$264</b>    | <b>\$264</b>    | <b>\$264</b>    | <b>\$264</b>    | <b>\$264</b>    | <b>\$264</b>    | <b>\$264</b>    | <b>\$264</b>    |
| <b>REVENUES AVAILABLE FOR DEBT SERVICE</b>       | <b>\$8,373</b>  | <b>\$8,616</b>  | <b>\$8,867</b>  | <b>\$9,125</b>  | <b>\$9,391</b>  | <b>\$9,665</b>  | <b>\$9,947</b>  | <b>\$10,237</b> | <b>\$10,536</b> | <b>\$10,844</b> |
| <b>TAXABLE LIEN DEBT SERVICE:</b>                |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Gross Debt Service                               | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             |
| Less: Capitalized Interest                       | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               |
| <b>Net Taxable Lien Debt Service</b>             | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      |
| <b>TAX-EXEMPT LIEN DEBT SERVICE:</b>             |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Gross Debt Service                               | \$4,993         | \$5,050         | \$5,112         | \$5,175         | \$5,238         | \$5,298         | \$5,365         | \$5,426         | \$5,494         | \$5,561         |
| Less: Capitalized Interest                       | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               |
| <b>Net Tax-Exempt Lien Debt Service</b>          | <b>\$4,993</b>  | <b>\$5,050</b>  | <b>\$5,112</b>  | <b>\$5,175</b>  | <b>\$5,238</b>  | <b>\$5,298</b>  | <b>\$5,365</b>  | <b>\$5,426</b>  | <b>\$5,494</b>  | <b>\$5,561</b>  |
| <b>TOTAL NET DEBT SERVICE</b>                    | <b>\$4,993</b>  | <b>\$5,050</b>  | <b>\$5,112</b>  | <b>\$5,175</b>  | <b>\$5,238</b>  | <b>\$5,298</b>  | <b>\$5,365</b>  | <b>\$5,426</b>  | <b>\$5,494</b>  | <b>\$5,561</b>  |
| <b>NET CASH FLOW AFTER DEBT SERVICE</b>          | <b>\$3,380</b>  | <b>\$3,567</b>  | <b>\$3,755</b>  | <b>\$3,950</b>  | <b>\$4,155</b>  | <b>\$4,368</b>  | <b>\$4,582</b>  | <b>\$4,812</b>  | <b>\$5,043</b>  | <b>\$5,280</b>  |
| <b>OTHER DEDUCTIONS:</b>                         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Subordinated Management Fees                     | \$341           | \$351           | \$362           | \$373           | \$384           | \$395           | \$407           | \$419           | \$432           | \$445           |
| Subordinated FF&E Reserve Fund                   | 818             | 843             | 868             | 894             | 921             | 948             | 977             | 1,008           | 1,038           | 1,068           |
| <b>Total Other Deductions</b>                    | <b>\$1,159</b>  | <b>\$1,194</b>  | <b>\$1,230</b>  | <b>\$1,267</b>  | <b>\$1,305</b>  | <b>\$1,344</b>  | <b>\$1,384</b>  | <b>\$1,426</b>  | <b>\$1,468</b>  | <b>\$1,512</b>  |
| <b>NET CASH FLOW</b>                             | <b>\$2,221</b>  | <b>\$2,373</b>  | <b>\$2,525</b>  | <b>\$2,684</b>  | <b>\$2,850</b>  | <b>\$3,025</b>  | <b>\$3,198</b>  | <b>\$3,386</b>  | <b>\$3,574</b>  | <b>\$3,768</b>  |
| <b>APPLICATION OF NET CASH FLOWS:</b>            |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Supplemental Reserve Fund                        | \$57            | \$63            | \$62            | \$61            | \$60            | \$68            | \$61            | \$68            | \$1,574         | \$0             |
| Redemption Fund - 50%                            | 1,082           | 1,155           | 1,231           | 1,311           | 1,395           | 1,478           | 1,569           | 1,659           | 0               | 2,448           |
| City Surplus Fund - 50%                          | 1,082           | 1,155           | 1,231           | 1,311           | 1,395           | 1,478           | 1,569           | 1,659           | 0               | 2,448           |
| <b>Remaining Net Cash Flows</b>                  | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      |
| <b>FUND BALANCES:</b>                            |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Supplemental Reserve Fund Requirement            | \$5,050         | \$5,112         | \$5,175         | \$5,238         | \$5,298         | \$5,365         | \$5,426         | \$5,494         | \$5,561         | \$0             |
| Accum. Bal. - Supplemental Reserve Fund          | \$5,050         | \$5,112         | \$5,175         | \$5,238         | \$5,298         | \$5,365         | \$5,426         | \$5,494         | \$5,561         | \$9,068         |
| Accum. Bal. - Bond Redemption Fund               | \$13,101        | \$14,256        | \$15,487        | \$16,799        | \$18,194        | \$19,672        | \$21,240        | \$22,899        | \$24,647        | \$26,485        |
| Accum. Bal. - Surplus Fund                       | \$13,101        | \$14,256        | \$15,487        | \$16,799        | \$18,194        | \$19,672        | \$21,240        | \$22,899        | \$24,647        | \$26,485        |
| <b>AVAILABLE CITY STANDBY SUP PAYMENT</b>        | <b>\$3,495</b>  | <b>\$3,535</b>  | <b>\$3,579</b>  | <b>\$3,622</b>  | <b>\$3,665</b>  | <b>\$3,707</b>  | <b>\$3,755</b>  | <b>\$3,798</b>  | <b>\$3,846</b>  | <b>\$3,893</b>  |
| <b>DEBT SERVICE COVERAGE RATIOS:</b>             |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Debt Service Coverage Ratio (3)                  | 5.59            | 5.69            | 5.78            | 5.88            | 5.98            | 6.08            | 6.18            | 6.29            | 6.39            | 6.53            |
| Total Debt Service Coverage Ratio (4)            | 1.68            | 1.71            | 1.73            | 1.76            | 1.78            | 1.82            | 1.85            | 1.89            | 1.92            | 1.96            |

NOTES:

- (1) As provided by PKF through 2015; 3% annual increase thereafter.
- (2) Assumes Interest Earnings of 5.00% for the Debt Service Reserve Funds.
- (3) Adjusted Net Operating Income Plus DSRF earnings divided by Net Debt Service Minus Available City Standby Support Payment.
- (4) Adjusted Net Operating Income plus DSRF earnings divided by Net Debt Service.

City of Columbia, South Carolina  
Columbia Hilton

Construction Draw Schedule

|           | GMP        | Operations,<br>Supplies, and<br>Equipment | IT &<br>Telephone | Development<br>Cost | Legal<br>Accounting | Construction<br>Minority | Technical<br>Services Fee | Pre Opening | W. C.   | Opening<br>Reserves | Project<br>Contingency | Monthly<br>Drawdowns | Funding Source |           |           |            |
|-----------|------------|-------------------------------------------|-------------------|---------------------|---------------------|--------------------------|---------------------------|-------------|---------|---------------------|------------------------|----------------------|----------------|-----------|-----------|------------|
|           |            |                                           |                   |                     |                     |                          |                           |             |         |                     |                        |                      | Debt Money     | Gov Money | Taxable   | Tax-Exempt |
| 4/1/2004  | 4,823,000  |                                           |                   | 503,307             | 73,000              | 150,000                  | 160,000                   |             |         |                     |                        | 4,831,307            | 73,000         |           | 73,000    | 4,776,307  |
| 5/1/2004  | 2,476,000  |                                           |                   | 63,488              |                     |                          | 11,943                    |             |         |                     |                        | 2,533,433            | 0              |           | 0         | 2,533,433  |
| 6/1/2004  | 1,583,000  |                                           |                   | 63,488              |                     |                          | 11,943                    |             |         |                     |                        | 1,660,433            | 0              |           | 0         | 1,660,433  |
| 7/1/2004  | 2,283,000  |                                           |                   | 63,488              |                     |                          | 11,943                    |             |         |                     |                        | 2,362,433            | 0              |           | 0         | 2,362,433  |
| 8/1/2004  | 2,571,000  |                                           |                   | 63,488              |                     |                          | 11,943                    |             |         |                     |                        | 2,631,433            | 0              |           | 0         | 2,631,433  |
| 9/1/2004  | 2,577,000  |                                           |                   | 63,488              |                     |                          | 11,943                    |             |         |                     |                        | 2,634,433            | 0              |           | 0         | 2,634,433  |
| 10/1/2004 | 2,399,000  |                                           |                   | 63,488              |                     |                          | 11,943                    |             |         |                     |                        | 2,476,433            | 0              |           | 0         | 2,476,433  |
| 11/1/2004 | 1,973,000  |                                           |                   | 63,488              |                     |                          | 11,943                    |             |         |                     |                        | 2,030,433            | 0              |           | 0         | 2,030,433  |
| 12/1/2004 | 2,018,000  |                                           |                   | 63,488              |                     |                          | 11,943                    |             |         |                     |                        | 2,105,433            | 0              |           | 0         | 2,105,433  |
| 1/1/2005  | 4,403,000  |                                           |                   | 63,488              |                     |                          | 11,943                    |             |         |                     |                        | 4,600,433            | 0              |           | 0         | 4,600,433  |
| 2/1/2005  | 3,249,000  |                                           |                   | 63,488              |                     |                          | 11,944                    |             |         |                     | 118,000                | 4,600,433            | 0              |           | 0         | 4,600,433  |
| 3/1/2005  | 1,971,000  | 130,000                                   | 100,000           | 63,488              |                     |                          | 11,944                    | 200,000     |         |                     |                        | 2,701,432            | 200,000        |           | 260,000   | 2,501,432  |
| 4/1/2005  | 1,838,000  | 136,000                                   | 100,000           | 63,488              |                     |                          | 11,944                    | 200,000     |         |                     |                        | 2,775,432            | 550,000        |           | 590,000   | 2,233,432  |
| 5/1/2005  | 1,641,000  | 100,000                                   | 100,000           | 63,488              |                     |                          | 11,944                    | 200,000     |         |                     |                        | 2,428,432            | 136,000        |           | 136,000   | 2,090,432  |
| 6/1/2005  | 1,350,000  | 200,000                                   | 100,000           | 63,488              |                     |                          | 11,944                    | 200,000     |         |                     |                        | 2,193,432            | 310,000        |           | 300,000   | 1,893,432  |
| 7/1/2005  | 1,740,000  | 200,000                                   | 100,000           | 63,488              |                     |                          | 11,944                    | 200,000     |         |                     |                        | 2,002,432            | 400,000        |           | 400,000   | 1,602,432  |
| 8/1/2005  | 1,300,000  | 400,000                                   | 100,000           | 63,488              |                     |                          | 11,944                    | 200,000     |         |                     |                        | 2,192,432            | 400,000        |           | 400,000   | 1,792,432  |
| 9/1/2005  | 1,000,000  | 750,000                                   | 100,000           | 63,488              |                     |                          | 11,944                    | 200,000     | 100,000 |                     |                        | 2,152,432            | 600,000        |           | 600,000   | 1,552,432  |
| 10/1/2005 | 280,000    | 750,000                                   | 100,000           | 63,488              |                     |                          | 11,944                    | 200,000     | 100,000 |                     |                        | 2,302,432            | 1,050,000      | 100,000   | 950,000   | 1,252,432  |
| 11/1/2005 | 215,000    | 750,000                                   | 43,000            | 273,397             |                     |                          | 11,944                    | 200,000     | 100,000 |                     |                        | 1,733,341            | 1,050,000      | 500,000   | 550,000   | 683,341    |
| 12/1/2005 |            |                                           |                   |                     |                     |                          |                           |             | 100,000 | 230,000             |                        | 575,000              | 350,000        | 350,000   | 0         | 225,000    |
|           |            |                                           |                   |                     |                     |                          |                           |             | 30,000  |                     |                        | 30,000               | 30,000         | 30,000    | 0         | 0          |
| Total     | 40,017,000 | 2,886,000                                 | 743,000           | 1,890,000           | 73,000              | 150,000                  | 313,000                   | 1,800,000   | 350,000 | 230,000             | 793,000                | 49,269,000           | 3,361,000      | 1,000,000 | 4,161,000 | 43,908,000 |
| Had       | 73,000     | 2,886,000                                 |                   |                     |                     |                          |                           | 1,800,000   | 350,000 | 230,000             |                        | 3,361,000            |                |           |           |            |
| Draws     | 4/1/2004   | ALL                                       |                   |                     |                     |                          | ALL                       | ALL         | ALL     | ALL                 |                        |                      |                |           |           |            |

Confidential

SB City of Columbia 01889

City of Columbia, South Carolina  
Columbia Hilton  
Tax-Exempt Bonds

Construction Fund

| Date      | Beginning Balance | Deposit       | Interest 1.200000% | Transfer to Capital | Drawdowns     | Ending Balance |
|-----------|-------------------|---------------|--------------------|---------------------|---------------|----------------|
| 4/1/2004  |                   | 43,572,396.23 |                    |                     |               | 43,572,396.23  |
| 4/1/2004  | 43,572,396.23     |               |                    |                     | 4,776,307.00  | 38,796,089.23  |
| 5/1/2004  | 38,796,089.23     |               | 38,699.45          |                     | 2,553,433.00  | 36,281,355.69  |
| 6/1/2004  | 36,281,355.69     |               | 36,190.98          |                     | 1,660,433.00  | 34,657,113.67  |
| 7/1/2004  | 34,657,113.67     |               | 34,570.79          |                     | 2,362,433.00  | 32,329,251.46  |
| 8/1/2004  | 32,329,251.46     |               | 32,248.72          |                     | 2,651,433.00  | 29,710,067.18  |
| 9/1/2004  | 29,710,067.18     |               | 29,636.06          |                     | 2,654,433.00  | 27,045,270.24  |
| 10/1/2004 | 27,045,270.24     |               | 27,017.60          |                     | 2,476,433.00  | 24,635,855.05  |
| 11/1/2004 | 24,635,855.05     |               | 24,574.49          |                     | 2,050,433.00  | 22,609,996.54  |
| 12/1/2004 | 22,609,996.54     |               | 22,553.68          |                     | 2,105,433.00  | 20,527,117.22  |
| 1/1/2005  | 20,527,117.22     |               | 20,475.99          |                     | 4,600,432.00  | 15,947,161.20  |
| 2/1/2005  | 15,947,161.20     |               | 15,907.44          |                     | 2,501,432.00  | 13,441,636.64  |
| 3/1/2005  | 13,441,636.64     |               | 13,428.11          |                     | 2,223,432.00  | 11,251,632.75  |
| 4/1/2005  | 11,251,632.75     |               | 11,223.61          |                     | 2,090,432.00  | 9,172,424.35   |
| 5/1/2005  | 9,172,424.35      |               | 9,149.58           |                     | 1,897,432.00  | 7,288,141.93   |
| 6/1/2005  | 7,288,141.93      |               | 7,269.99           |                     | 1,602,432.00  | 5,692,979.92   |
| 7/1/2005  | 5,692,979.92      |               | 5,678.80           |                     | 1,992,432.00  | 3,706,226.72   |
| 8/1/2005  | 3,706,226.72      |               | 3,696.99           |                     | 1,552,432.00  | 2,157,491.71   |
| 9/1/2005  | 2,157,491.71      |               | 2,152.12           |                     | 1,252,432.00  | 907,211.83     |
| 10/1/2005 | 907,211.83        |               | 904.95             |                     | 683,341.00    | 224,775.78     |
| 11/1/2005 | 224,775.78        |               | 224.22             |                     | 225,000.00    | (0.00)         |
| 12/1/2005 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 1/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 2/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 3/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 4/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 5/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 6/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 7/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 8/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 9/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 10/1/2006 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 11/1/2006 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 12/1/2006 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 1/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 2/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 3/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 4/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 5/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 6/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 7/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 8/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 9/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 10/1/2007 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 11/1/2007 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 12/1/2007 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 1/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 2/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 3/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 4/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 5/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 6/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 7/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 8/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 9/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 10/1/2008 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 11/1/2008 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 12/1/2008 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 1/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 2/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 3/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 4/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 5/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 6/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 7/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 8/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 9/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 10/1/2009 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 11/1/2009 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 12/1/2009 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 1/1/2010  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 2/1/2010  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 3/1/2010  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| Total     | 43,572,396.23     |               | 335,603.77         |                     | 43,908,000.00 |                |

City of Columbia, South Carolina  
Columbia Hilton  
Taxable Bonds

Construction Fund

| Date      | Beginning Balance | Deposits     | Interest @ 2.000000% | Transfer to Capital | Drawdowns    | Ending Balance |
|-----------|-------------------|--------------|----------------------|---------------------|--------------|----------------|
| 4/1/2004  |                   | 4,298,431.81 | -                    | -                   | -            | 4,298,431.81   |
| 4/1/2004  | 4,298,431.81      |              | -                    | -                   | 75,000.00    | 4,223,431.81   |
| 5/1/2004  | 4,223,431.81      |              | 4,212.91             | -                   | -            | 4,227,644.72   |
| 6/1/2004  | 4,227,644.72      |              | 4,217.11             | -                   | -            | 4,231,861.83   |
| 7/1/2004  | 4,231,861.83      |              | 4,221.32             | -                   | -            | 4,236,083.15   |
| 8/1/2004  | 4,236,083.15      |              | 4,225.53             | -                   | -            | 4,240,308.69   |
| 9/1/2004  | 4,240,308.69      |              | 4,229.75             | -                   | -            | 4,244,538.43   |
| 10/1/2004 | 4,244,538.43      |              | 4,233.97             | -                   | -            | 4,248,772.40   |
| 11/1/2004 | 4,248,772.40      |              | 4,238.19             | -                   | -            | 4,253,010.59   |
| 12/1/2004 | 4,253,010.59      |              | 4,242.42             | -                   | -            | 4,257,253.00   |
| 1/1/2005  | 4,257,253.00      |              | 4,246.65             | -                   | -            | 4,261,499.65   |
| 2/1/2005  | 4,261,499.65      |              | 4,250.88             | -                   | 200,000.00   | 4,065,750.54   |
| 3/1/2005  | 4,065,750.54      |              | 4,055.62             | -                   | 550,000.00   | 3,519,806.16   |
| 4/1/2005  | 3,519,806.16      |              | 3,511.04             | -                   | 336,000.00   | 3,187,317.20   |
| 5/1/2005  | 3,187,317.20      |              | 3,179.38             | -                   | 300,000.00   | 2,890,496.58   |
| 6/1/2005  | 2,890,496.58      |              | 2,883.30             | -                   | 400,000.00   | 2,493,379.87   |
| 7/1/2005  | 2,493,379.87      |              | 2,487.17             | -                   | 400,000.00   | 2,095,867.04   |
| 8/1/2005  | 2,095,867.04      |              | 2,090.63             | -                   | 600,000.00   | 1,497,957.69   |
| 9/1/2005  | 1,497,957.69      |              | 1,494.23             | -                   | 950,000.00   | 549,451.92     |
| 10/1/2005 | 549,451.92        |              | 548.08               | -                   | 550,000.00   | 0.00           |
| 11/1/2005 | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 12/1/2005 | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 1/1/2006  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 2/1/2006  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 3/1/2006  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 4/1/2006  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 5/1/2006  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 6/1/2006  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 7/1/2006  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 8/1/2006  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 9/1/2006  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 10/1/2006 | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 11/1/2006 | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 12/1/2006 | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 1/1/2007  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 2/1/2007  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 3/1/2007  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 4/1/2007  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 5/1/2007  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 6/1/2007  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 7/1/2007  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 8/1/2007  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 9/1/2007  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 10/1/2007 | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 11/1/2007 | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 12/1/2007 | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 1/1/2008  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 2/1/2008  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 3/1/2008  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 4/1/2008  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 5/1/2008  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 6/1/2008  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 7/1/2008  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 8/1/2008  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 9/1/2008  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 10/1/2008 | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 11/1/2008 | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 12/1/2008 | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 1/1/2009  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 2/1/2009  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 3/1/2009  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 4/1/2009  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 5/1/2009  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 6/1/2009  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 7/1/2009  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 8/1/2009  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 9/1/2009  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 10/1/2009 | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 11/1/2009 | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 12/1/2009 | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 1/1/2010  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 2/1/2010  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| 3/1/2010  | 0.00              |              | 0.00                 | -                   | -            | 0.00           |
| Total     | 4,298,431.81      |              | 62,568.19            | -                   | 4,361,000.00 |                |

City of Columbia, South Carolina  
Columbia Hilton  
Key Money

Construction Fund

| Date      | Beginning<br>Balance | Deposit      | Interest<br>0.000000% | Transfer<br>to CapInt | Drawdowns    | Ending<br>Balance |
|-----------|----------------------|--------------|-----------------------|-----------------------|--------------|-------------------|
| 4/1/2004  | -                    | -            | -                     | -                     | -            | -                 |
| 4/1/2004  | -                    | -            | -                     | -                     | -            | -                 |
| 5/1/2004  | -                    | -            | -                     | -                     | -            | -                 |
| 6/1/2004  | -                    | -            | -                     | -                     | -            | -                 |
| 7/1/2004  | -                    | -            | -                     | -                     | -            | -                 |
| 8/1/2004  | -                    | -            | -                     | -                     | -            | -                 |
| 9/1/2004  | -                    | -            | -                     | -                     | -            | -                 |
| 10/1/2004 | -                    | -            | -                     | -                     | -            | -                 |
| 11/1/2004 | -                    | -            | -                     | -                     | -            | -                 |
| 12/1/2004 | -                    | -            | -                     | -                     | -            | -                 |
| 1/1/2005  | -                    | -            | -                     | -                     | -            | -                 |
| 2/1/2005  | -                    | -            | -                     | -                     | -            | -                 |
| 3/1/2005  | -                    | -            | -                     | -                     | -            | -                 |
| 4/1/2005  | -                    | -            | -                     | -                     | -            | -                 |
| 5/1/2005  | -                    | -            | -                     | -                     | -            | -                 |
| 6/1/2005  | -                    | -            | -                     | -                     | -            | -                 |
| 7/1/2005  | -                    | -            | -                     | -                     | -            | -                 |
| 8/1/2005  | -                    | -            | -                     | -                     | -            | -                 |
| 9/1/2005  | -                    | 1,000,000.00 | -                     | -                     | 100,000.00   | 900,000.00        |
| 10/1/2005 | 900,000.00           | -            | -                     | -                     | 500,000.00   | 400,000.00        |
| 11/1/2005 | 400,000.00           | -            | -                     | -                     | 350,000.00   | 50,000.00         |
| 12/1/2005 | 50,000.00            | -            | -                     | -                     | 50,000.00    | -                 |
| 1/1/2006  | -                    | -            | -                     | -                     | -            | -                 |
| 2/1/2006  | -                    | -            | -                     | -                     | -            | -                 |
| 3/1/2006  | -                    | -            | -                     | -                     | -            | -                 |
| 4/1/2006  | -                    | -            | -                     | -                     | -            | -                 |
| 5/1/2006  | -                    | -            | -                     | -                     | -            | -                 |
| 6/1/2006  | -                    | -            | -                     | -                     | -            | -                 |
| 7/1/2006  | -                    | -            | -                     | -                     | -            | -                 |
| 8/1/2006  | -                    | -            | -                     | -                     | -            | -                 |
| 9/1/2006  | -                    | -            | -                     | -                     | -            | -                 |
| 10/1/2006 | -                    | -            | -                     | -                     | -            | -                 |
| 11/1/2006 | -                    | -            | -                     | -                     | -            | -                 |
| 12/1/2006 | -                    | -            | -                     | -                     | -            | -                 |
| 1/1/2007  | -                    | -            | -                     | -                     | -            | -                 |
| 2/1/2007  | -                    | -            | -                     | -                     | -            | -                 |
| 3/1/2007  | -                    | -            | -                     | -                     | -            | -                 |
| 4/1/2007  | -                    | -            | -                     | -                     | -            | -                 |
| 5/1/2007  | -                    | -            | -                     | -                     | -            | -                 |
| 6/1/2007  | -                    | -            | -                     | -                     | -            | -                 |
| 7/1/2007  | -                    | -            | -                     | -                     | -            | -                 |
| 8/1/2007  | -                    | -            | -                     | -                     | -            | -                 |
| 9/1/2007  | -                    | -            | -                     | -                     | -            | -                 |
| 10/1/2007 | -                    | -            | -                     | -                     | -            | -                 |
| 11/1/2007 | -                    | -            | -                     | -                     | -            | -                 |
| 12/1/2007 | -                    | -            | -                     | -                     | -            | -                 |
| 1/1/2008  | -                    | -            | -                     | -                     | -            | -                 |
| 2/1/2008  | -                    | -            | -                     | -                     | -            | -                 |
| 3/1/2008  | -                    | -            | -                     | -                     | -            | -                 |
| 4/1/2008  | -                    | -            | -                     | -                     | -            | -                 |
| 5/1/2008  | -                    | -            | -                     | -                     | -            | -                 |
| 6/1/2008  | -                    | -            | -                     | -                     | -            | -                 |
| 7/1/2008  | -                    | -            | -                     | -                     | -            | -                 |
| 8/1/2008  | -                    | -            | -                     | -                     | -            | -                 |
| 9/1/2008  | -                    | -            | -                     | -                     | -            | -                 |
| 10/1/2008 | -                    | -            | -                     | -                     | -            | -                 |
| 11/1/2008 | -                    | -            | -                     | -                     | -            | -                 |
| 12/1/2008 | -                    | -            | -                     | -                     | -            | -                 |
| 1/1/2009  | -                    | -            | -                     | -                     | -            | -                 |
| 2/1/2009  | -                    | -            | -                     | -                     | -            | -                 |
| 3/1/2009  | -                    | -            | -                     | -                     | -            | -                 |
| 4/1/2009  | -                    | -            | -                     | -                     | -            | -                 |
| 5/1/2009  | -                    | -            | -                     | -                     | -            | -                 |
| 6/1/2009  | -                    | -            | -                     | -                     | -            | -                 |
| 7/1/2009  | -                    | -            | -                     | -                     | -            | -                 |
| 8/1/2009  | -                    | -            | -                     | -                     | -            | -                 |
| 9/1/2009  | -                    | -            | -                     | -                     | -            | -                 |
| 10/1/2009 | -                    | -            | -                     | -                     | -            | -                 |
| 11/1/2009 | -                    | -            | -                     | -                     | -            | -                 |
| 12/1/2009 | -                    | -            | -                     | -                     | -            | -                 |
| 1/1/2010  | -                    | -            | -                     | -                     | -            | -                 |
| 2/1/2010  | -                    | -            | -                     | -                     | -            | -                 |
| 3/1/2010  | -                    | -            | -                     | -                     | -            | -                 |
| Total     |                      | 1,000,000.00 | -                     | -                     | 1,000,000.00 |                   |

City of Columbia, South Carolina  
Columbia Hilton  
Tax-Exempt Bonds

Current Interest Bonds

| Date     | Principal     | Rate   | Yield  | Price   | Interest      | Total<br>Debt Service | Annual<br>Debt Service |
|----------|---------------|--------|--------|---------|---------------|-----------------------|------------------------|
| 4/1/2004 |               |        |        |         | -717,023.63   | 717,023.63            |                        |
| 7/1/2004 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 2,151,070.88           |
| 1/1/2005 | -             | 1.300% | 1.300% | 100.000 | 1,434,047.25  | 1,434,047.25          |                        |
| 7/1/2005 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 2,868,094.50           |
| 1/1/2006 | -             | 1.640% | 1.640% | 100.000 | 1,434,047.25  | 1,434,047.25          |                        |
| 7/1/2006 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 2,868,094.50           |
| 1/1/2007 | -             | 1.940% | 1.940% | 100.000 | 1,434,047.25  | 1,434,047.25          |                        |
| 7/1/2007 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 2,868,094.50           |
| 1/1/2008 | -             | 2.300% | 2.300% | 100.000 | 1,434,047.25  | 1,434,047.25          |                        |
| 7/1/2008 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 2,868,094.50           |
| 1/1/2009 | -             | 2.600% | 2.600% | 100.000 | 1,434,047.25  | 1,434,047.25          |                        |
| 7/1/2009 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 2,868,094.50           |
| 1/1/2010 | -             | 2.840% | 2.840% | 100.000 | 1,434,047.25  | 1,434,047.25          |                        |
| 7/1/2010 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 2,868,094.50           |
| 1/1/2011 | -             | 3.080% | 3.080% | 100.000 | 1,434,047.25  | 1,434,047.25          |                        |
| 7/1/2011 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 2,868,094.50           |
| 1/1/2012 | -             | 3.320% | 3.320% | 100.000 | 1,434,047.25  | 1,434,047.25          |                        |
| 7/1/2012 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 2,868,094.50           |
| 1/1/2013 | -             | 3.520% | 3.520% | 100.000 | 1,434,047.25  | 1,434,047.25          |                        |
| 7/1/2013 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 2,868,094.50           |
| 1/1/2014 | -             | 3.690% | 3.690% | 100.000 | 1,434,047.25  | 1,434,047.25          |                        |
| 7/1/2014 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 2,868,094.50           |
| 1/1/2015 | -             | 3.830% | 3.830% | 100.000 | 1,434,047.25  | 1,434,047.25          |                        |
| 7/1/2015 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 2,868,094.50           |
| 1/1/2016 | -             | 3.950% | 3.950% | 100.000 | 1,434,047.25  | 1,434,047.25          |                        |
| 7/1/2016 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 2,868,094.50           |
| 1/1/2017 | -             | 4.060% | 4.060% | 100.000 | 1,434,047.25  | 1,434,047.25          |                        |
| 7/1/2017 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 2,868,094.50           |
| 1/1/2018 | -             | 4.170% | 4.170% | 100.000 | 1,434,047.25  | 1,434,047.25          |                        |
| 7/1/2018 |               |        |        |         | 1,434,047.25  | 1,434,047.25          | 4,538,094.50           |
| 1/1/2019 | 1,670,000.00  | 4.270% | 4.270% | 100.000 | 1,434,047.25  | 3,104,047.25          |                        |
| 7/1/2019 |               |        |        |         | 1,398,392.75  | 1,398,392.75          | 4,591,785.50           |
| 1/1/2020 | 1,795,000.00  | 4.360% | 4.360% | 100.000 | 1,398,392.75  | 3,193,392.75          |                        |
| 7/1/2020 |               |        |        |         | 1,359,261.75  | 1,359,261.75          | 4,648,523.50           |
| 1/1/2021 | 1,930,000.00  | 4.450% | 4.450% | 100.000 | 1,359,261.75  | 3,289,261.75          |                        |
| 7/1/2021 |               |        |        |         | 1,316,319.25  | 1,316,319.25          | 4,702,638.50           |
| 1/1/2022 | 2,070,000.00  | 4.530% | 4.530% | 100.000 | 1,316,319.25  | 3,386,319.25          |                        |
| 7/1/2022 |               |        |        |         | 1,269,433.75  | 1,269,433.75          | 4,758,867.50           |
| 1/1/2023 | 2,220,000.00  | 4.600% | 4.600% | 100.000 | 1,269,433.75  | 3,489,433.75          |                        |
| 7/1/2023 |               |        |        |         | 1,218,373.75  | 1,218,373.75          | 4,816,747.50           |
| 1/1/2024 | 2,380,000.00  | 4.660% | 4.660% | 100.000 | 1,218,373.75  | 3,598,373.75          |                        |
| 7/1/2024 |               |        |        |         | 1,162,919.75  | 1,162,919.75          | 4,875,839.50           |
| 1/1/2025 | 2,550,000.00  | 4.690% | 4.690% | 100.000 | 1,162,919.75  | 3,712,919.75          |                        |
| 7/1/2025 |               |        |        |         | 1,103,122.25  | 1,103,122.25          | 4,931,244.50           |
| 1/1/2026 | 2,725,000.00  | 4.720% | 4.720% | 100.000 | 1,103,122.25  | 3,828,122.25          |                        |
| 7/1/2026 |               |        |        |         | 1,038,812.25  | 1,038,812.25          | 4,992,624.50           |
| 1/1/2027 | 2,915,000.00  | 4.730% | 4.730% | 100.000 | 1,038,812.25  | 3,993,812.25          |                        |
| 7/1/2027 |               |        |        |         | 969,872.50    | 969,872.50            | 5,049,745.00           |
| 1/1/2028 | 3,110,000.00  | 4.740% | 4.740% | 100.000 | 969,872.50    | 4,079,872.50          |                        |
| 7/1/2028 |               |        |        |         | 896,165.50    | 896,165.50            | 5,112,331.00           |
| 1/1/2029 | 3,320,000.00  | 4.750% | 4.750% | 100.000 | 896,165.50    | 4,216,165.50          |                        |
| 7/1/2029 |               |        |        |         | 817,315.50    | 817,315.50            | 5,174,631.00           |
| 1/1/2030 | 3,540,000.00  | 4.760% | 4.760% | 100.000 | 817,315.50    | 4,357,315.50          |                        |
| 7/1/2030 |               |        |        |         | 733,063.50    | 733,063.50            | 5,236,127.00           |
| 1/1/2031 | 3,770,000.00  | 4.770% | 4.770% | 100.000 | 733,063.50    | 4,501,063.50          |                        |
| 7/1/2031 |               |        |        |         | 643,149.00    | 643,149.00            | 5,296,298.00           |
| 1/1/2032 | 4,010,000.00  | 4.780% | 4.780% | 100.000 | 643,149.00    | 4,653,149.00          |                        |
| 7/1/2032 |               |        |        |         | 547,310.00    | 547,310.00            | 5,364,620.00           |
| 1/1/2033 | 4,270,000.00  | 4.780% | 4.780% | 100.000 | 547,310.00    | 4,817,310.00          |                        |
| 7/1/2033 |               |        |        |         | 445,257.00    | 445,257.00            | 5,425,514.00           |
| 1/1/2034 | 4,535,000.00  | 4.780% | 4.780% | 100.000 | 445,257.00    | 4,960,257.00          |                        |
| 7/1/2034 |               |        |        |         | 336,870.50    | 336,870.50            | 5,493,741.00           |
| 1/1/2035 | 4,820,000.00  | 4.780% | 4.780% | 100.000 | 336,870.50    | 5,154,870.50          |                        |
| 7/1/2035 |               |        |        |         | 221,672.50    | 221,672.50            | 9,718,345.00           |
| 1/1/2036 | 9,275,000.00  | 4.780% | 4.780% | 100.000 | 221,672.50    | 9,496,672.50          |                        |
| 7/1/2036 |               |        |        |         | -             | -                     |                        |
| 1/1/2037 | -             | 4.780% | 4.780% | 100.000 | -             | -                     |                        |
| 7/1/2037 |               |        |        |         | -             | -                     |                        |
| 1/1/2038 | -             | 4.780% | 4.780% | 100.000 | -             | -                     |                        |
| 7/1/2038 |               |        |        |         | -             | -                     |                        |
| 1/1/2039 | -             | 4.780% | 4.780% | 100.000 | -             | -                     |                        |
| 7/1/2039 |               |        |        |         | -             | -                     |                        |
| 1/1/2040 | -             | 4.780% | 4.780% | 100.000 | -             | -                     |                        |
| 7/1/2040 |               |        |        |         | -             | -                     |                        |
| 1/1/2041 | -             | 4.780% | 4.780% | 100.000 | -             | -                     |                        |
| 7/1/2041 |               |        |        |         | -             | -                     |                        |
| 1/1/2042 | -             | 4.780% | 4.780% | 100.000 | -             | -                     |                        |
| 7/1/2042 |               |        |        |         | -             | -                     |                        |
| 1/1/2043 | -             | 4.780% | 4.780% | 100.000 | -             | -                     |                        |
| 7/1/2043 |               |        |        |         | -             | -                     |                        |
| 1/1/2044 | -             | 4.780% | 4.780% | 99.992  | -             | -                     |                        |
| 7/1/2044 |               |        |        |         | -             | -                     |                        |
|          |               |        |        |         |               |                       |                        |
| Total    | 60,905,000.00 |        |        |         | 73,259,016.88 | 134,164,016.88        | 134,164,016.88         |

City of Columbia, South Carolina  
Columbia Hilton  
Tax-Exempt Bonds

Capitalized Interest

| Date     | Days<br>30/360 | Beginning<br>Balance | Deposits     | Interest<br>1.200000% | Import From<br>DSRF Fund | Percentage<br>Capitalized | Interest<br>Capitalized | Ending<br>Balance |
|----------|----------------|----------------------|--------------|-----------------------|--------------------------|---------------------------|-------------------------|-------------------|
| 4/1/2004 |                |                      | 4,497,514.08 |                       |                          | 100.00%                   |                         | 4,497,514.08      |
| 7/1/2004 | 90             | 4,497,514.08         |              | 13,472.36             | 65,618.02                | 100.00%                   | 717,023.63              | 3,859,580.83      |
| 1/1/2005 | 180            | 3,859,580.83         |              | 23,157.49             | 132,051.20               | 100.00%                   | 1,434,047.25            | 2,580,742.27      |
| 7/1/2005 | 180            | 2,580,742.27         |              | 15,484.45             | 132,051.20               | 100.00%                   | 1,434,047.25            | 1,294,230.67      |
| 1/1/2006 | 180            | 1,294,230.67         |              | 7,765.38              | 132,051.20               | 100.00%                   | 1,434,047.25            |                   |
| 7/1/2006 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2007 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2007 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2008 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2008 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2009 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2009 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2010 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2010 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2011 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2011 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2012 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2012 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2013 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2013 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2014 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2014 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2015 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2015 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2016 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| Total    |                |                      |              | 59,879.69             | 461,771.61               |                           | 5,019,165.38            |                   |

City of Columbia, South Carolina  
Columbia Hilton  
Tax-Exempt Bonds

Debt Service Reserve Fund

| Date     | Days<br>30/360 | Beginning<br>Balance | Deposits     | Interest<br>\$1,000,000% | Export to<br>Capital Fund | Export to<br>Revenue Fund | Ending<br>Balance |
|----------|----------------|----------------------|--------------|--------------------------|---------------------------|---------------------------|-------------------|
| 4/1/2004 |                |                      | 5,282,047.91 |                          |                           |                           | 5,282,047.91      |
| 7/1/2004 | 90             | 5,282,047.91         |              | 65,618.02                | (65,618.02)               |                           | 5,282,047.91      |
| 1/1/2005 | 180            | 5,282,047.91         |              | 132,051.20               | (132,051.20)              |                           | 5,282,047.91      |
| 7/1/2005 | 180            | 5,282,047.91         |              | 132,051.20               | (132,051.20)              |                           | 5,282,047.91      |
| 1/1/2006 | 180            | 5,282,047.91         |              | 132,051.20               | (132,051.20)              |                           | 5,282,047.91      |
| 7/1/2006 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2007 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2007 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2008 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2008 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2009 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2009 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2010 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2010 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2011 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2011 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2012 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2012 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2013 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2013 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2014 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2014 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2015 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2015 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2016 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2016 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2017 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2017 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2018 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2018 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2019 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2019 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2020 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2020 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2021 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2021 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2022 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2022 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2023 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2023 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2024 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2024 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2025 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2025 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2026 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2026 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2027 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2027 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2028 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2028 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2029 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2029 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2030 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2030 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2031 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2031 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2032 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2032 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2033 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2033 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2034 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2034 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2035 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 7/1/2035 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (132,051.20)              | 5,282,047.91      |
| 1/1/2036 | 180            | 5,282,047.91         |              | 132,051.20               |                           | (5,414,099.11)            | -                 |
| 7/1/2036 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 1/1/2037 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 7/1/2037 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 1/1/2038 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 7/1/2038 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 1/1/2039 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 7/1/2039 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 1/1/2040 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 7/1/2040 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 1/1/2041 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 7/1/2041 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 1/1/2042 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 7/1/2042 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 1/1/2043 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 7/1/2043 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| 1/1/2044 | 180            | -                    | -            | -                        | -                         | -                         | -                 |
| Total    |                | 5,282,047.91         | 8,314,443.47 | (461,771.61)             | (13,205,119.77)           |                           |                   |

City of Columbia, South Carolina  
Columbia Hilton  
Taxable Bonds

Current Interest Bonds

| Date     | Principal    | Rate   | Yield  | Price   | Interest     | Total Debt Service | Annual Debt Service |
|----------|--------------|--------|--------|---------|--------------|--------------------|---------------------|
| 4/1/2004 |              |        |        |         |              |                    |                     |
| 7/1/2004 |              |        |        |         | 120,170.00   | 120,170.00         |                     |
| 1/1/2005 | -            | 1.750% | 1.750% | 100.000 | 240,340.00   | 240,340.00         | 360,510.00          |
| 7/1/2005 |              |        |        |         | 240,340.00   | 240,340.00         |                     |
| 1/1/2006 | -            | 2.400% | 2.400% | 100.000 | 240,340.00   | 240,340.00         | 480,680.00          |
| 7/1/2006 |              |        |        |         | 240,340.00   | 240,340.00         |                     |
| 1/1/2007 | -            | 2.880% | 2.880% | 100.000 | 240,340.00   | 240,340.00         | 480,680.00          |
| 7/1/2007 |              |        |        |         | 240,340.00   | 240,340.00         |                     |
| 1/1/2008 | -            | 3.380% | 3.380% | 100.000 | 240,340.00   | 240,340.00         | 480,680.00          |
| 7/1/2008 |              |        |        |         | 240,340.00   | 240,340.00         |                     |
| 1/1/2009 | -            | 3.670% | 3.670% | 100.000 | 240,340.00   | 240,340.00         | 480,680.00          |
| 7/1/2009 |              |        |        |         | 240,340.00   | 240,340.00         |                     |
| 1/1/2010 | 830,000.00   | 4.000% | 4.000% | 100.000 | 240,340.00   | 1,070,340.00       | 1,310,680.00        |
| 7/1/2010 |              |        |        |         | 223,740.00   | 223,740.00         |                     |
| 1/1/2011 | 880,000.00   | 4.310% | 4.310% | 100.000 | 223,740.00   | 1,103,740.00       | 1,327,480.00        |
| 7/1/2011 |              |        |        |         | 204,776.00   | 204,776.00         |                     |
| 1/1/2012 | 935,000.00   | 4.560% | 4.560% | 100.000 | 204,776.00   | 1,139,776.00       | 1,344,532.00        |
| 7/1/2012 |              |        |        |         | 183,458.00   | 183,458.00         |                     |
| 1/1/2013 | 990,000.00   | 4.730% | 4.730% | 100.000 | 183,458.00   | 1,173,458.00       | 1,356,916.00        |
| 7/1/2013 |              |        |        |         | 160,044.50   | 160,044.50         |                     |
| 1/1/2014 | 1,055,000.00 | 4.760% | 4.760% | 100.000 | 160,044.50   | 1,213,044.50       | 1,375,087.00        |
| 7/1/2014 |              |        |        |         | 134,935.50   | 134,935.50         |                     |
| 1/1/2015 | 1,120,000.00 | 5.430% | 5.430% | 100.000 | 134,935.50   | 1,254,935.50       | 1,389,871.00        |
| 7/1/2015 |              |        |        |         | 104,527.50   | 104,527.50         |                     |
| 1/1/2016 | 1,200,000.00 | 5.430% | 5.430% | 100.000 | 104,527.50   | 1,304,527.50       | 1,409,055.00        |
| 7/1/2016 |              |        |        |         | 71,947.50    | 71,947.50          |                     |
| 1/1/2017 | 1,280,000.00 | 5.430% | 5.430% | 100.000 | 71,947.50    | 1,351,947.50       | 1,423,895.00        |
| 7/1/2017 |              |        |        |         | 37,195.50    | 37,195.50          |                     |
| 1/1/2018 | 1,370,000.00 | 5.430% | 5.430% | 100.000 | 37,195.50    | 1,407,195.50       | 1,444,391.00        |
| 7/1/2018 |              |        |        |         | -            | -                  |                     |
| 1/1/2019 | -            | 5.430% | 5.430% | 100.000 | -            | -                  |                     |
| 7/1/2019 |              |        |        |         | -            | -                  |                     |
| 1/1/2020 | -            | 5.430% | 5.430% | 100.000 | -            | -                  |                     |
| 7/1/2020 |              |        |        |         | -            | -                  |                     |
| 1/1/2021 | -            | 5.430% | 5.430% | 100.000 | -            | -                  |                     |
| 7/1/2021 |              |        |        |         | -            | -                  |                     |
| 1/1/2022 | -            | 5.430% | 5.430% | 100.000 | -            | -                  |                     |
| 7/1/2022 |              |        |        |         | -            | -                  |                     |
| 1/1/2023 | -            | 5.430% | 5.430% | 100.000 | -            | -                  |                     |
| 7/1/2023 |              |        |        |         | -            | -                  |                     |
| 1/1/2024 | -            | 5.430% | 5.430% | 100.000 | -            | -                  |                     |
| 7/1/2024 |              |        |        |         | -            | -                  |                     |
| 1/1/2025 | -            | 5.630% | 5.630% | 100.000 | -            | -                  |                     |
| 7/1/2025 |              |        |        |         | -            | -                  |                     |
| 1/1/2026 | -            | 5.630% | 5.630% | 100.000 | -            | -                  |                     |
| 7/1/2026 |              |        |        |         | -            | -                  |                     |
| 1/1/2027 | -            | 5.630% | 5.630% | 100.000 | -            | -                  |                     |
| 7/1/2027 |              |        |        |         | -            | -                  |                     |
| 1/1/2028 | -            | 5.630% | 5.630% | 100.000 | -            | -                  |                     |
| 7/1/2028 |              |        |        |         | -            | -                  |                     |
| 1/1/2029 | -            | 5.630% | 5.630% | 100.000 | -            | -                  |                     |
| 7/1/2029 |              |        |        |         | -            | -                  |                     |
| 1/1/2030 | -            | 5.630% | 5.630% | 100.000 | -            | -                  |                     |
| 7/1/2030 |              |        |        |         | -            | -                  |                     |
| 1/1/2031 | -            | 5.630% | 5.630% | 100.000 | -            | -                  |                     |
| 7/1/2031 |              |        |        |         | -            | -                  |                     |
| 1/1/2032 | -            | 5.630% | 5.630% | 100.000 | -            | -                  |                     |
| 7/1/2032 |              |        |        |         | -            | -                  |                     |
| 1/1/2033 | -            | 5.630% | 5.630% | 100.000 | -            | -                  |                     |
| 7/1/2033 |              |        |        |         | -            | -                  |                     |
| 1/1/2034 | -            | 5.630% | 5.630% | 100.000 | -            | -                  |                     |
| 7/1/2034 |              |        |        |         | -            | -                  |                     |
| 1/1/2035 | -            | 5.630% | 5.630% | 100.000 | -            | -                  |                     |
| 7/1/2035 |              |        |        |         | -            | -                  |                     |
| 1/1/2036 | -            | 5.630% | 5.630% | 100.000 | -            | -                  |                     |
| 7/1/2036 |              |        |        |         | -            | -                  |                     |
| 1/1/2037 | -            | 0.000% | 0.000% | 100.000 | -            | -                  |                     |
| 7/1/2037 |              |        |        |         | -            | -                  |                     |
| 1/1/2038 | -            | 0.000% | 0.000% | 100.000 | -            | -                  |                     |
| 7/1/2038 |              |        |        |         | -            | -                  |                     |
| 1/1/2039 | -            | 0.000% | 0.000% | 100.000 | -            | -                  |                     |
| 7/1/2039 |              |        |        |         | -            | -                  |                     |
| 1/1/2040 | -            | 0.000% | 0.000% | 100.000 | -            | -                  |                     |
| 7/1/2040 |              |        |        |         | -            | -                  |                     |
| 1/1/2041 | -            | 0.000% | 0.000% | 100.000 | -            | -                  |                     |
| 7/1/2041 |              |        |        |         | -            | -                  |                     |
| 1/1/2042 | -            | 0.000% | 0.000% | 100.000 | -            | -                  |                     |
| 7/1/2042 |              |        |        |         | -            | -                  |                     |
| 1/1/2043 | -            | 0.000% | 0.000% | 100.000 | -            | -                  |                     |
| 7/1/2043 |              |        |        |         | -            | -                  |                     |
| 1/1/2044 | -            | 0.000% | 0.000% | 100.000 | -            | -                  |                     |
| Total    | 9,660,000.00 |        |        |         | 5,005,159.00 | 14,665,159.00      | 14,665,159.00       |

City of Columbia, South Carolina  
Columbia Hilton  
Taxable Bonds

*Capitalized Interest*

| Date         | Days<br>30/360 | Beginning<br>Balance | Deposits     | Interest<br>1.2000000% | Import From<br>DSRF Fund | Percentage<br>Capitalized | Interest<br>Capitalized | Ending<br>Balance |
|--------------|----------------|----------------------|--------------|------------------------|--------------------------|---------------------------|-------------------------|-------------------|
| 4/1/2004     |                |                      | 4,011,107.91 |                        |                          | 100.00%                   |                         | 4,497,514.08      |
| 7/1/2004     | 90             | 4,497,514.08         | -            | 13,472.36              | 7,172.55                 | 100.00%                   | 120,170.00              | 3,859,580.83      |
| 1/1/2005     | 180            | 3,859,580.83         | -            | 23,157.49              | 14,434.21                | 100.00%                   | 240,340.00              | 2,560,742.27      |
| 7/1/2005     | 180            | 2,560,742.27         | -            | 15,484.45              | 14,434.21                | 100.00%                   | 240,340.00              | 1,294,230.67      |
| 1/1/2006     | 180            | 1,294,230.67         | -            | 7,765.38               | 14,434.21                | 100.00%                   | 240,340.00              | -                 |
| 7/1/2006     | 180            | -                    | -            | -                      | -                        | 50.00%                    | 837,193.63              | -                 |
| 1/1/2007     | 180            | -                    | -            | -                      | -                        | 50.00%                    | 837,193.63              | -                 |
| 7/1/2007     | 180            | -                    | -            | -                      | -                        | 50.00%                    | 837,193.63              | -                 |
| 1/1/2008     | 180            | -                    | -            | -                      | -                        | 50.00%                    | 837,193.63              | -                 |
| 7/1/2008     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 1/1/2009     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 7/1/2009     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 1/1/2010     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 7/1/2010     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 1/1/2011     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 7/1/2011     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 1/1/2012     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 7/1/2012     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 1/1/2013     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 7/1/2013     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 1/1/2014     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 7/1/2014     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 1/1/2015     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 7/1/2015     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| 1/1/2016     | 180            | -                    | -            | -                      | -                        | 0.00%                     | -                       | -                 |
| <b>Total</b> |                |                      |              | <b>59,879.69</b>       | <b>50,475.19</b>         |                           | <b>4,189,964.50</b>     |                   |

City of Columbia, South Carolina  
Columbia Hilton  
Taxable Bonds

Debt Service Reserve Fund

| Date     | Days<br>30/360 | Beginning<br>Balance | Deposits   | Interest<br>5.000000% | Export to<br>Capital Fund | Export to<br>Revenue Fund | Ending<br>Balance |
|----------|----------------|----------------------|------------|-----------------------|---------------------------|---------------------------|-------------------|
| 4/1/2004 |                |                      | 577,368.46 |                       |                           |                           | 577,368.46        |
| 7/1/2004 | 90             | 577,368.46           |            | 7,172.55              | (7,172.55)                |                           | 577,368.46        |
| 1/1/2005 | 180            | 577,368.46           |            | 14,434.21             | (14,434.21)               |                           | 577,368.46        |
| 7/1/2005 | 180            | 577,368.46           |            | 14,434.21             | (14,434.21)               |                           | 577,368.46        |
| 1/1/2006 | 180            | 577,368.46           |            | 14,434.21             | (14,434.21)               |                           | 577,368.46        |
| 7/1/2006 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 1/1/2007 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 7/1/2007 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 1/1/2008 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 7/1/2008 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 1/1/2009 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 7/1/2009 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 1/1/2010 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 7/1/2010 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 1/1/2011 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 7/1/2011 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 1/1/2012 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 7/1/2012 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 1/1/2013 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 7/1/2013 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 1/1/2014 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 7/1/2014 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 1/1/2015 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 7/1/2015 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 1/1/2016 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 7/1/2016 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 1/1/2017 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 7/1/2017 | 180            | 577,368.46           |            | 14,434.21             |                           | (14,434.21)               | 577,368.46        |
| 1/1/2018 | 180            | 577,368.46           |            | 14,434.21             |                           | (591,882.67)              | 577,368.46        |
| 7/1/2018 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2019 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2019 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2020 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2020 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2021 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2021 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2022 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2022 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2023 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2023 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2024 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2024 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2025 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2025 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2026 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2026 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2027 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2027 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2028 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2028 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2029 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2029 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2030 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2030 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2031 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2031 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2032 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2032 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2033 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2033 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2034 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2034 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2035 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2035 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2036 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2036 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2037 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2037 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2038 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2038 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2039 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2039 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2040 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2040 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2041 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2041 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2042 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2042 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2043 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 7/1/2043 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| 1/1/2044 | 180            | -                    | -          | -                     | -                         | -                         | -                 |
| Total    |                | 577,368.46           |            | 396,896.26            | (50,475.19)               | (923,789.53)              |                   |

**City of Columbia, South Carolina  
Columbia Hilton**

***Aggregate Cost of Issuance***

| <u>Cost of Issuance</u> | <u>Fee</u>   |
|-------------------------|--------------|
| Bond Counsel            | 300,000      |
| Underwriter's Counsel   | 100,000      |
| Counsels to the City    | 300,000      |
| Financial Advisor       | 65,000       |
| Hotel Consultant        | 165,000      |
| Trustee / Counsel       | 15,000       |
| POS/OS Printing         | 15,000       |
| Ambac                   | 105,000      |
| Ambac Insurance Counsel | 17,500       |
| S&P                     | 80,000       |
| Moody's                 | 60,000       |
| Fitch                   | 0            |
| Feasibility Report      | 60,000       |
| City Issuance Expenses  | 102,000      |
| Miscellaneous           | 25,000       |
| Total                   | 1,609,500.00 |

Ambac Assurance Corporation  
One State Street Plaza  
New York, NY 10004  
212.668.0340

*A member of Ambac Financial Group, Inc.*

## COMMITMENT FOR FINANCIAL GUARANTY INSURANCE

Obligor: **CITY OF COLUMBIA, SOUTH CAROLINA**

Commitment Number: **26216**

Commitment Date: February 17, 2004

Expiration Date: May 17, 2004

Obligations: \$63,295,000\* Senior Bonds (Columbia Hilton), maturing on September 1 in the years 2008 through 2035, both inclusive.

Insurance premium: 2.90% of the total principal and interest due on the Obligations (Fitch, Inc., Moody's Investors Service and Standard & Poor's Credit Markets Services assess separate rating fees which are payable directly to them. Each rating agency will bill separately and all questions regarding the payment of such fees must be addressed to the applicable agency.)

Ambac Assurance Corporation ("Ambac"), a Wisconsin Stock Insurance Corporation,

hereby commits to issue a Financial Guaranty Insurance Policy (the "Policy") relating to the above-described debt obligations (the "Obligations"), substantially in the form imprinted in this Commitment, subject to the terms and conditions contained herein or added hereto (see conditions set forth herein).

To keep this Commitment in effect after the expiration date set forth above, a request for renewal must be submitted to Ambac prior to such expiration date. Ambac reserves the right to refuse wholly or in part to grant a renewal.

The Financial Guaranty Insurance Policy shall be issued if the following conditions are satisfied:

1. The documents to be executed and delivered in connection with the issuance and sale of the Obligations shall not contain any untrue or misleading statement of a material fact and shall not fail to state a material fact necessary in order to make the information contained therein not misleading.
2. No event shall occur which would permit any purchaser of the Obligations, otherwise required, not to be required to purchase the Obligations on the date scheduled for the issuance and delivery thereof.
3. There shall be no material change in or affecting the Obligations (including, without limitation, the security for the Obligations or the proposed debt service structure for the Obligations) or the financing documents or the official statement (or any similar disclosure document) to be executed and delivered in connection with the issuance and sale of the Obligations from the descriptions or schedules thereof heretofore provided to Ambac.
4. The Obligations shall contain no reference to Ambac, the Policy or the financial guaranty insurance evidenced thereby except as may be approved by Ambac.

---

\* Subject to change, with Ambac's approval.

5. Ambac shall be provided with:
  - (a) Executed copies of all financing documents, the official statement (or any similar disclosure document) and the various legal opinions delivered in connection with the issuance and sale of the Obligations, including, without limitation, the unqualified approving opinion of bond counsel rendered by a law firm acceptable to Ambac. The form of Bond Counsel's approving opinion shall also indicate, if applicable, that the Obligations are exempt from federal income taxation, that the Obligor must comply with certain covenants under and pursuant to the new tax law and that the Obligor has the legal power to comply with such covenants. Such opinion of bond counsel shall be addressed to Ambac or, in lieu thereof, a letter shall be provided to Ambac to the effect that Ambac may rely on such opinion as if it were addressed to Ambac.
  - (b) Evidence of a wire transfer in an amount equal to the insurance premium at the time of the issuance and delivery of the Obligations.
6. Unless expressly waived in whole or in part by Ambac, the financing documents and the Official Statement shall contain (a) the terms and provisions provided in Ambac's STANDARD PACKAGE transmitted herewith, and (b) any additional oral or written provisions or comments submitted by Ambac.
7. Ambac shall receive a copy of any insurance policy, surety bond, guaranty or indemnification or any other policy, contract or agreement which provides for payment of all or any portion of the debt, the costs of reconstruction, the loss of business income or in any way secures, ensures or enhances the income stream anticipated to pay the Obligations.
8. Any provisions or requirements of the Purchase Contract or Bond Purchase Agreement referencing Ambac must be sent to the attention of Danielle Packer not less than five (5) business days prior to closing. If such provisions or requirements are not received within that time, compliance may not be possible.

**Special Conditions:**

- Investment grade rating from S&P, but we will require that monies be set so that Ambac can apply for a Moody's rating.
10. All project documents must be satisfactory to Ambac and its outside counsel. Ambac will require the City to pay for outside legal review of documents. Estimated cost is \$90,000-120,000 dollars.
11. All insurance provisions must be satisfactory to Ambac. Ambac will require an insurance consultant to review insurance provisions. Estimated cost is \$15,000-20,000 dollars.
12. Satisfactory review of all environmental reports related to the project.
13. No additional debt allowed under the Indenture.
14. Construction Monitor subject to Ambac consent based upon a mutually agreed upon list of candidates.
15. Ambac's consent to replace Operator.
16. The City's obligation to appropriate monies for debt service is limited to 50% for the initial 10-year operating period and 70% per annum until the debt is fully repaid. The City's obligation to support the annual debt service will always relate to the original amount of Obligations issued, except for redemptions made with monies from outside the transaction.
17. There will be no conditions in the ground lease or Deed of Trust to selling the property or use of the facilities in foreclosure.
18. Ambac can require a Hotel Consultant to be retained if debt service coverage on the Obligations is less than 1.2x, but 1.1x for the initial two years of hotel operations.
19. Ambac's consent to Hotel Consultant based upon a mutually agreed upon list of candidates.
20. The City will not be able to receive monies from the Project prior to 2008.

21. The City will receive 50% of any excess cash flow provided coverage from Hotel net operating income is at least 1.2x.
2. City agrees not to sponsor or support any additional hotel with other than traditional development tools in a defined competitive area without Ambac consent.
23. The Convention Center Authority will covenant not to enter into a room block agreement with any other hotel and not to designate any other hotel as affiliated with the convention center.

Anne Raben  
Authorized Officer



Stevens & Wilkinson

MEMO

Telephone Conversation Memo

Memo to the Record

Meeting Notes Memo

Project Team Communication

Advance to A&E Team

December 5, 2003

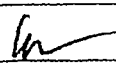
SUBJECT

DATE

Shawn Epps

Columbia Hilton Hotel

TO

Bobby Lyles 

PROJECT NAME

FROM

03028.00

PROJECT NUMBER

SIGNED

ATTENDEES:

DISTRIBUTION:

As we discussed, the A&E team is requesting this advance in the spirit of the Council's actions last July. I do not believe that anyone anticipated the bond closing being delayed this long. The design team has continued to perform in anticipation of a 2003 closing. Now that it appears this will not happen, we just need help at the end of the fiscal year this December 31, 2003.

The team thanks you very much for your help in this matter.

Please accept this memo as confirmation of Stevens & Wilkinson of South Carolina, Inc.'s understanding. If your understanding is inconsistent, please notify Stevens & Wilkinson of South Carolina, Inc. immediately.

FILE: DOCUMENT4

Stevens & Wilkinson of South Carolina, Inc.  
1501 Main Street, Columbia, SC 29201-2831 • P.O. Drawer 7, Columbia, SC 29202-0007 • 803 765 0320 • Fax 803 254 6209

1-929

December 17, 2003

Mr. Mark Alles  
Turner Construction  
3424 Peachtree Road, NE  
Suite 200  
Atlanta, GA 30326

RE: Columbia Hilton Hotel  
JN: 03028.00

Sent Via Email

Dear Mark:

The Columbia City Council voted today to advance Seven-Hundred Five Thousand Dollars (\$705,000.00) to the design team for design services and expenses at cost covering the time period between July 10, 2003 to December 15, 2003. Since Stevens & Wilkinson and the design team's contract is with Turner Construction, the City needs for Turner to, (1) agree the City of Columbia will be reimbursed directly at bond closing for the advanced funds, and (2) that it is permissible that the advanced funds be paid directly to Stevens & Wilkinson for distribution to the design team instead of through Turner, to Stevens & Wilkinson, to the design team.

Mark, I need you to send a letter to John Lumpkin stating that the above meets with Turner's approval as soon as possible so we can receive and distribute the money before the end of the year. The City is requiring John Lumpkin to forward your letter and my invoice with back up to the City with an explanation as to how the City will be reimbursed. I will send you a copy of my invoices and back up information tomorrow.

Your prompt attention to this matter is greatly appreciated.

Sincerely,



Robert T. Lyles, AIA  
Chairman

RTL/jhw

cc: John Lumpkin, Edens & Avant  
Steve Gantt, City of Columbia

1-942

# Turner

December 18, 2003

Turner Construction Company  
3424 Peachtree Rd., NE  
Suite 200  
Atlanta, Georgia 30326  
phone: 404.504.3700  
fax: 404.504.3715

Mr. John Lumpkin  
Edens & Avant  
1901 Main Street  
900 Bank of America Plaza  
Columbia, SC 29201

Re: Columbia City Hilton Hotel

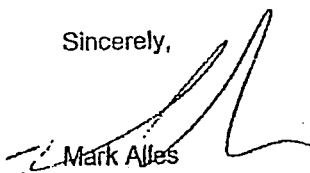
Dear John,

We've received a letter from Mr. Bobby Lyles of Stevens & Wilkinson informing Turner Construction Company of the decision by the City to pay the A/E Team design costs incurred from July 10th to December 15<sup>th</sup>, 2003. We approve the direct payment of \$705,000 to Stevens & Wilkinson with the following understanding:

1. We would reimburse the City after the bonds close.
2. We have received our initial payment amount from the bond sale, which will include these funds.
3. The amount of the GMP will not be affected.
4. If for any reason the bonds fail to close, we are not obligated to reimburse the City.
5. Stevens & Wilkinson provide the appropriate back up to meet the City requirements.
6. We are not obligated to reimburse the City for any costs associated with the use of these funds.

If you have any questions concerning the above feel free to contact me on my mobile.

Sincerely,

  
Mark Alles  
Project Executive  
Turner Construction

CC: P. Little - TCCo  
D. Butler - TCCo  
S. Oakes - TCCo  
File

A Century of Excellence

1-940

1 Q. Yeah. And you all are going to look for the  
2 contract and give it to us, if you've got it?

3 A. Yeah, I feel sure that you got it.

4 Q. Now --

5 A. It might just be a letter, but it's  
6 something.

7 Q. And you're saying in your letter to Mr. Mark  
8 Alles at Turner, you're saying since Stevens &  
9 Wilkinson and the design team's contract is with Turner  
10 Construction, and by that you meant that you did not  
11 have a direct contract with the City of Columbia,  
12 right?

13 MR. NEWMAN: Object to the form.

14 THE WITNESS: I did not have a direct  
15 contract; my contract was with Turner Construction.

16 BY MR. PAUL:

17 Q. All right. And it was Turner that had a  
18 contract with the nonprofit corporation?

19 A. Right, or the city, whichever.

20 Q. All right. And, actually, that contract is  
21 the one that never got signed either, did it?

22 A. I don't know.

23 Q. Okay. And so you were saying to Turner  
24 that -- you on behalf of S&W were saying to Turner that  
25 Turner would need to authorize the city to pay Stevens

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Stevens & Wilkinson of South  
Carolina, Inc., )

Docket No. 2005-CP-40-3361.

Plaintiff, )

vs. )

City of Columbia, South Carolina, )

Defendant. )

NOTICE OF MOTION AND MOTION  
TO ALTER OR AMEND PURSUANT  
TO RULE 59(E), SCRCP

RICHLAND COUNTY  
FILED  
2009 MAR - 1 PM 4:31  
JEANNE W. McBRIDE  
CLERK, P. & G.S.

TO: RICHARD A. HARPOOTLIAN AND GRAHAM L. NEWMAN, ATTORNEYS FOR  
STEVENS & WILKINSON OF SOUTH CAROLINA, INC.:

YOU WILL PLEASE TAKE NOTICE that Defendant City of Columbia, by and through its undersigned attorneys, will move pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure for an order from this Honorable Court to alter or amend this Court's Order granting Plaintiff Stevens & Wilkinson of South Carolina, Inc.'s motion for partial summary judgment against Defendant City of Columbia. This matter came before this Court on March 10, 2009, for a hearing on Stevens & Wilkinson's Motion for Partial Summary Judgment against the City, which motion this Court granted by Order, dated and filed March 23, 2009. The City respectfully requests that this Court reconsider its decision to grant Stevens & Wilkinson's motion and amend its Order to correct an error of law.

#### FACTS

The undisputed facts are that on July 21, 2003, Stevens & Wilkinson presented to the City, a "Cost Estimate" of architectural and engineering fees that were likely to be incurred through

October 13, 2003, the anticipated closing date for the bonds to fund the hotel. (**Exhibit A, Cost Estimate-Revised July 21, 2003.**) The total estimated cost for architectural and engineering fees was \$650,000 for a 90-day period beginning July 13, 2003 and continuing to October 13, 2003. Included on the Cost Estimate was a separate estimate of \$75,000 per week for architectural and engineering fees after October 13, 2003.

On July 30, 2003, the City Council considered payment of the requested interim architectural and engineering fees, but the City Council voted to approve payment of only \$650,000. (**Exhibit B, Minutes of July 30, 2003 Columbia City Council meeting.**) The minutes from the July 30, 2003 City Council meeting state as follows:

ACTION: APPROVED \$650,000 for Interim architectural design services for a period of 90 days prior to Bond Closing. Mr. Papadea and Mr. Osborne did not vote due to a conflict of interest.

The City did not approve the separate estimate of \$75,000 per week for fees after October 13, 2003. On December 18, 2003, Stevens & Wilkinson sent an invoice to the City in the amount of \$697,084.79. (**Exhibit C, Invoice from Stevens & Wilkinson.**) The City issued a check to Stevens & Wilkinson for \$697,084.79 on December 29, 2003. (**Exhibit D, Check from City of Columbia.**)

---

#### DISCUSSION

In its Order, dated March 23, 2009, this Court interpreted Stevens & Wilkinson's Cost Estimate as a contract offer and the City Council's vote on July 30, 2003, as an acceptance of that offer. The Court also found that there was valuable consideration such that a contract was formed. The City respectfully requests that this Court reconsider this analysis and amend the Order because this analysis is based upon an error of law. As a matter of law, the City Council's vote to approve \$650,000 in interim architectural design fees was not an acceptance of Stevens & Wilkinson's offer

to continue architectural and engineering work. Instead, the City Council's vote was a counter-offer, which Stevens & Wilkinson later accepted by performance.

A counter-offer is defined as "an offer made by an offeree to his offeror relating to the same matter as the original offer and proposing a substituted bargain differing from that proposed by the original offer." Restatement 2d Contracts § 39. In this case, the City was the offeree. The City Council vote on July 30, 2003, was related to the same subject matter as the offer by Stevens & Wilkinson, which subject matter was payment for architectural and engineering fees incurred after mid-July of 2003. However, the City Council's vote actually proposed a substituted bargain that differed from the original offer because it did not include payment of \$75,000 per week for architectural or engineering work performed after October 13, 2003. The minutes recording the vote clearly state that City Council only approved payment of \$650,000 and did not approve the additional term of \$75,000 per week. In its Order, this Court recognized the disconnect between what Stevens & Wilkinson asked for and what the City Council approved when it stated, "The City affirmatively accepted this offer, **albeit on seemingly modified terms**, via its vote on July 30, 2003." However, as a matter of law, the City Council vote was a counter-offer, because there can be no acceptance of an offer "on seemingly modified terms."

Stevens & Wilkinson accepted this counter-offer by continuing to perform architectural and engineering work and by accepting payment for that work.<sup>1</sup> There is no evidence that Stevens & Wilkinson made a demand for the additional \$75,000 per week until after this suit was brought.

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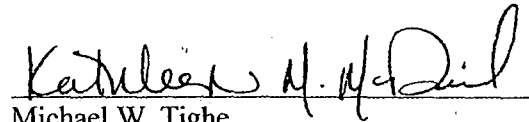
<sup>1</sup>The City was actually presented with a bill by Stevens & Wilkinson for services rendered from July 30, 2003, through December 15, 2003, for \$697,084.79, which was accepted and paid.

Thus, upon reconsideration, the City would respectfully show that this Court should correct the error of law and determine that the contract formed between Stevens & Wilkinson and the City resulted from Stevens & Wilkinson's acceptance of the City's counter-offer; that this contract's terms are clearly found in the counter-offer evidenced by the City Council's July 30, 2003 vote; and that the contract was fulfilled by the presentment by Stevens & Wilkinson of its December 18, 2003 invoice and its payment by the City.

### CONCLUSION

Based upon the foregoing, the City respectfully requests that this Court amend its Order to find that the vote of the City Council on July 30, 2003, was a counter-offer not an acceptance, that the terms of this contract were for the payment of \$650,000 in architectural design fees, and that the City has fully performed under the contract.

Respectfully submitted,



Michael W. Tighe

D. Reece Williams, III

Richard C. Detwiler

Kathleen M. McDaniel

CALLISON TIGHE & ROBINSON, LLC

1812 Lincoln Street, Suite 200

Post Office Box 1390

Columbia, South Carolina 29202-1390

Telephone: 803-256-2371

Facsimile: 803-256-6431

ATTORNEYS FOR DEFENDANT  
CITY OF COLUMBIA

Columbia, South Carolina  
April 1, 2009

**Columbia Convention Center Hotel  
Architectural & Engineering Fees  
Cost Estimate  
Revised - July 21, 2003**

|                                                                    |              |
|--------------------------------------------------------------------|--------------|
| Estimated A/E Fees During 90-Day Period<br>Ending October 13, 2003 | \$450,000.00 |
|--------------------------------------------------------------------|--------------|

|                                                                                                       |                   |
|-------------------------------------------------------------------------------------------------------|-------------------|
| Estimated A/E Fees to be Incurred Weekly<br>After October 13, 2003 (anticipated<br>Bond closing date) | \$ 60,000.00/Week |
|-------------------------------------------------------------------------------------------------------|-------------------|

---

|                                                                |              |
|----------------------------------------------------------------|--------------|
| Estimated Fees for Special Consultants<br>During 90-Day Period | \$200,000.00 |
|----------------------------------------------------------------|--------------|

|                                                                                  |                  |
|----------------------------------------------------------------------------------|------------------|
| Estimated Fees for Special Consultants<br>Incurred Weekly after October 13, 2003 | \$15,000.00/Week |
|----------------------------------------------------------------------------------|------------------|

CITY OF COLUMBIA  
CITY COUNCIL WORK SESSION ACTION REPORT  
July 30, 2003  
9:00 AM - City Council Chambers  
3<sup>rd</sup> Floor City Hall - 1737 Main Street



CITY COUNCIL DISCUSSION/ ACTION

A. \*\*Comprehensive Land Use Agreement between The University Neighborhood Organization and The University of South Carolina

ACTION: Representatives of the University Neighborhood Association, the University of South Carolina and the National Advocacy Center discussed the impact the proposed agreement and the Inn could have on the community as a whole.

B. \*\*The Greater Columbia Hotel & Motel Association - Mr. Tom Sponseller, President/CEO

ACTION: Representatives of the hospitality industry presented statistical data supporting their opposition to the University being involved with the development of a hotel.

C. Columbia Action Council Budget Request - Mr. Allison Baker, Director of Parks & Recreation

ACTION: APPROVED staff recommendations to reduce the Columbia Action Council's budget and AUTHORIZED staff to determine a funding source for the additional \$30,000.00 requested to cover three (3) events during fiscal year 2003/2004.

D. Proposal for Collecting and Remitting Hospitality Tax Funding - Ms. Cathy Alexander, Finance Director

ACTION: AUTHORIZED staff to continue collecting the Hospitality Tax without offering taxpayer discounts and asked staff to review other taxes and how various jurisdictions handle taxpayer discounts while considering administrative costs. A report should be given to Council within thirty- (30) days.

E. Underwriter Recommendations - Mr. Steve Gantt, ACM for Development Services

ACTION: APPROVED staff recommendations.

F. Central Midlands Regional Transit Authority Update - Ms. Dana Turner, Administrative Advisor

ACTION: Ms. Dana Turner, Administrative Advisor, updated the members of Council on the RTA.

ORDINANCE - SECOND READING

G. Ordinance No.: 2003-030 - Granting encroachment to The Woman's Club for placement of a plaque near their former clubhouse at 1703 Blossom Street - First reading approval July 23, 2003

ACTION: APPROVED on second reading.

ORDINANCE - FIRST READING

H. Ordinance No.: 2003-067 - Authorizing property exchange between the City of Columbia and South Carolina Department of Transportation

ACTION: APPROVED on first reading.

\*\*Amendment to the Agenda

WS AR 07/30/2003 Page 1

EXHIBIT B-2-719

APPOINTMENT

H1. \*\*Arts Task Force

ACTION: APPROVED the appointment of Ms. Stacy Calvert to the Arts Task Force.

Council voted to go into Executive Session at 12:02 p.m. to discuss Items I, through K.

EXECUTIVE SESSION DISCUSSION

I. Discussion of the evaluation of employees

ACTION: This item was held over, no action was taken.

J. \*\*Discussion of negotiations incident to the proposed sale of property

ACTION: This item was discussed in Executive Session, no action was taken.

K. Discussion of negotiations incident to proposed contractual arrangements

- AquaGrille

ACTION: This item was held over, no action was taken.

- Mr. Charles Williams, Consultant

ACTION: This item was held over, no action was taken.

- Annexation Coordinator

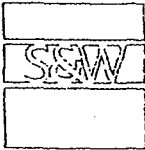
ACTION: This item was held over, no action was taken.

- Convention Center Hotel

- o Mayor Coble adjourned the Executive Session discussion at 1:54 p.m. to reconvene the Work Session.

ACTION: APPROVED \$650,000 for Interim architectural design services for a period of 90 days prior to Bond Closing. Mr. Papadea and Mr. Osborne did not vote due to a conflict of interest.

Mayor Coble adjourned the meeting at 1:55 p.m.



# Stevens & Wilkinson

ARCHITECTURE ENGINEERING INTERIORS

December 18, 2003  
Invoice No. 38430B  
Job No. 03028.00

City of Columbia  
Attn: Shawn Epps  
P.O. Box 147  
Columbia, SC 29217

FOR: Columbia Hilton Hotel

PROFESSIONAL SERVICES FOR THE PERIOD JULY 10, 2003 THROUGH  
DECEMBER 15, 2003- NET AMOUNTS VOLUNTARILY & TEMPORARY DEFERRED

## Fees

|     |            |
|-----|------------|
| S&W | 359,707.34 |
| TVS | 170,289.00 |

## Consultants

|                 |                  |
|-----------------|------------------|
| Douglas Group   | 2,922.30         |
| BAI             | 14,000.00        |
| CM King         | 3,500.00         |
| J&A Engineering | 20,883.56        |
| Enviro Ag       | 18,000.00        |
| Clevenger       | 14,210.00        |
| Lowen- Gunther  | <u>57,250.00</u> |
|                 | 660,762.20       |

|                        |             |
|------------------------|-------------|
| Less Previously Billed | <u>0.00</u> |
| Current Fee Billing    | 660,762.20  |

## Expenses to Date

|             |                  |
|-------------|------------------|
| S&W         | 6,081.43         |
| TVS         | 19,254.29        |
| Consultants | <u>10,986.87</u> |
|             | 36,322.59        |

|                              |             |
|------------------------------|-------------|
| Less Previously Billed       | <u>0.00</u> |
| Current Reimbursable Billing |             |

36,322.59

TOTAL AMOUNT DUE THIS INVOICE      \$ 697,084.79

104

NOTICE:      SECTION 29-6-50, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS  
                 AMENDED, APPLIES TO THE PAYMENT REQUESTED HEREIN.

Stevens & Wilkinson of South Carolina, Inc.  
P.O. Drawer 7, Columbia, SC 29202-0007 • 1501 Main Street, Columbia, SC 29201 • 803 765-0320 • Fax 803-254-6209

EXHIBIT

TC003367



CITY OF COLUMBIA  
PO Box 147  
Columbia, South Carolina 29202

|           |                       |            |           |
|-----------|-----------------------|------------|-----------|
| VENDOR ID | VENDOR NAME           | CHECK DATE | CHECK NO. |
| V003755   | STEVENS AND WILKINSON | 12/29/03   | 00011636  |

| INVOICE NUMBER | INVOICE DATE | PO NUMBER | DEPT REF NUMBER | DESCRIPTION           | CR MEMO DISCOUNT | NET AMOUNT |
|----------------|--------------|-----------|-----------------|-----------------------|------------------|------------|
| 38430B 03      | 12/22/03     | P009728   |                 | Columbia Hilton Hotel | 0.00             | 697,084.79 |
| TOTAL          |              |           |                 |                       |                  | 697,084.79 |



CITY OF COLUMBIA

PO Box 147  
Columbia, South Carolina 29202

WACHOVIA BANK OF SOUTH CAROLINA  
COLUMBIA, SC

DATE 12/29/03

CHECK NO. 00011636

67-778  
52

AP ACCOUNT

PAY EXACTLY

\$ 697,084.79

PAY SIX HUNDRED NINETY SEVEN THOUSAND EIGHTY FOUR DOLLARS and  
SEVENTY NINE CENTS

THIS CHECK WILL NOT BE PAID IF PRESENTED TO THE TREASURER AFTER  
THE EXPIRATION OF NINETY (90) DAYS FROM DATE HEREOF.

TO THE  
ORDER  
OF

STEVENS AND WILKINSON  
POST OFFICE DRAWER 7  
COLUMBIA, SC 29202

*Cristina Alexander*  
*Kerol Sullivan*

⑈00011636⑈ ⑆053207766⑆ 2000020327622⑈

1-937

EXHIBIT D

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Stevens & Wilkinson of South )  
Carolina, Inc., )

Docket No. 2005-CP-40-3361

Plaintiff, )

vs. )

City of Columbia, South Carolina, )

Defendant. )

**MEMORANDUM IN SUPPORT  
OF DEFENDANT'S MOTION TO ALTER  
OR AMEND PURSUANT TO RULE  
59(E), SCRPC**

This Court granted Plaintiff Stevens & Wilkinson of South Carolina, Inc. ("S&W's") Motion for Partial Summary Judgment against Defendant City of Columbia, South Carolina ("the City") by Order dated and filed March 23, 2009. The City timely filed a Motion to Alter or Amend the Order pursuant to Rule 59(e), SCRPC, on April 1, 2009. The City requests that this Court reconsider and amend its Order to correct an error of law. The City respectfully submits this memorandum in support of its Motion to Alter or Amend.

### FACTS

The facts as set forth in this Court's Order of March 23, 2009 are essentially undisputed. In support of a request for interim architectural and engineering fees, on July 21, 2003, S&W presented to the City a "Cost Estimate" indicating fees it would incur on the Convention Center Hotel Project from that date through October 13, 2003, the anticipated date for the bond closing. (**Exhibit A, Cost Estimate-Revised July 21, 2003.**) The estimate was \$650,000. S&W also included "Estimated A/E fees to be incurred weekly after October 13, 2003 (anticipated bond closing date) . . . \$60,000/week," along with an estimate of fees for special consultants for this subsequent period of \$15,000 per week

for a total of \$75,000 per week after October 13, 2003. On July 30, 2003, the Columbia City Council considered S&W's proposal for interim fees. City Council voted to extend a counter-offer for the payment of only the \$650,000 for interim architectural fees for the 90-day period only, until the anticipated October 13, 2003 bond closing, but did not agree to the payment of weekly fees thereafter. The minutes from the July 30, 2003 City Council meeting state as follows:

ACTION: APPROVED \$650,000 for Interim architectural design services for a period of 90 days prior to Bond Closing. Mr. Papadea and Mr. Osborne did not vote due to a conflict of interest.

**(Exhibit B, Minutes of July 30, 2003 Columbia City Council meeting.)**

Based upon this counter-offer, S&W stated that they would "pick up their pens" again to work on the Hotel plans. On December 18, 2003, S&W submitted an invoice to the City in the amount of \$697,084.79 for the period July 13, 2003 to December 15, 2003. **(Exhibit C, Invoice from Stevens & Wilkinson.)** The City issued a check to S&W for \$697,084.79 on December 29, 2003. **(Exhibit D, Check from City of Columbia.)**<sup>1</sup> Significantly, the bond closing did not occur on October 13, 2003; indeed, there was never a bond closing.

#### DISCUSSION

In its Order dated March 23, 2009, this Court granted S&W's Motion for Partial Summary Judgment on the sole issue of whether a contract was formed between the City and S&W with respect to the interim architectural fees. In its Order, the Court interpreted S&W's Cost Estimate as a contract offer and the City Council's vote on July 30, 2003, as an acceptance of that offer. The

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<sup>1</sup>There is nothing in the record to explain the \$47,084.79 difference between the amount approved by the City and the amount invoiced by S&W, other than the bill as presented and the fact that the City paid it; it is unclear from the record precisely what work, if any, may have been performed between October 13 and December 13, 2003.

City respectfully submits that such a finding is an error of law. As a matter of law, the City Council's vote was not an acceptance of S&W's offer but was a counter-offer, the terms of which S&W then accepted. The City requests that this Court amend the Order to correct this error of law.

For a valid, enforceable contract to exist, "there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement." Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989) (quoting Hughes v. Edwards, 265 S.C. 529, 220 S.E.2d 231 (1975)). Where the purported acceptance differs materially from the offer, there is no meeting of the minds; therefore, there is no contract formed by the acceptance on differing terms. Instead, a purported acceptance containing terms differing from the offer is a counter-offer. "A reply to an offer which purports to accept it but is conditional on the offeror's assent to terms additional to or different from those offered is not an acceptance but a counter-offer." Restatement (Second) of Contracts §59.

South Carolina has applied this rule to find that a purported acceptance on different terms was a counter-offer that could then be accepted or rejected by the initial offeror. Sossamon v. Littlejohn, 241 S.C. 478, 129 S.E.2d 124 (1963). In Sossamon, two business partners entered into negotiations, via the exchange of letters, for the sale of one partner's interest in the business to the other. The negotiations began with a letter from the defendant offering to sell the business to the plaintiff on the following terms: (1) the interest was to include the one-half interest in the business and all of the real property owned by the business, (2) the price would be \$100,000, (3) all cash on hand at the time of closing would be split equally between the two, and (4) the defendant would receive the \$5,000 life insurance policy that the business carried on him.

The plaintiff replied by letter, stating that he accepted the defendant's offer. The plaintiff's

letter included a check for \$1,000 and set forth the following pertinent terms: (1) the closing date would be April 1, 1959, at which time the partnership would terminate, (2) the plaintiff would have up to 60 days from April 1, 1959, to pay the balance of \$99,000 if the defendant wanted payment in cash, and (3) the defendant would transfer title in the real property to the plaintiff on April 1, 1959. The defendant disagreed with those terms and replied in writing that the plaintiff's counter-offer was rejected and the offer was withdrawn. The plaintiff then sought specific performance of what he alleged was a valid, binding contract.

The Supreme Court disagreed. It held that the plaintiff's letter constituted a counter-offer as to the material terms of the contract because the plaintiff's acceptance changed certain terms of the offer. The Supreme Court quoted with approval the following language from Cohn v. Penn. Beverage Co., et al., 169 A. 768 (1934):

Nothing is better settled than that in order to constitute a contract there must be an offer on one side and an unconditional acceptance on the other. . . . There must be a meeting of the minds in order to constitute a contract. . . . To constitute a contract the acceptance of the offer must be absolute and identical with the terms of the offer. If one offers another to do a definite thing, and that other person accepts conditionally or introduces a new term into the acceptance, his answer is either a mere expression of willingness to treat or it is in effect a counter proposal. A qualified acceptance does not constitute a contract.

Sossamon, 241 S.C. at \_ , 129 S.E.2d at 127 (emphasis added).

The Supreme Court held that because the plaintiff "imposed new or other conditions not contemplated in the offer," the plaintiff's letter "constituted a counter proposal as to a material term of the sale, to which the defendant was required to assent before there could be a meeting of the minds of the parties." Id. at \_ , 129 S.E. 2d at 128. Hence, there was no contract because the defendant rejected the plaintiff's counter-offer.

Where the original offeree makes a counter-offer to the original offeror, a power of acceptance is created in the original offeror. If he accepts the terms of the counter-offer, a contract is formed and the terms of the contract are those of the counter-offer, not the offer. In Cain v. Noel, 268 S.C. 583, 587, 235 S.E.2d 292, 293 (1997), the Supreme Court stated:

If the party who made the prior offer properly expresses his assent to the terms of the counter offer, a contract is thereby made on those terms. The fact that the prior offer became inoperative is now immaterial; and the terms of that offer are also immaterial except in so far as they are incorporated by reference in the counter offer itself.

Id. (quoting 1 Corbin on Contracts § 89, pp. 379-80.)

Such an acceptance of an offer, or counter-offer as in this case, may be inferred from acts and conduct even if a party does not verbally or in writing accept the offer or counter-offer. Florence City-County Airport Comm'n v. Air Terminal Parking Co., 283 S.C. 337, 341, 322 S.E.2d 471, 473 (Ct. App. 1984) ("Assent to an offer need not be expressed to constitute a contract, and may be inferred from acts and conduct.").

The facts here are only susceptible to one interpretation as a matter of law. The City Council's vote to approve \$650,000 in interim fees can only be construed as a counter-offer to S&W's offer. The terms of the City Council vote differed materially from the terms of S&W's offer in that the vote did not include the approval of the additional \$75,000 per week after October 13, 2003. Thus, as a matter of law, the City Council's vote was not an acceptance but rather a counter-offer, which then created in S&W a power of acceptance. S&W accepted the City's counter-offer by presumably performing the work, invoicing the City for payment, and accepting payment by the City.

In its March 23, 2009 Order, this Court held that by its July 30, 2003 vote, City Council

"affirmatively accepted this offer, albeit on seemingly modified terms . . . ." Order, pg. 6 (emphasis added). Under South Carolina law, one cannot form a contract by accepting an offer on modified terms; such "seemingly modified terms" can only be considered a counter-offer as a matter of law. This is precisely what the Supreme Court held in Sossamon. 241 S.C. at \_\_, 129 S.E. 2d at 128. Notably, at no time has S&W ever invoiced the City for payment of the additional \$75,000 per week.

### **CONCLUSION AND REQUEST FOR RELIEF**

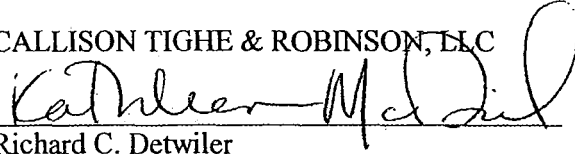
The City would respectfully show that this Court should modify its March 23, 2009 Order, as a matter of law, in the following respects:

- A. By deleting or modifying any references in the Order stating or implying that by the vote of City Council on July 30, 2003, the City accepted S&W's offer to perform interim architectural and engineering services between July 13, 2003, and October 13, 2003;
- B. By finding that the City Council's vote contained materially different terms than those contained in S&W's offer and, therefore, was a counter-offer;
- C. By finding that S&W accepted the terms of the counter-offer and a contract was formed calling for the City to pay \$650,000 to S&W for interim architectural fees for the period between July 13, 2003, and October 13, 2003; and
- D. By finding that the terms of the contract were fulfilled by the City's payment to S&W of \$697,084.79 on December 29, 2003.

*(Signature Page to Follow)*

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC



Richard C. Detwiler

D. Reece Williams, III

Kathleen McDaniel

1812 Lincoln Street, Suite 200

Post Box Office 1390

Columbia, South Carolina 29202-1390

Telephone: 803-256-2371

Facsimile: 803-256-6431

**ATTORNEYS FOR DEFENDANT  
CITY OF COLUMBIA**

Columbia, South Carolina  
June 30, 2009

# Exhibit A

# Stevens & Wilkinson

## **Columbia Convention Center Hotel Architectural & Engineering Fees Cost Estimate Revised - July 21, 2003**

|                                                                    |              |
|--------------------------------------------------------------------|--------------|
| Estimated A/E Fees During 90-Day Period<br>Ending October 13, 2003 | \$450,000.00 |
|--------------------------------------------------------------------|--------------|

|                                                                                                       |                   |
|-------------------------------------------------------------------------------------------------------|-------------------|
| Estimated A/E Fees to be Incurred Weekly<br>After October 13, 2003 (anticipated<br>Bond closing date) | \$ 60,000.00/Week |
|-------------------------------------------------------------------------------------------------------|-------------------|

|                                                                |              |
|----------------------------------------------------------------|--------------|
| Estimated Fees for Special Consultants<br>During 90-Day Period | \$200,000.00 |
|----------------------------------------------------------------|--------------|

|                                                                                  |                  |
|----------------------------------------------------------------------------------|------------------|
| Estimated Fees for Special Consultants<br>Incurred Weekly after October 13, 2003 | \$15,000.00/Week |
|----------------------------------------------------------------------------------|------------------|

# Exhibit B

CITY OF COLUMBIA  
CITY COUNCIL WORK SESSION ACTION REPORT  
July 30, 2003  
9:00 AM - City Council Chambers  
3<sup>rd</sup> Floor City Hall - 1737 Main Street



CITY COUNCIL DISCUSSION/ ACTION

A. \*\*Comprehensive Land Use Agreement between The University Neighborhood Organization and The University of South Carolina

ACTION: Representatives of the University Neighborhood Association, the University of South Carolina and the National Advocacy Center discussed the impact the proposed agreement and the Inn could have on the community as a whole.

B. \*\*The Greater Columbia Hotel & Motel Association – Mr. Tom Sponseller, President/CEO

ACTION: Representatives of the hospitality industry presented statistical data supporting their opposition to the University being involved with the development of a hotel.

C. Columbia Action Council Budget Request – Mr. Allison Baker, Director of Parks & Recreation

ACTION: APPROVED staff recommendations to reduce the Columbia Action Council's budget and AUTHORIZED staff to determine a funding source for the additional \$30,000.00 requested to cover three (3) events during fiscal year 2003/2004.

D. Proposal for Collecting and Remitting Hospitality Tax Funding – Ms. Cathy Alexander, Finance Director

ACTION: AUTHORIZED staff to continue collecting the Hospitality Tax without offering taxpayer discounts and asked staff to review other taxes and how various jurisdictions handle taxpayer discounts while considering administrative costs. A report should be given to Council within thirty- (30) days.

E. Underwriter Recommendations – Mr. Steve Gantt, ACM for Development Services

ACTION: APPROVED staff recommendations.

F. Central Midlands Regional Transit Authority Update – Ms. Dana Turner, Administrative Advisor

ACTION: Ms. Dana Turner, Administrative Advisor, updated the members of Council on the RTA.

ORDINANCE – SECOND READING

G. Ordinance No.: 2003-030 – Granting encroachment to The Woman's Club for placement of a plaque near their former clubhouse at 1703 Blossom Street – First reading approval July 23, 2003

ACTION: APPROVED on second reading.

ORDINANCE – FIRST READING

H. Ordinance No.: 2003-067 - Authorizing property exchange between the City of Columbia and South Carolina Department of Transportation

ACTION: APPROVED on first reading.

\*\* Amendment to the Agenda

WS AR 07/30/2003 Page 1

### APPOINTMENT

HI. \*\*Arts Task Force

ACTION: APPROVED the appointment of Ms. Stacy Calvert to the Arts Task Force.

Council voted to go into Executive Session at 12:02 p.m. to discuss Items I. through K.

### EXECUTIVE SESSION DISCUSSION

I. Discussion of the evaluation of employees

ACTION: This item was held over, no action was taken.

J. \*\*Discussion of negotiations incident to the proposed sale of property

ACTION: This item was discussed in Executive Session, no action was taken.

K. Discussion of negotiations incident to proposed contractual arrangements

- AquaGrille

ACTION: This item was held over, no action was taken.

- Mr. Charles Williams, Consultant

ACTION: This item was held over, no action was taken.

- Annexation Coordinator

ACTION: This item was held over, no action was taken.

- Convention Center Hotel

- Mayor Coble adjourned the Executive Session discussion at 1:54 p.m. to reconvene the Work Session.

ACTION: APPROVED \$650,000 for Interim architectural design services for a period of 90 days prior to Bond Closing. Mr. Papadea and Mr. Osborne did not vote due to a conflict of interest.

Mayor Coble adjourned the meeting at 1:55 p.m.

# Exhibit C



# Stevens & Wilkinson

ARCHITECTURE ENGINEERING INTERIORS

December 18, 2003  
Invoice No. 384308  
Job No. 03028.00

City of Columbia  
Attn: Shawn Epps  
P.O. Box 147  
Columbia, SC 29217

FOR: Columbia Hilton Hotel

PROFESSIONAL SERVICES FOR THE PERIOD JULY 10, 2003 THROUGH  
DECEMBER 15, 2003- NET AMOUNTS VOLUNTARILY & TEMPORARY DEFERRED

## Fees

|     |            |
|-----|------------|
| S&W | 359,707.34 |
| TVS | 170,289.00 |

## Consultants

|                 |                  |
|-----------------|------------------|
| Douglas Group   | 2,922.30         |
| BAI             | 14,000.00        |
| CM King         | 3,500.00         |
| J&A Engineering | 20,883.56        |
| Enviro Ag       | 18,000.00        |
| Clevenger       | 14,210.00        |
| Lowen- Gunther  | <u>57,250.00</u> |
|                 | 660,762.20       |

Less Previously Billed  
Current Fee Billing

0.00

660,762.20

## Expenses to Date

|             |                  |
|-------------|------------------|
| S&W         | 6,081.43         |
| TVS         | 19,254.29        |
| Consultants | <u>10,986.87</u> |
|             | 36,322.59        |

Less Previously Billed  
Current Reimbursable Billing

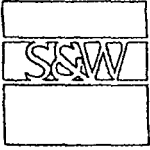
0.00

36,322.59

TOTAL AMOUNT DUE THIS INVOICE     \$ 697,084.79

NOTICE:     SECTION 29-6-50, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS  
              AMENDED, APPLIES TO THE PAYMENT REQUESTED HEREIN.

Stevens & Wilkinson of South Carolina, Inc.  
P.O. Drawer 7 Columbia, SC 29202-0007 • 1501 Main Street Columbia, SC 29201 • 803.765.0320 • Fax 803.254.6209



**Stevens & Wilkinson**  
ARCHITECTURE ENGINEERING INTERIORS

December 18, 2003  
Invoice No. 384308  
Job No. 03028.00

City of Columbia  
Attn: Shawn Epps  
P.O. Box 147  
Columbia, SC 29217

FOR: Columbia Hilton Hotel

PROFESSIONAL SERVICES FOR THE PERIOD JULY 10, 2003 THROUGH  
DECEMBER 15, 2003

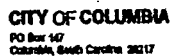
|                   | <u>Fees</u>      | <u>Fee Earned</u> |
|-------------------|------------------|-------------------|
| Basic Project Fee | 2,203,000.00     | 588,006.10        |
| Early Site Work   | <u>34,000.00</u> | <u>34,000.00</u>  |
| Subtotal          | 2,237,000.00     | 622,006.10        |
| I.D. Fees         | 357,000.00       | <u>75,078.69</u>  |

TOTAL AMOUNT DUE THIS INVOICE     \$ 697,084.79

NOTICE:     SECTION 29-6-50, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS  
              AMENDED, APPLIES TO THE PAYMENT REQUESTED HEREIN.

Stevens & Wilkinson of South Carolina, Inc.  
P.O. Drawer 7 Columbia, SC 29202-0007 • 1501 Main Street Columbia, SC 29201 • 803.765 0320 • Fax 803 254 6209

# Exhibit D



| VENDOR ID | VENDOR NAME           | CHECK DATE | CHECK NO |
|-----------|-----------------------|------------|----------|
| V003755   | STEVENS AND WILKINSON | 12/29/03   | 00011636 |

| INVOICE NUMBER | INVOICE DATE | PO NUMBER | DEPT REF NUMBER | DESCRIPTION           | ST. MEMO DISCOUNT | NET AMOUNT |
|----------------|--------------|-----------|-----------------|-----------------------|-------------------|------------|
| 38430B 03      | 12/22/03     | P009728   |                 | Columbia Hilton Hotel | 0.00              | 697,084.79 |

|       |            |
|-------|------------|
| TOTAL | 697,084.79 |
|-------|------------|



**CITY OF COLUMBIA**

PO Box 157  
Columbia, South Carolina 29217

WACHOVIA BANK OF SOUTH CAROLINA, N.A.  
COLUMBIA, S.C.

CHECK NO. 00011636

97-77  
632

DATE 12/29/02

AP ACCOUNT

PAY SIX Hundred NINETY SEVEN Thousand EIGHTY FOUR Dollars and SEVENTY NINE Cents. THIS C

SECRET 6977084.79

THIS CHECK WILL NOT BE PAID IF PRESENTED TO THE TREASURER AFTER THE EXPIRATION OF NINETY (90) DAYS FROM DATE HEREOF.

TO THE  
ORDER  
OF

STEVENS AND WILKINSON  
POST OFFICE DRAWER 7  
COLUMBIA, S.C. 29202

EXPIRATION OF NINE (9) DAYS FROM DATE HEREOF.

Catherine Alexander  
Moral Sullivan

⑈00011636⑈ ⑈053207766⑈ 20000-20327622⑈

1-937

122

|   |                           |   |                     |
|---|---------------------------|---|---------------------|
| 1 | STATE OF SOUTH CAROLINA   | ) | IN GENERAL SESSIONS |
| 2 | <u>COUNTY OF RICHLAND</u> | ) | COURT               |
| 3 |                           | ) | NOV 18 2009         |
| 4 | STEVENS AND WILKINSON,    | ) |                     |
| 5 |                           | ) |                     |
| 6 | -V-                       | ) | TRANSCRIPT OF       |
| 7 |                           | ) | RECORD              |
| 8 | CITY OF COLUMBIA          | ) | 2005-CP-40-002      |
| 9 | <u>DEFENDANT.</u>         | ) |                     |

10

11

MARCH 10, 2009

12

RICHLAND, SOUTH CAROLINA

13

14

B-E-F-O-R-E:

15

HONORABLE CASEY L. MANNING, JUDGE;

16

17

A-P-P-E-A-R-A-N-C-E-S:

18

FOR THE PLAINTIFF:

19

MR. HARPOOTLIAN, ESQ.

20

MR. HENSON, ESQ.

21

FOR THE DEFENDANT:

22

MS. MCDANIEL, ESQ.

23

MR. WARD, ESQ.

24

25

## I-N-D-E-X

PG.

MOTION:

3

CERTIFICATE OF REPORTER:

33

(REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED.)

1 (The following proceedings were  
2 held on March 10, 2009.)

3 MR. HARPOOTLIAN: We got a motion for partial  
4 summary judgment and she's got a motion for privilege. I  
5 would ask that we deal with the summary judgment motion  
6 first.

7 THE COURT: Why?

8 MR. HARPOOTLIAN: Sir?

9 THE COURT: Why?

10 MR. HARPOOTLIAN: I'm more important.

11 (Laughter)

12 MS. MCDANIEL: I have no objection to that, Your  
13 Honor.

14 THE COURT: Okay.

15 MR. HARPOOTLIAN: And she has no objection.

16 THE COURT: Well.

17 MR. HARPOOTLIAN: And she has no objection.

18 MS. MCDANIEL: Well, let's --

19 MR. HARPOOTLIAN: Please the court, Your Honor,  
20 let me by way of background.

21 THE COURT: I think I first heard about this case  
22 three years ago, I think I heard some motions when this  
23 issue first got started.

24 MR. HARPOOTLIAN: It's got some age on it and it's  
25 scheduled to be tried this July for --

1 THE COURT: This was the Damon's and all of this

2 --

3 MR. HARPOOTLIAN: Right.

4 THE COURT: This is the whole Damon's?

5 MR. HARPOOTLIAN: Well, part of it.

6 THE COURT: Part of it.

7 MR. HARPOOTLIAN: Part of it, we're beyond all  
8 that.

9 THE COURT: Yeah.

10 MR. HARPOOTLIAN: And, Your Honor, we're scheduled  
11 to try this July 13<sup>th</sup>, before --

12 THE COURT: Mr. Ward is shaking his head, Toby  
13 Ward.

14 MR. WARD: Your Honor, that's not entirely agreed  
15 upon at this point in time, that is when it would go to  
16 trial.

17 THE COURT: Okay.

18 MR. HARPOOTLIAN: Everybody yesterday I thought --  
19 did you not agree to it?

20 MR. WARD: No.

21 MR. HARPOOTLIAN: Okay. Well, I didn't know, I'm  
22 sorry.

23 THE COURT: It's all right. Go ahead.

24 MR. HARPOOTLIAN: Your Honor, by way of  
25 background, this legal action arose out of an agreement

1 entered into by several, several, parties; it involved  
2 determining -- initially determining whether or not the City  
3 of Columbia would build, own and operate a hotel. And to  
4 that end several parties entered into something called  
5 memorandum of understanding, and that was entered into on  
6 April of 2003. And one of the parties -- I represent  
7 Stevens Wilkinson an architecture firm. One of the parties  
8 was Stevens and Wilkinson and they entered into this -- what  
9 we're going to refer to as the MOU along with a number of  
10 other people and The City of Columbia. And the idea was  
11 that people who -- people would work at risk, several of  
12 them, including Stevens and Wilkinson to get to the point to  
13 where the city could determine whether or not it was  
14 feasible to go forward with the city owned, city operated  
15 hotel. To that end, Stevens Wilkinson agreed to do the  
16 work, that is to do the design work to get to what is called  
17 a guarantee -- price. That is to do drawings where somebody  
18 else could determine what the guaranteed maximum price was.  
19 And then to see if they could get bond financing to do that.  
20 Now, that is somewhat an over simplification.

21 THE COURT: All right.

22 MR. HARPOOTLIAN: For your purposes this morning I  
23 don't think it's, it's, really that relevant. I just need  
24 for you to understand this MOU. And that Stevens Wilkinson  
25 agreed to produce whatever work, drawings, whatever that the

1 Turner Construction and others could take and then come up  
2 with a guarantee maximum price which they then could  
3 determine whether it was feasible to go forward or not and  
4 Stevens Wilkinson did that; they produced these drawings and  
5 in July of 2003 they said, okay, we've done what we agreed  
6 to do at risk. We're putting our pencils down and when  
7 y'all -- the bonds get approved let us know or don't get  
8 approved let us know. And if they don't then we're done, if  
9 they do then we'll go forward with doing the rest of the  
10 work that's necessary to get the hotel built.

11           The city decided that they did not want to wait  
12 between July and what was suppose to be October when the  
13 bonds were to be approved that was sort of the target date.  
14 So they approached Stevens and Wilkinson. And John Lumpkin  
15 who was the -- served as the development team liaison with  
16 the city wrote a letter on behalf of Stevens Wilkinson and  
17 we have included it as Exhibit A. And what he says in this  
18 is that rather -- the city doesn't want a delay. He says  
19 Stevens Wilkinson offered to continue to design team's work  
20 on finalizing the hotel project in exchange for a promise of  
21 payment. In other words, we done what we going to do but if  
22 you want us to go forward and he says the issue opportunity  
23 presented under this scenario relates to the time period  
24 between obtaining the GMD, guaranteed maximum price and bond  
25 closing approximately 90 days, provided the article team

1 continues its work during its 90 day period which work does  
2 not require for bond closing; it would enable a contractor to  
3 commence work 90 days early thereby directly effecting the  
4 time frame of the hotel only. In order for this to happen  
5 the article team would need assurance that it would receive  
6 payment for its work performed during this particular time.  
7 I enclose an estimate of the fees which would be incurred  
8 during that 90 day period and a weekly estimate of the fees  
9 after that should the bond closing be delayed during the  
10 week of October 13<sup>th</sup>, 2003. Stevens Wilkinson submitted  
11 two different estimates for what it would cost to do this  
12 work. The first total 450,000 and \$60,000 per week after  
13 October 13<sup>th</sup>.

14 THE COURT: 460?

15 MR. HARPOOTLIAN: And 60 a week, and 60 a week,  
16 after October 13<sup>th</sup> and it was limited to Stevens Wilkinson  
17 individual expenses and that's Exhibit B.

18 The second estimate totaled 650,000 through  
19 October 15 and 75,000 per week thereafter included  
20 additional expenses Stevens Wilkinson will be required to  
21 pay subcontractors and that's Exhibit C.

22 The city responded by approving the allegation of  
23 \$650,000 for them to go forward, that's Exhibit D the July  
24 30 minutes. On December 18 Stevens Wilkinson submitted an  
25 invoice to the city for 697,000 -- \$697,084.79 for services

1 rendered through December 15 and that invoice is in here as  
2 Exhibit E. The city released a check to Stevens Wilkinson  
3 on December 29 for that amount Exhibit F, they wrote a check  
4 for Stevens Wilkinson. Now --

5 THE COURT: For 609.

6 MR. HARPOOTLIAN: For \$697.84, and, Your Honor,  
7 we're not here today asking you --

8 THE COURT: Wait a minute, \$697.84?

9 MR. HARPOOTLIAN: 60 -- six -- \$697,084.79.

10 THE COURT: Okay.

11 THE DEFENDANT: We're not here today, by the way,  
12 to ask the court for damages. Should, Your Honor, grant  
13 partial summary judgment we would then ask -- and we would  
14 waive jury and ask that judge -- the master or some other  
15 judge have a nonjury trial on damages. So all we're asking  
16 today is whether or not -- Your Honor, whether or not there  
17 was a contact, not how much we were damaged.

18 THE COURT: All right.

19 MR. HARPOOTLIAN: So -- and what happened after  
20 that was that, that, Stevens Wilkinson continued to do the  
21 work until April of 2004 meeting every week with Steve Gant  
22 the city official who is the -- in charge of this project  
23 and generating work. They generated more and more drawings,  
24 more information and met with the -- the big team met every  
25 week and the city was aware of what they were doing. Until

1 April when the city decided and there had not been any  
2 feasibility study done at that point but that's another  
3 issue for another day, but the city did not -- decided to go  
4 in another direction and that direction was a privately  
5 owned, privately run Hilton --

6 THE COURT: This is so we can get a Roof Chris in  
7 Columbia?

8 MR. HARPOOTLIAN: And to get a Roof Chris in  
9 Columbia. Now, there may have been a Roof Chris in the city  
10 hotel.

11 THE COURT: Go ahead.

12 MR. HARPOOTLIAN: May have been a Morton's, may  
13 have been something else, but that's not -- that issue is  
14 not here today that is whether or not they're was a  
15 determination of feasibility. But they stopped. They  
16 actually never voted to stop proceeding with the city owned  
17 hotel, they never directed Stevens Wilkinson or anybody else  
18 to stop working. But it obviously when an RFP was issued  
19 for a private hotel and that private hotel went forward in  
20 April of 2004 they did stop working. But as we point out in  
21 our memorandum, Your Honor, we've submitted to you, that  
22 Tameika Isaac Devine a member of city council at the time of  
23 the July 30<sup>th</sup>, agreement acknowledged that the transaction  
24 was intended Stevens Wilkinson for work performed,  
25 performed, beyond the MOU. In other words, we're saying

1 there's a contact as a result of the offer and acceptance by  
2 the city and the payment of the \$697,000. Now, we also  
3 point out that Assistant City Manager Steven Gant said that  
4 this agreement was outside the MOU and we quote his  
5 deposition testimony.

6 Now, and of course, Gant he was asked by me, Isn't  
7 it reasonable for them Stevens Wilkinson to believe they  
8 should have been paid for what they did after the city told  
9 them to pick their pencils back up?

10 Answer, I don't know.

11 Question, So you have a question about that, they  
12 could have reasonably expected to be paid?

13 I guess they could have, yes. So the question  
14 becomes should Stevens and Wilkinson be paid or did they  
15 have a contact that began in July and ended in April? The  
16 city's going to take the position, I suspect, that if they  
17 got paid for what they did up to the point the city council  
18 authorized. We make a couple points about that; the first  
19 is the city was given two proposals which we explained with  
20 a flat amount plus so much a week, in -- it was to go to  
21 October 15. They were billed through December 15<sup>th</sup> and  
22 paid it which is A an indication that they intended to --  
23 this agreement to go beyond October 15. They appropriated  
24 \$650,000; they paid almost another \$50,000 on top of that on  
25 December 15<sup>th</sup>. So neither the amount nor the term was

1 fixed by anything city council did, matter of fact, their  
2 conduct would indicate their potential for it to go until  
3 bonds were approved or disapproved. So Stevens and  
4 Wilkinson continued to work, met with the city, no one ever  
5 told them to stop working and they continued to give the  
6 city the product of what, what, they generated. Now, let me  
7 --

8 THE COURT: So basically you're saying they've  
9 done the work they haven't been paid for?

10 MR. HARPOOTLIAN: Yes, sir.

11 THE COURT: All right.

12 MR. HARPOOTLIAN: And that they had a contract to  
13 that.

14 THE COURT: Okay.

15 MR. HARPOOTLIAN: And, of course, we -- just  
16 briefly I would just to hit the high points of the legal  
17 argument on this.

18 THE COURT: Okay.

19 MR. HARPOOTLIAN: The Carolina Amusement -- case  
20 we cite, an offer is a manifestation of willingness to enter  
21 into a bargain so as to -- so made as to justify another  
22 person in understanding there is a sent to -- that bargain  
23 is invited and will conclude it.

24 Regions Bank, a contract exist where there is an  
25 agreement between two or more persons upon sufficient

1 consideration either to do or not do a particular act;  
2 stated another way there must be an offer and acceptance  
3 accompanied by consideration.

4 Now, the uncontroverted evidence in this case, is  
5 that they completed all the design work necessary for the  
6 guaranteed maximum price to be determined, they put their  
7 pencils down and the city said to them if you will pick your  
8 pencils back up we will pay you for your work. And they  
9 offered to continue work in exchange for \$650,000 through  
10 October 13<sup>th</sup> and 75,000 a week thereafter. They offered  
11 to continue working constituted quote, "A manifestation of  
12 willingness to enter into a bargain from the case and that  
13 gives rise to a contract."

14 Now, the, the, consideration pay is the \$697,000.  
15 So, I mean, very simply, Stevens Wilkinson offered and  
16 entered into a bargain with the city where they perform  
17 architectural services for 650,000 between July 22 and  
18 October 13. The city expressly accepted this offer by a  
19 vote on July 30th and they paid Stevens Wilkinson through  
20 December of '03. So the, the, city has offered, we  
21 accepted, we did the work. Now, one other point I want to  
22 point out is this, there have been some -- the city has  
23 indicated two things, one that Stevens Wilkinson wasn't a  
24 primary party of the city's contract. Well, that concerns  
25 the MOU but even if that was binding here we're a third

1 party beneficiary of that contract -- of the contract  
2 entered into. Every check was written to Stevens Wilkinson;  
3 it wasn't written to anybody else that \$697,000.

4 And the last point I'd make is this, Your Honor.  
5 The city indicates that this was somehow a, perhaps, an  
6 advancement of fees. There is a letter Exhibit G that a guy  
7 named Mark Aliales of Turner Construction wrote to The City  
8 of Columbia and they site that as evidence that was merely  
9 an advance. The letter stated quote, We approved the direct  
10 payment of \$705,000 to Stevens Wilkinson with the following  
11 understanding, one we wouldn't reimburse the city after the  
12 bonds closed and that's what the city points to. But the  
13 city failed to note and fails to remind the court of is that  
14 the Aliales letter specifically note that quote, If for any  
15 reason the bonds failed to close were not obligated to  
16 reimburse the city. So, Your Honor, simply put there was an  
17 offer, there was an acceptance and then there has been  
18 hundreds of thousands of dollars of work done, I mean,  
19 Stevens Wilkinson in July of '03 said we've done what we  
20 agreed to do for no payment; we're putting our pencils down  
21 and we'll just wait and see what happens. The city says,  
22 oh, we don't want to wait. We want to not delay this, this,  
23 process by 90 days until the bonds get approved. We'll pay  
24 you; what's it going to cost for you to pick up your pencils  
25 and go back to work until the bonds are proved? They told

1    them; they went forward. And by the way, if the city wanted  
2    them to stop in December all they had to say was stop. They  
3    never said it. There's not a sign, letter, vote, hint to  
4    stop working. The first time that they find out that  
5    they're not going forward is in April when the city votes to  
6    go look at a privately run hotel.

7               THE COURT: All right.

8               MR. HARPOOTLIAN: Thank you, Your Honor.

9               THE COURT: And you claim that they owe you 1.6  
10   million dollars?

11              MR. HARPOOTLIAN: Sir? I'm sorry.

12              THE COURT: Are you claiming 1.6 million dollars?

13              MR. HARPOOTLIAN: Well, Your Honor, well we're  
14   claiming --

15              THE COURT: Offer of judgment?

16              MR. HARPOOTLIAN: That was an offer of judgment.  
17   We're claiming we have damages but we would say this, if  
18   Your Honor finds that there's a contact we again would ask  
19   that to be sent to a judge --

20              THE COURT: All right --

21              MR. HARPOOTLIAN: For a nonjury trial and the  
22   numbers are the number whatever they are and they seem to  
23   have some problem with how we billed or what we billed or  
24   what we said we, we'd be more than happy to have Judge  
25   Stricklin or some other judge determine how much is owed,

1 maybe, one sixth, it may be less than that.

2 THE COURT: All right.

3 MR. HARPOOTLIAN: Could be more than that.

4 THE COURT: All right.

5 MR. HARPOOTLIAN: Thank you.

6 THE COURT: Thank you, sir.

7 Yes, ma'am.

8 MS. MCDANIEL: Good morning, Your Honor.

9 THE COURT: Morning.

10 MS. MCDANIEL: Your Honor. Stevens Wilkinson  
11 argues that the payment of \$697,000 in December of 2003  
12 some -- changed the agreement between the parties and  
13 effectively put the -- Stevens Wilkinson and the project  
14 team no longer at risk under the terms of the MOU. Your  
15 Honor, there's plenty of evidence in the record to show that  
16 the city did not agree to change the terms of the agreement.  
17 Stevens Wilkinson did request that they be paid interim  
18 architectural fees from the period July until 90 days before  
19 the bond closing and the minutes of the city council meeting  
20 from July 30th, 2003 state exactly what the city agreed to.  
21 Those minutes state approved \$650,000 for interim  
22 architectural design fess for a period of 90 days prior to  
23 the closing. In December -- and that is exactly what they  
24 agreed to, they agreed to an advance on the fees that  
25 Stevens Wilkinson would have been paid under the terms of

1 the MOU at bond closing.

2 In December of 2003 the project team, Stevens  
3 Wilkinson, did send an invoice to the city for \$697,000 and  
4 the city paid it. That was the full obligation that the  
5 city needed to meet the terms of their agreement in  
6 July 2003. This payment was merely an advance and that is  
7 supported by statements in the record from Robert Lyles  
8 himself and a letter dated December 17<sup>th</sup> to Mark Alice he  
9 states that Turner Construction would have to agree to  
10 reimburse the city directly for those bonds at bond closing.  
11 This clearly indicates that the city contemplated that this  
12 was not a separate deal that this was part of the larger  
13 deal under the MOU. Furthermore, if Stevens Wilkinson  
14 argues that this additional \$75,000 we're pleading was  
15 something that the city agreed to pay why did they never --  
16 there's no indication that they never invoiced the city for  
17 the \$75,000 per week. The city never agreed to pay that and  
18 that's why they never sent the invoice.

19 It's the city's position that --

20 THE COURT: It's a genuine issue of material fact.

21 MS. MCDANIEL: Yes, sir.

22 THE COURT: Summary judgment should not be  
23 granted.

24 MS. MCDANIEL: Absolutely, sir.

25 THE COURT: All right.

1 MS. MCDANIEL: And that that is supported by the  
2 \$650,000 they agreed to pay.

3 THE COURT: All right, thank you.

4 MS. MCDANIEL: Thank you.

5 THE COURT: Yes, sir.

6 MR. HARPOOTLIAN: Very briefly, Your Honor, I  
7 point out two things one she seems to be arguing novation.  
8 We're, we're -- we agree with the fact that as of July of  
9 2003 Stevens Wilkinson was not owed a dime.

10 THE COURT: All right.

11 MR. HARPOOTLIAN: But once the city said pick your  
12 pencils back up and they -- you can see they offered two  
13 different ways to do this. And then what she says well, the  
14 city only authorized \$650,000 through October of '03 when,  
15 in fact, Stevens Wilkinson bills them through December of  
16 '03 for an amount greater than \$650,000. Now, the issue is  
17 not, I would submit, if there was a contract the question is  
18 what are the damages. And, Your Honor, we would propose  
19 that, that, summary judgment on this issue is separate  
20 contract outside the MOU is appropriate because, I mean, in  
21 her brief and in her argument all she points to is a  
22 question of damages and again, we think that's appropriate.  
23 We really think a judge could determine that without a jury.  
24 We prepared a proposed order that's the only copy we have,  
25 we'll get a copy to the defendants which is -- simple not

1 complicated. Your Honor, will be happy to answer any  
2 questions you have.

3 THE COURT: All right. Thank you, sir.

4 Yes, ma'am, your response.

5 MS. MCDANIEL: Your Honor, there is a question of  
6 fact, there was no meeting of the minds as to what the terms  
7 of any agreement were, the Stevens Wilkinson submitted what  
8 they estimated their expenses to be to include \$75,000 per  
9 week. The minutes of the city council meetings specifically  
10 show that the city council did not approve that, there's no  
11 meeting of the minds on what the terms of the contract were  
12 that is a question of fact and it's not merely an issue of  
13 damages; therefore, summery judgment is inappropriate at  
14 this point.

15 THE COURT: All right.

16 MR. HARPOOTLIAN: Your Honor, just one --

17 THE COURT: Yes, sir --

18 MR. HARPOOTLIAN: Just one other case I would --

19 THE COURT: Is it cited in your?

20 MR. HARPOOTLIAN: The Connor case which is  
21 evidence that a party complied with the terms of allege  
22 contract or acted as --

23 THE COURT: That's C-O-N-N-O-R?

24 MR. HARPOOTLIAN: Conformity with their -- there  
25 with is relevant and admissible on the issue of the contact

1 existence, that is, if they acted in conformity we continued  
2 to work, met with them every week, they didn't tell us hey  
3 it's 650 and then you're done and that is uncontroverted in  
4 the record, matter of fact, the city -- the only way the  
5 city can make a decision is to vote and say stop. They did  
6 not do that and Mr. Gant's testimony is clear that he met  
7 with them every week for all most 16 weeks and they thought,  
8 he thought, it was going forward and that's what he  
9 testified to thank you, Your Honor.

10 THE COURT: All right. Yes, ma'am, anything  
11 further in response?

12 MS. MCDANIEL: No, Your Honor.

13 THE COURT: All right. I'll give you a chance to  
14 look at this proposed order and response in the appropriate  
15 manner.

16 And now next is whether or not city council  
17 members should be required to testify or appear in  
18 deposition.

19 Are you going to argue, Mr. Harpootlian?

20 MR. HARPOOTLIAN: No, I --

21 THE COURT: You have a hired gun?

22 MR. HARPOOTLIAN: I have a hired gun. Although  
23 it's her motion and we're going to respond.

24 THE COURT: Okay.

25 MS. MCDANIEL: Your Honor, we're here today

1 because the plaintiffs in this case have sought to depose  
2 several members of city council who were on city council at  
3 the time back when this case arose. Ultimately all of the  
4 decisions that the city council members made whether as  
5 members of city council or as members of the nonprofit  
6 cooperation that was later formed all of those fall within  
7 the spear of legitimate legislative activity and should be  
8 protected by the legislative privileges. The purpose of the  
9 legislative privilege is to provide a testimonial pool of  
10 legislatures. It prevents the judiciary and the public from  
11 intruding into the decisions and the motivations of why  
12 legislators made certain legislative decisions. The  
13 legislative privilege is in the -- it benefits the public by  
14 providing the legislators the space to make innovative or  
15 creative or difficult decisions that if they were subjected  
16 to the intense scrutiny of the public or the judiciary that  
17 they would not have the freedom to make.

18           There is two very specific cases in South Carolina  
19 that are directly on point we've got the Bear Case in  
20 Greenville County versus Kenwood and Bear versus Greenville  
21 County. There was an issue of a zoning matter and the  
22 plaintiffs in that case sought to depose members of  
23 Greenville County council. The Greenville County did not  
24 object and the depositions went forward and the testimony  
25 was used at trial.

1           THE COURT: Well, I just -- all I know is I read  
2 this morning early I see where Tameika Isaac volunteered to  
3 testify and --

4           MS. MCDANIEL: Your Honor, that was under a  
5 special situation. At that point we had come to an  
6 agreement between the parties that we would allow her  
7 deposition to go forward and that we would object to  
8 anything that we felt was legislatively privileged and we  
9 have -- we objected to a great deal of her testimony at that  
10 time. And what we realized at that point was that doing  
11 depositions in the manner was completely unworkable because  
12 we would have to come back before the court for every single  
13 question that wanted -- that the plaintiffs would want to  
14 ask to determine whether or not it was subject to the  
15 legislative privileges.

16          THE COURT: Sounds to me that they're going to  
17 argue some sort of waiver, I don't know these things yet but  
18 obviously --

19          MS. MCDANIEL: Your Honor, in order to waive the  
20 legislative privilege it requires a much -- it's a much  
21 higher standard of waiver, it has to be clear, unequivocal  
22 and you have to specifically waive that privilege; it's a  
23 higher standard than a regular waiver.

24          THE COURT: All right.

25          MS. MCDANIEL: And all of the actions that the

1 council -- well, let me go back to Bear. In Bear, the court  
2 of appeals recognized that the depositions have gone forward  
3 and the testimony was used but the court of appeals of its  
4 own accord went so far to say that they recognized no  
5 authority for a plaintiff to take the deposition of a county  
6 council member. Several years later in Kenwood the South  
7 Carolina Supreme Court specifically approved the -- that  
8 doctrine of legislative privilege and quashed the subpoenas  
9 of county council members in a case where the plaintiffs  
10 were challenging the constitutionality of an -- to  
11 restricting sexily oriented businesses. So we've got very  
12 clear case law in South Carolina that it is inappropriate  
13 for plaintiffs to try to take the depositions of council  
14 members in order to impeach the decision of a councilor.  
15 And it's the city's position the only reason that the  
16 plaintiffs would have to depose the council members would be  
17 to look into the motivations, their reasons, their decision  
18 making process as member of county council or as members of  
19 the nonprofit corporation and that that will be a completely  
20 inappropriate inquiry.

21 THE COURT: Help, help, me understand a little  
22 bit, so the council counsel members became part or --

23 MS. MCDANIEL: Yes, sir.

24 THE COURT: All of the --

25 MS. MCDANIEL: The city council --

1 THE COURT: Nonprofit --

2 MS. MCDANIEL: Yes, sir. The city council had to  
3 setup a nonprofit organization to be able to accept the  
4 proceeds from the bonds that were anticipated to be issued  
5 to pay for the hotel. In order to move that project forward  
6 they setup the nonprofit and the council members became the  
7 members and board and directors of that nonprofit  
8 corporation. And the purpose of the nonprofit corporation

9 --

10 THE COURT: Are these facts present in the Bear  
11 Case?

12 MS. MCDANIEL: No, sir, that --

13 THE COURT: Were they present in the -- was that  
14 Tankler Case you said.

15 MS. MCDANIEL: Kenwood.

16 THE COURT: Kenwood.

17 MS. MCDANIEL: Kenwood. No, sir, those were cases  
18 where the city council was acting purely -- sitting purely  
19 at the city council. However, there are cases where for  
20 instances in Arizona where districting board even if it's  
21 not non legislatures are afforded the legislators privilege  
22 when they're acting within the sphere of legitimate  
23 legislative active. And it's our position that everything  
24 that the city council did whether as members of city council  
25 or as members of nonprofit corporation was all part and --

1 partial of the larger decision that the city was going to  
2 have to make whether to issue bonds, to fund a publicly  
3 funded hotel or whether to go into privately funded option  
4 and it's impossible to separate the decisions that those  
5 individuals made based on what chair they were sitting in.

6 THE COURT: Okay, thank you, ma'am.

7 MS. MCDANIEL: Thank you.

8 THE COURT: Yes, sir, your name sir?

9 MR. HENSON: Brent Henson.

10 THE COURT: Where you from?

11 MR. HENSON: I'm from Bennettsville, South  
12 Carolina.

13 THE COURT: Yeah, yeah.

14 (Laughter)

15 THE COURT: You, you --

16 MR. HENSON: I grew up closer to Clio though.

17 THE COURT: I know you did. You went to school  
18 with Kelly and your mother is from Dillon.

19 MR. HENSON: Yes, sir.

20 THE COURT: Geez.

21 MR. HARPOOTLIAN: Everybody is from Dillon.

22 THE COURT: Well, not everybody.

23 Go ahead, sir.

24 MR. HENSON: Your Honor, we prepared a memo in  
25 opposition. This case is consolidated for discovery so.

1 THE COURT: All right, sir.

2 MR. HENSON: I'm arguing on behalf of all the  
3 plaintiffs that want to take these depositions.

4 THE COURT: All right, sir.

5 MR. HENSON: There's several issues that I will  
6 take with the city's argument. The first being that --  
7 well, I'll start with that Bear and Kenwood are wholly  
8 inapplicable to the situation at bar. Bear and Kenwood deal  
9 with zoning decisions. One involves the use of a particular  
10 person's land; the second involves sexily oriented  
11 businesses. Those -- zoning decisions are legitimate  
12 legislative decisions. And in the case before you now,  
13 we're talking about the city's decision and involvement in  
14 the building of a hotel. This is a commercial active it's  
15 an administrative decision and it doesn't get the  
16 legislature privilege. There's a host of cases I've sited  
17 in the memorandum I just brought up from the fourth circuit  
18 Alexander being the one closest on point. In Alexander  
19 there were some personal decisions made by city council.  
20 And in analyzing whether the legislative privilege applied  
21 the Fourth Circuit Court of Appeals said the key inquiry  
22 involves making a distinction between general and specify  
23 actions. If the underline facts relate to particular  
24 individuals or situations and the decision impacts specific  
25 individuals or singles out specific individuals the decision

1 is administrative, on the other hand, the action is  
2 legislative if the facts involve generalizations concerning  
3 the policy or state of affairs and the establishment of the  
4 general policy effecting the larger population.

5           Your Honor, we're not talking about a policy  
6 affecting the large -- a large population; we've not taking  
7 about zoning. We've talking about the city's decision to  
8 build a hotel and that's -- it singles out particular  
9 individuals in situations. This perfectly fits the  
10 definition of an administrative action under the Fourth  
11 Circuit Court -- fourth circuit's test and the legislative  
12 privilege would not apply.

13           Secondly, and Ms. McDaniel mentioned it for a  
14 minute the 68 -- the conviction -- did not profit the  
15 corporation that the city setup. The city set this up surly  
16 to gain certain immunity from suit and if you also give the  
17 city the advance of legislative immunity the city is in  
18 essences having its cake and eating it too. It's getting  
19 all of the advantages of having formed a corporation and  
20 it's getting all of the advantages of, of, a municipality.  
21 And our position would be that you can't have it both ways,  
22 Your Honor.

23           THE COURT: All right, sir. Thank you.

24           Yes, ma'am.

25           MS. MCDANIEL: Your Honor, this was a legislative

1 decision. A legislative decision is one that is  
2 discretionary, it reflects a policy making decision  
3 implicating budget priorities of a city and services the  
4 city, provides to its constituents, that is how the United  
5 States Supreme Circuit defines a legislative action. In  
6 this case it wasn't just a contact that was between the  
7 plaintiffs and the defendant that was at issue. The bigger  
8 issue is whether or not the city was going to pledge its  
9 credit towards issuing bonds to pay for the hotel or whether  
10 they were going to pledge almost 90 million dollars in city  
11 standby support if the hotel revenues didn't pay for the  
12 bond service. This -- these -- this decision implicates  
13 budget parties of the city, it implicates -- it effects the  
14 bond indebtedness that the city could have undertaken after  
15 this decision was made. It's a purely legislative decision  
16 the fact that there was a contact that was a subpart of the  
17 larger decision that the council had to make in no way  
18 changes it into an administrative action. And the, again  
19 the fact that the council members were also acting as the  
20 board members of the nonprofit corporation does not do away  
21 with their legislative privilege. As the members of --  
22 board members of that nonprofit cooperation they were  
23 working with the project team, they were --

24 THE COURT: Well, let me ask you this question, is  
25 there a case on point that has the same elements that these

1 facts have? That is, you have the city council that acts as  
2 a separate entity or board, is there a case on point  
3 involving those two elements?

4 MS. MCDANIEL: Well, there is a case that's close  
5 Richardson B. McGill is a South Carolina Supreme Case from  
6 1979 where a state legislature was --

7 THE COURT: Was it Nancy McGill?

8 MS. MCDANIEL: (There was no response.)

9 THE COURT: Never mind.

10 THE DEFENDANT: I don't believe it is Nancy, no,  
11 sir. The legislative delegation was sitting as a  
12 legislative delegation and went out to meet with a county --  
13 supervisor. They were not acting as members of the general  
14 assembly perse they were acting as the legislative  
15 delegation at that time had a great deal of control over  
16 county actives.

17 THE COURT: All right.

18 MS. MCDANIEL: And the supreme court held that  
19 statements that one of the legislatures made in that meeting  
20 was subject to an absolute legislative immunity, we could  
21 not be sued for deformation based on statements that could  
22 be made outside of the general assembly --

23 THE COURT: I don't think the question is whether  
24 or not they can be sued you it's whether or not they can  
25 take your depositions.

1 MS. MCDANIEL: Well, yes, sir. The legislature  
2 immunity is the larger doctrine.

3 THE COURT: All right.

4 MS. MCDANIEL: And the legislative privilege is  
5 the testimonial privilege that necessarily closed from that.  
6 So the fact South Carolina has recognized that absolute  
7 immunity for a legislator acting not specifically in his  
8 legislative capacity indicates that South Carolina should  
9 also afford that same legislative privilege to our city  
10 council members.

11 THE COURT: Thank you.

12 Anything in response?

13 MR. HENSON: Yes, Your Honor. I would argue that  
14 the Richardson Case has no bearing on the situation at bar.  
15 Richardson like Ms. McDaniel said it is a case about  
16 deformation, it's a slander case where this -- I don't know  
17 if it's a county council member or city council member  
18 possibly state legislator makes these defamatory statements  
19 about someone's impropriety with ladies and so --

20 THE COURT: Oh, I'm surprised.

21 (Laughter)

22 MR. HENSON: He's later sued for these words. The  
23 facts are just --

24 THE COURT: All right.

25 MR. HENSON: Totally inapplicable to the situation

1 at bar.

2 THE COURT: All right.

3 MR. HENSON: And again I would take issue with,  
4 with, the city's -- the way they described what's a  
5 legitimate legislative activity again this is a commercial  
6 nature. The city choose to enter into what we would argue  
7 is contact for the building of a hotel; it's not comparable  
8 to zoning decisions and things of that nature. It's not  
9 legislative. It effects the specify players in this action,  
10 the various entities that they agreed with that would build  
11 this hotel. If, if, the city is protected from  
12 legislative -- by legislative immunity in this action it  
13 will certain and deposition cannot be taken it puts the  
14 plaintiffs at a great disadvantage. I think there's certain  
15 public policy implications to that. Anyone looking to  
16 contact with municipality would think twice about that, if  
17 there were --

18 THE COURT: As well they should, but I mean.

19 (Laughter)

20 MR. HENSON: Well, their, their, recourse on  
21 breach of contract would be limited if they weren't allowed  
22 to take the depositions of the party that had broken the  
23 contract.

24 THE COURT: All right.

25 Anything further?

1 MS. MCDANIEL: Yes, Your Honor. I just want to  
2 respond to that very quickly. There are other avenues of  
3 discovery where plaintiffs can find information to determine  
4 the decision that was made and the circumstances  
5 surrounding. They don't need to take the deposition of city  
6 council members in order to obtain that information. In  
7 further more, the public policy of protecting the integrity  
8 of the legislative spear far out weighs any concern that a  
9 contacting party may have with dealing with the city  
10 council. When you contact with the city you should  
11 understand what you're getting into and the city council  
12 members should have complete surety that their decisions  
13 will not be looked behind and scrutinized based on their  
14 motivations and reasons.

15 THE COURT: All right. Anything further?

16 MR. HENSON: One more quick thing, Your Honor. I  
17 just want to say, all the purposes, all the questions that  
18 we have for the city council members who were also members  
19 of the board of directors for the CCHC do not wholly involve  
20 their decisions involving the hotel. There is also a suit  
21 in the consolidated cases, you know, against the --  
22 Greenville who ultimately built Hilton Hotel that, you know,  
23 stands in the city and our allegations against Mr. Altery is  
24 that he made improper communications to the members of the  
25 CCHC and the Columbia City Council. We deposed

1 Mr. Altery -- we would like to depose these five individuals  
2 that sat on the board for the CCHC and find out what they  
3 say Mr. Altery said to them, what promises Mr. Altery made  
4 to them and the city's motion for protective order  
5 preventing us finding that out.

6 THE COURT: Well, have you propounded any request  
7 to -- or anything like that in the pleadings, just curious.

8 MR. HENSON: No, sir.

9 THE COURT: All right.

10 Yeah, Mr. Harpootlian, you about to jump up about  
11 something. Yes, sir.

12 MR. HARPOOTLIAN: I just got a copy of our  
13 proposed order I wanted to hand it to opposing counsel.

14 THE COURT: Okay.

15 MR. HARPOOTLIAN: And since this matter is  
16 probably going to be tried in July, we're going to try to  
17 expedite it.

18 THE COURT: That's all right. Anything further  
19 then?

20 (There was no response.)

21 THE COURT: Well, thank you all for your lively  
22 presentations.

23 MR. HARPOOTLIAN: Thank you, Your Honor.

24 THE COURT: I'll think about it.

25 (End of proceedings.)

1 COUNTY OF RICHLAND )

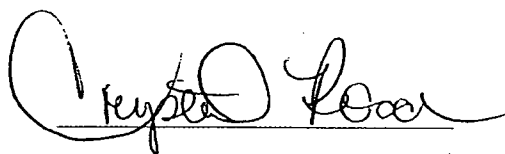
2 CERTIFICATE OF REPORTER

3 I, Crystal Roach, hereby certify that I reported  
4 the preceding case entitled Stevens and Wilkinson Vs. City  
5 of Columbia, Case No. 2005-CP-40-3361, at the Richland  
6 County Courthouse, March 10, 2009.

7 I FURTHER CERTIFY that the foregoing pages 1  
8 through 33 constitute a true, accurate and full transcript  
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of  
11 the parties hereto and I have no financial interest in the  
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand  
14 and seal at Richland County on this 16th day of November  
15 2009.

16 

17 Crystal Roach, Court Reporter  
18 and Notary Public for the  
19 State of South Carolina my  
Commission Expires:  
April 21, 2014

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25

STATE OF SOUTH CAROLINA )  
COURT OF COMMON PLEAS  
COUNTY OF RICHLAND ) No. 2005 CP 40 3361

4 STEVENS & WILKINSON OF )  
SOUTH CAROLINA, INC. )

Plaintiff

versus

8 CITY OF COLUMBIA, )  
SOUTH CAROLINA )

Defendant

Columbia, South Carolina  
July 1, 2009

12

B E F O R E :

HONORABLE L. CASEY MANNING, JUDGE

A P P E A R A - N C E S :

For the Plaintiff:

RICHARD A. HARPOOTLIAN, Esq.

For the Defendant:

RICHARD C. DETWILER, Esq.

Reporter:

CRYSTAL ROACH

HARRIET P. BENNETT  
Reporter, S. C. Court Administration  
P. O. Box 86  
Ladson, S. C. 29456

25

1           (The within matter came before the Court on July  
2           1, 2009)

3           THE COURT: Is everybody ready?

4           MR. DETWILER: Yes, sir, Your Honor.

5           MR. HARPOOTLIAN: Ready, Your Honor.

6           THE COURT: All right. I believe that the City  
7           is the moving party?

8           MR. DETWILER: Yes, sir, Your Honor. The City is  
9           the moving party here. May it please the Court?

10          We are here to ask you to think about and to recon-  
11          sider your earlier Order in this case in which you had  
12          granted a partial summary judgment to Stevens and  
13          Wilkinson.

14          We are not here to dispute your finding that there  
15          was a contract formed by that event that took place in  
16          July of 2003 in which Stevens and Wilkinson made an  
17          offer to continue to work, and to prove that or to, you  
18          know, prove part of what they proposed, but we think  
19          Your Honor may have analyzed incorrectly, respectfully,  
20          how this contract was formed.

21          Our position is quite simply that Stevens and  
22          Wilkinson made an offer that had two basic components.  
23          One was we would work for a finite period of time, for  
24          ninety days prior to the bond closing or anticipated  
25          bond closing for Six Hundred Fifty Thousand Dollars.

1           We would keep going, and the second major term  
2           was that after that we will work for you for Sixty  
3           Thousand Dollars or Seventy-five Thousand Dollars, de-  
4           pending on how you construe what it is that they pro-  
5           posed.

6           The City Council very simply approved one thing,  
7           and that is the payment of Six Hundred Fifty Thousand  
8           Dollars for that finite period of time.

9           In fact, Stevens and Wilkinson, I would presume  
10          anyway, worked for that period of time. There is some  
11          little question in my mind about how much they worked,  
12          but, be that as it may, they submitted an invoice and  
13          the invoice was paid. The invoice was for Six Hundred  
14          and Ninety-seven Thousand Dollars and actually included  
15          a period of time longer than that which was approved  
16          by the City. For whatever reason, the City paid it.

17          So the point of all of this is, Your Honor, that  
18          in your Order you found that the City simply accepted  
19          Stevens and Wilkinson's proposal, and I think that the  
20          phrase you used, albeit unseemingly modified term -- we  
21          would respectfully propose to Your Honor that that is  
22          not something that can be done under South Carolina law.  
23          If someone makes a proposal or offer to do something  
24          and the other side accepts it, but adds additional terms  
25          or takes out certain other terms than were in the

1 original proposal, this is not an acceptance. You can-  
2 not accept something on modified terms. There is a  
3 counter-offer.

4 That counter-offer was then accepted by Stevens  
5 and Wilkinson by picking up their tents again and doing  
6 the work they did, getting paid for it, accepting the  
7 money in December of 2003, and that was the end of  
8 that contract.

9 Now, that was the sole issue that was before you  
10 last time we appeared before you. This is, of course,  
11 just a small sub-set of the overall dispute between the  
12 parties.

13 But it is important to everybody that we get this  
14 straight, and we would ask you to reconsider and just  
15 modify your Order.

16 We're not arguing about whether there was a con-  
17 tract, but how it was formed and what the terms were.

18 Thank you, Your Honor.

19 THE COURT: Yes, sir. All right.

20 MR. HARPOOTLIAN: May it please the Court, Your  
21 Honor?

22 Very briefly, I believe we submitted a memo to you  
23 so I'm not going to plow that ground again.

24 I think that two points need to be addressed. The  
25 first is that this -- what they raise in their memorandum

1 and by reference today is that the Six Hundred Fifty  
2 Thousand Dollar appropriation from the City was a  
3 counter offer.

4 That was never raised before you in the original  
5 proceeding, and I think under Rule 59 E isn't appro-  
6 priate to be raised here today.

7 The second point is -- and I just wrote down what  
8 Mr. Detwiler said -- uncontraverted that Stevens and  
9 Wilkinson said, we're putting our tents down and will  
10 pick them up -- and the City is the one who said, hey,  
11 we don't want to wait -- what will it cost?

12 It was said it would cost Six Fifty through Octo-  
13 ber and then Seventy-five Thousand Dollars a week after  
14 that.

15 The City in response to that passed a Resolution  
16 or Ordinance or budget proviso appropriating Six  
17 Hundred Fifty Thousand Dollars.

18 They submitted a bill for Six Hundred Ninety-seven  
19 Thousand Dollars to cover, Mr. Dewiler said, a period  
20 beyond the October deadline, and, he said, for whatever  
21 reason the City paid it.

22 Well, the reason is, we would submit, that there  
23 was a contract that they entered into.

24 Your Honor has already found that, and that that  
25 contract extended beyond October.

1           Now, we have given you a proposed Order because  
2           we think your words albeit unseemingly modified term --  
3           they are applying that to the original contract. We  
4           believe the Court meant the phrase was a reference to  
5           the outstanding question of whether the terms may have  
6           been modified by the parties after the contract was  
7           formed, which obviously would be a jury issue at some  
8           point down the line.

9           So we would ask you to deny their motion and sign  
10          our Order which clarifies what you meant by that phrase,  
11          Your Honor.

12          Thank you.

13          THE COURT: All right, Mr. Detwiler.

14          MR. DETWILER: Thank you, Your Honor.

15          I would just say that the issue before the Court  
16          originally was whether or not there was a contract and  
17          the terms of that contract.

18          That's what we're here to clarify today, so the  
19          idea that that wasn't before you previously I think is  
20          just not correct.

21          THE COURT: I understand your position. I didn't  
22          mean to stop you.

23          MR. DETWILER: And I am sure he wouldn't dispute  
24          that I said he was wrong.

25          MR. HARPOOTLIAN: I wouldn't dispute that he said

1       said I was wrong, which is wrong if he says that I'm  
2       wrong.

3               Thank you.

4               MR. DETWILER: But, Your Honor, Mr. Harpootlian  
5       said, if I understood what he just said, that the con-  
6       tract was extended beyond the original term, and the  
7       evidence is that the extra payment was --- well, let  
8       me point out to the Court and to Mr. Harpootlian that  
9       the proposal Stevens and Wilkinson made was Six Hundred  
10      Fifty Thousand Dollars and then Sixty or Seventy-five  
11      Thousand a week out beyond that.

12              Not once ever has Stevens and Wilkinson ever in-  
13      voiced the City of Columbia for anything remotely re-  
14      sembling this second term that they say is now a con-  
15      tract or in the contract.

16              Never have they invoiced that, and that is just my  
17      position, Your Honor. We think we -- we would just ask  
18      you to modify this Order. Their position has no traction.

19              THE COURT: All right, sir.

20              MR. DETWILER: I think we've made our position  
21      clear. We would ask you to modify the Order.

22              THE COURT: Thank you. Anything further?

23              MR. HARPOOTLIAN: Very briefly. The reason -- and  
24      we don't have it before you today on either side -- the  
25      reason they didn't invoice it was the City was saying

1 we're going to close the bond -- the bond is going to  
2 close -- just wait.

3 You know, we don't want to have to plunk the money  
4 out of our pocket. Just wait for the bonds, wait for  
5 the bonds, wait for the bonds.

6 That was the testimony from the Plaintiff and it  
7 is confirmed by at least Mr. Gantt.

8 And they did invoice them on December 18, 2003,  
9 which is a matter of record which is contained in their  
10 motion.

11 It shows services for the period of July 10th  
12 through December 15, and that amount voluntarily and  
13 temporarily deferred -- it shows what they're defer-  
14 ring because the City said, look, we ain't got the  
15 money. How about hold off?

16 But that is a separate issue that a jury can de-  
17 cide at the appropriate time, Your Honor.

18 ~~So we would ask Your Honor to sign our Order.~~

19 Thank you.

20 MR. DETWILER: Well, I think Mr. Harpootlian,  
21 Judge, is trying to talk you into just vacating the  
22 motion or your Order granting summary judgment completely,  
23 because he just pointed out that there are many issues  
24 of factual dispute in this case.

25 We're not here to ask you to do that, but the

1 invoice that Mr. Harpootlian just pointed to speaks for  
2 itself, and it is for an amount of money for a finite  
3 period of time, nothing resembling what -- the terms  
4 that were proposed and that the City obviously rejected.

5 Thank you.

6 THE COURT: All right. I appreciate your arguments,  
7 gentlemen, as always.

8 I will read your memos.

9 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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1 CERTIFICATE

2 I, HARRIET P. BENNETT, Official Court Reporter for  
3 South Carolina Court Administration, do hereby certify  
4 that the foregoing Transcript was prepared from the re-  
5 cords of Crystal Roach, having been taken by her in the  
6 Court of Common Pleas for Richland County on July 1,  
7 2009; that it was prepared to the best of my ability  
8 from those records.

9 FURTHER, I certify that I am neither of kin nor  
10 counsel to any party to this action, nor do I have any  
11 interest in the outcome hereof.

12 January 4, 2010

13 *Harriet P. Bennett*  
14  
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**COLUMBIA**

**MOU**

**FINAL COPY**

**4/17/03**

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") by and between the CITY OF COLUMBIA ("City") and the PROJECT TEAM ("Project Team") defined below, for the development of a 300-room convention center hotel and ancillary uses (hereafter the "Hotel") in response to the City's solicitation for development teams to construct and operate the Hotel.

WHEREAS, Project Team intends to construct a three hundred (300) guestroom, full service Hilton Hotel with approximately twelve thousand (12,000) square feet of meeting space in downtown Columbia adjacent to the new Midlands Regional Convention Center (the "MRCC") to satisfy the needs of conventioners and visitors to Columbia; and

WHEREAS, the City has determined that the Hotel is required to maximize the utilization and the economic benefits of the MRCC; and

WHEREAS, the City's support of the development of the Hotel helps to achieve this goal and understands a public-private partnership will be required to create a financially viable Hotel; and

WHEREAS, it was determined that it would be in the best interest of the City for a Non-Profit Corporation ("NPC") of the City to be the owner of the Hotel; and

WHEREAS, the Project Team submitted a proposal to finance, develop and operate the Hotel in response to the City's solicitation; and

WHEREAS, the City and the Project Team desire to document the understandings reached with respect to the financing, development and operation of the Hotel.

NOW THEREFORE, in consideration of the foregoing and the mutual promises contained herein, and other valuable consideration the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

### I. GENERAL CONDITIONS

1. This MOU reflects the intent to proceed in good faith to execute definitive written agreements with respect to the business terms and conditions herein contained. Notwithstanding anything herein to the contrary, if the City determines that it is not feasible to proceed with the Hotel project it shall have no liability under this MOU.
2. Unless superseded by an amendment to this MOU or the final Development Management Agreement, this MOU identifies the understanding of the parties.

### II. PURPOSE

This MOU is entered into with the understanding by all parties that the primary reason for the City's participation in the Hotel is to maximize the impact the MRCC has on the community by developing an adjacent headquarters hotel. Accordingly, it is understood that the MRCC impact is of the highest priority.

### **III. PARTIES TO THIS MEMORANDUM OF UNDERSTANDING**

1. City – City of Columbia ("City");
2. Project Team:
  - 2.1. Developer – Edens & Avant Real Estate Services LLC; Garfield Traub Development; and Gary Realty, Inc.
  - 2.2. Design/Builder – Turner Construction Company in association with Construction Dynamics and DESA, Inc.. The A/E part of their Team is - Thompson, Ventulett, Stainback & Associates, Inc. Architects; Stevens & Wilkinson; and ENVIRO AgScience.
  - 2.3. Operator – Hilton Corporation.
  - 2.4. Underwriter – Salomon Smith Barney, Inc.

### **IV. Hotel Description**

1. Hotel Site – The anticipated site is located near the new MRCC and is approximately 60,000 square feet.
2. Parking Facility Site – The anticipated site is located near new MRCC and is approximately 80,000 square feet.
3. Brand – The Hotel is to be branded as a "Hilton" hotel and named by the NPC in accordance with the Operator's brand requirements.
4. Hotel Program – The Hotel is to include 300 rentable guestrooms, including ten 10 suites. The Hotel is to also include approximately 12,000 square feet of ballroom and breakout meeting space. In addition, the Hotel is to include a casual restaurant and lobby bar that collectively is to provide table seating adequate to serve Hotel guests as well as those utilizing meeting space in the Hotel.
5. Parking – The Hotel is to have access to adequate parking spaces in a larger public parking garage adjacent to the Hotel for Hotel patrons and guests.
6. Project Quality - The construction quality and level of amenities is to be similar in all material respects to the Sheraton Overland Park Hotel and/or The Radisson Convention Center Hotel in Myrtle Beach
7. Development Budget - A detailed development budget will be prepared by Developer but shall be subject to the review and approval of the City.

## **V. ROLE OF THE CITY**

1. **Hotel Site Assembly** – The City agrees to acquire the Hotel Site, satisfy any environmental issues, demolish any existing structures, rezone the land for the Hotel (if required) and convey it to the NPC at cost, funded by Hotel Revenue Bond proceeds. The Developer will provide an amount satisfactory to the City in Hotel Revenue Bond proceeds for acquisition of land and site development costs associated with the Hotel.
2. **Parking Facility** – The City is to develop a nearby Parking Facility of approximately 800 spaces. 300 parking spaces will be made available in the public parking garage for Hotel patrons and guests. The NPC is to work with the City to formulate a joint use agreement related to the Hotel parking spaces during periods of low demand.
3. **Establish NPC** – The City is to establish a NPC to issue bonds to finance the Hotel, own the Hotel developed by the Project Team, and retain the Operator for the operation of the Hotel consistent with the terms and conditions of this MOU. The NPC articles of incorporation, bylaws and Board of Directors are to be established by the City.
4. **NPC Financing** – The NPC is to retain the Underwriter and legal counsel to structure and issue approximately \$60 million in tax-exempt hotel revenue bonds in amounts acceptable to the City ("the Bonds") supported by Hotel revenues and the City Financial Participation. The Bonds will be issued either in one series—"Hotel Bonds" or two series—"Senior Bonds and "Subordinate Bonds" The City shall use its best efforts to approve the issuance of a series of tax-exempt Hotel revenue bonds. The proceeds of the Bonds will be sufficient to (i) pay the development and construction costs of the project, (ii) pay 100% of debt service on the Bonds during the construction period and pay a portion of debt service during the first two operating years, (iii) fund debt service reserve funds for the Bonds, (iv) pay the fees of the Underwriter as described below, and (v) pay other financing costs including the costs of bond and underwriter's counsel, rating agency fees, trustee fees, financial advisory fees, printing costs and costs of the feasibility report. in amounts satisfactory to the City.
5. **City Credit Support** – The City is willing to provide a credit enhancement to support an amount acceptable to the City which would be utilized for any debt service shortfall on the Subordinate Bonds or Hotel Bonds (as the case may be), if project revenues net of expenses are insufficient to provide for the debt service on the Subordinate Bonds or on the Hotel Bonds.

## **VI. ROLE OF THE DEVELOPER**

1. **Development of the Hotel** – The Developer will coordinate design, development, construction and delivery of the Hotel in accordance with the terms of the Development Management Agreement to be finalized between the City or NPC and the Developer.

2. **Development Fee** – The Developer is to be paid a development fee of 4.75% of the project budget, exclusive of land and any financing related fees, to ensure the coordination and delivery of the Hotel on time and on budget. A preliminary scope of services is presented in Attachment 1. The fee is intended to include all fees and costs associated with personnel, administrative, travel and any other expenses. The Development Fee is to be paid as follows: 33 1/3% upon closing the bond sale; 57 2/3% on a pro rata basis over the construction period based on percentage of completion of the Hotel and the balance of 10% at the issuance of a Certificate of Occupancy for the Hotel.
3. **Pre-Development Funding** – The Project Team will be responsible for the costs incurred prior to closing the financing. These costs include, but are not limited to, design, testing, bid packages, legal, underwriting, travel, etc. If the Hotel financing fails to close as a result of the City not meeting its obligations outlined in the Development Agreement, or as a result of an unforeseen catastrophic event not caused by any of the Project Team, the City will reimburse the Project Team for actual, documented costs incurred to that point in time up to an amount to be agreed upon. All studies, tests, plans and the like prepared or obtained by the Project Team will be assigned to and become the property of the City.
4. **Project Oversight** – During the design and construction phases of the Hotel, the Developer shall furnish to the City and the City's consultants all information reasonably requested concerning the designing, planning, construction and development of the Hotel. The Developer is to provide the City with the opportunity for timely review and approval of construction plans for the Hotel. The Developer acknowledges that the City may have its own construction monitor, which could also be the construction monitor for the bondholders, on the Hotel site and that Construction Oversight costs are to be paid from the Hotel budget.
5. **Zoning** - The City and the Developer will work together on zoning matters including those related to the height of the Hotel building setbacks and design review issues.
6. **Commercial Non-Discrimination Policy and Subcontracting Outreach Program** – The Developer and Operator agree to fully implement the City's Commercial Non-Discrimination Policy and Subcontracting Outreach Program and to execute any amendments covering matters as reasonably determined by the City as necessary to evidence compliance with the City's policies. In addition, it will be the goal of the Developer to have twenty-five percent (25%) of the work associated with the construction of the Hotel handled by MBE/WBE firms and fifteen percent (15%) of the development and related fees generated by this project paid to the MBE/WBE firms associated with the project.

## **VII. ROLE OF THE CONTRACTOR**

1. **Fee** – The Design/Builder is to be paid 8% of Design/Build costs for general conditions and a 5% fee based on the Design/Build costs for the Design/Builder's overhead and profit. The fees are intended to include all fees and costs associated with personnel, administrative, travel and any other expenses. The fee is to be paid

per a schedule to be outlined in the Design/Build Agreement. . If the Underwriter does not close the financing, the City will not be responsible for reimbursing for any costs incurred except as provided in Section VI, 3 herein above.

2. Development Guarantee -- Upon the execution of the Design/Build Agreement, Turner Construction guarantees that the Hotel budget, including all costs related to designing, constructing, finishing and equipping the hotel will not exceed an amount to be agreed upon between the City, the Developer and Turner Construction. At the time of the issuance of any bonds, Turner Construction is to guarantee delivery of the Hotel on a date certain for the budgeted amount. The guarantee is to be supported by a payment and performance bond acceptable to the City and in an amount acceptable to the City that names the City as dual obligee. The guarantee is to also provide the City with liquidated damages on a schedule and in amounts sufficient to equal the interest on any bonds as it becomes due. The guarantee must be acceptable to the bond underwriter and to the bondholders.
3. Design/Build Cost Savings -- Fifty-percent (50%) of the construction cost savings realized during the construction of the Hotel will accrue to the NPC. Program/budget changes prior to the commencement of construction shall not be considered construction cost savings.

#### **VIII. ROLE OF THE ARCHITECT**

1. Fee -- The Architect is to be paid a fee of 7.25% by the Design/Builder based on hard construction costs together with the Design/Builder's general expenses and fees. This fee is comprised of a 6% basic services fee and 1.25% for special consultants to be retained by the Architect for the project. The fee is to be paid consistent with the normal A.I.A. contractual provisions in terms of timing and amount of payments. If the Underwriter does not close the financing, the City will not be responsible for reimbursing any costs incurred except as provided in VI, 3 herein above. The fee includes all fees and costs associated with personnel, administrative, travel and any other expenses for the defined scope. The Architect will be reimbursed for any additional services or expenses as requested by the City.
2. Design Review -- The Architect shall develop and implement a design review process that is to provide the City, neighborhood and professional staff input into the design of the Hotel. All parties pledge to use their best efforts to maintain the integrity of the Hotel and to be conscious of the time and cost of changes made during the review process.

#### **IX. ROLE OF THE UNDERWRITER**

1. Services Provided -- Underwriter as the NPC's senior managing underwriter is to be responsible for analyzing and structuring the project, development of the financing plan, development of the supporting financial documents, and marketing the bonds.
2. Fee -- The Underwriter fee, contingent upon a successful transaction closing, is to be either 1.5% of the total par amount of the Bonds for the Senior Bonds and 1.25% of

the total par amount of the Bonds for the Subordinate Bonds or 1.375% of the total par amount of the Hotel Bonds.

## **X. ROLE OF THE OPERATOR**

1. **Operator Contribution** – Subject to the provisions under this Section X, the Operator will contribute \$1.5 million in the form of an interest free, self-amortizing loan whose initial principal balance, after the opening, is to automatically reduce, without payment, by 1/180th per month as long as the QMA (defined below) is in effect. If the QMA is terminated before such loan is fully amortized, Operator shall be repaid the unamortized portion of such loan. The exact amount and terms will be subject to the approval of senior management of the Operator.
2. **Qualified Management Agreement** – The Hotel is to be managed by the Operator under a 15-year Qualified Management Agreement ("QMA") that complies with Operating Guidelines for Management Contracts as set forth in the IRS Revenue Procedure 97-13 and the Internal Revenue Code of 1986, as amended, and as interpreted by the City's or NPC's Bond Counsel, as appropriate. The City has the right to approve the final form of the QMA.
3. **Base Management Fee** – The Operator will be paid a fixed base management fee for the first four years, calculated based on 2.0% during the first year, 2.5% during the second year, 2.5% during the third year and 2.75% during the fourth year, of the projected gross operating revenues of the Hotel, and adjusted annually to reflect changes in a Market RevPar index for the remaining term. The fee structure assumes that the QMA would include a performance test that would allow for the earliest termination date to be at a time to be determined.
4. **Subordinated Base Management Fee** – The Operator will be paid a fixed subordinate management fee for the first three years, calculated based on 1.0% of the projected gross operating revenues of the Hotel, and 1.25% annually thereafter. This fee would be subordinate to either the senior project revenue bonds and the City enhanced project revenue bonds or the Hotel Bonds as applicable.
5. **Centralized Services Costs** – If required by Bond Counsel, the Operator agrees to be paid a fixed amount for centralized services allocation for the first four years, based on the Operator's current formulas and the projected gross operating revenues, and adjusted annually by CPI for the remaining term.
6. **Technical Services Fee** – The Operator is to be paid \$315,000 for technical services related to Hotel development. The fee is intended to include all fees and costs associated with personnel, administrative, travel and miscellaneous expenses. The fee is to be paid pro rata over the design and construction period based on percentage of completion of the Hotel.
7. **Pre-Opening Marketing** – The Operator is to outline its plan for directing the pre-opening marketing activities of the Hotel in an attachment to the QMA, subject to approval by the NPC. Pre-opening costs are estimated to be \$1,500,000.

8. Non-Compete Area – For a period of time, not to exceed the time the Operator manages the Hotel, Operator agrees not to directly or indirectly operate, franchise, brand or manage another full service Hilton Hotel within a five (5) mile radius of the Hotel.
9. Employees – All employees of the Hotel are to be employees of the Operator who shall be solely responsible for complying with all employment laws.
10. City Policies – The Operator agrees that the QMA will include certain requirements by the City relating to policies including but not limited to: Commercial Non-Discrimination Policy and Subcontracting Outreach Program, Equal Employment Opportunity, Drug Policy, etc.
11. Procurement – The Operator is to use reasonable efforts to make all purchases for the best commercial terms available. Any rebate received by the Operator related to a purchase for Hotel is applied to reduce the cost of Operator's purchasing operations and such reduction in cost (or, if any, the purchasing operation's profit) will be allocated to Hotel in the same manner as allocated to other Operator-managed hotels. Payments received from vendors for services rendered by Operator to such vendors, including market research, collection of purchasing data and participation in co-marketing or advertising programs, are not considered rebates and will be retained by Operator.
12. HQ Hotel Room Block Commitment – The Operator is to enter into an agreement with the Convention Center Authority that is to make available 250 of the Hotel's standard rooms and an applicable percentage of the Hotel's suites for a to-be-determined number of event nights each month for city-wide events booking the MRCC for a mutually agreeable number of months in advance. The number of rooms required to be made available can be reduced to 200 at a mutually agreeable point in time. The City is to retain the right to impose a room block rate cap on each type of room tied to the average daily group rate for such type of room, if the City determines it is required to book the event. The Operator can reasonably request release of dates beyond a to-be-agreed-upon date for certain high-impact in-house group events.
13. MRCC Meeting Space Rental and Catering Policy - Subject to availability, Operator agrees to pay normal and customary rental rates for use of MRCC facilities and services and to use MRCC catering services for such functions.
14. Flag Approval – Hilton Corporation will need to formally approve the use of its flag, which approval is expected.

## **XI. ATTACHMENTS**

1. Preliminary Development Management Scope of Services

**SIGNATURES**

**CITY OF COLUMBIA**

  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EDENS & AVANT REAL ESTATE  
SERVICES, LLC**

\_\_\_\_\_  
John H. Lumpkin, Jr. President

**GARFIELD TRAUB DEVELOPMENT,  
LLC**  
By Garfield Corporation, Member

\_\_\_\_\_  
Raymond Garfield, Jr., President

**GARY REALTY, INC.**

\_\_\_\_\_  
Charles B. Gary, President

**THOMPSON, VENTULETT,  
STAINBACK & ASSOCIATES, INC.  
ARCHITECTS**

\_\_\_\_\_  
Roger Neuenschwander, President

**STEVENS & WILKINSON**

\_\_\_\_\_  
Robert T. Lyles, Chairman

**ENVIRO AgSCIENCE**

\_\_\_\_\_  
Louis B. Lynn, President

**TURNER CONSTRUCTION  
COMPANY**

\_\_\_\_\_  
Paul D. Little, Vice President

**CONSTRUCTION DYNAMICS, INC**

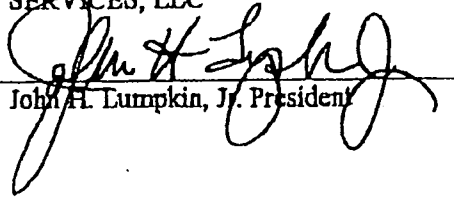
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Nathaniel Spells, Sr. President

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STEVENS & WILKINSON

\_\_\_\_\_  
Robert T. Lyles, Chairman

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COMPANY

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Paul D. Little, Vice President

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Robert T. Lyles, Chairman

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Nathaniel Spella, Sr. President

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SERVICES, LLC

\_\_\_\_\_  
John H. Lumpkin, Jr. President

GARY REALTY, INC.

\_\_\_\_\_  
Charles B. Gary, President

*Prime Architect*  
STEVENS & WILKINSON *OF*  
*Smith County, Inc.*

\_\_\_\_\_  
Robert T. Lyles, Chairman

TURNER CONSTRUCTION  
COMPANY

\_\_\_\_\_  
Paul D. Little, Vice President

GARFIELD TRAUB DEVELOPMENT,  
LLC  
By Garfield Corporation, Member

\_\_\_\_\_  
Raymond Garfield, Jr., President

*Design Architect*  
THOMPSON, VENTULETT,  
STAINBACK & ASSOCIATES, INC.,  
ARCHITECTS

\_\_\_\_\_  
Roger Neuenschwander, President

ENVIRO AgSCIENCE

\_\_\_\_\_  
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Nathaniel Spells, Sr. President

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Robert T. Lyles, Chairman

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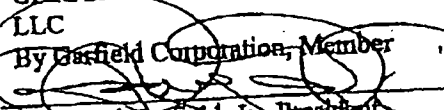
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Robert T. Lyles, Chairman

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Paul D. Little, Vice President

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LLC**  
By ~~Garfield Corporation, Member~~  
  
Raymond Garfield, Jr., President

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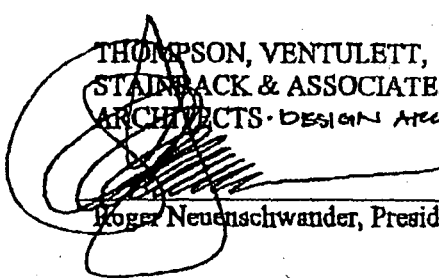
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Charles B. Gary, President

**THOMPSON, VENTULETT,  
STAINBACK & ASSOCIATES, INC.**  
ARCHITECTS • DESIGN ARCHITECT

  
\_\_\_\_\_  
Roger Neuenschwander, President

**STEVENS & WILKINSON**  
PRIME / ARCHITECT of RECORD

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Robert T. Lyles, Chairman

**ENVIRO AgSCIENCE**

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Paul D. Little, Vice President

**CONSTRUCTION DYNAMICS, INC**

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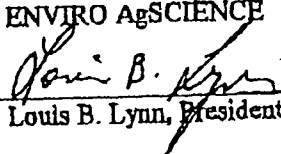
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Roger Neuenschwander, President

**STEVENS & WILKINSON**

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Robert T. Lyles, Chairman

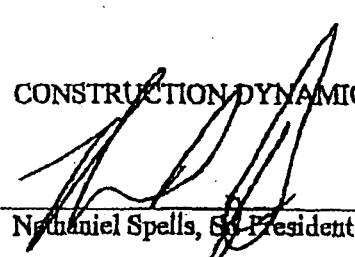
**ENVIRO AgSCIENCE**

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Louis B. Lynn, President

**TURNER CONSTRUCTION  
COMPANY**

\_\_\_\_\_  
Paul D. Little, Vice President

**CONSTRUCTION DYNAMICS, INC**

  
\_\_\_\_\_  
Nathaniel Spells, Sr. President

DESA, INC

*Diane E. Sumpter*  
Diane E. Sumpter, President & CEO

HILTON CORPORATION

Stephen H. Crabill, Vice President,  
Southeast Region

SALOMON SMITH BARNEY, INC.

William M. Corrado, Director

DESA, INC

Diane B. Sumpter, President & CEO

HILTON CORPORATION

Stephen H. Crabill, Vice President,  
Southeast Region

CITIGROUP GLOBAL MARKETS  
INC.

*William M. Corrado*  
William M. Corrado, Director

DESA, INC

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Diane E. Sumpter, President & CEO

SALOMON SMITH BARNEY, INC.

---

William M. Corrado, Director

HILTON HOTELS CORPORATION

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Greg S. Dickens, Vice President  
South Central Region

## **ATTACHMENT 1**

### **PRELIMINARY DEVELOPMENT MANAGEMENT SCOPE OF SERVICES**

#### **I. PRE-CONSTRUCTION SERVICES:**

1. Identify and quantify the Owner's goals for the Project so that these goals can be communicated clearly to the entire Project team.
2. Identify for the Owner a list of required consultants and other professionals required to develop the Project that have not already been envisioned.
3. Develop an initial Project development schedule describing the steps and duration of the major tasks required to develop the Project.
4. Identify other parameters, such as code, zoning, land use or other such restrictions, which have a potential impact of the design development or construction of the Project.
5. Work with architect and operator to refine the current Project program and master plan.
6. Review and refine the preliminary Project budget outlining the expected costs to develop the Project.
7. Develop a bid packaging plan.

#### **II. DESIGN COMPLETION PHASE (AFTER FINANCING PLAN APPROVAL):**

1. Manage the design and development team throughout the entire documentation process to ensure adherence to the approved program, budget and schedule.
2. Develop the organizational structure of the development team, establish responsibilities and line of authority and establish communication procedures to be used throughout the development process.
3. Provide periodic review of design documents for completeness, feasibility, constructability and appropriateness of building systems and materials.
4. Provide periodic budget checks throughout the design process and propose and review value engineering alternates required to maintain Project budget.
5. Implement any design changes required to maintain the Project budget.
6. Identify and coordinate required site studies, such as soil and environmental reports, necessary to design and obtain construction permits for the Project.

7. Assist the Owner, architect and/or general contractor in the review of the Project with code officials and submission of the Project to obtain required building permits.
8. Work with the architect to prepare bid packages.
9. Review contractor submittals and make recommendations.
10. Assist the City with negotiating the contractor contracts.
11. Develop and manage the entire accounting and funding process to include receipt and review of all Project related invoices and payment applications and assembly of such documents into a monthly draw package. Submit this package to the City with recommendation for payment and manage and/or monitor payment by the City.
12. Establish and monitor the FF&E procurement process for adherence to the approved Project budget and schedule.
13. Maintain Project records and Project communication procedures throughout the development process.

### **III. CONSTRUCTION PHASE:**

1. Provide on-site representation throughout the entire construction process as the City's representative.
2. Monitor the development and maintenance of the construction schedule by the general contractor(s).
3. Conduct regular on-site meetings with the general contractor(s), architect, operator and other appropriate development team members to coordinate and maintain the construction process.
4. Review and coordinate all requests for information from the general contractor(s) for timely response by the architect. Review and monitor all supplemental instructions and directives for potential impact on the Project budget and schedule.
5. Review all invoices and applications for payment from the general contractor(s) and design team and include all approved requests in the monthly draw package to be submitted to the City for payment.
6. Provide a monthly report to the City that summarizes the status of the Project cost and schedule.
7. Review change proposals submitted by the general contractor(s) for appropriateness and accuracy and recommend acceptance and/or payment of such changes to the City.
8. Monitor the submission of shop drawings and product samples by the general contractor(s) and response and review by the architect for timeliness and appropriateness.

9. Monitor the procurement, warehousing, delivery and installation of all FF&E with the purchasing agent and associated vendors and contractors to ensure timeliness.
10. Develop with the design team and general contractor the construction punch lists for all areas of the Project. Monitor implementation and completion of all punch list items.
11. Assist the general contractor(s) with acquisition of all government approvals required to receive a certificate of occupancy.
12. Maintain all Project records throughout the construction process.

#### **IV. POST-CONSTRUCTION PHASE:**

1. Assist the general contractor(s) and operator in conducting all move-in operations, system start-ups and other transitional requirements.
2. Manage the closeout of the construction contract, punch list completion and receipt and documentation of all final lien waivers.
3. Close out the Project accounting and provide the final status of the Project budget.
4. Obtain and turnover to operations and/or the Owner all product and warranty information pertaining to the Project.

*Edens &  
Avant*

REAL ESTATE SERVICES

June 26, 2003

Mr. Steven A. Gantt  
Assistant City Manager  
City of Columbia  
P. O. Box 147  
Columbia, SC 29217

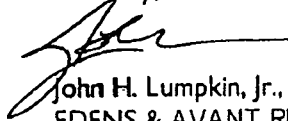
RE: Convention Center Hotel

Dear Steve:

As you know, under the terms of the MOU, members of the development team agreed to be effectively at risk up to the date of bond closing. As it relates to the architectural and engineering work, the at risk was limited to sufficient plans and specs in order to obtain a Guaranteed Maximum Price (GMP) from Turner Construction, the contractor. The completion of the GMP set of documents is scheduled to occur July 10, 2003. We are very pleased with the work accomplished at this point and anticipate meeting the July 10 schedule. With the GMP in hand, the City would then be able to pursue bond closings, currently scheduled to be held during the second week of October 2003. The issue/opportunity presented under this scenario relates to the time period between obtaining the GMP and bond closing (approximately 90 days). Provided the architectural team continues its work during this ninety (90) day period, (which work is not required for bond closing), it would enable the contractor to commence its work ninety (90) days earlier, thereby directly affecting the timeframe of the Hotel opening. In order for this to happen, the architectural team would need assurance that it would receive payment for its work performed during this particular timeframe.

I enclose an estimate of the fees, which would be incurred during this 90-day period, and a weekly estimate of the fees after that, should the bond closing be delayed beyond the week of October 13, 2003. Please advise.

Sincerely,



John H. Lumpkin, Jr., President  
EDENS & AVANT REAL ESTATE SERVICES, LLC

Enclosures

**Columbia Convention Center Hotel  
Architectural & Engineering Fees  
Cost Estimate  
June 26, 2003**

|                                                                                                     |                   |
|-----------------------------------------------------------------------------------------------------|-------------------|
| Estimated Fees During 90-Day Period<br>July 10, 2003 – October 13, 2003                             | \$450,000.00      |
| Estimate of Fees to be incurred Weekly<br>After October 13, 2003 (anticipated<br>Bond closing date) | \$ 60,000.00/Week |

**Columbia Convention Center Hotel  
Architectural & Engineering Fees  
Cost Estimate  
Revised - July 21, 2003**

|                                                                    |              |
|--------------------------------------------------------------------|--------------|
| Estimated A/E Fees During 90-Day Period<br>Ending October 13, 2003 | \$450,000.00 |
|--------------------------------------------------------------------|--------------|

|                                                                                                       |                   |
|-------------------------------------------------------------------------------------------------------|-------------------|
| Estimated A/E Fees to be Incurred Weekly<br>After October 13, 2003 (anticipated<br>Bond closing date) | \$ 60,000.00/Week |
|-------------------------------------------------------------------------------------------------------|-------------------|

|                                                                |              |
|----------------------------------------------------------------|--------------|
| Estimated Fees for Special Consultants<br>During 90-Day Period | \$200,000.00 |
|----------------------------------------------------------------|--------------|

|                                                                                  |                  |
|----------------------------------------------------------------------------------|------------------|
| Estimated Fees for Special Consultants<br>Incurred Weekly after October 13, 2003 | \$15,000.00/Week |
|----------------------------------------------------------------------------------|------------------|

CITY OF COLUMBIA  
CITY COUNCIL WORK SESSION ACTION REPORT  
July 30, 2003  
9:00 AM - City Council Chambers  
3<sup>rd</sup> Floor City Hall - 1737 Main Street



CITY COUNCIL DISCUSSION / ACTION

- A. \*\*Comprehensive Land Use Agreement between The University Neighborhood Organization and The University of South Carolina

ACTION: Representatives of the University Neighborhood Association, the University of South Carolina and the National Advocacy Center discussed the impact the proposed agreement and the Inn could have on the community as a whole.

- B. \*\*The Greater Columbia Hotel & Motel Association – Mr. Tom Sponseller, President/CEO

ACTION: Representatives of the hospitality industry presented statistical data supporting their opposition to the University being involved with the development of a hotel.

- C. Columbia Action Council Budget Request – Mr. Allison Baker, Director of Parks & Recreation

ACTION: APPROVED staff recommendations to reduce the Columbia Action Council's budget and AUTHORIZED staff to determine a funding source for the additional \$30,000.00 requested to cover three (3) events during fiscal year 2003/2004.

- D. Proposal for Collecting and Remitting Hospitality Tax Funding – Ms. Cathy Alexander, Finance Director

ACTION: AUTHORIZED staff to continue collecting the Hospitality Tax without offering taxpayer discounts and asked staff to review other taxes and how various jurisdictions handle taxpayer discounts while considering administrative costs. A report should be given to Council within thirty- (30) days.

- E. Underwriter Recommendations – Mr. Steve Gantt, ACM for Development Services

ACTION: APPROVED staff recommendations.

- F. Central Midlands Regional Transit Authority Update – Ms. Dana Turner, Administrative Advisor

ACTION: Ms. Dana Turner, Administrative Advisor, updated the members of Council on the RTA.

ORDINANCE – SECOND READING

- G. Ordinance No.: 2003-030 – Granting encroachment to The Woman's Club for placement of a plaque near their former clubhouse at 1703 Blossom Street – First reading approval July 23, 2003

ACTION: APPROVED on second reading.

ORDINANCE – FIRST READING

- H. Ordinance No.: 2003-067 - Authorizing property exchange between the City of Columbia and South Carolina Department of Transportation

ACTION: APPROVED on first reading.

\*\*Amendment to the Agenda

WS AR 07/30/2003 Page 1

### APPOINTMENT

HI. \*\*Arts Task Force

ACTION: APPROVED the appointment of Ms. Stacy Calvert to the Arts Task Force.

Council voted to go into Executive Session at 12:02 p.m. to discuss Items I. through K.

### EXECUTIVE SESSION DISCUSSION

I. Discussion of the evaluation of employees

ACTION: This item was held over, no action was taken.

J. \*\*Discussion of negotiations incident to the proposed sale of property

ACTION: This item was discussed in Executive Session, no action was taken.

K. Discussion of negotiations incident to proposed contractual arrangements

- AquaGrille

ACTION: This item was held over, no action was taken.

- Mr. Charles Williams, Consultant

ACTION: This item was held over, no action was taken.

- Annexation Coordinator

ACTION: This item was held over, no action was taken.

- Convention Center Hotel

- Mayor Coble adjourned the Executive Session discussion at 1:54 p.m. to reconvene the Work Session.

ACTION: APPROVED \$650,000 for Interim architectural design services for a period of 90 days prior to Bond Closing. Mr. Papadea and Mr. Osborne did not vote due to a conflict of interest.

Mayor Coble adjourned the meeting at 1:55 p.m.

December 17, 2003

Mr. Mark Alles  
Turner Construction  
3424 Peachtree Road, NE  
Suite 200  
Atlanta, GA 30326

RE: Columbia Hilton Hotel  
JN: 03028.00

Sent Via Email

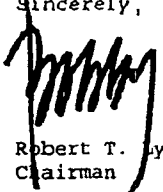
Dear Mark:

The Columbia City Council voted today to advance Seven-Hundred Five Thousand Dollars (\$705,000.00) to the design team for design services and expenses at cost covering the time period between July 10, 2003 to December 15, 2003. Since Stevens & Wilkinson and the design team's contract is with Turner Construction, the City needs for Turner to, (1) agree the City of Columbia will be reimbursed directly at bond closing for the advanced funds, and (2) that it is permissible that the advanced funds be paid directly to Stevens & Wilkinson for distribution to the design team instead of through Turner, to Stevens & Wilkinson, to the design team.

Mark, I need you to send a letter to John Lumpkin stating that the above meets with Turner's approval as soon as possible so we can receive and distribute the money before the end of the year. The City is requiring John Lumpkin to forward your letter and my invoice with back up to the City with an explanation as to how the City will be reimbursed. I will send you a copy of my invoices and back up information tomorrow.

Your prompt attention to this matter is greatly appreciated.

Sincerely,



Robert T. Lyles, AIA  
Chairman

RTL/jhw

cc: John Lumpkin, Edens & Avant  
Steve Gantt, City of Columbia

# Turner

Turner Construction Company  
3424 Peachtree Rd., N.E.  
Suite 200  
Atlanta, Georgia 30326  
phone: 404.504.3700  
fax: 404.504.3715

December 18, 2003

Mr. John Lumpkin  
**Edens & Avant**  
1901 Main Street  
900 Bank of America Plaza  
Columbia, SC 29201

Re: Columbia City Hilton Hotel

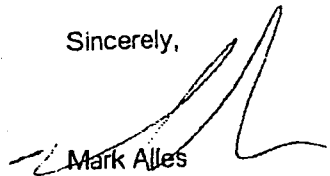
Dear John,

We've received a letter from Mr. Bobby Lyles of Stevens & Wilkinson informing Turner Construction Company of the decision by the City to pay the A/E Team design costs incurred from July 10th to December 15<sup>th</sup>, 2003. We approve the direct payment of \$705,000 to Stevens & Wilkinson with the following understanding:

1. We would reimburse the City after the bonds close.
2. We have received our initial payment amount from the bond sale, which will include these funds.
3. The amount of the GMP will not be affected.
4. If for any reason the bonds fail to close, we are not obligated to reimburse the City.
5. Stevens & Wilkinson provide the appropriate back up to meet the City requirements.
6. We are not obligated to reimburse the City for any costs associated with the use of these funds.

If you have any questions concerning the above feel free to contact me on my mobile.

Sincerely,



Mark Alles  
Project Executive  
Turner Construction

CC: P. Little - TCCo  
D. Butler - TCCo  
S. Oakes - TCCo  
File

*A Century of Excellence*

1-940

*Edens &  
Avant*  
REAL ESTATE SERVICES

December 18, 2003

Mr. Steve Gantt  
City of Columbia  
Post Office Box 147  
Columbia, South Carolina 29217

**Re: Columbia Hilton Hotel**

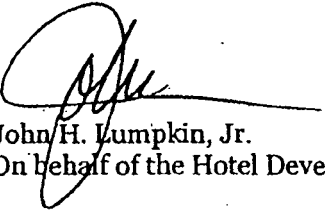
Dear Steve:

It is our understanding that the City of Columbia has agreed to advance up to Seven-Hundred Five Thousand Dollars (\$705,000.00) to the Columbia Hilton Hotel Design Team for services and expenses incurred by same from the time period between July 10, 2003 to December 15, 2003.

In this connection, we enclose a letter from the Design Builder (Turner Construction) enclosing the subject invoice and supporting documentation acknowledging that (i) the City of Columbia may advance these funds directly to Stevens & Wilkinson for distribution to members of the Design Team, (ii) such funds will be credited against the "Design Fee" line item contained in the September 9, 2003 Schematic GMP (i.e. the GMP will not increase) and (iii) the City of Columbia will be reimbursed such amount at the closing of the bonds associated with construction of the Columbia Hilton Hotel.

In the event the bonds fail to close, however, there would be no obligation from the Design Team, the Design Builder or any of the other members of the Development Team to reimburse the City of Columbia for such amounts.

Sincerely,



John H. Lumpkin, Jr.  
On behalf of the Hotel Development Team

JHL/ehm

Enclosures

BROKERAGE • DEVELOPMENT • OFFICE • INDUSTRIAL • HEALTHCARE

900 Bank of America Plaza 1901 Main Street Columbia SC 29201 803.779.4420 Fax 803.254.4983 [www.edensandavant.com](http://www.edensandavant.com)



**Stevens & Wilkinson**  
ARCHITECTURE ENGINEERING INTERIORS

December 18, 2003  
Invoice No. 384308  
Job No. 03028.00

City of Columbia  
Attn: Shawn Epps  
P.O. Box 147  
Columbia, SC 29217

FOR: Columbia Hilton Hotel

PROFESSIONAL SERVICES FOR THE PERIOD JULY 10, 2003 THROUGH  
DECEMBER 15, 2003

|                   | <u>Fees</u>      | <u>Fee Earned</u> |
|-------------------|------------------|-------------------|
| Basic Project Fee | 2,203,000.00     | 588,006.10        |
| Early Site Work   | <u>34,000.00</u> | <u>34,000.00</u>  |
| Subtotal          | 2,237,000.00     | 622,006.10        |
| I.D. Fees         | 357,000.00       | <u>75,078.69</u>  |

TOTAL AMOUNT DUE THIS INVOICE    \$ 697,084.79

NOTICE:    SECTION 29-6-50, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS  
             AMENDED, APPLIES TO THE PAYMENT REQUESTED HEREIN.

Stevens & Wilkinson of South Carolina, Inc.  
P.O. Drawer 7, Columbia, SC 29202-0007 • 1501 Main Street, Columbia, SC 29201 • 803.765.0320 • Fax 803.254.6209

1-943



CITY OF COLUMBIA  
PO Box 147  
Columbia, South Carolina 29217

| VENDOR ID | VENDOR NAME           | CHECK DATE | CHECK NO. |
|-----------|-----------------------|------------|-----------|
| V003755   | STEVENS AND WILKINSON | 12/29/03   | 00011636  |

| VOICE NUMBER | INVOICE DATE | PO NUMBER | DEPT REF NUMBER | DESCRIPTION           | CR MEMO DISCOUNT | NET AMOUNT |
|--------------|--------------|-----------|-----------------|-----------------------|------------------|------------|
| 8430B 03     | 12/22/03     | P009728   |                 | Columbia Hilton Hotel | 0.00             | 697,084.79 |

TOTAL 697,084.79



CITY OF COLUMBIA

PO Box 147  
Columbia, South Carolina 29217

WACHOVIA BANK OF SOUTH CAROLINA, N.A.  
COLUMBIA, SC

CHECK NO. 00011636

67-779  
532

DATE 12/29/03

A/P ACCOUNT

PAY TO THE ORDER OF  
\$ 697,084.79

PAY SIX Hundred NINETY SEVEN Thousand EIGHTY FOUR Dollars and  
SEVENTY NINE Cents

THIS CHECK WILL NOT BE PAID IF PRESENTED TO THE TREASURER AFTER  
THE EXPIRATION OF NINETY (90) DAYS FROM DATE HEREOF.

TO THE  
ORDER  
OF

STEVENS AND WILKINSON  
POST OFFICE DRAWER 2  
COLUMBIA, SC 29202

*[Signature]*  
*[Signature]*

⑈00011636⑈ ⑆053207766⑆ 2000020327622⑈

1-937

City of Columbia, South Carolina  
Columbia Hilton  
Additional \$1.5MM City Use  
AAA-Insured (Taxable and Tax-Exempt Issuance)  
Sources and Uses of Funds (Combined)

| SOURCES:             | Tax-Exempt Bonds     | Taxable Bonds       | Key Money           | Total                |
|----------------------|----------------------|---------------------|---------------------|----------------------|
| Par Amount           | 66,250,000.00        | 5,765,000.00        | -                   | 72,015,000.00        |
| Key Money            | -                    | -                   | 1,500,000.00        | 1,500,000.00         |
| Accrued Interest     | -                    | -                   | -                   | -                    |
| <b>Total Sources</b> | <b>66,250,000.00</b> | <b>5,765,000.00</b> | <b>1,500,000.00</b> | <b>73,515,000.00</b> |

| USES:                             | Tax-Exempt Bonds     | Taxable Bonds       | Key Money           | Total                |
|-----------------------------------|----------------------|---------------------|---------------------|----------------------|
| Construction Fund Deposit         | 47,870,828.04        | 1,381,974.22        | 1,000,000.00        | 50,252,802.26        |
| Other Development Costs           | -                    | -                   | -                   | -                    |
| Other City Uses                   | 1,500,000.00         | -                   | -                   | 1,500,000.00         |
| Capitalized Interest Fund Deposit | 4,839,284.58         | 3,641,741.85        | -                   | 8,481,026.44         |
| Debt Service Reserve Fund Deposit | 5,596,051.79         | 306,727.70          | -                   | 5,902,779.48         |
| Working Capital Fund              | -                    | -                   | 500,000.00          | 500,000.00           |
| Underwriter's Discount            | 910,937.50           | 79,268.75           | -                   | 990,206.25           |
| Costs of Issuance                 | 1,480,655.07         | 128,844.93          | -                   | 1,609,500.00         |
| Municipal Bond Insurance          | 4,050,981.89         | 222,040.18          | -                   | 4,273,022.07         |
| Accrued Interest                  | -                    | -                   | -                   | -                    |
| Other                             | -                    | -                   | -                   | -                    |
| Contingency (Rounding)            | 1,261.13             | 4,402.37            | -                   | 5,663.50             |
| <b>Total Uses</b>                 | <b>66,250,000.00</b> | <b>5,765,000.00</b> | <b>1,500,000.00</b> | <b>73,515,000.00</b> |

ASSUMPTIONS / SUMMARY STATISTICS:

|                          |          |          |          |
|--------------------------|----------|----------|----------|
| Arbitrage Yield          | 5.14%    | 5.13%    | 5.14%    |
| True Interest Cost       | 5.24%    | 5.36%    | 5.25%    |
| All-In Cost of Borrowing | 5.42%    | 5.73%    | 5.43%    |
| Initial Coverage         | 2.61x    | 3.25x    | 2.61x    |
| Average Coverage         | 1.67x    | 4.82x    | 1.67x    |
| Dated Date               | 4/1/2004 | 4/1/2004 | 4/1/2004 |
| Delivery Date            | 4/1/2004 | 4/1/2004 | 4/1/2004 |

BOND ISSUANCE EXPENSES:

|                          |         |         |         |
|--------------------------|---------|---------|---------|
| Underwriter's Discount   | \$13.75 | \$13.75 | \$13.75 |
| Costs of Issuance        | \$22.35 | \$22.35 | \$22.35 |
| Municipal Bond Insurance | 2.850%  | 2.850%  | 2.850%  |

INVESTMENT RATES:

|                                   |        |        |        |
|-----------------------------------|--------|--------|--------|
| Debt Service Reserve Fund Deposit | 5.000% | 5.000% | 5.000% |
| Construction Fund Deposit         | 1.200% | 1.200% | 1.200% |
| Capitalized Interest Fund Deposit | 1.200% | 1.200% | 1.200% |

OTHER:

|                                       |                 |                 |                 |
|---------------------------------------|-----------------|-----------------|-----------------|
| Capitalized Interest                  | Yes             | Yes             | Yes             |
| Interest Capitalized Through          | 1/1/2008        | 1/1/2008        | 1/1/2008        |
| Debt Service Reserve Fund             | Yes             | Yes             | Yes             |
| Debt Service Reserve Fund Requirement | Lesser of Three | Lesser of Three | Lesser of Three |
| End of Construction                   | 12/1/2005       | 12/1/2005       | 12/1/2005       |

CONSTRUCTION FUND SUMMARY:

|                               |               |              |              |               |
|-------------------------------|---------------|--------------|--------------|---------------|
| Total Construction Fund Draws | 48,249,000.00 | 1,400,000.00 | 1,000,000.00 | 50,649,000.00 |
| Target Construction Funds     | -             | -            | -            | 50,649,000.00 |
| Difference                    | -             | -            | -            | -             |

Notes:

Interest / Investment Rates as of 2-5-04  
Assumes triple-A insured credit rating.

City of Columbia, South Carolina

Columbia 1010n

Operating Statistics and Forecasted Revenues, Expenditures, Net Income and Coverage Ratios  
for the Years Ending December 31, as shown

|                                               | 2006     | 2007     | 2008     | 2009     | 2010     | 2011     | 2012     | 2013     | 2014     | 2015     |
|-----------------------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Available Rooms (Daily)                       | 300      | 300      | 300      | 300      | 300      | 300      | 300      | 300      | 300      | 300      |
| Available Rooms (Annually)                    | 109,500  | 109,500  | 109,500  | 109,800  | 109,600  | 109,500  | 109,500  | 109,800  | 109,500  | 109,500  |
| Occupied Rooms (Annually)                     | 67,890   | 75,560   | 77,750   | 77,750   | 77,750   | 77,750   | 77,750   | 77,750   | 77,750   | 77,750   |
| Occupancy Percentage                          | 62.00%   | 69.00%   | 71.00%   | 71.00%   | 71.00%   | 71.00%   | 71.00%   | 71.00%   | 71.00%   | 71.00%   |
| Average Room Rate                             | \$117.75 | \$122.25 | \$126.50 | \$130.25 | \$134.25 | \$138.25 | \$142.25 | \$146.50 | \$151.00 | \$155.50 |
| Revenue Per Occupied Room (RevPAR)            | \$73.01  | \$84.35  | \$89.82  | \$92.48  | \$95.32  | \$98.16  | \$101.00 | \$104.02 | \$107.21 | \$110.41 |
| <b>REVENUE:</b>                               |          |          |          |          |          |          |          |          |          |          |
| Rooms                                         | \$7,994  | \$9,237  | \$9,835  | \$10,127 | \$10,438 | \$10,749 | \$11,060 | \$11,390 | \$11,740 | \$12,090 |
| Food & Beverage                               | 4,627    | 4,785    | 4,908    | 5,058    | 5,207    | 5,364    | 5,524    | 5,690    | 5,861    | 6,037    |
| Telecommunications                            | 147      | 168      | 178      | 184      | 189      | 195      | 201      | 207      | 213      | 220      |
| Garage                                        | 578      | 660      | 700      | 721      | 742      | 765      | 788      | 811      | 836      | 861      |
| Other Operated Departments                    | 257      | 295      | 312      | 322      | 331      | 341      | 352      | 362      | 373      | 384      |
| Rentals and Other Income                      | 73       | 84       | 89       | 92       | 95       | 98       | 100      | 103      | 107      | 110      |
| Total Revenue                                 | \$13,674 | \$15,209 | \$16,022 | \$16,502 | \$17,062 | \$17,512 | \$18,025 | \$18,583 | \$19,130 | \$19,762 |
| <b>DEPARTMENTAL EXPENSES:</b>                 |          |          |          |          |          |          |          |          |          |          |
| Rooms                                         | \$1,970  | \$2,136  | \$2,231  | \$2,298  | \$2,367  | \$2,438  | \$2,511  | \$2,587  | \$2,664  | \$2,744  |
| Food & Beverage                               | 3,239    | 3,338    | 3,436    | 3,539    | 3,645    | 3,754    | 3,867    | 3,983    | 4,103    | 4,226    |
| Telecommunications                            | 88       | 101      | 107      | 110      | 114      | 117      | 121      | 124      | 128      | 132      |
| Garage                                        | 419      | 480      | 509      | 524      | 540      | 556      | 573      | 590      | 607      | 626      |
| Other Operated Departments                    | 180      | 208      | 219      | 225      | 232      | 239      | 246      | 253      | 261      | 269      |
| Total Departmental Expenses                   | \$5,896  | \$6,259  | \$6,502  | \$6,696  | \$6,898  | \$7,104  | \$7,318  | \$7,537  | \$7,763  | \$7,997  |
| Departmental Profit                           | \$7,778  | \$8,950  | \$9,520  | \$9,806  | \$10,164 | \$10,408 | \$10,707 | \$11,046 | \$11,367 | \$11,765 |
| <b>UNDISTRIBUTED EXPENSES:</b>                |          |          |          |          |          |          |          |          |          |          |
| Admin & Gen                                   | \$1,006  | \$1,038  | \$1,068  | \$1,100  | \$1,133  | \$1,167  | \$1,202  | \$1,238  | \$1,275  | \$1,313  |
| Marketing                                     | 1,087    | 1,120    | 1,154    | 1,188    | 1,224    | 1,261    | 1,298    | 1,337    | 1,378    | 1,419    |
| Property Operation & Maintenance              | 578      | 593      | 611      | 630      | 648      | 668      | 688      | 709      | 730      | 752      |
| Utility Costs                                 | 503      | 518      | 534      | 550      | 566      | 583      | 601      | 619      | 637      | 656      |
| Total Undistributed Operating Expenses        | \$3,172  | \$3,269  | \$3,367  | \$3,468  | \$3,571  | \$3,679  | \$3,789  | \$3,903  | \$4,020  | \$4,140  |
| GROSS OPERATING PROFIT                        | \$4,506  | \$5,643  | \$6,153  | \$6,338  | \$6,533  | \$6,729  | \$6,916  | \$7,123  | \$7,347  | \$7,565  |
| <b>FIXED CHARGES</b>                          |          |          |          |          |          |          |          |          |          |          |
| Insurance                                     | 138      | 142      | 146      | 151      | 155      | 160      | 165      | 170      | 175      | 180      |
| Total Fixed Charges                           | \$138    | \$142    | \$146    | \$151    | \$155    | \$160    | \$165    | \$170    | \$175    | \$180    |
| EBITDA BEFORE MGT FEES                        | \$4,468  | \$5,541  | \$6,007  | \$6,187  | \$6,378  | \$6,569  | \$6,753  | \$6,953  | \$7,172  | \$7,385  |
| <b>MANAGEMENT FEES:</b>                       |          |          |          |          |          |          |          |          |          |          |
| Base Management Fees                          | \$273    | \$380    | \$401    | \$454    | \$468    | \$482    | \$496    | \$510    | \$526    | \$542    |
| Incentive Management Fees (see below)         | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |
| Total Management Fees                         | \$273    | \$380    | \$401    | \$454    | \$468    | \$482    | \$496    | \$510    | \$526    | \$542    |
| EBITDA                                        | \$4,195  | \$5,161  | \$5,606  | \$5,733  | \$5,910  | \$6,087  | \$6,257  | \$6,443  | \$6,648  | \$6,843  |
| Primary FF&E Reserve                          | \$137    | \$304    | \$481    | \$495    | \$510    | \$700    | \$721    | \$743    | \$765    | \$985    |
| NET OPERATING INCOME (1)                      | \$4,058  | \$4,857  | \$5,126  | \$5,238  | \$5,400  | \$5,387  | \$5,536  | \$5,700  | \$5,883  | \$5,858  |
| Add: Incentive Management Fee (see below)     | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |
| ADJUSTED NET OPERATING INCOME                 | \$4,058  | \$4,857  | \$5,126  | \$5,238  | \$5,400  | \$5,387  | \$5,536  | \$5,700  | \$5,883  | \$5,858  |
| <b>INVESTMENT EARNINGS AND OTHER REV: (2)</b> |          |          |          |          |          |          |          |          |          |          |
| Debt Service Reserve Fund - Taxable           | \$15     | \$15     | \$15     | \$15     | \$15     | \$15     | \$15     | \$322    | \$0      | \$0      |
| Debt Service Reserve Fund - Tax-Exempt        | 280      | 280      | 280      | 280      | 280      | 280      | 280      | 280      | 280      | 280      |
| Total Investment Earnings and Other Rev       | \$295    | \$295    | \$295    | \$295    | \$295    | \$295    | \$295    | \$602    | \$280    | \$280    |
| REVENUES AVAILABLE FOR DEBT SERVICE           | \$4,353  | \$5,152  | \$5,421  | \$5,533  | \$5,695  | \$5,682  | \$5,831  | \$6,302  | \$6,163  | \$6,138  |
| <b>TAXABLE LIEN DEBT SERVICE:</b>             |          |          |          |          |          |          |          |          |          |          |
| Gross Debt Service                            | \$258    | \$258    | \$258    | \$1,343  | \$1,355  | \$1,378  | \$1,391  | \$1,100  | \$0      | \$0      |
| Less: Capitalized Interest                    | 129      | 129      | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |
| Net Taxable Lien Debt Service                 | \$129    | \$129    | \$258    | \$1,343  | \$1,355  | \$1,378  | \$1,391  | \$1,100  | \$0      | \$0      |
| <b>TAX-EXEMPT LIEN DEBT SERVICE:</b>          |          |          |          |          |          |          |          |          |          |          |
| Gross Debt Service                            | \$3,082  | \$3,082  | \$3,082  | \$3,082  | \$3,082  | \$3,082  | \$3,082  | \$3,082  | \$4,307  | \$4,355  |
| Less: Capitalized Interest                    | 1,541    | 1,541    | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |
| Net Tax-Exempt Lien Debt Service              | \$1,541  | \$1,541  | \$3,082  | \$3,082  | \$3,082  | \$3,082  | \$3,082  | \$3,082  | \$4,307  | \$4,355  |
| TOTAL NET DEBT SERVICE                        | \$1,670  | \$1,670  | \$3,340  | \$4,425  | \$4,437  | \$4,460  | \$4,473  | \$4,182  | \$4,307  | \$4,355  |
| NET CASH FLOW AFTER DEBT SERVICE              | \$2,683  | \$3,482  | \$2,081  | \$1,108  | \$1,259  | \$1,225  | \$1,359  | \$2,120  | \$1,854  | \$1,783  |
| <b>OTHER DEDUCTIONS:</b>                      |          |          |          |          |          |          |          |          |          |          |
| Subordinated Management Fees                  | \$137    | \$152    | \$160    | \$206    | \$213    | \$219    | \$225    | \$232    | \$239    | \$248    |
| Subordinate FF&E Reserve Fund                 | 137      | 304      | 481      | 495      | 510      | 525      | 541      | 557      | 574      | 591      |
| Total Other Deductions                        | \$273    | \$456    | \$641    | \$701    | \$723    | \$744    | \$766    | \$789    | \$813    | \$837    |
| NET CASH FLOW                                 | \$2,409  | \$3,026  | \$1,440  | \$407    | \$536    | \$480    | \$593    | \$1,331  | \$1,041  | \$946    |
| <b>APPLICATION OF NET CASH FLOWS:</b>         |          |          |          |          |          |          |          |          |          |          |
| Supplemental Reserve Fund                     | \$2,409  | \$930    | \$1,085  | \$12     | \$21     | \$15     | -\$291   | \$125    | \$48     | \$53     |
| Redemption Fund - 50%                         | 0        | 1,048    | 178      | 198      | 258      | 233      | 442      | 603      | 496      | 448      |
| City Surplus Fund - 50%                       | 0        | 1,048    | 178      | 198      | 258      | 233      | 442      | 603      | 496      | 448      |
| Remaining Net Cash Flows                      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |
| <b>FUND BALANCES:</b>                         |          |          |          |          |          |          |          |          |          |          |
| Supplemental Reserve Fund Requirement         | \$3,340  | \$3,340  | \$4,425  | \$4,437  | \$4,457  | \$4,472  | \$4,182  | \$4,307  | \$4,355  | \$4,408  |
| Accum. Bal. - Supplemental Reserve Fund       | \$2,409  | \$3,340  | \$4,425  | \$4,437  | \$4,457  | \$4,472  | \$4,182  | \$4,307  | \$4,355  | \$4,408  |
| Accum. Bal. - Bond Redemption Fund            | \$0      | \$1,048  | \$1,225  | \$1,423  | \$1,681  | \$1,913  | \$2,355  | \$2,958  | \$3,455  | \$3,901  |
| Accum. Bal. - Surplus Fund                    | \$0      | \$1,048  | \$1,225  | \$1,423  | \$1,681  | \$1,913  | \$2,355  | \$2,958  | \$3,455  | \$3,901  |
| AVAILABLE CITY STANDBY SUP PAYMENT            | \$835    | \$835    | \$1,670  | \$2,212  | \$2,216  | \$2,229  | \$2,236  | \$2,091  | \$2,153  | \$2,177  |
| <b>DEBT SERVICE COVERAGE RATIOS:</b>          |          |          |          |          |          |          |          |          |          |          |
| Debt Service Coverage Ratio (3)               | 5.21     | 6.17     | 3.25     | 2.50     | 2.57     | 2.55     | 2.61     | 3.01     | 2.86     | 2.82     |
| Total Debt Service Coverage Ratio (4)         | 2.61     | 3.08     | 1.62     | 1.25     | 1.28     | 1.27     | 1.30     | 1.51     | 1.43     | 1.41     |

NOTES:

(1) As provided by PKF through 2015; 3% annual increase thereafter.

(2) Assumes Interest Earnings of 5.00% for the Debt Service Reserve Funds.

(3) Adjusted Net Operating Income Plus DSRF earnings divided by Net Debt Service Minus Available City Standby Support Payment

(4) Adjusted Net Operating Income plus DSRF earnings divided by Net Debt Service.

City of Columbia, South Carolina

Columbia Hilton

Operating Statistics and Forecasted Revenues, Expenditures, Net Income and Coverage Ratios  
for the Years Ending December 31, as shown

|                                                  | 2016            | 2017            | 2018            | 2019            | 2020            | 2021            | 2022            | 2023            | 2024            | 2025            |
|--------------------------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Available Rooms (Daily)                          | 300             | 300             | 300             | 300             | 300             | 300             | 300             | 300             | 300             | 300             |
| Available Rooms (Annually)                       | 109,500         | 109,500         | 109,500         | 109,500         | 109,500         | 109,800         | 109,500         | 109,500         | 109,500         | 109,800         |
| Occupied Rooms (Annually)                        | 78,183          | 78,397          | 78,183          | 78,183          | 78,183          | 78,397          | 78,183          | 78,183          | 78,183          | 78,397          |
| Occupancy Percentage                             | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          | 71.40%          |
| Average Room Rate                                | \$160.17        | \$164.97        | \$169.92        | \$175.02        | \$180.27        | \$185.88        | \$191.25        | \$196.98        | \$202.89        | \$208.98        |
| Revenue Per Occupied Room (RevPAR)               | \$114.36        | \$117.79        | \$121.32        | \$124.96        | \$128.71        | \$132.57        | \$136.55        | \$140.65        | \$144.87        | \$149.21        |
| <b>REVENUE:</b>                                  |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Rooms                                            | \$12,453        | \$12,826        | \$13,211        | \$13,607        | \$14,016        | \$14,436        | \$14,869        | \$15,315        | \$15,775        | \$16,248        |
| Food & Beverage                                  | 6,218           | 6,405           | 6,597           | 6,795           | 6,999           | 7,208           | 7,425           | 7,647           | 7,877           | 8,113           |
| Telecommunications                               | 227             | 233             | 240             | 248             | 255             | 263             | 271             | 279             | 287             | 296             |
| Garage                                           | 687             | 913             | 941             | 969             | 988             | 1,028           | 1,059           | 1,091           | 1,123           | 1,157           |
| Other Operated Departments                       | 398             | 407             | 420             | 432             | 445             | 459             | 472             | 486             | 501             | 516             |
| Rentals and Other Income                         | 113             | 117             | 120             | 124             | 128             | 131             | 135             | 139             | 144             | 148             |
| <b>Total Revenues</b>                            | <b>\$20,293</b> | <b>\$20,902</b> | <b>\$21,523</b> | <b>\$22,175</b> | <b>\$22,848</b> | <b>\$23,525</b> | <b>\$24,231</b> | <b>\$24,958</b> | <b>\$25,707</b> | <b>\$26,478</b> |
| <b>DEPARTMENTAL EXPENSES:</b>                    |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Rooms                                            | \$2,826         | \$2,911         | \$2,998         | \$3,088         | \$3,181         | \$3,278         | \$3,375         | \$3,476         | \$3,580         | \$3,688         |
| Food & Beverage                                  | 4,353           | 4,483           | 4,618           | 4,756           | 4,899           | 5,046           | 5,197           | 5,353           | 5,514           | 5,679           |
| Telecommunications                               | 136             | 140             | 144             | 149             | 153             | 158             | 162             | 167             | 172             | 177             |
| Garage                                           | 645             | 684             | 684             | 705             | 726             | 747             | 770             | 793             | 817             | 841             |
| Other Operated Departments                       | 277             | 285             | 294             | 303             | 312             | 321             | 331             | 341             | 351             | 362             |
| <b>Total Departmental Expenses</b>               | <b>\$8,237</b>  | <b>\$8,444</b>  | <b>\$8,739</b>  | <b>\$9,001</b>  | <b>\$9,271</b>  | <b>\$9,549</b>  | <b>\$9,835</b>  | <b>\$10,130</b> | <b>\$10,434</b> | <b>\$10,747</b> |
| <b>Departmental Profit</b>                       | <b>\$12,056</b> | <b>\$12,418</b> | <b>\$12,780</b> | <b>\$13,174</b> | <b>\$13,568</b> | <b>\$13,976</b> | <b>\$14,396</b> | <b>\$14,828</b> | <b>\$15,272</b> | <b>\$15,731</b> |
| <b>UNDISTRIBUTED EXPENSES:</b>                   |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Admin & Gen                                      | \$1,352         | \$1,393         | \$1,435         | \$1,478         | \$1,522         | \$1,568         | \$1,615         | \$1,663         | \$1,713         | \$1,765         |
| Marketing                                        | 1,432           | 1,505           | 1,551           | 1,597           | 1,645           | 1,694           | 1,745           | 1,798           | 1,851           | 1,907           |
| Property Operation & Maintenance                 | 775             | 798             | 822             | 846             | 872             | 898             | 925             | 953             | 981             | 1,011           |
| Utility Costs                                    | 676             | 696             | 717             | 738             | 760             | 783             | 807             | 831             | 856             | 882             |
| <b>Total Undistributed Operating Expenses</b>    | <b>\$4,234</b>  | <b>\$4,392</b>  | <b>\$4,524</b>  | <b>\$4,660</b>  | <b>\$4,799</b>  | <b>\$4,943</b>  | <b>\$5,092</b>  | <b>\$5,244</b>  | <b>\$5,402</b>  | <b>\$5,564</b>  |
| <b>GROSS OPERATING PROFIT</b>                    | <b>\$7,792</b>  | <b>\$8,026</b>  | <b>\$8,256</b>  | <b>\$8,514</b>  | <b>\$8,770</b>  | <b>\$9,033</b>  | <b>\$9,304</b>  | <b>\$9,583</b>  | <b>\$9,871</b>  | <b>\$10,167</b> |
| <b>FIXED CHARGES</b>                             |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Insurance                                        | 185             | 191             | 197             | 203             | 209             | 215             | 221             | 228             | 235             | 242             |
| <b>Total Fixed Charges</b>                       | <b>\$185</b>    | <b>\$191</b>    | <b>\$197</b>    | <b>\$203</b>    | <b>\$209</b>    | <b>\$215</b>    | <b>\$221</b>    | <b>\$228</b>    | <b>\$235</b>    | <b>\$242</b>    |
| <b>EBITDA BEFORE MGT FEES</b>                    | <b>\$7,607</b>  | <b>\$7,835</b>  | <b>\$8,059</b>  | <b>\$8,312</b>  | <b>\$8,561</b>  | <b>\$8,818</b>  | <b>\$9,083</b>  | <b>\$9,355</b>  | <b>\$9,636</b>  | <b>\$9,925</b>  |
| <b>Base Management Fees</b>                      | <b>\$558</b>    | <b>\$575</b>    | <b>\$592</b>    | <b>\$610</b>    | <b>\$628</b>    | <b>\$647</b>    | <b>\$666</b>    | <b>\$686</b>    | <b>\$707</b>    | <b>\$728</b>    |
| <b>Incentive Management Fees (see below)</b>     | <b>0</b>        | <b>0</b>        | <b>0</b>        | <b>0</b>        | <b>0</b>        | <b>0</b>        | <b>0</b>        | <b>0</b>        | <b>0</b>        | <b>0</b>        |
| <b>Total Management Fees</b>                     | <b>\$558</b>    | <b>\$575</b>    | <b>\$592</b>    | <b>\$610</b>    | <b>\$628</b>    | <b>\$647</b>    | <b>\$666</b>    | <b>\$686</b>    | <b>\$707</b>    | <b>\$728</b>    |
| <b>EBITDA</b>                                    | <b>\$7,048</b>  | <b>\$7,260</b>  | <b>\$7,478</b>  | <b>\$7,702</b>  | <b>\$7,933</b>  | <b>\$8,171</b>  | <b>\$8,416</b>  | <b>\$8,659</b>  | <b>\$8,928</b>  | <b>\$9,197</b>  |
| <b>Primary FF&amp;E Reserve</b>                  | <b>\$1,015</b>  | <b>\$1,045</b>  | <b>\$1,076</b>  | <b>\$1,109</b>  | <b>\$1,142</b>  | <b>\$1,176</b>  | <b>\$1,212</b>  | <b>\$1,248</b>  | <b>\$1,285</b>  | <b>\$1,324</b>  |
| <b>NET OPERATING INCOME (1)</b>                  | <b>\$6,034</b>  | <b>\$6,215</b>  | <b>\$6,401</b>  | <b>\$6,593</b>  | <b>\$6,791</b>  | <b>\$6,995</b>  | <b>\$7,205</b>  | <b>\$7,421</b>  | <b>\$7,643</b>  | <b>\$7,873</b>  |
| <b>Add: Incentive Management Fee (see below)</b> | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      |
| <b>ADJUSTED NET OPERATING INCOME</b>             | <b>\$6,034</b>  | <b>\$6,215</b>  | <b>\$6,401</b>  | <b>\$6,593</b>  | <b>\$6,791</b>  | <b>\$6,995</b>  | <b>\$7,205</b>  | <b>\$7,421</b>  | <b>\$7,643</b>  | <b>\$7,873</b>  |
| <b>INVESTMENT EARNINGS AND OTHER REV: (2)</b>    |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Debt Service Reserve Fund - Taxable              | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             |
| Debt Service Reserve Fund - Tax-Exempt           | 280             | 280             | 280             | 280             | 280             | 280             | 280             | 280             | 280             | 280             |
| <b>Total Investment Earnings and Other Re</b>    | <b>\$280</b>    | <b>\$280</b>    | <b>\$280</b>    | <b>\$280</b>    | <b>\$280</b>    | <b>\$280</b>    | <b>\$280</b>    | <b>\$280</b>    | <b>\$280</b>    | <b>\$280</b>    |
| <b>REVENUES AVAILABLE FOR DEBT SERVIC</b>        | <b>\$6,314</b>  | <b>\$6,495</b>  | <b>\$6,681</b>  | <b>\$6,873</b>  | <b>\$7,071</b>  | <b>\$7,275</b>  | <b>\$7,485</b>  | <b>\$7,701</b>  | <b>\$7,923</b>  | <b>\$8,153</b>  |
| <b>TAXABLE LIEN DEBT SERVICE:</b>                |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Gross Debt Service                               | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             | \$0             |
| Less: Capitalized Interest                       | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               |
| <b>Net Taxable Lien Debt Service</b>             | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      |
| <b>TAX-EXEMPT LIEN DEBT SERVICE:</b>             |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Gross Debt Service                               | \$4,408         | \$4,465         | \$4,516         | \$4,570         | \$4,627         | \$4,682         | \$4,739         | \$4,793         | \$4,853         | \$4,909         |
| Less: Capitalized Interest                       | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               | 0               |
| <b>Net Tax-Exempt Lien Debt Service</b>          | <b>\$4,408</b>  | <b>\$4,465</b>  | <b>\$4,516</b>  | <b>\$4,570</b>  | <b>\$4,627</b>  | <b>\$4,682</b>  | <b>\$4,739</b>  | <b>\$4,793</b>  | <b>\$4,853</b>  | <b>\$4,909</b>  |
| <b>TOTAL NET DEBT SERVICE</b>                    | <b>\$4,408</b>  | <b>\$4,465</b>  | <b>\$4,516</b>  | <b>\$4,570</b>  | <b>\$4,627</b>  | <b>\$4,682</b>  | <b>\$4,739</b>  | <b>\$4,793</b>  | <b>\$4,853</b>  | <b>\$4,909</b>  |
| <b>NET CASH FLOW AFTER DEBT SERVICE</b>          | <b>\$1,906</b>  | <b>\$2,030</b>  | <b>\$2,166</b>  | <b>\$2,303</b>  | <b>\$2,444</b>  | <b>\$2,593</b>  | <b>\$2,746</b>  | <b>\$2,906</b>  | <b>\$3,071</b>  | <b>\$3,244</b>  |
| <b>OTHER DEDUCTIONS:</b>                         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Subordinated Management Fees                     | \$254           | \$281           | \$269           | \$277           | \$286           | \$294           | \$303           | \$312           | \$321           | \$331           |
| Subordinated FF&E Reserve Fund                   | 609             | 627             | 646             | 665             | 685             | 706             | 727             | 749             | 771             | 794             |
| <b>Total Other Deductions</b>                    | <b>\$863</b>    | <b>\$908</b>    | <b>\$915</b>    | <b>\$942</b>    | <b>\$971</b>    | <b>\$1,000</b>  | <b>\$1,030</b>  | <b>\$1,061</b>  | <b>\$1,093</b>  | <b>\$1,125</b>  |
| <b>NET CASH FLOW</b>                             | <b>\$1,044</b>  | <b>\$1,142</b>  | <b>\$1,251</b>  | <b>\$1,361</b>  | <b>\$1,473</b>  | <b>\$1,593</b>  | <b>\$1,716</b>  | <b>\$1,847</b>  | <b>\$1,978</b>  | <b>\$2,118</b>  |
| <b>APPLICATION OF NET CASH FLOWS:</b>            |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Supplemental Reserve Fund                        | \$57            | \$51            | \$54            | \$57            | \$55            | \$57            | \$54            | \$80            | \$56            | \$82            |
| Redemption Fund - 50%                            | 493             | 545             | 598             | 652             | 709             | 768             | 831             | 894             | 961             | 1,028           |
| City Surplus Fund - 50%                          | 493             | 545             | 598             | 652             | 709             | 768             | 831             | 894             | 961             | 1,028           |
| <b>Remaining Net Cash Flows</b>                  | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>      |
| <b>FUND BALANCES:</b>                            |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Supplemental Reserve Fund Requirement            | \$4,465         | \$4,516         | \$4,570         | \$4,627         | \$4,682         | \$4,739         | \$4,793         | \$4,853         | \$4,909         | \$4,971         |
| Accum. Bal. - Supplemental Reserve Fund          | \$4,465         | \$4,516         | \$4,570         | \$4,627         | \$4,682         | \$4,739         | \$4,793         | \$4,853         | \$4,909         | \$4,971         |
| Accum. Bal. - Bond Redemption Fund               | \$4,394         | \$4,940         | \$5,538         | \$6,190         | \$6,899         | \$7,667         | \$8,496         | \$9,392         | \$10,352        | \$11,380        |
| Accum. Bal. - Surplus Fund                       | \$4,394         | \$4,940         | \$5,538         | \$6,190         | \$6,899         | \$7,667         | \$8,496         | \$9,392         | \$10,352        | \$11,380        |
| <b>AVAILABLE CITY STANDBY SUP PAYMENT</b>        | <b>\$3,085</b>  | <b>\$3,125</b>  | <b>\$3,161</b>  | <b>\$3,199</b>  | <b>\$3,239</b>  | <b>\$3,277</b>  | <b>\$3,317</b>  | <b>\$3,355</b>  | <b>\$3,397</b>  | <b>\$3,436</b>  |
| <b>DEBT SERVICE COVERAGE RATIOS:</b>             |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |
| Debt Service Coverage Ratio (3)                  | 4.77            | 4.85            | 4.93            | 5.01            | 5.09            | 5.18            | 5.26            | 5.36            | 5.44            | 5.54            |
| Total Debt Service Coverage Ratio (4)            | 1.43            | 1.45            | 1.48            | 1.50            | 1.53            | 1.55            | 1.58            | 1.61            | 1.63            | 1.68            |

NOTES:

- (1) As provided by PKF through 2015; 3% annual increase thereafter.
- (2) Assumes latest Earnings of 5.00% for the Debt Service Reserve Funds.
- (3) Adjusted Net Operating Income Plus DSRF earnings divided by Net Debt Service Minus Available City Standby Support Payment
- (4) Adjusted Net Operating Income plus DSRF earnings divided by Net Debt Service.

City of Columbia, South Carolina  
Columbia Hilton  
Operating Statistics and Forecasted Revenues, Expenditures, Net Income and Coverage Ratios  
for the Years Ending December 31, as shown

|                                               | 2026     | 2027     | 2028     | 2029     | 2030     | 2031     | 2032     | 2033     | 2034     | 2035     |
|-----------------------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Available Rooms (Daily)                       | 300      | 300      | 300      | 300      | 300      | 300      | 300      | 300      | 300      | 300      |
| Available Rooms (Annually)                    | 109,500  | 109,500  | 109,500  | 109,500  | 109,500  | 109,500  | 109,500  | 109,500  | 109,500  | 109,500  |
| Occupied Rooms (Annually)                     | 78,163   | 78,163   | 78,163   | 78,397   | 78,163   | 78,163   | 78,163   | 78,397   | 78,163   | 78,163   |
| Occupancy Percentage                          | 71.40%   | 71.40%   | 71.40%   | 71.40%   | 71.40%   | 71.40%   | 71.40%   | 71.40%   | 71.40%   | 71.40%   |
| Average Room Rate                             | \$215.25 | \$221.71 | \$228.36 | \$235.21 | \$242.26 | \$249.53 | \$257.02 | \$264.73 | \$272.67 | \$280.85 |
| Revenue Per Occupied Room (RevPAR)            | \$153.69 | \$158.30 | \$163.05 | \$167.94 | \$172.88 | \$178.17 | \$183.51 | \$189.02 | \$194.69 | \$200.53 |
| <b>REVENUE:</b>                               |          |          |          |          |          |          |          |          |          |          |
| Rooms                                         | \$16,735 | \$17,237 | \$17,755 | \$18,287 | \$18,836 | \$19,401 | \$19,983 | \$20,582 | \$21,200 | \$21,836 |
| Food & Beverage                               | 8,357    | 8,607    | 8,866    | 9,132    | 9,405    | 9,688    | 9,978    | 10,278   | 10,588   | 10,903   |
| Telecommunications                            | 305      | 314      | 323      | 333      | 343      | 353      | 364      | 375      | 386      | 397      |
| Garage                                        | 1,192    | 1,228    | 1,264    | 1,302    | 1,341    | 1,382    | 1,423    | 1,466    | 1,510    | 1,555    |
| Other Operated Departments                    | 532      | 547      | 564      | 581      | 598      | 616      | 635      | 654      | 673      | 694      |
| Rentals and Other Income                      | 152      | 157      | 162      | 166      | 171      | 177      | 182      | 187      | 193      | 199      |
| Total Revenues                                | \$27,272 | \$28,090 | \$28,933 | \$29,801 | \$30,685 | \$31,618 | \$32,564 | \$33,541 | \$34,548 | \$35,584 |
| <b>DEPARTMENTAL EXPENSES:</b>                 |          |          |          |          |          |          |          |          |          |          |
| Rooms                                         | \$3,798  | \$3,912  | \$4,030  | \$4,151  | \$4,275  | \$4,403  | \$4,535  | \$4,671  | \$4,812  | \$4,958  |
| Food & Beverage                               | 5,850    | 6,025    | 6,206    | 6,392    | 6,584    | 6,781    | 6,985    | 7,194    | 7,410    | 7,633    |
| Telecommunications                            | 183      | 188      | 194      | 200      | 206      | 212      | 218      | 225      | 231      | 238      |
| Garage                                        | 867      | 893      | 919      | 947      | 975      | 1,005    | 1,035    | 1,068    | 1,098    | 1,131    |
| Other Operated Departments                    | 372      | 384      | 395      | 407      | 419      | 432      | 445      | 458      | 472      | 486      |
| Total Departmental Expenses                   | \$11,070 | \$11,402 | \$11,744 | \$12,096 | \$12,459 | \$12,833 | \$13,218 | \$13,614 | \$14,023 | \$14,443 |
| Departmental Profit                           | \$16,202 | \$16,688 | \$17,189 | \$17,705 | \$18,226 | \$18,785 | \$19,347 | \$19,927 | \$20,525 | \$21,141 |
| <b>UNDISTRIBUTED EXPENSES:</b>                |          |          |          |          |          |          |          |          |          |          |
| Admin & Gen                                   | \$1,817  | \$1,872  | \$1,928  | \$1,986  | \$2,046  | \$2,107  | \$2,170  | \$2,235  | \$2,302  | \$2,371  |
| Marketing                                     | 1,964    | 2,023    | 2,084    | 2,146    | 2,211    | 2,277    | 2,345    | 2,416    | 2,488    | 2,563    |
| Property Operation & Maintenance              | 1,041    | 1,072    | 1,104    | 1,137    | 1,172    | 1,207    | 1,243    | 1,280    | 1,319    | 1,358    |
| Utility Costs                                 | 908      | 935      | 963      | 992      | 1,022    | 1,053    | 1,084    | 1,117    | 1,150    | 1,185    |
| Total Undistributed Operating Expenses        | \$5,731  | \$5,903  | \$6,080  | \$6,262  | \$6,459  | \$6,643  | \$6,843  | \$7,048  | \$7,260  | \$7,477  |
| <b>GROSS OPERATING PROFIT</b>                 | \$10,472 | \$10,786 | \$11,109 | \$11,443 | \$11,786 | \$12,140 | \$12,504 | \$12,879 | \$13,265 | \$13,663 |
| <b>FIXED CHARGES</b>                          |          |          |          |          |          |          |          |          |          |          |
| Insurance                                     | 249      | 257      | 264      | 272      | 280      | 289      | 298      | 308      | 318      | 325      |
| Total Fixed Charges                           | \$249    | \$257    | \$264    | \$272    | \$280    | \$289    | \$298    | \$308    | \$318    | \$325    |
| <b>EBITDA BEFORE MGT FEES</b>                 | \$10,223 | \$10,529 | \$10,845 | \$11,170 | \$11,506 | \$11,851 | \$12,206 | \$12,572 | \$12,950 | \$13,338 |
| Base Management Fees                          | \$750    | \$772    | \$796    | \$820    | \$844    | \$869    | \$896    | \$922    | \$950    | \$979    |
| Incentive Management Fees (see below)         | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |
| Total Management Fees                         | \$750    | \$772    | \$796    | \$820    | \$844    | \$869    | \$896    | \$922    | \$950    | \$979    |
| <b>EBITDA</b>                                 | \$9,473  | \$9,757  | \$10,049 | \$10,351 | \$10,661 | \$10,981 | \$11,311 | \$11,650 | \$12,000 | \$12,360 |
| Primary FF&E Reserve                          | \$1,364  | \$1,405  | \$1,447  | \$1,490  | \$1,535  | \$1,581  | \$1,628  | \$1,677  | \$1,727  | \$1,779  |
| <b>NET OPERATING INCOME (1)</b>               | \$8,109  | \$8,352  | \$8,603  | \$8,861  | \$9,127  | \$9,401  | \$9,683  | \$9,973  | \$10,272 | \$10,580 |
| Add: Incentive Management Fee (see below)     | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |
| <b>ADJUSTED NET OPERATING INCOME</b>          | \$8,109  | \$8,352  | \$8,603  | \$8,861  | \$9,127  | \$9,401  | \$9,683  | \$9,973  | \$10,272 | \$10,580 |
| <b>INVESTMENT EARNINGS AND OTHER REV: (2)</b> |          |          |          |          |          |          |          |          |          |          |
| Debt Service Reserve Fund - Taxable           | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |
| Debt Service Reserve Fund - Tax-Exempt        | 280      | 280      | 280      | 280      | 280      | 280      | 280      | 280      | 280      | 280      |
| Total Investment Earnings and Other Rev       | \$280    | \$280    | \$280    | \$280    | \$280    | \$280    | \$280    | \$280    | \$280    | \$280    |
| <b>REVENUES AVAILABLE FOR DEBT SERVICE</b>    | \$8,389  | \$8,632  | \$8,883  | \$9,141  | \$9,407  | \$9,681  | \$9,963  | \$10,253 | \$10,552 | \$10,860 |
| <b>TAXABLE LIEN DEBT SERVICE:</b>             |          |          |          |          |          |          |          |          |          |          |
| Gross Debt Service                            | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |
| Less: Capitalized Interest                    | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |
| Net Taxable Lien Debt Service                 | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |
| <b>TAX-EXEMPT LIEN DEBT SERVICE:</b>          |          |          |          |          |          |          |          |          |          |          |
| Gross Debt Service                            | \$4,971  | \$5,029  | \$5,088  | \$5,151  | \$5,214  | \$5,275  | \$5,335  | \$5,402  | \$5,467  | \$5,538  |
| Less: Capitalized Interest                    | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |
| Net Tax-Exempt Lien Debt Service              | \$4,971  | \$5,029  | \$5,088  | \$5,151  | \$5,214  | \$5,275  | \$5,335  | \$5,402  | \$5,467  | \$5,538  |
| <b>TOTAL NET DEBT SERVICE</b>                 | \$4,971  | \$5,029  | \$5,088  | \$5,151  | \$5,214  | \$5,275  | \$5,335  | \$5,402  | \$5,467  | \$5,538  |
| <b>NET CASH FLOW AFTER DEBT SERVICE</b>       | \$3,418  | \$3,603  | \$3,795  | \$3,988  | \$4,193  | \$4,405  | \$4,627  | \$4,850  | \$5,085  | \$5,318  |
| <b>OTHER DEDUCTIONS:</b>                      |          |          |          |          |          |          |          |          |          |          |
| Subordinated Management Fees                  | \$341    | \$351    | \$362    | \$373    | \$384    | \$395    | \$407    | \$419    | \$432    | \$445    |
| Subordinate FF&E Reserve Fund                 | 818      | 843      | 868      | 894      | 921      | 948      | 977      | 1,006    | 1,036    | 1,068    |
| Total Other Deductions                        | \$1,159  | \$1,194  | \$1,230  | \$1,267  | \$1,305  | \$1,343  | \$1,384  | \$1,426  | \$1,468  | \$1,512  |
| <b>NET CASH FLOW</b>                          | \$2,259  | \$2,409  | \$2,565  | \$2,723  | \$2,888  | \$3,061  | \$3,243  | \$3,425  | \$3,617  | \$3,806  |
| <b>APPLICATION OF NET CASH FLOWS:</b>         |          |          |          |          |          |          |          |          |          |          |
| Supplemental Reserve Fund                     | \$58     | \$59     | \$63     | \$63     | \$61     | \$60     | \$68     | \$65     | \$3,617  | \$0      |
| Redemption Fund - 50%                         | 1,100    | 1,175    | 1,261    | 1,330    | 1,413    | 1,501    | 1,584    | 1,680    | 0        | 2,503    |
| City Surplus Fund - 50%                       | 1,100    | 1,175    | 1,251    | 1,330    | 1,413    | 1,501    | 1,588    | 1,680    | 0        | 2,503    |
| Remaining Net Cash Flows                      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      | \$0      |
| <b>FUND BALANCES:</b>                         |          |          |          |          |          |          |          |          |          |          |
| Supplemental Reserve Fund Requirement         | \$5,029  | \$5,088  | \$5,151  | \$5,214  | \$5,275  | \$5,335  | \$5,402  | \$5,467  | \$5,538  | \$0      |
| Accum. Bal. - Supplemental Reserve Fund       | \$5,029  | \$5,088  | \$5,151  | \$5,214  | \$5,275  | \$5,335  | \$5,402  | \$5,467  | \$5,538  | \$0      |
| Accum. Bal. - Bond Redemption Fund            | \$12,481 | \$13,656 | \$14,907 | \$16,237 | \$17,650 | \$19,151 | \$20,739 | \$22,419 | \$24,198 | \$26,082 |
| Accum. Bal. - Surplus Fund                    | \$12,481 | \$13,656 | \$14,907 | \$16,237 | \$17,650 | \$19,151 | \$20,739 | \$22,419 | \$24,198 | \$26,082 |
| <b>AVAILABLE CITY STANDBY SUP PAYMENT</b>     | \$3,480  | \$3,521  | \$3,561  | \$3,608  | \$3,650  | \$3,693  | \$3,734  | \$3,782  | \$3,827  | \$3,877  |
| <b>DEBT SERVICE COVERAGE RATIOS:</b>          |          |          |          |          |          |          |          |          |          |          |
| Debt Service Coverage Ratio (3)               | 5.62     | 5.72     | 5.82     | 5.91     | 6.01     | 6.12     | 6.22     | 6.33     | 6.43     | 6.52     |
| Total Debt Service Coverage Ratio (4)         | 1.69     | 1.72     | 1.75     | 1.77     | 1.80     | 1.84     | 1.87     | 1.90     | 1.93     | 1.96     |

NOTES:

- (1) As provided by PKF through 2015; 3% annual increase thereafter.  
(2) Assumes Interest Earnings of 5.00% for the Debt Service Reserve Funds.  
(3) Adjusted Net Operating Income Plus DSRF earnings divided by Net Debt Service Minus Available City Standby Support Payment  
(4) Adjusted Net Operating Income plus DSRF earnings divided by Net Debt Service.

City of Columbia, South Carolina  
Columbia Hilton

Construction Draw Schedule

|              | OMP        | Operations,<br>Supplies, and<br>Equipment | IT &<br>Telephone | Development<br>Cost | Legal<br>Accounting | Construction<br>Monitor | Technical<br>Services Fee | Pre Opening | W.C.    | Operating<br>Reserves | Project<br>Contingency | Monthly<br>Drawdowns | Funding Source |           |           |            |
|--------------|------------|-------------------------------------------|-------------------|---------------------|---------------------|-------------------------|---------------------------|-------------|---------|-----------------------|------------------------|----------------------|----------------|-----------|-----------|------------|
|              |            |                                           |                   |                     |                     |                         |                           |             |         |                       |                        |                      | Bad Money      | Key Money | Taxable   | Tax-Exempt |
| 4/1/2004     | 4,021,000  |                                           |                   | 503,307             | 75,000              | 150,000                 | 100,000                   |             |         |                       |                        | 4,831,307            | 0              |           | 0         | 4,831,307  |
| 5/1/2004     | 2,176,000  |                                           |                   | 65,488              |                     |                         | 11,945                    |             |         |                       |                        | 2,333,433            | 0              |           | 0         | 2,333,433  |
| 6/1/2004     | 1,581,000  |                                           |                   | 65,488              |                     |                         | 11,945                    |             |         |                       |                        | 1,660,433            | 0              |           | 0         | 1,660,433  |
| 7/1/2004     | 2,285,000  |                                           |                   | 65,488              |                     |                         | 11,945                    |             |         |                       |                        | 2,362,433            | 0              |           | 0         | 2,362,433  |
| 8/1/2004     | 2,574,000  |                                           |                   | 65,488              |                     |                         | 11,945                    |             |         |                       |                        | 2,651,433            | 0              |           | 0         | 2,651,433  |
| 9/1/2004     | 2,577,000  |                                           |                   | 65,488              |                     |                         | 11,945                    |             |         |                       |                        | 2,654,433            | 0              |           | 0         | 2,654,433  |
| 10/1/2004    | 2,399,000  |                                           |                   | 65,488              |                     |                         | 11,945                    |             |         |                       |                        | 2,476,433            | 0              |           | 0         | 2,476,433  |
| 11/1/2004    | 1,973,000  |                                           |                   | 65,488              |                     |                         | 11,945                    |             |         |                       |                        | 2,050,433            | 0              |           | 0         | 2,050,433  |
| 12/1/2004    | 2,038,000  |                                           |                   | 65,488              |                     |                         | 11,945                    |             |         |                       |                        | 2,105,433            | 0              |           | 0         | 2,105,433  |
| 1/1/2005     | 4,405,000  |                                           |                   | 65,488              |                     |                         | 11,944                    |             |         |                       | 118,000                | 4,600,432            | 0              |           | 0         | 4,600,432  |
| 2/1/2005     | 3,349,000  |                                           |                   | 65,488              |                     |                         | 11,944                    | 200,000     |         |                       | 75,000                 | 2,701,432            | 100,000        |           | 100,000   | 2,501,432  |
| 3/1/2005     | 1,971,000  | 350,000                                   | 100,000           |                     |                     |                         | 11,944                    | 200,000     |         |                       | 75,000                 | 2,773,432            | 200,000        |           | 200,000   | 2,573,432  |
| 4/1/2005     | 1,838,000  | 150,000                                   | 100,000           |                     |                     |                         | 11,944                    | 200,000     |         |                       | 75,000                 | 2,428,432            | 200,000        |           | 200,000   | 2,228,432  |
| 5/1/2005     | 1,641,000  | 100,000                                   | 100,000           |                     |                     |                         | 11,944                    | 200,000     |         |                       | 75,000                 | 2,193,432            | 200,000        |           | 200,000   | 1,993,432  |
| 6/1/2005     | 1,310,000  | 200,000                                   | 100,000           |                     |                     |                         | 11,944                    | 200,000     |         |                       | 75,000                 | 2,003,432            | 200,000        |           | 200,000   | 1,803,432  |
| 7/1/2005     | 1,740,000  | 200,000                                   | 100,000           |                     |                     |                         | 11,944                    | 200,000     |         |                       | 75,000                 | 2,192,432            | 200,000        |           | 200,000   | 2,192,432  |
| 8/1/2005     | 1,100,000  | 400,000                                   | 100,000           |                     |                     |                         | 11,944                    | 200,000     |         |                       | 75,000                 | 2,152,432            | 200,000        |           | 200,000   | 1,952,432  |
| 9/1/2005     | 1,000,000  | 750,000                                   | 100,000           |                     |                     |                         | 11,944                    | 200,000     | 100,000 |                       | 75,000                 | 2,102,432            | 100,000        | 100,000   | 0         | 2,002,432  |
| 10/1/2005    | 180,000    | 750,160                                   | 43,700            | 273,397             |                     |                         | 11,944                    | 200,000     | 100,000 |                       | 75,000                 | 1,733,341            | 100,000        | 300,000   | 0         | 1,433,341  |
| 11/1/2005    | 225,000    |                                           |                   |                     |                     |                         |                           | 100,000     | 50,000  | 250,000               |                        | 575,000              | 350,000        | 350,000   | 0         | 225,000    |
| 12/1/2005    |            |                                           |                   |                     |                     |                         |                           |             |         |                       |                        | 50,000               | 50,000         | 50,000    | 0         | 0          |
| Total        | 40,017,000 | 2,886,000                                 | 743,000           | 1,890,000           | 75,000              | 150,000                 | 315,000                   | 1,800,000   | 350,000 | 250,000               | 795,000                | 49,269,000           | 2,400,000      | 1,000,000 | 1,400,000 | 46,269,000 |
| Bad<br>Draws |            | 0                                         |                   |                     |                     |                         |                           | 1,800,000   | 350,000 | 250,000               |                        | 2,400,000            |                |           |           |            |
|              |            | 10/1/2005                                 |                   |                     |                     |                         |                           | ALL         | ALL     | ALL                   |                        |                      |                |           |           |            |

City of Columbia, South Carolina  
Columbia Hilton  
Tax-Exempt Bonds

Construction Fund

| Date      | Beginning Balance | Deposit       | Interest 1.200000% | Transfer to Capital | Drawdowns     | Ending Balance |
|-----------|-------------------|---------------|--------------------|---------------------|---------------|----------------|
| 4/1/2004  |                   | 47,870,828.04 |                    |                     |               | 47,870,828.04  |
| 4/1/2004  | 47,870,828.04     |               |                    |                     | 4,851,307.00  | 43,019,521.04  |
| 5/1/2004  | 43,019,521.04     |               | 42,912.36          |                     | 2,553,433.00  | 40,509,000.41  |
| 6/1/2004  | 40,509,000.41     |               | 40,408.10          |                     | 1,660,433.00  | 38,888,975.50  |
| 7/1/2004  | 38,888,975.50     |               | 38,792.11          |                     | 2,362,433.00  | 36,565,334.61  |
| 8/1/2004  | 36,565,334.61     |               | 36,474.26          |                     | 2,651,433.00  | 33,950,375.87  |
| 9/1/2004  | 33,950,375.87     |               | 33,865.81          |                     | 2,654,433.00  | 31,329,808.68  |
| 10/1/2004 | 31,329,808.68     |               | 31,251.77          |                     | 2,476,433.00  | 28,884,627.45  |
| 11/1/2004 | 28,884,627.45     |               | 28,812.68          |                     | 2,050,433.00  | 26,863,007.13  |
| 12/1/2004 | 26,863,007.13     |               | 26,796.09          |                     | 2,105,433.00  | 24,784,370.22  |
| 1/1/2005  | 24,784,370.22     |               | 24,722.64          |                     | 4,600,432.00  | 20,208,660.86  |
| 2/1/2005  | 20,208,660.86     |               | 20,158.32          |                     | 2,701,432.00  | 17,527,387.18  |
| 3/1/2005  | 17,527,387.18     |               | 17,483.73          |                     | 2,773,432.00  | 14,771,438.91  |
| 4/1/2005  | 14,771,438.91     |               | 14,734.65          |                     | 2,426,432.00  | 12,359,741.55  |
| 5/1/2005  | 12,359,741.55     |               | 12,328.96          |                     | 2,193,432.00  | 10,178,638.51  |
| 6/1/2005  | 10,178,638.51     |               | 10,153.28          |                     | 2,002,432.00  | 8,186,359.79   |
| 7/1/2005  | 8,186,359.79      |               | 8,165.97           |                     | 2,392,432.00  | 5,802,093.76   |
| 8/1/2005  | 5,802,093.76      |               | 5,787.64           |                     | 2,152,432.00  | 3,655,449.40   |
| 9/1/2005  | 3,655,449.40      |               | 3,646.34           |                     | 2,202,432.00  | 1,456,663.75   |
| 10/1/2005 | 1,456,663.75      |               | 1,453.04           |                     | 1,233,341.00  | 224,775.78     |
| 11/1/2005 | 224,775.78        |               | 224.22             |                     | 225,000.00    | (0.00)         |
| 12/1/2005 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 1/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 2/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 3/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 4/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 5/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 6/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 7/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 8/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 9/1/2006  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 10/1/2006 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 11/1/2006 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 12/1/2006 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 1/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 2/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 3/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 4/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 5/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 6/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 7/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 8/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 9/1/2007  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 10/1/2007 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 11/1/2007 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 12/1/2007 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 1/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 2/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 3/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 4/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 5/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 6/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 7/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 8/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 9/1/2008  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 10/1/2008 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 11/1/2008 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 12/1/2008 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 1/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 2/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 3/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 4/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 5/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 6/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 7/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 8/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 9/1/2009  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 10/1/2009 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 11/1/2009 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 12/1/2009 | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 1/1/2010  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 2/1/2010  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| 3/1/2010  | (0.00)            |               | (0.00)             |                     | -             | (0.00)         |
| Total     | 47,870,828.04     |               | 398,171.96         | -                   | 48,269,000.00 |                |

City of Columbia, South Carolina  
Columbia Hilton  
Taxable Bonds

Construction Fund

| Date      | Beginning Balance | Deposit      | Interest 1.200000% | Transfer to Capital | Drawdowns    | Ending Balance |
|-----------|-------------------|--------------|--------------------|---------------------|--------------|----------------|
| 4/1/2004  |                   | 1,381,974.22 |                    |                     |              | 1,381,974.22   |
| 4/1/2004  | 1,381,974.22      |              |                    |                     |              | 1,381,974.22   |
| 5/1/2004  | 1,381,974.22      |              | 1,378.53           |                     |              | 1,383,352.75   |
| 6/1/2004  | 1,383,352.75      |              | 1,379.91           |                     |              | 1,384,732.66   |
| 7/1/2004  | 1,384,732.66      |              | 1,381.28           |                     |              | 1,386,113.94   |
| 8/1/2004  | 1,386,113.94      |              | 1,382.66           |                     |              | 1,387,496.60   |
| 9/1/2004  | 1,387,496.60      |              | 1,384.04           |                     |              | 1,388,880.64   |
| 10/1/2004 | 1,388,880.64      |              | 1,385.42           |                     |              | 1,390,266.06   |
| 11/1/2004 | 1,390,266.06      |              | 1,386.80           |                     |              | 1,391,652.87   |
| 12/1/2004 | 1,391,652.87      |              | 1,388.19           |                     |              | 1,393,041.05   |
| 1/1/2005  | 1,393,041.05      |              | 1,389.57           |                     |              | 1,394,430.62   |
| 2/1/2005  | 1,394,430.62      |              | 1,390.96           |                     | 200,000.00   | 1,195,821.58   |
| 3/1/2005  | 1,195,821.58      |              | 1,192.84           |                     | 200,000.00   | 997,014.42     |
| 4/1/2005  | 997,014.42        |              | 994.53             |                     | 200,000.00   | 798,008.95     |
| 5/1/2005  | 798,008.95        |              | 796.02             |                     | 200,000.00   | 598,804.98     |
| 6/1/2005  | 598,804.98        |              | 597.31             |                     | 200,000.00   | 399,402.29     |
| 7/1/2005  | 399,402.29        |              | 398.41             |                     | 200,000.00   | 199,800.70     |
| 8/1/2005  | 199,800.70        |              | 199.30             |                     | 200,000.00   | (0.00)         |
| 9/1/2005  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 10/1/2005 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 11/1/2005 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 12/1/2005 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 1/1/2006  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 2/1/2006  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 3/1/2006  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 4/1/2006  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 5/1/2006  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 6/1/2006  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 7/1/2006  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 8/1/2006  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 9/1/2006  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 10/1/2006 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 11/1/2006 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 12/1/2006 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 1/1/2007  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 2/1/2007  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 3/1/2007  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 4/1/2007  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 5/1/2007  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 6/1/2007  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 7/1/2007  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 8/1/2007  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 9/1/2007  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 10/1/2007 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 11/1/2007 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 12/1/2007 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 1/1/2008  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 2/1/2008  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 3/1/2008  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 4/1/2008  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 5/1/2008  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 6/1/2008  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 7/1/2008  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 8/1/2008  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 9/1/2008  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 10/1/2008 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 11/1/2008 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 12/1/2008 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 1/1/2009  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 2/1/2009  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 3/1/2009  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 4/1/2009  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 5/1/2009  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 6/1/2009  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 7/1/2009  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 8/1/2009  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 9/1/2009  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 10/1/2009 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 11/1/2009 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 12/1/2009 | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 1/1/2010  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 2/1/2010  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| 3/1/2010  | (0.00)            |              | (0.00)             |                     |              | (0.00)         |
| Total     | 1,381,974.22      |              | 18,025.78          |                     | 1,400,000.00 |                |

City of Columbia, South Carolina  
Columbia Hilton  
Key Money

Construction Fund

| Date      | Beginning<br>Balance | Deposit      | Interest<br>0.000000% | Transfer<br>to Capital | Drawdowns    | Ending<br>Balance |
|-----------|----------------------|--------------|-----------------------|------------------------|--------------|-------------------|
| 4/1/2004  | -                    | -            | -                     | -                      | -            | -                 |
| 4/1/2004  | -                    | -            | -                     | -                      | -            | -                 |
| 5/1/2004  | -                    | -            | -                     | -                      | -            | -                 |
| 6/1/2004  | -                    | -            | -                     | -                      | -            | -                 |
| 7/1/2004  | -                    | -            | -                     | -                      | -            | -                 |
| 8/1/2004  | -                    | -            | -                     | -                      | -            | -                 |
| 9/1/2004  | -                    | -            | -                     | -                      | -            | -                 |
| 10/1/2004 | -                    | -            | -                     | -                      | -            | -                 |
| 11/1/2004 | -                    | -            | -                     | -                      | -            | -                 |
| 12/1/2004 | -                    | -            | -                     | -                      | -            | -                 |
| 1/1/2005  | -                    | -            | -                     | -                      | -            | -                 |
| 2/1/2005  | -                    | -            | -                     | -                      | -            | -                 |
| 3/1/2005  | -                    | -            | -                     | -                      | -            | -                 |
| 4/1/2005  | -                    | -            | -                     | -                      | -            | -                 |
| 5/1/2005  | -                    | -            | -                     | -                      | -            | -                 |
| 6/1/2005  | -                    | -            | -                     | -                      | -            | -                 |
| 7/1/2005  | -                    | -            | -                     | -                      | -            | -                 |
| 8/1/2005  | -                    | -            | -                     | -                      | -            | -                 |
| 9/1/2005  | -                    | 1,000,000.00 | -                     | -                      | 300,000.00   | 700,000.00        |
| 10/1/2005 | 700,000.00           | -            | -                     | -                      | 300,000.00   | 400,000.00        |
| 11/1/2005 | 400,000.00           | -            | -                     | -                      | 150,000.00   | 250,000.00        |
| 12/1/2005 | 50,000.00            | -            | -                     | -                      | 50,000.00    | -                 |
| 1/1/2006  | -                    | -            | -                     | -                      | -            | -                 |
| 2/1/2006  | -                    | -            | -                     | -                      | -            | -                 |
| 3/1/2006  | -                    | -            | -                     | -                      | -            | -                 |
| 4/1/2006  | -                    | -            | -                     | -                      | -            | -                 |
| 5/1/2006  | -                    | -            | -                     | -                      | -            | -                 |
| 6/1/2006  | -                    | -            | -                     | -                      | -            | -                 |
| 7/1/2006  | -                    | -            | -                     | -                      | -            | -                 |
| 8/1/2006  | -                    | -            | -                     | -                      | -            | -                 |
| 9/1/2006  | -                    | -            | -                     | -                      | -            | -                 |
| 10/1/2006 | -                    | -            | -                     | -                      | -            | -                 |
| 11/1/2006 | -                    | -            | -                     | -                      | -            | -                 |
| 12/1/2006 | -                    | -            | -                     | -                      | -            | -                 |
| 1/1/2007  | -                    | -            | -                     | -                      | -            | -                 |
| 2/1/2007  | -                    | -            | -                     | -                      | -            | -                 |
| 3/1/2007  | -                    | -            | -                     | -                      | -            | -                 |
| 4/1/2007  | -                    | -            | -                     | -                      | -            | -                 |
| 5/1/2007  | -                    | -            | -                     | -                      | -            | -                 |
| 6/1/2007  | -                    | -            | -                     | -                      | -            | -                 |
| 7/1/2007  | -                    | -            | -                     | -                      | -            | -                 |
| 8/1/2007  | -                    | -            | -                     | -                      | -            | -                 |
| 9/1/2007  | -                    | -            | -                     | -                      | -            | -                 |
| 10/1/2007 | -                    | -            | -                     | -                      | -            | -                 |
| 11/1/2007 | -                    | -            | -                     | -                      | -            | -                 |
| 12/1/2007 | -                    | -            | -                     | -                      | -            | -                 |
| 1/1/2008  | -                    | -            | -                     | -                      | -            | -                 |
| 2/1/2008  | -                    | -            | -                     | -                      | -            | -                 |
| 3/1/2008  | -                    | -            | -                     | -                      | -            | -                 |
| 4/1/2008  | -                    | -            | -                     | -                      | -            | -                 |
| 5/1/2008  | -                    | -            | -                     | -                      | -            | -                 |
| 6/1/2008  | -                    | -            | -                     | -                      | -            | -                 |
| 7/1/2008  | -                    | -            | -                     | -                      | -            | -                 |
| 8/1/2008  | -                    | -            | -                     | -                      | -            | -                 |
| 9/1/2008  | -                    | -            | -                     | -                      | -            | -                 |
| 10/1/2008 | -                    | -            | -                     | -                      | -            | -                 |
| 11/1/2008 | -                    | -            | -                     | -                      | -            | -                 |
| 12/1/2008 | -                    | -            | -                     | -                      | -            | -                 |
| 1/1/2009  | -                    | -            | -                     | -                      | -            | -                 |
| 2/1/2009  | -                    | -            | -                     | -                      | -            | -                 |
| 3/1/2009  | -                    | -            | -                     | -                      | -            | -                 |
| 4/1/2009  | -                    | -            | -                     | -                      | -            | -                 |
| 5/1/2009  | -                    | -            | -                     | -                      | -            | -                 |
| 6/1/2009  | -                    | -            | -                     | -                      | -            | -                 |
| 7/1/2009  | -                    | -            | -                     | -                      | -            | -                 |
| 8/1/2009  | -                    | -            | -                     | -                      | -            | -                 |
| 9/1/2009  | -                    | -            | -                     | -                      | -            | -                 |
| 10/1/2009 | -                    | -            | -                     | -                      | -            | -                 |
| 11/1/2009 | -                    | -            | -                     | -                      | -            | -                 |
| 12/1/2009 | -                    | -            | -                     | -                      | -            | -                 |
| 1/1/2010  | -                    | -            | -                     | -                      | -            | -                 |
| 2/1/2010  | -                    | -            | -                     | -                      | -            | -                 |
| 3/1/2010  | -                    | -            | -                     | -                      | -            | -                 |
| Total     |                      | 1,000,000.00 | -                     | -                      | 1,000,000.00 |                   |

City of Columbia, South Carolina  
Columbia Hilton  
Tax-Exempt Bonds

Current Interest Bonds

| Date     | Principal     | Rate   | Yield  | Price   | Interest      | Total<br>Debt Service | Annual<br>Debt Service |
|----------|---------------|--------|--------|---------|---------------|-----------------------|------------------------|
| 4/1/2004 |               |        |        |         |               |                       |                        |
| 7/1/2004 |               |        |        |         | 770,419.63    | 770,419.63            |                        |
| 1/1/2005 | -             | 1.300% | 1.300% | 100.000 | 1,540,839.25  | 1,540,839.25          | 2,311,258.88           |
| 7/1/2005 |               |        |        |         | 1,540,839.25  | 1,540,839.25          |                        |
| 1/1/2006 | -             | 1.640% | 1.640% | 100.000 | 1,540,839.25  | 1,540,839.25          | 3,081,678.50           |
| 7/1/2006 |               |        |        |         | 1,540,839.25  | 1,540,839.25          |                        |
| 1/1/2007 | -             | 1.940% | 1.940% | 100.000 | 1,540,839.25  | 1,540,839.25          | 3,081,678.50           |
| 7/1/2007 |               |        |        |         | 1,540,839.25  | 1,540,839.25          |                        |
| 1/1/2008 | -             | 2.300% | 2.300% | 100.000 | 1,540,839.25  | 1,540,839.25          | 3,081,678.50           |
| 7/1/2008 |               |        |        |         | 1,540,839.25  | 1,540,839.25          |                        |
| 1/1/2009 | -             | 2.600% | 2.600% | 100.000 | 1,540,839.25  | 1,540,839.25          | 3,081,678.50           |
| 7/1/2009 |               |        |        |         | 1,540,839.25  | 1,540,839.25          |                        |
| 1/1/2010 | -             | 2.840% | 2.840% | 100.000 | 1,540,839.25  | 1,540,839.25          | 3,081,678.50           |
| 7/1/2010 |               |        |        |         | 1,540,839.25  | 1,540,839.25          |                        |
| 1/1/2011 | -             | 3.080% | 3.080% | 100.000 | 1,540,839.25  | 1,540,839.25          | 3,081,678.50           |
| 7/1/2011 |               |        |        |         | 1,540,839.25  | 1,540,839.25          |                        |
| 1/1/2012 | -             | 3.320% | 3.320% | 100.000 | 1,540,839.25  | 1,540,839.25          | 3,081,678.50           |
| 7/1/2012 |               |        |        |         | 1,540,839.25  | 1,540,839.25          |                        |
| 1/1/2013 | -             | 3.520% | 3.520% | 100.000 | 1,540,839.25  | 1,540,839.25          | 3,081,678.50           |
| 7/1/2013 |               |        |        |         | 1,540,839.25  | 1,540,839.25          |                        |
| 1/1/2014 | -             | 3.690% | 3.690% | 100.000 | 1,540,839.25  | 1,540,839.25          | 3,081,678.50           |
| 7/1/2014 |               |        |        |         | 1,540,839.25  | 1,540,839.25          |                        |
| 1/1/2015 | 1,225,000.00  | 3.830% | 3.830% | 100.000 | 1,540,839.25  | 2,765,839.25          | 4,306,678.50           |
| 7/1/2015 |               |        |        |         | 1,517,380.50  | 1,517,380.50          |                        |
| 1/1/2016 | 1,320,000.00  | 3.950% | 3.950% | 100.000 | 1,517,380.50  | 2,837,380.50          | 4,354,761.00           |
| 7/1/2016 |               |        |        |         | 1,491,310.50  | 1,491,310.50          |                        |
| 1/1/2017 | 1,425,000.00  | 4.060% | 4.060% | 100.000 | 1,491,310.50  | 2,916,310.50          | 4,407,621.00           |
| 7/1/2017 |               |        |        |         | 1,462,383.00  | 1,462,383.00          |                        |
| 1/1/2018 | 1,540,000.00  | 4.170% | 4.170% | 100.000 | 1,462,383.00  | 3,002,383.00          | 4,464,766.00           |
| 7/1/2018 |               |        |        |         | 1,430,274.00  | 1,430,274.00          |                        |
| 1/1/2019 | 1,655,000.00  | 4.270% | 4.270% | 100.000 | 1,430,274.00  | 3,085,274.00          | 4,515,548.00           |
| 7/1/2019 |               |        |        |         | 1,394,939.75  | 1,394,939.75          |                        |
| 1/1/2020 | 1,780,000.00  | 4.360% | 4.360% | 100.000 | 1,394,939.75  | 3,174,939.75          | 4,569,879.50           |
| 7/1/2020 |               |        |        |         | 1,358,135.75  | 1,358,135.75          |                        |
| 1/1/2021 | 1,915,000.00  | 4.450% | 4.450% | 100.000 | 1,358,135.75  | 3,271,135.75          | 4,627,271.50           |
| 7/1/2021 |               |        |        |         | 1,313,527.00  | 1,313,527.00          |                        |
| 1/1/2022 | 2,055,000.00  | 4.530% | 4.530% | 100.000 | 1,313,527.00  | 3,368,527.00          | 4,682,054.00           |
| 7/1/2022 |               |        |        |         | 1,266,981.25  | 1,266,981.25          |                        |
| 1/1/2023 | 2,205,000.00  | 4.600% | 4.600% | 100.000 | 1,266,981.25  | 3,471,981.25          | 4,738,962.50           |
| 7/1/2023 |               |        |        |         | 1,216,266.25  | 1,216,266.25          |                        |
| 1/1/2024 | 2,360,000.00  | 4.660% | 4.660% | 100.000 | 1,216,266.25  | 3,576,266.25          | 4,792,532.50           |
| 7/1/2024 |               |        |        |         | 1,161,278.25  | 1,161,278.25          |                        |
| 1/1/2025 | 2,530,000.00  | 4.690% | 4.690% | 100.000 | 1,161,278.25  | 3,691,278.25          | 4,852,556.50           |
| 7/1/2025 |               |        |        |         | 1,101,949.75  | 1,101,949.75          |                        |
| 1/1/2026 | 2,705,000.00  | 4.720% | 4.720% | 100.000 | 1,101,949.75  | 3,806,949.75          | 4,908,899.50           |
| 7/1/2026 |               |        |        |         | 1,038,111.75  | 1,038,111.75          |                        |
| 1/1/2027 | 2,895,000.00  | 4.730% | 4.730% | 100.000 | 1,038,111.75  | 3,933,111.75          | 4,971,223.50           |
| 7/1/2027 |               |        |        |         | 969,645.00    | 969,645.00            |                        |
| 1/1/2028 | 3,090,000.00  | 4.740% | 4.740% | 100.000 | 969,645.00    | 4,059,645.00          | 5,029,290.00           |
| 7/1/2028 |               |        |        |         | 896,412.00    | 896,412.00            |                        |
| 1/1/2029 | 3,295,000.00  | 4.750% | 4.750% | 100.000 | 896,412.00    | 4,191,412.00          | 5,087,824.00           |
| 7/1/2029 |               |        |        |         | 818,155.75    | 818,155.75            |                        |
| 1/1/2030 | 3,515,000.00  | 4.760% | 4.760% | 100.000 | 818,155.75    | 4,333,155.75          | 5,151,311.50           |
| 7/1/2030 |               |        |        |         | 734,498.75    | 734,498.75            |                        |
| 1/1/2031 | 3,745,000.00  | 4.770% | 4.770% | 100.000 | 734,498.75    | 4,479,498.75          | 5,213,997.50           |
| 7/1/2031 |               |        |        |         | 645,180.50    | 645,180.50            |                        |
| 1/1/2032 | 3,985,000.00  | 4.780% | 4.780% | 100.000 | 645,180.50    | 4,630,180.50          | 5,275,361.00           |
| 7/1/2032 |               |        |        |         | 549,939.00    | 549,939.00            |                        |
| 1/1/2033 | 4,235,000.00  | 4.780% | 4.780% | 100.000 | 549,939.00    | 4,784,939.00          | 5,334,878.00           |
| 7/1/2033 |               |        |        |         | 448,722.50    | 448,722.50            |                        |
| 1/1/2034 | 4,505,000.00  | 4.780% | 4.780% | 100.000 | 448,722.50    | 4,953,722.50          | 5,402,445.00           |
| 7/1/2034 |               |        |        |         | 341,053.00    | 341,053.00            |                        |
| 1/1/2035 | 4,785,000.00  | 4.780% | 4.780% | 100.000 | 341,053.00    | 5,126,053.00          | 5,467,106.00           |
| 7/1/2035 |               |        |        |         | 226,691.50    | 226,691.50            |                        |
| 1/1/2036 | 9,485,000.00  | 4.780% | 4.780% | 100.000 | 226,691.50    | 9,711,691.50          | 9,938,383.00           |
| 7/1/2036 |               |        |        |         | -             | -                     |                        |
| 1/1/2037 | -             | 4.780% | 4.780% | 100.000 | -             | -                     | -                      |
| 7/1/2037 |               |        |        |         | -             | -                     | -                      |
| 1/1/2038 | -             | 4.780% | 4.780% | 100.000 | -             | -                     | -                      |
| 7/1/2038 |               |        |        |         | -             | -                     | -                      |
| 1/1/2039 | -             | 4.780% | 4.780% | 100.000 | -             | -                     | -                      |
| 7/1/2039 |               |        |        |         | -             | -                     | -                      |
| 1/1/2040 | -             | 4.780% | 4.780% | 100.000 | -             | -                     | -                      |
| 7/1/2040 |               |        |        |         | -             | -                     | -                      |
| 1/1/2041 | -             | 4.780% | 4.780% | 100.000 | -             | -                     | -                      |
| 7/1/2041 |               |        |        |         | -             | -                     | -                      |
| 1/1/2042 | -             | 4.780% | 4.780% | 100.000 | -             | -                     | -                      |
| 7/1/2042 |               |        |        |         | -             | -                     | -                      |
| 1/1/2043 | -             | 4.780% | 4.780% | 100.000 | -             | -                     | -                      |
| 7/1/2043 |               |        |        |         | -             | -                     | -                      |
| 1/1/2044 | -             | 4.780% | 4.780% | 99.992  | -             | -                     | -                      |
| 7/1/2044 |               |        |        |         | -             | -                     | -                      |
|          |               |        |        |         |               |                       |                        |
| Total    | 66,250,000.00 |        |        |         | 75,889,715.38 | 142,139,715.38        | 142,139,715.38         |

City of Columbia, South Carolina  
Columbia Hilton  
Tax-Exempt Bonds

*Capitalized Interest*

| Date     | Days<br>30/360 | Beginning<br>Balance | Deposits     | Interest<br>1.200000% | Import From<br>OSRF Fund | Percentage<br>Capitalized | Interest<br>Capitalized | Ending<br>Balance |
|----------|----------------|----------------------|--------------|-----------------------|--------------------------|---------------------------|-------------------------|-------------------|
| 4/1/2004 |                |                      | 4,839,284.58 |                       |                          | 100.00%                   |                         | 4,839,284.58      |
| 7/1/2004 | 90             | 4,839,284.58         |              | 14,496.14             | 69,518.84                | 100.00%                   | 770,419.63              | 4,152,879.94      |
| 1/1/2005 | 180            | 4,152,879.94         |              | 24,917.28             | 139,901.29               | 100.00%                   | 1,540,839.25            | 2,776,859.26      |
| 7/1/2005 | 180            | 2,776,859.26         |              | 16,661.16             | 139,901.29               | 100.00%                   | 1,540,839.25            | 1,392,582.46      |
| 1/1/2006 | 180            | 1,392,582.46         |              | 8,355.49              | 139,901.29               | 100.00%                   | 1,540,839.25            |                   |
| 7/1/2006 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2007 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2007 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2008 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2008 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2009 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2009 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2010 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2010 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2011 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2011 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2012 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2012 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2013 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2013 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2014 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2014 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2015 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2015 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2016 | 180            | -                    |              | -                     | -                        | 0.00%                     | -                       | -                 |
| Total    |                |                      |              | 64,430.07             | 489,222.72               |                           | 5,392,937.38            |                   |

City of Columbia, South Carolina  
Columbia Hilton  
Tax-Exempt Bonds

Debt Service Reserve Fund

| Date     | Days<br>30/360 | Beginning<br>Balance | Deposits     | Interest<br>5.000000% | Export to<br>Capital Fund | Export to<br>Revenue Fund | Ending<br>Balance |
|----------|----------------|----------------------|--------------|-----------------------|---------------------------|---------------------------|-------------------|
| 4/1/2004 |                |                      | 5,596,051.79 |                       |                           |                           | 5,596,051.79      |
| 7/1/2004 | 90             | 5,596,051.79         |              | 69,518.84             | (69,518.84)               |                           | 5,596,051.79      |
| 1/1/2005 | 180            | 5,596,051.79         |              | 139,901.29            | (139,901.29)              |                           | 5,596,051.79      |
| 7/1/2005 | 180            | 5,596,051.79         |              | 139,901.29            | (139,901.29)              |                           | 5,596,051.79      |
| 1/1/2006 | 180            | 5,596,051.79         |              | 139,901.29            | (139,901.29)              |                           | 5,596,051.79      |
| 7/1/2006 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2007 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2007 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2008 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2008 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2009 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2009 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2010 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2010 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2011 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2011 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2012 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2012 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2013 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2013 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2014 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2014 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2015 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2015 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2016 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2016 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2017 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2017 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2018 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2018 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2019 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2019 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2020 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2020 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2021 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2021 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2022 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2022 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2023 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2023 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2024 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2024 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2025 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2025 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2026 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2026 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2027 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2027 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2028 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2028 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2029 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2029 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2030 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2030 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2031 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2031 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2032 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2032 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2033 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2033 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2034 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2034 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2035 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 7/1/2035 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (139,901.29)              | 5,596,051.79      |
| 1/1/2036 | 180            | 5,596,051.79         |              | 139,901.29            |                           | (5,733,953.08)            | -                 |
| 7/1/2036 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 1/1/2037 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 7/1/2037 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 1/1/2038 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 7/1/2038 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 1/1/2039 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 7/1/2039 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 1/1/2040 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 7/1/2040 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 1/1/2041 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 7/1/2041 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 1/1/2042 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 7/1/2042 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 1/1/2043 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 7/1/2043 | 180            | -                    |              | -                     |                           | -                         | -                 |
| 1/1/2044 | 180            | -                    |              | -                     |                           | -                         | -                 |
| Total    |                | 5,596,051.79         |              | 8,883,300.40          | (489,222.72)              | (13,990,129.47)           |                   |

City of Columbia, South Carolina  
Columbia Hilton  
Taxable Bonds

Current Interest Bonds

| Date     | Principal    | Rate   | Yield  | Price   | Interest     | Total<br>Debt Service | Annual<br>Debt Service |
|----------|--------------|--------|--------|---------|--------------|-----------------------|------------------------|
| 4/1/2004 |              |        |        |         | 64,558.50    | 64,558.50             |                        |
| 7/1/2004 |              |        |        |         | 129,117.00   | 129,117.00            | 193,675.50             |
| 1/1/2005 | -            | 1.750% | 1.750% | 100.000 | 129,117.00   | 129,117.00            |                        |
| 7/1/2005 |              |        |        |         | 129,117.00   | 129,117.00            |                        |
| 1/1/2006 | -            | 2.400% | 2.400% | 100.000 | 129,117.00   | 129,117.00            | 258,234.00             |
| 7/1/2006 |              |        |        |         | 129,117.00   | 129,117.00            |                        |
| 1/1/2007 | -            | 2.880% | 2.880% | 100.000 | 129,117.00   | 129,117.00            | 258,234.00             |
| 7/1/2007 |              |        |        |         | 129,117.00   | 129,117.00            |                        |
| 1/1/2008 | -            | 3.380% | 3.380% | 100.000 | 129,117.00   | 129,117.00            | 258,234.00             |
| 7/1/2008 |              |        |        |         | 129,117.00   | 129,117.00            |                        |
| 1/1/2009 | -            | 3.670% | 3.670% | 100.000 | 129,117.00   | 129,117.00            | 258,234.00             |
| 7/1/2009 |              |        |        |         | 129,117.00   | 129,117.00            |                        |
| 1/1/2010 | 1,085,000.00 | 4.000% | 4.000% | 100.000 | 129,117.00   | 1,214,117.00          | 1,343,234.00           |
| 7/1/2010 |              |        |        |         | 107,417.00   | 107,417.00            |                        |
| 1/1/2011 | 1,140,000.00 | 4.310% | 4.310% | 100.000 | 107,417.00   | 1,247,417.00          | 1,354,834.00           |
| 7/1/2011 |              |        |        |         | 82,850.00    | 82,850.00             |                        |
| 1/1/2012 | 1,210,000.00 | 4.560% | 4.560% | 100.000 | 82,850.00    | 1,292,850.00          | 1,375,700.00           |
| 7/1/2012 |              |        |        |         | 55,262.00    | 55,262.00             |                        |
| 1/1/2013 | 1,280,000.00 | 4.730% | 4.730% | 100.000 | 55,262.00    | 1,335,262.00          | 1,390,524.00           |
| 7/1/2013 |              |        |        |         | 24,990.00    | 24,990.00             |                        |
| 1/1/2014 | 1,050,000.00 | 4.760% | 4.760% | 100.000 | 24,990.00    | 1,074,990.00          | 1,099,980.00           |
| 7/1/2014 |              |        |        |         | -            | -                     | -                      |
| 1/1/2015 | -            | 5.430% | 5.430% | 100.000 | -            | -                     | -                      |
| 7/1/2015 |              |        |        |         | -            | -                     | -                      |
| 1/1/2016 | -            | 5.430% | 5.430% | 100.000 | -            | -                     | -                      |
| 7/1/2016 |              |        |        |         | -            | -                     | -                      |
| 1/1/2017 | -            | 5.430% | 5.430% | 100.000 | -            | -                     | -                      |
| 7/1/2017 |              |        |        |         | -            | -                     | -                      |
| 1/1/2018 | -            | 5.430% | 5.430% | 100.000 | -            | -                     | -                      |
| 7/1/2018 |              |        |        |         | -            | -                     | -                      |
| 1/1/2019 | -            | 5.430% | 5.430% | 100.000 | -            | -                     | -                      |
| 7/1/2019 |              |        |        |         | -            | -                     | -                      |
| 1/1/2020 | -            | 5.430% | 5.430% | 100.000 | -            | -                     | -                      |
| 7/1/2020 |              |        |        |         | -            | -                     | -                      |
| 1/1/2021 | -            | 5.430% | 5.430% | 100.000 | -            | -                     | -                      |
| 7/1/2021 |              |        |        |         | -            | -                     | -                      |
| 1/1/2022 | -            | 5.430% | 5.430% | 100.000 | -            | -                     | -                      |
| 7/1/2022 |              |        |        |         | -            | -                     | -                      |
| 1/1/2023 | -            | 5.430% | 5.430% | 100.000 | -            | -                     | -                      |
| 7/1/2023 |              |        |        |         | -            | -                     | -                      |
| 1/1/2024 | -            | 5.430% | 5.430% | 100.000 | -            | -                     | -                      |
| 7/1/2024 |              |        |        |         | -            | -                     | -                      |
| 1/1/2025 | -            | 5.630% | 5.630% | 100.000 | -            | -                     | -                      |
| 7/1/2025 |              |        |        |         | -            | -                     | -                      |
| 1/1/2026 | -            | 5.630% | 5.630% | 100.000 | -            | -                     | -                      |
| 7/1/2026 |              |        |        |         | -            | -                     | -                      |
| 1/1/2027 | -            | 5.630% | 5.630% | 100.000 | -            | -                     | -                      |
| 7/1/2027 |              |        |        |         | -            | -                     | -                      |
| 1/1/2028 | -            | 5.630% | 5.630% | 100.000 | -            | -                     | -                      |
| 7/1/2028 |              |        |        |         | -            | -                     | -                      |
| 1/1/2029 | -            | 5.630% | 5.630% | 100.000 | -            | -                     | -                      |
| 7/1/2029 |              |        |        |         | -            | -                     | -                      |
| 1/1/2030 | -            | 5.630% | 5.630% | 100.000 | -            | -                     | -                      |
| 7/1/2030 |              |        |        |         | -            | -                     | -                      |
| 1/1/2031 | -            | 5.630% | 5.630% | 100.000 | -            | -                     | -                      |
| 7/1/2031 |              |        |        |         | -            | -                     | -                      |
| 1/1/2032 | -            | 5.630% | 5.630% | 100.000 | -            | -                     | -                      |
| 7/1/2032 |              |        |        |         | -            | -                     | -                      |
| 1/1/2033 | -            | 5.630% | 5.630% | 100.000 | -            | -                     | -                      |
| 7/1/2033 |              |        |        |         | -            | -                     | -                      |
| 1/1/2034 | -            | 5.630% | 5.630% | 100.000 | -            | -                     | -                      |
| 7/1/2034 |              |        |        |         | -            | -                     | -                      |
| 1/1/2035 | -            | 5.630% | 5.630% | 100.000 | -            | -                     | -                      |
| 7/1/2035 |              |        |        |         | -            | -                     | -                      |
| 1/1/2036 | -            | 5.630% | 5.630% | 100.000 | -            | -                     | -                      |
| 7/1/2036 |              |        |        |         | -            | -                     | -                      |
| 1/1/2037 | -            | 0.000% | 0.000% | 100.000 | -            | -                     | -                      |
| 7/1/2037 |              |        |        |         | -            | -                     | -                      |
| 1/1/2038 | -            | 0.000% | 0.000% | 100.000 | -            | -                     | -                      |
| 7/1/2038 |              |        |        |         | -            | -                     | -                      |
| 1/1/2039 | -            | 0.000% | 0.000% | 100.000 | -            | -                     | -                      |
| 7/1/2039 |              |        |        |         | -            | -                     | -                      |
| 1/1/2040 | -            | 0.000% | 0.000% | 100.000 | -            | -                     | -                      |
| 7/1/2040 |              |        |        |         | -            | -                     | -                      |
| 1/1/2041 | -            | 0.000% | 0.000% | 100.000 | -            | -                     | -                      |
| 7/1/2041 |              |        |        |         | -            | -                     | -                      |
| 1/1/2042 | -            | 0.000% | 0.000% | 100.000 | -            | -                     | -                      |
| 7/1/2042 |              |        |        |         | -            | -                     | -                      |
| 1/1/2043 | -            | 0.000% | 0.000% | 100.000 | -            | -                     | -                      |
| 7/1/2043 |              |        |        |         | -            | -                     | -                      |
| 1/1/2044 | -            | 0.000% | 0.000% | 100.001 | -            | -                     | -                      |
| Total    | 5,765,000.00 |        |        |         | 2,025,883.50 | 7,790,883.50          | 7,790,883.50           |

City of Columbia, South Carolina  
Columbia Hilton  
Taxable Bonds

Capitalized Interest

| Date     | Days<br>30/360 | Beginning<br>Balance | Deposits     | Interest<br>1.200000% | Import From<br>DSRF Fund | Percentage<br>Capitalized | Interest<br>Capitalized | Ending<br>Balance |
|----------|----------------|----------------------|--------------|-----------------------|--------------------------|---------------------------|-------------------------|-------------------|
| 4/1/2004 |                | -                    | 3,641,741.85 | -                     | -                        | 100.00%                   | -                       | 4,839,284.58      |
| 7/1/2004 | 90             | 4,839,284.58         | -            | 14,496.14             | 3,810.43                 | 100.00%                   | 64,558.50               | 4,152,879.94      |
| 1/1/2005 | 180            | 4,152,879.94         | -            | 24,917.28             | 7,668.19                 | 100.00%                   | 129,117.00              | 2,776,859.26      |
| 7/1/2005 | 180            | 2,776,859.26         | -            | 16,661.16             | 7,668.19                 | 100.00%                   | 129,117.00              | 1,392,582.46      |
| 1/1/2006 | 180            | 1,392,582.46         | -            | 8,355.49              | 7,668.19                 | 100.00%                   | 129,117.00              | -                 |
| 7/1/2006 | 180            | -                    | -            | -                     | -                        | 50.00%                    | 834,978.13              | -                 |
| 1/1/2007 | 180            | -                    | -            | -                     | -                        | 50.00%                    | 834,978.13              | -                 |
| 7/1/2007 | 180            | -                    | -            | -                     | -                        | 50.00%                    | 834,978.13              | -                 |
| 1/1/2008 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2008 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2009 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2009 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2010 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2010 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2011 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2011 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2012 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2012 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2013 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2013 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2014 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2014 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2015 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 7/1/2015 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| 1/1/2016 | 180            | -                    | -            | -                     | -                        | 0.00%                     | -                       | -                 |
| Total    |                |                      |              | 64,430.07             | 26,815.01                |                           | 3,791,822.00            |                   |

City of Columbia, South Carolina  
Columbia Hilton  
Taxable Bonds

Debt Service Reserve Fund

| Date     | Days<br>30/360 | Beginning<br>Balance | Deposits   | Interest<br>5.000000% | Export to<br>Capm Fund | Export to<br>Revenue Fund | Ending<br>Balance |
|----------|----------------|----------------------|------------|-----------------------|------------------------|---------------------------|-------------------|
| 4/1/2004 |                |                      | 306,727.70 | -                     |                        |                           | 306,727.70        |
| 7/1/2004 | 90             | 306,727.70           |            | 3,810.43              | (3,810.43)             |                           | 306,727.70        |
| 1/1/2005 | 180            | 306,727.70           |            | 7,668.19              | (7,668.19)             |                           | 306,727.70        |
| 7/1/2005 | 180            | 306,727.70           |            | 7,668.19              | (7,668.19)             |                           | 306,727.70        |
| 1/1/2006 | 180            | 306,727.70           |            | 7,668.19              | (7,668.19)             |                           | 306,727.70        |
| 7/1/2006 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 1/1/2007 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 7/1/2007 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 1/1/2008 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 7/1/2008 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 1/1/2009 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 7/1/2009 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 1/1/2010 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 7/1/2010 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 1/1/2011 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 7/1/2011 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 1/1/2012 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 7/1/2012 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 1/1/2013 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 7/1/2013 | 180            | 306,727.70           |            | 7,668.19              |                        | (7,668.19)                | 306,727.70        |
| 1/1/2014 | 180            | 306,727.70           |            | 7,668.19              |                        | (314,395.89)              | -                 |
| 7/1/2014 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2015 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2015 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2016 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2016 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2017 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2017 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2018 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2018 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2019 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2019 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2020 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2020 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2021 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2021 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2022 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2022 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2023 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2023 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2024 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2024 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2025 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2025 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2026 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2026 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2027 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2027 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2028 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2028 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2029 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2029 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2030 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2030 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2031 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2031 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2032 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2032 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2033 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2033 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2034 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2034 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2035 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2035 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2036 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2036 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2037 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2037 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2038 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2038 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2039 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2039 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2040 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2040 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2041 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2041 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2042 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2042 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2043 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 7/1/2043 | 180            | -                    |            | -                     |                        | -                         | -                 |
| 1/1/2044 | 180            | -                    |            | -                     |                        | -                         | -                 |
| Total    |                | 306,727.70           |            | 149,506.08            | (26,815.01)            | (429,418.78)              |                   |

**City of Columbia, South Carolina  
Columbia Hilton**

**Aggregate Cost of Issuance**

| <u>Cost of Issuance</u> | <u>Fee</u>   |
|-------------------------|--------------|
| Bond Counsel            | 300,000      |
| Underwriter's Counsel   | 100,000      |
| Counsels to the City    | 300,000      |
| Financial Advisor       | 65,000       |
| Hotel Consultant        | 365,000      |
| Trustee / Counsel       | 15,000       |
| POS/OS Printing         | 15,000       |
| Ambac                   | 105,000      |
| Ambac Insurance Counsel | 17,500       |
| S&P                     | 80,000       |
| Moody's                 | 60,000       |
| Fitch                   | 0            |
| Feasibility Report      | 60,000       |
| City Issuance Expenses  | 102,000      |
| Miscellaneous           | 25,000       |
| Total                   | 1,609,500.00 |

**CITY OF COLUMBIA  
CITY COUNCIL WORK SESSION MINUTES****March 17, 2004****9:00 AM - City Council Chambers****3rd Floor City Hall - 1737 Main Street**

The City of Columbia City Council met for a Work Session on Wednesday, March 17, 2004, in the City Hall Council Chambers at 1737 Main Street, Columbia, South Carolina. Mayor Robert D. Coble called the meeting to order at 9:04 a.m. Council members present were The Honorable E. W. Cromartie, II, The Honorable Jim D. N. Papadea, The Honorable Anne M. Sinclair, The Honorable Hamilton Osborne, Jr., The Honorable Sam Davis and The Honorable Tameika Isaac Devine. Also present were Mr. Charles P. Austin, Sr., City Manager and Ms. Erika D. Moore, City Clerk.

**REVIEW ZONING PUBLIC HEARING AGENDA**

**\*\*There was a consensus of Council to amend the Work Session agenda to include the discussion of the Disparity Study, City Center Master Plan Request for Qualifications and the Convention Center Hotel Request for Proposals.**

**PRESENTATIONS****A. Greening the Arts Festival 2004 – Ms. Shirley Fields-Martin, Executive Director**

Ms. Shirley Fields-Martin presented the Greening the *Arts* Festival 2004 to the members of City Council. She stated that cultural literacy promotes community development; therefore the majority of the events will be free of charge. Greening the *Arts* Festival will be held from Sunday, May 23, 2004 until Sunday, May 30, 2004 in the City of Columbia.

**B. Rosewood Community Parks Master Plan – Mr. Bob Amundson, Rosewood Community Council President and Mr. Kenneth Simmons, Kenneth B. Simmons & Associates**

Mr. Bob Amundson, Rosewood Community Council President requested approval of the Parks Master Plan for the Rosewood Community. He thanked the City of Columbia for the allocation of Columbia Assisting Neighborhoods Development Opportunities (CANDO) funding. He assured the members of Council that this proposal is what the community wants and that the proposal was approved by the Parks & Recreation Department.

Mr. Kenneth Simmons, Kenneth B. Simmons & Associates presented the Rosewood Community Parks Master Plan as it relates to Valencia, Rosewood, Tyler and Lester Bates Parks. He stated that the community wants each park to have its own character with distinctive walkways connecting one to the other. He stated that Valencia Park has problems with parking and buffers between pedestrians and vehicular traffic; therefore, they will add a 25-space parking lot, a fenced entrance area, a new canteen/restroom building and new bleachers. Mr. Simmons described Rosewood Park as a citywide regional park with an existing baseball field and scattered playground equipment. He stated that they would like to install a water feature, a maze play area and an amphitheatre at Rosewood Park. Mr. Simmons described Tyler Park as a linear shaped park with four (4) roads running through the park. He proposed to change the pavement on the portion of the roads that run through the park and to create an American Disabilities Act compliant facility with an exercise station, plants and gazebos to create a pedestrian friendly environment. Lester Bates Park was also described as a linear park. He stated that the community would like to create a doggie park with a landscaped plaza, a dry creek and an exercise

trail.

Mr. Bob Amundson, stated that the community voted unanimously in favor of the proposals and that they understand the need to divide this Rosewood Parks Masterplan into phases. He said that they are also applying for grants to assist with funding.

Upon motion by Mayor Coble, seconded by Ms. Sinclair, Council voted unanimously to endorse the Parks Master Plan subject to the appropriation of funding.

#### **COUNCIL DISCUSSION/ ACTION**

##### **B1. \*\*Disparity Study**

Upon motion by Mayor Coble, seconded by Mr. Papadea, Council voted unanimously to endorse and adopt the Proposed Critical Path for Minority Business Enterprise / Women Business Enterprise Policy Development for the City of Columbia along with the proposed implementation schedule and budget. The City Manager was authorized to implement the plan and budget as outlined.

##### **B2. \*\*Greater Columbia Community Relations Council Request for Funding – Mr. Preston Winkler, Executive Director**

Upon motion by Mayor Coble, seconded by Mr. Cromartie, Council voted unanimously to allocate Community Promotions Funding in the amount of \$60,783.25 to cover a budgetary shortfall for fiscal year 2003/2004. The request to add the Greater Columbia Community Relations Council to the City of Columbia's General Fund Budget was deferred.

#### **COUNCIL DISCUSSION/ ACTION**

##### **B3. \*\*City Center Master Plan Request for Qualifications**

Upon motion by Ms. Sinclair, seconded by Mayor Coble, Council voted unanimously to authorize staff to proceed with a Request for Qualifications for the City Center Master Plan.

Mayor Coble adjourned the Work Session at 10:00 a.m. to convene the Zoning Public Hearing.

Mayor Coble reconvened the Work Session at 11:33 p.m.

##### **B4. \*\*Convention Center Hotel Request for Proposals**

Upon motion by Ms. Sinclair, seconded by Mr. Cromartie, staff was directed to draft a Request for Proposals for a full service Convention Center Hotel. Mr. Papadea and Mr. Osborne abstained from voting due to a conflict of interest.

#### **APPOINTMENTS**

##### **C. Design Development Review Commission**

Upon motion by Mr. Papadea, seconded by Mr. Cromartie, Council voted unanimously to approve the re-appointment of Mr. James Byrum, Ms. Gardenia Fair, Mr. James Mancini and Ms. Nancy McCormick for a three-year term to expire in April 2007.

Upon motion by Mayor Coble, seconded by Mr. Cromartie, Council voted unanimously to go into Executive Session at 11:37 a.m. for the discussion of Items D. through F. as amended.

**EXECUTIVE SESSION DISCUSSION**

D. Receipt of legal advice, which relates to a matter covered by attorney-client privilege

**\*\*Disparity Study – Mr. Richard Gergel, Esquire**

This item was discussed in Executive Session no action was taken.

**\*\*Richland County School District One – Mr. Jim Meggs, City Attorney**

This item was discussed in Executive Session no action was taken. Mr. Cromartie abstained from discussions due to a conflict of interest.

**\*\*East Central City Consortium – Mr. Fred Johnson, F.A. Johnson Consulting Group, Inc.**

This item was discussed in Executive Session no action was taken.

**\*\*Parkridge Road Relocation**

This item was discussed in Executive Session no action was taken.

E. **\*\*Discussion of negotiations incident to the proposed sale of property**

**\*\*SEC North Lake Drive and Irmo Drive – Mr. Shawn Epps, Special Projects Administrator**

This item was discussed in Executive Session no action was taken.

F. **\*\*Receipt of legal advice which relates to a pending, threatened or potential claim**

This item was discussed in Executive Session no action was taken.

Mayor Coble adjourned the Work Session at 12:50 p.m.

Respectfully submitted by:

Erika D. Moore  
City Clerk

**CITY OF COLUMBIA  
CITY COUNCIL WORK SESSION MINUTES  
March 24, 2004  
9:00 AM - City Council Chambers  
3<sup>rd</sup> Floor City Hall - 1737 Main Street**



The City of Columbia City Council met for a Work Session on Wednesday, March 24, 2004, in the City Hall Council Chambers at 1737 Main Street, Columbia, South Carolina. Mayor Robert D. Coble called the meeting to order at 9:04 a.m. Council members present were The Honorable E. W. Cromartie, II, The Honorable Jim D. N. Papadea, The Honorable Anne M. Sinclair, The Honorable Hamilton Osborne, Jr., The Honorable Sam Davis and The Honorable Tameika Isaac Devine. Also present were Mr. Charles P. Austin, Sr., City Manager and Ms. Erika D. Moore, City Clerk.

**PRESENTATIONS**

- A. \*\* Miss South Carolina/USA Amanda Pennekamp – Ms. Paula Miles, Executive Director of the Miss SC/USA Pageant

Miss Paula Miles, Executive Director, introduced Miss Amanda Pennekamp as Miss South Carolina 2004.

Miss Amanda Pennekamp, Miss South Carolina 2004, shared her platform with the members of City Council and thanked everyone for their support.

Mayor Coble presented Miss Pennekamp with a Key to the City and roses as a token of the City's support.

- B. Retirement Presentation for Chief John Jansen – Mr. Curtis Maffett, Mr. Joseph (Rusty) Smith and Mr. Joseph Floyd, Assistant Chiefs, Columbia Fire Department

Mayor Coble, members of City Council, Mr. Charles P. Austin, Sr., City Manager and members of the Fire Department showered Chief John Jansen with words of appreciation. Mayor Coble presented a Proclamation in honor of the Chiefs retirement, which declared March 24, 2004 as Chief John Jansen Day in the City of Columbia.

- C. Kids Day Columbia 2004 – Ms. Judy Stringer, Columbia Action Council Executive Director

Ms. Judy Stringer, Executive Director, briefed the members of Council on the Kids Day Columbia 2004 Event. She indicated that the event is free, but attendees will pay for food and rides in an effort to raise funds for the Columbia Action Council. Kids Day Columbia is scheduled for Saturday, March 27, 2004 in Finlay Park.

- D. \*\*Cultural Council of Richland - Lexington Counties Update – Ms. Susan Benesh, Executive Director

Ms. Susan Benesh, Executive Director updated the members of Council on the changes that have occurred within the past nine (9) months within the Cultural Council of Richland – Lexington Counties. She stated that their mission is to raise money for the Arts, to fund organizations, and to promote the Arts. She said that the entire member benefit program was revamped to encourage greater participation. Ms. Benesh announced that the Cancer Survivors Garden is now complete. She also announced that the Cultural Council would enter into fiscal year 2004/2005 with a balanced budget.

E. East Central City Consortium Project Update – Mr. Fred A. Johnson, F. A. Johnson Consulting Group, Inc.

Mr. Heyward Bannister, Director of South Carolina Fannie Mae Partnership Office, thanked the members of Council for their strong interest and commitment to the communities that are often underserved and overlooked. He told the members of Council that a group composed of neighborhood leaders, City officials, City staff, representatives of financial institutions and other stakeholders went to Atlanta, Georgia for a site tour and to learn more about Atlanta's housing initiatives. Mr. Bannister stated that their objective is to stop blight in these communities.

Ms. Myrtle Gordon, Edgewood Road Street Community/ Comprehensive Masterplan Committee Chair, stated that the committee did participate in the planning process since the first planning meeting. She said that they all want to see the positive changes continue throughout the communities. Ms. Gordon said that the residents have been outspoken about their concerns and their dreams. She stated that a detailed action plan would be presented soon.

Mr. Fred A. Johnson, III, F.A. Johnson Consulting Group, Inc. Managing Principal, stated that as a practical matter this is a housing initiative, but it's also the dreams, hopes and visions of twelve neighborhoods. He stated that the proposed development plan would address design, the placement of housing, streetscapes, traffic patterns and compatibility of new and existing structures. Mr. Johnson indicated that the focus is on the production of affordable housing opportunities for approximately 1,000 acres and over 3,200 parcels of land. He told the members of Council that the East Central City Consortium Board would forward the final Master Development Implementation Plan to City Council for approval within sixty (60) days of this presentation.

F. \*\*Economic Development Strategic Plan – Mr. Jim Gambrell, Director of Economic Development

Mr. Jim Gambrell, Director of Economic Development, presented the City of Columbia's Collaborative Plan for Economic Development to the members of Council. He explained that this is a collaborative effort to support and promote a strong business community resulting in economic growth for the region, while maintaining an excellent quality of life. The following five (5) economic development oriented departments work directly with individuals and businesses to help them obtain their business goals: the Office of Economic Development; the Business Enterprise Office; the Community Development Department; the Planning Department; and the Sumter-Columbia Empowerment Zone Department. The following five (5) economic development corporations serve specific areas within the City to perform specific development functions within the City for individuals and businesses: the Columbia Development Corporation (serves the Congaree Vista area); the Eau Claire Development Corporation (serves the Eau Claire area); the South Columbia Development Corporation (serves the southern area of the City); the Two Notch Development Corporation (serves the area of the City along Two Notch Road); and the Columbia Housing Development Corporation (serves the entire City with a focus on residential development).

**TRAFFIC ISSUES**

G. Glenwood Road Traffic Control

Upon motion by Ms. Sinclair, seconded by Mr. Osborne, Council voted unanimously to approve the installation of a multi-way stop at the intersection of Glenwood Road and Bagnal Road contingent upon SCDOT approval.

## APPOINTMENTS

### H. Planning Commission

Upon motion by Ms. Sinclair, seconded by Mr. Osborne, Council voted unanimously to approve the reappointment of Ms. Jenny Screen and Ms. Isabelle Mandel for a three-year term to expire on March 1, 2007.

### I. \*\*Election Commission

Upon motion by Mayor Coble, seconded by Mr. Cromartie, Council voted unanimously to approve the appointment of Mrs. Marsha Duffy on a temporary basis contingent upon Mrs. Duffy acceptance of the appointment. Mrs. Marsha Duffy accepted the appointment to the City of Columbia Election Commission on a temporary basis.

## STREET III

- J. Council is asked to approve a request from the University of South Carolina and Global Spectrum to close Greene Street from Gadsden Street to the railroad track where it dead ends and to restrict access from the corner of Gadsden Street and Greene Street to Wayne Street and Gervais Street one hour prior to the following events: Contact: Mr. Matt Homan, Director of Event Services

Upon motion by Mr. Cromartie, seconded by Mr. Papadea, Council voted unanimously to approve a request from the University of South Carolina and Global Spectrum to close Greene Street from Gadsden Street to the railroad track where it dead ends and to restrict access from the corner of Gadsden Street and Greene Street to Wayne Street and Gervais Street one hour prior to the following events:

|           |                |                    |                         |
|-----------|----------------|--------------------|-------------------------|
| Wednesday | March 31, 2004 | Robotics Move In   | 8:00 a.m. - 6:00 p.m.   |
| Thursday  | April 1, 2004  | Robotics Show      | 7:00 a.m. - 7:00 p.m.   |
| Friday    | April 2, 2004  | Robotics Show      | 7:00 a.m. - 7:00 p.m.   |
| Saturday  | April 3, 2004  | Robotics Show      | 7:00 a.m. - 7:00 p.m.   |
| Wednesday | April 7, 2004  | Aerosmith          | 12:00 p.m. - 12:00 a.m. |
| Friday    | April 16, 2004 | Disney on Ice      | 8:00 a.m. - 10:00 p.m.  |
| Saturday  | April 17, 2004 | Disney on Ice      | 10:00 a.m. - 10:00 p.m. |
| Sunday    | April 18, 2004 | Disney on Ice      | 12:00 p.m. - 10:00 p.m. |
| Wednesday | April 21, 2004 | Prince             | 9:00 .m. - 12:00 a.m.   |
| Thursday  | April 22, 2004 | Kenny Chesney      | 9:00a.m. - 12:00 a.m.   |
| Friday    | April 23, 2004 | Urban Youth League | 3:00 p.m. - 7:00 p.m.   |
| Saturday  | April 24, 2004 | Urban Youth League | 7:00 a.m. - 12:00 a.m.  |
| Sunday    | April 25, 2004 | God is Love        | 2:00 p.m. - 10:30 p.m.  |
| Wednesday | April 28, 2004 | Shania Twain       | 8:00 a.m. - 12:00 a.m.  |
| Thursday  | April 29, 2004 | Jimmy Buffett      | 8:00 a.m. - 12:00 a.m.  |

## OTHER MATTERS

Upon motion by Mr. Cromartie, seconded by Mr. Papadea, Council voted unanimously to approve on a single motion **Item K**. The destruction of 128 Firearms and **Item L**. The destruction of 519 Narcotics to include drug paraphernalia as requested by the Columbia Police Department Evidence Unit.

- K. Council is asked to approve the Destruction of 128 Firearms, as requested by the Columbia Police Department Evidence Unit. - Approved

- L.     **\*\*Council is asked to approve the Destruction of 519 Narcotics to include drug paraphernalia, as requested by the Columbia Police Department Evidence Unit. - Approved**

- M.     **\*\*Tom Joyner Sky Show Request for Funding**

Upon motion by Mr. Cromartie, seconded by Mr. Papadea, Council voted unanimously to approve funding in the amount of \$3,500.00 from the City Council Contingency Fund.

Upon motion by Mayor Coble, seconded by Mr. Cromartie, Council voted unanimously to go into Executive Session at 11:42 a.m. for the discussion of the Convention Center Hotel Memorandum of Understanding and the Commercial Non-Discrimination Policy as it relates to the details of a Request for Proposals. Mr. Papadea and Mr. Osborne abstained from discussions relating to the Convention Center Hotel Memorandum of Understanding due to a conflict of interest.

11           **SESSION DISCUSSION**

- N.     Discussion of negotiation incident to proposed contractual arrangements  
This item was discussed in Executive Session no action was taken.

- **Mayor Coble reconvened the Work Session at 12:35 p.m.**

**CITY COUNCIL DISCUSSION/ACTION**

- O.     **\*\*Convention Center Hotel Request for Proposals**

Upon motion by Mayor Coble, seconded by Mr. Osborne, Council voted unanimously to authorize staff to release a Request for Proposals for a full service Convention Center Hotel. The Request for Proposals should contain the following minimum hotel specifications:

1.   200 guest rooms
2.   Restaurant facility to accommodate at least 100 patrons
3.   Lounge / Bar area
4.   Swimming Pool and Fitness Room
5.   5,000 square feet of meeting space
6.   Business Center
7.   Building exterior must be approved by the Design Development Review Commission
8.   Kitchen facility
9.   Offer 3 meals per day
10.  Concierge and Bell Services
11.  Branded by a National Name
12.  200 Room Block Agreement
13.  Land available upon negotiation
14.  City of Columbia will offer a 50% discount on parking
15.  Site Lease
16.  Hotel Performance Standards

- **Mayor Coble adjourned the meeting at 1:25 p.m.**

Respectfully submitted by:

Erika D. Moore  
City Clerk

# **Request for Proposals**



## **Convention Center Hotel**

**CITY OF COLUMBIA, SOUTH CAROLINA  
REQUEST FOR PROPOSALS  
CONVENTION CENTER HOTEL**

**I. OVERVIEW.** The City of Columbia, South Carolina ("City") is issuing this request for proposals ("RFP") for the development and operation of a full service convention center hotel to support the Columbia Metropolitan Convention Center ("Convention Center"). The Convention Center is currently under construction and is scheduled to be completed in September 2004. The completion of this facility will represent a substantial investment and the culmination of unprecedented cooperation between many organizations in the area. An important factor in the success of convention centers nationwide is the affiliation of the convention center with a hotel. For this reason, the City is seeking proposals for the construction, ownership, and operation of a convention center hotel ("Hotel").

**II. GENERAL INFORMATION AND INSTRUCTIONS.**

**A. PROCUREMENT PROCESS.** The RFP is not a bid. In the event the City elects to negotiate a contract with the successful proposer, such contract shall contain terms and conditions consistent herewith. The City reserves the right, in its sole discretion, to reject all submissions, reissue a subsequent RFP, terminate, restructure, or amend this procurement process at any time. The final selection and contract negotiation rests solely with the City. The City shall establish a special committee ("Committee") for the purpose of reviewing the proposals and making appropriate recommendations to City Council. Where the context permits the term "City" shall include the Committee and City Council.

**B. QUESTIONS.** Questions are allowed and encouraged to clarify this RFP. All questions or requests for information shall be in writing and addressed to City of Columbia, Attn: Steven A. Gantt, PO Box 147, Columbia, SC 29217. Such written questions may also be transmitted by facsimile to (803) 255-8922 or e-mail to [sagantt@columbiasc.net](mailto:sagantt@columbiasc.net). Upon request the City shall provide a copy of its market study prepared by PKF Consulting.

**Proposers shall not lobby or otherwise contact members of City Council or the Committee with respect to this RFP.** Such contact shall constitute grounds for rejection of a proposal.

**C. PRE-RESPONSE MEETING.** A pre-response meeting will be held on Monday, April 19, 2004, at 2:00 p.m. at the City Council Chambers, City Hall, 1737 Main Street, Columbia, SC. Proposers are not required to attend but are encouraged to do so.

**D. REJECTION OF PROPOSALS.** The City may reject any proposals which do not conform to the essential requirements of the RFP.

E. **CONFIDENTIALITY.** All information, materials, or other documents submitted by a proposer shall not be released or made otherwise available to any person or entity except the City's representatives assisting in this procurement process, until public opening of the proposals, unless required by law or judicial process. Proprietary or financial information submitted to the City by a proposer will not be disclosed if proposer visibly marks each part of the proposal which proposer considers to be confidential financial or proprietary information with the word "Confidential", unless required by law or judicial process.

F. **EVALUATION CRITERIA.** The following shall be used in evaluating proposals and the proposals should include information necessary for such evaluation:

1. Past Performance - The proposer's satisfactory past experience in developing and operating hotels.
2. Proposed Investment/Financial Ability - The total capital investment proposed to be made in the Hotel and the financial ability of the proposer.
3. Performance of Requested Services - Demonstration that proposer currently has the capability, qualifications, and experience to develop and operate the Hotel.
4. Exceeding Minimum - Greater consideration will be given to proposals exceeding the Minimum Hotel Specifications.
5. Maximization of City Incentives - The City has outlined the incentives it is willing to grant for this project below and greater consideration will be given to proposals exceeding Minimum Hotel Specifications and/or requiring less City incentives.

G. **PROPOSALS, FORMAT.**

1. All proposals must be clearly marked "Proposal for Development and Operation of Columbia Convention Center Hotel".
2. Proposals must be signed by an authorized person and submitted in sealed envelopes and shall include at least ten (10) copies.
3. Proposals must be submitted by hand delivery (including delivery by recognized courier) to Steven A. Gantt, City of Columbia, City Hall, 1737 Main Street, Columbia, SC 29201, or mailed to City of Columbia, Attn: Steven A. Gantt, PO Box 147, Columbia, SC 29217.
4. Proposals must be received on or before May 4, 2004.

H. **INTERVIEWS/ CONTRACT NEGOTIATIONS.** The City will evaluate

the proposals and may, in its discretion, elect to interview, meet with, and/or require public presentations from one or more of the proposers before making final selection. Once final selection is made a contract will be negotiated with the selected proposer which may include a security deposit requirement. The City intends to make a final selection prior to July 1, 2004.

**III. TERMS AND CONDITIONS.** The physical characteristics of the Hotel enumerated herein are minimum requirements. The goal of the City is to obtain the largest number of guest accommodations at the highest possible quality as a result of this RFP. Proposers are therefore encouraged to enhance their submissions with respect to all elements of the Hotel, including but not limited to, numbers of guests rooms, size of meeting areas, restaurant, lounge/bar, kitchen, facilities and other guest amenities. Preference will be given to size of facility, quality of finishes, design features including expansion capability, and guest services to be provided.

**A. MINIMUM HOTEL SPECIFICATIONS.**

1. 200 guest rooms of not less than 330 square feet / room.
2. 5,000 square feet of meeting space.
3. Kitchen facility capable of providing service to a restaurant, lounge/bar, room service, catering to meeting space.
4. Restaurant facilities of not less than 100 seats; offering three meals per day, seven days per week.
5. Lounge/bar facility with not less than 50 seats. A lobby bar may be substituted in lieu of dedicated lounge bar.
6. Swimming pool of sufficient size to provide a pleasing recreational experience for guests.
7. Fitness room or facility appropriately equipped.
8. Business center equipped with appropriate modern business equipment and technology.
9. The building exterior shall be constructed with long lasting, aesthetically pleasing materials (e.g., masonry, brick, precast). Interiors finishes shall be of first class quality.
10. Mechanical systems shall be designed to maximize efficiency, guest comfort, and aesthetics.

11. The Hotel must be branded or flagged by a nationally known hotel operator with a nationwide reservation system. Significant weight and preference will be afforded to proposals which offer a "First-Class" nationally known hotelier, it being the intent of the City to attract visitors and groups from across the United States.

**B. ROOM BLOCK AGREEMENT.**

1. The primary mission of the Hotel will be to provide support for the convention activities of the Convention Center. Consequently, the proposers must be willing to enter into a satisfactory long-term room block agreement that would generally require committing at least 200 rooms and appropriate hotel meeting space for qualified (city-wide) events held at the Convention Center up to 14 nights per month for events that book the Convention Center three years or more in advance. The requirements of the room block agreement would decrease as the booking horizon shortens.

2. All reasonable efforts shall be made to allow the Hotel to charge the prevailing room rates to a qualified event. However, if a room rate cannot be successfully negotiated between the Hotel and the qualified event, the City may, at its sole discretion, require the Hotel to charge a predetermined rate that would be mutually agreed upon between the City and the Hotel as part of the room block agreement.

3. The details of the room block agreement are subject to negotiation between the City and the Hotel and are an integral part of the City offering the incentives outlined below.

**C. HOTEL SITE(S).** The Hotel shall be constructed on one of two City-owned parcels generally shown or described on the attached Exhibits "A" and "B", respectively. The parcel described on Exhibit "A" is bounded on the north by Senate Street and is called "Parcel A" and the parcel described on Exhibit "B" is bounded on the south by Senate Street and is called "Parcel B". The City intends to construct a public parking garage either along Pendleton Street on property currently owned by the City and on property not yet acquired by the City or on property currently owned by the City which includes Parcel A. If the garage is constructed on Pendleton Street Parcel A will be the preferred Hotel site. If the garage is constructed on land which includes Parcel A then Parcel B will be the Hotel site.

**D. CITY INCENTIVES.**

1. **GROUND LEASE.** The City will ground lease the site for a 50 year term for a rental of One Dollar (\$1.00) per year paid in advance. The ground lease shall not be subordinated to liens.

2. **PARKING.** The City will provide one parking space per sleeping room in a City parking facility to be constructed nearby to the Hotel site and managed and maintained by the City. These parking spaces will be made available to the Hotel at 50% of then

prevailing market rates (the current daily market rate is \$10.00). The City anticipates entering into a joint use parking agreement related to the parking facility that will allow the City to rent as many spaces as possible to daily visitors. As such, the City envisions working with the Hotel to determine the reasonable number of spaces that will be required for the Hotel on a daily basis and the Hotel will be charged only for the spaces it utilizes. In this way, the Hotel can minimize its parking costs and the City can maximize its parking revenues.

3. The City reserves the right but not the obligation to consider additional incentives to induce a higher quality product. If additional incentives are required please specify and explain.

E. NON-DISCRIMINATION. Proposer will take affirmative action in complying with all federal, state and local requirements concerning fair employment and employment of the handicapped and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin, or physical handicap. Any contract extended subsequent to this RFP shall require proposers to comply with the City's Commercial Non-Discrimination Policy and Sub-Contractor Outreach Program.

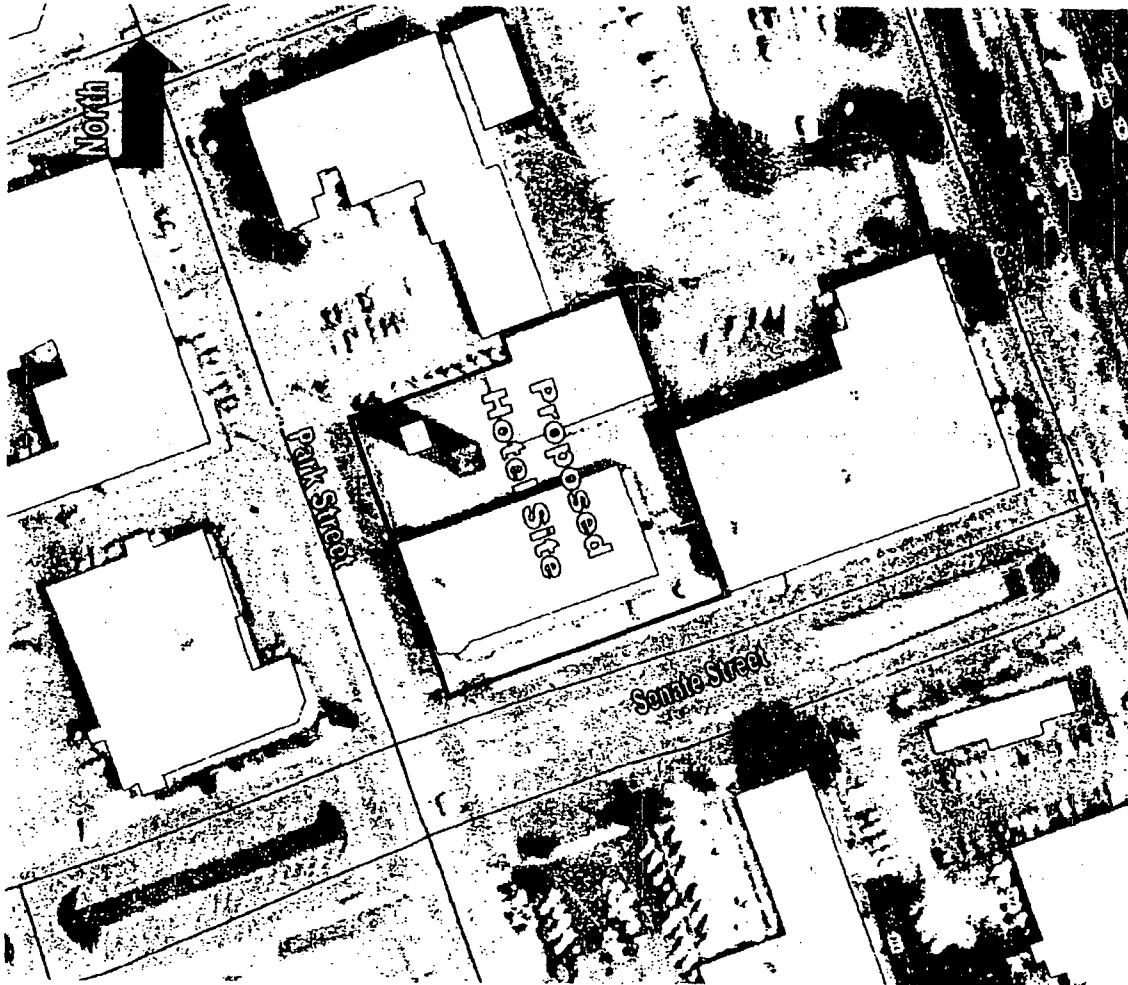
## Exhibit "A"



### Description of Site:

The proposed Hotel site is located at the southwest corner of Senate and Park Streets. The approximate boundaries of the property are as follows: northern boundary (Senate Street) - 207 feet, eastern boundary (Park Street) - 243 feet, western boundary - 243, southern boundary - 210 feet.

## Exhibit "B"



### Description of Site:

The proposed Hotel site is located at the northeast corner of Senate and Park Streets. The approximate boundaries of the property are as follows: southern boundary (Senate Street) - 206 feet, western boundary (Park Street) - 186 feet, northern boundary (irregular line) - 206 feet, eastern boundary - 208 feet.

## **ADDENDUM #1**

**April 13, 2004**

### **CITY OF COLUMBIA, SOUTH CAROLINA REQUEST FOR PROPOSALS CONVENTION CENTER HOTEL**

1. Delete the "Room Block Agreement" section of the RFP (Subsection "B" of Section "III") submitted on or about April 2, 2004.
2. Insert the following Room Block Agreement section (Subsection "B" of Section "III") into the RFP:

#### **B. ROOM BLOCK AGREEMENT.**

1. The primary mission of the Hotel will be to provide support for the convention activities of the Convention Center. Consequently, the proposers must be willing to enter into a satisfactory long-term room block agreement that would generally require committing at least 200 rooms and appropriate hotel meeting space for qualified (city-wide) events held at the Convention Center up to 14 nights per month for events that book the Convention Center one year or more in advance. The requirements of the room block agreement would be eliminated within the one year period.

2. All reasonable efforts shall be made to allow the Hotel to charge the prevailing room rates to a qualified event. However, if a room rate cannot be successfully negotiated between the Hotel and the qualified event, the City may, at its sole discretion, require the Hotel to charge a predetermined rate that would be mutually agreed upon between the City and the Hotel as part of the room block agreement.

3. The details of the room block agreement are subject to negotiation between the City and the Hotel and are an integral part of the City offering the incentives outlined below.

**ADDENDUM #2**

**April 15, 2004**

**CITY OF COLUMBIA, SOUTH CAROLINA  
REQUEST FOR PROPOSALS  
CONVENTION CENTER HOTEL**

Due to the number of people on the selection committee for the convention center hotel,  
please submit 15 copies of your proposal instead of 10.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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Case No. 2005-CP-40-3361

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Stevens & Wilkinson of South Carolina, Inc. .... Respondent,

vs.

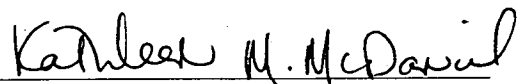
City of Columbia, South Carolina ..... Appellant.

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that the Record on Appeal contains all materials proposed  
to be included by any of the parties and not any other material.



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Kathleen M. McDaniel  
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ATTORNEYS FOR APPELLANT

July 26, 2010  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2005-CP-40-3361

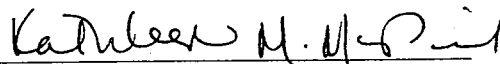
Stevens & Wilkinson of South Carolina, Inc. . . . . Respondent,

vs.

City of Columbia, South Carolina . . . . . Appellant.

CERTIFICATE OF SERVICE

I, Kathleen M. McDaniel, an attorney with the law firm of Callison, Tighe & Robinson, LLC, certify that I have served the **Record on Appeal** on the Respondent herein, by causing copies of same to be hand-delivered, to its attorneys of record, Richard A. Harpootlian and Graham L. Newman, at 1410 Laurel Street, Columbia, South Carolina 29202, on July 26, 2010.

  
Kathleen M. McDaniel

July 26, 2010  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

AUG 11 2010

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2005-CP-40-3361

Stevens & Wilkinson of South Carolina, Inc. .... Respondent,

vs.

City of Columbia, South Carolina ..... Appellant.

FINAL BRIEF OF APPELLANT

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ATTORNEYS FOR APPELLANT

August 11, 2010  
Columbia, South Carolina

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### STATEMENT OF ISSUES ON APPEAL

- I. The trial court erred as a matter of law in finding that the vote of City Council on July 30, 2003 constituted an acceptance of the offer presented by Stevens & Wilkinson.
- II. The issue of whether, how and on what terms a contract was formed by the July 30, 2003 vote was argued before the trial court and, therefore, was preserved for consideration by that Court on the City's Rule 59(e) Motion and for review by the appellate court.

### STATEMENT OF THE CASE

The issues addressed in this appeal arise out of litigation surrounding the City of Columbia's efforts to encourage the construction of a headquarters hotel to support the Columbia Metropolitan Convention Center. Following the City's decision to allow the private funding and development of the hotel with a development team that did not include Respondent Stevens & Wilkinson, the Respondent filed an action against the City for breach of contract, among other causes of action. (Amended Complaint, filed November 14, 2005, R. pp. 12-19.) Other members of Stevens & Wilkinson's development team filed separate, almost identical suits against the City. The City has been granted summary judgment on all other causes of action in each of these related suits except for the issues presented in this appeal.<sup>1</sup>

On February 20, 2009, Stevens & Wilkinson filed a motion for partial summary judgment seeking a determination that "Stevens and Wilkinson and the City of Columbia created a contractual agreement—separate and apart from the Memorandum of

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<sup>1</sup>All cases were consolidated for trial and the City has filed (or intends to file) a Motion to Consolidate the appeals pending in all cases.

Understanding—in July of 2003 for the performance of and payment for architectural and design services.” (Motion for Partial Summary Judgment, R. pp. 20-21.)<sup>2</sup> A hearing on Stevens & Wilkinson’s motion for summary judgment was held on March 10, 2009. (Transcript of March 10, 2009 Hearing, R. pp. 123-155.) On March 23, 2009, the trial court issued an Order granting Stevens & Wilkinson’s Motion for Partial Summary Judgment. (March 23, 2009 Order, R. pp. 3-8.) The City filed a motion pursuant to Rule 59(e) requesting that the trial court alter or amend its Order (Rule 59(e) motion, R. pp. 97-105), and a hearing on the City’s motion was held on July 1, 2009. (Transcript of July 1, 2009 Hearing, R. pp. 156-165.) The trial court issued an Order denying the City’s 59(e) motion on July 23, 2009. (July 23, 2009 Order, R. pp. 9-11.) The City timely filed this appeal of both Orders.

### **FACTS**

The facts essential to this appeal are virtually undisputed. In April 2003, the City executed a Memorandum of Understanding (“MOU”) with Stevens & Wilkinson and other members of a project team that the City had selected to develop and construct the convention center hotel. (MOU, R. pp. 166-188.) The hotel project was to be financed by the issuance of hotel revenue bonds. (MOU, R. p. 169.) According to the terms of the MOU, the project team members would not be compensated for their work unless and until the bonds closed.

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<sup>2</sup>Stevens & Wilkinson’s Motion for Partial Summary Judgment included two other grounds for summary judgment, but those were not addressed at the hearing on March 10, 2009, or in the trial court’s Orders.

(MOU, R. pp. 170-171.)<sup>3</sup>

After performing work in anticipation of a bond closing in the Summer of 2003 which was delayed (at no fault of the City), Stevens & Wilkinson sought an advance payment for a portion of its services prior to the bond closing. Stevens & Wilkinson agreed that any payment, while non-refundable to the City if the bonds did not close, would be charged against any fee due to Stevens & Wilkinson if the bonds closed. (Letter from Bobby Lyles to Mark Alles, dated December 17, 2003, R. p. 194; Letter from Mark Alles to John Lumpkin, dated December 18, 2003, R. p. 195; Letter from John Lumpkin to Steve Gantt, dated December 18, 2003, R. p. 196.) Stevens & Wilkinson presented its request for payment to the City in the form of a "Cost Estimate," indicating fees it would incur on the hotel project from that date through October 13, 2003, the anticipated revised date for the bond closing. (Cost Estimate-Revised July 21, 2003, R. p. 191.) The total estimate for architectural and engineering fees and fees for special consultants through October 13, 2003, was \$650,000. (Id.) Stevens & Wilkinson also included in its cost estimate "Estimated A/E fees to be incurred weekly after October 13, 2003 (anticipated bond closing date) . . . \$60,000/week," along with an estimate of fees for special consultants for this subsequent period of \$15,000 per week, for a total estimate of \$75,000 per week after October 13, 2003. (Id.)

On July 30, 2003, the City Council considered Stevens & Wilkinson's proposal for interim fees and voted on the proposal. The minutes from the July 30, 2003 City Council

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<sup>3</sup>The trial court in this and the other related cases consolidated for trial found that the MOU was not a binding, enforceable contract and granted summary judgment to the City. That ruling is the subject of separate appeals.

meeting reflect that City Council responded to Stevens & Wilkinson's proposal as follows:

ACTION: APPROVED \$650,000 for Interim architectural design services for a period of 90 days prior to Bond Closing. Mr. Papadea and Mr. Osborne did not vote due to a conflict of interest.

(Minutes of July 30, 2003 Columbia City Council meeting, R. p. 193, line 20.)

Based upon this vote, Stevens & Wilkinson performed additional work on the hotel project. On December 18, 2003, Stevens & Wilkinson submitted an invoice to the City for its work in the amount of \$697,084.79 for the period July 10, 2003 to December 15, 2003. (Invoice from Stevens & Wilkinson, R. p. 197.) The City issued a check to Stevens & Wilkinson for the full amount of \$697,084.79 on December 29, 2003. (Check from City of Columbia, R. p. 198.)<sup>4</sup> Significantly, the bond closing did not occur on October 13, 2003; indeed, there was never a bond closing. Stevens & Wilkinson never sent the City another invoice, and the City paid no more money to Stevens & Wilkinson.

By the Spring of 2004 cost estimates for the hotel proposed by Stevens & Wilkinson's project team had risen from \$60 million to over \$72 million, and the "back stop" exposure to the City (i.e., the City's guarantee on the bond, shown as City Standby Support Payment on the financial model) had increased to over \$90 million. (Citigroup financial model, March 15, 2004, R. pp. 199-213.) At that point, the City decided to seek a private developer to construct the hotel rather than issue public bonds to finance the hotel. (Columbia City Council meeting minutes from meeting on March 17, 2004, R. p. 215, lines

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<sup>4</sup>There is nothing in the record to explain the \$47,084.79 difference between the amount approved by the City and the amount invoiced by Stevens & Wilkinson, other than the bill as presented and the fact that the City paid it.

25-28; Columbia City Council Meeting Minutes from meeting on March 24, 2004, R. p. 220, lines 18-37; Request for Proposals, issued April 2, 2004, R. pp. 221-230.) When the Stevens & Wilkinson project team was not selected for the private development plan this litigation ensued.

The grounds stated in Stevens & Wilkinson's Motion for Partial Summary Judgment, pertinent to this appeal were as follows:

Stevens and Wilkinson and the City of Columbia created a contractual agreement—separate and apart from the Memorandum of Understanding—in July of 2003 for the performance of and payment for architectural and design services.

Stevens & Wilkinson argued that the City Council vote of July 20, 2002 was an acceptance of its proposal to be paid an advance on its fee to be paid if the bonds closed. The City argued that no contract was formed by the City Council vote. Following a hearing on that single issue, the trial court issued an Order granting Stevens & Wilkinson's motion for summary judgment. (Order, dated March 23, 2009, R. pp. 3-8.) In that Order, the trial court held:

Stevens & Wilkinson made an affirmative offer of services for compensation to the City of Columbia through its July 21, 2003 letter. The City affirmatively accepted this offer, albeit on seemingly modified terms, via its [sic] vote of July 30, 2003.

(Order, dated March 23, 2009, R. p. 8, lines 12-14.) (emphasis added).

The City filed a Motion to Alter or Amend the Judgment pursuant to Rule 59(e), SCRCp. The City asserted in its 59(e) motion that there can be no acceptance of an offer on “albeit seemingly modified terms” and that such a response would instead, as a matter of law,

constitute a counteroffer. Following a hearing on the matter, the trial court denied the City's motion. In that Order, the trial court held first that the City's 59(e) motion introduced a new theory that had not been addressed at the hearing; therefore, it declined to reach the issue. However, in the same Order, the trial court did address the issue, stating, "The lack of reference within the City Council minutes to the additional \$75,000 per week beyond the anticipated bond closing date does not clearly preclude an acceptance of the original offer." (Order, dated July 23, 2009, R. p. 10, lines 9-11.) The Order denying the City's 59(e) motion further held:

It appears that the phrase "albeit on seemingly modified terms" contained within my previous order has given rise to this motion. It was not my intent to cloud the issue of the terms contained within the initial offer and acceptance. Rather, the phrase was a reference to the outstanding questions of whether the terms may have been modified by the parties after the contract was formed—questions addressed within the very same paragraph. In view of the confusion surrounding this phrase, I amend the previous order so as to delete this phrase.

(Id., R. p. 10, lines 17-23.)

The City has now appealed both the Order granting Stevens & Wilkinson's motion for partial summary judgment and the Order denying the City's 59(e) motion.

#### **STANDARD OF REVIEW**

An appellate court should review a grant of summary judgment using the same standard applied by the trial court under Rule 56 (c), SCRCP. Bovain v. Canal Ins., 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009). A trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact

and that the moving party is entitled to a judgment as a matter of law." Rule 56 (c), SCRCF. To determine whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). Where the burden of proof is the preponderance of the evidence, the non-moving party is required to submit only a mere scintilla of evidence to withstand a motion for summary judgment. Id. at 330, 673 S.E.2d at 803. "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." Brockbank v. Best Capital Corp., 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000).

### **ARGUMENTS**

**I. The trial court erred as a matter of law in finding that the vote of City Council on July 30, 2003, constituted an acceptance of an offer presented by Stevens & Wilkinson.**

In its Order, dated March 23, 2009, the trial court interpreted Stevens & Wilkinson's Cost Estimate as a contract offer and the City Council's vote on July 30, 2003, as an acceptance of that offer, "albeit on seemingly modified terms, via [its] vote of July 23, 2003." (Order, dated March 23, 2009, R. p. 8, lines 13-14.) While in its March 23 Order and its subsequent Order on the City's 59(e) motion the trial court indicated that its ruling was confined to the existence of a contract, the language of both Orders indicates that the terms of the contract were as Stevens & Wilkinson had proposed and not as the City had approved.

The City disputes any interpretation of the trial court's Orders that the terms of any agreement between Stevens & Wilkinson and the City included payment of \$75,000 per

week for fees after October 15, 2003. As a matter of law, the City Council's vote to approve \$650,000 in interim architectural design fees was not an acceptance of Stevens & Wilkinson's offer to continue architectural and engineering work but was instead a counteroffer, which Stevens & Wilkinson later accepted by performance. Thus, as argued by the City at the hearing on the Motion for Summary judgment, no contract was formed by the City Council's vote. Furthermore, the trial court should have ascertained what material facts existed without substantial controversy and entered an order clearly setting forth the terms of the contract it found to have existed and whether compliance with the contract terms had been achieved. See Rule 56(d), SCRCP (on a summary judgment motion, the court, "by examining the pleadings and the evidence before it, and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy . . . .")

For a valid, enforceable contract to exist, there must not only be offer and acceptance, there must also be a "meeting of the minds" as to the material terms of the agreement. Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989) (citing Hughes v. Edwards, 265 S.C. 529, 220 S.E.2d 231 (1975)). "The 'meeting of minds' required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known." Id. (quoting McClintock v. Skelly Oil Co., 232 Mo.App. 1204, 114 S.W.2d 181 (Mo.App.1938)).

Where a purported acceptance differs materially from the offer, there can be no meeting of the minds; therefore, there can be no contract formed by a purported acceptance

on differing terms. Instead, an acceptance containing terms differing from the offer is a counteroffer. "A reply to an offer which purports to accept it but is conditional on the offeror's assent to terms additional to or different from those offered is not an acceptance but a counteroffer." Restatement (Second) of Contracts §59 (emphasis added).

South Carolina has applied this rule to find that a purported acceptance on different terms was a counteroffer that could then be accepted or rejected by the initial offeror. Sossamon v. Littlejohn, 241 S.C. 478, 129 S.E.2d 124 (1963). In Sossamon, two business partners entered into negotiations, via the exchange of letters, for the sale of one partner's interest in the business to the other. The negotiations began with a letter from the defendant offering to sell the business to the plaintiff on the following terms: (1) the interest was to include the one-half interest in the business and all of the real property owned by the business, (2) the price would be \$100,000, (3) all cash on hand at the time of closing would be split equally between the two, and (4) the defendant would receive the \$5,000 life insurance policy that the business carried on him.

The plaintiff replied by letter, stating that he accepted the defendant's offer. The plaintiff's letter included a check for \$1,000 and set forth the following pertinent terms: (1) the closing date would be April 1, 1959, at which time the partnership would terminate, (2) the plaintiff would have up to 60 days from April 1, 1959, to pay the balance of \$99,000 if the defendant wanted payment in cash, and (3) the defendant would transfer title in the real property to the plaintiff on April 1, 1959. The defendant disagreed with those terms and replied in writing that the plaintiff's counteroffer was rejected and the offer was withdrawn. The plaintiff then sought specific performance of what he alleged was a valid, binding

contract.

The Supreme Court disagreed. It held that the plaintiff's letter constituted a counteroffer as to the material terms of the contract because the plaintiff's acceptance changed certain terms of the offer. The Supreme Court quoted with approval the following language from Cohn v. Penn. Beverage Co, et al., 169 A. 768 (1934):

Nothing is better settled than that in order to constitute a contract there must be an offer on one side and an unconditional acceptance on the other. . . . There must be a meeting of the minds in order to constitute a contract. . . . To constitute a contract the acceptance of the offer must be absolute and identical with the terms of the offer. If one offers another to do a definite thing, and that other person accepts conditionally or introduces a new term into the acceptance, his answer is either a mere expression of willingness to treat or it is in effect a counter proposal. A qualified acceptance does not constitute a contract.

Sossamon, 241 S.C. at 485-486, 129 S.E.2d at 127-128 (emphasis added).

The Supreme Court held that because the plaintiff "imposed new or other conditions not contemplated in the offer," the plaintiff's letter "constituted a counter proposal as to a material term of the sale, to which the defendant was required to assent before there could be a meeting of the minds of the parties." Id. at 486, 129 S.E. 2d at 128. Hence, there was no contract because the defendant rejected the plaintiff's counteroffer.

Where the original offeree makes a counteroffer to the original offeror, a power of acceptance is created in the original offeror. If he accepts the terms of the counteroffer, a contract is formed and the terms of the contract are those of the counteroffer, not the offer. In Cain v. Noel, 268 S.C. 583, 587, 235 S.E.2d 292, 293 (1997), the Supreme Court stated:

If the party who made the prior offer properly expresses his

assent to the terms of the counter offer, a contract is thereby made on those terms. The fact that the prior offer became inoperative is now immaterial; and the terms of that offer are also immaterial except in so far as they are incorporated by reference in the counter offer itself.

Id. (quoting 1 Corbin on Contracts § 89, pp. 379-80.)

An acceptance of an offer (or counteroffer), may be inferred from acts and conduct even if a party does not verbally or in writing accept the offer or counteroffer. Florence City-County Airport Comm'n v. Air Terminal Parking Co., 283 S.C. 337, 341, 322 S.E.2d 471, 473 (Ct. App. 1984) ("Assent to an offer need not be expressed to constitute a contract, and may be inferred from acts and conduct.").

In this case, no meeting of the minds was formed by the City Council's vote because it approved only a part of what Stevens & Wilkinson had proposed; the additional \$75,000 per week sought by Stevens & Wilkinson was not approved by the Council.

The trial court expressly recognized the inconsistency between Stevens & Wilkinson's request for payment, which included the additional \$75,000, and the City's response, which did not, in holding that the vote on July 30, 2003, was an acceptance "albeit on seemingly modified terms." The express language in its March 23rd Order make clear that the trial court was referring to the vote on July 30, 2003, and not to later actions by the parties that may have modified any agreement between them. The trial court thus recognized and rejected the City's argument that there was no meeting of the minds created by the City Council's vote. The trial court's later determination to delete this phrase does nothing to correct the error of law in its analysis. By deleting this phrase in its Order on the City's 59(e) motion, the trial court acknowledged that there could be no acceptance on "seemingly

modified terms.”

On its Rule 59(e) Motion, the City did not argue that a contract was not formed for the payment of interim architectural fees, only (again) that it was not formed by the Council’s vote. Rather, Stevens & Wilkinson’s performance was an acceptance of the City’s counteroffer and the terms of that contract were fulfilled by that performance and the City’s payment of the only invoice presented by Stevens & Wilkinson.

This Court has more than enough undisputed evidence before it to rule as a matter of law that the City Council’s vote was not an acceptance but rather a counteroffer, and that Stevens & Wilkinson accepted this counteroffer by continuing to perform architectural and engineering work and by accepting payment for that work.<sup>5</sup> At the very least, there is a genuine issue of material fact as to whether the City Council’s vote on July 30, 2003, was an acceptance of Stevens & Wilkinson’s proposed terms for payment.

**II. The issue of whether, how and on what terms a contract was formed by the July 30, 2003 vote was argued before the trial court and, therefore, was preserved for consideration by that Court on the City’s Rule 59(e) Motion and for review by the appellate court.**

In its “Order on 59(e) Motion” dated July 23, 2009, the trial court declined to specifically address the City’s concerns about its previous order, stating that the issue was not raised at the March 10, 2009 hearing on Stevens & Wilkinson’s motion for summary judgment. Yet, the effect of the City’s vote – that is, whether the vote created a contract or not – was the issue which was raised and discussed at the summary judgment hearing. At

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<sup>5</sup>The City was actually presented with a bill by Stevens & Wilkinson for services rendered from July 10, 2003, through December 15, 2003, for \$697,084.79, which was accepted and paid. As noted, no other bill has ever been presented by Stevens & Wilkinson and a review of its original Complaint reveals that there was no specific mention of this theory until later in this litigation.

that hearing, the City articulated its position that by the Council's vote it agreed to pay – and only agreed to pay – \$650,000 in interim fees but that it never agreed to pay the additional \$75,000. (Transcript of hearing on March 10, 2009, R. p. 137, line 17-p. 138, line 18.) At the hearing on March 10, 2009, counsel for the City additionally stated:

Your Honor, there is a question of fact, there was no meeting of the minds as to what the terms of any agreement were, the Stevens Wilkinson submitted what they estimated their expenses to be to include \$75,000 per week. The minutes of the city council meetings specifically show that the city council did not approve that, there's no meeting of the minds on what the terms of the contract were that is a question of fact and it's not merely an issue of damages; therefore, summary judgment is inappropriate at this point.

(Transcript of Hearing on March 10, 2009, R. p. 140, lines 5-14.)

The trial court then ruled that the City Council's vote was an acceptance of Stevens & Wilkinson's offer "albeit on seemingly modified terms," implicitly rejecting the City's argument that it never agreed to pay the additional \$75,000 per week. Regardless of whether the phrase "counteroffer" was or was not used, the facts and arguments essential to that issue were presented to the trial court and the trial court ruled upon them.

A similar set of facts was presented to this Court in Gartside v. Gartside, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009). That case was an action for a reduction in alimony where the husband argued that the issue of imputed income was not preserved for appellate review because the wife had not specifically raised it at the hearing but only later in a 59(e) motion. Id. This Court acknowledged the general rule that an issue cannot be raised for the first time in a 59(e) motion. Id. However, the Court went on to hold that the issue of imputed income had been raised and implicitly rejected by the lower court because the wife raised the issue

of husband's underemployment at the hearing. Id. The Supreme Court held that the issue of imputed income had likewise been raised because "[u]nderemployment and imputed income go hand in hand." Id. at 43, 677 S.E.2d at 626. The issue of imputed income was, therefore, preserved for appellate review.

This Court's logic in its decision in Gartside is applicable to this appeal. Although the term "counteroffer" was not used at the hearing, the City argued there had been no meeting of the minds as to the \$75,000 additional fees and that failure to agree was reflected in the City Council's July 30, 2003 vote. The interrelationship of these two concepts is best articulated by our Supreme Court in the excerpt from Sossamon quoted above. Thus, the issue of whether the City Council's vote constituted a counteroffer is preserved for appellate review.

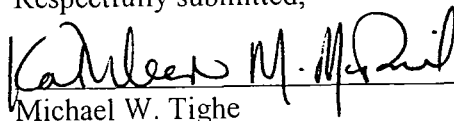
In addition, despite its July 23, 2009 Order declining to reach the issue, the trial court did in fact present an analysis of the City's counteroffer argument in that Order. The trial court held that "the City's position does not give rise to a genuine issue of material fact" because: (1) there was no counterproposal language in City Council minutes; (2) the council minutes did "not clearly preclude an acceptance of the original offer;" (3) the City continued to work with Stevens & Wilkinson beyond the bond closing date; and (4) the City paid Stevens & Wilkinson more than \$650,000. Notwithstanding that this holding is clearly contrary to the holding in Sossamon, the purpose of issue preservation is to assure that the lower court has had every opportunity to consider the issues and rule properly "after it has considered all relevant facts, law, and arguments." Gartside, 383 S.C. at 44, 677 S.E.2d at 625. In this case, the trial court clearly considered all of the facts, law, and arguments

regarding the City's counteroffer analysis and rejected it by the very terms of its subsequent order on the City's Rule 59(e) Motion. Thus, the purpose of issue preservation has been served and the counteroffer issue is preserved for review by this Court.

### CONCLUSION

Based upon the foregoing, the City of Columbia respectfully requests that this Court reverse the trial court's ruling that the City Council vote on July 30, 2003 created an enforceable contract between the City of Columbia and Stevens & Wilkinson regarding the payment for interim architectural and engineering fees of \$75,000 per week after October 15, 2003. The City additionally requests that this Court not only reverse the circuit court's grant of summary judgment in favor of Stevens & Wilkinson but also find, as the trial court should have, that the City Council vote on July 30, 2003, was a counteroffer later accepted by Stevens & Wilkinson's performance, and that the City's payment of \$697,084.79 on December 29, 2003 – and Stevens & Wilkinson's acceptance of that payment – fulfilled the terms of that contract.

Respectfully submitted,



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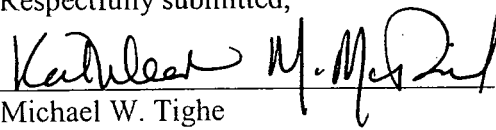
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August 11, 2010  
Columbia, South Carolina

CERTIFICATE OF COUNSEL

I hereby certify that this Final Brief of Appellant complies with Rule 211(b), SCACR.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathleen M. McDaniel", is written over a horizontal line.

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RECEIVED

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge  
Richland County

Trial Court Case No.: 05-CP-40-3361  
Court Tracking No.: 2009137906

Stevens & Wilkinson of South Carolina, Inc., Gary Realty Company, Inc., Garfield  
Fraub Development LLC, and Turner Construction  
Company

Plaintiffs

Of Whom

Stevens & Wilkinson of South Carolina, Inc. is

Respondent

City of Columbia, South Carolina, Paul C. "Bo" Aughtry III, Windsor/Aughtry Co., Inc., vista Hotel  
Partners, LLC and Hilton Hotels Corporations

Defendants

Of Whom

City of Columbia, South Carolina is

Appellant

**Final Brief of Respondent**

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## FACTS

Plaintiff Stevens & Wilkinson is an architectural firm based primarily in Columbia, South Carolina. On April 17<sup>th</sup>, 2003, Stevens & Wilkinson entered into an agreement with the City of Columbia and various other parties in the form of a "Memorandum of Understanding" ("MOU") in which all parties would work to design, fund and construct a publicly-financed hotel in downtown Columbia (the "Hotel Project"). However, after nearly a year of watching Stevens & Wilkinson and the other members of the Project Team working on the project, the City approved a privately-financed project on May 28, 2004.

Stevens & Wilkinson served as the chief architect and head of the design team responsible for much of the preliminary planning of the Hotel Project. The preliminary planning was geared towards the completion of a hotel design that was sufficient to formulate a "guaranteed maximum price". Once the preliminary designing was complete, this "guaranteed maximum price" would be utilized by the City to obtain municipal bond financing sufficient to cover the final cost of the Hotel Project.

On June 26, 2003, John Lumpkin—who served as the Development Team's liaison with the City—penned a letter on behalf of Stevens & Wilkinson to Assistant City Manager Steven Gantt notifying the City that the design team had completed the preliminary planning necessary to reach a "guaranteed maximum price" as envisioned by the MOU. As a result, Stevens & Wilkinson announced their intention to "put our pencils down" until the bond financing of the Hotel Project was finalized.

As an alternative to this delay, Stevens & Wilkinson offered to continue the design team's work on finalizing the Hotel Project plans in exchange for a promise of payment.

The issue/opportunity presented under this scenario relates to the time period between obtaining the GMP and bond closing (approximately 90 days). Provided the architectural team continues its work during this ninety (90) day period, (which work is not required for bond closing), it would enable the contractor to commence its work ninety (90) days earlier, thereby directly affecting the timeframe of the Hotel opening. In order for this to happen, the architectural team would need assurance that it would receive payment for its work performed during this particular time frame.

I enclose an estimate of the fees, which would be incurred during this 90-day period, and a weekly estimate of the fees after that, should the bond closing be delayed beyond the week of October 13, 2003. Please advise.

(R. p. 189) Stevens & Wilkinson submitted two different estimates. The first totaled \$450,000 and \$60,000 per week after October 13<sup>th</sup> and was limited to Stevens & Wilkinson's individual expenses. (R. p. 190) The second estimate totaled \$650,000 through October 13, 2003 and \$75,000 per week thereafter and included additional expenses Stevens & Wilkinson would be required to pay subcontractors. (R. p. 191). On July 30, 2003, the City responded to this offer by approving an allocation of \$650,000 to Stevens & Wilkinson "for Interim architectural design services for a period of 90 days prior to Bond Closing." (R. p. 193)

Bond closing did not proceed as scheduled on October 13<sup>th</sup>, but Stevens & Wilkinson continued to work in conjunction with the City. On December 18, 2003, Stevens & Wilkinson submitted an invoice to the City for \$697,084.79 for services

rendered through December 15<sup>th</sup>. (R. p. 197) The City released a check to Stevens & Wilkinson on December 29, 2003 in the amount of \$697,084.79 (R. p. 198).

Subsequent to this initial payment, Stevens & Wilkinson continued to work closely with the City to prepare a final set of architectural drawings for the proposed hotel. On April 2, 2004, however, the City issued a Request for Proposals for a privately-financed hotel, essentially cancelling the hotel project envisioned within the April 2003 MOU. (R. p. 221). Stevens & Wilkinson received no further compensation for its work performed subsequent to the July 30, 2003 approval of "Interim architectural fees." This litigation ensued.

After the completion of discovery, Stevens & Wilkinson moved for partial summary judgment on the following question of fact.

Stevens & Wilkinson and the City of Columbia created a contractual agreement—separate and apart from the Memorandum of Understanding—in July of 2003 for the performance of and payment for architectural and design services.

(R. p. 20). The City opposed this motion on two specific grounds.

Stevens & Wilkinson cannot assert that the City's agreement to pay the interim architectural design fees created another agreement separate and apart from the MOU because this payment (1) was merely an advance on payments that were anticipated following the bond closing and (2) was made pursuant to an agreement with Turner Construction, if anyone.

(R. p. 28). After considering all evidence in the record, the trial court granted Stevens & Wilkinson's motion for partial summary judgment, holding as follows.

While an issue may remain outstanding as to whether the July 30, 2003 agreement was later modified by the parties, the existence of a contract between the two parties is not. Stevens & Wilkinson made an affirmative offer of services for compensation to the City of Columbia through its July

21, 2003 letter. The City affirmatively accepted this offer, albeit on seemingly modified terms, via its vote of July 30, 2003. The intent of the parties to enter into a contractual agreement is further confirmed by the \$697,084.79 paid to Stevens & Wilkinson by the City on December 29, 2003. Thus the three tenants of contract have been established: offer, acceptance and valuable consideration.

Whereas the existence of a contract between Stevens & Wilkinson and the City of Columbia as a result of the July 30, 2003 agreement is the only issue now before the Court, the Court hereby grants the Plaintiff's motion for partial summary judgment.

(R. p. 6).

Subsequent to the trial court's order granting summary judgment, the City filed a Rule 59(e) motion to alter or amend. The City's Rule 59(e) motion did not request that the trial court reconsider its finding of the existence of a contract between the City and Stevens & Wilkinson, but rather requested that the trial court make an affirmative ruling as to the specific terms of that contract and, further, find that the City satisfied those terms.

[U]pon reconsideration, the City would respectfully show that this Court should correct the error of law and determine that the contract formed between Stevens & Wilkinson and the City resulted from Stevens & Wilkinson's acceptance of the City's counter-offer; that this contract's terms are clearly found in the counter-offer evidenced by the City Council's July 30, 2003 vote; and that the contract was fulfilled by the presentment by Stevens & Wilkinson of its December 18, 2003 invoice and its payment by the City.

(R. p. 100). The trial court declined to extend its ruling to these issues upon which Stevens & Wilkinson had not sought relief and which the City had not raised during the motion for summary judgment. (R. pp. 9-10).

## ARGUMENT

The City's appeal seeks to reverse the trial court's refusal to grant the additional relief requested within the City's Rule 59(e) motion. More specifically, the City does not challenge the trial court's finding of a contract between the parties at issue. Rather the City seeks to establish, as a matter of law, the terms of that contract and whether the City satisfied its duties therein.

The orders subject to this appeal should be affirmed for two reasons: first, the trial court correctly limited its ruling to the relief sought by the moving party; and second, the City's arguments are not preserved for appeal in that they did not present the arguments to the trial court in opposition to the summary judgment motion and cannot seek affirmative relief in opposition to another party's motion or Rule 59(e) petition.

### **I. The trial court correctly limited its ruling to the existence of a contract between the City of Columbia and Stevens & Wilkinson**

As a primary matter, the City's first issue on appeal does not seek to reverse the trial court's ruling as to the existence of a contract. Rather the City "disputes any interpretation of the trial court's Orders that the terms of any agreement between Stevens & Wilkinson and the City included payment of \$75,000 per week for fees after October 15, 2003." (Appellant's Brief at 7). The record is clear, however, that the trial court limited its ruling to the existence of a contract—"the only issue now before the Court"—and specifically declined to rule upon questions of liability or modification of the terms of the contract. (R. p. 8). Thus the City remains free to dispute what terms dictate its potential liability under the contract stemming from the July 30, 2003 vote and this appellate issue is moot.

Similarly, the City dedicates considerable effort to the phrase “albeit on seemingly modified terms” contained within the trial court’s original order. After the City moved for reconsideration, the trial court amended its original order by deleting this phrase from its previous findings and clarifying that “the phrase was a reference to the outstanding questions of whether the terms may have been modified by the parties after the contract was formed....”<sup>1</sup> (R. p. 10). This amendment underscores the fact that the City’s appeal over what specific terms control its liability in this case is now a non-issue.

Citing Rule 56(d), SCRCP, the City asserts that the trial court should have “entered an order clearly setting forth the terms of the contract it found to have existed and whether compliance with the contract terms had been achieved.” (Appellant’s Brief at 8). The text of Rule 56, however, contains no such mandate.

If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted.

Rule 56(d), SCRCP. Consistent with these guidelines, the trial court recognized that the only request for relief before it was that of Stevens & Wilkinson as to the existence of a contract. The court determined that such a contract existed, but also recognized that disputed issues remained as to whether that contract was breached or whether the terms of the contract themselves were modified by the parties. (R. p. 8). Rule 56 requires

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<sup>1</sup> This amendment and clarification contradicts the City’s assertion that “[t]he express language in its March 23<sup>rd</sup> Order make clear that the trial court was referring to the vote on July 30, 2003, and not to later actions by the parties that may have modified any agreement between them.” (Appellant’s Brief at 11).

nothing more for to do so would be to place the trial court in the position of advocating relief which the moving party did not request.

The City's reliance upon *Sossamon v. Littlejohn*, 241 S.C. 478, 129 S.E.2d 124 (1963) is both procedurally and factually irrelevant. First, as the trial court noted, the City did not attempt to establish the terms of the contract between it and Stevens & Wilkinson until after summary judgment had been granted. (R. p. 9). Second, the trial court also recognized that, even if the issue was properly before the court, the City's "counteroffer" theory does not pair with the facts in evidence.

[T]he fact that the City continued to work with Stevens & Wilkinson beyond the bond closing date and paid Stevens & Wilkinson more than the \$650,000 further supports their acceptance of the initial offer. "Assent to an offer need not be expressed to constitute a contract, and may be inferred from acts and conduct."

(R. p. 10). Indeed, were one to adopt the City's proposed construction of the contract arising out of the July 30, 2003 vote, one would have to ignore the subsequent acts of the parties in working beyond October 15, 2003 for monies in excess of \$650,000. "[E]vidence that a party complied with the terms of the alleged contract or acted in conformity therewith is relevant and admissible on the issues of the contract's existence, the meaning of its terms, and whether the contract was breached." *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 593, 658 S.E.2d 539, 543 (Ct. App. 2008), reh'g denied (Mar. 25, 2008), quoting *Conner v. City of Forest Acres*, 363 S.C. 460, 473, 611 S.E.2d 905, 912 (2005).

The trial court emphasized, however, that the only issue before it was the existence of a contract—not the meaning of its terms or its potential breach. (R. p. 8; R. pp. 9-10). Thus, while the evidence is inconsistent with the City's proposed construction

of the contract, this issue remains in dispute and may be addressed by the parties upon remand.

**II. The issue of contractual satisfaction was not properly raised before the trial court and thus is not preserved for review**

The City's basis for appeal also is fundamentally flawed in that it failed to argue contractual compliance or satisfaction prior to its Rule 59(e) motion to alter or amend. In fact, the City's principal defense to Stevens & Wilkinson's motion for summary judgment was that no contract existed at all. More specifically, the City argued that

Stevens & Wilkinson cannot assert that the City's agreement to pay the interim architectural design fees created another agreement separate and apart from the MOU because this payment (1) was merely an advance on payments that were anticipated following the bond closing and (2) was made pursuant to an agreement with Turner Construction, if anyone.

(R. p. 28). After these positions were rejected by the trial court, the City changed its strategy to insist that the July 30, 2003 vote did give rise to a contract, but under terms that were later satisfied by the City's \$697,000 payment in December of 2003.

[U]pon reconsideration, the City would respectfully show that this Court should correct the error of law and determine that the contract formed between Stevens & Wilkinson and the City resulted from Stevens & Wilkinson's acceptance of the City's counter-offer; that this contract's terms are clearly found in the counter-offer evidenced by the City Council's July 30, 2003 vote; and that the contract was fulfilled by the presentment by Stevens & Wilkinson of its December 18, 2003 invoice and its payment by the City.

(R. p. 100).

"[A] party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not." *RRR, Inc.*

v. *Toggas*, 378 S.C. 174, 185, 662 S.E.2d 438, 443 (S.C. Ct. App. 2008), reh'g denied (June 26, 2008), *cert. granted, decision aff'd*, 381 S.C. 490, 674 S.E.2d 170 (2009), citing *Dixon v. Dixon*, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Gartside v. Gartside*, 383 S.C. 35, 43, 677 S.E.2d 621, 625 (Ct. App. 2009), citing *I'On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

Relying upon *Gartside*, the City claims that its questions of offer/acceptance and satisfaction were "implicitly rejected" by the trial court. The City reasons that this implicit rejection stems from its unsuccessful argument that no contract existed as a result of the July 30, 2003 vote. But "no contract" and "contractual satisfaction" are not analogous arguments which, as in *Gartside*, "go hand in hand." *Id.* at 43, 677 S.E.2d at 626. Thus issues at hand were never properly before the trial court.

The impropriety of the City's leap from its "no contract" defense to "contractual satisfaction" is underscored by the extraordinary relief it seeks from this appeal. More specifically, the City

additionally requests that this Court not only reverse the circuit court's grant of summary judgment in favor of Stevens & Wilkinson but also find, as the trial court should have, that the City Council vote on July 30, 2003, was a counteroffer later accepted by Stevens & Wilkinson's performance, and that the City's payment of \$697,084.87 ... fulfilled the terms of that contract.

(Appellant's Brief at 15). Very simply, the City—in a somewhat round-about manner—requests that the Court of Appeals grant it summary judgment as to any claims stemming from the July 30, 2003 vote. The City's major problem, however, is that it never moved

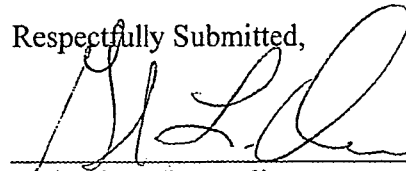
for summary judgment on these grounds. In fact, as the trial court noted, even Stevens & Wilkinson's motion did not go to the ultimate issue of breach of contract. "My previous order did not rule on the question of the breach of contract or any damages related thereto. Thus it would be inappropriate for me to make extend [sic] a ruling in this case." (R. p. 10).

For the reasons stated above, the issues the City seeks to litigate were never properly before the trial court and have not been preserved for appeal.

### CONCLUSION

Based upon the facts, analysis and authority set forth above, the ruling of the trial court should be affirmed.

Respectfully Submitted,



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September 13, 2010  
Columbia, South Carolina

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge  
Richland County

---

Trial Court Case 05-CP-40-3361

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Stevens & Wilkinson of South Carolina, Inc., Gary Realty Company, Inc., Garfield  
Traub Development LLC., and Turner Construction  
Company, .....Plaintiffs,

Of Whom  
Stevens & Wilkinson of South Carolina Inc. is Respondent

v.

City of Columbia, South Carolina, Paul C. "Bo" Aughtry, III, Windsor/Aughtry Co., Inc., vista  
Hotel Partners, LLC, and Hilton Hotels Corporations .....Defendants,

Of Whom  
City of Columbia, South Carolina is Appellant

---

**CERTIFICATE OF SERVICE**

---

I, Heather Hardy, legal assistant to RICHARD A. HARPOOTLIAN, P.A., attorney for  
Respondent Stevens & Wilkinson of South Carolina, Inc., do hereby certify that I have served  
the below listed document, Via Hand Delivery, on September 17, 2010, to the individuals listed  
below:

**Document:** 1) Final Brief of Respondent.

**Served:** Michael Tighe, Esquire  
D. Reece Williams, Esquire  
Kathleen M. McDaniel, Esquire  
Richard C. Detwiler, Esquire  
Callison Tighe & Robinson, LLC  
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Heather Hardy

RECEIVED

AUG 11 2010

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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Case No. 2005-CP-40-3361

---

Stevens & Wilkinson of South Carolina, Inc. .... Respondent,

vs.

City of Columbia, South Carolina ..... Appellant.

---

**FINAL REPLY BRIEF OF APPELLANT**

---

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August 11, 2010  
Columbia, South Carolina

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## REPLY ARGUMENTS

The City maintains its position that there could not, as a matter of law, have been a contract between the City and Stevens & Wilkinson based only on the City Council action of July 30, 2003. (Brief of Appellant, p. 12.) At the hearing on Stevens & Wilkinson's motion for summary judgment, the City argued that the July 30, 2003 action by City Council did not result in a new contract with Stevens & Wilkinson because the terms of the City Council vote differed materially from Stevens & Wilkinson's offer. Although the lower court found the City Council action to be an acceptance of Stevens & Wilkinson's offer, even it recognized the discrepancy between Stevens & Wilkinson's request and the City Council's vote, holding, "The City affirmatively accepted this offer, albeit on seemingly modified terms, via its vote of July 30, 2003." (Order, dated March 23, 2009, R. p. 8, lines 13-14.)<sup>1</sup>

When the lower court ruled that there was a contract formed by the July 23, 2003 City Council action, the City made a proper motion under Rule 59(e), pointing out the basic

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<sup>1</sup>Although Stevens & Wilkinson relies heavily on the lower court's retraction in its subsequent Order of the phrase "albeit on seemingly modified terms," it is clear from the syntax of the first Order that the lower court was indeed referring to the City Council's vote and not to any later interactions between the parties. (Order, dated March 23, 2009, R. p. 8, lines 13-14.) The subsequent Order was drafted by Respondent's counsel and handed to the lower court at the hearing on the Rule 59(e) motion, with the following commentary from counsel:

Now, we have given you a proposed Order because we think your words albeit unseemingly [sic] modified term - - they are applying that to the original contract. We believe the Court meant the phrase was a reference to the outstanding question of whether the terms may have been modified by the parties after the contract was formed, which obviously would be a jury issue at some point down the line.

(Transcript of Hearing, July 1, 2009, R. p. 161, lines 1-8.)

contract law error made by the lower court (i.e., that a purported acceptance on terms that differ from the offer is not an acceptance sufficient to form a contract but is, in fact, a counteroffer). (City of Columbia's Motion to Alter or Amend the Judgment pursuant to Rule 59(e), R. pp. 97-105.) If any contract was formed between the parties, it had to have been formed by Stevens & Wilkinson's acceptance of the City's counteroffer.

The City also argued that the lower court had the authority to determine the terms of the contract as created by Stevens & Wilkinson's acceptance of the City's counteroffer. (Motion to Alter or Amend, R. p. 100; Transcript of Hearing on July 1, 2009, R. p. 159, lines 16-17.) However, the lower court refused to determine the terms of any contract between the parties, stating, "My previous order, however, was constrained to the existence of the contract." (Order, dated July 23, 2009, R. p. 9, line 16.) The question posed by the City is—"If such a contract existed, what were its terms?" Stated another way—"If the lower court cannot identify the terms of the contract, how did it determine that one even existed?"

Stevens & Wilkinson argues that the City requested "additional relief" by asking the lower court to define the terms of any contract between the parties. (Brief of Respondent, p. 5.) Such a request is not additional relief, but is instead required as a matter of law.

As explained by the City at the first hearing (Transcript of Hearing on March 10, 2009, R. p. 140, lines 5-14.) and in its Brief (Brief of Appellant, pp. 8-11), in order for a contract to exist, there must be a "meeting of the minds" as to all of the essential and material terms of the contract. Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989); Hardaway Concrete Co., Inc. v. Hall Contracting Corp., 374 S.C. 216, 647 S.E.2d 488 (Ct. App. 2007). Without material terms, there is no contract, but only an agreement to agree on terms in the

future. Aperm of South Carolina v. Roof, 290 S.C. 442, 351 S.E.2d 171 (Ct. App. 1986).

Logically, it is impossible for a contract to exist without known material terms because the parties must know the terms to which they are bound. Thus, the lower court as a matter of law could not determine the existence of a contract without also determining its terms. The lower court had to determine the material terms of any contract formed between Stevens & Wilkinson and the City as a prerequisite to finding that a contract even existed. In this case, it did not.

The lower court had authority to do so not only as a matter of substantive law, but also as a matter of procedural law. Rule 56(d), states that the lower court, "shall if practicable ascertain what material facts exist without substantial controversy." Rule 56(d), SCRCF. The word "shall" mandates that the lower court ascertain the uncontroverted material facts. Where the material facts are uncontroverted, a lower court has a responsibility to deem those facts as established for trial. See Chambers v. Pingree, 334 S.C. 349, 356, 513 S.E.2d 369, 373 (Ct. App. 1999).

In this case, the material facts are uncontroverted and should have been found as such by the lower court. Stevens & Wilkinson made an offer to the City, the City Council vote responded to the offer with different terms, Stevens & Wilkinson continued working, and the City subsequently paid Stevens & Wilkinson the amount set forth in the City Council vote.<sup>2</sup> These uncontroverted facts lead to only one possible conclusion of law—the City Council's vote was a counteroffer that was accepted by Stevens & Wilkinson's performance and the

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<sup>2</sup>The City acknowledges that the payment to Stevens & Wilkinson was slightly greater than the amount approved by City Council, but this was nothing more than an oversight by the City to the benefit of Stevens & Wilkinson.

City fully performed under the terms of the contract between the parties. The lower court's failure to determine the terms of the contract and the sufficiency of the City's performance was an error of law, where such a determination was and is the only legal conclusion to be drawn from the uncontroverted facts.

Stevens & Wilkinson argues that it was appropriate for the lower court to refuse to find the terms of any contract between the parties because that contract may have been modified by later actions of the parties.<sup>3</sup> (Brief of Respondent, pp. 6-7.) However, Stevens & Wilkinson's argument misses the crucial point that at the time the contract was formed, if it was formed, there must have been material terms agreed to by both parties. Any later negotiations or modifications of those terms are completely irrelevant to the original terms of the contract at the time that the contract came into existence. Indeed, how could a subsequent trial court determine if contractual "modifications" were made if the original terms were unclear? Even in its brief, Stevens & Wilkinson fails to posit any material terms of the contract. Obviously, leaving unresolved the matter of the terms of the contract at the time of contract is of great benefit to Stevens & Wilkinson because such vagueness glosses over the glaring difference between Stevens & Wilkinson's proposal and the City Council vote. But, if Stevens & Wilkinson insists that the terms of the agreement were unknowable at the time that the agreement arose, then such a transaction would be, as a matter of law, an unenforceable and non-binding agreement to agree.

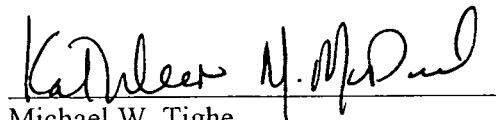
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<sup>3</sup>There is no evidence in the record to support Stevens & Wilkinson's proposition that any contract between the parties may have been later modified.

### CONCLUSION

Based upon the foregoing and in conjunction with the Brief of Appellant, the City of Columbia respectfully requests that this Court reverse the lower court's grant of summary judgment in favor of Stevens & Wilkinson. The City requests that this Court determine that there is a question of fact as to whether the City Council vote on July 30, 2003, was an acceptance of an offer by Stevens & Wilkinson. Additionally, this Court has sufficient facts and properly-preserved arguments before it to determine that the City Council vote was in fact a counteroffer later accepted by Stevens & Wilkinson and that the City has fulfilled the terms of any contract between the parties.

Respectfully submitted,



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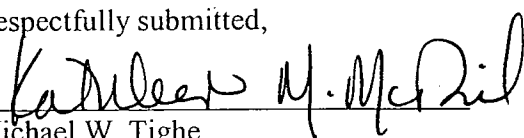
ATTORNEYS FOR APPELLANT

Columbia, South Carolina  
August 11, 2010

CERTIFICATE OF COUNSEL

I hereby certify that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

Respectfully submitted,



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August 11, 2010

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR  
RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY  
RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Stevens & Wilkinson of South Carolina, Inc.,  
Respondent,

v.

City of Columbia, Appellant.

---

Appeal From Richland County  
L. Casey Manning, Circuit Court Judge

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Unpublished Opinion No. 2011-UP-519  
Heard September 13, 2011 – Filed November 29, 2011

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**AFFIRMED AS MODIFIED**

---

Michael W. Tighe, D. Reece Williams, III,  
Kathleen M. McDaniel, and Richard C.  
Detwiler, all of Columbia, for Appellant.

Richard A. Harpootlian and Graham L.  
Newman, both of Columbia, for Respondent.

**PER CURIAM:** Stevens & Wilkinson of South Carolina, Inc. alleges it had a contract with the City of Columbia to pay Stevens & Wilkinson for architectural services. The circuit court granted partial summary judgment for Stevens & Wilkinson, finding it had a contract with the City. We affirm as modified.

## **I. Facts**

In April 2003, the City entered into a Memorandum of Understanding (MOU) with a team of firms, including Stevens & Wilkinson, regarding the development of a hotel in downtown Columbia. The MOU called on the team members and the City to perform various tasks that would enable the parties to calculate a guaranteed maximum price for construction of the hotel.

In July 2003, Stevens & Wilkinson completed preliminary plans sufficient to determine the guaranteed maximum price. Stevens & Wilkinson offered to continue working on hotel plans in order to facilitate an earlier construction start date. Because this proposed work went beyond the scope of services described in the MOU, Stevens & Wilkinson asked for assurance that it would receive payment for the additional work. Stevens & Wilkinson submitted a cost estimate of \$650,000.00 for a ninety-day period ending October 13, 2003, and \$75,000.00 per week thereafter.

On July 30, 2003, City Council voted on Stevens & Wilkinson's proposal. The minutes of Council's work session state Council voted to approve "\$650,000.00 for interim architectural design services for a period of ninety days prior to Bond Closing." The minutes say nothing about the proposed additional \$75,000.00 per week for work performed after October 13. Stevens & Wilkinson continued to work on the plans for the next several months.

On December 18, 2003, Stevens & Wilkinson sent the City an invoice for "professional services for the period July 10, 2003 through December 15, 2003." The invoice listed \$660,762.20 in fees and \$36,322.59 in "expenses to date," for a total of \$697,084.79. The City issued a check for the invoiced amount on December 22, 2003. The development team and the City continued working on the hotel project and met for regular, weekly meetings through at least February 25, 2004. Ultimately, in May 2004, the City chose another team's proposal to build the hotel.

## **II. Procedural History**

Stevens & Wilkinson sued the City for breach of contract, quantum meruit, breach of the duty of good faith and fair dealing, and estoppel. Stevens & Wilkinson later filed a motion for partial summary judgment asking the circuit court to find Council's July 2003 vote created a contract. The circuit court granted partial summary judgment to Stevens & Wilkinson, finding Council's vote was an acceptance of Stevens & Wilkinson's offer. Limiting itself to the question of whether a contract existed, the court left open the question of whether the parties later modified the contract.

The City filed a motion under Rule 59(e), SCRCP, asserting its approval of the \$650,000.00 was a counteroffer that did not include the \$75,000.00 per week term. The City argued that Stevens & Wilkinson accepted its counteroffer by doing the work and that Stevens & Wilkinson's acceptance of payment in December "was the end of that contract." The circuit court denied the City's motion, finding the issue of whether the City's payment satisfied the contract was outside the scope of its previous order, which addressed only the issue of the existence of a contract.

## **III. Existence of a Contract**

Stevens & Wilkinson contends it made an offer to perform \$650,000.00 in architectural work, plus \$75,000.00 per week after October 13, and the City accepted the offer in Council's vote of July 30, 2003. We disagree. Because the terms of the vote differed from the terms of the offer, the vote could not have been an acceptance. See Weisz Graphics Div. of Fred B. Johnson Co., v. Peck Indus., Inc., 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991) ("At common law, no contract is formed if the acceptance varies the terms of the offer. Instead, an acceptance which adds different or additional terms is treated as a counteroffer, which may be accepted or rejected by

the other party." (internal citation omitted)); see also Berkeley Elec. Coop., Inc. v. Town of Mount Pleasant, 308 S.C. 205, 208, 417 S.E.2d 579, 581 (1992) ("Municipal records properly authenticated or verified are the only competent evidence of the proceedings of the transactions of the governing body. Parol evidence cannot be admitted to explain, enlarge, or contradict minutes of the proceeding of a town council unless the minutes are incomplete or ambiguous." (internal citations omitted)). Therefore, we find the circuit court erred in finding the July 2003 vote constituted an acceptance.

Nevertheless, the parties agreed at oral argument that a contract was formed for at least \$650,000.00. They disagreed as to how the contract was formed and as to its terms. As a result of our finding that the circuit court erred in adopting Stevens & Wilkinson's theory that the contract was formed by the City's July 2003 vote, we are left with the City's theory that the vote was a counteroffer that Stevens & Wilkinson accepted by performance. We find the contract was formed by a counteroffer and subsequently accepted by performance. We therefore affirm the circuit court's ruling that there was a contract between the City and Stevens & Wilkinson. We remand for a jury to determine the terms of the contract based on all of the surrounding circumstances, including whether the terms of the contract were later modified. The jury must then determine whether the City breached the contract, and, if so, damages.

The City argues its payment of \$697,084.79 satisfied its contractual obligations to Stevens & Wilkinson. The circuit court did not rule on this issue, and thus it is not preserved for review. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (stating issue preservation requires that an issue be raised to and ruled upon by the trial court). The judgment of the circuit court is

**AFFIRMED AS MODIFIED.**

**FEW, C.J., and THOMAS and KONDUROS, JJ., concur.**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

**RECEIVED**

DEC 14 2011

Case No. 2005-CP-40-3361

**SC Court of Appeals**

Stevens & Wilkinson of South Carolina, Inc. .... Respondent,

vs.

City of Columbia, South Carolina ..... Appellant.

**PETITION FOR REHEARING**

This Court, in its unpublished Opinion No.2011-UP-519 ("Opinion"), which was filed on November 29, 2011, affirmed as modified the lower court's order granting partial summary judgment to the Respondent Stevens & Wilkinson of South Carolina, Inc. ("Stevens & Wilkinson"), filed on March 23, 2009; and the order denying the Appellant City of Columbia's ("the City") motion to alter or amend, filed on July 23, 2009.

The City appealed on two grounds: First, the City argued that the trial court erred as a matter of law in its ruling regarding the manner in which a contract was formed between the City and Stevens & Wilkinson. Second, the City argued that the trial court erred as a matter of law because even though the trial court found that a contract was formed between the parties, it failed to make a determination of the terms of that contract. This Court agreed

with the City as to the manner of formation of the contract and affirmed the lower court as modified. This Court, however, misapprehended or overlooked three other issues, and it is these issues as to which the City respectfully submits this Petition for Rehearing, pursuant to Rule 221(a) and Rule 240 of the South Carolina Appellate Court Rules.

### ARGUMENT

**I. THIS COURT MISAPPREHENDED OR OVERLOOKED THE CITY'S ARGUMENT THAT THE TERMS OF THE CONTRACT ARE DICTATED AS A MATTER OF LAW BY THE MANNER OF CONTRACT FORMATION.**

The trial court held that, by a vote on July 30, 2003, of the Columbia City Council, the City accepted Stevens & Wilkinson's offer to perform additional work on the development of the proposed Convention Center Hotel. The City argued that the trial court erred as a matter of law in finding that the Columbia City Council vote was an acceptance of Stevens & Wilkinson's offer rather than a counteroffer subsequently accepted by Stevens & Wilkinson's performance. This Court agreed with the City, and in its Opinion held that a contract between the City and Stevens & Wilkinson was formed by Stevens & Wilkinson's acceptance of the City's counteroffer.

This Court misapprehended, however, that it could not find the terms of such contract as a matter of law. The South Carolina Supreme Court has addressed which terms constitute a contract where there is an offer, counteroffer, and acceptance.

If the party who made the prior offer properly expresses his assent to the terms of the counter offer, a contract is thereby made **on those terms**. The fact that the prior offer became inoperative is now immaterial; and the terms of that offer are also immaterial except in so far as they are incorporated by reference in the counter offer itself.

Cain v. Noel, 268 S.C. 583, 587, 235 S.E.2d 292, 293 (1997) (quoting 1 Corbin on Contracts § 89, pp. 379-80) (emphasis added). The South Carolina Supreme Court subsequently held, "The **offer identifies the bargained for exchange** and creates a power of acceptance in the offeree." Prescott v. Farmers Tel. Co-op., Inc., 516 S.E.2d 923, 926 (1999) (citing Carolina Amusement Co., Inc. v. Connecticut Nat. Life Ins. Co., 313 S.C. 215 220, 437 S.E.2d 122, 125) (1993)) (emphasis added).

Accordingly, as a matter of law, the terms of a contract are dictated by the terms of the offer, or in this case, the counteroffer. When the counteroffer is accepted, the only terms remaining to be accepted are those in the counteroffer, and only those terms can become the terms of the contract.

In this case, the terms of the counteroffer can only be those presented in the Columbia City Council's vote of July 30, 2003. As this Court points out in the Opinion, the terms of the counteroffer are dictated by the Columbia City Council vote as recorded in its minutes. Berkeley Electric Coop. v. Town of Mount Pleasant, 308 S.C. 205, 208, 417 S.E.2d 579, 581 (1992). The minutes of the Columbia City Council meeting are the only evidence of the Columbia City Council's decision, and parol evidence cannot be admitted to vary or contradict the terms in those minutes. Id. Thus, the terms of the City of Columbia's counteroffer are limited to those terms recorded in the Columbia City Council minutes of the July 30, 2003 vote. Those terms were limited to payment to Stevens & Wilkinson of \$650,000.00 for interim architectural services for a period of 90 days prior to bond closing. Nowhere in the recording of Columbia City Council's vote is there any mention of the body voting to approve the payment of \$75,000.00 per week for services beyond the said 90 day

period. (Minutes of July 30, 2003 Columbia City Council meeting, R.p.577.) Because the terms of the contract were dictated as a matter of law by the terms of the City's counteroffer, this Court should vacate its Opinion remanding the issue for determination by a jury and rule as a matter of law that the terms of the contract were that the City would pay Stevens & Wilkinson \$650,000.00 for interim architectural services **and nothing more**.

The City additionally argued that the trial court erred in failing to ascertain the terms of the contract formed between the City and Stevens & Wilkinson, in accordance with Rule 56(d), South Carolina Rules of Civil Procedure. Whether by misapprehension or being overlooked, the Opinion does not address this portion of the City of Columbia's appeal.

Rule 56(d) provides that a trial court "shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted." The use of the word "shall" indicates it is mandatory that the trial court make such ruling where practicable when considering a motion for partial summary judgment.

In this case, there were no remaining controverted material facts regarding the terms of the contract between Stevens & Wilkinson and the City because, as a matter of law, the City's counteroffer set the terms of the contract at the time of the contract's formation. The trial court's failure to make such a ruling pursuant to Rule 56(d) was an error of law, which this Court should have addressed and corrected in its Opinion by setting forth the terms of the contract as they should have been found by the trial court.

Thus, the City respectfully requests that this Court amend its Opinion so as rule as a matter of law that the terms of the contract are only the narrow terms identified in the

Columbia City Council's vote on July 30, 2003 and that the trial court had the authority and the duty, pursuant to Rule 56(d), to make the same determination.

**II. THIS COURT MISAPPREHENDED THAT THE TERMS OF THE CONTRACT COULD BE DETERMINED ON REMAND IN LIGHT OF SURROUNDING CIRCUMSTANCES.**

In its Opinion, this Court remanded the case "for a jury to determine the terms of the contract based on all of the surrounding circumstances." As set forth above, as a matter of law the terms of the contract are only those terms contained in the Columbia City Council's vote on July 30, 2003. The Supreme Court made it clear in Berkeley Electric Coop. that unless there is evidence that the minutes of a town council are incomplete or ambiguous parol evidence cannot be admitted to "explain, enlarge, or contradict minutes of a proceeding of a town council." Id. at 208, 417 S.E.2d at 581.

In this case, the minutes are complete and unambiguous on their face, and they definitively state the terms approved by Columbia City Council. Thus, no parol evidence of "surrounding circumstances" is admissible to explain, enlarge, or contradict the terms of the City of Columbia's counteroffer as set forth in the recorded vote of Columbia City Council. The City of Columbia, accordingly, requests that this Court modify its Opinion to vacate its remand for a jury to determine the terms of the contract based on all surrounding circumstances.

**III. THIS COURT MISAPPREHENDED THAT THERE COULD BE EVIDENCE IN THE RECORD OF MODIFICATION OF THE CONTRACT.**

In its Opinion, this Court also remanded the case for a jury to determine whether the contract had been modified after it was created by Stevens & Wilkinson's acceptance of the

City's counteroffer. The only manner in which the contract could have been modified would have been by another vote of Columbia City Council convened as such and voting on the specific matter of contract modification. The actions of any individual could not bind the City. There is absolutely no evidence in the record regarding modification of the contract by the Columbia City Council after formation and none was presented to this Court.

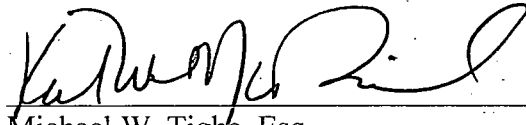
The only basis for this Court or the trial court to find even the possibility of modification is the bare contention of counsel for Stevens & Wilkinson that there may have been some modification after contract formation. Without some evidentiary support, Counsel's contentions are an insufficient basis to create a question of fact to be remanded to the jury. Accordingly, the City respectfully requests that this Court vacate the portion of its Opinion remanding to the jury the question of whether there was subsequent modification of the contract between Stevens & Wilkinson and the City of Columbia.

### **CONCLUSION**

Based upon the foregoing, the City respectfully requests this Petition for Rehearing be granted and that this Court amend its Opinion: (1) to rule as a matter of law that the terms of the contract between Stevens & Wilkinson and the City of Columbia are limited to \$650,000.00 for architectural services rendered, (2) vacate the portion of its Opinion remanding the case to the jury for a determination of the terms of the contract based on all of the surrounding circumstances, and (3) vacate the portion of its Opinion remanding the case to a jury for a determination of whether the contract was subsequently modified.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Michael W. Tighe", written over a horizontal line.

Michael W. Tighe, Esq.

D. Reece Williams, III, Esq.

Richard C. Detwiler, Esq.

Kathleen M. McDaniel, Esq.

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**ATTORNEYS FOR APPELLANT  
CITY OF COLUMBIA**

Columbia, South Carolina

December 14, 2011

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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Case No. 2005-CP-40-3361

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Stevens & Wilkinson of South Carolina, Inc. .... Respondent,

vs.

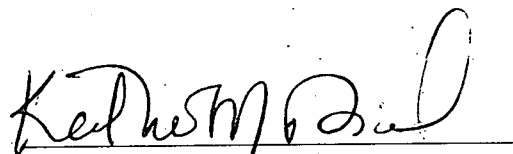
City of Columbia, South Carolina .... Appellant.

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**PROOF OF SERVICE**

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I, Kathleen M. McDaniel, an attorney with the law firm of Callison, Tighe & Robinson, LLC, hereby certify that I have served the **Petition for Rehearing** on the Respondent herein, by causing copies of same to be hand-delivered, to its attorneys of record, Richard A. Harpootlian and Graham L. Newman, at 1410 Laurel Street, Columbia, South Carolina 29202, on December 14, 2011:

  
Kathleen M. McDaniel

Columbia, South Carolina

December 14, 2011

**RECEIVED**

DEC 14 2011

**SC Court of Appeals**

# The South Carolina Court of Appeals

Stevens & Wilkinson of South  
Carolina, Inc.,

Respondent,

v.

City of Columbia,

Appellant.

The Honorable L. Casey Manning  
Richland County  
Trial Court Case No. 2005-CP-40-03361

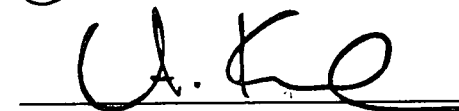
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## ORDER DENYING PETITION FOR REHEARING

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PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

  
C.J.  
  
J.  
  
J.

Columbia, South Carolina

cc: Michael W. Tighe  
Richard C. Detwiler

D. Reece Williams, III  
Kathleen M. McDaniel  
Graham L. Newman

**FILED**

January 27, 2012