



## 2017 DOWNTOWN DEVELOPMENT PROJECT Request for Proposals (RFP)

DECEMBER 2, 2016

Proposals Due  
3:00 p.m., February 3, 2017

City of Aiken  
City Manager's Office  
P.O. Drawer 1177  
Aiken, SC 29802  
(803) 642-7654  
[sbedenbaugh@cityofaikensc.gov](mailto:sbedenbaugh@cityofaikensc.gov)

# 2017 DOWNTOWN DEVELOPMENT PROJECT

## Issue Date: December 2, 2016

Respondents interested in being considered for this work should respond with one (1) original and 15 copies of a cover letter and proposal addressing the project requirements no later than 3:00 p.m. on February 3, 2017, and must clearly be marked "2017 DOWNTOWN DEVELOPMENT PROJECT." Any submittal received after this date and time will not be considered and will be returned unopened to the firm. The submittal must be signed by an official authorized to bind Developer to the project. The submittal must contain all of the evaluation criteria listed in the RFP.

### Return this signed form with Proposal

Must include an original copy signed in **blue ink** by a person duly authorized to legally bind the person, partnership, company or corporation submitting the proposal.

Send Proposals to:

#### US Postal Mail Address

City of Aiken  
 Attn: Mr. Stuart Bedenbaugh  
 RFP 2017-01  
 P.O. Drawer 1177  
 Aiken, SC 29802

#### Street Delivery Address

City of Aiken  
 Attn: Mr. Stuart Bedenbaugh  
 RFP 2017-01  
 135 Laurens Street SW Aiken, SC 29801

Phone 803-642-7654

The City of Aiken reserves the right to consider modifications to submittals prior to the award of a contract, and to reject any and all submittals as a result of the RFP. The City of Aiken is not liable for any costs incurred by respondents prior to contract award. The following statement must be certified by the proposing Developer:

**By signing this Statement, I certify that we [our firm] will comply with all requirements of Section 44- 107-10 et. seq., relating to the S.C. Drug Free Workplace Act:**

Authorized Signature	Printed Name	Date	
Company			
City	State	Zip	Phone

# Request for Proposal 2017 DOWNTOWN DEVELOPMENT PROJECT

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## I. Background

### PREFACE

General Matters: The City of Aiken (the “City”) is requesting proposals from Developers to enter into agreements to effect a Design-Build-Operate-Maintain delivery for the 2017 Downtown Development Project (“Project”). The RFP is a formal document generally governed by the provisions of the City of Aiken Procurement Code (the “Procurement Code”). The City may amend or modify the terms and provisions hereof and may abandon the procurement as it determines to be in the best interest of the City. The Table of Contents is merely a guide to the RFP and the Table of Contents and the headings adopted herein are for convenience. Neither the Table of Contents nor the headings limit or control the interpretation hereof. Developers must review the entire RFP as the text of the RFP may be broader or narrower than might be inferred from the Table of Contents or the headings.

The City intends to select a single Developer. Developers must identify major entities other than the Developer to provide specific elements of the Project. These entities must include at a minimum (i) the architectural firm or firms who will be providing design services for the project; (ii) civil, structural and MEP engineers; (iii) firms who provide services to accommodate existing local businesses occupying the project development area (iv) the general contractors who will provide construction services for the Project; (v) any entities that will provide management for any part of the Project; (vi) any financial entities who will provide financing for the Project; (vii) any law firms who will provide legal services for the Developer; (viii) any entities that the developer anticipates will provide operations and maintenance (as appropriate) if not performed by the Developer and (ix) any partners or other entities who will provide funding, like kind or other services to the Developer and who will gain any ownership or beneficial interest in or revenue from the Project. The other entities identified will be considered to participate with the Developer as Subcontractors. Any additions to or changes to the Subcontractors in connection with a Proposal are subject to review and approval by the City. If a Developer does not name other entities, then that Developer’s proposal will be evaluated assuming that the Developer will self-perform all functions and any later decision to include other entities in any of these roles will also require review and approval of these entities prior to their use by the Developer.





## HISTORY OF AIKEN, SOUTH CAROLINA

Three historical events generally shaped the physical development of Aiken: construction of the railroad line between Charleston, SC. and Hamburg, SC. in the 1830's, the development of a winter resort industry based on equestrian sports in the 1880's, and the establishment of the Savannah River Plant, a nuclear weapons facility, in the 1950's. Today, Aiken reflects the influence of these events in the layout of its streets, the distribution of its neighborhoods, and the remarkable architecture spread throughout the City limits.

One of Aiken's most outstanding and characteristic features is its layout and parkways. Aiken's regular grid of boulevards creates a checkerboard of commercial and residential streets. The parkways are divided boulevards with landscaped medians, creating a network of linear parks connecting different areas of the city. Aiken's design is a direct result of the construction of the first major passenger railway line built in the United States. Leaders of the South Carolina Railroad and Canal Company wanted to develop real estate along the line to appeal to South Carolina residents wanting to escape the heat and disease associated with the summer months. The company's engineers designed the town of Aiken to have plenty of trees and open spaces which were believed to provide a healthier living environment.

Almost immediately after Aiken's founding, people began to promote the town as a vacation destination, highlighting the mild climate during the winter. In the last decades of the nineteenth and the first half of the twentieth century, Aiken became known as a winter resort destination. The "Golden Era" of the Winter Colony began in the 1880's, when Mr. and Mrs. Thomas Hitchcock actively developed the area as a winter training ground for horses. For the next sixty years, Aik-

en attracted prominent businessmen and wealthy families from across the country who moved to Aiken during the winter season to enjoy the “leisurely, outdoor atmosphere.” In the early years of the Winter Colony, visitors often rented houses or rooms in town, but over the following decades, families constructed their own homes, some establishing permanent residence in Aiken. In this period, families associated with the Winter Colony built exquisite mansions, often accompanied by extensive stable facilities and adorned with lavish, formal gardens. The Second World War, coming on the heels of the Great Depression, disrupted the seasonal arrival of winter visitors.

In 1952, the Atomic Energy Commission constructed the Savannah River Plant, an atomic energy facility on the Savannah River, at a site approximately fifteen miles from Aiken. Thousands of construction workers and plant personnel arrived in Aiken, first occupying hastily constructed temporary housing and then establishing new residential subdivisions pushing up against the historic neighborhoods of Aiken. Much of the plant-related residential development occurred south of town, along Whiskey Road, the main artery connecting Aiken to the Savannah River Plant.



Few small cities in the United States can rival Aiken, South Carolina’s rich history and abundance of historically significant architectural resources. The City has actively preserved this heritage. Over 70 homes and buildings are listed on the National Register, either individually or within one of the three National Register Historic Districts.

The City of Aiken, South Carolina was chosen for the highest municipal award in America during the All-America City competition sponsored by the National Civic League in Kansas City, Missouri, on Saturday, June 7, 1997. The All-America City designation is not meant as recognition for the city government so much as it is an award for innovative community involvement from the grass-roots level.

During the summer of 1992, the City of Aiken launched an ambitious strategic planning process to chart the future of Aiken for the next 17 years. Hundreds of Aiken residents served on study committees, attended meetings and wrestled with issues ranging from health care to economic growth. Their mission was to develop a vision for the future of Aiken. And, that’s exactly what happened. It has been our citizens themselves who conceived the ideas and provided the leadership that has given birth to a vision for our well-loved city. Assisted by city staff, computer imaging and a variety of resources, the Steering Committee endorsed four focus areas to strategically guide our wonderful community. These are Historic City, Green City, Business City, and Family City. The theme groups reflect the strengths and values shared by the Aiken community. This plan was updated in 2000 and 2010, with more recent meetings held through 2016.

Aiken is 56 miles west of the South Carolina state capital, Columbia, and 174 miles east of the Georgia state capital, Atlanta. The area of the City is 21.03 square miles. According to the 2010 US Census, Aiken had a population of 29,524. Aiken is empowered to levy a property tax on both real and personal property located within its boundaries. It also is empowered by state

statute to extend its corporate limits by annexation, which it has done from time to time. Aiken operates as a Council-Manager form of government. City Council is composed of seven members elected on a partisan basis. Our Mayor is elected to a four-year term, and our six Council members are elected every two years to serve four-year staggered terms. Beginning in November, 2013, Council members were elected under a 6-1 single member district plan. The U.S. Department of Justice pre-cleared it after Council action and citizen approval. The Mayor is elected from the City at-large. The remaining six Council members are elected from six single member districts. Aiken City Council is a legally constituted law-making and policy-making body. Their major duties include: adopting an annual budget, establishing the annual property tax rate, enacting policies concerning City operations, enacting local ordinances, appointing the City Attorney, City Solicitor, and City Manager, and selecting members for various boards, commissions, and committees. They also have the authority to call bond referendums.

The City Manager is the Chief City Executive, appointed to an indefinite term. Major duties include: supervising and coordinating of City department activities, attending Council meetings, making recommendations on appropriate matters of business, ascertaining that all orders and policies of City Council are implemented, recommending an annual budget, keeping City Council advised on City finances, and representing our City in business with other agencies.



We provide a full range of municipal services including: Finance; Parks, Recreation and Tourism; Public Safety; Planning; Human Resources; and Public Works (which include Solid Waste, Water, Sewer, Engineering, Utilities and Stormwater systems).

City Council is required to adopt an annual budget no later than June 30 of each fiscal year. This annual budget serves as the foundation for City financial planning and control.

## Local economy

Our Aiken economy depends, to some degree, on the nearby location of a Department of Energy Complex, the Savannah River Site. However, the strength of our local economy is also based on industrial and commercial diversity throughout the Aiken area. Over the past thirty years, Aiken has continued to grow, and the economic environment in Aiken has been traditionally steady. Our area continues to see openings of new and small businesses.

We continue to encourage new industries to locate within area industrial parks. We have industrial parks that total over 200 acres of prime industrial and business property.

New construction, while slower in past years, continues. Almost \$24 million worth of new construction was permitted last year. This total includes residential dwellings, at a value of \$19.7 million and new commercial buildings, with total construction costs valued at \$4.2 million.

In addition to this new construction activity, we continue to maintain existing structures and services. At the same time, we make sure that these services keep pace with growth. We have a Stormwater Drainage Program that has served as the model throughout South Carolina. It





has also been recognized by the National Science Foundation. Our Stormwater Utility System has allowed us to correct stormwater problems inherent to a historic city. Our Parkways Green Infrastructure project received a Municipal Achievement Award from the Municipal Association of South Carolina.

A Hospitality Tax of one percent was implemented on June 1, 2015, to enhance the city. Funds will be used for tourism related expenses to improve the downtown area and roads for tourist use. A portion of the funds are used for marketing the City to tourists.

### Long-term financial planning

The One Percent Capital Project Sales Tax passed by voters in 2000, 2004, and 2010 has been used to pay for many improvements and has funded additional infrastructure improvements. They include road construction, the development of Citizens Park, the Tennis Center, environmental restoration work in Hitchcock Woods, purchase of land for a northside park, construction of a Community Center at Eustis Park, and other capital project work.

The last water and sewer Revenue Bond was paid off during fiscal year 2015-16. A new water plant was brought online with no external debt.

We also continue to update and improve our financial management procedures and processes. Recent changes in our computer system have allowed us to make tremendous strides in our services, and we continue to improve this service for customers and employees. We continue financial transparency via our City website, [www.cityofaikensc.gov](http://www.cityofaikensc.gov). We have added the ability to pay tax and utility bills online through our website.

The 2016-17 budget was completely reformatted and extensively revised to more effectively communicate information to Aiken citizens, the community and elected officials. The budget was submitted to the Government Finance Officers Association Distinguished Budget Award program and recognized as a first time award recipient.

## Major initiatives

Aiken County voters approved the original Capital Project Sales Tax in 2000 for \$12,451,740, renewed it in 2010 for \$30,000,000 and approved the third round in 2010 for \$44,600,000.

In 2016, City Council approved two new revenue sources to fund infrastructure improvements and address traffic and public safety improvements in the City. City Council has decided to implement strategies to maintain the roads owned by the city. Each vehicle registered in the city limits would be assessed an annual fee of \$20 on their vehicle tax bill. This money will be accounted for in a special revenue fund and earmarked for road maintenance. The second new fund will be the Transportation and Public Safety Improvement Fund to carry out plans to improve traffic on the Southside of Aiken, for example and fund other transportation and public safety needs. This will be funded by increasing the franchise fees paid by the electric companies from 3% to 5%.

## OUR BELIEFS

1. Respect for people: We treat all people in a manner that respects their personal dignity, and expect employee courtesy and thoughtfulness in interactions with other employees, residents, and other individuals engaged in business with the City.
2. Effective Use of Public Funds: We believe in responsible stewardship of public funds, with the most cost effective use of the taxpayer's money.
3. Support for people: We commit ourselves to assist all members of the community, giving particular attention to helping those who can least help themselves.
4. Encouragement for Idealism, Creativity, and Innovation: We encourage our employees to maintain a sense of idealism in every area of government and to question established practices. We take pride in our uniqueness, value the diversity of our community, and support the cultural and artistic richness offered by this mix.
5. Responsive to the Public: We listen to members of our community, understand their needs, and develop timely policies and programs. We make, and keep, realistic commitments.



6. Commitment to Excellence: We strive for quality in all our actions, setting the highest goals and standards for ourselves and our colleagues. We hire highly skilled and involved staff who understands the technical aspects of government and care for people. We recognize and reward both individual and group contributions to the success of this City.
7. Responsibility for the Environment: We provide sensitive, competent leadership in the protection and improvement of our natural and urban environments.
8. Support for Business Development and Citizenship: We support business, and recognize the importance of generating interest in and income for the City. We seek to develop a physical, economic, and social environment where new businesses can be nurtured and established businesses can flourish. We encourage business owners and employees to actively support this community. To the maximum extent feasible, existing tenants in the project area should be accommodated by the developer selected.
9. Commitment to the Total Community: We recognize the service needs of the entire Aiken community, and care about the concerns of all residents of this City.
10. Commitment to Aiken Design Aesthetic: Incorporation of Aiken's architectural charm, character and uniqueness are integral components to any successful development plan.

## Definitions

The following terms have the meanings provided under this heading and there are places in the RFP where terms are additionally defined. Notwithstanding that a term is defined under this heading or in the body of the RFP, the context in which a term is used may dictate a meaning different from the stated definition. Developers will be given opportunities to ask questions in order to clarify the meaning of any term or the intent of any particular provision.

"Addendum" or "Addenda" means written or graphic instructions issued by the City of prior to the receipt of Proposals that modify or interpret the RFP by addition, deletion, clarification, or correction.

"City" means the City of Aiken, South Carolina.

"Competitive Proposals" means the method authorized in the Procurement Code for competitive sealed proposals.

"Developer" means the entity submitting a Proposal and receiving a contract award under this RFP.

"Development Agreement" is the agreement that delineates each of the City's and the Developer's responsibilities for the management and operations of the Project.

"Ground Lease" means an agreement that defines the terms by which the Site may be leased by the City to the Developer. There may be zero, one, or more than one ground leases based on the parcels identified in the Site and the Proposal.

“Procurement Officer” means Mr. Stuart Bedenbaugh, Assistant City Manager.

“Project” means the 2017 Downtown Development Project.

“Proposal” means a Developer’s response to this RFP.

“Retail Elements” means spaces within the completed Project leased to private enterprises for commercial uses compatible with the character and vision of the City for development of its downtown.

“Subcontractor” means any party named by the Developer in a Proposal to perform specific tasks in the delivery of the Project.

“Site” means the parcels designated for the development of the Project. The Site is shown on the Site Plan attached as Exhibit A illustrating the parcels available for planning and development.

## II. Scope of Proposal

### SECTION A. SUMMARY AND BACKGROUND

I. Summary of Project Scope. The City has general goals for the scope of the Project and has ideas about how the project could be implemented on the available land. However, the City understands that the risk of economic performance is borne by the Developer. Consequently, the City is allowing latitude in the completion of all facilities. The City invites the Developer to propose the plan, delivery times and other elements that make the Project economically feasible. The City values its existing businesses. Therefore, a plan to accommodate local businesses impacted by the project shall be a component to the response of this RFP.

**Guiding Needs and Policies Served by the Project: It is the goal of the City to revitalize a portion of the downtown area and to expand downtown commercial, parking and housing opportunities.**

In the City's 2010 updated Strategic Plan a long-term goal is expansion of the Municipal Building. (Id., at 4). Another identified goal is "identify opportunities to partner with others who will foster the entrepreneurial spirit," as well as "include retail space in the Municipal Building expansion project." (Id., at 10). We have adopted a "Shop Aiken First" focus. (Id., at 11). We have a strategic emphasis on "Continue Public-Private Partnerships." (Id., at 13) that includes the goals of "leverage public dollars as much as possible" and "ensure projects have continuing supervision." Id. We have another strategic focus on "Develop Better Parking" through all of the following: "find easy alternatives for providing more parking spaces in congested areas"; "identify sites to alleviate parking pressures"; "identify sites for creative parking solutions"; and "build additional lots and facilities at City-owned venues." Id.

The Comprehensive Land Use and Transportation Plan also identifies needs and goals of the City. According to the Plan, "Council uses the Plan to apply policy for the physical development and redevelopment of the community; the Plan gives the governing body a chance to step back from the pressing day-to-day issues and take a long-range view to determine what the physical character of the community should be and how it should be achieved." (Id. at 1-1). This plan encourages "commercial uses tightly clustered in nodes instead of dispersed in strips along roads." (Id., at ES-3.) The plan directs us to, "encourage innovative placement of new shops that would create a more attractive streetscape than parking lots." (Id., at ES-4). "Provisions should be adopted to allow parking for uses to be shared." (Id., at III-7). Additionally, in the Old Aiken Master Plan, adopted in 2005, major themes listed in the plan for Aiken's Downtown include a "strong residential base," "strong retail in the downtown core," "appropriate design of structures and public improvements," and "visible public facilities and uses." Furthermore, the Old Aiken Master Plan states that "public uses are a strong determining factor in the health of Old Aiken. Government buildings demonstrate the City's commitment to the area as well as providing landmarks which help create a sense of place."

The Aiken architectural aesthetic includes influences such as Palladian, Georgian and Southern. Buildings contain mixed materials, mixed detailed elements that create detail and dimension, painted brick or face bricks need to be molded or tumbled in their character, not vertically scored or smooth. Wooden and man-made architectural detail elements are appreciated in keeping with the styles of those surrounding buildings within the project area. Facias consisting of colonnades, arcades, variable parapet heights and other dimensional aspects are appreciated components of any design. Attention is to be paid to awnings, railings, balustrades, cornices and

the approach.

The Project: To these ends the City proposes to solicit proposals for a single Project, under a single Developer, consisting of several interrelated pieces:

**1. Renovation of the existing Historic Municipal Building (214 Park Avenue SW). The scope would explore management or ownership options of the current first floor conference center currently owned by the city.**

**2. Construction of multi-story addition on City property (Brinkley Property) on the west side of Newberry Street SW between Park Avenue SW and The Alley at 139 Newberry Street SW, which facility will contain commercial retail space on the first floor and City offices above to fulfill the Third Round Capital Projects Sales Tax Project to expand the Municipal Building as approved by Aiken citizens in November, 2010. The City desires a condominium regime structure providing private ownership of ground floor commercial/retail space and perhaps other space. The City desires to work with a selected Developer to develop phasing and work plans that can accommodate existing private businesses in spaces affected by the project during the work, but is not guaranteeing such protection to tenants as a superior consideration to the expeditious and efficient completion of the Project. Secure interior connection of the renovated historic Municipal Building offices with the new addition's second or third floor offices.**

**3. A new Parking Facility (Anderson Property and Shah Property) as well as retail and housing on lots currently optioned to the City on the west side of Newberry Street SW south of Richland Avenue W. The Anderson property is located between 205 and 213 Richland Avenue W and 113 and 117 Newberry Street SW. The Shah property is located at 235 Richland Avenue W.**

The City will also consider Developer proposals for inclusion into the Project of additional lots to the extent the Parking Facility can be convenient to the City offices described above.

**4. Conveyance to the Developer, as partial consideration for its contract obligations under the contract, of the City land and improvements at the northwest corner of Hayne Avenue SW and Laurens Street SW (135 Laurens Street SW), currently known as the Administration and Finance Building, with a requirement that the Developer create a retail/residential facility on the site that is compatible with the character of the historic downtown district.**

In addition to the conveyance of the City Administration and Finance Building facility property, further costs of the Project and Project contract may be paid by City general obligation bond proceeds, City revenue bond proceeds, City general funds, City special revenue funds, lease concessions, availability payments, and all other forms of funding which may be available for the Project.

The City also intends to discuss with the Developer options for Project financing that reflect the creativity and flexibility of private industry in forming a financially prudent strategy. "Condominization" of properties, long- and short-term leases, installment payment programs, and other financial arrangements may all factor into the Development finances.

## SECTION B. OVERVIEW OF DEVELOPMENT OPPORTUNITY

(a) Proposed Sites. Exhibit A includes details on the sites that are available for the Project. The City has indicated the available sites and has suggested the location for the components of the Project. The Developer may also propose alternatives for the final configuration and location of the components within the various sites of the Project.

(b) Objectives of the City. The City is using this RFP to accomplish several goals.

The role of the Parking Facility is to provide additional capacity for visitors to utilize private enterprises in the City's historic downtown. The role of the Municipal Building Renovation and space to be occupied by the City in the addition is to enhance efficiency of civic services. The City expects that the successful Developer will work in tandem with the staff of the City to identify, target, and recruit tenants for the Retail Elements that advance the vision of the City and the community for downtown.

(c) Planning Process. The City expects that Developers will propose to satisfy the project requirements by employing different layouts for developing the parcels, which have immediate implications for the Project cost. Therefore the City is not making specific or preconceived site designs available beyond the references to master plans and guidelines indicated below. The Developer will be responsible for successful adherence to all planning and permitting processes required for implementation of the development proposal approved by the City. Various City personnel will interact with the selected developer in a collaborative manner to assure that the final program for all development reflects the needs and values of City. The City will review and approve the planning and architectural design of capital construction projects as they evolve from conceptual site design to exterior massing, fenestration and ultimately the selection of exterior finish materials and colors.

## SECTION C. PROJECT REQUIREMENTS

(a) Property Ownership, Ground Leases, Commercial Leases. The following are the general parameters of what the City has identified as potential arrangements. Alternatives or variations on these ideas are welcome and encouraged. The City's ultimate goals are the functionality of the Project and the efficient use of public resources to achieve that functionality for the City and for its citizens. The City will need to consider public financing options as well as any Developer-financing options to find the method or combination of methods that best achieves the City's needs and overall financial and political situation.

(i) The Parking Facility Site (The Anderson property, 205-213 Richland Avenue W and 113 and 117 Newberry Street SW and the Shah property, 235 Richland Avenue W). Note that the City intends NOT to charge the general public, or allow the Developer to charge, hourly parking fees for use of the parking spaces in the Parking Facility. All spaces will be controlled by the City and any parking revenues from monthly or similar agreements with private business will inure to the City.

Developer shall acquire the Parking Facility Sites by assignment of the real property options from the City to the Developer and the City and Developer may agree upon a mutually agreeable "buy out" of the Developer's entire interest in the Parking Facility Site and all improvements on the Parking Facility Site. A "condominium" regime for separating the treatment of various elements of the Project on the Site may also be considered for the

Parking Facility Site. In the alternative, the Developer may propose to lease the Parking Facility to the City.

(ii) The Historic Municipal Building Renovation Site (214 Park Avenue SW). The City does not wish to constrain the creativity that a Development Agreement could contain regarding ownership of the historic Municipal Building Renovation Site.

(iii) The Historic Municipal Building Addition (139 Newberry Street SW). This Site is proposed to have a retail first floor and upper floors of City offices. Accordingly the City will consider all available arrangements for integrating this Site into the Project arrangements.

(iv) The City Administration and Finance Building Site (135 Laurens Street SW). The City proposes to convey this Site to the Developer as partial consideration for the Development Agreement; provided, however, that the City cannot vacate this Site until it obtains beneficial occupancy of the Renovated Historic Municipal Building Site and the City offices in the Historic Municipal Building Addition. The City's purpose in this conveyance is to cause private development of the City Administration and Finance Building Site in furtherance of City goals for downtown development. The Development Agreement will require the Developer to create on this site a facility that is approved by the City as consistent with City plans for retail uses and possible upper-floor residential uses, all with a design aesthetically compatible with the downtown historic district's character.

#### SECTION D. CITY'S FINANCIAL CONSIDERATIONS

The City has elected not to "piecemeal" the design and construction work of the Project components for several reasons, noted in the City's "Written Determination." The City also seeks to catalyze private activity in downtown Aiken. Accordingly the City is seeking a Developer with experience and expertise in ways portions of the Project can be financed, at least in part, through Public-Private Partnership ("P3") arrangements that take into account (1) the value of the private development opportunity on the City Administration and Finance Building Site (135 Laurens Street SW), (2) retail spaces revenues, and (3) City revenues and/or debt proceeds. In short, the Developer will be working closely with City staff and the City's consultants to integrate a financial model into an overall Development Agreement.

## SECTION E. DEVELOPER INFORMATION REQUIREMENTS

The Developer must provide the following information with respect to itself and any Subcontractor included in the Proposal.

(a) Team / Company profile and Experience. Provide a brief description of the Developer and each member of the team identified in the Proposal. This information should contain the history and general nature of the business of each as well as the 5 most analogous projects completed by each within the past 5 years. It is preferred that projects be included that contain analogous renovation, analogous new construction, and analogous parking structures where the Developer and Subcontractors have all or some of these types of experience. Include in this information for each project the cost per square foot of each project, the length of time for completion of construction from the signing of the Development Agreement. Also include the name, title, phone number and e-mail address of the Owner's representative and the Owner's CFO or similarly responsible officer.

(b) Project Team Key Personnel. Identify the individuals at the Developer and each member of the team, as required by the preface, who will be directly responsible for performing the tasks required for the Project. Provide brief résumés of each person identified. Also identify the primary contact.

(c) Additional Information. Provide any information about relationships, industry knowledge, local conditions knowledge relevant to success of the Project, and operating philosophies that may be relevant to the City's evaluation. Developer should provide information about how existing tenants have been accommodated due to displacement from past projects.

## SECTION F. DESIGN GUIDELINES AND REQUIREMENTS

(a) General Conditions. The design and construction of these facilities must be consistent with the quality and aesthetic of the relevant surrounding construction including exterior materials and aesthetics. Buildings must comply with the currently adopted City building codes and standards, including compliance with the Old Aiken Design Guidelines. The Developer shall be responsible for inspections necessary to ensure compliance with these requirements.

(b) Site Work. The scope of work indicated below shall be designed, coordinated and provided by the Developer. Demolition of existing paving and all site infrastructure will be executed by the Developer. Developer shall coordinate curb cuts and site access with the South Carolina Department of Transportation and the City as applicable based on the authority having jurisdiction where the curb cuts are located. Consideration shall be given for short term access for deliveries with special consideration for the retail and dining establishments. Site utility infrastructure will be provided by the Developer. Utilities surveyed within the right-of-way may be reviewed in drawings referenced in this document. Effort shall be made to conceal central mechanical equipment. Dumpster areas will be screened from public view.

(c) Programming and conceptual designs, tied to budgets, will be a joint undertaking of the parties for the purpose of preparing the Development Agreement. The City will also participate in the selections for finishes, signage, interior and exterior aesthetics, audio-visual equipment, furnishings, controls, and similar end-user functionality elements of the portions of completed projects meant for public or City occupancy.

## SECTION G. OPERATIONS

The Development Agreement will contain provisions that will provide enforcement rights to the City to ensure successful operation and maintenance of facilities to be maintained and operated by the Developer, if any.

## SECTION H. DEVELOPMENT AGREEMENT

Once the City and the Developer have reached agreement upon the scope of work, pricing, Developer compensation, financing, schedule(s), and other key terms for the Project, a Development Agreement will be prepared for approval by the City Council. If a successful Development Agreement cannot be reached with the first-selected Developer under this solicitation, the City may terminate negotiations and commence negotiations with the next-highest ranked proposer. A Development Agreement will include reimbursement to the City for costs incurred including but not limited to purchase option fees and administrative costs.

## SECTION I. RFP PROCESS

(a) Executive Summary. Every response should contain an executive summary that summarizes the Developer's view on the approach and management plan, pre-construction and construction services, ability to meet the project schedule and provide detail on available resources to provide these services.

(b) Overview. Every response should contain the Developer's view on the requirements to successfully complete the Project and implement operations. The Developer should include information on the Developer's project approach and management plan, pre-construction and construction services, ability to meet the project schedule and provide detail on available resources to provide these services.

(c) Content Requirements for RFP. The content of a Proposal should be organized so that material relating to each of the evaluation factors can be readily located. You should refrain from including anything but the briefest of description of your organization and key personnel and we strongly prefer that the material you provide be free of general brochures or presentations that are not narrowly focused on responding to the matters addressed in the RFP.

(d) Graphic Documents Required for the RFP. Developers may include preliminary concepts in graphical and narrative format as part of the RFP response. Providing these concepts does not bind the parties to use the concepts in whole or in part in the Development Agreement, but serves as an opportunity to demonstrate to the selection committee the Respondents' insight and creativity for the accomplishment of City functionality requirements.

(e) Financing. Developers may include ideas for financing the project. At this point the City is mainly concerned to be sure that the Developer has the relevant knowledge and acumen in analyzing and utilizing an optimal mix of multi-source financing in completing projects of this nature, and the ability to work productively with City financial consultants on creating a sound overall financial plan to be incorporated into the Development Agreement.

(f) Evaluation Factors for RFP. The following are the factors to be evaluated:

- a. Developer's team's expertise.
- b. Developer's team's experience and track record on similar projects.
- c. References of past clients.
- d. Developer's ability to financially perform the Proposal.
- e. Developer's plan to accommodate local businesses impacted by the project.

(g) Method of Award. The Proposals will be evaluated by a City selection committee. The City intends to hold interviews with the responsive Developers as part of the evaluation. The City may choose to create a short list prior to interviews, in the event the City determines during its evaluation process that numerous proposals have been received but only a small subset of the proposals appear to be reasonably capable of receiving the award. Following all interviews, the Developers will be ranked from most advantageous to least advantageous to the City considering only the evaluation factors.

The highest ranked Developer will be notified of its initial selection to enter the Pre-Development Agreement phase of the process. During this phase of the procurement, the Developer will work at its own expense and risk with the City to further the design through the conceptual stage of development for each facility. During this time, negotiations will also be conducted with the City of the contractual provisions that will govern the final terms of the Development Agreement and any property ownership arrangements or leases to be included in the Project arrangements. The Developer will provide final evidence of securing any third party financing that will be required for all facilities to be constructed.

This process will be concluded within 90 days of notice to the highest scoring Developer of its preliminary selection. If the Pre-development phase is successful, a proposed contract with that Developer will be submitted to the City Council for consideration and approval.

If a satisfactory contract cannot be negotiated with the highest ranking Developer, negotiations may be conducted with the second, and then the third, and so on, ranked Developers in an effort to successfully reach a proposed contract. Following approval of the proposed contract by the approving entities, an intent to award statement will be issued to successful Developer.

(h) Developer Confidentiality Clause. If the Developer contends a portion of the RFP contains information that is exempt from public disclosure as defined in the S.C. Code of Laws Section 11-35-410 or Section 30-4-40 (a) (1), the Developer must mark the relevant section with the word "CONFIDENTIAL" using a method that conspicuously distinguishes the mark from the other text. Do not mark your entire response as confidential. If your response is improperly marked as "confidential" the City may, in its sole discretion, determine it non responsive.

### III. Schedule and Submission Deadline

**PRE-PROPOSAL CONFERENCE AND CITY HALL SITE TOUR.** The City will host a Pre-Proposal Conference for interested parties at **214 Park Avenue SW, 1st Floor Conference Center at 10:00 a.m. on Wednesday, January 11, 2017.** City officials and other professionals associated with the Project will provide an overview of their respective areas of engagement on the Project. Afterwards an opportunity will be provided to tour the interior of the Municipal Building for general familiarity purposes. Minutes of this conference will be issued as an Addendum.

**SUBMISSION OF PROPOSALS.** Firms interested in being considered for this work should respond with one (1) original and fifteen (15) copies of a cover letter and proposal addressing the above criteria no later than **3:00 p.m. on February 3, 2017.** Each RFP must contain a cover letter and executive summary.

Submissions can be made using the following delivery methods:

**US Mail:**

Mr. Stuart Bedenbaugh  
Attn: RFP No. 2017-01  
P.O. Box 1177  
Aiken, SC 29802

**Courier Delivery Service or Hand-Delivered:**

Mr. Stuart Bedenbaugh  
Attn: RFP No. 2017-01  
135 Laurens Street, Southwest  
Aiken, SC 29801

Delivery of submissions by email or facsimile is prohibited.

The City is not responsible for costs incurred by the Developer in the preparation of the Proposal or any work performed by the Developer prior to the approval of an executed contract with the City.

All questions in connection with the Request for Proposal shall be sent to Stuart Bedenbaugh, City of Aiken, P.O. Drawer 1177, Aiken, South Carolina 29802, with the envelope clearly marked "RFP 2017-01 Questions" or emailed at [sbedenbaugh@cityofaikensc.gov](mailto:sbedenbaugh@cityofaikensc.gov). Questions must be submitted in writing and received by 5:00 p.m., January 25, 2017. All questions will be answered and posted on the City's website, [www.cityofaikensc.gov](http://www.cityofaikensc.gov) within 48 hours after the deadline.

# Exhibit A

- I. Map of Project Area
- II. Description of Subject Properties
- III. Anderson Option
- IV. Shah Option

# I. Map of Project Area



## II. Description of Subject Properties

I. Property +/-0.63 acres located at the northwest corner of Laurens Street SW and Hayne Avenue SW.

Address: 135 Laurens Street SW

Tax Parcel Numbers: 105-28-03-012 and 105-28-03-013

II. Property +/-0.52 acres with frontage along Park Avenue SW, Newberry Street SW and The Alley.

Address: 214 Park Avenue SW

Tax Parcel Number: 121-21-06-001

III. Property +/-0.75 acres with frontage along Richland Avenue W and Newberry Street SW.

Addresses: 205-213 Richland Avenue W and 113-117 Newberry Street SW

Tax Parcel Numbers: 121-21-08-002; 121-21-08-003; 121-21-08-004 and 121-21-08-009

IV. Property +/-0.33 acres located at the southwest corner of Richland Avenue W and Bee Lane.

Address: 235 Richland Avenue W

Tax Parcel Number: 121-21-08-001



5. Exercise of Option. During the Option Term, Aiken may make inspections of the Property, as outlined in Paragraph 10 herein, and may have appraisals conducted of both Parcels A and B. Both parties acknowledge the existence of appraisals previously obtained by Aiken prepared by J. Marshall Vann dated June 8, 2016. Any wishes to obtain additional appraisals it may do so at its expense. Likewise, if Anderson desires to obtain appraisals of the property, she may do so at the expense of Anderson. In the event of exercise of the Option, Aiken must buy Parcel A and Parcel B as it is shown on Exhibit "A". Aiken does not have the Option of purchasing Parcel A or Parcel B alone. In the event that Aiken wishes to Purchase either Parcel A or Parcel B, then Aiken and Anderson may negotiate an additional Option. Anderson shall be under no obligation to sell one parcel without the sale of both. In the event of the exercise of the Option, then Aiken may deliver written notice of exercise to Anderson. Upon giving of such notice (the "**Exercise Date**") and from and after the date such notice is given, this Amended Option Agreement shall be deemed for all purposes a legally enforceable contract between Aiken and Anderson for the sale and purchase of the Property upon the terms and conditions herein provided, with the closing of the purchase of the Property to occur at Aiken's counsel's office in Aiken, South Carolina, on the date that is one hundred twenty (120) days after the Exercise Date or upon such other date as may be agreed upon by the parties ("**Closing**").

6. Existing Leases. The parties acknowledge that the property subject to this Option is currently leased. Copies of existing Leases will be provided by Anderson to the Aiken upon request. In the event of the exercise of the Option, Aiken will be fully bound by the terms of such Leases and will respect all legal rights and obligations of the tenants. Further, it is understood that in the Lease between Anderson and Newberry Hall of Aiken, LLC, that there is an option to purchase by the tenant and that such option must be honored by both parties.

7. Closing. Upon the exercise of this Option by Aiken and at the Closing of the transaction, Anderson shall convey to Aiken fee simple title to the Property by limited warranty deed expressly subject to (i) ad valorem real estate taxes for the then-current year not yet due and payable, (ii) all matters of record, and (iii) such matters as would be disclosed by a current and accurate survey of the Property. At the Closing, Anderson shall execute the limited warranty deed and such other documents customary in commercial real estate closings in South Carolina, including without limitation, evidence of Anderson's authority to consummate the Closing and a standard owner's affidavit reasonably acceptable to Aiken's title insurance company.

8. Closing Expenses. At the Closing under this Amended Option Agreement, Anderson shall pay the deed recording fee, formerly known as deed stamps. Any ad valorem taxes shall be prorated by the parties through the day of Closing. Each party shall bear its own attorney fees. All other closing expenses shall be borne by Aiken, including without limitation, title expenses and premiums, survey charges and other costs associated with Aiken's investigation of the Property.

9. Delivery of Possession. Anderson will, upon Closing and payment of the Option Price herein provided, deliver possession of the Property to Aiken.

10. Right to Terminate by Aiken. Notwithstanding anything herein to the contrary, Aiken shall have right, in its sole and absolute discretion, to terminate this Option and the purchase and sale contract resulting from this Option at any time until Closing for any reason. In the event Aiken so terminates this option, neither party shall have any further obligations to the other, except for obligations that expressly survive termination of this Option.

11. Inspection of Property. Aiken, its agents, invitees, employees, and/or contractors shall have the privilege of going upon the Property for the purpose of inspecting, examining, or surveying the Property at Aiken's sole expense and risk. Notwithstanding the foregoing, in connection with any entry by Aiken, or its agents, employees or contractors onto the Property, Aiken shall give Anderson reasonable advance notice of such entry and shall conduct such entry and any inspections in connection therewith (a) during normal business hours, (b) so as to minimize, to the greatest extent possible, interference with Anderson's business, (c) in compliance with all applicable laws, and (d) otherwise in a manner reasonably acceptable to Anderson. Aiken shall maintain, and shall assure that its contractors maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Aiken and its agents, employees or contractors, arising out of any entry or inspections of the Property pursuant to the provisions hereof, and Aiken shall provide Anderson with evidence of such insurance coverage upon request by Anderson. Aiken shall indemnify and hold Anderson harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, court costs and reasonable attorneys' fees and disbursements) arising out of or relating to any entry on the Property by Aiken, its agents, employees or contractors in the course of performing the inspections or inquiries provided for in this Agreement. The parties acknowledge that there are existing tenants in the property. All efforts will be made to minimize any inconvenience to the tenants while conducting such appraisals or inspections.

12. Representations and Warranties. To induce Aiken to enter into this Amended Option Agreement, Anderson hereby makes the following representations, warranties and covenants, with respect to the Property, upon each of which Anderson acknowledges and agrees that Aiken is entitled to rely and has relied. Anderson acknowledges that as a condition of the Closing, Anderson shall provide an affidavit affirming such representations as of the time of Closing.

- a. Binding Agreement. This Agreement has been duly authorized by all necessary action on the part of Anderson, has been duly executed and delivered by Anderson, and once fully executed by Aiken, constitutes the valid and binding agreement of Anderson, enforceable in accordance with its terms.
- b. Execution. The execution and delivery of and the performance by Anderson of its obligations hereunder do not and will not contravene, or constitute a default under, any provisions of applicable law or regulation, or any agreement, judgment, injunction, order, decree or other instrument binding upon Anderson or result in the creation of any lien or other encumbrance on any asset of Anderson.
- c. No Agreements. Except as may be disclosed in the public records, Anderson has entered into no agreement, oral or written, other than this Agreement, that remains in effect which grants any party other than Aiken any rights in and to the Property.
- d. Condemnation. Neither Anderson, nor any agent of Anderson has or shall have at or prior to Closing received any notice from any city, county, or other governmental authority of any taking of the Property, or any portion thereof, by eminent domain or similar proceeding, and no such taking or other condemnation of the Property, or any portion thereof, shall be threatened or contemplated by any governmental authority.
- e. Assessments and Fees. To the best of Anderson's knowledge, there are no pending or confirmed charges, assessments or acreage fees imposed by any governmental authority affecting the Property.



- c. Governing Law. This Amended Option Agreement shall be enforced and construed in accordance with the laws of the State of South Carolina.
- d. Amendments. Any amendment of this Amended Option Agreement must be made in writing and signed by both parties. Any attempted oral modifications will not be valid.
- e. No Waiver. Any failure by either party to enforce any right arising under this Amended Option Agreement shall not be deemed a waiver of the ability to later enforce that right. Any waiver must be in writing and signed by the person waiving the right in order to be enforceable.
- f. Successors and Assigns. This Amended Option Agreement shall inure to the benefit of, and shall be binding upon and be enforceable by Anderson and Aiken, and their respective successors and/or assigns. This Amended Option Agreement may be assigned in whole or in part by either party upon written notice to the other party.
- g. No Interest. Notwithstanding anything herein to the contrary, the parties agree that no portion of the Option Price shall be construed or treated as interest by any party hereto.
- h. Due Authorization. Each individual executing this Amended Option Agreement on behalf of a corporation or other legal entity, represents and warrants that such individual has been authorized to do so by the board of directors or other governing body of said legal entity.

[EXECUTION ON FOLLOWING PAGES]

The parties have executed this Amended Option Agreement under seal effective the day and year first written above.

John Redout  
Witness

Sara B. Ridout  
Witness

CITY OF AIKEN (Seal)

By: [Signature]

Print Name: John C. Klimm

Title: City Manager

State of South Carolina)

County of Aiken)

Acknowledgment

I, SARA B. Ridout, a notary public for the State and County aforesaid, do hereby certify that JOHN C. KLIMM, on behalf of Aiken, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 14<sup>th</sup> day of Sept., 2016.

Sara B. Ridout

Notary Public

My Commission Expires: May 5, 2018

(Notarial Seal)

[Signature]  
Witness

[Signature]  
Witness

MYRTLE ANDERSON (Seal)

By: Myrtle H. Anderson

Print Name: Myrtle H. Anderson

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

State of South Carolina )  
County of Aiken ) Acknowledgment

I, Arthur W. Reich, a notary public for the State and County aforesaid, do hereby certify that Myrtle Anderson, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 29<sup>th</sup> day of August, 2016.

[Signature]  
Notary Public  
My Commission Expires: 3-12-23

(Notarial Seal)



[Signature]  
Witness

[Signature]  
Witness

C. B. ANDERSON, JR. FAMILY, L.P. (Seal)

By: [Signature]  
Myrtle Anderson, as General Partner

Print Name: Myrtle H. Anderson

Title: P/A

State of South Carolina )  
County of Aiken ) Acknowledgment

I, Arthur W. Rich, a notary public for the State and County aforesaid, do hereby certify that Myrtle Anderson, on behalf of C. B. Anderson, Jr. Family, L. P., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 14<sup>th</sup> day of August, 2016.

[Signature]  
Notary Public  
My Commission Expires: 3-12-23

(Notarial Seal)

Exhibit "A"

Map

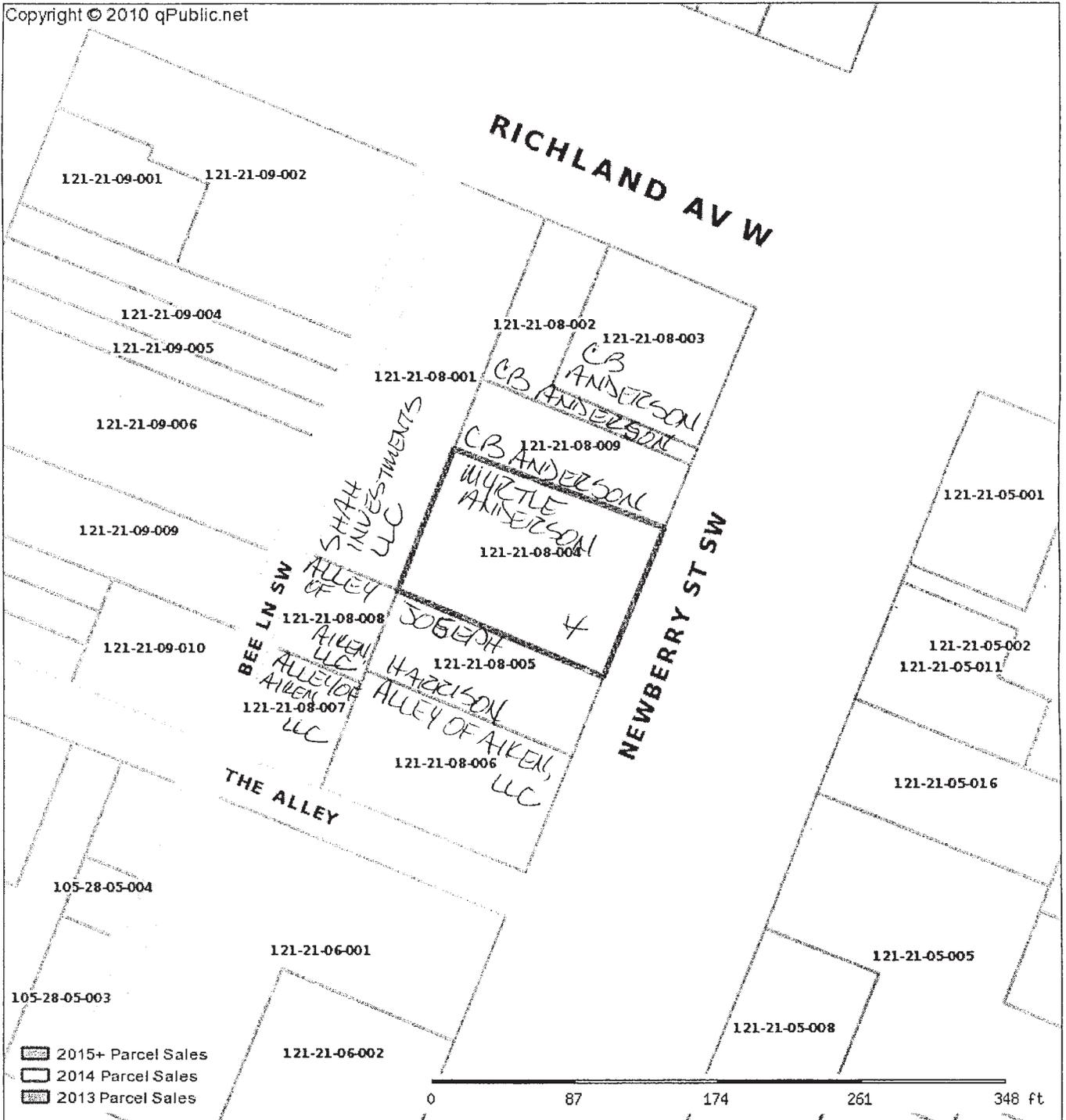
Parcel A

ALL these certain parcels, with existing improvements thereon, shown as Tax Parcel Numbers 121-21-08-002, 121-21-08-003, and 121-21-08-009. Also as depicted upon a copy of the current tax map attached hereto.

AND

Parcel B

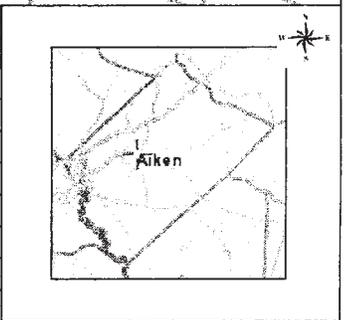
ALL this certain parcel, with existing improvements thereon, shown as Tax Parcel Number 121-21-08-004. Also as depicted upon a copy of the current tax map attached hereto.



**Aiken County Assessor**

Parcel: 121-21-08-004 Acres: 0

<b>Name:</b>	ANDERSON MYRTLE H	<b>Land Value:</b>	300288
<b>Site:</b>	117 NEWBERRY ST	<b>Improvement Value:</b>	385479
<b>Sale:</b>	\$1 on 2002-12-31 Reason= Qual=U	<b>Accessory Value:</b>	15297
<b>Mail:</b>	356 FAIRWAY RD AIKEN, SC 29801	<b>Total Value:</b>	701064



The Aiken County Assessor's Office makes every effort to produce the most accurate information possible. No warranties expressed or implied are provided for the data herein, its use or interpretation. All assessment information is subject to change before the next certified tax roll.  
 Date printed: 03/23/16 : 09:44:27

## IV. Shah Option

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

OPTION TO PURCHASE REAL ESTATE

THIS OPTION TO PURCHASE REAL ESTATE (the “**Option Agreement**”) is executed the 14<sup>th</sup> day of September, 2016, by and between THE CITY OF AIKEN (“**Aiken**”) and SHAH INVESTMENTS, LLC, a South Carolina limited liability company (“**Shah**”).

### RECITALS:

WHEREAS, Shah desires to extend to Aiken an exclusive option to purchase the parcel of real estate, including all easements, restrictions and appurtenances belonging or appertaining thereto, located in the City of Aiken, Aiken County, South Carolina, and further identified as Bee Lane Hotel Annex (the “**Property**”) as attached as Exhibit “A” hereto.

NOW, THEREFORE, in consideration ONE AND NO/100 DOLLARS (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Shah and Aiken do hereby agree as follows:

1. Grant of Option. Shah does hereby grant and extend unto Aiken the exclusive option (the “**Option**”), exercisable during the Option Term (as defined below), to purchase the Property upon the terms and conditions set forth in this Option Agreement.

2. Option Term. The option term (the “**Option Term**”) shall commence on the date of this Option Agreement, as shown above, and shall expire on the day that is six (6) months thereafter.

3. Option Price. Aiken agrees to pay to Shah the sum of One and No/100 (\$1.00) Dollars per month for a period of six (6) months (the “**Option Price**”).

4. Exercise of Option. During the Option Term, Aiken may make inspections of the Property, as outlined in Paragraph 10 herein, and have appraisals conducted of Bee Lane Hotel Annex. Once Aiken has completed such inspections or appraisals, it retains the option to propose to Shah a price whereby Aiken shall purchase Bee Lane Hotel Annex, as described herein, from Shah. In the event that an agreement to the sales price cannot be reached, then in that event either party may cancel this Agreement and have no further obligation hereunder. Whether the Option is exercised or not, the Option money described in Paragraph 3 shall belong to Shah and no refund to Aiken shall be granted. Further, the Option price shall not be applied towards the sales price in the event of exercise of the Option. In the event of the exercise of the Option and agreement upon the sales price, then Aiken must buy all of Bee Lane Hotel Annex, described on Exhibit "A". Here again, the mutually agreeable sales price for Bee Lane Hotel Annex must be made and agreed upon between the parties. In the event of the exercise of the Option, then Aiken may deliver written notice of exercise to Shah. Upon giving of such notice (the “**Exercise Date**”) and from and after the date such notice is given, this Option Agreement shall be deemed for all purposes a legally enforceable contract between Aiken and Shah for the sale and purchase of the Property upon the terms and conditions herein provided, with the closing of the purchase of the

Property to occur at Aiken's counsel's office in Aiken, South Carolina, on the date that is one hundred twenty (120) days after the Exercise Date or upon such other date as may be agreed upon by the parties ("**Closing**").

5. Closing. Upon the exercise of this Option by Aiken and at the Closing of the transaction, Shah shall convey to Aiken fee simple title to the Property by limited warranty deed expressly subject to (i) ad valorem real estate taxes for the then-current year not yet due and payable, (ii) all matters of record, and (iii) such matters as would be disclosed by a current and accurate survey of the Property. At the Closing, Shah shall execute the limited warranty deed and such other documents customary in commercial real estate closings in South Carolina, including without limitation, evidence of Shah's authority to consummate the Closing and a standard owner's affidavit reasonably acceptable to Aiken's title insurance company.

6. Closing Expenses. At the Closing under this Option Agreement, Shah shall pay the deed recording fee, formerly known as deed stamps. Any ad valorem taxes shall be prorated by the parties through the day of Closing. Each party shall bear its own attorney fees. All other closing expenses shall be borne by Aiken, including without limitation, title expenses and premiums, survey charges and other costs associated with Aiken's investigation of the Property.

7. Delivery of Possession. Shah will, upon Closing and payment of the Option Price herein provided, deliver possession of the Property to Aiken.

8. Right to Terminate by Aiken. Notwithstanding anything herein to the contrary, Aiken shall have right, in its sole and absolute discretion, to terminate this Option and the purchase and sale contract resulting from this Option at any time until Closing for any reason. In the event Aiken so terminates this option, neither party shall have any further obligations to the other, except for obligations that expressly survive termination of this Option.

9. Inspection of Property. Aiken, its agents, invitees, employees, and/or contractors shall have the privilege of going upon the Property for the purpose of inspecting, examining, or surveying the Property at Aiken's sole expense and risk. Notwithstanding the foregoing, in connection with any entry by Aiken, or its agents, employees or contractors onto the Property, Aiken shall give Shah reasonable advance notice of such entry and shall conduct such entry and any inspections in connection therewith (a) during normal business hours, (b) so as to minimize, to the greatest extent possible, interference with Shah's business, (c) in compliance with all applicable laws, and (d) otherwise in a manner reasonably acceptable to Shah. Aiken shall maintain, and shall assure that its contractors maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Aiken and its agents, employees or contractors, arising out of any entry or inspections of the Property pursuant to the provisions hereof, and Aiken shall provide Shah with evidence of such insurance coverage upon request by Shah. Aiken shall indemnify and hold Shah harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, court costs and reasonable attorneys' fees and disbursements) arising out of or relating to any entry on the Property by Aiken, its agents, employees or contractors in the course of performing the inspections or inquiries provided for in this Agreement.

10. Representations and Warranties. To induce Aiken to enter into this Option Agreement, Shah hereby makes the following representations, warranties and covenants, with respect to the Property, upon each of which Shah acknowledges and agrees that Aiken is entitled to rely and has relied. Shah acknowledges that as a condition of the Closing, Shah shall provide an affidavit affirming such representations as of the time of Closing.

- a. Binding Agreement. This Agreement has been duly authorized by all necessary action on the part of Shah, has been duly executed and delivered by Shah, and once fully executed by Aiken, constitutes the valid and binding agreement of Shah, enforceable in accordance with its terms.
- b. Execution. The execution and delivery of and the performance by Shah of its obligations hereunder do not and will not contravene, or constitute a default under, any provisions of applicable law or regulation, or any agreement, judgment, injunction, order, decree or other instrument binding upon Shah or result in the creation of any lien or other encumbrance on any asset of Shah.
- c. No Agreements. Except as may be disclosed in the public records, Shah has entered into no agreement, oral or written, other than this Agreement, that remains in effect which grants any party other than Aiken any rights in and to the Property.
- d. Condemnation. Neither Shah, nor any agent of Shah has or shall have at or prior to Closing received any notice from any city, county, or other governmental authority of any taking of the Property, or any portion thereof, by eminent domain or similar proceeding, and no such taking or other condemnation of the Property, or any portion thereof, shall be threatened or contemplated by any governmental authority.
- e. Assessments and Fees. To the best of Shah's knowledge, there are no pending or confirmed charges, assessments or acreage fees imposed by any governmental authority affecting the Property.
- f. Environmental. Shah has no knowledge of the property not being in compliance with any and all environmental laws and Shah has no notice, directly or indirectly, of any pending, threatened, or anticipated environmental proceedings, claims, judgments, or orders against the property or Shah. There have been varied uses of the property throughout the years. Accordingly, Shah makes no representation as to whether there are any environmental issues or problems with the property and Aiken may make any such inspections in that regard which it may choose. If any environmental issues are discovered, Shah shall be under no obligation to remedy such issues. In the event in the exercise of this Option, Aiken will be fully responsible for any and all environmental problems or violations which may exist on the property.

11. Notices. All notices and other communications required under this Option Agreement shall be in writing and shall be deemed to have been properly given, if personally delivered, on the date of such delivery, or, if sent by Certified or Registered U.S. Mail, return receipt requested, on the third (3rd) business day following deposit in the U.S. Mail, postage prepaid, or if sent by overnight courier with guaranteed overnight delivery, on the day following the date delivered to such overnight courier. All notices shall be addressed to the party to whom it is intended at its address set forth below. Any party may designate a change of address by written notice to the others, given at least ten (10) business days before such change of address is to:

If to Shah to:	Shah Investments, LLC 235 Richland Avenue W Aiken, SC 29801
----------------	---

If to Aiken:

City Manager of Aiken  
135 Laurens Street, SW  
Aiken, SC 29801

As-Is, Where-Is. Except as specifically set forth in this Agreement and in the limited warranty deed and owner's affidavit to be executed at Closing, Aiken acknowledges and agrees that it will be acquiring the Property "As Is" and "Where Is", without representation or warranty of any kind.

12. Option to Run with the Land. This Option shall run with the title to the Property and shall be unaffected by any sale or conveyance of the Property. The terms and conditions of this Option Agreement shall be binding on the successor-in-interest to Shah in and to the Property or any portion thereof.

13. Miscellaneous.

- a. Counterparts. This Option Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument.
- b. Effective Date. This Option Agreement shall be effective as of the date first written above.
- c. Governing Law. This Option Agreement shall be enforced and construed in accordance with the laws of the State of South Carolina.
- d. Amendments. Any amendment of this Option Agreement must be made in writing and signed by both parties. Any attempted oral modifications will not be valid.
- e. No Waiver. Any failure by either party to enforce any right arising under this Option Agreement shall not be deemed a waiver of the ability to later enforce that right. Any waiver must be in writing and signed by the person waiving the right in order to be enforceable.
- f. Successors and Assigns. This Option Agreement shall inure to the benefit of, and shall be binding upon and be enforceable by Shah and Aiken, and their respective successors and/or assigns. This Option Agreement may be assigned in whole or in part by either party upon written notice to the other party.
- g. No Interest. Notwithstanding anything herein to the contrary, the parties agree that no portion of the Option Price shall be construed or treated as interest by any party hereto.
- h. Due Authorization. Each individual executing this Option Agreement on behalf of a corporation or other legal entity, represents and warrants that such individual has been authorized to do so by the board of directors or other governing body of said legal entity.

14. Assignment of Option. Aiken retains the right to assign this Option to a third (3<sup>rd</sup>) party.

The parties have executed this Option Agreement under seal effective the day and year first written above.

John Redabayo  
Witness  
Sara B. Ridout  
Witness

CITY OF AIKEN (Seal)  
By: [Signature]  
Print Name: JOHN C. KLIMM  
Title: CITY MANAGER

State of South Carolina )  
County of Aiken ) Acknowledgment

I, SARA B. RIDOUT, a notary public for the State and County aforesaid, do hereby certify that JOHN C. KLIMM, on behalf of Aiken, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 14<sup>th</sup> day of Sept., 2016.

Sara B. Ridout  
Notary Public  
My Commission Expires: May 5, 2018

(Notarial Seal)

