

COUNTY COUNCIL OF BEAUFORT COUNTY

ADMINISTRATION BUILDING
100 RIBAUT ROAD
POST OFFICE DRAWER 1228
BEAUFORT, SOUTH CAROLINA 29901-1228
TELEPHONE: (843) 255-2180
FAX: (843) 255-9401
www.bcgov.net

WM. WESTON J. NEWTON
CHAIRMAN

D. PAUL SOMMERVILLE
VICE CHAIRMAN

COUNCIL MEMBERS

STEVEN M. BAER
RICK CAPORALE
GERALD DAWSON
BRIAN E. FLEWELLING
HERBERT N. GLAZE
WILLIAM L. McBRIDE
STEWART H. RODMAN
GERALD W. STEWART
LAURA VON HARTEN

GARY KUBIC
COUNTY ADMINISTRATOR

BRYAN J. HILL
DEPUTY COUNTY ADMINISTRATOR

JOSHUA A. GRUBER
COUNTY ATTORNEY

SUZANNE M. RAINEY
CLERK TO COUNCIL

AGENDA FINANCE COMMITTEE

Monday, April 9, 2012
1:30 p.m.
Executive Conference Room
Administration Building

Committee Members:

Stu Rodman, Chairman
Rick Caporale, Vice Chairman
Steven Baer
Brian Flewelling
William McBride
Paul Sommerville
Jerry Stewart

Staff Support

Bryan Hill, Deputy County Administrator
David Starkey, Chief Financial Officer

1. CALL TO ORDER – 1:30 P.M.
2. FY 2013 BUDGET PROPOSALS
 - A. Technical College of the Lowcountry
 - B. University of South Carolina-Beaufort
3. DISCUSSION / BUDGET ITEMS REFERRED FROM AIRPORTS BOARD
4. COUNTY BUDGET PRESENTATION
5. PUBLIC / PRIVATE PARTNERSHIP CONTRACT BETWEEN BEAUFORT COUNTY AND DIRECT INSTRUCTION SUPPORT SYSTEMS, INC., AN OHIO NON-PROFIT CORPORATION, DBA, GO ZIP HILTON HEAD FOR THE CREATION AND DEVELOPMENT OF CERTAIN EDUCATIONAL AND RECREATIONAL ACTIVITIES IN THE OKATIE REGIONAL PARK TO BE CALLED “GOZIPHILTONHEAD” (final) (markup)
6. ADJOURNMENT – 3:30 P.M.

Open and Priority Retreat Items

Solid Waste Analysis
Road Financing
Burton Wells Regional Park Financing
Sports Complex Economic Analysis

2013 Budget Cycle

Reserve / Debt Policy
Business License Fees
2014 Millage Policy
Employee COLA / Bonus
Joint Use of School Facilities
Airport Business Plan
Beaufort Memorial Hospital

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

consist of the installation and maintenance of a temporary portable Welcome Center to use as a base of operations for the canopy tour and serve as an information center for park guests. Upon completion of all necessary infrastructure by the County contained in Section III below, Contractor shall construct a permanent structure of no less than 10' x 20' in size to serve as the Welcome Center at a cost not to exceed \$30,000. At the conclusion of this Agreement, the Contractor shall donate the permanent Welcome Center to the County.

4. The Contractor shall provide no less than three (3) portable temporary restrooms until such time as permanent restrooms may be installed on the site by the County. Upon the installation of permanent restroom facilities, the Contractor shall maintain and service such restroom facilities as its sole expense for use by the general public and Park guests. Contractor shall also maintain all permanent parking areas and the landscaping in and around the parking areas and shall be responsible for supplying any gravel as may be needed subject to inspection by the County.
5. The Contractor shall provide staff for the Welcome Center on all days for which the canopy tour is open for business and shall be responsible for the opening and closing of the park on those days. The Contractor shall ensure that the park is open for use by the general public during normal business hours consisting of a minimum time of 30-40 hours in season and 20 hours off season. For purposes of this agreement "in season" is defined as Memorial Day to Labor Day, or as otherwise may be agreed to in writing by the parties.
6. The Contractor shall mow and maintain the trails and provide maintenance, labor, and construction materials, signage and liability insurance for the off road bicycle trail as needed for clear and unimpeded access (subject to the primitive nature and natural characteristics of the primitive trails and off road bicycle trail) by the general public. Contractor shall also provide a dumpster for refuse and waste collection at the Welcome Center and shall ensure that said dumpster be emptied as needed to prevent the accumulation and overflow of trash and other debris around the dumpster area.
7. The Contractor shall provide for all signage of the Canopy Tour, off road bicycle trail and supporting structures as may be appropriate, as mutually agreed upon by the County and the Contractor, under the circumstances. All signage installed by the Contractor shall comply with the Town of Bluffton's rules and regulations as may be required.
8. The Contractor agrees to purchase and at all times maintain liability insurance in an amount of no less than Three Million and No/100 Dollars (\$3,000,000) and shall name the County, Beaufort Count Rural and Critical Lands Program, and the

Beaufort County Open Land Trust as an additional insured on said policy. The Contractor shall provide the County with proof of insurance prior to commencement of any operations and shall thereafter provide the County with annual updates of said policy thereafter.

9. The Contractor shall pay rent to the County in an amount of either \$1,250.00 per month as a flat rental amount or five (5%) percent of its gross revenues less any agent commissions, credit card fees, business license fees, and local and state sales and use taxes, whichever is greater. This amount shall be remitted to the County on a monthly basis as calculated by the previous month's gross revenue figures. This amount shall be submitted to the County no later than the fifteenth (15th) day of the month in which the rent is due. Any amounts not received by the fifteenth (15th) day shall incur a late charge of ten (10%) percent of the total amount due. The rental amount shall be sent to the Beaufort County Finance Department, P.O. Box 1228, Beaufort, SC 29901.
10. The Contractor agrees that its books and records may be audited by the County, at its cost, to ensure the accuracy and sufficiency of all monthly rent payments that may be due to the County.
11. The Contractor may provide signage for the park which shall be done in conformity with all applicable Town of Bluffton sign regulations and ordinances.

SECTION III – SERVICES BY THE COUNTY:

1. The County shall permit the Contractor to use the Okatie Regional Park for the purposes described above which use shall be in conformity with the Master Plan, which shall be incorporated into this Agreement by reference and made an integral part hereof.
2. The County shall obtain all necessary permits and design fees with the Town of Bluffton as they pertain to the infrastructure elements of the park that are the responsibility of the County to install pursuant to this Agreement.
3. The County shall provide for the installation of one two-hundred (200) amp electrical service panel within twenty-five (25) feet of the planned Welcome Center.
4. The County shall provide directional signs for the park along State Routes 278 and 170 and the access road (Cecil Reynolds Road) as may be permitted by all applicable state and local laws and regulations relating to the installation of signage.

5. The County agrees that it will provide the following improvements to the park so long as the aggregate cost to purchase, construct, and install the improvements shall at no time exceed \$175,000. County agrees that a priority use of such funds shall be to provide parking and water line connection to the property. Any costs that exceed the \$175,000 shall be discussed by the Contractor and County to determine if the costs should be incurred and if such costs are agreed upon by the Contractor and County and as approved by the appropriate Beaufort County Council Committee, such costs shall be split equally.
 - a. The County shall provide for the installation of a lockable gate and fence on the northern boundary of the park. The Park shall be opened and closed on a schedule that is mutually agreeable to both the County and the Contractor. Opening and closing the park will be the sole responsibility of the Contractor.
 - b. The County shall provide for the construction and installation of a picnic pavilion which shall have a concrete floor, no less than eight (8) picnic tables, and appropriate trash receptacles.
 - c. The County shall provide for permeable parking facilities so as to allow parking for between 20 vehicle and 40 vehicles, the number of parking spaces to be mutually agreed upon by Contractor and the County.
 - d. The County shall design and create the initial primitive trail park system throughout the park with all necessary and appropriate signage.
 - e. The County shall ensure that a water line connection to the property is available for use by the Contractor and the public. The County shall pay all tap fees associated with connecting the water line system to the restroom facility.

SECTION IV – MUTUAL UNDERSTANDINGS:

1. The Contractor shall allow annual inspection of the park infrastructure to determine general conditions and maintenance needs by the County. The Contractor agrees that it will be solely responsible for all such routine maintenance and repairs as may be determined during any such annual inspection.
2. All improvements to the park shall be done in conformity with the Master Plan and shall be subject to the prior approval of the County or its designee, which approval shall not unreasonably withheld.

3. The Contractor and the County will work cooperatively to provide recreational opportunities for the visitors and residents of the County and will use this public-private partnership to further the mission of the Rural and Critical Lands Preservation Program.
4. The Contractor and the County agree that a "Buy Beaufort County" philosophy shall be present and utilized during the performance of this Agreement as may be appropriate.
5. The Contractor agrees that it shall pay its employees and agents prevailing local hospitality industry wages, as Determined by Contractor, during the performance of this agreement and shall strive to create as many full time and part time jobs for Beaufort County residents as may be possible under the terms of this Agreement. The County may ask the Contractor to provide it with copies of its 1099s or other records as may be necessary to ensure compliance with this requirement.
6. The Contractor agrees that it shall provide reduced pricing up to 10% for its services to both adults and children who are residents of Beaufort County.
7. The Contractor agrees that at the conclusion of this agreement, or the termination or non-renewal of this agreement, that Contractor shall be responsible for removing the Contractor's recreational improvements so as to return the park to as close as possible to its natural state taking into consideration the use of such improvements and the reasonable costs associated therewith, and Contractor shall provide for the removal of any and all recreational equipment, recreational structures, or recreational facilities installed by Contractor as may reasonably be required by the County.
6. In order to reduce the impact upon the park during the construction and maintenance of contractor activities, the Contractor will attempt, at its sole discretion, to lease private adjacent property as a staging area for construction. If leased, all maintenance equipment, mowers, storage trailers, not associated with the daily operation of the park will be stored off site to maintain the natural beauty of the park.

SECTION V – TERM, RENEWAL, AND TERMINATION:

1. This agreement shall be in full force and effect from the last date executed below for a period of five (5) years ("Initial Term.") The Parties acknowledge that the Initial Term is necessary based upon the Contractor's significant capital improvements in developing a canopy tour at the Okatie Regional Park.

2. This Agreement may be renewed at the option of Contractor for two (2) consecutive periods of five (5) years each for a total potential renewal term of ten (10) years, unless either party provides written notice of termination at least twelve (12) months prior to the expiration of the Initial Term or any subsequent renewal term, with such continuation not being unreasonably withheld.
3. In the event that this Agreement is terminated hereunder, the Contractor shall deliver to the County all reports, field books, drawings, or other documents that have been prepared in the course of the services performed under this Agreement. All such material is, and shall remain the property of the County, to be used in such a manner and for such purposes as the County may choose. The County shall not use such materials which are not completed by the Contractor or which are used on other than this Agreement. It is further agreed that in the event the County shall terminate the Agreement due to failure of the Contractor to properly perform material obligations in accordance with the terms of this Agreement, the County may make such arrangements as it shall deem desirable for the completion of the Services under this Agreement.
4. After the initial term, the Contractor shall make no claim for additional compensation against the County by reason of termination other than as allowed for by law.

5. This Contract may be terminated by Contractor, if the County does not submit the land disturbance permit applications within 90 days of this Agreement.

6. Neither party shall be liable for failure to perform this agreement when such failure is due to “force majeure.” “Force majeure” shall mean acts of God, strikes, lockouts, or industrial disputes or disturbances, civil disturbances, arrests and restraints, interruptions by government or court orders, present and future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, insurrections, inability to secure labor or inability to secure materials, including inability to secure materials by reason of allocations promulgated by authorized governmental agencies, epidemics, fires, explosions, inability to obtain easements, right-of-way, or other interests in realty, or any other cause, whether of the kind here enumerated or otherwise, not reasonably within the control of the party claiming “force majeure.”

SECTION VI – MODIFICATION:

1. This Agreement constitutes the entire agreement and understanding by and between the parties with respect to the subject matter hereof and supersedes all prior oral or written communications, proposals, agreements or understandings of the parties relating to the subject matter hereof and shall not be modified unless confirmed in writing by all parties in agreement hereto. No representation, promise, or inducement has been made by either party hereto that is not embodied in this Agreement, and neither party shall be bound or liable for any alleged representation, promise, or inducement not specifically set forth herein.

SECTION VII – GOVERNING LAW:

1. This agreement shall be governed and interpreted under the laws of the State of South Carolina, County of Beaufort.

SECTION VIII – DISPUTE RESOLUTION:

1. In the event of any dispute arising under this Agreement, the Parties agree that prior to the filing of a lawsuit, they may participate in voluntary mediation to resolve any and all such disputes and shall attempt to jointly explore and communicate their differences and will seek an acceptable solutions for both parties if at all possible. If a lawsuit is filed, the party who files the lawsuit stipulates and agrees that the lawsuit shall be stayed while the parties participate in mandatory mediation. The parties shall agree on a mediator, and if they are unable to agree they shall contact the Beaufort County Clerk of Court to obtain the name of the next certified mediator (as set forth in ADR Rule 4) and shall use that person as the mediator. The cost of the mediator shall be split equally.

SECTION IX – SEVERABILITY:

1. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed, or if any provision is held invalid or unenforceable by a court of competent jurisdiction, such provision shall be deleted from this Agreement and the Agreement shall be construed to give full effect to the remaining provisions thereof.

SECTION X – HEADINGS AND CAPTIONS:

1. Headings and Captions. The paragraph headings and captions contained in this Agreement are for convenience only and shall not be construed to define, limit, or affect the scope or meaning of the provisions hereof.

SECTION XI – ASSIGNABILITY:

1. This Agreement shall be binding upon and inure to the benefit of each Party and its respective successors and assigns. Neither this Agreement nor any rights or obligations hereunder may be assigned by either Party without the prior written consent of the other, which consent shall not be unreasonably withheld. Notwithstanding the forgoing, County expressly agrees that Contractor may assign its rights and obligations to Go Zip Hilton Head, LLC.

SECTION XII – INDEMNIFICATION:

1. Contractor hereby agrees to defend, indemnify, and hold harmless the County, the Beaufort County Rural and Critical Lands Program, and the Beaufort County Open Land Trust from any and all claims, actions, suits, or demands for compensation from whatever source, arising from the operation and use of the canopy tour and other activities specifically monitored by Contractor, .
 2. The County will defend, indemnify and hold harmless the Contractor, its officers, owners, agents, employees, instructors, and volunteers from any and all claims, actions, suits, or demands for compensation from whatever source arising out of or related to public use of the park not associated with activities specifically monitored and supervised by the Contractor, including but not limited to the primitive nature trails
 3. Nothing herein is intended to waive the limits of liability provided by the Recreational Use Statute, SC Code Ann §§ 27-3-10 – 70.
-
-

SECTION XIII- NO THIRD PARTY BENEFICIARIES

1. The terms of this Agreement are only binding upon and inure to the benefit of the County and the Contractor, and their permitted assigns. There are no other intended beneficiaries of this Agreement. There are no third party beneficiaries to this Agreement.

SECTION XIII – GENERAL PROVISIONS:

1. No failure by either party to insist upon the strict performance by the other of any covenant, agreement, term, or condition of the Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement, and term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.
2. Time is of the essence in each provision of this Agreement in which a time period is specifically mentioned.
3. All references to the term of this Agreement shall include any and all Renewal Periods of such term.
4. Except as otherwise provided hereby, all notices, demands, or requests from one party to the other must be personally delivered or sent by certified U.S. mail.

To the County at: Mr. Gary Kubic
Beaufort County Administrator
P.O. Box 1228
Beaufort, South Carolina 29901

With Copy to:
Beaufort County Staff Attorney
P.O. Box 1228
Beaufort, South Carolina 29901

To Contractor at:
Mr. Gary Moore, Ph.D.
Direct Instructional Support Systems, Inc.
P.O. Box 691
Worthington, Ohio 43085

Each party shall have the right from time to time to designate a different address by which notices of the change in address can be given in conformity with this Agreement.

SECTION XIV – EXECUTION, APPROVAL AND CERTIFICATION:

IN WITNESS WHEREOF, the parties hereto have affixed their hands and have executed this Agreement, in duplicate, as of the day and year first above written.

WITNESSES:

BEAUFORT COUNTY:

By: _____

Its: _____

CONTRACTOR:

(Print Name)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AGREEMENT

SECTION I – PURPOSE:

This Agreement is entered into this _____ day of _____, 2012, by and between Beaufort County, a body politic and political subdivision of the State of South Carolina (hereinafter "County"), and Direct Instruction Support Systems, Inc. (hereinafter "Contractor"), an Ohio Non-Profit Corporation. (dba, Go Zip Hilton Head).

WITNESSETH: that the Contractor for and in consideration of the mutual obligations contained herein, agrees to perform necessary services and improvements, hereinafter referred to as Services, as requested by the County and described elsewhere in this Agreement for the creation and development of certain educational and recreational activities in the Okatie Regional Park to be called "GoZipHiltonHead."

SECTION II – SERVICES BY THE CONTRACTOR:

1. The Contractor agrees that its obligations under this Agreement are for the benefit only of the County. The Contractor represents that it is possessed of the necessary professional skills and experience as required to properly execute the work as required of this Agreement and shall at all times safeguard the interests of the County, as set forth herein, during the course and performance of this Agreement. The Contractor shall furnish all personnel, equipment and materials necessary, as determined by Contractor, to perform the Services as stated under this Agreement and shall conduct said work in an effective and timely manner.
2. The Contractor agrees to invest up to ~~Three Hundred and FiftyFour Hundred Forty One~~ Thousand and No/100 Dollars (\$~~350441~~,000) in the construction of a canopy tour and associated structures in the Okatie Regional Park. Said tour to include such towers, zip lines, and sky bridges using such structures, poles, and trees as may be necessary to create a two and one-half hour tour and supporting activities to increase public enjoyment of the park. ~~The supporting activities will be mutually agreed upon by the Contractor and the County. (climbing wall, giant swing, children's adventure playground, and off road bicycle trails)~~ Final layout of the tour shall be determined in conformity with the various setbacks, permits, Master Plan for the Okatie Regional Park, and subject to confirmation and approval by the County and a certified arborist of its choosing, such approval not being unreasonably withheld. Any and all payments made by the Contractor to the certified arborist shall be included in the \$~~350441~~,000.00 amount herein.

3. The Contractor agrees to make physical improvements and provide the following infrastructure to the Okatie Regional Park which physical improvements shall consist of the installation and maintenance of a [temporary](#) portable Welcome Center to use as a base of operations for the canopy tour and serve as an information center for park guests. Upon completion of all necessary infrastructure by the County [contained in Section III below](#), Contractor shall construct a permanent structure of no less than 10' x 20' in size to serve as the Welcome Center at a cost not to exceed \$30,000. At the conclusion of this Agreement, the Contractor shall donate the permanent Welcome Center to the County.
4. The Contractor shall provide [no less than three \(3\)](#) portable temporary restrooms until such time as permanent restrooms may be installed on the site by the County. Upon the installation of permanent restroom facilities, the Contractor shall maintain and service such restroom facilities as its sole expense for use by the general public and Park guests. Contractor shall also maintain all permanent parking areas and the landscaping in and around the parking areas and shall be responsible for supplying any gravel as may be needed [subject to inspection by the County](#).
5. The Contractor shall provide staff for the Welcome Center on all days for which the canopy tour is open for business and shall be responsible for the opening and closing of the park on those days. The Contractor shall ensure that the park is open for use by the general public during normal business hours consisting of a minimum time of 30-40 hours in season and 20 hours off season. [For purposes of this agreement "in season" is defined as Memorial Day to Labor Day, or as otherwise may be agreed to in writing by the parties.](#)
6. The Contractor shall mow and maintain the ~~primitive trails (up to one mile)~~ and provide maintenance, labor, and construction materials, signage and liability insurance for the off road bicycle trail as needed for clear and unimpeded access (subject to the primitive nature and natural characteristics of the primitive trails and off road bicycle trail) by the general public. Contractor shall also provide a dumpster for refuse and waste collection at the Welcome Center and shall ensure that said dumpster be emptied as needed to prevent the accumulation and overflow of trash and other debris around the dumpster area.
7. The Contractor shall provide for all signage of the Canopy Tour, off road bicycle trail and supporting structures as may be appropriate, as ~~determined mutually agreed upon~~ [by the County and the Contractor, under the circumstances. All signage installed by the Contractor shall comply with the Town of Bluffton's rules and regulations as may be required.](#)

8. The Contractor agrees to purchase and at all times maintain liability insurance in an amount of no less than ~~Three~~ Million and No/100 Dollars (\$~~32~~,000,000) and shall name the County, Beaufort Count Rural and Critical Lands Program, and the Beaufort County Open Land Trust as an additional insured on said policy. The Contractor shall provide the County with proof of insurance prior to commencement of any operations and shall thereafter provide the County with annual updates of said policy thereafter.

9. The Contractor shall pay rent to the County in an amount of either \$1,250.00 per month as a flat rental amount or ~~in the amount of~~ five (5%) percent of its gross revenues less any agent commissions, credit card fees, business license fees, and local and state sales and use taxes, whichever is greater. This amount shall be remitted to the County on a monthly basis as calculated by the previous month's gross revenue figures. This amount shall be submitted to the County no later than the fifteenth (15th) day of the month in which the rent is due. Any amounts not received by the fifteenth (15th) day shall incur a late charge of ten (10%) percent of the total amount due. The ~~rental amount~~ amount shall be sent to the Beaufort County Finance Department, P.O. Box 1228, Beaufort, SC 29901-
_____.

Comment [BL1]: We're looking for some help from Josh on this one.

10. The Contractor agrees that its books and records may be audited by the County, at its cost, to ensure the accuracy and sufficiency of all monthly rent payments that may be due to the County.

~~10.~~11. The Contractor may provide signage for the park which shall be done in conformity with all applicable Town of Bluffton sign regulations and ordinances.

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Font: (Default) Tahoma, 12 pt

Formatted: Font: (Default) Tahoma, 12 pt

SECTION III – SERVICES BY THE COUNTY:

1. The County shall permit the Contractor to use the Okatie Regional Park for the purposes described above which use shall be in conformity with the Master Plan, which shall be incorporated into this Agreement by reference and made an integral part hereof.

2. The County shall obtain all necessary permits and design fees with the Town of Bluffton as they pertain to the ~~basic~~ infrastructure elements of the park that are the responsibility of the County to install pursuant to this Agreement.

~~3.~~ The County shall provide for the installation of one two-hundred ~~and fifty~~ (250) amp electrical service panel within twenty-five (25) feet of the planned Welcome Center.

3.

Formatted: Font: (Default) Tahoma, 12 pt

Formatted: Justified, Space After: 0 pt, Line spacing: single, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.31" + Indent at: 0.56"

~~4. The County shall provide and allow for signage for the park with a banner space for the canopy tour which shall be done in conformity with all applicable Town of Bluffton sign regulations and ordinances.~~

5.4. The County shall provide directional signs for the park along State Routes 278 and 170 and the access road (Cecil Reynolds Road) as may be permitted by all applicable state and local laws and regulations relating to the installation of signage.

~~6.5. The County agrees that it will provide the following improvements to the park so long as the aggregate cost to purchase, construct, and install the improvements shall at no time exceed \$175,000. County agrees that a priority use of such funds shall be to provide parking and water line connection to the property. Any and all costs for the below items that shall be above the aggregate amount of \$175,000 stated above, shall be the responsibility of the Contractor for completion and final installation, up to a maximum amount of \$81,000 to be paid by Contractor. Any costs that exceed the \$175,000 and the \$81,000, shall be discussed by the Contractor and County to determine if the costs should be incurred and if such costs are agreed upon by the Contractor and County and as approved by the appropriate Beaufort County Council Committee, such costs shall be split equally. ÷~~

Formatted: Font: (Default) Tahoma, 12 pt

Comment [BL2]: \$81,000 This incorporates the difference between our CIP manager's estimate and the money designated for park development.

Formatted: Font: (Default) Tahoma, 12 pt

Formatted: Font: (Default) Tahoma, 12 pt

- a. The County shall provide for the installation of a lockable gate and fence on the northern boundary of the park. The Park shall be opened and closed on a schedule that is mutually agreeable to both the County and the Contractor. Opening and closing the park will be the sole responsibility of the Contractor.
- b. The County shall provide for the construction and installation of a picnic pavilion which shall have a concrete floor, no less than eight (8) picnic tables, and appropriate trash receptacles.
- c. The County shall provide for permeable parking facilities so as to allow parking for between 20 vehicle and 40 vehicles, the number of parking spaces to be ~~determined by an eco-analysis or as~~ mutually agreed upon by Contractor and the County.
- d. The County shall design and create the initial primitive trail park system throughout the park with all necessary and appropriate signage.
- e. The County shall ensure that a water line connection to the property is available for use ~~by~~ the Contractor and the public. The County shall pay all tap fees associated with connecting the water line system to the restroom facility.

SECTION IV – MUTUAL UNDERSTANDINGS:

1. The Contractor shall allow annual inspection of the park infrastructure to determine general conditions and maintenance needs by the County. The Contractor agrees that it will be solely responsible for all such routine maintenance and repairs as may be determined during any such annual inspection.
2. All improvements to the park shall be done in conformity with the Master Plan and shall be subject to the prior approval of the County or its designee, which approval shall not unreasonably withheld.
3. The Contractor and the County will work cooperatively to provide recreational opportunities for the visitors and residents of the County and will use this public-private partnership to further the mission of the Rural and Critical Lands Preservation Program.
4. The Contractor and the County agree that a “Buy Beaufort County” philosophy shall be present and utilized during the performance of this Agreement as may be appropriate.
5. The Contractor agrees that it shall pay its employees and agents prevailing local hospitality industry wages, as Determined by Contractor, during the performance of this agreement and shall strive to create as many full time and part time jobs for Beaufort County residents as may be possible under the terms of this Agreement. The County may ask the Contractor to provide it with copies of its 1099s or other records as may be necessary to ensure compliance with this requirement.
6. The Contractor agrees that it shall provide reduced pricing up to 10% for its services to both adults and children who are residents of that are documented Beaufort County residents.
7. The Contractor agrees that at the conclusion of this agreement, or the termination or non-renewal of this agreement, that Contractor shall be responsible for removing the Contractor’s recreational improvements so as to return the park to as close as possible to its natural state taking into consideration the use of such improvements and the reasonable costs associated therewith, and Contractor shall provide for the removal of any and all recreational equipment, recreational structures, or recreational facilities installed by Contractor as may reasonably be required by the County.

Formatted: Font: (Default) Tahoma, 12 pt

Formatted: Normal, Indent: Left: 0.31", Hanging: 0.19", No bullets or numbering

Formatted: Font: (Default) Tahoma, 12 pt

Formatted: Font: (Default) Tahoma, 12 pt

Formatted: Font: (Default) Tahoma, 12 pt

Formatted: Font: (Default) Tahoma, 12 pt

Formatted: Font: (Default) Tahoma, 12 pt

8-6. In order to reduce the impact upon the park during the construction and maintenance of contractor activities, the Contractor will attempt, at its sole discretion, to lease private adjacent property as a staging area for construction. If leased, all maintenance equipment, mowers, storage trailers, not associated with the daily operation of the park will be stored off site to maintain the natural beauty of the park.

SECTION V – TERM, RENEWAL, AND TERMINATION:

1. This agreement shall be in full force and effect from the last date executed below for a period of ~~five~~four (54) years (“Initial Term.”) The Parties acknowledge that the Initial Term is necessary based upon the Contractor’s significant capital improvements in developing a canopy tour at the Okatie Regional Park.

2. This Agreement may be renewed at the option of Contractor for ~~two~~three (23) consecutive periods of ~~five~~four (54) years each for a total potential renewal term of ~~ten~~twelve (10+2) years, unless either party provides written notice of termination at least twelve (12) months prior to the expiration of the Initial Term or any subsequent renewal term, with such continuation not being unreasonably withheld.

2-
3. In the event that this Agreement is terminated hereunder, the Contractor shall deliver to the County all reports, field books, drawings, or other documents that have been prepared in the course of the services performed under this Agreement. All such material is, and shall remain the property of the County, to be used in such a manner and for such purposes as the County may choose. The County shall not use such materials which are not completed by the Contractor or which are used on other than this Agreement. It is further agreed that in the event the County shall terminate the Agreement due to failure of the Contractor to properly perform material obligations in accordance with the terms of this Agreement, the County may make such arrangements as it shall deem desirable for the completion of the Services under this Agreement.

4. After the initial term, the Contractor shall make no claim for additional compensation against the County by reason of termination other than as allowed for by law.

5. This Contract may be terminated by Contactor, if the County does not provide the land disturbance permit with 120 days of this Agreement. submit the land disturbance permit applications within 90 days of this Agreement.

6. Neither party shall be liable for failure to perform this agreement when such failure is due to “force majeure.” “Force majeure” shall mean acts of God, strikes, lockouts, or industrial

Formatted: Indent: Left: 0.5", No bullets or numbering

Comment [BL3]: This change is made because permitting involves outside agencies that are beyond the County’s control.

disputes or disturbances, civil disturbances, arrests and restraints, interruptions by government or court orders, present and future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, insurrections, inability to secure labor or inability to secure materials, including inability to secure materials by reason of allocations promulgated by authorized governmental agencies, epidemics, fires, explosions, inability to obtain easements, right-of-way, or other interests in realty, or any other cause, whether of the kind here enumerated or otherwise, not reasonably within the control of the party claiming "force majeure."

SECTION VI – MODIFICATION:

1. This Agreement constitutes the entire agreement and understanding by and between the parties with respect to the subject matter hereof and supersedes all prior oral or written communications, proposals, agreements or understandings of the parties relating to the subject matter hereof and shall not be modified unless confirmed in writing by all parties in agreement hereto. No representation, promise, or inducement has been made by either party hereto that is not embodied in this Agreement, and neither party shall be bound or liable for any alleged representation, promise, or inducement not specifically set forth herein.

SECTION VII – GOVERNING LAW:

1. This agreement shall be governed and interpreted under the laws of the State of South Carolina, County of Beaufort.

SECTION VIII – DISPUTE RESOLUTION:

1. In the event of any dispute arising under this Agreement, the Parties agree that prior to the filing of a lawsuit, they ~~shall~~ may participate in ~~voluntary~~ mandatory mediation to resolve any and all such disputes and shall attempt to jointly explore and communicate their differences and will seek an acceptable solutions for both parties if at all possible. If a lawsuit is filed, the party who files the lawsuit stipulates and agrees that the lawsuit shall be stayed while the parties participate in mandatory mediation. The parties shall agree on a mediator, and if they are unable to agree they shall contact the Beaufort County Clerk of Court to obtain the name of the next certified mediator (as set forth in ADR Rule 4) and shall use that person as the mediator. The cost of the mediator shall be split equally.

SECTION IX – SEVERABILITY:

1. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed, or if any provision is held invalid or unenforceable by a court of competent jurisdiction, such provision shall be deleted from this Agreement and the Agreement shall be construed to give full effect to the remaining provisions thereof.

SECTION X – HEADINGS AND CAPTIONS:

1. Headings and Captions. The paragraph headings and captions contained in this Agreement are for convenience only and shall not be construed to define, limit, or affect the scope or meaning of the provisions hereof.

SECTION XI – ASSIGNABILITY:

1. This Agreement shall be binding upon and inure to the benefit of each Party and its respective successors and assigns. Neither this Agreement nor any rights or obligations hereunder may be assigned by either Party without the prior written consent of the other, which consent shall not be unreasonably withheld. Notwithstanding the forgoing, County expressly agrees that Contractor may assign its rights and obligations to Go Zip Hilton Head, LLC.

SECTION XII – INDEMNIFICATION:

1. Contractor hereby agrees to defend, indemnify, and hold harmless the County, the Beaufort County Rural and Critical Lands Program, and the Beaufort County Open Land Trust from any and all claims, actions, suits, or demands for compensation from whatever source, arising from the operation and use of the canopy tour and other activities specifically monitored by Contractor, .
2. The County will defend, indemnify and hold harmless the Contractor, its officers, owners, agents, employees, instructors, and volunteers from any and all claims, actions, suits, or demands for compensation from whatever source arising out of or related to public use of the park not associated with activities specifically monitored and supervised by the Contractor, including but not limited to the primitive nature trails
3. Nothing herein is intended to waive the limits of liability provided by the Recreational Use Statute, SC Code Ann §§ 27-3-10 – 70.

SECTION XIII- NO THIRD PARTY BENEFICIARIES

1. The terms of this Agreement are only binding upon and inure to the benefit of the County and the Contractor, and their permitted assigns. There are no other intended beneficiaries of this Agreement. There are no third party beneficiaries to this Agreement.

SECTION XIII – GENERAL PROVISIONS:

1. No failure by either party to insist upon the strict performance by the other of any covenant, agreement, term, or condition of the Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement, and term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.
2. Time is of the essence in each provision of this Agreement in which a time period is specifically mentioned.
3. All references to the term of this Agreement shall include any and all Renewal Periods of such term.
4. Except as otherwise provided hereby, all notices, demands, or requests from one party to the other must be personally delivered or sent by certified U.S. mail.

To the County at: Mr. Gary Kubic
Beaufort County Administrator
P.O. Box 1228

Beaufort, South Carolina 29901

With Copy to:

Beaufort County Staff Attorney
P.O. Box 1228
Beaufort, South Carolina 29901

To Contractor at:

Mr. Gary Moore, Ph.D.
Direct Instructional Support Systems, Inc.
P.O. Box 691
Worthington, Ohio 43085

Each party shall have the right from time to time to designate a different address by which notices of the change in address can be given in conformity with this Agreement.

Formatted: List Paragraph

SECTION XIV – EXECUTION, APPROVAL AND CERTIFICATION:

IN WITNESS WHEREOF, the parties hereto have affixed their hands and have executed this Agreement, in duplicate, as of the day and year first above written.

WITNESSES:

BEAUFORT COUNTY:

By: _____

Its: _____

CONTRACTOR:

(Print Name)

