

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

FIRST AMENDMENT TO
MEMORANDUM OF UNDERSTANDING
(Stoney Field)

This First Amendment to the Memorandum of Understanding (the "**MOU**") is entered into as of the _____ day of _____, 2020, by and between the City of Charleston, South Carolina (the "**City**") and the Charleston County School District (the "**CCSD**").

WHEREAS, the City and CCSD entered into a Memorandum of Understanding on December 26, 2018 to improve the playing field conditions at Stoney Field ("the Project"), a City-owned and operated recreational field (the "Property") located at 300 Fishburne Charleston, SC 29403; a copy of the Memorandum of Understanding is attached hereto as Exhibit 1; and,

WHEREAS, the Project shall be completed in two phases; 1) design phase and 2) construction phase, (collectively hereinafter the "Project") through CCSD's procurement process; and,

WHEREAS, the design phase of the Project has been completed and the construction phase of the Project is currently underway; and,

WHEREAS, the parties now desire to amend the Memorandum of Understanding to include as a part of the Construction Work a fifty/fifty sharing of the cost to construct a 400m asphalt track to replace the 400m cinder track that existed prior to the commencement of the Project.

NOW, THEREFORE, for and consideration of the sum of One and 00/100 (\$1.00) Dollar and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Paragraph 2.A. ii. of the Agreement is hereby amended by deleting subsection ii. (d) and replacing it with the following and by adding a new subsection ii. (f) as follows:

ii. City Rights/Responsibilities. During the project, the City shall:

(d) Apply all reasonable costs expended by CCSD to facilitate this Project first towards the amount owed of \$2,274,100.00 owed to the City by CCSD pursuant to the Agreement for Exchange of Real Property dated June 21, 2011, and the remaining costs towards CCSD's budgeted amount as identified in revised Exhibit B attached hereto and incorporated herein by reference. The City and CCSD acknowledge and agree that as of the date of this First Amendment, CCSD has paid \$2,075,173.26 toward the costs of construction of this Project.

(f) Share in 50% of the cost of constructing a 400m asphalt track to replace the 400m cinder track that existed prior to the commencement of the Project, and based on the same layout as the current Project plan in the amount of \$460,895 to be constructed according to the plans dated 07/08/2020, attached hereto as Exhibit 2 and incorporated herein by reference (the "Track"). The change to the asphalt track will require such services to include a surcharge program, building a retaining wall along the marsh, cut off walls at each stadium face, fencing and base and asphalt surface course. This work is to be performed by Gulfstream Construction and substantially completed 340 days from Notice to Proceed. CCSD's 50% share of the costs of the Track is included in the approved budgeted amount shown on Exhibit B. CCSD will pay directly to Project contractors each month the amount due per the contract between CCSD and the Project contractors and will submit to the City each month a copy of the contractors' pay application with the allocation for the Track portion of the pay application shown in the schedule of values. The City shall reimburse CCSD within ten (10) days after submission to the City of a copy of each monthly pay application an amount equal to 50% of the total costs expended to date for construction of the Track. Upon completion of the Project, including the Track, the City shall pay to CCSD all amounts due to CCSD pursuant to subsection (f).

In all other respects, the Memorandum of Understanding heretofore entered into by and between the parties remains unmodified and in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have affixed their hands and seals as of the day and year first written above:

City of Charleston:

Witness

Mayor John J. Tecklenburg,

Witness

Charleston County School District

Witness

By: _____

Its: _____

Witness

EXHIBIT 1

**MEMORANDUM OF UNDERSTANDING
DATED DECEMBER 26, 2018**

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

MEMORANDUM OF UNDERSTANDING
(Stoney Field)

26th This Memorandum of Understanding (the "MOU") is entered into as of the day of December 2018, by and between the City of Charleston, South Carolina (the "City") and the Charleston County School District (the "CCSD").

1. The City and CCSD desire to improve the playing field conditions at Stoney Field, a City-owned and operated recreational field (the "Property") located at 300 Fishburne Charleston, SC 29403. Stoney field improvements were approved for funding by the CCSD Board of Trustees on August 22, 2016 and March 26, 2018.

2. The project shall be completed in two phases; 1) design phase and 2) construction phase, (collectively hereinafter the "Project") through CCSD's procurement process. The design scope of work will include surveying, wetland delineation, geotechnical and environmental services, surcharge design, permitting, development of bid documents, surcharge instrumentation installation, data acquisition, data processing, analyses, surcharge reports, track demolition and removal, surcharge placement, synthetic turf field design and weekly site visits and construction contract administration ("Design Work"). The construction scope of work will include removal of surcharge material, field grading, drainage, turf, goal post and scoreboard installation, replacement of walking track and fence installation ("Construction Work").

A. Stoney Field Design and Construction

i. CCSD Rights/Responsibilities. During the project, CCSD shall:

- (a) Have access to the Property and to the access point as shown on the attached Exhibit A for its contractors and sub-contractors to execute the Design Work and Construction Work commencing 35 days after full execution of this MOU and terminating upon project completion anticipated to be September, 2020;
- (b) Secure all required governmental and regulatory permits and inspections required to complete the Design and Construction Work;
- (c) Repair all damage to the Property caused by the Design and Construction Work, including, but not limited to, the parking lot, any construction access points created for the Work, the scoreboard, home and visitor stands, and restrooms, which all shall be returned to the City in their current or better condition;

- (d) Prior to the commencement of any surcharge or other construction activities, CCSD shall present the Design and Construction drawings to the City for approval and will obtain City approval for any changes to the Project;
 - (e) Coordinate with the City in holding necessary public meetings;
 - (f) Obtain approval and any required permits (including a soil management plan) from DHEC and OCRM for any soil disturbing activities. (see Section 2.B.iii below);
 - ~~(g)~~ Fully fund the Project in accordance with CCSD Board of Trustee approval, as shown on the CCSD Board approved budget and approval document attached as Exhibit B;
 - (h) Provide all warranties for the Project, and provide as-built drawings to the City upon Project completion;
 - (i) Cause all CCSD contractors and subcontractors to provide insurance and indemnity to the City as shown on the attached Exhibit B for entire duration of the Project;
 - ~~(j)~~ CCSD will fully fund any and all amounts over the approved budget; and,
 - (k) CCSD understands that the City has a parking agreement with MUSC for the parking lot on the parcel where the Property is located. CCSD agrees not to disturb, disrupt, or use any part of the parking lot without advance written approval of the City.
- ii. City Rights/Responsibilities. During the project, the City shall:
- (a) Provide access to the Property to CCSD contractors and subcontractors to execute the Design and Construction Work commencing 35 days after full execution of this MOU and terminating upon Project completion anticipated to be September, 2020;
 - (b) Provide necessary approvals for CCSD to discuss with DHEC Phase 1 of the Project related to the design of the surcharge.

- (b) Coordinate with the CCSD in holding necessary public meetings;
- (c) In the event CCSD stops work, causing the project completion schedule to be extended by more than 12 months, the City reserves the right to complete the Project, at CCSD's sole expense; and,
- (d) Apply all reasonable costs, as identified by Exhibit B, expended by CCSD to facilitate this Project towards the amount owed to the City by CCSD. The amount owed to the City is \$2,274,100.00 as described in the Agreement for Exchange of Real Property of June 21, 2011.
- (e) Assign a Project Manager (PM) to work with the CCSD's Project Manager (PM) for the oversight of the design and construction contracts. The CCSD's PM will invite the City's PM to all coordination and project update meetings with the design and construction contractors and prior to the final approval of all invoices reflecting the work in place, the City's PM will validate the work in place by a signature. Copies of all final payments will be sent to the City's PM.

B. Future MOUs.

- i. During the design and construction phase of the surcharge, the City will draft a MOU with CCSD to address field maintenance responsibilities to include future settlement repairs.
- ii. CCSD agrees that any future MOUs with the City will contain requirements for CCSD to cause all contractors and subcontractors to provide all insurance and indemnity to the City as shown in the attached Exhibit C.
- iii. The City and CCSD agree that any future MOUs for Stoney Field will contain the requirement that any work requiring a DHEC and/or DHEC ORCM approval will be the responsibility of the party completing the work.

3. Miscellaneous.

A. Notices. All notices, consents and other communications under this MOU shall be in writing and shall be deemed to have been duly given when (i) delivered by hand with signed delivery receipt requested, (ii) sent by facsimile (with receipt confirmed), provided a copy is mailed on the same day by registered mail, return receipt requested, or (iii) received by the addressee, if sent by U.S. Mail or Express Mail, Federal Express or other express delivery service (return receipt requested), in each case to the appropriate addresses and facsimile numbers set forth below (or to such other addresses and facsimile numbers as a party may designate as to itself by notice to the other):

If to the City:

City of Charleston, Department of Parks
Attn: Jason Kronsberg, Director
823 Meeting Street
Charleston, SC 29403

With copies to:

City of Charleston
Corporation Counsel
50 Broad Street
Charleston, SC 29401

And,

Real Estate Management
City of Charleston
2 George, Suite 2601
Charleston, SC 29401

If to CCSD:

Jeff Borowy – COO
3999 Bridge View Dr
North Charleston, SC 29405
843-566-1975

Gerrita Postlewait – Superintendent
75 Calhoun St
Charleston, SC 29401
843-937-6319

B. Indemnity. To the extent permitted by law, CCSD agrees to indemnify and save harmless the City and the City's officers, agents, and employees, from and against all losses and claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description brought or recovered against them by reason

of any act, omission, or default of the CCSD, its agents, contractors, sub-contractors, or employees in the execution of this MOU. When the City submits notice, CCSD shall promptly defend any aforementioned action at no cost to the City. This obligation shall survive the suspension or termination of this MOU. The limits of insurance coverage required herein shall not serve to limit this indemnity obligation. The recovery of costs and fees shall extend to those incurred in the enforcement of this indemnity.

C. No Partnership. Nothing herein shall be deemed to create any partnership or joint venture between the parties.

D. Entire Agreement. This MOU embodies the entire agreement and understanding among the parties hereto relating to the obligations of the parties hereunder and supersedes all prior agreements and understandings between them, whether written or oral, with respect thereto.

E. Amendments. This MOU may be amended only in writing, in whole or in part, at any time only by the approval of the City and CCSD. No provision of this MOU may be waived except by a writing signed by both parties.

F. Applicable Law. This MOU shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina.

G. Severability. If any provision of this MOU is held to be invalid, as applied to any fact or circumstance, such invalidity shall not affect the validity of any other provision hereof or the validity of such provision as applied to any other fact or circumstance.

H. Headings. Section headings are for convenience of reference only and shall in no way affect the interpretation of this MOU.

I. Binding Effect/Successors and Assigns. The provisions of this MOU shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

J. Multiple Counterparts. This MOU may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any of the parties hereto may execute this MOU by signing any such counterpart.

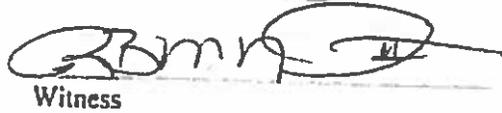
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IN WITNESS WHEREOF, the parties have affixed their hands and seals as of the day and year first written above:


Witness


Witness

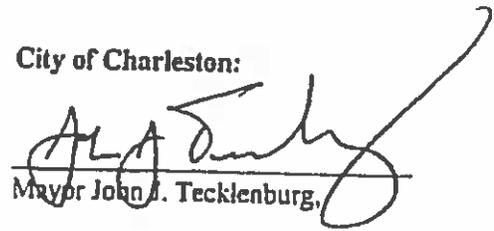

Witness


Witness

Witness

Witness

City of Charleston:


Mayor John A. Tecklenburg.

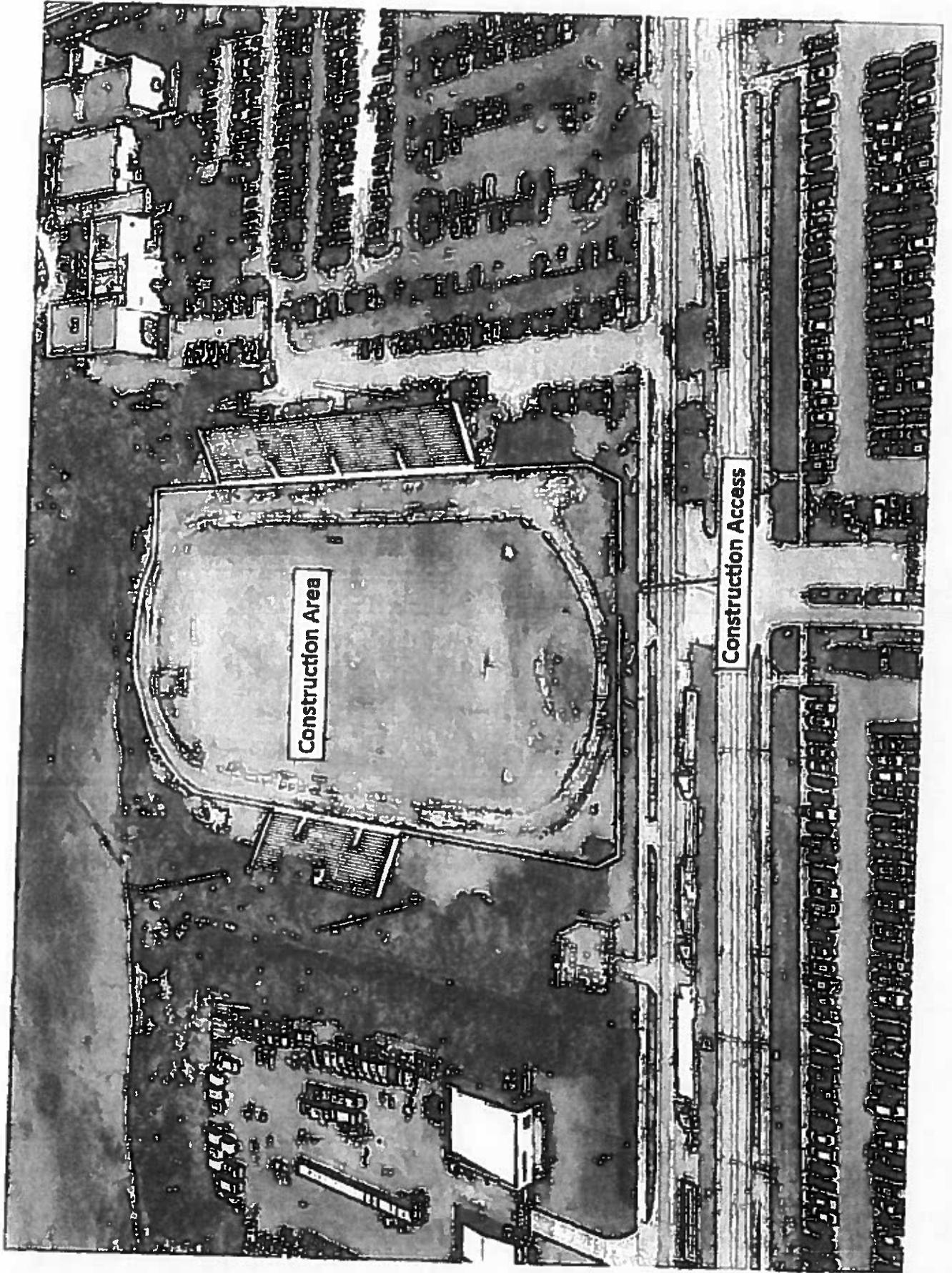
Charleston County School District


By: Gerrita Postlewait
Its: Superintendent

Charleston County School District

By: _____
Its: _____

EXHIBIT A
MAP OF PROPERTY AND ACCESS POINT



Construction Area

Construction Access

EXHIBIT B

CCSD BOARD APPROVED BUDGET FOR THE PROJECT

11/07/2018 11:42
519/cost

Charleston County School District vll.2
YEAR-TO-DATE BUDGET REPORT



P 1
91yctdbud

FOR 2019 05

5268 STONEY FIELD/2017-2022	ORIGINAL APPROP	REVISED BUDGET	YTD EXPENDED	MTD EXPENDED	ENC/ARO	AVAILABLE BUDGET	PCT USED
	1,000,000	954,654	16,154.80	3,398.22	96,645.20	841,854.00	11.8%
GRAND TOTAL	1,000,000	954,654	16,154.80	3,398.22	96,645.20	841,854.00	11.8%
** END OF REPORT - Generated by Joyce Costello **							
45,346 CM Fee							
\$1,000,000 Total Project Budget							

EXHIBIT C
Insurance and Indemnity Requirements

- A. During the Term of this MOU and for the duration of the Project, CCSD and its agents, contractors, sub-contractors, and employees shall, at their own expense, carry adequate liability and property damage insurance for the benefit of the City and its directors, officers, employees, and agents with respect to CCSD's use of the Property as set forth in this MOU.
- B. All contractors and sub-contractors employed by CCSD and any sub-contractors employed by the contractor shall purchase and maintain insurance to protect against claims that may arise out of the contractor's or sub-contractor's operations under the Design and Construction Scope of Work for this MOU. The limits shall be for not less than the limits set forth below, shall be written on an occurrence basis, and shall be in force for the duration of the Project.
- C. All liability insurance required herein shall include all major divisions of coverage and is to be based on a Commercial basis including the following:
1. Premises – Operations.
 2. Independent Contractor's Protective.
 3. Products and Completed Operations.
 4. Personal and Advertising Injury.
 5. Contractual, including specified provisions for Contractor's obligations.
 6. Broad Form Property Damage, including Completed Operations.
 7. Owned, Non-Owned and Hired Vehicles.
 8. Errors and Omissions.
- D. The Insurance required by this Exhibit shall be written for not less than the following limits or greater if required by law or other provisions in this Agreement:
1. Commercial General Liability:

a. General Aggregate (per project)	\$ 2,000,000
b. Products/Completed Operations	\$ 2,000,000
c. Personal and Advertising Injury	\$ 1,000,000
d. Each Occurrence	\$ 1,000,000
e. Fire Damage	\$ 50,000
f. Medical Expense (any one person)	\$ 5,000
 2. Business Auto Liability (including all owned, non-owned, and hired vehicles):

a. Combined Single Limit	\$ 1,000,000
-OR-	
b. Bodily Injury & Property Damage (each)	\$
1,000,000	
 3. Workers Compensation

a. State Statutory	
b. Employer's Liability	\$ 100,000 Per Accident
	\$ 500,000 Disease, Policy Limit

\$100,000 Disease, Each Employee

- E. The aggregate limits of the insurance shall apply, in total for this Agreement. This shall be indicated on the Certificate of Insurance as "Per Project", or in an attached policy amendment.
- F. The City shall be listed as the certificate holder on all Liability Insurance required herein.
- G. Certificates of Insurance shall be in the form of the latest edition of the ACORD 25 and shall be filed with the City prior to commencement of the Work. In addition to Certificates of Insurance, the contractor and any subcontractor's shall supply a written endorsement to the contractor's and any sub-contractor's general liability insurance policy that names the City as an additional insured. The endorsement shall provide that the contractor's and any sub-contractor's liability insurance policy shall be primary, and that any liability insurance of the City shall be secondary and noncontributory. These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been given to the City.
- H. In no event shall any failure of the City to receive certified copies or certificates of policies required under this Exhibit or to demand receipt of such certified copies or certificates prior to the commencement of any Work be construed as a waiver by the City of the contractor's or sub-contractor's obligations to obtain insurance pursuant to this Exhibit. The obligation to procure and maintain any insurance required by this Agreement is a separate responsibility of the contractor and any sub-contractors and shall be independent of the duty to furnish a certified copy or certificate of such insurance policies. Cancellation of insurance shall be grounds for the immediate termination of this MOU.
- I. All contractors and subcontractors employed by CCSD and any subcontractors employed the contractor shall indemnify and save harmless the City and the City's officers, agents, employees, from and against all losses and claims, demands, payments, suits, actions recoveries, and judgements of every nature and description brought or recovered against them by reason of any act, omission, or default of the contractors or subcontractors, their agents, sub-contractors, or employees in the execution of the Work under this MOU. When the City submits notice, the contractors and/or subcontractors shall promptly defend any aforementioned action at no cost to the City. This obligation shall survive the suspension or termination of this Agreement. The limits of insurance coverage required herein shall not serve to limit this indemnity obligation. The recovery of costs and fees shall extend to those incurred in the enforcement of this indemnity.

EXHIBIT 2

PLANS DATED 07/08/2020

<https://davisfloyd.filegenius.com/downloadPublic/z8oxa4e3lrmay2v>

(Hard copy documents may be obtained from the Parks Department)

**EXHIBIT B
(REVISED)**

Exhibit B (revised)



1
P
glytbdud

Charleston County School District
YEAR-TO-DATE BUDGET REPORT

09/17/2020 16:13
519jcost

FOR 2021 03

	ORIGINAL APPROP	REVISED BUDGET	YTD EXPENDED	MTD EXPENDED	ENC/REQ	AVAILABLE BUDGET	PCT USED
5268 STONEY FIELD/2017-2022	1,000,000	4,136,915	2,075,173.26	.00	1,683,012.85	378,728.89	90.8%
GRAND TOTAL	1,000,000	4,136,915	2,075,173.26	.00	1,683,012.85	378,728.89	90.8%

** END OF REPORT - Generated by Joyce Costello **