ORDINANCE #2026-008

AN ORDINANCE TO ADOPT THE PROVISIONS OF AGREEMENT BETWEEN JAHNKE & SONS CONSTRUCTION, INC. AND THE CITY OF MULLINS AS AN ORDINANCE OF THE CITY OF MULLINS, SOUTH CAROLINA

WHEREAS, on June 16, 2026, the City Council of Mullins, South Carolina, at a duly called Meeting of said Council, did approve an Agreement between Jahnke & Sons Constructions, Inc., d/b/a WHP Trainingtowers and the City of Mullins pertaining to the construction of, and payment for, a burn building training facility; and,

WHEREAS, Council recognizes that absent exigent circumstance, time and circumstance so allowing, it prefers action to be taken by Ordinance when feasible; now,

THEREFORE, BE IT ORDAINED, that the City of Mullins does hereby adopt and incorporate as if stated forth fully herein verbatim, the provisions of that certain Agreement by and between Jahnke & Sons Construction, Inc., d/b/a WHP Trainingtowers and the City of Mullins, South Carolina, effective date June 30, 2026, a copy of which is attached hereto, as an Ordinance of the City of Mullins, South Carolina.

THEREFORE, IT IS SO ORDAINED.

ATTEST:

_____
Clerk

_____
Mayor Pro Tem

_____

_____

_____

_____

_____

_____
Members of City Council

First Reading: June 23, 2026

Final Reading: June 30, 2026

APPROVED AS TO FORM:

_____
City Attorney

SETTLEMENT AND INSTALLMENT PAYMENT AGREEMENT

THIS SETTLEMENT AND INSTALLMENT PAYMENT AGREEMENT (this "Agreement") is made and entered into by and between **Jahnke & Sons Construction, Inc.** dba ***WHP Trainingtowers*** ("WHP"), and the ***City of Mullins, South Carolina***, a municipal corporation organized under the laws of the State of South Carolina, including its Fire Department (the "City") as of the Effective Date. WHP and the City are referred to herein individually as a "Party" and collectively as the "Parties." As used in this Agreement, the "Effective Date" means the date on which the ordinance of the City Council approving and authorizing this Agreement (the "Ordinance") becomes effective.

RECITALS:

A. On or about June 27, 2024, WHP provided the City, through its Fire Department, a written quote identified as Quote No. Q-2418566 for the design and erection of a pre-engineered fire-training tower and related improvements (the "Project").

B. WHP completed the work contemplated by the Project in July 2025, and the goods, materials, and improvements furnished by WHP were ordered, received, accepted, used, and retained by the City for the Project.

C. WHP submitted Invoice No. 25-4795 for the Project, and a balance remains payable to WHP.

D. The obligation to pay for the Project is a presently due, undisputed, and liquidated debt arising out of the City's exercise of its business and proprietary powers, and not its legislative or governmental powers.

E. The Parties desire, in good faith, to resolve this matter amicably and to provide for orderly payment of the balance over time on the terms set forth below.

F. The City Council of the City of Mullins (the "Council") has determined that this Agreement is, at the time of its execution, fair, reasonable, and necessary or advantageous to the City, and the Council has authorized and approved, or will authorize and approve, this Agreement by the Ordinance in accordance with applicable law.

G. The Parties desire to memorialize the terms upon which the balance will be paid and secured.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

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1. **Payment Terms**

In full and final settlement of the amounts owed for the Project, the City shall pay WHP the sum of the Initial Payment and all Monthly Installments (collectively, the "Settlement Sum") as follows:

(a) *Initial Payment.* The City shall pay an initial payment of $27,353.57 (the "Initial Payment"), due no later than five (5) days after the Effective Date.

(b) *Installment Payments.* After payment of the Initial Payment, the remaining balance of $225,000.00 shall be paid in sixty (60) consecutive monthly installments of $4,478.28 each (each, a "Monthly Installment"), subject to annual adjustment as provided in Section 1(c). The first Monthly Installment shall be due on July 10, 2026, and each subsequent Monthly Installment shall be due on the tenth (10th) day of each succeeding month until the Outstanding Balance is paid in full. Each Monthly Installment shall be applied first to accrued and unpaid interest and then to principal. As used in this Agreement, the "Outstanding Balance" means, at any time, the then-unpaid principal, together with all accrued and unpaid interest and any other amounts then due under this Agreement.

(c) *Interest; Annual Adjustment.* Interest shall accrue on the unpaid principal as simple interest at the rate of six and three-quarters percent (6.75%) per annum. Beginning with the Monthly Installment due in July 2027, and with each July installment thereafter, the interest rate shall be adjusted to the Wall Street Journal Prime Rate published on the first Business Day of that calendar year, and each Monthly Installment shall be recalculated to fully amortize the then-Outstanding Balance over the remaining Monthly Installments at the adjusted rate. As used in this Agreement, "Business Day" means any day other than a Saturday, Sunday, or day on which the City's offices are closed. The final Monthly Installment shall be adjusted as necessary to pay the Outstanding Balance in full.

(d) *Place and Method of Payment.* All payments under this Agreement shall be made by ACH transfer to the account designated in writing by WHP. If ACH transfer is unavailable, or as WHP may otherwise direct in writing, payment shall instead be made by check delivered to WHP via FedEx (or other nationally recognized overnight courier) with tracking, to WHP Trainingtowers, Attn: Accounting Controller, 519 Duck Rd., Grandview, Missouri 64030 (the "Payment Address"). WHP may change the Payment Address or the designated ACH account upon written notice given in accordance with Section 17.

(e) *Prepayment.* The City may prepay all or any portion of the Outstanding Balance at any time without penalty or premium. Any prepayment shall be applied first to accrued and unpaid interest and then to principal.

2. **Security; Confession of Judgment**

As security for the City's payment obligations under this Agreement, the City shall execute and deliver to WHP, contemporaneously with the execution of this Agreement, a confession of judgment in the form attached as **Exhibit A** (the "Confession of Judgment"). The Confession of

Judgment shall confess judgment in favor of WHP in the amount determined in accordance with, and subject to the limitations set forth in, Exhibit A. WHP (or its counsel) shall hold the Confession of Judgment and shall not file, enter, or otherwise seek to enforce it except upon an Event of Default that remains uncured following the notice and cure procedures set forth in Sections 5 and 6. Upon payment in full of the Outstanding Balance, WHP shall mark the Confession of Judgment satisfied and shall return or destroy the original.

3. Release and Covenant Not to Sue

Upon the City's payment in full of the Settlement Sum in accordance with this Agreement, WHP, on behalf of itself and its successors and assigns, shall fully and finally release and discharge the City from any and all claims, demands, and causes of action arising out of or relating to the Project and the outstanding balance, including any claim for principal, interest, attorney's fees, and costs. Pending payment in full, and so long as no Event of Default has occurred and remains uncured, WHP covenants not to institute suit against the City on account of the Project or the outstanding balance; provided, however, that nothing in this Agreement waives, releases, or impairs WHP's rights, claims, or remedies (including, without limitation, any rights, claims, remedies, and defenses available at law, in equity, or under any applicable statute) in the event of an Event of Default, all of which are expressly reserved until the Outstanding Balance is paid in full.

4. No Confidentiality; Public Record

The Parties acknowledge and agree that the City is a public body and that this Agreement, the Ordinance, and related records are public records subject to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 *et seq.* Accordingly, this Agreement is not confidential, and neither Party shall have any obligation to maintain the existence or terms of this Agreement in confidence. Nothing herein shall be construed to restrict either Party from disclosing this Agreement or its terms as required or permitted by law.

5. Events of Default

Each of the following constitutes an "Event of Default" under this Agreement: (a) the City fails to pay the Initial Payment or any Monthly Installment when due, and such failure continues for thirty (30) days (the "Default Period"); or (b) the City otherwise materially breaches any covenant or obligation under this Agreement and fails to cure such breach within thirty (30) days after written notice thereof.

6. Notice, Cure, and Remedies

(a) *Notice of Default.* Upon the occurrence of an Event of Default, WHP shall provide the City written notice of default in accordance with Section 17 (a "Notice of Default"). The City shall have thirty (30) days following the date of the Notice of Default (the "Notice Cure Period") to cure the default by paying all amounts then due, together with any interest accrued thereon, or by otherwise curing the breach.

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(b) *Filing of Confession of Judgment.* If the City fails to cure within the Notice Cure Period, WHP may, in addition to any other remedy available at law or in equity, file and enter the Confession of Judgment for the Outstanding Balance due and owing as of the date of the Event of Default, together with interest, costs, and other recoverable amounts.

(c) *Limitation on Cure Opportunities.* The City shall be entitled to the notice and cure process described in this Section 6 for the first five (5) payment defaults only. If the City defaults on a payment after having already cured five (5) prior payment defaults, WHP may file and enter the Confession of Judgment once the Default Period has expired, without giving any further notice or cure period.

(d) *Remedies Cumulative.* All remedies provided in this Agreement are cumulative and are in addition to, and not in lieu of, any other remedies available at law or in equity. No delay or omission by WHP in exercising any right or remedy shall operate as a waiver thereof.

7. Acceleration

Upon the filing and entry of the Confession of Judgment following an uncured Event of Default, the entire Outstanding Balance shall be immediately due and payable, and WHP shall be entitled to recover the full Outstanding Balance, together with all interest, costs, and other amounts recoverable under this Agreement and applicable law.

8. Municipal Authorization; Ordinance; Appropriation

The City represents and warrants that this Agreement, the Confession of Judgment, and the appropriation of funds necessary to perform the City's payment obligations have been, or upon the Effective Date will have been, duly authorized and approved by the Council by Ordinance enacted in accordance with all applicable procedural requirements, including the requirements of S.C. Code Ann. § 5-7-270 and the City's own ordinances and charter. To the fullest extent permitted by law, the City covenants that it shall include in each annual budget, and shall appropriate, the funds necessary to pay the Initial Payment and each Monthly Installment coming due in each fiscal year during the term of this Agreement, and that it shall take all lawful action necessary to ensure that such appropriations are made and maintained. The Parties acknowledge that this covenant services a presently existing and already incurred liquidated debt for goods, materials, and improvements that were delivered to and accepted by the City, and that this covenant does not create, compel, or constitute any new governmental, legislative, or discretionary undertaking. The City further acknowledges that this appropriation covenant is a material inducement to WHP's agreement to accept payment over time rather than to demand immediate payment of the full amount then due.

9. Proprietary Obligation; Binding on Successors

The Parties acknowledge and agree, and the Council has found, that the City's obligations under this Agreement arise solely out of the City's exercise of its business and proprietary powers, namely, the procurement of, and the payment for, goods, materials, and improvements that the City ordered, received, accepted, used, and retained for the Project, and that such procurement and

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payment constitute a commercial and business function of the City, irrespective of the use to which the Project may be put. This Agreement does not govern, restrict, or condition the City's fire, public safety, regulatory, legislative, or other governmental operations in any respect. Under South Carolina law, a municipal contract that involves the exercise of the municipal corporation's business or proprietary powers may extend beyond the term of the contracting body and is binding on successor bodies if, at the time the contract was entered into, it was fair and reasonable and necessary or advantageous to the municipality. The Council has expressly found that this Agreement is, at the time of its execution, fair, reasonable, and necessary or advantageous to the City; that its term of sixty months is of reasonable and finite duration; and that settlement on these terms is preferable to the cost, delay, and risk of litigation, including potential exposure to statutory interest, attorney's fees, and costs. The sole obligation created by this Agreement is the payment of a fixed and liquidated sum of money for goods, materials, and improvements already delivered to and accepted by the City, which obligation is ministerial in nature and does not deprive the City, or any successor Council, of any discretion that public policy demands should be left unimpaired. Accordingly, this Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors and assigns, including all present and future members of the Council, and shall remain in full force and effect notwithstanding any change in the membership of the Council.

10. No Impairment of Governmental Functions

Nothing in this Agreement requires the City to exercise, to refrain from exercising, to delegate, or to surrender any of its legislative, regulatory, police, or other governmental powers, nor does it condition any future governmental action of the City upon the consent of WHP or any other private party. The sole obligation of the City under this Agreement is to pay a fixed and liquidated sum of money, payable over time, for goods, materials, and improvements already delivered to and accepted by the City. The Parties intend that this Agreement be construed so as not to deprive the City, or any successor Council, of any discretion that public policy demands should be left unimpaired.

11. No Admission of Liability

This Agreement is entered into as a compromise of disputed matters. Neither the execution of this Agreement nor any term hereof shall be construed as an admission of liability, fault, or wrongdoing by either Party, all such liability being expressly denied.

12. Representations and Warranties

Each Party represents and warrants that: (a) it has full power and authority to enter into and perform this Agreement; (b) the individual executing this Agreement on its behalf is duly authorized to do so and to bind the Party; and (c) it has not assigned or transferred, and will not assign or transfer, any claim released or compromised under this Agreement.

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13. Reservation of Rights

Until the Outstanding Balance is paid in full, WHP reserves all rights, claims, remedies, and defenses available to it at law, in equity, or under any applicable statute, including the right to seek interest, attorney's fees, and costs, to the extent payment is not made in accordance with this Agreement. No provision of this Agreement, and no acceptance of any payment hereunder, shall be construed as a waiver, release, or impairment of any such right, claim, remedy, or defense.

14. Construction; Severability; Governing Law

This Agreement shall be construed and interpreted to effectuate the intent of the Parties, which is to resolve completely the outstanding balance for the Project on the terms set forth herein. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to its conflict of laws principles, and venue for any action to enforce this Agreement shall lie in Marion County, South Carolina. If any provision of this Agreement is held to be invalid, void, or unenforceable, such provision shall be construed and, to the extent permitted, reformed in a manner that most nearly effectuates the intent of the Parties and permits enforcement, and in no event shall such holding affect, impair, or invalidate any other provision of this Agreement, each of which shall remain in full force and effect. The Parties expressly intend and agree that the City's payment obligations under Section 1 and the security provided under Section 2 are independent of, and not conditioned upon, the enforceability of any other provision of this Agreement, and shall survive and remain fully enforceable notwithstanding the invalidation of any other provision, including Section 8 or Section 9. The Parties acknowledge that these payment obligations are supported by goods, materials, and improvements already delivered to and accepted by the City, and would remain a valid and enforceable debt of the City irrespective of any such invalidation.

15. Entire Agreement; Amendment

This Agreement, together with its exhibits, constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements, understandings, and communications, whether oral or written, relating thereto. This Agreement may be amended, modified, waived, discharged, or terminated only by a written instrument signed by the Party against whom enforcement is sought, and any amendment requiring municipal authorization shall be effective only upon enactment of an appropriate ordinance.

16. Joint Draftsmanship; No Waiver

This Agreement is the product of negotiation and contribution by both Parties, and any rule of construction resolving ambiguities against the drafting Party shall be inapplicable. No failure or delay by either Party in exercising any right, power, or remedy under this Agreement shall operate as a waiver thereof, and any waiver must be in writing and shall be limited to its terms.

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17. Notices

All notices, including any Notice of Default, shall be in writing and shall be deemed given when delivered personally, sent by nationally recognized overnight courier, or sent by certified mail, return receipt requested, and by email, to the following addresses (or such other address as a Party may designate by written notice):

If to WHP: WHP Trainingtowers, Attn: Accounting Controller, 519 Duck Rd., Grandview, Missouri 64030, alexish@trainingtowers.com,

with a copy to J. Boone Aiken IV, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, 850 Morrison Drive, Suite 775, Charleston, South Carolina 29403.

If to the City: Holly C. Jackson, City Administrator, City of Mullins, 151 E. Front Street, P.O. Drawer 408, Mullins, South Carolina 29574, hjackson@mullinssc.us,

with a copy to the City Attorney, City of Mullins, 151 E. Front Street, P.O. Drawer 408, Mullins, South Carolina 29574.

18. Further Assurances; Counterparts

Each Party agrees to execute and deliver such further documents and to take such further actions as may be reasonably necessary to give full force and effect to this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, and electronic or emailed signatures shall have the same force and effect as original signatures.

Signature Follows

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IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

CITY:

CITY OF MULLINS, SOUTH CAROLINA

By: Holly C. Jackson

Name: Holly C. Jackson

Title: City Administrator

WHP:

JAHNKE & SONS CONSTRUCTION, INC.
D/B/A WHP TRAININGTOWERS

By: Joseph P. Kirchner

Name: Joseph P. Kirchner

Title: COO